

The Role of the Public in Halakhic Considerations of Public Health – Part 2

Rabbi David Shabtai, MD

In our previous post, we argued that public considerations of health can and do differ, on a halakhic level, from those of private individuals. Several examples highlighted the notion that from a public health perspective, the threshold for what qualifies as a risk or threat is demonstrably lower than for an individual.

However, even accepting that the notion that “the public” is a distinct entity from the simple sum of all individuals, the practical dichotomy between public and private is not always simple. Conflicts can quickly arise between individual considerations and preferences and their interaction with public needs.

Rav Elyashiv (*Shiurei Torah le-Rof'im* vol. 3, p. 105) was approached by a philanthropist, who, out of gratitude to a particular hospital, wanted to donate a significant amount of money, earmarked for a specific cause. For personal reasons, the donor wanted to donate a new organ transplant unit and asked Rav Elyashiv for his blessing and guidance as to whether this was an appropriate goal.

The concern was the cost benefit ratio. An organ transplant unit is phenomenally expensive to set up and run and only benefits a very small percentage of the population. However, a more robust pediatrics program or public health clinic would almost certainly address a far greater percentage of the population and through effective preventive medicine, positively affect far more lives, at the same price point.

If the question being asked is how to best maximize a \$10 million investment to save the most lives, the answer will almost always be the ‘less exciting’ option of mass preventive care. There are scores of data supporting effective, efficient, and available public health preventive medicine as getting the best ‘pikuach nefesh-return on investment.’ And if the question was one of public health, it would only seem natural to divert all funds to these efforts.

But if that’s true, it’s important to realize that public health doesn’t just end with an accessible pediatric clinic or diabetes outreach and follow up teams. Public health also includes providing and maintaining clean water sources, seat belt safety campaigns, and substance abuse programs and therapy. Public smoking cessation campaigns have been particularly effective in reducing cigarette usage and directly lowering lung cancer death rates.

But as a society, we need more than just these overarching public health endeavors. We need to have transplant units and highly specialized medical fields. We have the knowledge and ability to keep healthy and save so many different lives, ranging from rare genetic

diseases to the increasingly more common hypertension and diabetes and it behooves us, as a society, to do our best to serve all our various constituents.

Practically however, the allocation of resources is far less straightforward. While it's true that there are patients who are in need of highly specialized therapy, but they aren't all concentrated in one locality. That very city has all sorts of needs and from that city, municipality, or village's financial perspective, they could maximize their pikuach nefesh return on investment for their constituents by opening up and maintaining more robust public preventive health initiatives.

Surprisingly, Rav Elyashiv took a somewhat counter-intuitive approach in differentiating between private and public responsibilities.

He argued that when it comes to an individual's responsibility, the optimal fulfillment of pikuach nefesh demands maximizing the number of lives saved (or return on investment). Therefore, an individual should be guided to sponsoring or donating toward a public health clinic. In the query he was presented, the choices were a NICU (neonatal ICU) or an organ transplant unit. Because the former would benefit more patients and save more lives, Rav Elyashiv ruled that the donor should be encouraged to donate toward the NICU.

However, Rav Elyashiv ruled that from a public health perspective, an organ transplant unit cannot be ignored. While he doesn't give specific guidance as to the precise allocation of funds, he felt that it was important, from a public health perspective, that the public / society invest in an organ transplant unit. Despite the lower 'return on investment,' Rav Elyashiv argued that organ transplants are considered to be צרכי רבים and therefore, halakhically equivalent to pikuach nefesh. He argues that if there is no organ transplant unit, it will lead to a generalized fear of getting sick (יביא הדבר למורך בלב) and people will not want to live in that particular location.

ולכן אע"פ שמחלקת ההשתלות זקוקה לתקציב גדול יותר, שבו היה אפשר לטפל ולהציל נפשות רבות, בכל זאת עצם קיום מחלקה כזו מרגיע את הציבור, היודעים שבעת הצורך ניתן כאן להשתיל, וכמוהו כפיקוח נפש.

Therefore, even though an organ transplant unit requires a larger budget, with which it would have otherwise been possible to save many lives, nonetheless, the very existence of such a unit calms the public, that knows that when necessary, these needs can be met. And it is similar to pikuach nefesh.

Rav Elyashiv is clearly trying to find a balance between competing claims of pikuach nefesh and concludes:

ולכן לא ניתן להורות לציבור לוותר על מחלקות, כגון יחידת השתלות או פגיה, [אבל ליחיד תורם הבא להתייעץ, נייעץ לו שיעדיף מחלקות אשר בהן מצילים מספר גדול של חולים]. אך אין להפעיל אותה בתפוסה מלאה, אם ההוצאות רבות, וניתן להציל בממון זה מספר גדול יותר של אנשים.

Therefore, it's not appropriate to instruct the public to forgo these [more expensive] units, such as an organ transplant unit [although for a private individual who asks, we will instruct him to donate money to whatever ends save the greatest number of people]. However, they should not operate at full capacity, if the costs are great, and use those additional funds to save the largest number of people.

Even while he advocates for a societal preference of opening an organ transplant unit or a NICU, he suggests that they not operate at full capacity, so as to accommodate the budgetary needs of public clinics and general needs. It's likely deliberately vague, since there cannot be a clear cut calculation as to how this calculus must play out.

When analyzing 'public health,' Rav Elyashiv includes caring for all segments of the population, insuring that even those less common (and costlier) concerns are cared for. This in itself isn't terribly novel. If 'the public' is responsible for taking care of society's health, why should that necessarily be limited by some prevalence factor? The novelty is that he is willing to sacrifice some potential lives saved to accomplish this goal. Diverting funds (or in this case, a significant gift) to an organ transplant unit will mean less money for preventive health and other basic needs that not only serve a significantly larger population, but offer a better pikuach nefesh return on investment.

But even in arguing to fund the organ transplant unit, Rav Elyashiv is still operating under the same framework of saving lives. He argues that when complete medical services aren't available in a particular area, people won't want to live there. If people won't choose to move or live there, they will collect less taxes. And the ball will keep rolling until it will reach a point that vital medical services won't be able to be provided and people's lives will be at risk. The details of how this would have to break down between different governmental levels is fascinating (each small town doesn't need to open a tertiary-care academic medical center, but on a regional level, it's certainly something desired), but beyond the scope of this discussion (who pays for regional level care? Even though the center may open in a particular city, it necessarily serves all the smaller towns and villages in the surrounding area as well.)

Individuals, Rav Elyashiv argues, don't bear this responsibility. They must use their funds to maximize the mitzvah of pikuach nefesh for the best return on investment. It's specifically because public health is considered a separate category that cities must think about this question differently than individuals. It's the balance between these different components however, that needs to be further explored.

To be continued....