

First Principles: Who Gets the Vaccine?

Adapted from the writings of Dayan Yitzhak Grossman

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With distribution of the scarce COVID-19 vaccines now underway, prioritization decisions have been made by various authorities: some eminently reasonable, others rather less so, and some quite dubious. In a series of articles, we consider the halacha governing medical triage and prioritization in general, and its application to vaccine prioritization in particular. In this introductory article, we consider the basic Talmudic framework of precedence, its contemporary applicability, and various other triage criteria set forth by the *poskim*.

The Horayos hierarchy

The classic discussion of the rules of prioritization of “rescue” is in Horayos:

MISHNAH: The man precedes the woman when there is uncertainty with regard to which of them to rescue...

GEMARA: Apropos precedence, the Sages taught in a *braisa*: If one and his father and his teacher were in captivity, his release precedes his teacher’s because one’s own life takes precedence, and his teacher’s release precedes his father’s release...

A Torah scholar precedes the king of Israel, because in the case of a Sage who dies, we have no one like him, but in the case of a king of Israel who dies, all of Israel are fit for royalty...

MISHNAH: A *kohein* precedes a *levi*. A *levi* precedes a *yisrael*...When do these halachos of precedence apply? In circumstances when they are all equal in wisdom. But if there were a *mamzer* who is a Torah scholar and a *kohein gadol* who is an ignoramus, a *mamzer* who is a Torah scholar precedes a *kohein gadol* who is an ignoramus, as Torah wisdom surpasses all else.[1]

R’ Moshe Feinstein adds additional criteria that are evaluated prior to the Talmudic hierarchy, as well as a rule that a random selection is to be made when the hierarchy is inapplicable:

A physician must go [first] to the patient who summons him first and the patient nearest his home, and when these factors are equal, he must prioritize according to the hierarchy of the *mishnah* in Horayos, and if the physician does not know this (i.e., the categories into which the various patients fit), there should be a lottery.[2]

The Chazon Ish, on the other hand, assumes that when two people are equal according to the hierarchy, a third party may choose to save whichever one he chooses.[3] R’ Asher Weiss vehemently rejects, however, the position (attributed to an anonymous *gaon* whom he considers a *posek muvhak*) that the physician may choose to save the one that promises him greater compensation.[4]

Contemporary application

Some authorities are skeptical of the contemporary applicability of this

hierarchy, although they do not really offer satisfactory explanations for their skepticism. While as we have seen, R' Moshe in one of his responsa takes for granted that the hierarchy is to be followed, in another he writes, "It is difficult to put these rules into practice without very careful investigation (*iyun gadol*)."[5] Similarly, R' Shlomo Zalman Auerbach writes, "I think that in our era it is very difficult to operate this way." Neither R' Moshe nor R' Shlomo Zalman provides any further explanation of the difficulty in following a straightforward-seeming set of guidelines.[6] R' Avraham Sofer-Abraham writes that it would seem that physicians should follow the hierarchy, but he believes that they do not and instead follow the rule of first come, first served, and he is perplexed by this apparent flouting of a clear halacha.[7] (As we have seen, R' Moshe also assumes a rule of first come, first served, but he assumes that subsequent to that rule, the hierarchy is followed.) R' Asher Weiss maintains that the hierarchy is to be followed (after consideration of other triage criteria, as discussed below).[8]

Triage criteria: severity and prognosis

The Pri Megadim establishes an alternate criterion: One who is in certain danger takes precedence over one who is merely in possible danger.[9] He does not specify whether this criterion is evaluated before, after, or as an alternative to the Talmudic hierarchy.

R' Shlomo Zalman extends the Pri Megadim's standard to incorporate the relative chances of saving the patients, but he insists that the patients' relative ages are not taken into account.[10]

Similarly, R' Moshe rules that if one patient is expected to survive for more than a year (with treatment), while the other is not expected to survive that long, the former takes precedence, and this criterion overrides the Talmudic hierarchy. If they are both expected to survive at least a year, then an intermediate-term prognosis of death (e.g., within two years) is not taken into consideration, and in such cases, the patient closer to the physician's home has precedence, followed by the Talmudic hierarchy, as above.[11] Even a very elderly patient, even one who "despises his life" and does not desire treatment, has equal priority to a young person.[12] A patient whose illness is more severe than another's in the physician's judgment has precedence.[13]

R' Asher Weiss, too, maintains that the key criteria in determining precedence for treatment are the severity and imminence of the danger to the patients, the likelihood of our being able to save them, and whether we expect to be able to save them for "long life" as opposed to a brief period (*chayei sha'ah*). The patients' ages are generally not taken into account, although R' Asher is unsure whether a young person would have precedence over a very elderly one who is likely (based on the laws of nature) near death.[14]

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- [1]Horayos 13a-b.
[2]Shu"t Igros Moshe C.M. *cheilek 2 siman 75* end of *os 2*.
[3]Chazon Ish, Likutim to Maseches Bava Metzia *siman 20 daf 62a*.
[4]Minchas Asher *ibid*.
[5]Igros Moshe *ibid. siman 74* end of *os 1 s.v. Achar kach noda li*.
[6]Shu"t Minchas Shlomo tinyana *siman 86 os 1*.
[7]Nishmas Avraham (Second Expanded Edition) Y.D. beginning of *siman 251 p. 288*.
[8]Shu"t Minchas Asher *cheilek 2 siman 126*.
[9]Pri Megadim O.C. *siman 328 M.Z. s.k. 1*.
[10]Minchas Shlomo *ibid*.
[11]Igros Moshe C.M. *cheilek 2 siman 75 os 2*.
[12]*Ibid. os 3*.
[13]Igros Moshe *ibid. siman 74*.
[14]Minchas Asher *ibid. and cheilek 1 siman 115*; Minchas Asher - *b'Tekufas hacorona* (mahadura tinyana) *siman 4 pp. 17-18*.