**CCAR RESPONSA**

**New American Reform Responsa**

**161. Responsibility of an "AIDS" Carrier**

**QUESTION:** An individual has been diagnosed as having AIDS, the testing has been positive, there is little room for doubt as he has developed some initial symptoms. Years may pass before other symptoms appear. It is currently estimated that at least thirty percent of carriers of AIDS will be affected by the syndrome. As a carrier he is also a transmitter of the syndrome; he is aware of the fact that the active stage of AIDS is fatal. The young man in question insists on continuing to be sexually active and is careless about using preventive measures like condoms. Would Judaism consider him a danger to society or if married, to his wife? Would Judaism label his transmission of AIDS as murder? What are his responsibilities to society? (D. R. Pittsburgh PA)

**ANSWER:** We sympathize with anyone struck by this illness and must help them in every way possible. AIDS victims must be protected from needless discrimination yet society must also protect itself from obvious dangers. Let us view this question from two different perspectives. First, let us look at the matter of his sexual activity and Judaism's attitude toward this. The question does not indicate whether the individual is homosexual, heterosexual, single or married. Let us initially assume that he is heterosexual, not married and that his sexual activities are conducted with a number of different partners. Traditional and Reform Judaism have, of course, rejected promiscuous sexual activity and we would reject his behavior on these grounds. In fact the *Talmud* assumed that if a man had intercourse, with a woman, that it was intended to be serious and would lead to marriage (eyn adam oseh beilato bilatzenut Yeb 107a; Ket 83a; Git 81b). There were many statements which prohibit sexual relations outside marriage (Prov 6.29,32; Lev 19.29, 20.10; Tos 1.4; etc) this applied to both men and women. All unmarried individuals were to refrain from sexual intercourse (Pes 113 af; Shab 152a; San 107a; Ket 10a; etc). Any male who violated this prohibition could be flogged (Ket 10a); more severe penalties were applied to females. The efforts of traditional Judaism to segregate men and women sought to remove the temptations of sexual intercourse outside of marriage. Men and women were to be separated on all festive occasions in public places; a man was even prohibited from walking behind a woman for this reason (Yad Hil Yom Tov 6.21). There are numerous similar citations in the *Talmud*, the codes and the responsa literature. Despite this, such extra-marital sexual relationships did exist and were sometimes defended as a human weakness. Looser standards were tolerated in some ages, for example in Judea in the Talmudic period (Ket 7b); in the Byzantine Empire and in various Balkan lands in the last centuries (L. Epstein Sex Laws and Customs in Judaism p 128). Yet consistent efforts were made to restrict sexual intercourse to marriage. In marriage, human sexuality was considered a positive experience. The tradition, of course, said much more on the subject. We would therefore reject this man's promiscuous behavior and state that Judaism demands restraint and would punish violations when possible.

Now let us ask that what would our attitude be if the individual in question is married; we must ask whether he can continue sexual relations with his wife. If he remains careless about his use of condoms he will probably transmit AIDS to his wife. No one is permitted to endanger the life of a fellow human being; one must die rather than endanger another human life even if one's own life is in danger (San 60 b ff; A Z 43b; 54a; Ket 33b; Shab 149a; Sefer HaMitzvot Lo Taaseh #2 ff, 10, 14; Shulhan Arukh Yoreh Deah 157.1). As every source of saqanat nefesh must be removed (Deut 4.9; 4.15; Ber 32b; B K 91b; Yad Hil Rotzeah Ushemirat Hanefesh 11.4-5 Hil Shevuot 5.7; Hil Hovel Umazeq 5.1) this individual should not permit himself to continue sexual relations with his wife. This may ultimately provide grounds for divorce which could be enforced by a bet din. A woman has always been able to seek a divorce if her husband was afflicted with leprosy (M Ned 11.12) or similar diseases. For that matter she could seek it if her husband engaged in a new field which was noxious to her as tanning of hides. (M Ket 8.9) Certainly if the danger is great as with AIDS, grounds for divorce exist. We would discourage a divorce and rather encourage the wife to support her husband in this difficult period, when he needs her help. The couple must, however, refrain from intercourse or use stringent precautions.

We should also view this situation entirely from the point of view of transmitting a fatal disease. Traditional literature has dealt with dangerous contagious diseases through quarantine from the Biblical period onward ("Jewish Reaction To Epidemics - AIDS" W. Jacob Contemporary American Reform Responsa #82). Every effort was made to isolate the individual and to protect the general society in Biblical times from the dangerous but not fatal zorat. In this instance we are dealing with a fatal disease whose effect is felt over many years. This means that a false sense of security may be given to both the carrier and the recipient. It also remains possible for the carrier to hide her/his condition from the
recipient in the early stages of the symptoms.

We are aware of the tragic consequences for any individual who has AIDS and must sympathize with his/her plight. Every possible support and help must be extended to such individuals. His/her right to work and to function in a normal manner in our society must be protected as long as such individuals are willing to do their share in protecting society. We must also differentiate between absolutely positive testing for AIDS and those whose status is doubtful. Such individuals should undergo further tests. Yet such a respect for individual rights cannot be permitted to endanger others through reckless behavior.

Our present knowledge of AIDS and the lack of any cure or immunization leads us to see a known carrier who is aware of his/her condition and engages in sexual relations without the regular use of condoms as guilty of endangering another human life. This must be made absolutely clear to such individuals; society can demand that they refrain from all sexual activity or to protect their partner with great care. Such partners must be adequately warned. We should in turn also warn everyone against promiscuous sexual behavior as it is considered morally wrong and may endanger their lives.

If such demands cannot be met by known carriers of AIDS then society must protect itself by isolating individuals who are known carriers and utilize every means at its disposal to protect the remainder of society. No individual has the right to endanger the life of another. It is incumbent on all members of society to protect themselves against such reckless and dangerous behavior.

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If needed, please consult Abbreviations used in CCAR Responsa.