



## Our agenda

The balance between protecting the public and enabling the practice of medicine is tricky during a pandemic. Infection protocols are necessarily strict and uniform, but they open the door to serious ethical questions. If a patient or professional is infected, how should the public be informed? What is the reporting duty of a staff member who believes that safety protocols have been breached, but no infection has taken place? Does a medical professional have leeway in applying protocols, if she judges that they may be safely adjusted in a way that would enable stronger patient care?

By the end of this session participants will:

1. Be able to describe the ethical and halachic considerations relating to infection risk in patients and oneself.
2. Understand the halachic perspective on adherence to guidance and protocols from professional bodies.
3. Be able to discuss the reporting duties and responsibilities of themselves, staff members, and patients.

1. Rabbi Chaim Yosef David Azulai (18<sup>th</sup> century Italy), Shiyurei Berachah to Birkei Yosef, Orach Chaim 328:1

והיום שאין שום אדם יכול לרפאות כי אם ברשות חכמיהם, סתם כל עוסק ברפואה נקרא מומחה. מהרי"ל ואל"י.

Today, when no one may treat without license from their scholars, all who are involved in treating are called "experts". (Maharil Valle)

2. Rabbi Eliezer Waldenberg (20<sup>th</sup> century Israel), Tzitz Eliezer 4:13:3

הצד השווה שאנו למדים מכל הנ"ל שכל שהרופא מכוון לשם רפוי ע"פ דרכי הרפואה שבידו ומותר ומצוה בידו לרפאות את החולה ע"פ שיטת הרפואה המקובלת לריפוי מחלה זאת

The common denominator among the views cited above is that so long as the doctor intends to heal via the medical methods he possesses, he is permitted to do so, and it is a mitzvah for him to treat the patient via the accepted medical approach for this illness.

3. Rabbi Yaakov Reischer (17<sup>th</sup> century Prague), Responsa Shevut Yaakov 3:75

בנדון זה, כיון שודאי ימות מניחין הודאי ותופסין הספק, אולי יתרפא. ומ"מ אין לעשות הרופא כפשוטו כן, רק צריך להיות מתון מאוד בדבר לפקח עם רופאין מומחין שבעיר ע"פ רוב דיעות, דהיינו רובא דמינכר שהוא כפל, לפי שיש לחוש לקלי דעת. ע"כ יעשה ע"פ רוב דיעות הרופאים והסכמת החכם שבעיר

In this case, since he will certainly die [without the treatment], we leave the certainty and take the possibility; he might be healed. Still, the doctor should not simply proceed with this; he must be very patient, checking with local expert doctors and deciding based on the majority of views, meaning a recognizable majority – which is double – for there is concern regarding frivolous people. Therefore, he should follow the majority of medical opinions, and the agreement of the leading local authority.

## Vignettes

- (1) Sarah, a dentist, receives notification from Toronto Public Health that a patient, Jill, who came in for a routine cleaning has tested positive for COVID-19. The visit took place four days ago, and the patient was asymptomatic at the time. No aerosol-generating procedures were conducted. Public Health wants a list of patients who were present in the facility when Jill was present, but Sarah feels that the great majority of them were not at any risk. What should Sarah tell Public Health about the other patients, according to public health protocols and according to Jewish law? And is there any concern that this could lead to harm for Jill?
- (2) Jonathan, a new receptionist at a family medicine practice, notices that one of the staff members wears a poorly fitted mask. There are visible paths of airflow to and from his nose and mouth. Jonathan does not know the staff member well, so he discusses the situation with the physician who runs the practice. The physician offers an excuse on behalf of the staff member, and does not take any corrective action. What steps should Jonathan take to respond to this, according to public health protocols and according to Jewish law?

- (3) In a May 26, 2020 directive, and in further detail on June 15, the Ontario Ministry of Health directed physicians to begin seeing patients in person for deferred, elective and non-essential services. Rodney, a pediatrician, feels that he should not yet see patients in person, out of concern for the health of his pregnant wife. What would the Ministry of Health and Jewish law say about Rodney's wish to decline to see patients in person at this stage?
- (4) In a May 26, 2020 directive, and in further detail on June 15, the Ontario Ministry of Health directed physicians to begin seeing patients for deferred, elective and non-essential services. The Ministry specified that wherever possible, in-person visits should be replaced by other interactions. Samantha, a family physician, conducts routine physicals via telemedicine, but believes that she should see her geriatric patients in person, to be certain to detect any health problems as well as to provide them with stronger emotional support during the pandemic. Samantha and her staff are very careful about PPE, clean the office regularly and strictly monitor their own health, and Samantha insists that her patients travel to their appointments in private vehicles and make no stops en route to the appointment or en route home. What would the Ministry of Health and Jewish law say about this?

#### Uncertainty, Personal Discretion and Professional Discretion

#### 4. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Choshen Mishpat 290:2

בודקין אדם נאמן ואיש חיל ויודע להפך בזכות היתומים וטוען טענתם ויש לו כח בעסקי העולם כדי לשמור הנכסים ולהרויח בהם.  
 We examine a faithful man of substance who knows how to argue on behalf of the orphans and who will promote their claims, and who exhibits strength in worldly affairs such that he could guard their assets and produce profits.

#### 5. Rabbi Hershel Schachter citing Rabbi Yosef Dov Soloveitchik (20<sup>th</sup> century USA), Nefesh haRav pp. 267-268

ענין הפשרה היה רגיל רבינו לבאר שהוא ג"כ פסק דין... אלא שהוא פסק של לפני משורת הדין המיוסד ע"פ יושר. ואין ההלכה אומרת לחלק לשנים את סכום הממון אשר עליו הם מחולקים, אלא לקבוע על פי רגש היושר – מי הוא הצודק בעסק הזה. ולפעמים יהיה הפסק בפשרה להיפך במאה אחוז מהפסק אילו פסקוהו לפי הדין.

והעולם רגילים לומר [וכך היא באחרונים] שיש ב' סוגי פשרה, שיש פשרה הקרובה לדין, ויש פשרה סתם. ורבינו אמר שאינו מבין הבדל זה, דהלא כל הענין של פשרה יסודו בקרא ד"ועשית הישר והטוב" – שמחוייבים תמיד לנהוג כפי היושר (ולפנים משורת הדין), ואם כן זה הענין גופא הו' דין התורה.

Our master would explain that "balancing" is also a legal verdict... but it is a verdict of transcending the line of the law, based on justice. The law does not say to split the monetary sum in dispute [as a means of balancing - MT], but to establish, based on a sense of justice – who is right in this case. Sometimes, the verdict of balancing will be 100% opposite what it would have been in law.

People are accustomed to say [and so is found in latter-day authorities] that there are two kinds of balancing, there is balancing that is close to law and there is general balancing. Our master said that he did not understand this distinction; the entire matter of balancing is established by the verse, "You shall do that which is just and good" – we are always obligated to act according to justice (and transcending the line of the law), and if so, this itself is the Torah's law.

#### 6. Talmud, Bava Metzia 112a

"ואילוי הוא נשא את נפשו" - מפני מה עלה זה בכבש ונתלה באילן ומסר את עצמו למיתה - לא על שכרו?  
 "For this he puts his life on the line (Devarim 24:15)" – Why did this person climb the ramp, become suspended from the tree, and give his life over to death? Was it not for his wages?

#### 7. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Orach Chaim 618:1

חולה שצריך לאכול, אם יש שם רופא בקי אפילו הוא עובד כוכבים שאומר: אם לא יאכילו אותו אפסד עליו החולי ויסתכן, מאכילין אותו על פיו... אפילו אם החולה אומר: אינו צריך, שומעים לרופא. ואם החולה אומר: צריך אני, אפילו מאה רופאים אומרים: אינו צריך, שומעים לחולה.

If a patient needs to eat, and an expert doctor – Jewish or not Jewish – says that without eating his illness may worsen and he may be endangered, we feed him... Even if the patient denies needing it, we listen to the doctor. And if the patient says, "I need it," then even if 100 doctors say he does not need it, we listen to the patient.

#### 8. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Orach Chaim 328:10

כל חולי שהרופאים אומרים שהוא סכנה... מחללין עליו את השבת...  
 When doctors say something is dangerous... we violate Shabbat...

9. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Choshen Mishpat 250:2

שכיב מרע שכתב כל נכסיו לאחרים ולא שייר כלום, ואף על פי שקנו מידו, אם עמד ונתרפא לגמרי, המתנה בטלה ממילא... ואם עמד בין החולי שצוה בו ובין החולי שמת ממנו, והלך נשען על מקלו, אומדין אותו על פי רופאים אם מחמת חולי הראשון מת מתנתו קיימת, ואם לא אינה מתנה.

If a dying person records a gift assigning all of his assets to others and he leaves nothing behind, then even if they executed a formal transaction with him, if he is entirely healed then the gift is automatically void... And if he rises between the illness during which he instructed this and the illness from which he dies, and he walked about while supported by his staff, we evaluate him via doctors. If he died of the initial illness, his gift stands. If not, it is not a gift.

10. Rabbi Moshe Isserless (16<sup>th</sup> century Poland), Shulchan Aruch Yoreh Deah 199:2

ואשה שצוו אותה הרופאים שלא תחוף ראשה במים, רק ביין, יש לשאול לרופאים אם היין מסבך השערות, ואם אומרים שאינו מסבך יש לסמוך עליהן...

And if doctors instruct a woman not to wash her hair with water, but only with wine, then one should ask doctors whether wine tangles the hair. If they say it does not tangle, one should rely on them...

11. Tosefta, Bava Kama 6:17

רופא אומן שריפה ברשות בית דין והזיק פטור מדיני אדם והייב בדיני שמים

An expert doctor who treats with court authorization and causes harm is exempt in human law, and liable in heavenly law.

12. Tosefta, Gittin 3:8

כהנים שפגלו במקדש שוגגין פטורין מזידין חייבין מפני תיקון העולם. שלוח בית דין שהכה ברשות בית דין והזיק בשוגג פטור, במזיד חייב מפני תיקון העולם. רופא אומן שריפא ברשות בית דין והזיק בשוגג פטור במזיד חייב מפני תיקון העולם.

Kohanim who accidentally disqualify offerings are exempt; if they do it intentionally they are liable; for *tikun olam*.

Court agents who strike with court authorization and harm accidentally are exempt; if they do it intentionally they are liable; for *tikun olam*.

An expert doctor who treats with court authorization and harms accidentally is exempt; if he does it intentionally he is liable; for *tikun olam*.

Vignette 1: Informing the public

13. Ontario Personal Health Information Protection Act (2004)

A health information custodian may disclose personal health information about an individual if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons. 2004, c. 3, Sched. A, s. 40 (1).

14. Ontario Human Rights Commission, *COVID-19 and Ontario's Human Rights Code – Questions and Answers*

[http://www.ohrc.on.ca/en/news\\_centre/covid-19-and-ontario%E2%80%99s-human-rights-code-%E2%80%93-questions-and-answers](http://www.ohrc.on.ca/en/news_centre/covid-19-and-ontario%E2%80%99s-human-rights-code-%E2%80%93-questions-and-answers)

It is particularly important that medical information is handled in a way that maximizes confidentiality. When necessary, employers should only disclose that an unnamed employee has tested positive for COVID-19. Any information that could identify the employee should not be disclosed to other employees unless there is an urgent health and safety justification to do so at that time.

15. Ontario Ministry of Health, *Management of Cases and Contacts of COVID-19 in Ontario*, Pg. 6

[http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/contact\\_mngmt/management\\_cases\\_contacts.pdf](http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/contact_mngmt/management_cases_contacts.pdf)

All Public Health Units (PHUs): Conduct COVID-19 case management (for all probable and confirmed cases) as described in this document including: initial telephone calls to cases, monitoring of cases until cleared from self-isolation, and updating case status as required.

16. Government of Canada, *Updated: Public health management of cases and contacts associated with COVID-19*  
<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/interim-guidance-cases-contacts.html>

It is important for frontline health care providers to notify PHAs (public health authorities) of cases of COVID-19 in accordance with jurisdictional reporting requirements. PHAs need to provide overall co-ordination with health care providers and provincial laboratories for the management and reporting of cases, and to establish communication links with all involved health care providers for the full duration of illness.

17. Public Health Ontario, COVID-19 Communication

- <https://www.publichealthontario.ca/-/media/documents/ncov/ipac/2020/07/covid-19-dental-care-settings.pdf?la=en>
- <https://www.publichealthontario.ca/-/media/documents/ncov/main/2020/09/covid-19-contact-tracing-risk-assessment.pdf?la=en>

18. Talmud, Yoma 4b

מניין לאומר דבר לחבירו שהוא בבל יאמר עד שיאמר לו לך אמור שנאמר "וידבר ד' אליו מאהל מועד לאמר"

How do we know that one may not repeat something told to him until he is told, "Go tell it"? It is written: "And Gd spoke to him from the Tent of Meeting, to tell others."

19. Rabbi Yisrael Meir Kagan (19<sup>th</sup>-20<sup>th</sup> century Poland), Chafetz Chaim, Lashon HaRa 10:2

- Only report personal experience or a verified account;
- Don't jump to conclusions about what happened, and what laws were broken;
- See if there is another way to avoid harm besides public disclosure;
- Stick to the facts; do not magnify the crime beyond its true nature and circumstances;
- There must be no personal agenda, only the altruistic goal of protecting the community and righting the wrong;
- Make sure the harm you cause to the subject is commensurate with the wrongdoing

20. Talmud, Sanhedrin 73a

מניין לרואה את חבירו שהוא טובע בנהר או חיה גוררתו או לסטין באין עליו שהוא חייב להצילו תלמוד לומר לא תעמד על דם רעך

How do we know that one who sees another drowning in a river or being dragged by a beast or being beset by bandits must act to save him? The Torah says: Do not stand by as your peer's blood is shed.

21. Rabbi Moshe Isserless (16<sup>th</sup> century Poland), Shulchan Aruch Choshen Mishpat 369:8

י"א דלא אמרינן דינא דמלכותא דינא אלא במסים ומכסים התלויים בקרקע, כי המלך גוזר שלא ידורו בארצו כי אם בדרך זה, אבל בשאר דברים, לא (הרא"ש פ' ד' נדרים בשם הר"מ ומרדכי פרק הגזול בתרא). ויש חולקין וסבירא להו דאמרינן בכל דבר דינא דמלכותא דינא (מרדכי שם בשם התוס' ות"ה סי' ש"ט),

Some say that we do not say "the land of the land is the law" other than in taxes and tariffs which are tied to land, for the king decrees that they may not live in his land other than in this way. But other matters, no. And some disagree and argue that we say "the law of the land is the law" in all matters.

22. Rabbi Moshe Isserless (16<sup>th</sup> century Poland), Shulchan Aruch Choshen Mishpat 356:7

אומן שנותנין לו כלים לתקן, והשכינם, צריכין הבעלים ליתן לו [למלווה] מעותיו... ואפילו למאן דאמר: אומן קונה בשבח כלי, לא נאמר דהרי הוא של אומן ולא של בעלים, דמכל מקום צריך להחזירו לבעלים מכח דינא דמלכותא

Where a craftsman is given items to fix, and he uses them as collateral for a loan, the original owners must pay the lender for them [and then deal with the craftsman]... Even per the [talmudic] view that a craftsman purchases an implement when he improves it [and may choose to pay for the item and keep it], it does not belong to him rather than the owners, for government law requires him to return it.

23. Rabbi Eliezer Waldenberg (20<sup>th</sup> century Israel), Tzitz Eliezer 15:40:6-7

ועד כדי כך היה פשוט הדבר להפוסקים ז"ל שישנו חיוב כזה [לשלם לרפואת חולה-ט.מ.]. על כל הסובבים את החולה עד שדנים בהיכא שהוציאו הוצאות עבור כך מבלי לשאול את החולה באם מחויב החולה אח"כ להחזיר להם ההוצאות, בהיות ומחויבים ועומדים על כך...

עפ"י האמור, ברור ופשוט הדבר כי הממשלה אשר בריאות הציבור צריך ומחויב להיות בראש דאגותיה, מחובתה גם היא להקציב תקציבים כספיים כדי לעזור למניעת ההתפתחות של מחלה זו היא קוצר-ראיה בהגשת טיפול דרוש באמצעות צוות רופאים מומחים...  
It was so obvious to halachic authorities that there is such a duty [to pay for an ill person's treatment] upon all of those around the ill person, to the point that they debated the case in which the community had spent for this without asking the ill person – is the ill person obligated to repay them for their expenditures, since they were obligated to do this...  
Based on what has been said, it is clear and simple that the government, which must have the health of society as its top concern, must also allocate funds to help prevent the development of this disease of nearsightedness, by providing the necessary treatment via expert doctors...

24. DiPoce and Buchbinder, *Preventive Medicine*, Journal of Halachah and Contemporary Society 42 (2001), pg. 99  
Rav Shachter also asserted that where vaccines are mandated by the state, such as in the case of immunizations before entering school, one would be obligated to be immunized based on the concept of *Dina d'Malchuta Dina* [the law of the land is the law].

### Vignette 2: Reporting dangerous conduct

25. Talmud, Gittin 7a

שלח ליה מר עוקבא ר' אלעזר בני אדם העומדים עלי ובידי למסרם למלכות מהו שרטט וכתב ליה אמרתי אשמרה דרכי מחטוא בלשוני אשמרה לפי מחסום בעוד רשע לנגדי אע"פ שרשע לנגדי אשמרה לפי מחסום שלח ליה קא מצערי לי טובא ולא מצינא דאיקום בהו שלח ליה +תהלים ל"ז+ דום לד' והתחולל לו דום לד' והוא יפילם לך חללים חללים השכם והערב עליהן לבהמ"ד והן כלין מאיליהן  
Mar Ukva sent to Rabbi Elazar: There are people who stand against me, and I could give them to the throne; what should I do?

Rabbi Elazar wrote back: It is written, "I guarded my path from sinning with my tongue; I muzzle my mouth when the wicked are still opposite me." Even though the wicked are opposite me, I will muzzle my mouth.

Mar Ukva sent back: They are causing me great pain, and I cannot manage them.

He sent: It is written, "Be silent for Gd and hope [*hitcholleil*] for Him." Be silent for Gd, and He will make them corpses [*challalim*]. Rise early and stay late in the Beit Midrash, and they will disappear on their own.

26. Rambam (12<sup>th</sup> century Egypt), Mishneh Torah, Hilchot Chovel uMazik 8:9

אסור למסור ישראל ביד גוים בין בגופו בין בממונו, ואפילו היה רשע ובעל עבירות ואפילו היה מיצר לו ומצערו, וכל המוסר ישראל ביד גוים בין בגופו בין בממונו אין לו חלק לעולם הבא.

One may not hand a Jew to the control of the nations, whether physically or financially, even where he is wicked and a sinner, and even where he causes him trouble and pain. Anyone who gives a Jew to the nations, whether physically or financially, has no share in the next world.

27. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Choshen Mishpat 425:3

מצילין אותו אפילו בנפש הרודף

We save the victim, even by taking the life of the pursuer

28. Rabbi Shlomo Zalman Auerbach (20<sup>th</sup> century Israel), Minchat Shlomo 1:7

מה שמותר בימות החול לקום על ישראל הבא במחותרת ולהורגו ולא אמרינן שיניחנו ליטול ממונו, היינו משום דהריגת הרודף היתר גמור הוא אף כשאינו אלא ספק שהרי כל הבא במחותרת אינו ודאי רודף

The fact that one may rise up against a Jewish invader on a weekday and kill him, and we don't say to let the invader take his money, is because killing a pursuer is entirely permitted even where his intentions are only uncertain. Anyone who tunnels in is not definitely a pursuer [and yet one may kill him].

29. Talmud, Bava Metzia 83b-84a

אמר [ר' אלעזר ב"ר שמעון] תא אגמרך היכי תעביד: עול בארבע שעי לחנותא, כי חזית איניש דקא שתי חמרא וקא נקיט כסא בידיה וקא מנמנב, שאול עילויה. אי צורבא מרבנן הוא ונייב, אקדומי קדים לגרסיה. אי פועל הוא, קדים קא עביד עבידתיה. ואי עבידתיה בליליא, רדודי רדיד. ואי לא, גנבא הוא ותפסיה.

אישתמע מילתא בי מלכא, אמרו "קריינא דאיגרתא איהו ליהוי פרונקא!" אתיוה לרבי אלעזר ברבי שמעון וקא תפיס גנבי ואזיל.

שלה ליה רבי יהושע בן קרחה: "חומץ בן יין! עד מתי אתה מוסר עמו של אלקינו להריגה?" שלח ליה, "קוצים אני מכלה מן הכרם." שלח ליה, "יבא בעל הכרם ויכלה את קוציו..."

Rabbi Elazar ben Rabbi Shimon advised a government police officer: Go into the pub in the fourth hour of the day. When you see someone drinking wine, holding a cup and dozing, ask about him. If he is a scholar and he is dozing, it's because he rose early to study. If he is a worker, he rose early for labour. If he works at night, perhaps he works with fine metal (and that's why no one hears the sounds of his work). Otherwise, he is a thief, and you can catch him. Word of this was brought to the government, and they said, "Let the reader of the scroll be the one to carry it out!" They brought Rabbi Elazar ben Rabbi Shimon, and he caught thieves.

Rabbi Yehoshua ben Karchah sent to him: Vinegar, son of wine! How long will you pass the nation of our Gd to be murdered?!

Rabbi Elazar ben Rabbi Shimon responded: I am eliminating thorns from the vineyard. He replied: Let the Owner of the vineyard come and eliminate his own thorns...

30. Rabbi Shlomo ibn Aderet (13<sup>th</sup> century Spain), Responsum 3:393

אם העדים נאמני אצל הברורים רשאים הן לקנוס קנס ממון או עונש הגוף, הכל לפי מה שיראה להם וזה מקיים העולם. שאם אתם מעמידין הכל על הדינין הקצובים בתורה ושלא לענוש אלא כמו שענשה התורה בחבלות וכיוצא בזה נמצא העולם חרב שהיין צריכים עדים והתראה... וכ"ש בדאיכא הורמנא דמלכא, וכענין ר' אלעזר בר' שמעון בריש פרק השוכר את הפועלים. ומכל מקום הברורים צריכין להתיישב בדברים ולעשות מעשיהן אחר המלכה ולהיות כונתם בכל עת לשמים.

If the witnesses are credible to the selected judges, they may fine [the defendant] financially or punish him physically, all according to what appears to them [despite not fitting the biblical requirements]; this upholds the world. If you were to establish everything on the basis of biblical law, and you would not punish other than as the Torah does for injuries and the like, the world would be ruined, for we would require witnesses and warnings... And certainly where there is government license, like in the case of Rabbi Elazar ben Rabbi Shimon in Bava Metzia 83b. But the selected judges must confer in the matter and act after consultation, and their intent must always be for Heaven.

31. Rabbi Hershel Schachter, *Dina De'malchusa Dina: Secular Law as a Religious Obligation*, Journal of Halachah and Contemporary Society 1 (1981), pg. 118

One critical point should however be added: There is no problem of Mesirah in informing the government of a Jewish criminal, even if they penalize the criminal with a punishment more severe than the Torah requires, because even a non-Jewish government is authorized to punish and penalize above and beyond the law, Shelo Min HaDin, for the purpose of maintaining law and order. However, this applies only in the situation when the Jewish offender or criminal has at least violated some Torah law. But if he did absolutely nothing wrong in the eyes of the Torah, then giving him over to the government would constitute a violation of Mesirah

32. Rabbi Asher Weiss (21<sup>st</sup> century Israel), **מסירה לשלטונות של מי שחשוד בהתעוללות בילדים**

אין המוסר כרודף ממש מעיקר הדין אלא שחכמים ברוחב דעתם עשוהו כרודף להעמיד הדת על תילה ומשום תקנת הציבור... וכיון שכן נמסר הדבר בידם ותיקנו מה שתיקנו לתועלת הציבור, והם אמרו והם אמרו...

A *moser* is not truly like a pursuer, by letter of the law. The sages, with their broad wisdom, treated him as a pursuer in order to establish the law, and for the sake of the community... And therefore, the law is up to the sages. They enacted as they did for the benefit of the community, and they said this and they also said that...

Vignette 3: Refusing to see patients

33. Government of Canada, *COVID-19 pandemic guidance for the health care sector*

<https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/health-professionals/covid-19-pandemic-guidance-health-care-sector.html>

HCWs who are unable (e.g., for health reasons) or unwilling to be directly involved with COVID-19 patients should be assigned supportive roles.

34. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Choshen Mishpat 7:12

כל דבר שיש לדיין בו צד הנאה, אינו יכול לדון עליו.

Wherever a judge has potential benefit, he may not judge it.

35. Rabbi Moshe Isserles (16<sup>th</sup> century Poland), Shulchan Aruch, Choshen Mishpat 290:8

י"א כמו שהאפוטרופס יכול ליתנם לאחרים, כך יכול לקבל המעות לעצמו, ובלבד שיעשה בבית דין, משום לזות שפתים.

Some say that just as a guardian may invest with others, so he may accept it for his own ventures – so long as the rabbinical court oversees it, due to concern for gossip.

36. Rabbi Avraham Yeshayah Karelitz (Chazon Ish, 20<sup>th</sup> century Israel), Emunah uBitachon 3:30

והנה אין הזהרת השוחד מכלל המשפטים אלא מכלל החקים, שהרי לא אסרה התורה הוראה לעצמו ואדם רואה טריפה לעצמו, אף אם הוא דל וכל חייו תלויים בו.

The warning against bribes is not rational law, but engraved statute, for the Torah did not prohibit ruling for one's self, and one may examine the kashrut of his own slaughter, even if he is indigent and his entire life depends on it.

37. Rabbi Asher Weiss (Agudath Israel of America Torah Projects Commission), April 6 '20

<https://player.vimeo.com/video/404795764>

38. Rabbi Yosef Karo, Rabbi Moshe Isserless (16<sup>th</sup> century Israel, Poland), Shulchan Aruch, Choshen Mishpat 12:1

שנים שבאו לפניך לדין, אחד רך ואחד קשה, עד שלא תשמע דבריהם, או משתשמע דבריהם ואי אתה יודע להיכן הדין נוטה, אתה רשאי לומר להם: איני נזקק לכם, שמא יתחייב הקשה ונמצא רודף אחר הדיין. אבל משתשמע דבריהם ותדע להיכן הדין נוטה, אי אתה רשאי לומר: איני נזקק לכם. ואם היה ממונה לרבים, חייב להזקק להם.

הגה: ... ויש מי שכתב דמכל מקום נוהגין עכשיו שלא למחות בעוברי עבירה, משום שיש סכנה בדבר, שלא ימסרנו לאנסיין (מהרי"ו).

Rabbi Karo: If two parties come before you for judgment, one is gentle and one is harsh, then until you hear their words, or after you hear their words but you don't know which way the law leans, you may tell them, "I won't deal with you," as perhaps the harsher one may be found liable and may pursue the judge. But once you hear their words and know which way the law leans, you may not say, "I won't deal with you." And a judge who is publicly appointed is [always] obligated to deal with them.

Rabbi Isserless: ... And one authority has written that in any case, we do not protest against transgressors today, because it is dangerous, lest he turn us over to *anasin*.

39. Rabbi Dr. Avraham Steinberg (Torah in Motion), April 5 '20 (registration required)

<https://www.torahinmotion.org/podcast/covid-19-public-health-and-jewish-law>

40. Rabbi Shlomo Brody, *Does Jewish Law Oblige Doctors to Risk Their Own Health*, Mosaic, April '20

[http://web.colby.edu/coronaguidance/files/2020/04/Brody-Does-Jewish-Law-Oblige-Doctors-to-Risk-Their-Own-Health-to-Heal-the-Sick\\_%C2%BB-Mosaic.pdf](http://web.colby.edu/coronaguidance/files/2020/04/Brody-Does-Jewish-Law-Oblige-Doctors-to-Risk-Their-Own-Health-to-Heal-the-Sick_%C2%BB-Mosaic.pdf)

41. Association of Ontario Midwives, *COVID-19 Clinical FAQ*, <https://www.ontariomidwives.ca/covid-19-clinical-faq>

There is no evidence that pregnant people are at increased risk of becoming infected with COVID-19 than the general population. (RCOG 2020; RANZCOG 2020) If infected, the research evidence continues to suggest that the large majority of pregnant people will experience only mild or moderate symptoms and most will recover without the need for hospital admission.

However there has been consistent reporting that pregnant individuals are at increased risk of severe illness. Recent Canadian evidence on 430 pregnancies suggests that pregnant individuals were eight times more likely to be admitted to ICU than their non-pregnant counterparts diagnosed with COVID-19, although overall rates of ICU admission were low (2.3%) among pregnant people. (Money 2020) ...

Vignette 4: Seeing patients in conditions that the government discourages

42. Ontario Ministry of Health, *COVID-19 Directive #2 for Health Care Providers*, May 26 '20

[http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/directives/RHPA\\_professionals.pdf](http://www.health.gov.on.ca/en/pro/programs/publichealth/coronavirus/docs/directives/RHPA_professionals.pdf)

Reciprocity: Certain patients and patient populations will be particularly burdened as a result of our health system's limited capacity to restart services. Consequently, our health system has a reciprocal obligation to ensure that those who continue to be burdened have their health monitored, receive appropriate care, and be re-evaluated for emergent activities should they require them

43. Dr. Christopher Meyers, *Autonomy and Critical Care Decision-Making*, Bioethics 18:2 (2004) pg. 110

In my experience, many clinicians see the assent standard as being sufficient for autonomous consent. So long as the patient has expressed a 'willingness to accept the proposed care', she has autonomously chosen. Surely, though, this is false. Assent requires merely that the patient *agree to* the recommendations of others, whereas autonomous consent requires a rich evaluation of information, of the full range of options, and of whether likely outcomes are consistent with life plans, along with the intentional selection of preferred alternatives. With assent, the patient *gives permission*; with consent, the patient *chooses*. With assent, the patient *accedes* to treatment; with consent, the patient *takes ownership* of or *identifies* with the choice made.

#### Past sessions referenced in this session

- Medical malpractice <https://www.yutorah.org/lectures/lecture.cfm/801124/>
- Reporting child abuse <https://www.yutorah.org/lectures/lecture.cfm/863352/>
- Ebola and Ethics: Panel <https://www.yutorah.org/lectures/lecture.cfm/819722/>
- Pandemic Ethics <https://www.yutorah.org/lectures/lecture.cfm/952090/>
- Live Organ Donation <https://www.yutorah.org/lectures/lecture.cfm/932385/>

#### Review Questions

- 1) What are examples of cases in which mitzvah performance must rely on personal judgment?
- 2) What are examples of cases in which personal judgment establishes how a mitzvah is to be performed?
- 3) What three examples did we bring to demonstrate that Shulchan Aruch relies on medical opinion?
- 4) In Vignette 1, would Public Health take into consideration the dentist's personal contention that the other patients present during Jill's care were not at risk?
- 5) In Vignette 1, would Halachah allow Sarah to rely on her own discretion in determining which patients were at risk?
- 6) In Vignette 1, would Public Health or Halachah endorse release of Jill's name?
- 7) In Vignette 2, would reporting an uncooperative staff person with a poorly fitted mask be prohibited as *mesirah*?
- 8) In Vignette 3, does Public Health require medical professionals to see patients during the pandemic?
- 9) According to Chazon Ish, why do we rely on a Rabbi to give halachic answers regarding the Rabbi's own kitchen?
- 10) May a healthcare worker err on the side of caution for personal health, during a pandemic?
- 11) Does pregnancy pose a greater risk for COVID-19?
- 12) In Vignette 4, may a medical professional rely on the patient's judgment in deciding whether to come in for a routine physical?