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## DIAGNOSTIC DISCLOSURE DILEMMAS: THERAPEUTIC PRIVILEGE IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

A dilemma often faced by medical professionals is whether to inform a terminally ill patient of his grim prognosis. The last century saw an evolution of American medical ethics from the traditional paternalistic attitude that it is generally in the best interest of the patient for the information to be withheld from him, to the contemporary liberal perspective that considers personal autonomy a supreme value, and thus maintains that:

Except in emergency situations in which a patient is incapable of making an informed decision, withholding information without the patient's knowledge or consent is ethically unacceptable.<sup>1</sup>

In this article we explore halachic perspectives on this question. In contemporary American medical ethics, personal autonomy as a fundamental value has become the dominant consideration; in halacha, the primary value is simply the welfare of the patient, physical and spiritual. *Poskim* have

inclined increasingly toward disclosure, as we shall see.

### INSTRUCTING THE CRITICALLY ILL TO RECITE VIDUI

Prior to the twentieth century, there is very little halachic discussion of this topic. The Ramban cautions that when we instruct a critically ill person to recite *vidui*, we accompany this with the reassurance that "many have said *vidui* but did not die...and many walk about in the street and recite *vidui*," in order to avoid destroying his morale.<sup>2</sup> The *poskim* add that someone who is ill but not in imminent danger of death should not be instructed to recite *vidui* even with the above caveat, since he will nevertheless assume that his condition must be grave since we are expressing concern about his possible death.<sup>3</sup>

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<sup>1</sup> American Medical Association, Withholding Information from Patients - Code of Medical Ethics Opinion 2.1.3.

<sup>2</sup> Toras Ha'adam, beginning of *Sha'ar Hasof*, cited in Tur and Shulchan Aruch Y.D. *siman* 338 *se'if* 1.

<sup>3</sup> Bach and Shach *ibid.* s.k. 1.

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HaRav Yosef Grossman zt"l



### PARSHAS YISRO

#### CLOUD COMPUTING

Excerpted and adapted from a shiur by  
Dayan Yosef Greenwald

*I am Hashem your G-d who took you out of  
the land of Egypt...*

Shemos 20:2

Chazal say (Shabbos 88b) that when Klal Yisrael heard the first two *dibros* directly from Hashem, they were thrown back a distance of 12 *mil*.

The Moshav Zekeinim Miba'alei HaTosafos asks that the Gemara says that the *aseres hadibros* were given on Shabbos. While there is a *machlokes Tana'im* whether the *techum* limiting walking on Shabbos to 2,000 *amos* is *mid'Oraisa* or *mid'Rabbanan*, most *Rishonim* agree that the *techum* of 12 *mil* is *d'Oraisa*. If so, how were they able to walk back to Har Sinai on Shabbos?

The Moshav Zekeinim answers that because the Jews were surrounded by the *ananei hakavod*, the entire area within the clouds was considered within city limits.

The Pri Megadim asks that the entire halacha of *reshus harabim* is derived from the *machanei Yisrael* in the *midbar*, which proves that the *ananim* were not like walls, because then the camp would have been a *reshus hayachid*.

One answer offered by the *Acharonim* is

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### A Point of Order

Q On the 15th of Shevat, I made a *borei pri ha'eitz* and then a *shehecheyanu* on a new fruit. Was this the correct sequence?

A The Shulechan Aruch (Orach Chaim 225:3) rules that when one obtains a new fruit, he should not make a *shehecheyanu* until he eats it. This is contrary to the view of the Vilna Gaon, who is quoted as saying that one should make the *shehecheyanu* upon seeing a new fruit, because he maintains that the *bracha* is on the new season rather than on eating the fruit. The Shulechan Aruch, however, (continued on page 2)

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## DISCLOSING TERMINAL DIAGNOSES

### R' Yaakov Breisch

R' Yaakov Breisch discusses the physician of a patient with terminal cancer. The patient was engaged to be married, but neither the patient himself, nor his family, nor his fiancée knew of his prognosis. Rav Breisch notes that “it is, of course, against the rules of the physicians” to disclose the diagnosis to the patient, in order to avoid aggravating his condition. Rav Breisch’s question is whether the information must nevertheless be disclosed to the fiancée. He rules that it must, so that she can avoid the personal devastation consequent to marrying someone so gravely ill, but he seems to assume that absent such considerations, the “rules of the physicians” should be followed.<sup>4</sup>

### R' Betzalel Stern

The first substantial discussion of our question of which I am aware is by R' Betzalel Stern, who rules that a cancer patient should not be informed of his diagnosis, since prayer can always be effective, but a patient who is hopeless may not believe this and so will fail to pray properly for his recovery.<sup>5</sup>

### R' Avraham Sofer-Abraham

R' Avraham Sofer-Abraham apparently accepts in principle the stance of Rav Stern, but he argues that today it is practically very difficult to conceal cancer diagnoses from patients, particularly since they often require radiation or chemotherapy and treatment in an oncology facility. Further, since the chances of success in the treatment of cancer, including not just the prolongation of life but even the complete curing of the illness, are increasingly good, the patient’s morale may actually be improved by a frank and candid discussion with the physician of his condition and the possibilities of successfully treating it, and the provision of crucially important emotional support. On the contrary, ignorance of—or even worse, misconceptions regarding—his condition will result in hopelessness and the destruction of his morale. Rav Abraham concedes, however, that in the case of a late diagnosis, where treatment of the dis-

4 Shu”t Chelkas Yaakov E.H. siman 79.

5 Shu”t Betzeil Hachochmah cheilek 2 siman 55. This position is endorsed by R’ Shlomo Aviner and R’ Shiloh Refael, *Sefer Assia* vol. 3 pp. 335-37.

ease itself is no longer possible and all that can be provided is palliative care, then “in the vast majority of cases” the patient himself should not be informed of his condition, although his family still should be.<sup>6</sup>

### R' Elazar Schach

It is reported that when R' Elazar Menachem Man Schach was asked about disclosing a terminal diagnosis to a patient, he responded by noting the evolution of medical opinion toward disclosure. (The implication is that he gave at least considerable weight, if not total deference, to medical opinion on the matter.) He further added a religious argument opposite to that of Rav Stern:

The point of all suffering that G-d brings upon man is to rouse the person to search his ways and take action to rectify his shortcomings and to repent. If his condition is kept unknown to him by his doctors and family, they are thus preventing him from fulfilling the responsibility that has been cast upon him by G-d.<sup>7</sup>

### R' Yigal Shafran

R' Yigal Shafran has a lengthy discussion of the subject in which he rejects the position of Rav Stern outright, and he maintains that although each case must be evaluated on its own, and in some cases it is indeed appropriate to withhold a patient’s diagnosis for his own good, in general truth and honesty are strongly preferred, and it is the patient’s right to be informed of his condition—and his duty, in order to prepare himself for the Next World.<sup>8</sup> He notes the additional concern that if patients become aware that the halacha enjoins physicians from being candid with their patients, this itself would result in terrible damage to morale and a complete mistrust of the medical establishment, *chas v’shalom*.<sup>9</sup>

### R' Eliezer Melamed

R' Eliezer Melamed emphasizes that ultimately, our primary concern is the welfare of the patient. The most important consideration is to provide the patient with emotional support, but giving him the opportunity to recite *vidui* is important as well. He declines to provide a default rule of dis-

6 Nishmas Avraham (Second Expanded Edition) Y.D. pp. 447-8.

7 *HaRav Schach—Conversations*, pp. 235-36. I am indebted to my friend R’ Nosson Kaiser for bringing this source to my attention.

8 A similar position is expressed by Prof. Shimon Glick, *Sefer Assia* vol. 3 pp. 497-8.

9 *Sefer Assia* vol. 7 pp. 23-30.

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holds that the *bracha* is on eating the fruit.

The Ba’er Heiteiv says the Shulchan Aruch would hold that the *shehecheyanu* should be made after the *ha’eitz*, when one is actually ready to eat the fruit.

The Pri Magadim, though, says the Shulehan Aruch agrees that *shehecheyanu* is a *bracha* on seeing new fruit, but *Chazal* decreed that it should only be made when one actually enjoys the fruit. He therefore rules that the *shehecheyanu* should be made first, because seeing the fruit precedes its eating. He also says that making *ha’eitz* would interrupt between seeing the fruit and making *shehecheyanu*.

The Kesav Sofer (Orach Chaim 25) quotes his father, the Chasam Sofer, as ruling that the *shehecheyanu* goes first. He says this is different from making a *bracha* on a mitzvah, like lulav or shofar, where the *bracha* of the mitzvah precedes the *shehecheyanu*, because the *shehecheyanu* on a mitzvah is made on the experience of the time of year rather than the mitzvah act, and one could still make the *shehecheyanu* after the mitzvah, because that experience is ongoing. Because the *bracha* of *shehecheyanu* could technically be made later, while the *bracha* on the mitzvah must be made before the mitzvah is performed, the *birkas hamitzvah* goes first. But when eating a fruit, the *shehecheyanu* must be made beforehand, so *ha’eitz* does not take precedence over it.

closure, concluding that each case should be evaluated individually, to determine the best course for the particular patient: Some will be better off knowing the precise details of their illness, while others will be better served by knowing just the general details. A patient should never, though, be told that there is no hope. First, because this can never be known with certainty, and second, in order to avoid the destruction of his morale.<sup>10</sup>

10 R' Eliezer Melamed, *Hilchos Hanoteh Lamus*.

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that for an area to be a *reshus hayachid*, it must be encompassed by sturdy barriers that deem it enclosed. For *techumin*, however, the area need only be sur-

rounded, so as to define the area as a single place. For the latter purpose, *ananim* suffice.

We may add that the reason the *machaneh* is considered one area is because it is designated to be the dwelling place of Hashem in this world. Since the entire area has one exalted purpose, the *ananim* suffice to unify it vis-à-vis

*techumin*, even if they aren’t enough to make it a *reshus hayachid*.

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