



An Observant Jewish Physician Working in a Secular Ethical Society: Ethical Dilemmas*

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When the Albert Einstein College of Medicine of Yeshiva University began preparing to admit its first class of students in September 1955, many members of the faculty had serious concerns and reservations as to whether or not observant Jewish graduates of Yeshiva College would fully comply with all the rules and regulations of the new medical school, the first under Jewish auspices. Some of the faculties were concerned that the observant Jewish students might not dissect their cadaver as part of the anatomy and pathology courses because of Jewish laws prohibiting the desecration of the dead, prohibiting the derivation of benefit from the dead, and the religious requirement to promptly bury the dead. Other members of the faculty voiced concerns about whether or not the observant Jewish students would work on the Sabbath or Jewish Holidays in the hospital during the third and fourth years when students are clinical clerks and thus part of the medical team caring for patients. In fact my interviewer asked me that specific question. I responded that I would do everything that is necessary for the proper care of my patients according to standard and accepted good medical practice. I explained to the interviewer that I am not only divinely licensed to become a physician and practice medicine but am also divinely mandated to heal the sick after receiving appropriate training, i.e., medical school and post-doctoral residency of my choice, and after receiving appropriate censure to practice medicine from the municipal or governmental authorities. My interviewer must have been satisfied with my answer because I was accepted as a member of the first class. One of my close friends who graduated college with me as the only *summa cum laude* in the class was interviewed by the chairman of the Department of Pathology who asked the applicant, "Will you request an autopsy on a patient of yours who dies?" He unexpectedly answered, "no." His admission to the medical school was delayed and required the personal intervention of Dr. Samuel Belkin, then president of Yeshiva University, to clarify the applicant's answer. He was finally admitted, excelled throughout the four years of medical school and went on to become a prominent neurosurgeon.

Throughout the four years of medical school, the students of the first class at the Albert Einstein College of Medicine were faced with numerous religious and moral questions regarding the physician's license and obligation to heal, procreation and sexuality – including abortion, contraception, sperm procurement and analysis, artificial insemination, induction of labor, sterilization procedures in men and women – and many more. Questions involving issues of death and dying included informing the critically ill patient, euthanasia, the definition of death in Jewish law, autopsy, embalming, burial of organs removed at surgery, among others. Other questions concerned hazardous therapy and human experimentation, mental health, dentistry, and a series of miscellaneous topics. By far, most questions related to the practice of medicine on the Sabbath by a medical student or a physician. All these questions were posed to Rabbi Moshe Feinstein, who answered them all with sensitivity, compassion and concern for the medical students. All the answers or Responsa provided by Rabbi Feinstein were collected and published in a still very popular book among Jewish medical students entitled *Practical Medical Halachah* [1]. The Jewish contribution to Medical Ethics began with the pioneering, now classic, book of the late chief Rabbi of the British Commonwealth of Nations entitled *Jewish Medical Ethics* [2], which has since been followed by numerous scholarly treatises and books [3–28] culminating in the recent publication of a multi-volume *Encyclopedia of Jewish Medical Ethics* [29].

Two hundred years ago in New York City, it was very difficult for a Jewish college graduate to gain admittance to medical school. It was also very difficult for Jewish physicians to obtain post-doctoral specialty training, and even more difficult for Jewish physicians to obtain staff privileges at most hospitals. These facts led to the creation of the Mount Sinai Hospital in New York, followed by the creation of the other New York Jewish Federation hospitals. The problem was greatly alleviated if not eliminated with the opening of Yeshiva University's Albert Einstein College of Medicine, which resulted in the other New York medical schools accepting Jewish men and women college graduates to their medical schools.

A prominent religiously observant Danish obstetrician/gynecologist describes in some detail the problems he encountered in his career in practicing in a non-Jewish society guided by secular

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medical ethics [30]. He describes the problem of a Jewish physician or nurse who refuses to participate in the performance of abortions, inseminations, and other procedures, which may be contrary to his/her religious convictions. He also details his personal problems with employment in a hospital and promotion to a more senior position. He eventually became chairman of the department. He describes the personal solutions he used to overcome his problems as an observant Jewish physician working in a non-Jewish secular society.

I too twice applied for the chairmanship of the Department of Medicine at a prestigious New York hospital. I was not even given the courtesy of an interview on either occasion. My impression is that my candidacy was not even considered because the administration suspected that I would not come to the hospital for the monthly budget meetings on Saturday mornings to which all chairmen of clinical departments were expected to attend. I swallowed my pride and remained at my then current position of Director of Medicine at a municipal hospital, and Program Director of its Medical Residency Program, a position with which I was very happy.

Jewish and secular approaches to Medical Ethics

The differences between secular and Jewish approaches to medical ethics are detailed by Avraham Steinberg [31]. He points out that several radical scientific, philosophical, and social changes have occurred over the past several decades, which have overwhelmingly influenced the shaping of current secular medical ethics, and exemplifies each of these changes. Of most significant importance is the philosophical shift in the physician-patient relationship from the primacy of beneficence and paternalism to the primacy of autonomy. This concept stresses rights of privacy and individual liberty, patient autonomous decision making and self-determination. Our medical system of care has shifted from the physician-oriented model to the patient-oriented model. The secular ethical system nowadays emphasizes patient rights. The patient has the right to a doctor. The patient has the right to know his diagnosis and prognosis, and the reason why the physician is recommending certain diagnostic tests and therapeutic interventions. The patient has the right to be told about alternative options, and what the outcome is likely to be if he refuses to follow the doctor's recommendations. The patient has a right to abortion, a right to assisted suicide (in the State of Oregon), the right to appoint a healthcare proxy for when the patient might be unable to make healthcare decisions for himself. Few people who advocate the principle of autonomy and patients' rights speak of patients' duties and/or obligations.

Thus, while much of the secular ethical system is based on rights, Judaism is an ethical system based on duties and responsibilities. Judaism requires patients to do whatever is proper in order to be healthy. It is an obligation in Judaism to be healthy. One should not smoke; one should eat properly and not excessively. One should exercise regularly, sleep adequately, only engage in proper and legitimate sex, and follow an overall healthy lifestyle. These are just some of the legal and moral duties, obligations and

imperatives in Judaism [32]. The autonomy of the patient in Jewish law is discussed in some detail by Shimon Glick [33]. The late Chief Rabbi of the British Commonwealth of Nations, Lord Immanuel Jakobovits, eloquently articulates the Jewish view as follows:

Now in Judaism we know of no intrinsic rights. Indeed there is no word for rights in the very language of the Hebrew Bible and of the classic sources of Jewish law. In the moral vocabulary of the Jewish discipline of life we speak of human duties, not of human rights, of obligations, not entitlement. The Decalogue is a list of Ten Commandments, not a Bill of Human Rights [34].

Case Study of an observant Jewish physician's personal experience in the era of Autonomy and Patient Self-Determination and Decision Making

A 46 year old woman was brought to the emergency room comatose after she ran her car into a tree. Resuscitative measures were attempted. She was intubated, a nasogastric feeding tube inserted, nasal oxygen applied and a respirator used to support her breathing. The family related that six months earlier the woman had watched her husband die of advanced lung cancer while he was attached to life support equipment. The woman firmly told her children and other family members that she does not want to die like that, "hooked up to tubes and machines." The patient was admitted to the medical service and given appropriate care including nutrition by nasogastric tube and hydration by intravenous infusion. She remained comatose. Two days later, as Director of the Department of Medicine, I received a phone call from the hospital lawyer who informed me that the family had received a court order to remove the respirator based on the clear and convincing evidence of her previously expressed wishes to the family. I told the lawyer he was welcome to come to the hospital to carry out the court order to which he replied "But I am an attorney, not a physician." I told him that it does not require a physician to turn off a respirator and that I would be happy to show him the switch to turn it off. He refused. I spoke to the family, who obtained the court order, and suggested that they carry out the order and I would show them how to turn off the control switch. They too refused. The hospital attorney insisted that it was my responsibility to disconnect the respirator. I told him that the patient might wake up from her coma any day and recover with some or no neurologic sequelae. "If I remove the respirator now," I said, "and if she dies as a result, I will have shortened her life and committed an act of moral murder since my religious beliefs prohibit the performance of an act that might shorten a person's life." The lawyer insisted that if I was not willing to carry out the court order it was my responsibility to find a physician on my staff who would be willing to do so. I canvassed my entire house staff and my entire attending staff – and no one was willing to disconnect the respirator. I solved the dilemma by referring the problem to the hospital's Medical Director who found a physician in the Department of Neurology who was willing to comply with the court order. When he disconnected the respirator, the patient began breathing on her own just as Karen Ann Quinlan did in 1976 in that landmark case where the New Jersey

Supreme Court granted her parents petition to remove her respirator so that she could die in dignity rather than remain indefinitely in a persistent vegetative state.

The next morning I received another telephone call from the hospital attorney, saying that the family had now obtained a second court order to remove the feeding tube. I again told him he was welcome to come to the hospital to do so and I would show him how. Again he said, "I am an attorney, and not a physician." I explained to him that withdrawing nutrition from the patient would cause her to starve to death, and I could not be the one to commit moral murder by shortening her life by starvation. We continued to discuss the matter. The next morning when I arrived in the patient's room, I found the nasogastric tube on the floor. The nurses denied having removed it. The house staff denied having removed it. The family denied having removed it. We were all surprised but decided not to reinsert it because of the court order.

In secular medical ethics and in Catholic medical ethics there is no moral or legal difference between withholding and withdrawing a feeding tube. In Jewish medical ethics, there *is* a moral difference. Passively omitting to do something (known in Hebrew as *Shev Ve'al Taaseh*) is morally acceptable under certain circumstances such as medical futility. The act of removing the feeding tube (known in Hebrew as *Kum Va'aseh* or *Maaseh Beyadayini*) is prohibited if it shortens the patient's life. This problem solved itself since the feeding tube was mysteriously found on the floor of the patient's room and was not reinserted to comply with the court order.

The next morning I received another phone call from the hospital attorney, saying that the family had obtained another court order to remove the nasal oxygen. I explained to him that the oxygen was purely a comfort measure to ease her breathing and was not a specific medical therapy. I spoke to the family and convinced them of this fact and they allowed the continuation of the nasal oxygen.

The final telephone call from the hospital attorney came two days later; he reported that the family had obtained an additional court order to remove the intravenous infusion which was hydrating the patient who was still comatose but breathing on her own. I pondered long and hard about this quandary. Is the act of removing the intravenous line an act of shortening the patient's life and therefore morally forbidden in the Jewish ethical system? I resolved the matter by instructing the house staff that when the current infusion ends, they should passively not hang up another bag of fluids (*Shev Ve'al Taaseh*). They followed my instructions, and subsequently the nurses removed the needle from the patient's vein. The patient lived for 46 days without any nutrition or hydration until her heart and breathing stopped and she was declared dead. This lengthy period without food and water is comparable to the length of time it took for Irish prisoners some years ago who went on a hunger fast until their death. To this day, I still have misgivings about this case and whether or not I acted correctly.

Such cases are obviously rare and most observant Jewish physicians practicing in a secular medical society are seldom, if ever, faced with such problems. Guidance is easily available from the multitude of books now available in English on Jewish Medical Ethics [1–30].

Informing the patient of a fatal illness: secular and Jewish views

There are significant differences between Jewish and secular views with regard to telling the patient "Everything," even if it is very bad news. Disclosure of information to patients has drastically changed in the past few decades in the secular ethical system.

Until the late twentieth century, withholding a fatal diagnosis functioned as a paradigm for sharing of medical information with patients. The obligation of confidentiality was emphasized and disclosure was ignored. Ethicists perceived the doctor-patient relationship as oriented to therapy, reassurance and avoiding harm. Physicians were to provide lies and truth instrumental only insofar as they aided therapy [8]. This was the era of paternalism. Since the 1960s, opinion on the role of disclosure has changed rapidly in the United States, stimulated by the patients' rights movement and the rise of bioethics. The current climate supports honest and complete disclosure of information. In 1972, the Board of Trustees of the American Hospital Association affirmed A Patient's Bill of Rights, which states that the patient has the right to obtain from his physician complete current information concerning his diagnosis, treatment and prognosis in terms the patient can be reasonably expected to understand [9]. Bioethics now favors full disclosure as a means of respecting patient autonomy [10]. The American College of Physicians Ethics Manual states that disclosure to patients is a fundamental ethical requirement [11]. The era of patient autonomy ended the traditional pattern of withholding information, which was characteristic of the previous era of paternalism.

The Jewish view toward full disclosure of a fatal illness to a patient and especially a patient who is terminally ill is, in general, a negative one because of the fear that the patient may give up hope, suffer severe mental anguish (*tirufhadaat*), become despondent, and die sooner than otherwise. Shortening a patient's life is strictly forbidden because Judaism espouses the concept that God-given life is sacred, even if only for a short time. Disclosure should be conveyed in the context of optimism. The most positive outlook should be imparted to the patient. Disclosure must be imparted with compassion, sensitivity and hope, thus giving the patient an opportunity to "set his house in order" and recite the confessional penitent prayer known as *Viduy*.

Medical confidentiality and patient privacy rights: the secular and Jewish viewpoints

Another area in modern medical practice where the observant Jewish physician must pay great attention to is the subject of medical confidentiality and patient privacy rights. Recent legislation passed by the U.S. Congress and signed into law by the President requires all physicians to comply with the new HIPAA rules governing medical privacy and patient confidentiality. The new mandatory standards protect individuals' medical records and other health information. Patients now have much more control over their health information. Safeguards are built into the new rules, and penalties can be imposed on physicians who fail to protect the privacy of health information. Observant Jewish physicians and all other physicians are scrambling to comply with the new HIPAA rules

and regulations. A fundamental Jewish ethical principle is "The law of the land is the law." Therefore, all physicians including observant Jewish physicians must comply with the law. The Jewish view on confidentiality is described in detail elsewhere [35–41].

Summary of basic principles in Jewish Medical Ethics

Judaism is guided by the concept of the supreme sanctity of human life and the dignity of man created in the image of God. The preservation of human life in Judaism is a divine commandment. Jewish law requires physicians to do everything in their power to prolong life but prohibits the use of measures that prolong the act of dying. The value attached to human life in Judaism is far greater than that in the Christian tradition or in Anglo-Saxon common law. In order to save a life, all Jewish religious laws are automatically suspended; the only exceptions are those prohibiting idolatry, murder, and forbidden sexual relations such as incest.

In Judaism, the practice of medicine by a physician does not constitute an interference with the deliberate designs of Divine Providence. A physician does not play God when he practices medicine. In fact, a physician not only has divine license to heal but he is *obligated* to heal. A physician in Judaism is prohibited from withholding his healing skills.

Judaism is a "right-to-life" religion. This obligation to save lives is not only individual but also communal. Certainly a physician, who has knowledge and expertise far greater than that of a layperson, is obligated to use his or her medical skills to heal the sick and thereby prolong and preserve life. It is erroneous to suppose that having recourse to medicine shows lack of trust and confidence in God, the Healer. The Bible takes for granted the use of medical therapy and actually demands it. Although it is permissible but not mandatory in Jewish law to study medicine, once a person becomes a physician he is obliged to use his skills and knowledge to heal the sick.

In Judaism, not only is a physician obligated to heal, but also a patient is obligated to seek healing from physicians rather than relying on faith healing. The Talmud states that no wise person should reside in a city that does not have a physician. The twelfth century Jewish scholar and physician Moses Maimonides rules that a man is obliged to accustom himself to a regimen that will preserve his body's health and heal and fortify it when it is ailing.

Our bodies and lives are given to us by God for a finite number of years. We are obligated to preserve, dignify and hallow that life. We are not to abuse our bodies. Suicide or assisted suicide is forbidden, as is self-mutilation and self-endangerment and self-wounding without appropriate medical indication. Only God gives life and only God takes it away. Our bodies are given to us by God as a precious gift to treasure until He claims it when we are obligated to return it to Him, like a tailor who is entrusted with an item that he must return when its owner comes and asks for it back.

The extreme concern in Judaism about the preservation of health and the prolongation of life requires that a woman's pregnancy be terminated if her life is endangered by the pregnancy, that a woman use contraception if her life would be threatened by pregnancy, that an organ transplant be performed if it can save or prolong the life of

a patient dying of organ failure, and that a postmortem examination be performed if the result of the autopsy may provide immediate information to rescue another dying patient. Judaism prohibits cruelty to animals, but it sanctions experimentation on animals to find cures for human illnesses as long as the animal experiences no pain and suffering. Judaism also allows patients to accept experimental medical or surgical treatments when no standard therapy is available, and the most experienced physicians, whose intent is to help the patient and not just to satisfy their academic curiosity, administer the experimental therapy.

In Judaism, the infinite value of human life prohibits euthanasia or mercy killing in any form. Handicapped newborns, mentally retarded persons, psychotic persons, and patients dying of any illness or cause have the same right to life as anyone else, and nothing may be done to hasten their death. On the other hand, there are times when specific medical or surgical therapies are no longer indicated, appropriate, or desirable for a patient who is irreversibly, terminally ill. Under no circumstances, however, can general supportive care, including food and water, be withheld or withdrawn to hasten a patient's death.

Thus, in Judaism each human being is considered to be of supreme and infinite value. It is the obligation of individuals and society to preserve, hallow and dignify human life, to care for the total needs of all persons so that they can be healthy and productive members of society. This fundamental principle of the sanctity of life and the dignity of man as a creation of God is the underlying axiom upon which all medical ethical decisions are based [42].

Conclusion

The attitude toward healing in Judaism has always been a positive one. A physician is obligated to heal and is given divine license to do so. A physician must be well trained and licensed in his discipline. A physician must apply his skills for the benefit of the patient and be careful not to do harm. Thus, the ethical principles of beneficence and non-maleficence are deeply rooted in Judaism. A patient is also obligated to seek healing since one must be healthy in order to serve the Lord by doing His will in the service of mankind.

A second cardinal principle of Judaism is the infinite value of human life. The preservation of life takes precedence over all biblical and rabbinic commandments except three: murder, idolatry and forbidden sexual relations such as incest or adultery. The Talmud states that all lives are equal since one person's blood is not redder than that of another person (*Pesachim 25b*).

Preventive medicine is a centerpiece of the Jewish system. The Jewish view toward the practice of medicine emphasizes prevention over treatment. Prevention of danger and thereby the preservation of life and health are biblical mandates. One must observe rules of personal hygiene such as hand washing before eating. Diet, exercise, sex and bodily functions must all be properly tended to. Preventive medical services and patient responsibilities are fully consonant with Judaism. Thus, emphases on prevention of illness, as well as personal responsibility, are deeply rooted in Judaic teaching and tradition.

With regard to the Internet, Judaism views any new technology or scientific advance with favor if it is used for the betterment of mankind such as the prevention and treatment of illness. Such harnessing of the natural sciences is not considered an encroachment upon divine prerogatives. On the contrary, God gave us dominion over the world to use nature to subdue the earth (Genesis 1:28) by transforming its secrets into products and technology to benefit mankind. The Internet is a wonderful tool to accomplish this purpose with some caveats as discussed above.

These principles of Judaism guide the Jewish physician in his practice of medicine. As new Jewish bioethical questions arise, rabbinic decisors will provide answers based on the expert medical and technical information provided by physicians and scientists. Such answers must be consonant with the physician's ability to practice medicine, using the most up-to-date advances in medical science and biomedical technology. However, such answers must also remain true to traditional Judaic teachings as transmitted by God to Moses and the children of Israel.

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