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 Rabbi Raysh Weiss

## Medical and Recreational Cannabis Usage<sup>1</sup>

*Approved on December 8, 2023. The P'sak includes several items. For this paper, the committee voted on P'sak #1 and Psakim #2-7, respectively. The vote totals can be found with the Piskei Din on page 16.*

### שאלה (Question)

What are the contemporary halakhic and Jewish ethical statuses of the consumption, possession, and sale of cannabis?

### תשובה (Response)

In the last decade, the legalisation of cannabis has emerged as a topic of heated debate across the globe, with notable developments unfolding in recent months. Most recently, Thailand decriminalised cannabis on June 9, 2022, with Germany and Spain expected to follow suit shortly, as of the time of this writing.<sup>2</sup> In 2018, Canada became the second country, after Uruguay in 2013, to legalise recreational cannabis. Since 1999, medical cannabis in Israel has been legal, and Israel remains one of the world leaders in medical cannabis consumption.<sup>3</sup> Presently in the United States, there is strong popular support for the legalisation of both medical

<sup>1</sup> I want to thank the entire CJLS and in particular, my colleagues Rabbis Pamela Barmash, Emily Barton, Elliot Dorff, David Kosak, Danny Nevins, Jonah Rank, Avram Reisner, Rob Scheinberg, and Deborah Silver, for their very helpful reviews of this responsum along with Dr. David Reifler.

<sup>2</sup> "Marijuana is now legal in Thailand. What does that mean for tourists?" <https://www.washingtonpost.com/travel/2022/06/14/marijuana-legal-thailand-tourists/>, accessed April 9, 2023. German Health Minister Karl Lauterbach has just shared with the Chancellor's cabinet his plans for the legalisation of cannabis: "Germany: Lauterbach outlines cannabis legalization plan," <https://www.dw.com/en/germany-health-minister-lauterbach-presents-plan-on-cannabis-legalization/a-63558414>, accessed April 9, 2023. Germany is expected to introduce its bill legalising recreational cannabis this season: "Germany To Introduce Bill To Legalize Cannabis In The Coming Weeks," <https://www.forbes.com/sites/dariosabaghi/2023/03/16/germany-to-introduce-bill-to-legalize-cannabis-in-the-coming-weeks/?sh=61622d735968>, accessed April 9, 2023.

<sup>3</sup> Recreational use of marijuana in Israel is currently undergoing reevaluation, with very recent efforts through the Ministry of Justice to limit its criminalisation. See "Justice Minister Sa'ar Signs New Regulation Decriminalizing Marijuana in Israel," <https://www.haaretz.com/israel-news/2022-03-10/ty-article/.premium/justice-minister-saar-signs-new-regulation-decriminalizing-marijuana-in-israel/0000017f-f2a7-d497-a1ff-f2a7cdc00000>, accessed April 9, 2023. Israel continues to lead the way in cannabis research and production, with researchers at Hebrew University having recently developed a more potent form of medical marijuana. The scientists, basing their analysis on the levels of THC per unit of product, estimate this product to be twenty percent more potent than earlier versions; see "Cannabis strain with 20% more THC engineered by Hebrew University researchers," <https://www.jpost.com/science/article-708155> accessed June 13, 2022.

and recreational cannabis usage.<sup>4</sup> At the time of this writing, nearly 40 US states have legalised medical cannabis, 24 US states as well as the District of Columbia have legalised recreational use, and over half of the States have fully legalised in-state cannabis usage.<sup>5</sup> In last year fall's midterm elections, five US states, Arkansas, Maryland, Missouri, North Dakota, and South Dakota, voted on the legalisation of recreational cannabis usage, with Maryland and Missouri voting in favour, and this past fall, Ohioans voted to legalise adult recreational cannabis usage. The following paper provides an overview of the scientific, medical, historical, sociocultural, and ethical dimensions of cannabis usage, with an eye to the halakhic ramifications for medical and recreational usages, respectively. Special attention will be paid to practical applications that may arise within Jewish organisational life and appropriate parameters for said use.

## Background

In Genesis 1:29-30, the plants of the field are firmly established as essential nourishment for humankind and for all of the other members of the animal kingdom. Indeed, our earliest sources are replete with herbal references in both our diet and ritual regimens.

Although difficult to substantiate conclusively, there appear to be references to cannabis consumption in the TaNaKh. For example, Ex. 30:23-25, in describing an anointing oil concoction, refers to *kaneh bosem*, which some rabbinical commentators, as well as more contemporary scholars, understand to mean the ancient *Cannabis Sativa* plant, from which cannabis is derived.<sup>6</sup> The word cannabis in Hebrew, קנבוס, derived from the Greek *kannabos* or *kannabis* (hemp), had been in circulation even before the Byzantine period, appearing in rabbinic literature. In Syriac, cannabis was referred to as *kanba* קנבא; in Arabic it was referred to as *qunnab* and *qinnab*.<sup>7</sup> The earliest references to cannabis products in rabbinic literature appear in

<sup>4</sup> "Americans overwhelmingly say marijuana should be legal for medical or recreational use," <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use/>, accessed June 13, 2022.

<sup>5</sup> "State Approaches to Marijuana Policy," <https://www.csg.org/2023/02/13/state-approaches-to-marijuana-policy/#:~:text=As%20of%202023%2C%2020%20states,recreational%20adult%20use%20of%20marijuana>, accessed April 9, 2023. "Marijuana Legality by State," <https://disa.com/marijuana-legality-by-state>, accessed October 5, 2023.

<sup>6</sup> See Metzudat Tzion on Is. 43:23-24: "קנה: מין בוסם." See also David Ilan, "The Ring-Kernoi and Psychotropic Substances," in *The Routledge Companion to Ecstatic Experience in the Ancient World* (Routledge, 2021):, 173-186; and

Semitic etymologist Sula Benet's discussion of *kaneh bosm* in "Early diffusion and folk uses of hemp," *Cannabis and culture* (1975): 39-49, linking Semitic *kanbos* and the Scythian "cannabis" to speculate that Scythian term bears Semitic origins. See also *The Routledge Companion to Ecstatic Experience in the Ancient World* (Routledge, 2021), 173-186. Commenting on the guidelines for appropriate Shabbat light wicks as detailed in Shulhan Arukh, Orah Hayyim 264:1, the 18<sup>th</sup> century legal commentator Elijah Spira in Eliyyahu Zuta lifts up cannabis from the possible list of acceptable materials for wicks, as most preferable to use. *Kaneh bosem* is also referenced in Song of Songs 4:14, Jer. 6:20, and Ezekiel 27:19.

<sup>7</sup> Ernst Klein (1987). *A Comprehensive Etymological Dictionary of the Hebrew Language for Readers of English* (Jerusalem, Tel Aviv: Carta Jerusalem, University of Haifa), 584. I am indebted to Dr. David Reifler for his

Mishnah Kilayim 9:1, in a discussion about the prohibition of mixing fabrics, specifically hemp with linen.<sup>8</sup> In 1934, the word *kanbus*, appeared in the first Modern Hebrew scientific and medical dictionary in which *kanbus hodu* (*C. indica*) and *kanbus matzui* [קנבוּס מצוּי] (*C. sativa*) were distinguished.<sup>9</sup>

For thousands of years, cannabis was used medicinally in the Middle East. There are numerous references to cannabis having been used by the Assyrians, who used it beginning in the 7<sup>th</sup> Century BCE for its healing qualities, for its psychotropic effects, as well as for ritual purposes.<sup>10</sup> Archaeologists digging in the area of Beit Shemesh in Israel have uncovered a 1,623-year-old corpse of a 14-year-old pregnant girl with hashish, i.e., cannabis, on her stomach, suggesting that may have been used as a numbing and healing agent aiding in birth.

There is also ample archaeological evidence suggesting ritual usage of cannabis across different eastern cultures. Archaeological findings from the first millennium in the western Chinese region of Pamirs indicate that cannabis was smoked as part of mortuary rite.<sup>11</sup> In 2020, archaeologists in Israel discovered black residue, which they determined to be cannabis containing the psychoactive compound THC, on the altar of a 2,700 year old shrine in Tel Arad.<sup>12</sup> THC, the abbreviated form of Δ9-THC (Delta-9-tetrahydrocannabinol) is the most important psychoactive compound in the approximately sixty forms of known cannabinoids, i.e., the naturally occurring chemical compounds found in cannabis plants.<sup>13</sup> Cannabis plants also bear cannabidiol (CBD), a non-intoxicating ingredient used in medical cannabis; this compound, a derivative of hemp, in its pure form has neither psychoactive nor addictive effects. Egyptians were also known to regularly use cannabis for its healing properties, as did the Greeks and Romans, who used the plant for as an anti-inflammatory agent.<sup>14</sup> According to Dr. Yosef

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generous and thorough review of this responsum and for his extended notes on the etymological origins of cannabis in the Ancient Near East.

<sup>8</sup> Yosef Kapach (5750/1989/90). *Rabbeinu Moshe ben Maimon. Sefer Mishneh Torah. Al-Pi Kitvei Yad Teiman 'Im Peirush Makif. Zeraim* [Hebrew], Book 7, *Sefer Zeraim; Hilkhot Kilayim*. Jerusalem: Makhon Mishneh HaRamba"m; 140–141.

<sup>9</sup> Aharon Meir Masie [Mazie], *Sefer ha-Munahim li-Refuah u-le-Madda 'ei ha-Teva* [Dictionary of Medicine and Allied Sciences] (Jerusalem: Margalit, 1934), 129.

<sup>10</sup> R Mechoulam R. and L. Hanus, "The cannabinoids: an overview. Therapeutic implications in vomiting and nausea after cancer chemotherapy, in appetite promotion, in multiple sclerosis and in neuroprotection," *Pain Research and Management* 6, no. 2 (2001): 67-73.

<sup>11</sup> Meng Ren, Zihua Tang, Xinhua Wu, Robert Spengler, et al (2019), "The origins of cannabis smoking: Chemical residue evidence from the first millennium BCE in the Pamirs," *Science Advances* 5(6); <https://advances.sciencemag.org/content/5/6/eaaw1391>, accessed April 9, 2023.

<sup>12</sup> Eran Arie, Baruch Rosen, and Dvory Namdar, "Cannabis and frankincense at the Judahite shrine of Arad," *Tel Aviv* 47, no. 1 (2020): 5-28.

<sup>13</sup> "CBD: What You Need to Know," [https://www.cdc.gov/marijuana/featured-topics/CBD.html#:~:text=Cannabidiol%20\(CBD\)%20is%20a%20compound,not%20cause%20a%20E2%80%9CHigh.%E2%80%9D&text=CBD%20can%20be%20derived%20from,.,mind%20altering%20substance%20in%20marijuana](https://www.cdc.gov/marijuana/featured-topics/CBD.html#:~:text=Cannabidiol%20(CBD)%20is%20a%20compound,not%20cause%20a%20E2%80%9CHigh.%E2%80%9D&text=CBD%20can%20be%20derived%20from,.,mind%20altering%20substance%20in%20marijuana) accessed April 9, 2023.

<sup>14</sup> The Radvaz, in *Hilkhot Kilayim* 5:19, referred to the intoxicating properties of the cannabis leaves used in Egypt. See also Pisanti, Simona, and Maurizio Bifulco, "Medical Cannabis: A plurimillennial history of an evergreen," *Journal of cellular physiology* 234, no. 6 (2019): 8342-8351, which dates Egyptian hemp usage until at

Glassman, a geriatrician, Maimonides prescribed cannabis oil to heal ear ailments and colds.<sup>15</sup> The medieval Jewish writers who understood the use of cannabis for healing purposes were well-grounded in the reality around them. Among other records of the various uses of cannabis in other societies are a 15<sup>th</sup> century Arabic record of the use of cannabis to treat epilepsy and documentation of its use to quell anxiety and aid in digestive ailments and immunity-strengthening in Ayurvedic medicine in India.<sup>16</sup>

While the origins of cannabis consumption date back to ancient times, the discovery of the active compound in cannabis and the isolation of Delta-Nine tetrahydrocannabinol, otherwise known as THC, is the work of Israeli chemist and Holocaust survivor Prof. Raphael Mechoulam. Prof. Mechoulam's groundbreaking research in the field cleared the way for Israel to become, in the words of former Israeli Prime Minister Ehud Barak, "a land flowing with milk, honey, and cannabis."<sup>17</sup> Mechoulam successfully isolated THC. Mechoulam and his associates tested the effects of the compound initially on mice, monkeys, and a sampling of his peers. Mechoulam was a lifelong advocate of medical cannabis and increased research on the healing potential of cannabis-derived medicine. Most conclusive was a 1973 clinical trial conducted in São Paulo, Brazil, in which 200 mg of cannabidiol was administered daily to the 10 clinical trial participants with epilepsy. In all cases, the cannabidiol cured the effects of epilepsy, relieving all participants of seizures.<sup>18</sup>

Since the landmark São Paulo trial, there has been a relative paucity of subsequent human-based studies, effectively hindering the potential inroads and scientific advancements in medical cannabis research. Consequently, we still suffer from a general lack of concrete data, despite the existing research's seemingly persuasive findings.

Mechoulam and his associates also discovered endogenous compounds in the human body that mimic cannabis and act upon cannabinoid receptors in the body, resulting in the discovery of arachidonoyl ethanolamine, which came to be known as the neurotransmitter Anandamide. In the mid-90's, Mechoulam and his colleagues Aya and Avraham Abrahamov

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least back to 1335 BCE and notes records of Greco-Roman medicinal cannabis consumption as far back at the first century CE.

<sup>15</sup> See interview with Dr. Yosef Glassman in "Doctor Cannabis," <http://forward.com/articles/188881/doctor-cannabis/>, accessed June 13, 2022. While Glassman refers to Maimonides' prescription of cannabis to treat ear ailments and colds, this author could not corroborate this claim with a text reference within Maimonides' writing.

<sup>16</sup> Ethan B. Russo, "Cannabis and epilepsy: An ancient treatment returns to the fore," *Epilepsy & Behavior* 70 (2017): 292-297. On the 15<sup>th</sup> century record from Ibn al-Badri and Ayurvedic uses of cannabis, see Raphael Mechoulam and Elisado A. Carlini, "Toward drugs derived from cannabis," *Naturwissenschaften* 65, no. 4 (1978): 174-179.

<sup>17</sup> "Ex-PM Ehud Barak at CannaTech: 'Israel is the Land of Milk, Honey & Cannabis,'" <https://nocamels.com/2019/04/ehud-barak-cannatech-cannabis-israel/>, accessed June 13, 2022.

In the 1930's, chemist Roger Adams and his colleagues in Chicago were the first to isolate cannabinol and CBD from hemp oil. See National Academies of Sciences, Engineering, and Medicine, "The health effects of cannabis and cannabinoids: the current state of evidence and recommendations for research" (2017), <https://www.ncbi.nlm.nih.gov/books/NBK423845/>, accessed June 13, 2022.

<sup>18</sup>Raphael Mechoulam and Elisado A. Carlini, "Toward drugs derived from cannabis," *Naturwissenschaften* 65, no. 4 (1978): 174-179.

tested the effects of very mild doses of THC, administered as under-the-tongue drops, on children undergoing chemotherapy, and found conclusively that the treatment eased the harsh side effects of these cancer treatments on the children without any psychoactivity.<sup>19</sup> Mechoulam however notes that studies on the use of Anandamide among humans remains nonetheless under-researched. More recent research on the possible effects of cannabinoids on cancer has been conducted by Prof. Manuel Guzmán and his team in Spain, who have explored the ways THC cannabinoids can exert anti-tumor actions in animals, inducing cell death through apoptosis, the dying of cells as a result of normal and controlled parts of an organism's development. Cannabinoids also can tackle other processes of cancer cell growth, such as angiogenesis, metastasis, and cell cycles.<sup>20</sup> Questions still remain about side effects, especially long-term effects, of cannabis usage. While patients do not die of cannabinoid overdose, even short-term effects vary considerably among subjects.

### Contemporary Sociocultural Context

The sociocultural status of cannabis and the complicated racial calculus surrounding its legalisation bears consideration in our greater reflections on this topic. Whereas a number of older and/or Orthodox sources have a tendency to decry cannabis as somehow especially symbolic of a dangerous counterculture, we must also consider the racial implications and the disastrous fallout of the United States' "War on Drugs" campaign. Efforts to crack down on illegal drug possessions and sales in the United States have led to Black Americans being arrested for these activities at a significantly higher rate than Americans of any other ethnic or racial background.<sup>21</sup> As powerfully documented in Michelle Alexander's 2010 book *The New Jim Crow*, the United States of America's current legal framework for drug-based arrests represents our country's systematised efforts to supplant antebellum slavery with the mass imprisonment of African Americans, who represent only 12% of the total US population yet comprise 38.3% of the current total prison population.<sup>22</sup>

<sup>19</sup>Aya Abrahamov, Avraham Abrahamov, and R. Mechoulam, "An efficient new cannabinoid antiemetic in pediatric oncology," *Life sciences* 56, no. 23-24 (1995): 2097-2102.

<sup>20</sup>Manuel Guzmán, Cristina Sánchez, and Ismael Galve-Roperh, "Control of the cell survival/death decision by cannabinoids," *Journal of molecular medicine* 78, no. 11 (2001): 613-625.

<sup>21</sup> On the association of marijuana as an icon of counterculture and its perils, see for example, D. Novak, "Alcohol and drug use in the perspective of Jewish tradition," in S. J. Levy & S. B. Blume, eds., *Addictions in the Jewish community* (New York: Commission on Synagogue Relations, Federation of Jewish Philanthropies of New York): 245-263). See also the Aviner responsum in *She'elat Shelomo*. On the systemic and disproportionate targeting and incarceration of African Americans, especially African American males, see Jane E. Palmer, Valli Rajah, and Sean K. Wilson. "Anti-racism in Criminology: An Oxymoron or the way Forward?." *Race and Justice* 12, no. 3 (2022): 531-547. For example, as of 2020, Black males were roughly five times more likely to be arrested than their white peers in the US. See also "The Color of Justice: Racial and Ethnic Disparity in State Prisons," <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>, accessed June 13, 2022.

<sup>22</sup> "Mass Incarceration: The Whole Pie 2023," <https://www.prisonpolicy.org/reports/pie2023.html> accessed April 9, 2023.

According to the Sentencing Project's October 2021 report, one in every 81 African American adults is incarcerated.



These figures should especially concern us as Jews, a population who suffered mightily at the hands of manipulative and hate-motivated governments who sought to break up our communities, destroy our families, and crush our spirits through detainment and back-breaking work in concentration camps. What Alexander most powerfully illustrates is the complicated web of social dissolution generated by these draconian and often completely unjust measures, resulting in the banishment and complete social disenfranchisement of a significant percentage of African Americans on the basis of race. As Alexander demonstrates, there is not a significant difference in the number of white vs. Black drug-dealers, but African Americans are disproportionately apprehended (whether justly or not) for drug sales. This trend has become all the more remarkable in light of the current staggering opioid epidemic, which is especially plaguing white rural America.

While the above context in no way lessens the potential outcomes of recreational cannabis consumption, it should guide our thinking when we make moral and spiritual decisions about our own stances and advocacy around cannabis legalisation. A Jewish sense of empathy, built jointly by national tragedies in Jewish history and by the moral teachings of our sages, must direct our ethical compass to refrain from exploiting cannabis and other drugs as a means to discriminate against minorities in our civic lives.

## Guiding Jewish Legal Principles

Aside from the above broader, structural societal considerations of how cannabis criminalisation has impacted the US prison system and the African American population in particular, the question remains as to whether or not cannabis consumption is acceptable within a Jewish legal framework. As with any matter of health, we must exert extra caution when considering the short and long-term consequences of a substance that has the ability to alter our physical and mental state.

First and foremost, we must take seriously the weight our tradition places on personal and collective safety and health, as expressed both in the Torah (*v'nishmartem me'od le'nafshoteikhem*, “guard yourselves well”) (Deuteronomy 4:15) and echoed variously throughout rabbinic literature. As Rav said to his son Hiyya, “אָמַר לִיהוּבָא רַב לְהֵיבֵי בְרִיָּה: לֹא תִשְׁתֵּי סַמָּא, וְלֹא תִשְׁנֹר בְּיַגְרָא, וְלֹא תִעָקֵר כְּפָא... “Do not drink medications, and do not leap into a ditch, do not pull out a tooth...” (BT Pesahim 113a)—all of the described activities are forms of needless risk-taking. Rashi, *ad locum*, explains “do not drink medications” to mean making a regular habit of drinking medications, an activity that could lead to dependency and undesirable outcomes.

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See “The Color of Justice: Racial and Ethnic Disparity in State Prisons,” <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>, accessed June 13, 2022. See Michelle Alexander, *The new Jim Crow: Mass incarceration in the age of colorblindness* (The New Press, 2020).

Nachmanides likewise appreciates the potential hazards of certain especially potent medications, noting that any drug potent enough to cure one person could cause death to another.<sup>23</sup> Inasmuch as *pikkuah nefesh* is a driving Jewish value, in all cases of personal and collective health, we must prioritise whatever will uphold and maintain life. The case of cannabis is an especially complicated one, as certain findings indicate substantial short and long-term cognitive and psychiatric risks associated with cannabis consumption, whereas other studies have conclusively demonstrated significant benefit from controlled medical cannabis consumption.<sup>24</sup> Moreover, as with the case of alcohol consumption, the substance will interact differently with different bodies, depending on individuals' different genetic composition and certain sociological factors. Indeed, as Nachmanides cautions, cannabis has the potential both to heal and to harm its consumers depending on context.

In addition to the injunction to prioritise life, moderation, and healthy living, we are charged to lift up the mundane through intentional sanctification. As Jews, we are charged to “be holy,” as God is holy (Lev. 19:2), *kedoshim tiyu*. As such, we are bound by a wide swath of ethical and ritual obligations that ensure our physical actions are in alignment with our spiritual potential as both servants and creations of God. Elsewhere in Leviticus (10:9), Levites are expressly forbidden from consuming alcohol before serving in the Tabernacle. Much of the pursuit of holiness involves different forms of exercising personal restraint and engaging in a series of intentional behaviours and actions. While Judaism is by no means a monastic or ascetic tradition—rather, we are encouraged to take advantage of permitted pleasures—we are still expected to embrace a lifestyle that will enable and affirm our free will. As we learn from Mishnah, Avot 3:10, the person who sleeps too much and drinks too much removes himself from the world. Willfully submitting ourselves to compromised states of consciousness, according to our Sages, is a denial of our basic connection to the world, a denial of our very humanity. We are created in the image of God and entrusted with free choice, which we should not squander by surrendering to conditions which render us powerless to act of our own free will.

In the case of psychoactive substances, such as THC, we must evaluate to what extent we can remain free actors who are able to perform the *mitzvot* without distraction, or *heseh ha-da'at*, when consuming such products. While cannabis consumption has not been proven to be addictive, there is increasing evidence of dependency.<sup>25</sup> And whereas cannabis is not lethal, it can induce dangerous states, such as hallucinations and paranoia.

In exploring personal decisions as to whether or not consume cannabis products, it is important to understand the currently known risks and benefits associated with each form. Cannabis can be consumed by drinking, eating, inhaling, smoking, or vaping it; there are also cannabis-derived products such as creams, oils, lotions, and waxes that can be applied topically. There is a difference between the popular and increasingly widely available CBD, which is

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<sup>23</sup> Kitvei Ramban, ed. R. Charles B Chavel (Jerusalem 5742),II, 43.

<sup>24</sup> See for example “Is There a Link Between Marijuana Use and Psychiatric Disorders?” <https://nida.nih.gov/publications/research-reports/marijuana/there-link-between-marijuana-use-psychiatric-disorders> accessed April 9, 2023

<sup>25</sup> And whereas cannabis is not itself addictive, we must take into serious consideration individuals who are addiction-prone and genetically predisposed to react adversely to the compound.

derived from hemp, and the Delta-9 THC cannabinoid compound, which is known for its psychoactive effects. Even CBD consumption poses certain health risks, including, for youth, heightened developmental risks and reproductive risks for male users.<sup>26</sup>

The currently available medical research strongly suggests the adverse effects of cannabis consumption on youth under the age of 18.<sup>27</sup> Cannabis consumers under the age of 18 are four to seven times more likely to develop a long-term dependency.<sup>28</sup> Moreover, youth cannabis consumption is also positively correlated to higher high school drop-out rates.<sup>29</sup>

Additionally, cannabis consumption during pregnancy poses substantial risks to the developing fetus.<sup>30</sup> Studies reveal strong evidence of the adverse effects of prenatal cannabis consumption, including lower birth weights and heightened risk for both long-term cognitive and behavioural complications.<sup>31</sup> At the same time, in addition to the earlier studies discussed earlier in this paper pointing to medical cannabis' healing properties, legalised cannabis has been proven an effective response to the current national opioid epidemic, as states that have legalised cannabis have experienced a 25% decrease in opioid-related deaths.<sup>32</sup>

As discussed earlier, at this stage in our knowledge of the short- and long-term effects of both recreational and medical cannabis, it is difficult to draw a definitive conclusion as to the advisability of its consumption. It is also important to consider the range of cannabis-derived products--some of which contain little to no THC, such as hemp; others are more natural products, such as leaf or flower cannabis; other forms, such as those products that involve smoking or vaping, pose additional health hazards—and how the different forms and contents of these products, as well as the context and amount of their consumption, may factor into our

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<sup>26</sup> Food and Drug Administration (FDA). (2020). What you need to know (and what we're working to find out) about products containing cannabis or cannabis-derived compounds, including CBD. "What You Need to Know (And What We're Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD," <https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-aboutproducts-containing-cannabis-or-cannabis>, accessed April 9, 2023.

<sup>27</sup> See for example: "What is Marijuana?" <https://nida.nih.gov/publications/drugfacts/cannabis-marijuana>, accessed April 9, 2023.

MH Meier, A Caspi, A Ambler, et al. Persistent cannabis users show neuropsychological decline from childhood to midlife. *Proc Natl Acad Sci U S A*. 2012;109(40). Accessed April 9, 2023.

<sup>28</sup> KC Winters, C-YS Lee, "Likelihood of developing an alcohol and cannabis use disorder during youth: association with recent use and age," *Drug Alcohol Depend*. 2008;92(1-3):239-247, accessed April 9, 2023.

<sup>29</sup> DF McCaffrey, RL Pacula, B Han, P Ellickson, "Marijuana Use and High School Dropout: The Influence of Unobservables," *Health Econ*. 2010;19(11):1281-1299.

<sup>30</sup> The National Academies of Sciences, Engineering, and Medicine, Health and Medicine Division, Board on Population Health and Public Health Practice, Committee on the Health Effects of Marijuana: An Evidence Review and Research Agenda. *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research*. <http://nationalacademies.org/hmd/Reports/2017/health-effects-of-cannabis-and-cannabinoids.aspx>. Accessed April 9, 2023.

<sup>31</sup> L Goldschmidt, NL Day, GA Richardson, "Effects of prenatal marijuana exposure on child behavior problems at age 10," *Neurotoxicol Teratol*. 2000;22(3):325-336; GA Richardson, C Ryan, J Willford, NL Day, L Goldschmidt, "Prenatal Alcohol and Marijuana Exposure: Effects on Neuropsychological Outcomes at 10 Years," *Neurotoxicol Teratol*. 2002;24(3):309-320, accessed April 9, 2023.

<sup>32</sup> "Where Marijuana Is Legal, Opioid Prescriptions Fall," <https://www.scientificamerican.com/article/where-marijuana-is-legal-opioid-prescriptions-fall/>, accessed April 9, 2023.



decision-making. At the time of this writing, with the increasing legalisation of US-wide cannabis consumption, both recreationally and medically, we are witnessing a steep increase in general cannabis consumption, including within the Jewish community. Presently, 55 million Americans are consuming cannabis, and 45% of Americans report having tried it at least once.<sup>33</sup> National support for legalising both medical and recreational cannabis is increasing as well, according to a Nov. 2022 Pew Research Center report, with 59% of American adults expressing their support of legalising both recreational and medical cannabis, and an additional 30% in favour of legalizing just medical cannabis.<sup>34</sup> With the overwhelming popular support of legalising cannabis nationally, along with the widespread usage of cannabis, the question arises of *ein goz 'rin gezerah al ha-tzibbur ella im kein rov ha-tzibbur y'kholin la'amod bah* (a ruling cannot be imposed upon the community unless the majority of the community is able to uphold it)<sup>35</sup>—of whether or not a Jewish legal ruling limiting or prohibiting the usage of cannabis, whether recreational and/or medical, could be viable.

While we might be tempted to apply a framework of the rabbinic principle of *dina d'malkhuta dina*, the law of the land is the binding law, or, even more permissively, *puk hazei mai amma davar*,<sup>36</sup> viewing these trends as retroactively normative based on widely observed practices, we first must examine the ramifications for such an approach and weigh the range of competing values in making such determinations within a Jewish legal framework.

### 1) Medicinal Cannabis usage

As discussed above, in Judaism, we promote the sanctification and promotion of life above all else, as encapsulated in the related principles of *pikkuah nefesh* (“saving life”) and *v'nishmartem me'od le'nafshoteikhem*,<sup>37</sup> the Biblical exhortation to “guard your souls well” and seek out healthcare. These principles extend to the use of treatments deemed medically essential for our continued existence and wellbeing.<sup>38</sup> When we have at our disposal the means to heal, we may even be considered murderers when we withhold these healing agents:

<sup>33</sup>“Marijuana Addiction: Rates & Usage Statistics,” <https://drugabusestatistics.org/marijuana-addiction/#:~:text=General%20Statistics&text=Approximately%20half%20of%20Americans%2C%20some,marijuana%20on%20a%20monthly%20basis>, accessed April 9, 2023.

<sup>34</sup> “Americans Overwhelmingly Say Marijuana Should be Legal for Medical or Recreational use,” <https://www.pewresearch.org/fact-tank/2022/11/22/americans-overwhelmingly-say-marijuana-should-be-legal-for-medical-or-recreational-use/>, accessed April 2023.

<sup>35</sup> See for example, BT Bava Batra 60b, BT Avodah Zarah 36a, and Bava Kamma 79b.

<sup>36</sup> BT Nedarim 28a; BT Gittin 10b; BT Bava Kamma 113a; BT Bava Batra 54b–55a. While the concept of *dina d'malkhuta dina* derives from the prophet Jeremiah in Jer. 29:7, the principle is formally developed by the Babylonian Amora Mar Shmuel. The principle of *Puk hazei mai amma davar* is established in BT Berakhot 45a and BT Eruvin 14b. It is important to note the complexity of *dina d'malkhuta dina* and that this legal principle applies to civil, monetary, or commercial law and not religious law (matters of *issur v'heter*).

<sup>37</sup> Deut. 4:15

<sup>38</sup> It should be noted that the definition of essential usage is subject to debate, even among the medical community. Especially in the case of cannabis, products may be prescribed to patients for a wide range of reasons, including anxiety, epilepsy, and nausea.

נתנה התורה רשות לרופא לרפאות ומצוה היא. ובכלל פיקוח נפש הוא. ואם מונע עצמו, הרי זה שופך דמים.<sup>39</sup>

The Torah issued permission to the doctor to heal, and healing is a *mitzvah*, and it is especially so in the case of saving a life. And if he holds back, it is considered the spilling of blood.

We can apply these principles to the cautious use of medical cannabis. In the words of Rabbi Menachem Genack, the CEO of the Orthodox Union, upon announcing the OU's certification of Vireo Health of New York's medical cannabis products, "Using medical cannabis products recommended by a physician should not be regarded as a *het*, a sinful act, but rather as a *mitzvah*, an imperative, a commandment."<sup>40</sup>

In recent years, we have seen instances of halakhic reasoning permitting use of cannabis for expressly medical purposes. For example, although cannabis is generally understood to be *kitniyot*, it has been deemed kosher for Passover when used medicinally.<sup>41</sup> (Moreover, our movement in recent years, has permitted the consumption of *kitniyot* on Passover, and the practice has gained widespread acceptance in Israel as well, further diminishing concerns about this possible violation of Passover kashrut.)<sup>42</sup>

Precedent of the widespread use of medical cannabis has been well-established, especially among Israeli users. As noted earlier, Israel leads the way in medical usage even on a global level, as the top importer of medical cannabis as of the year 2020, and as of 2021, with roughly 95,000 consumers of medical cannabis.<sup>43</sup> On the basis of the aforementioned *puk h'azei* principle, we might be inclined to conclude that such widespread precedent itself warrants blanket halakhic acceptance.

Taking into account Mechoulam and his associates' consistent findings about THC's ameliorative effects on such medical conditions as epilepsy, Alzheimer's disease, and the side effects of chemotherapy, we have reliable grounds upon which to stand when it comes to recognising medical cannabis consumption as a halakhically acceptable practice.

Especially with the burgeoning field of CBD oil production and consumption, which

<sup>39</sup> S.A. Yoreh De'ah 336:1

<sup>40</sup> "Vireo Health of New York's Medical Cannabis Products Now Certified by OU Kosher," <https://www.ou.org/news/vireo-health-new-york-medical-cannabis-ou-kosher/>, accessed April 9, 2023.

<sup>41</sup> See for example, "Haredi rabbi says marijuana is kosher for Passover," <https://thecjn.ca/uncategorized/haredi-rabbi-says-marijuana-is-kosher-for-passover/>, accessed June 2022.

<sup>42</sup> Rabbi Amy Levin and Rabbi Avram Israel Reisner, "A Teshuvah Permitting Ashkenazim to Eat Kitniyot on Pesah," <<https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/Levin-Reisner-Kitniyot.pdf>>.

<sup>43</sup> "As Israel's Biblical Farming Sabbatical Nears, Medical Cannabis is Budding Issue," <https://www.timesofisrael.com/as-israels-biblical-farming-sabbatical-nears-medical-cannabis-is-budding-issue/>, accessed June 13, 2022.

includes negligible amounts of THC (typically up to 0.3%; under the 2018 Farm Bill, to be legal in the US at the federal level, CBD may contain no more than 0.3% THC by dry weight), we are witnessing a spike in more casual consumption of medical cannabis products.<sup>44</sup> (Users should however exercise caution when consuming such products, as they are not currently FDA-approved.)<sup>45</sup> Although the existing body of medical research literature consistently demonstrates the ameliorative effects of carefully administered medical cannabis, the field of research, as noted, remains relatively limited, and in the absence of a more substantial body of literature, we still must exercise caution and consult with reliable expert physicians in determining if such a treatment is indeed the best course to pursue.

Nearly 40 years ago, Rabbi Dr. Walter Jacob, in his responsum on the medicinal use of drugs, permitted medically prescribed use of drugs:

We recognize that the medicinal use of drugs has expanded vastly...and has become a regular part of medical treatment. The form of treatment, as well as others, should be used under the general permission provided by the statements, “And he shall surely be healed,” and “You shall live by them” (Ex. 21:19). When there is danger to life, the physician is encouraged to utilize all means at his disposal (Shulḥan Arukh, Yoreh De’ah 116) ...It makes no difference whether the drugs are mind-altering or not, as long as they have been prescribed to heal those who are ill...<sup>46</sup>

We follow the ruling of Rabbi Dr. Jacob’s responsum with regard to the medicinal use of cannabis.<sup>47</sup>

## 2) Recreational Usage

Recreational THC consumption poses more complicated Jewish legal challenges for us to consider. One of the most substantial challenges of recreational cannabis usage is the potential danger it creates, both for its users, and potentially for those around them, especially if users are operating machinery, in proximity of weapons, and/or driving. If consumed publicly, cannabis, especially in its smoked form, poses potential environmental hazards for others, both as a form of second-hand smoke and also as an airborne substance that may result in impaired functioning. Although the field of research concerning the long-term health effects of cannabis in its smoked forms is still evolving, the already available body of literature firmly indicates that smoking cannabis, which features a similar carcinogenic chemical profile to tobacco, results in increased

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<sup>44</sup> Alice Mead, "The legal status of cannabis (marijuana) and cannabidiol (CBD) under US law." *Epilepsy & Behavior* 70 (2017): 288-291.

<sup>46</sup> Rabbi Dr. Walter Jacob, *Contemporary American Reform Responsa* (New York, NY: CCAR Press, 1984), pages 120-123, nos. 72-74

<sup>47</sup> It is also important to distinguish between the use of THC and non-psychoactive cannabinoids. For example, in 2017, the World Health Organization classified cannabidiol as neither addictive nor posing any public health risk.

respiratory infection and other long-term lung complications.<sup>48</sup> Another growing concern is the inability to ascertain whether or not a substance is pure, especially when purchased in unverified contexts, such as on the street. Additional long-term cognitive risk seems present in adolescent usage of cannabis.<sup>49</sup>

Recreational cannabis usage has met with strong disapproval by many modern *posekim*, perhaps most famously, Rav Moshe Feinstein, who decried the practice as an abomination that not only hurts the body, but distracts the mind from proper Torah study and service of God, resulting in unnecessary and dangerous addiction.<sup>50</sup> Feinstein grounds his argument primarily in the behavioural principle of *kedoshim tihyu* (“you shall be holy”) but does not offer much else in the way of Jewish legal precedent to make his argument. Rabbi Shelomo Zalman Auerbach rules against the use of any recreational drugs, including cannabis, as they are harmful to the body.<sup>51</sup> Similarly, Rabbi Shlomo Aviner vehemently rejects recreational cannabis consumption, on the grounds that the substance is harmful and that such consumption is a violation of *ve'nishmartem me'od le'nafshoteikhem*.<sup>52</sup> Moreover, Aviner argues, quoting the same *sugya* including Rav’s warning to his son Hiyya about the perils of drugs (BT Pesahim 113a), such behaviour is liable to result in long-term addiction and potentially jeopardises one’s life. Aviner describes the net effect of such an addiction in bold terms:

The senses go and blur; focus decreases; apathy grows; will power and energy are lost; coordination is damaged; vision deviates from its focus; analytic skill decreases; memory is weakened; self-confidence is great with no basis in reality; a man becomes a chatterbox and confident in his skills, and paradoxically, a man is hopelessly imprisoned in the very trap he wished to escape, namely, the frustration and loneliness, and he becomes isolated and sad until death.

Ironically (given more recent developments in cannabis usage in Israel), Aviner goes on to laud Israelis as being more fortified in their *Emunah*, or faith, than their American

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<sup>48</sup> See for example, Peter Gates, Adam Jaffe, and Jan Copeland. "Cannabis smoking and respiratory health: consideration of the literature." *Respirology* 19.5 (2014): 655-662.

<sup>49</sup> An emerging body of scientific literature suggest an increasingly bleak picture of unchecked recreational cannabis usage. See Emily Sohn, "Weighing the dangers of cannabis." *Nature* 572, no. 7771 (2019): S16-S16; Nora D. Volkow, Ruben D. Baler, Wilson M. Compton, and Susan RB Weiss, "Adverse health effects of marijuana use." *New England Journal of Medicine* 370, no. 23 (2014): 2219-2227; Catherine Orr, Philip Spechler, Zhipeng Cao, Matthew Albaugh, Bader Chaarani, Scott Mackey, Deepak D'Souza et al. "Grey matter volume differences associated with extremely low levels of cannabis use in adolescence." *Journal of Neuroscience* 39, no. 10 (2019): 1817-1827;

Gayatri Bhatia and Pawan Sharma, "Cannabis and road traffic accidents in South East Asia region: let there be light." *Asian journal of psychiatry* 73 (2022): e103173-e103173.

<sup>50</sup> Rabbi Moshe Feinstein, *Iggerot Moshe, Yoreh De'ah*, Vol. III, Siman 35. In *Shulhan Arukh haRav*, Schneur Zalman of Liadi decries even the pungent smell of cannabis as potentially distracting during worship, as he prescribes that one who is praying should distance himself at least four *amot* from cannabis soaking in water.

<sup>51</sup> R. Shelomo Zalman Auerbach, *Ma'adanei Shelomo*, 2nd edition (Jerusalem, 5763), p. 14.

<sup>52</sup> Rabbi Shelomo Aviner *She'elat Shelomo* (b. 1943), Israel vol. 4 no. 264; cf. R. Samuel Tuvya Stern, *Teshuvot Ha-Shavit*, III, no. 3, *beirurim be-inyanim shonim*, p. 133.

counterparts, and thus less weak and prone to the seductive lures of intoxicants.

Rabbi Adin Steinsaltz's position assumes a behavioural stance when discussing activities that could result in disordered consumption. In advising author Arthur Kurzweil, Steinsaltz also warned him about the perils of addiction:

The issue is who is the master and who is the slave. If you are the master, fine. If you are the slave, then you are in trouble no matter what you're the slave of, whether it be coffee, exercise, or Torah study. So you have to ask yourself, "Who is the master and who is the slave?"<sup>53</sup>

There are others who have held more sympathetic views about elective cannabis consumption, including Reb Zalman Schachter-Shalomi, who described the psychoactive effects of cannabis as a transcendental experience, but also one that should be done ideally in partnership with someone who will aid in processing and maximising the experience spiritually.<sup>54</sup> Writing under the pseudonym "Itzik Lodzer," in his essay, "Notes on the Jewish Underground: Psychedelics and Kabbalah," Rabbi Art Green described the use of psychedelic drugs as a window into what the kabbalists experienced as the *eyn sof*.

A serious question which demands our attention in this category is the extent to which recreational cannabis is truly addictive. Rabbi Elliot Dorff ponders this question in his analysis in his article "Judaism and Marijuana," where he makes the important point that Judaism does not offer a wholesale condemnation of any risk-taking activity; rather, cannabis consumption, like anything else, should be determined on the basis of net risk, both to casual users and addicts.<sup>55</sup> Dorff draws the comparison to alcohol consumption and its range of possible risks.<sup>56</sup>

### **Practical Halakhic Considerations If Using Cannabis**

Much recent halakhic attention in Israel has been focused on the permissibility of harvesting cannabis during the *shemittah* year. While cannabis was both grown and used medicinally in Israel already in the previous *shemittah* year of 5775, the population in Israel consuming cannabis medicinally expanded five-fold by the *shemittah* year of 5782, and, thus, the issue of its permissibility during the *shemittah* year, both medicinally and recreationally, is more of a pressing question now.<sup>57</sup>

In the case of recreational cannabis usage, wherein its consumption is strictly elective and

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<sup>53</sup> Kurzweil, Arthur. *On the Road with Rabbi Steinsaltz: 25 Years of Pre-Dawn Car Trips, Mind-Blowing Encounters, and Inspiring Conversations with a Man of Wisdom*. Jossey-Bass, 2006.

<sup>54</sup> Roger N. Walsh and Charles S. Grob. 2005. *Higher wisdom: eminent elders explore the continuing impact of psychedelics*. New York: State University of New York Press.

<sup>55</sup> Elliot N Dorff, "11 Judaism and Marijuana." *Pot Politics: Marijuana and the Costs of Prohibition* (2007): 208.

<sup>56</sup> *Ibid* 12-14.

<sup>57</sup> See J. David Bleich, "Survey of Recent Halakhic Literature of Tobacco, Snuff, and Cannabis (Part I)." *Tradition* 54, no. 2 (2022): 101-132.



experiential, we also must determine if the non-essential product is kosher. In its raw form, cannabis is a plant like any other, and, as such, requires no special certification. However, if consumed in the processed form of edible cannabis, such as the increasingly popular THC gummies, such a product may contain gelatin or other ingredients and would thus require a *hekhsher*.<sup>58</sup> Additionally, any processed food item would need to be produced in facilities whose equipment is deemed appropriate for the production of a kosher product.

As recreational cannabis becomes increasingly decriminalised throughout the US, we may begin to witness casual cannabis consumption in Jewish institutional spaces where we have heretofore not experienced cannabis usage. Whereas we have seen such programs as “Hookah in the Sukkah” become a staple of Hillel campus programming, and countless synagogue-based drinking-focused social events, such as “Latkes and Vodka,” or Israeli wine sampling, cannabis at the time of this writing has not yet made a public showing in mainstream Jewish organisational life.

Were this trend to change in the coming years, the question arises – would such programming be acceptable in a Jewish legal framework?

With the exception of *Shabbatot* and *yamim tovim*, when smoking cannabis poses certain halakhic problems according to most positions (see above), there is no technical problem of cannabis consumption in these contexts. Rather, on a more meta-halakhic plane, there are important ethical and spiritual considerations to take into account before making such a programming decision for a Jewish community: will this event potentially imperil our participants and/or others with whom they come into contact? And, as per Dorff’s writing, will the risk exceed reasonable expectations of safety? Will this activity promote or detract from a sense of our being a holy people (*kedoshim tihyu*)? Another important factor to consider is whether or not the states of consciousness produced via cannabis prevent people from effective *talmud Torah*, noting the caveats of Green’s and Reb Zalman’s exceptions.

In weighing these and other factors, the Chicago Rabbinical Council (CRC) decided not to grant *hekhsherim* to recreational cannabis.<sup>59</sup> Conversely, the Orthodox Union (OU) has awarded kosher certification to both Vireo Health of New York’s Cannabis products as well as to chocolate products of Bhang Inc., the global CPG brand company, and to the CBD product manufacturer Proleve.

In the cases of both medical and recreational cannabis consumption, there is yet another halakhic consideration to be addressed if we are determining that their use is allowed by Jewish law. Jewish law requires the recitation of *berakhot* before and after the consumption edible

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<sup>58</sup> Nearly 50 years ago, Rabbi Isaac Klein authored a responsum on the status in Jewish dietary law of gelatin derived from bones, determining it a “davar hadash,” or a new substance, and thus acceptable. See Isaac Klein, “Responsa and Halakhic studies.” (1975). Today, however, most commercial gelatin is the product of bovine or pork skins. See Francis, Frederick J., ed. (2000). “Gelatin.” *Encyclopedia of Food Science and Technology* (2nd ed.). John Wiley & Sons. pp. 1183–88.

<sup>59</sup> *Sappirim* (The Chicago Rabbinical Council: June 2021) 32, 4.

products. In the case of most medicine in which the medication is flavourless or administered orally, through swallowing directly, a *berakha* is not required. However, in the case of medicine with a taste (such as a flavoured children's medicine, or in the case of medical cannabis-flavoured gummy products), a blessing might be required.<sup>60</sup> Although it is generally accepted that a blessing is not required for the consumption of a non-flavoured medication, one may electively recite a blessing as an expression of our hope that the treatment will promote healing and recovery.<sup>61</sup>

In the case of recreational cannabis that is consumed as a food – e.g., as candy, or baked in brownies, or however else processed and packaged, the food item would require the categorically appropriate blessings for products with cannabis, such as, in the case, of gummies, *sheha'kol*.

In the case of smoked recreational cannabis, in which the user's objective is to derive pleasure and/or a mind-altering experience, we might liken the consumption to the category of *to'em ufolet*, in which the user takes the substance in and then expels it out and is to be distinguished from eating, and therefore a *berakha* would not need to be said.<sup>62</sup>

By the same token, if we do not categorise smoked cannabis as “food” for the purposes of blessing, we might be inclined to permit smoking hashish on minor fast days, on which standard categories of labour and the transfer of fire is still permitted (such as on *Tzom Gedalia*, *Ta'anit Esther*, *Ta'anit Bekhorot*, *Asara b'Tevet*, *Shivah Asar b'Tammuz*, or *Tish'ah be'Av*). Despite the arguable non-food category of the intoxicant, usage of the drug, which in recreational contexts is conventionally used to promote pleasurable experiences, would defy the solemn spirit of these days.<sup>63</sup><sup>64</sup> The only possible exception to the general principle of avoiding cannabis on fast days is the case of medically prescribed cannabis and/or cannabis-derived product, in which said product was deemed essential for the consumer's basic health. In such as case, the edible form would still require a blessing, as would any consumed food.

Regarding specifically smoking on *yamim tovim*, there are a number of concerns.<sup>65</sup> Certain types of labour prohibited on Shabbat are allowed on festivals. We learn from Ex. 12:16 that, whereas all other forms of work are forbidden on festivals, one may prepare food because it is eaten by all. BT Ketubbot 7a ultimately understands this principle of *shaveh l'khol nefesh* specifically as representing something more than collective benefit, but rather, collective need.

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<sup>60</sup> See *Shulhan Arukh Harav, Oraḥ Hayyim* 204:14

<sup>61</sup> “May it be Your will that this will be for healing,” from *Kitzur Shulhan Arukh, sec. 61:4; Seder Berakhot Utefilot (Kehot, 5703)*; see also *Reshimot HaYoman, p. 196*.

<sup>62</sup> See *Shulhan Arukh and Rema, Oraḥ Hayyim* 210:2.

<sup>63</sup> See J. David Bleich's argument in "Survey of Recent Halakhic Literature of Tobacco, Snuff, and Cannabis (Part I)." *Tradition* 54, no. 2 (2022): 121-125.

<sup>64</sup> See, in reference to tobacco smoking on fast days, *Mishnah Berurah* 555:8.

<sup>65</sup> See J. David Bleich's piece on the topic in *Or haMizrah* (Tishrei 5744)

There is some ambiguity as to how far this principle extends. There is a debate among later responsa as to whether *shaveh l'khol nefesh* refers to all people, in general, or all people in a particular area.<sup>66</sup> Drawing upon a Tosafot on BT Shabbat 39a, which seems to indicate that any therapeutic measure is *shaveh l'khol nefesh*, Teshuvot Ketav Sofer furthermore understands any healing agent to be equivalent to food, insofar as everyone would want to seek treatment when faced with illness.<sup>67</sup>

Although cannabis is not smoked by the majority of people, one could argue for medical cannabis' ameliorative properties as a possible argument of permitting its consumption on the festival. At the same time, medical cannabis is now available in multiple forms, such as edible, drinkable, and topical products, thus obviating the need to smoke cannabis specifically. In general, it would seem that smoking cannabis on *yamim tovim* at least currently does not satisfy the category of *shaveh l'khol nefesh*, something common (essential) and/or of benefit to all people, and thus, beyond the more obvious issues of kindling and/or extinguishing a flame, would be rendered inappropriate for these days.<sup>68</sup> Once again, exception could be made in the case of medicinal consumption, as discussed above.

## Conclusion

The subject of cannabis consumption is one which should be treated with utmost circumspection and intentionality. Based on the available scientific literature, it seems both responsible and advisable to consume cannabis when advised to do so by a trusted, expert physician, under her/his/their supervision.

In the case of recreational cannabis, this is an area where we should exercise extra caution and act *lifnim mi-shurat ha-din*, despite increasing legalisation of cannabis consumption, while also respecting the highly damaging social impact of the War on Drugs. While there is space within a Jewish legal framework to partake in cannabis recreationally in areas where such consumption is legal, at this time, it is the position of the author of this teshuva that one should refrain from recreational cannabis consumption as a matter of cautious practice. We should take seriously the known and still not yet fully researched risks associated with recreational cannabis consumption, adhering to the principle from Rabbi Moses Isserles in *Shulhan Arukh* YD, 116:5, cited by Rabbi Reuven Hammer in his posthumous 2020 responsum, *Teshuva Concerning Smoking* (HM 427.8.2020), that one must scrupulously avoid danger, as something that endangers one's life is stricter than a prohibition. As Rabbi Elliot Dorff proposes in his 2007 article, *Judaism and Marijuana*, it is most prudent for us to assume an evolving stance as more

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<sup>66</sup> For example, *Peri Megaddim*, *Eshel Avraham* 511:9 argues that this principle is a universal majority, whereas *Mishneh Berurah*, *Bei'ur Halakha* 511:4, which argues that the principle is relative to the specific time and locale.

<sup>67</sup> *Teshuvot Ketav Sofer*, *Orah Hayyim* 66

<sup>68</sup> On the meaning of *shaveh l'khol nefesh*, see BT Ketubbot 7a and BT Beitzah 12a-b.

information becomes available to us in the coming years.<sup>69</sup> As we learn more about the longer-term effects of recreational cannabis use, we can reevaluate the extent to which such usage poses a serious risk to users and those around them, but for the present, we should proceed with caution, recognising that Jewish law behooves us to act with careful intentionality as to what we consume, with utmost respect for human dignity and well-being.

**פסקי דין /Rulings:**

- 1) It is permissible to consume medically prescribed cannabis under the continued supervision of a trusted and accredited medical professional.

Psak #1: Approved on December 8, 2023, by a vote of 19 to one, with no abstentions (19-1-0). Voting in favor: Rabbis Aaron Alexander, Jaymee Alpert, Pamela Barmash, Emily Barton, Suzanne Brody, Nate Crane, Elliot Dorff, David J. Fine, Judith Hauptman, Barry Leff, Daniel S. Nevins, Micah Peltz, Joel Pitkowsky, Avram Reisner, Tracee Rosen, Rachel Safman, Robert Scheinberg, Miriam T. Spitzer, Ariel Stofenmacher. Voting Against: Rabbi Ellen S. WolintzFields.

- 2) In contexts when a consensus of medical research and advice deem recreational cannabis safe, recreational cannabis consumption is allowed, where permitted by civil law.
- 3) In accordance with Rabbi Reuven Hammer’s 2020 responsum “Teshuva Concerning Smoking,” in acknowledgement of the established adverse health effects of smoking, this responsum likewise prohibits recreational use of cannabis in its smoked form.
- 4) Consumption of recreational cannabis by youth is prohibited, based on the available data, which indicates the numerous health risks cannabis consumption poses to youth, including long-term cognitive decline and reproductive consequences. Recreational use is illegal for minors in all jurisdictions in the U.S.
- 5) Presently, cannabis should not be consumed recreationally in an official Jewish communal context (such as a synagogue, JCC, or school); this position is subject to change as more research becomes available on the long-term effects of recreational cannabis consumption.

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<sup>69</sup> In Mitch Earleywine, ed. *Pot politics: Marijuana and the costs of prohibition*. Oxford University Press, 2007.

- 6) Blessings are required for edible forms of cannabis.
- 7) With the exception of medically-prescribed cannabis, which is deemed essential for one's health, cannabis is forbidden on fast days.

Psakim #2-7: Approved on December 8, 2023, by a vote of nine to six with five abstentions (9-6-5). Voting in favor: Rabbis Pamela Barmash, Emily Barton, Suzanne Brody, Elliot Dorff, Daniel S. Nevins, Micah Peltz, Avram Reisner, Robert Scheinberg, Ariel Stofenmacher. Voting Against: Rabbis David J. Fine, Barry Leff, Joel Pitkowsky, Tracee Rosen, Miriam T. Spitzer, Ellen S. Wolintz-Fields. Abstaining: Rabbis Aaron Alexander, Jaymee Alpert, Nate Crane, Judith Hauptman, Rachel Safman.