



Halachah in Healthcare Settings

- Nishmat Avraham Orach Chaim <https://hebrewbooks.org/51473>
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Our agenda

Modern medical advances have enhanced both quality of life and length of life beyond what earlier generations enjoyed, but one side effect has been a growing population dealing with dementia due to an array of illnesses. These illnesses have created challenging situations regarding deciding between care at home and in institutional settings, evaluating capacity for different purposes, and the ethics of caring for one's own parent. Secular and Jewish ethicists have developed approaches to these issues, which we will discuss in terms of the professional's role as well as the caregiver's role.

Evaluation link	https://www.surveymonkey.com/r/JME-Dementia
Past medical sessions	https://torontotorah.com/nusbaum
Elder Care (2013)	https://www.yutorah.org/lectures/788590/
Judaism and Dementia Care (2014)	https://www.yutorah.org/lectures/lecture.cfm/814506/
The Shoteh (2023)	https://www.yutorah.org/lectures/1057489/

Vignettes

- 1> Shlomo, age 75, is suffering from moderate dementia. He generally recognizes his wife and children as familiar faces, but he sometimes confuses them for each other. He quickly forgets basic orienting information like the fact that today is Shabbat. Pesach is coming, and having Shlomo at the Pesach Seder would be challenging for him as well as for the others. Is there any obligation for Shlomo to be at the Seder?
- 2> Shlomo's daughter, Rebecca, is an internist. Would it be better for her to provide routine care (vitals, blood draws, bathing) for Shlomo because she is familiar and she understands him, or would it be better to have an aide do it?
- 3> As Shlomo's condition deteriorates, he begins to act out, expressing anger and paranoia. His children are concerned that it is not safe for him to be at home with his wife, Miriam, even with the aide provided by CCAC (Community Care Access Centre). However, Shlomo always asked his children to keep him at home, and not move him to a facility. What can Shlomo's children do?
- 4> Shlomo's children make the difficult decision to move him to an appropriate facility. Not long afterward, Miriam falls, strikes her head, and is hospitalized. Should Shlomo's children tell him? If they tell him and he forgets, are they obligated to remind him? What if Miriam passes away?
- 5> Shlomo's children have tried to visit him daily since he entered a facility. But as Shlomo's condition worsens, he often does not recognize them. Does the mitzvah of honouring parents require that they maintain daily visits? In general, is there a mitzvah for anyone to visit Shlomo, if he does not recognize them?

A Word for the Caregivers

1. Rabbi Eliyahu Cramer (Vilna Gaon, 18th century Lithuania), Aderet Eliyahu to Bereishit 2:24
ודבק באשתו – מורה על ענין בעלות ולא על מעשה אישות, שכל ימיו יהיה טורח ועמל על פרנסתה ולא על פרנסת אב ואם.
"He should stick to his wife" – This means acting as a husband; it is not a sexual reference. He should spend all of his days straining and struggling for her support, not for the support of his father and mother.
2. Rabbi Elazar Pappo (18th-19th century Bulgaria), Pele Yoetz **חסד**
וביותר ויותר יגדל החיוב עשות חסד עם עצמו וגופו, "וגומל נפשו איש חסד" (משלי יא) וכמו שאמרנו על הלל הזקן שכשהיה הולך לאכול היה אומר אלך ואגמול חסד עם אכסניא שיש לי דהיינו נשמתו...

Even greater is the obligation to perform *chesed* with one's self and body; Mishlei 11:17 says, "One who gives to himself is a man of *chesed*." And as they said of Hillel the Elder: When he dined he said, "I will go perform *chesed* for my guest," meaning his soul...

The Medical Side

3. Government of Canada, Dementia: Overview

<https://www.canada.ca/en/public-health/services/diseases/dementia.html>

Dementia is an umbrella term that describes a set of symptoms affecting brain function. It's a chronic condition that gets more severe over time and is often characterized by:

- A decline in: memory, planning, language, judgment
- Physical changes, like: loss of coordination, loss of bladder control, weak and stiff muscles, trouble standing, sitting or walking
- Changes in mood and behaviour

4. NIH National Institute on Aging

<https://www.nia.nih.gov/health/alzheimers-and-dementia/what-dementia-symptoms-types-and-diagnosis>

Dementia is the loss of cognitive functioning — thinking, remembering, and reasoning — to such an extent that it interferes with a person's daily life and activities. Some people with dementia cannot control their emotions, and their personalities may change.

5. CDC

<https://www.cdc.gov/aging/dementia/index.html>

6. Stages of Alzheimer's

<https://www.alz.org/alzheimers-dementia/stages>

In the early stage of Alzheimer's, a person may function independently. He or she may still drive, work and be part of social activities. Despite this, the person may feel as if he or she is having memory lapses, such as forgetting familiar words or the location of everyday objects.

During the middle stage of Alzheimer's, the dementia symptoms are more pronounced. The person may confuse words, get frustrated or angry, and act in unexpected ways, such as refusing to bathe. Damage to nerve cells in the brain can also make it difficult for the person to express thoughts and perform routine tasks without assistance.

In the final stage of the disease, dementia symptoms are severe. Individuals lose the ability to respond to their environment, to carry on a conversation and, eventually, to control movement. They may still say words or phrases, but communicating pain becomes difficult. As memory and cognitive skills continue to worsen, significant personality changes may take place and individuals need extensive care.

Case 1: Halachic Obligations

7. Rambam (12th century Egypt), Mishneh Torah, Hilchot Edut 9:9

השוטה פסול לעדות מן התורה לפי שאינו בן מצות, ולא שוטה שהוא מהלך ערום ומשבר כלים וזורק אבנים בלבד, אלא כל מי שנטרפה דעתו ונמצאת דעתו משובשת תמיד בדבר מן הדברים אף על פי שהוא מדבר ושואל כענין בשאר דברים הרי זה פסול ובכלל שוטים יחשב

A *shoteh* is biblically disqualified from testimony, for he is not obligated in *mitzvot*. This is not only a *shoteh* who walks unclothed, breaks implements and throws stones, but anyone whose mind is confused, such that his mind is perpetually mixed up on a matter, even if he can converse normally on other matters, is disqualified and is considered in the class of *shoteh*.

8. Rabbi Yitzchak Zilberstein (21st century Israel), Shiurei Torah l'Rofim III pg. 452

ומסתבר שזקן שדעתו מבלבלת, הוא בכלל נטרפה דעתו, ואם אינו מתמצא היכן נמצא, ואינו מכיר את קרוביו, הרי דינו כשוטה ופסול לכל. And logically, an aged person whose mind is confused is included in "his mind is perpetually mixed up", and if he doesn't know where he is, and he doesn't recognize his relatives, he has the status of a *shoteh* and he is disqualified for everything.

9. Rabbi Dr. Avraham Steinberg (contemporary Israel), HaRefuah KaHalachah IV 6:4:1:16

מי שדעתו נטרפת ומשובשת תמיד בדבר אחד, אבל בכל יתר הדברים הוא מתנהג כפיקח, הרי הוא שוטה לאותו דבר, וכל המצוות הקשורות באותו עניין אינן חלות עליו, אבל לשאר דברים איננו נחשב כשוטה...

One whose mind is torn and confused perpetually on one matter, but in all other areas he acts in a sane way, he is a *shoteh* for one matter, and all mitzvot connected to that matter are not binding for him, but for other areas he is not considered a *shoteh*...

10. Talmud, Rosh HaShanah 28a

עתים חלים עתים שוטה, כשהוא חלים הרי הוא כפיקח לכל דבריו, כשהוא שוטה הרי הוא כשוטה לכל דבריו.

If one is sometimes healthy and sometimes *shoteh*, when he is healthy he is as one who is sane for all matters, when he is a *shoteh* he is as a *shoteh* for all matters.

11. Rabbi Yisrael Meir haKohen (19th-20th century Poland), Mishneh Berurah 475:34

במידי דאכילה שעל כרחך נהנה גרונו עדיף טפי וכמתכוין דמי.

In matters of eating, when his throat automatically benefits, it is stronger and considered as though there was intent.

12. Rabbi Yonatan Rosensweig (contemporary Israel), **נפשי בשאלתי** pg. 76 fn 16

לפי מחקרים בעשרים השנים האחרונות, השהייה במסגרות חברתיות מעכבת את התקדמות המחלה, על פי ההנחה שלמוח ישנה "עתודה קוגניטיבית" (brain reserve; cognitive reserve) הנאבדת בהתדרדרותו.

Based on research in the last twenty years, spending time in social settings delays the progress of the disease. This is based on the assumption that the brain has cognitive reserves which battle its degeneration.

13. Rabbi Moshe Sternbuch (20th-21st century England/Israel/South Africa/Israel), Teshuvot v'Hanhagot 4:150

במאכלות אסורות אסור לתת לקטן בן יומו משום שהמאכל איסור פוגם בו

One may not give forbidden foods to a day-old child, because prohibited food harms him.

14. Rabbi Dr. Avraham Steinberg (contemporary Israel), HaRefuah KaHalachah IV 6:4:4:6

שוטה שמפריע למהלך התפילה, ויש בזה משום בזיון לו עצמו ולבני משפחתו – מותר להוציאו מבית הכנסת.

A *shoteh* who disrupts the flow of prayer, such that there is shame for himself and his family – one may remove him from the synagogue.

15. Rabbi Moshe Feinstein (20th century USA), Igrot Moshe Yoreh Deah 4:29

כשבאים בביהכ"נ, ודאי צריכים הציבור לקבלם בסבר פנים יפות, אף את מי שאין להם דעת ללמוד עמהם. וגם לראות שיענו אמן וקדושה לומר עמהם בין בשביל עצמן – שיקיימו מה שאפשר, וגם ההליכה לביהכ"נ בעצמה הוא מצווה וישקו את ספר התורה – ובין בשביל כבוד האבות.

When they come to the synagogue, the congregation must greet them pleasantly, even when they cannot learn with the community. They must see to it that such children answer "Amen" and Kedushah, saying it with them so that they will do what they can, and so as to honor their parents. This has value for the children themselves as they fulfill whatever they can, as even walking to synagogue is a mitzvah, and they can kiss the Torah scroll.

16. Rabbi Avraham Gombiner (17th century Poland), Magen Avraham 616:2

ומ"מ נ"ל דלא תתן להם לאכול דהוי כמאכילו נבילות בידים... דהאכילה בעצמ' אסור...

It appears to me that one should not give them to eat, as that would be like actively giving them *neveilah*... For eating itself is prohibited...

17. Rabbi Moshe Sternbuch (20th-21st century England/Israel/South Africa/Israel), Teshuvot v'Hanhagot 4:150

ולע"ד יש להתיר מעוד טעם, דשמא הצום מפריע לו ומסתכן ואינו יכול להגיד מפני מצבו, וכן א"א להאכילו בשיעורים משך היום דאולי מזיק לו רק שהוא אינו מבין ואינו מגיב.

In my humble opinion, there is another reason to permit: Perhaps the fast disturbs and endangers him, and he cannot say it because of his situation. One also cannot feed him minimal quantities through the day, for perhaps this harms him, and he neither understands nor expresses it.

Case 2: Taking Care of a Parent

18. 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.

19. AMA, Principles of Medical Ethics

<https://code-medical-ethics.ama-assn.org/ethics-opinions/treating-self-or-family>

When the patient is an immediate family member, the physician's personal feelings may unduly influence his or her professional medical judgment. Or the physician may fail to probe sensitive areas when taking the medical history or to perform intimate parts of the physical examination. Physicians may feel obligated to provide care for family members despite feeling uncomfortable doing so. They may also be inclined to treat problems that are beyond their expertise or training.

Similarly, patients may feel uncomfortable receiving care from a family member. A patient may be reluctant to disclose sensitive information or undergo an intimate examination when the physician is an immediate family member. This discomfort may particularly be the case when the patient is a minor child, who may not feel free to refuse care from a parent.

In general, physicians should not treat themselves or members of their own families. However, it may be acceptable to do so in limited circumstances:

1. In emergency settings or isolated settings where there is no other qualified physician available. In such situations, physicians should not hesitate to treat themselves or family members until another physician becomes available.
2. For short-term, minor problems.

When treating self or family members, physicians have a further responsibility to:

3. Document treatment or care provided and convey relevant information to the patient's primary care physician.
4. Recognize that if tensions develop in the professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.
5. Avoid providing sensitive or intimate care especially for a minor patient who is uncomfortable being treated by a family member.
6. Recognize that family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician.

20. Talmud, Sanhedrin 84b

מהו שיקיז דם לאביו רב מתנא אמר ואהבת לרעך כמוך. רב דימי בר חנינא אמר 'מכה אדם' ו'מכה בהמה' מה מכה בהמה לרפואה פטור אף מכה אדם לרפואה פטור. רב לא שביק לבריה למישקל ליה סילוא, מר בריה דרבינא לא שביק לבריה למיפתח ליה כוותא [כוויה], דילמא חביל והוה ליה שגגת איסור. אי הכי אחר נמי [אסור]! אחר שיגגת לאו, בנו שגגת חנק.

May one let blood for his father? Rav Matna said: 'You shall love your neighbour as yourself.' Rav Dimi bar Chinina said: The Torah juxtaposes 'One who strikes a person' and 'One who strikes a beast'. One is exempt for striking a beast to heal it, and so one is exempt for striking a person to heal him.

Rav did not permit his son to remove his thorn. Mar breih d'Raveina did not permit his son to open his blister, lest he wound him, which would be accidental violation of a prohibition. But if so, then others also may not do this! For others it would be a [mere] prohibition, for his son it would be a capital crime.

21. Ramban (13th century Spain), Torat haAdam, Shaar haSakkanah

דלמא חביל ביה טפי ממה שהוא בדרך הרפואה והוה ליה שגגת חנק

Lest he wound him beyond the normal way of medicine, which would be accidental commission of a capital crime.

22. Rabbeinu Nisim (14th century Spain), Commentary to Sanhedrin 84b

שמא יעשה חבורה לאביו ללא צריך שיחשוב ליטול הסילוא ויחבלוהו במקום אחר

Lest he wound his father unnecessarily, thinking to remove the thorn and wounding him in another spot.

23. Rabbi Yosef Babad (19th century Poland), Minchat Chinuch 48:3

הנהו אמוראי דלא הרשו לבניהם ליטול להם קוץ, היינו דילמא יעשו חבלה שלא לצורך בשוגג שלא מרצון אביו

These Talmudic sages did not permit their sons to remove thorns because he might wound unnecessarily, accidentally, against his father's will.

24. Rabbi Yosef Karo/Rabbi Moshe Isserless (16th century Israel/Poland) Shulchan Aruch Yoreh Deah 241:3

היה קוץ תחוב לאביו, לא יוציאנו, שמא יבא לעשות בו חבורה. וכן אם הוא מקיז דם, או רופא, לא יקיז דם לאביו ולא יחתוך לו אבר, אף על פי שמכוין לרפואה.

הגה: בד"א, בשיש שם אחר לעשות. אבל אם אין שם אחר לעשות והוא מצטער, הרי הוא מקיזו וחותר לו כפי מה שירשוהו לעשות.

Where his father is jabbed with a thorn, he should not remove it, lest he bruise him. The same is true if he lets blood, or acts as a doctor; he should not let his father's blood or cut his limb, even though it is intended medically.

Rama: This assumes there is another who can do it; where no one else will do it and he is in pain, the son should let blood and cut him as he permits.

25. Rabbi Yechiel Michel Epstein (19th-20th century Lithuania), Aruch haShulchan Yoreh Deah 241:6

אם אין שם מי שיעשה אלא הוא אם הם מצטערים ה"ז מקיז וחותר כפי שיתנו לו רשות לעשות וכן אם הוא עושה בטוב יותר מאחר ואביו חפץ בו יכול לעשות

Where there is no other to do it and they are in pain, he lets blood and cuts as they permit. The same is true if he is better than others, and his father wishes that he do it; he may do it.

26. Rabbi Shlomo Zalman Auerbach (20th century Israel), Minchat Shlomo 1:32:1

וכ"כ גם הלבוש ועוד פוסקים שהחשש הוא שמא יחבול יותר ממה שצריך, א"כ גבי זריקות שעפ"י רוב אין זה עושה כלל חבורה מסתבר שאין להחמיר

So wrote the Levush and other authorities: The concern is lest he wound more than is needed. If so, then regarding injections, where the majority do not wound at all, it would be logical to say that one should not be strict.

27. Masechet Semachot 12:12

עם הכל אדם נכנס לבית המרחץ, חוץ מאביו, וחמיו, ובעל אמו, ורבו שלימדו חכמה, רבי יהודה אומר אם היה אביו זקן או חולה נכנס ומרחיצו, שכך כבודו.

One may enter a bathhouse with anyone, other than his father, father-in-law, stepfather, or rabbi who has taught him wisdom. Rabbi Yehudah says: If his father is elderly or ill, one may enter and bathe him; this is his honour.

28. Talmud, Pesachim 51a

עם הכל אדם רוחץ חוץ מאביו וחמיו ובעל אמו ובעל אחותו ורבי יהודה מתיר באביו מפני כבוד אביו והוא הדין לבעל אמו... תנא תלמיד לא ירחץ עם רבו ואם רבו צריך לו מותר

One may bathe with anyone, other than his father, father-in-law, stepfather, or sister's husband. Rabbi Yehudah permits with his father for his father's honour, as well as with his stepfather... It was taught: A student may not bathe with his rabbi, but it is permitted where his rabbi needs him.

29. Rambam (12th century Egypt), Mishneh Torah, Hilchot Issurei Biah 21:16

ולא יכנס אדם עם אביו למרחץ, ולא עם בעל אחותו, ולא עם תלמידו, ואם היה צריך לתלמידו מותר

One may not enter the bathhouse with his father, sister's husband or student. It is permitted when he needs his student.

30. Rabbi Moshe Isserless (16th century Poland), Shulchan Aruch Yoreh Deah 242:16

המנהג פשוט ליכנס עם רבו ואביו וחמיו ובעל אמו ובעל אחותו למרחץ, אע"פ שבגמרא אסרו כולם, והכל הוא מטעם דעכשיו הולכים במכנסים.

The practice of entering a bathhouse with one's rabbi, father, father-in-law, stepfather and sister's husband has spread, despite the Talmud's prohibition. This is because people now enter wearing pants.

Case 3: Homecare vs. Facility

31. Rabbeinu Bechayye (13th century Spain) to Exodus 20:12

ומה שקבע הכתוב שכר הכבוד אריכות ימים, הגאון רב סעדיה ז"ל נתן טעם בזה כי מפני שלפעמים עתידים שיחיו האבות עם הבנים זמן ארוך, והאבות הם למשא כבוד על הבנים והכבוד יכבד עליהם, לכך קבע עליהם שכר המצוה הזאת: "למען יאריכון ימך", כלומר עליך לכבדם ותחיה עמהם ואם אולי תצטער על חייהם דע שעל חיך אתה מצטער

The text establishes a reward of long life. Rav Saadia Gaon explained: Sometimes parents live for a long time with their children, and the parents are a heavy burden on their children and honouring them is difficult. Therefore, the Torah established their reward for this mitzvah, "So that your days will be long," meaning, "You are obligated to honour them and live with them, and if you need to take pains for their life, know that you are taking pains for your own life."

32. Rabbi Meir of Rothenberg (14th century Germany), Responsum 4:1006

רחל יכולה לומר על דעת [שאצא ממקומי ומדירתך] לא עלה על דעתי ולגור בכפר בלא מנין ובלא תפלה ועוד וכי תעלה על דעתה לעבור הים שתלך עמה ואיזה שיעור [אתה] נותן לדבר...

Rachel may contend, "It never entered my mind that I would need to leave my place and my dwelling, to live in a village with neither minyan nor [communal] prayer." Further, would she ever have expected to cross the sea and go with her? What limit would you put on it?...

33. Talmud, Kiddushin 31b

רב אסי הוה ליה ההיא אמה זקינה אמרה לי' בעינא תכשיטין עבד לה בעינא גברא נייעין לך בעינא גברא דשפיר כותך שבקה ואזל לארעא דישראל שמע דקא אזלה אבתריה אתא לקמיה דרבי יוחנן אמר לי' מהו לצאת מארץ לחו"ל א"ל אסור. לקראת אמה מהו א"ל איני יודע [אתר] פורתא הדר אתא אמר ליה אסי נתרצית לצאת המקום יחזירך לשלום... אדהכי והכי שמע לארונא דקאתי אמר אי ידעי לא נפקי

Rav Asi's elderly mother said, "I want jewelry," and he made it for her. She said, "I want a man," and he said he would seek one. She said, "I want one as good as you," and he left her and went to Israel. He heard that she was coming after him, and he asked Rabbi Yochanan, "May one leave Israel?" Rabbi Yochanan replied, "No." He asked, "What about to greet my mother?" He said, "I don't know." He delayed a bit, then came back to Rabbi Yochanan, who said, "Asi, if you want to go back, may Gd return you there in peace."...

By then he heard that his mother's casket had arrived. He said, "Had I known, I would not have left."

34. Rambam (12th century Egypt), Mishneh Torah, Hilchot Mamrim 6:10

מי שנטרפה דעתו של אביו או של אמו משתדל לנהוג עמהם כפי דעתם עד שירוחם עליהן, ואם אי אפשר לו לעמוד מפני שנשתטו ביותר יניחם וילך לו ויצוה אחרים להנהיגם כראוי. א"א אין זו הוראה נכונה אם הוא ילך ויניח לו למי יצוה לשמרו, עכ"ל. +

Rambam: If one's father or mother develops dementia, he should try to act according to their wishes until Gd has mercy upon them. If he cannot bear it because they have become extremely irrational, he should leave and instruct others to manage them in the manner befitting them.

Raavad: This is an incorrect ruling; if he will go and leave his parent, whom will he instruct to care of him?

35. Rabbi Yonatan Rosensweig (contemporary Israel), **נפשי בשאלתי**, pg. 182 fn 2

כיום נראה פשוט שעם התקדמות הרפואה וקיומם של מוסדות מיוחדים לטיפול בחולים בעלי צרכים נפשיים מיוחדים, פסיקת השולחן ערוך על פי הרמב"ם נכוחה וברורה.

Today it appears obvious that with medical progress and the existence of institutions dedicated for care patients which special emotional needs, the ruling of the Shulchan Aruch based on the Rambam is clearly correct.

36. Rabbi Yosef Karo (16th century Israel), Shulchan Aruch Choshen Mishpat 97:4

אסור ללווה לקחת הלוואה ולהוציאה שלא לצורך ולאבדה עד שלא ימצא המלוה ממה לגבות חובו; ואם עושה כן נקרא רשע. וכשהמלוה מכיר את הלווה שהוא בעל מדה זו, מוטב שלא ללוותו ממה שילווהו ויצטרך לנגשו אחר כך ויעבור בכל פעם משום לא תהיה לו כנושה.
One may not accept a loan and waste it, to the point that the lender will have nothing from which to collect; one who does so is wicked. A lender who knows that the borrower would do this should not lend to him, rather than lend and need to oppress him, violating Shemot 22:24, "You shall not be an oppressor," each time.

Case 4: Informing of an ill or deceased spouse

37. Talmud, Gittin 13a

דברי שכיב מרע ככתובים וכמסורין דמו

The speech of a person on his deathbed has the legal force of written and transmitted wishes.

38. Rabbi Yosef Karo (16th century Israel), Shulchan Aruch Yoreh Deah 338:1

וכל אלו הדברים אין אומרין לו בפני ע"ה, ולא בפני נשים, ולא בפני קטנים, שמא יבכו וישברו לבו.
We don't speak of all of this [deathbed confession] before the unlearned, before women or before children, lest they cry and break his heart.

39. Talmud, Moed Katan 26b

חולה שמת לו מת אין מודיעין אותו שמת שמא תטרף דעתו עליו...

If a patient's relative dies, we do not inform him of the death, lest his mind be torn...