

Medical Ethics: Conflict of Interest in Medical Practice

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Halachah in Healthcare Settings

- Registration <https://ematai.org/medicalchabura>
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Our agenda

It is imperative that medical professionals treat patients impartially, but various circumstances may create conflicts of interest. These include having patients who are social acquaintances and relatives of medical professionals, as well as participating in trips and receiving other benefits from pharmaceutical companies. How do CPSO policy and Jewish ethics address these issues?

Evaluation link

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Vignettes

- 1> FINANCIAL: Susan, a psychologist resident at Mount Sinai Hospital, is invited to a presentation by Assuta Pharmaceuticals on a new antidepressant they have developed. The presentation will take place in a kosher steakhouse, with dinner served free of charge. Is it halachically appropriate for Susan to participate?
- 2> SOCIAL: One Shabbat, at the synagogue kiddush, Susan is approached by her friend Lisa. Lisa explains that her teenage daughter is exhibiting what seem to be signs of an eating disorder. Lisa is terrified, and wants to bring her daughter to Susan. But Susan's practice is closed to new patients; she explains that she has been waitlisting new patients for the past six months, because she needs the time to serve her current patients. Lisa is beside herself; after Shabbat she calls Susan, pleading with her. What should Susan do?
- 3> HALACHAH: Susan has a patient, Alison (age 25), who is dating a young man, Baruch, seriously. The families of Susan, Alison and Baruch all attend the same synagogue. Alison tells Baruch that she is seeing Susan, and soon afterward Baruch's mother asks Susan about Alison's mental health. What should Susan do?
- 4> FAMILY: David, an experienced primary care physician, often refers patients to dermatologists for examination of their moles. His sister marries Jonathan, a dermatologist. May David refer patients to Jonathan? Does he need to divulge their relationship?
- 5> FAMILY: David's mother is experiencing moderate dementia, and she expresses increasing paranoia regarding her doctors and caregivers. Would it be better for David to conduct routine medical care (vitals, blood draws, bathing) for his mother because he is familiar and he understands her, or would it be better to have an aide do it?

The Concerns of the Regulators

1. CMA Code of Ethics and Professionalism, Section B: Fundamental Commitments of the Medical Profession

Commitment to the well-being of the patient

Consider first the well-being of the patient; always act to benefit the patient and promote the good of the patient.

Commitment to professional integrity and competence

Practise medicine competently, safely, and with integrity; avoid any influence that could undermine your professional integrity.

2. CMA Policy: Guidelines for Physicians in Interactions with Industry

3. The practising physician's primary obligation is to the patient. Relationships with industry are inappropriate if they negatively affect the fiduciary nature of the patient-physician relationship.

3. CMA Code of Ethics and Professionalism, Section C: Professional Responsibilities

4. Inform the patient when your moral commitments may influence your recommendation concerning provision of, or practice of any medical procedure or intervention as it pertains to the patient's needs or requests.

7. Limit treatment of yourself, your immediate family, or anyone with whom you have a similarly close relationship to minor or emergency interventions and only when another physician is not readily available; there should be no fee for such treatment.

4. CMA Policy: Guidelines for Physicians in Interactions with Industry

44. Practising physicians should not accept personal gifts of any significant monetary or other value from industry. Physicians should be aware that acceptance of gifts of any value has been shown to have the potential to influence clinical decision making.

5. Talmud, Ketuvot 105b

מאי טעמא דשוחדא? כיון דקביל ליה שוחדא מיניה, איקרבא ליה דעתיה לגביה והוי כגופיה, ואין אדם רואה חובה לעצמו. מאי שוחד? שהוא חד.
Why is a bribe forbidden? Once one accepts a bribe from someone, one's mind becomes close to him and he is like his person, and one cannot see guilt for himself. What is *shochad*? *Shehu chad* ["it is one" or "it is sharp"].

Vignette #1: Outside financial interest

6. CMA Policy: Guidelines for Physicians in Interactions with Industry

The history of health care delivery in Canada has included interaction between physicians and the pharmaceutical and health supply industries; this interaction has extended to research as well as to education.

7. CMA Policy: Guidelines for Physicians in Interactions with Industry

Practising physicians should not accept a fee or equivalent consideration from pharmaceutical manufacturers or distributors in exchange for seeing them in a promotional or similar capacity.

8. CPSO, Physicians' Relationships with Industry: Practice, Education and Research (emphasis original)

Where industry representatives are providing information about products or services, physicians are permitted to accept meals for themselves and appropriate staff, however, physicians must only accept meals that are of a modest value.

Physicians are advised to consider the reasonable expectations of their patients in assessing whether a meal is "modest".

9. Talmud, Ketuvot 105b

היכי דמי שוחד דברים?

כי הא דשמואל הוה עבר במברא, אתא ההוא גברא יהיב ליה ידיה, אמר ליה: מאי עבידתיך? אמר ליה: דינא אית לי, א"ל: פסילנא לך לדינא. אמר ליה: דינא אית לי, אמר ליה: פסילנא לך לדינא.

מר עוקבא הוה שדי רוקא קמיה, אתא ההוא גברא כסייה, א"ל: מאי עבידתיך? א"ל: דינא אית לי, א"ל: פסילנא לך לדינא. ר' ישמעאל בר' יוסי הוה רגיל אריסיה דהוה מייתי ליה כל מעלי שבתא כנתא דפירי. יומא חד אייתי ליה בה' בשבתא. א"ל מאי שנא האידנא? א"ל דינא אית לי ואמינא אגב אורחי אייתי ליה למר. לא קביל מיניה, א"ל פסילנא לך לדינא. אותיב זוזא דרבנן וקדיינין ליה. בהדי דקאזיל ואתי אמר אי בעי טעין הכי ואי בעי טעין הכי, אמר תיפח נפשם של מקבלי שוחד, ומה אני שלא נטלתי ואם נטלתי שלי נטלתי, כך, מקבלי שוחד על אחת כמה וכמה!

And what is a verbal bribe?

- Like when Shemuel crossed on a ferry, and someone extended his hand to him. Shemuel asked, "Why are you here?" He replied, "I have litigation." Shemuel said, "I am disqualified to judge for you."
- Ameimar was judging, when a feather landed on his head. Someone removed it. Ameimar asked, "Why are you here?" He replied, "I have litigation." Ameimar said, "I am disqualified to judge for you."

- Mar Ukva spat before himself, and someone covered it. Mar Ukva asked, "Why are you here?" He replied, "I have litigation." Mar Ukva said, "I am disqualified to judge for you."

The sharecropper of Rabbi Yishmael son of Rabbi Yosi regularly brought him a basket of [the rabbi's] fruit on Fridays. Once he brought it to him on Thursday. He said: Why did you do it differently this time? He said, "I have litigation, and I said I would bring it to the master while I'm here." He didn't accept it from him, and he said, "I am disqualified to judge for you." He set up a pair of sages and they judged for him. While he was walking, he said, "If he wants he could argue thus, and if he wants he could argue thus." He said, "May the recipients of bribes perish! I did not accept it, and had I accepted, it would have been my own, but this happened – how much more so for recipients of bribes!"

10. Rabbi Mordechai Yaakov Breisch (20th c. Poland/Germany/Switzerland), Chelkat Yaakov Choshen Mishpat 1
 ולפע"ד הדבר פשוט דאסור לדונו, אי משום חומרא וחסידות, וקרוב לומר דאף גם עפ"י דינא, דפשיטא דזה לא עדיף מאריסי' דרבר"י... וכן הא דשמואל דקעבר... אף על גב דהאי גברא ודאי מצוה קעביד דזה בכלל הידור לת"ח... ואפה"כ א"ל פסילנא לדינא. ולשיטת הרמב"ם בפכ"ג מסנהדרין אף עפ"י ד פסול כמבואר בכ"מ שם ובב"י חו"מ סי' ט', ואף לשיטת התוספות שם ועוד פוסקים עכ"פ מצד חומרא וחסידות.
 And in my humble opinion, it is simple that one may not judge him, if only as stringency and special piety, and it's likely even by law. It is obvious that this is no more than the sharecropper... and Shemuel crossing... Even though that person was performing a mitzvah, for this is part of honouring a Torah sage... And yet he said, "I am disqualified to judge." And according to Rambam Hilchot Sanhedrin 23 he is even disqualified by law as per Kesef Mishneh. And even according to Tosafot there and other authorities, it is still a matter of stringency and piety.

11. Tosafot (12th-13th century Western Europe), Commentary to Ketuvot 105b לא
 ...אינו אלא חומרא בעלמא שהיו מחמירין על עצמן כדאשכחן בכמה דברים אבל פסולין לא הוו.
 ...It is only a stringency, for they were strict with themselves as we find in various areas, but they were not disqualified.

12. Rabbi Yosef Karo (16th century Israel), Kesef Mishneh Commentary to Rambam, Hilchot Sanhedrin 23:3
 ...וס"ל לרבינו דכל הני עובדי דהוו מימנעי מדינא לאו מדת חסידות בלחוד הואי אלא כך היא שורת הדין דכל כי הני פסילי לדינא ושלא כדעת התוספות שכתבו דחסידות בעלמא הוה:
 And our master thought that in all of these cases they refrained from judging not only out of piety but because this was the letter of the law. And not like the view of Tosafot who wrote that this was just piety.

13. Winnipeg Regional Health Authority, Industry Relationship Policy - Frequently Asked Questions
 Question 4: Can an industry representative take a WRHA representative out to lunch or dinner for a business purpose?
 Answer 4: A meal is considered a personal gift and should be respectfully declined. We suggest, instead, that industry representatives be invited to meet with WRHA representatives in accordance with the site access provisions of this policy.

Question 5: An industry representative who is either at an industry-sponsored conference or on-site at a WRHA-sponsored event has asked me and a couple of others to dinner following the event. May I accept?
 Answer 5: No. For the same reason stated above. However, if you pay for your dinner and do not discuss business, then this would be acceptable.

Question 6: If I am attending a national meeting and a vendor hosts a noon luncheon or other similar "event" open to all attendees, may I enjoy the meal or event?
 Answer 6: Yes, if the event or meal is open to all attendees. In such cases it is viewed as part of your registration and conference attendance. However, you may not accept additional entertainment or benefits limited to only a few attendees, such as an invitation to dinner, tickets for sporting events, etc.

Question 7: My spouse (who does not work for the WRHA) has been invited to a dinner funded by a drug manufacturer. May I accompany my spouse to this event?
 Answer 7: If your spouse attends alone, there is no issue. But if you accompany your spouse, you should cover the cost of both your meals. Although the invitation is to your spouse, the same principles that apply to the direct prohibition of industry providing you with gifts or free meals would apply to both of you in this case.

14. Talmud, Ketuvot 105a

"ושוחד לא תקח" מה ת"ל? אם ללמד שלא לזכות את החייב ושלא לחייב את הזכאי, הרי כבר נאמר: "לא תטה משפט"! אלא אפי' לזכות את הזכאי ולחייב את החייב, אמרה תורה: "ושוחד לא תקח".

"And you shall not accept a bribe" – What does this teach? If this is to teach that he should not find the guilty innocent or the innocent guilty, the text already says, "You shall not warp the judgment"! Rather, even if [the payment] is encouragement to find the innocent innocent and the guilty guilty, the Torah says, "And you shall not accept a bribe."

15. Rabbi Moshe Isserles (16th century Poland), Code of Jewish Law, Choshen Mishpat 290:8

י"א כמו שהאפוטרופס יכול ליתנם לאחרים, כך יכול לקבל המעות לעצמו, ובלבד שיעשה בבית דין, משום לזכות שפתיים.
Some say that just as a guardian may invest with others, so he may accept the investment for his own ventures – so long as the rabbinical court oversees it, due to concern for gossip.

16. Rabbi Yom Tov Lipmann Heller (16th-17th century Prague/Poland), Pilpula Charifta to Rosh Sanhedrin 3:17 ש

כתבתי זה להורות לנתמנים על הצבור אף על פי שאין דיניהם דין תורה ולא נתקבלו לכך אפילו הכא יזהרו מלקבל מתנות על דיניהם:
I wrote this to teach that public officials, even though their decisions are not Torah judgments and they are not empowered for that, they still must be careful not to accept gifts for issuing their rulings.

17. Rabbi Moshe Sofer (18th century Hungary), Chatam Sofer Choshen Mishpat 160

אנשי ק"ק פלונית התאספו יחד בני הקהלה לקבל עליהם רב ומורה והי' מסכימי' על ד' רבנים ליתנום אל תוך הקלפי ומי שיעלה מהם ראשון יחזור וישאלו לאנשי הק"ק אם ירבו המתרצים בו על הממאני' הרי הוא הרב... והשלישי זכה עפ"י רוב הדיעות. אחר איזה ימים הי' קול המון סוער כי הרבה מאנשי הק"ק קבלו שוחד ממון מקרובי הרב הוא כדי למנותו עליהם...

פשוט כביעי בכוחהא דהקבלה ההיא שע"י אותו המינוי בטלה מעיקרא שהרי הי' צריכי' לומר דיעותם לשם שמים כמ"ש רמ"א...
The people of a certain town gathered to hire a rabbi and teacher, and they agreed regarding four rabbis to place their names into a box, and then to vote on each name as it would be withdrawn... The third candidate won the majority of votes. After several days, the masses raised a stormy voice, for many of the people had accepted monetary bribes from the relatives of that rabbi, to appoint him upon them... It is as obvious as the kashrut of an egg in yogurt that this vote is void, for they were required to voice their opinions altruistically, as recorded by Rama...

18. Rabbi Moshe Isserless (Rama, 16th century Poland), Shulchan Aruch Choshen Mishpat 386:3

...המזיק לחבירו בעצתו שיעץ לו... כולם פטורים, דלא היו אלא גרמא בנזקין.
...Or one who harms another person via the advice he provided... all of these are exempt from liability, because it was only indirect causation of harm.

19. Rabbi Yechiel Michel Epstein (19th-20th century Lithuania), Aruch HaShulchan Choshen Mishpat 386:2

וכלל גדול צריך לדעת דאע"פ שגרמא בנזקין פטור מדיני אדם מטעמים שיתבארו מ"מ אסור לעשות כן [שם] וחייב בדיני שמים...
As a general rule, one must know that even though one is not liable in human court for indirectly causing harm, for reasons that will be explained, still, one must not do it, and one who does so is liable in the heavenly court...

20. Rabbi Moshe Isserless (Rama, 16th century Poland), Shulchan Aruch Choshen Mishpat 129:2

ואפילו לא נתערב בהדיא, רק שאומר למלוה להלוות ללוה כי בטוח הוא, ועשאו על פיו והיה שקר, חייב לשלם לו, דהוי כאילו נתערב לו (מהרי"ו).
Even if one did not explicitly guarantee a loan, but he told the lender to lend to the borrower because [the borrower] is reliable, and the lender acted on his word, which turned out to be false, he must pay. It is as though he guaranteed it.

Vignette #2: Social Interest

21. Rabbi J. David Bleich, *Physician Strikes*, Tradition 21:3 (1984)

An interesting point regarding the level of services which must be provided is reflected in a letter addressed to the medical staff of Shaare Zedek Hospital signed by two leading rabbinic authorities and published in the Kislev 5744 issue of Assia. The signators, Rabbi Yitzchak Ya'akov Weiss and Rabbi Shlomoh Zalman Auerbach, report that it had come to their attention that the number of physicians available to treat patients fell below the number of physicians customarily on duty on Shabbat. Assuming that the Shabbat staff is the minimum necessary for purposes of pikuah

nefesh, those authorities declared that the members of the medical staff are obligated to assure the presence of medical personnel "not fewer (in number) than on the holy Sabbath days."

Vignette #3: Halachic Interest

22. Ontario's 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).

23. CMA, Principles for the Protection of Patient Privacy

Patients have a right to privacy and physicians have a duty of confidentiality arising from the patient-physician relationship to protect patient privacy. The right to privacy flows from the principle of respect for patient autonomy...

The protection of privacy and the concomitant duty of confidentiality are essential to foster trust in the patient-physician-relationship, the delivery of good patient care and a positive patient care experience. Privacy protection is an important issue for Canadians, and research suggests that patients may withhold critical health information from their health care providers because of privacy concerns. Patients will be more willing to share complete and accurate information if they have a relationship of trust with their physician and are confident that their information will be protected.

24. 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: You shall not stand by as the blood of your neighbour is shed.

25. Midrash, Sifra Kedoshim 2

ולפני עור לא תתן מכשול לפני סומא בדבר... היה נוטל ממך עצה, אל תתן לו עצה שאינה הוגנת לו
"Do not place a stumbling block before the blind." This means: Before someone who is blind in a given matter... If someone asks your advice, do not give him improper advice.

26. Rabbi Avraham Tzvi Hirsch Eisenstadt (19th century Lithuania), Pitchei Teshuvah to Orach Chaim 156

כל ספרי המוסר מרעישים העולם על עון לה"ר, ואני מרעיש העולם להיפוך עון גדול מזה וגם הוא מצוי יותר, והוא מניעת עצמו מלדבר במקום שנצרך להציל עשוק מיד עושקו... וכן בעניני שידוך והוא יודע שהוא איש רע ובליעל ורע להתחתן עמו, כולן בכלל השבת גופו וממונו.
All of the ethical works thunder regarding the sin of harmful speech, and I thunder regarding the opposite, a greater sin which is also more common: refraining from speaking when it is needed to save the victim from the victimizer... And in *shidduch* matters as well, when he knows this is a bad, worthless man, and it would be bad to marry him, all of this is within the mitzvot of restoring health and wealth.

27. Rabbi Asher Weiss (contemporary Israel), Minchat Asher 2:127:3

והעצה הנכונה שהרופא יביא לכך שבני הדודים יבדקו, בלי לחשוף את מחלתו של זה, וימצא תחבולה אחרת להסביר להם למה חושש הוא לגביהם ולמה הוא מציע להם שיבדקו. ואם אי אפשר לו להערים בכגון דא, יאמר להם שמי מבני המשפחה נמצא נושא גן זה שיוכל לגרום דום לב, בלי לגלות מי זה שנמצא נגוע ומאיזו משפחה, וכדומה.

And the correct counsel is for the doctor to cause the cousins to check, without disclosing this one's illness; he should find another strategy to explain to them why he is concerned for them and why he is suggesting that they check. And if he cannot act cleverly in this way, he should tell them that one of the family members carries this gene which could cause a heart attack, without revealing who is afflicted and from which family, and the like.

Vignette #4: Family Interest

28. US Dept of Health and Human Services, Office of Inspector General, Fraud and Abuse Laws

The five most important Federal fraud and abuse laws that apply to physicians are the False Claims Act (FCA), the Anti-Kickback Statute (AKS), the Physician Self-Referral Law (Stark law), the Exclusion Authorities, and the Civil Monetary Penalties Law (CMPL)...

29. The Physician Self-Referral Law [42 U.S.C. § 1395nn]

The Physician Self-Referral Law, commonly referred to as the Stark law, prohibits physicians from referring patients to receive "designated health services" payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies. Financial relationships include both ownership/investment interests and compensation arrangements.

30. Rabbi Yosef Karo (16th century Israel), Shulchan Aruch, Choshen Mishpat 22:1

מי שקבל עליו קרוב או פסול, בין להיותו דיין בין להיותו עד עליו... אם קנו מידו על זה, אינו יכול לחזור בו.

One who accepts a relative or disqualified party as judge or witness... if there was a *kinyan*, he cannot recant.

31. Rabbi Yosef Karo (16th century Israel), Shulchan Aruch, Choshen Mishpat 227:21

האומר לחבירו "על מנת שאין לך עלי אונאה", יש לו עליו אונאה. בד"א, בסתם, שאינו יודע כמה אונאה יש בו כדי שימחול... אבל במפרש, אין לו אונאה. כיצד? מוכר שאמר ללוקח, "חפץ זה שאני נותן לך בק"ק יודע אני שאינו שוה אלא מאה, על מנת שאין לך עלי אונאה אני מוכר לך", אין לו עליו אונאה...

If one says to another, "On condition that you cannot claim *ona'ah*," he can still claim *ona'ah*. This is true where he did not specify, for the other does not know how much *ona'ah* is present, to forgive it... But where he specifies, there is no claim of *ona'ah*. For example: Where a merchant tells a customer, "I am giving you this item for 200. I know it is only worth 100, but I am selling it to you on condition that you cannot claim *ona'ah* from me," one cannot claim *ona'ah*.

32. Rabbi Yisrael ben Chaim (Mahari Bruna, 15th century Germany), Responsum 132

מעשה שנחלקו יו"ף מונ"כין והח"ר שמעון ואשתו אדי"ל ולקח כל אחד טוען, ומתחלה לקח שמעון ואשתו לטוען בצד את הח"ר אהרן פפנהיי"ם, ועמהם הח"ר אברהם ק"ץ ליועץ, והלך עמהם לפני ב"ד, וגם הח"ר משה מינ"ץ. ולאחר זמן נתהפך ונשכר אברהם ק"ץ ליוזי"ף מונ"כין והלכו הח"ר משה והח"ר אהרן ושמעון וקבלו עליו לפני בית דין... ופסקנו שאין לנו לפוסלו מדינא, דמה מועיל אם אינו טוען, אם ירצה מצוי ללמד מ"מ בחשאי מאי דבעי, וכשבאתי לביתי נמלכתי אם יבוא עוד מעשה כה"ג לידי אמחה בידו. דאשכחן בפ"ב דכתובות (כב ב) דאפי' דבר שהתר גמור הוא מ"מ לכתחלה לא יעשה, משום הא דרב [אסי] הסר ממך עקשות פה ולזות שפתים הרחק ממך...

Yosef Munchen and Shimon and his wife Eidel disputed, and each side hired a *toen*. At first, Shimon and his wife hired Aharon Pappenheim, as well as Avraham Katz as an advisor, and he went with them before the court, as well as Moshe Mintz. Later, Avraham Katz switched sides and was hired by Yosef Munchen. Moshe and Aharon and Shimon came to complain before the court... We ruled not to disqualify him, for what would be the benefit even if he were not the *toen*? If he wished, he could still tell them whatever he wanted in private! But when I came home I decided that if such a case were to come before me again, I would protest, for we find in Ketuvot 22b that even if something is permitted, one still should not determine to do it, as Rav Asi said: Remove from yourself the curved mouth, and distance gossip from yourself. (Proverbs 4:24)...

Vignette #5: Family Interest

33. CPSO, PHYSICIAN TREATMENT OF SELF, FAMILY MEMBERS, OR OTHERS CLOSE TO THEM

<https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Physician-Treatment-of-Self-Family-Members-or>

Physicians must not provide treatment for themselves or family members except:

- a. For a minor condition, or in emergency situations;
and
- b. When another qualified health-care professional is not readily available.

Physicians must not provide recurring episodic treatment to themselves or family members for the same disease or condition, or provide ongoing management of a disease or condition, even where the disease or condition is minor.