

## Bereavement and the Medical Professional

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### Questions

- (1) Norman, a psychologist, loses his father. On the third day of shivah, Robert calls his home; Norman has been treating Robert for anxiety on a weekly basis for six months. Robert reports an increase in anxiety this week, due to an emergent situation at work. May Norman spend an hour working with Robert on his anxiety? May he conduct the session in a more suitable environment outside the shivah house?
- (2) Sally, a heart surgeon, performs a triple bypass on Uziel. Three weeks later, Uziel passes away. Sally receives an email from Uziel's son, notifying her of the funeral and shivah details and implying a wish to see Sally there. Is Sally obligated to go to the funeral, shivah or both?
- (3) Uziel's death in Question 2 stemmed from an unanticipated surgical complication. Sally does not feel she could have done anything differently, but she did fail to anticipate and plan for this complication, and she does feel guilty. How would Jewish law speak to Sally's situation?
- (4) Sam, a hospice nurse, is often present when Jewish patients pass on. Must Sam tear *keriah* ritually?

### Learning objectives

By the end of the session participants will:

- Understand the challenges posed by personal bereavement for the observant Jewish physician.
- Understand the ritual and teachings presented in Judaism for medical professionals who experience the loss of a patient.

### 1: Caring for Patients vs Rituals of Mourning

#### 1. Talmud, Moed Katan 27b

שלושה ימים לבכי, ושבעה להספד, ושלישים לגיהוץ ולתספורת. מכאן ואילך אמר הקב"ה אי אתם רחמנים בו יותר ממני.

Three days for crying, seven for eulogy, thirty for pressing and haircuts. From then on, Gd says: You are not more merciful than I am.

#### 2. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Yoreh Deah 380:1

אלו דברים שהאבל אסור בהם: במלאכה...

These are prohibited for a mourner: Work...

#### 3. Rabbi Yosef Karo, Rabbi Moshe Isserless (16<sup>th</sup> century Israel/Poland), Shulchan Aruch Yoreh Deah 380:1

אסור לעשות מלאכתו ע"י אחרים (אפי' עובד כוכבים), אלא אם כן הוא דבר האבד, שדבר האבד מותר לאבל לעשות ע"י אחרים...

הגה: וי"א דאם לא יוכל לעשות ע"י אחרים, והוא דבר האבד, מותר לעשות האבל בעצמו (טור בשם הרמב"ן והרא"ש וכן כתב רבינו ירוחם); ולאחר שלושה ימים הראשונים יש להקל, ואפילו תוך ג' והוא הפסד מרובה.

Mechaber: One may not have others (including non-Jews) do his work, unless a loss is involved. For a loss, a mourner may have others do it...

Rama: Some say that if one could not have others do it, and a loss is involved, the mourner himself may do it. After the first three days one may be lenient, and even during the first three to prevent great loss.

#### 4. Rabbi Avraham Zvi Hirsch Eisenstadt (19<sup>th</sup> century Lithuania), Pitchei Teshuvah Yoreh Deah 380:1

כתב בס' חמודי דניאל... דדבר האבד, אפילו לאחר, מותר האבל לעשות. לפיכך מותר רופא לילך בתוך שבעה.

Chamudei Daniel wrote... that for a loss, even for someone else, the mourner may act. Therefore, a doctor may go, even during *shivah*.

#### 5. Rabbi Yaakov Reischer (17<sup>th</sup>-18<sup>th</sup> century Prague, Germany), Shevut Yaakov 1:86

לענין רופא שאירע בו אבילו', ראיתי מרבתי שהתירו לילך אל החולה כי חשש סכנה ומצוה שאני. ואפשר להתיר אף דאיכא רופא אחר כי לאו מכל אדם זוכה לרפואה...

Regarding a doctor who is in mourning, I have seen that my masters permitted going to the patient, for possible danger is different. One could even permit where another doctor is available; one may not merit healing from everyone...

## 6. Minyan vs. Medicine

<https://www.yutorah.org/lectures/lecture.cfm/773689/>, <https://www.yutorah.org/lectures/lecture.cfm/774759/>

## 7. Talmud, Succah 25a-b

משנה שלוחי מצוה פטורין מן הסוכה...

תניא "אמר רבי חנניא בן עקביא כותבי ספרים תפילין ומזוזות הן ותגריהן ותגרי תגריהן וכל העוסקין במלאכת שמים לאתויי מוכרי תכלת פטורין מקריאת שמע ומן התפילה ומן התפילין ומכל מצות האמורות בתורה, לקיים דברי רבי יוסי הגלילי שהיה רבי יוסי הגלילי אומר העוסק במצוה פטור מן המצוה."

Mishnah: Those who are on a mitzvah mission are exempt from Succah...

We have learned, "Rabbi Chanania ben Akavya said: Those who write Torah scrolls, tefillin and mezuzot, and their merchants, and their merchants' merchants, and all who do Heavenly work – which includes techelet merchants – are exempt from Shema, the amidah and tefillin and all biblical mitzvot, as Rabbi Yosi haGlili said, 'One who is involved in a mitzvah is exempt from another mitzvah.'"

## 8. Rabbi Moshe Isserless (16<sup>th</sup> century Poland), Shulchan Aruch Orach Chaim 38:8

ואם היו צריכים לעשות מלאכתן בשעת ק"ש ותפלה, או פטורין מק"ש ותפלה ותפילין. דכל העוסק במצוה פטור ממצוה אחרת אם צריך לטרוח אחר האחרת, אבל אם יכול לעשות שתיהן כאחת בלא טרוח, יעשה שתיהן.

If [scribes and merchants of tefillin and mezuzot] need to do their work during Shema and the amidah, they are exempt from Shema, the amidah and tefillin, for one who is involved in a mitzvah is exempt from other mitzvot if he would need to strain to fulfill the other mitzvah. If he can fulfill both without strain, though, then he should fulfill both.

## 9. Rabbeinu Nisim (14<sup>th</sup> century Spain), Succah 11a ואיכא

ודאי בשעה שהאבדה משומרת בתיבתו לא מפטר

Certainly, when the lost object is guarded in his safe then he is not exempt.

## 10. Rabbi Dr. Avraham Sofer Abraham (21<sup>st</sup> century Israel), Nishmat Avraham Orach Chaim 93:1

שמעתי ממו"ר הגרי"י נויבירט שליט"א שרופא פטור מתפלה, לא רק בזמן שהוא בודק ומטפל בחולה (אפילו שאין בו סכנה) אלא גם בזמן שהוא עסוק בכתיבה בתיק החולה ואפילו בזמן שהוא כותב מכתבי שחרור, כי כל זה מוגדר כעוסק במצוה

I have heard from my master Rabbi Yehoshua Neuwirth that a doctor is exempt from prayer not only when he is examining or treating a patient – even without danger to life – but even when he is writing in the patient's record, and even when he is writing release documents. All of this is "involvement in the mitzvah."

## 11. Rabbi Dr. Avraham Sofer Abraham (21<sup>st</sup> century Israel), Nishmat Avraham Orach Chaim 38:6

כותב הגר"י זילברשטיין שליט"א: רופא או אחות אעפ"י שכל עבודתו הוא רק עבור שכר, גם רופא כזה הוא משיב אבידה - ואין לך משיב אבידה גדולה מזו – ולכן מכיון שבשעת עבודתו הוא אינו מתכוין לשכר כלל אלא עוסק בסתם לשם ריפוי החולה, וטיפולו (וה"ה אחות) הוא עצם המצוה, יש לו דין כעוסק במצוה.

Rabbi Yitzchak Zylbershtein wrote: Even though doctors and nurses are paid for their work, still, they are like people returning lost objects – and there is no greater restorer of a lost object! Therefore, since he does not think about profit at all while working, but is only involved in healing the patient, and his care (or that of a nurse) is the mitzvah itself, he has the status of one who is involved in a mitzvah.

## 2: Dealing with bereaved families

### 12. Rabbi Dr. Avraham Sofer Abraham (21<sup>st</sup> century Israel), Nishmat Avraham Yoreh Deah 402:1

ומאוד מאוד צריכים להיזהר בצורה ונוסח בהם מודיעים לקרוב על פטירתו בן משפחתו, כי יש וזה יכול לגרום להלם ואפילו למיתת בן המשפחה (כמו כל בשורה רעה), וכן מצאנו לגבי עלי הכהן וכן לגבי שרה אמנו... ואם מת חולה ואין בני המשפחה על ידו, אין להודיע להם בטלפון שהוא נפטר אלא צריכים לקרוא להם לביה"ח עקב "מצבו" ורק כשהם בביה"ח אומרים להם לאט לאט פנים אל פנים.

One must be very, very careful in the form and language with which one informs a relative of the passing of his family member. This could cause shock, or even the death of a family member (like any bad news). So we see regarding Eli the priest, and regarding our matriarch Sarah... And if a patient dies and there are no family members present, one should not inform them by phone that he has passed away. Rather, one must call them to the hospital due to "his situation", and only inform them slowly, face-to-face, when they are at the hospital.

13. Should Doctors Attend Patients' Funerals? <https://www.funeralguide.net/blog/doctors-attending-patients-funerals>  
[Psychologist] Dr [Sofia] Zambrano conducted a research study at the University of Adelaide, looking into funeral attendance practices of Australian health professionals. She and her colleagues, Anna Chur-Hansen and Gregory B. Crawford, created an online survey, which was answered by 437 doctors across Australia, from various different specialties (they also targeted other health professionals like nurses and social workers, however that is the subject of an upcoming publication). The aim of the survey was to explore how doctors perceive funeral attendance, how often they attend their patients' funerals – and what influences them to do so...

"What I found interesting is that when the physician attends the funeral, it is not just about that sense of the physician feeling better about themselves, and dealing with their emotions, but also that sense of wanting to do something for the family, showing that they had a relationship that was important to them. It's not just about the physician, but for the benefit of the family."

For example, the doctor's attendance, apart from helping the doctor cope with the grief of losing a patient, may signal to the bereaved family that support is still available. It can bring some comfort too, and give the message that the patient who has died had a valuable relationship with their doctor.

14. Dr. Danielle Ofri, *A Doctor at the Funeral*, NY Times Feb '11

The little research that has been done suggests that most families appreciate the presence of the loved one's physician. In my own experience, families are quite surprised, but usually honored, to see the doctor in attendance. I've been proudly introduced to more aunts, uncles and cousins than I can possibly keep track of. But after the introductions, there's always an uncomfortable gap in the proceedings, as if they don't quite know what to do with me.

I feel like a respected guest, but one who causes others to stiffen slightly with formality. I'm careful not to overstay my welcome.

Many doctors express a desire to attend their patients' funerals. But it can be nigh impossible to reschedule 20 patient appointments or rearrange a planned operation on the short notice that funerals typically offer. And beyond the logistical scheduling challenges lies an inner core of ambivalence; now that the medical care chapter has closed, we're not quite sure how we fit into the patient's life. We were so recently actively directing the medical care — *doing* something — and now we are the awkward bystanders, often abashed by the deference paid by families.

But the deeper truth, I think, is that it's just too painful. Not because we feel that the death of a patient is a "failure," as stereotype often has it. But because it hurts to keep losing members of the family. It hurts to keep seeing the bodies of your patients — bodies with whom you have been intimately familiar — laid out in stone-cold carriage. It hurts to see the face of someone with whom you've had deeply personal conversation, now rigid with that oddly blank expression. It just hurts.

It never gets easy. Not even after years in practice.

15. Kim, Churilov, Huang, Weinberg, *Bereavement practices employed by hospitals and medical practitioners toward attending funeral of patients*, Medicine Sept '19 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6739025/>

Bereavement practices employed by MPs included answering or making phone calls, attending family meetings, and sending condolence letters. MPs' attendance at a patient's funeral was influenced by MPs' gender, age, years of experience [in] the medical specialty. Perceived benefits of MPs' attendance at a patient's funeral included providing support to the family, extending the professional relationship, illustrating respect to the patient and the family, resolving guilt and personal growth. Barriers to the attendance included a lack of time, blurring of professional boundaries, personal discomfort with death, emotional arousal, and discouragement by colleagues. General practice had an attendance rate of 71%. Attendance rates for palliative care, oncology, and psychiatrists ranged from 63% to 81%, 7.1% to 67%, and 15% to 67%, respectively. Intensivists had an attendance rate of 22%.

16. Parris, Hale, *Death and Dignity: Exploring Physicians' Responsibilities After a Patient's Death*, The American Journal of Medicine 130:8 (Aug '17)

As literature on end of life care grows, more attention is also being paid to the importance of caring for bereaved family members, highlighting the need to continue to care for those left behind.

In parallel, a newer body of work is emphasizing the importance of studying and avoiding harm associated with failures to maintain the respect and dignity of patients and their families. There is a drive to apply the methods of quality improvement to this realm in a similarly rigorous manner as seen with "never events," such as wrong-site surgery, falls in the hospital, or pressure ulcers.

### 17. Talmud Yerushalmi, Shekalim 3:2

רבי שמואל בר נחמן בשם רבי יונתן: בתורה ובנביאים ובכתובים מצאנו שאדם צריך לצאת ידי הבריות כדרך שהוא צריך לצאת ידי המקום. בתורה מניין דכתיב [במדבר לב כב] "והייתם נקיים מד' ומישראל", בנביאים מניין דכתיב [יהושע כב כב] "קל אלקים ד' וגו' וישראל הוא ידע", בכתובים מניין דכתיב [משלי ג ד] "ומצא חן ושכל טוב בעיני אלקים ואדם."

Rabbi Shemuel bar Nachman cited Rabbi Yonatan: We find in Torah, Prophets and Writings that one must satisfy others as one must satisfy Gd. Bamidbar 32:22 says, "And you shall be innocent from Gd and from Israel." Yehoshua 22:22 says, "*Kel Elokim HaShem...* and Israel will know." Mishlei 3:4 says, "And find favour and [a reputation for] good insight in the eyes of Gd and Man."

### 18. Rabbi Yosef Karo, Rabbi Moshe Isserles (16<sup>th</sup> century Israel/Poland, Shulchan Aruch Yoreh Deah 257:2

ואין מחשבין בצדקה עם גבאי צדקה... הגה: ומ"מ כדי שיהיו נקיים מד' ומישראל, טוב להם ליתן חשבון (טור). וכל זה בגבאים הכשרים, אבל מי שאינו כשר, או שנתמנה באלמות וחזקה, צריך ליתן חשבון. וה"ה בכל ממונים על הצבור.

Mechaber: We do not demand accounts of tzedakah from collectors...

Rama: But it is good for them to present accounts, to fulfill the verse, "And you shall be innocent from Gd and from Israel." And the above is where we have collectors who are known to be righteous; otherwise, or where they have taken the position through their strength, they must offer accounts. The same is true for all communal appointees.

### 3: Responsibility for patient death

19. Medical Malpractice <https://www.yutorah.org/lectures/lecture.cfm/801124/>

### 20. Tosefta, Bava Kama 6:17

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

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

### 21. Tosefta, Gittin 3:8

רופא אומן שריפא ברשות בית דין והזיק בשוגג פטור במזיד חייב מפני תיקון העולם.

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

### 22. Shulchan Aruch Yoreh Deah 336:1

ואם ריפא ברשות ב"ד, וטעה והזיק, פטור מדיני אדם וחייב בדיני שמים

If he treats with court authorization, and errs and harms, he is exempt in human law, and liable in heavenly law.

### 23. Rabbi Dr. Avraham Sofer Abraham (21<sup>st</sup> century Israel), Nishmat Avraham Choshen Mishpat 306

יראה דחייב לשלם מעיקר הדין, וכן כל כיוצא בו מטפולי הרופאים שלמדנו מן הנסיון שלפעמים מטפלים במקומות בריאים, וגורמים נזקים עצומים. וכמובן דזה רק באופן שהי' יכול לדעת בברור ולאחר המקום הראוי אלא שהתרשל ופשע...

It appears that he is liable to pay, according to the letter of the law, and the same is true in all similar cases of treatments where experience has taught us that sometimes one [accidentally] treats healthy sites, causing great harm. Of course, this is where he could have known clearly, immediately, which was the appropriate site, and he was negligent...

### 24. Rabbi Moshe Sofer (19<sup>th</sup> century Pressburg), Chatam Sofer 1:Orach Chaim 177

צריך קצת תשובה... אך אין להעמיס עליה הרבה כיון שעסקה בהצלחות נפשות וגם הי' בהול יותר... ואם נחמיר נמצא מכשילן לעתיד לבא בפ"נ... Some repentance is required... but one should not burden her with too much, for she was trying to save a life, and she was very confused... And if we would be strict, we would cause her to stumble regarding saving lives in the future...

#### 4: Rituals

25. Rabbi Yitzchak Zylbershtein (21<sup>st</sup> century Israel), Shiurei Torah l'Rofim 201

לעניות דעתי היה נראה שישנם כמה טעמים לאיסור מתן "סמים" וכדומה לחולה לפני מותו... הצעתי את דברי לפני מורי חמי מרן הגרי"ש אלישיב שליט"א ולא קבלם, וטען שהסברא אומרת שאם ימלאו את משאלתו, ובצורה כזו שהוא מבקש יקלו על סבלו, ועל ידי זה נאריך את שעות חייו במדת מה, יש לעשות כך ואין להתחשב בשאר נימוקים השוללים זאת.

In my humble opinion it appears that there are several reasons to prohibit use of drugs and the like for a patient before he dies... I laid out my arguments before my father-in-law, Rav Yosef Shalom Elyashiv, and he did not accept them. He contended that logic dictates that if they would fulfill his request, and thereby ease his suffering, and so extend the hours of his life somewhat, one should do this and one should not consider the points against this.

26. Rabbi Howard Jachter, *The Final Vidui*, <https://www.koltorah.org/halachah/the-final-vidui-by-rabbi-chaim-jachter>

In practice, I have heard that Rabbanim do lead a comatose patient in Vidui. Indeed, the Shulchan Aruch states that if one cannot recite the Vidui, he should think it "in his heart." Comatose patients, for all we know, might follow the Rav's lead and recite it in their hearts.

27. Rabbi Yosef Karo (16<sup>th</sup> century Israel), Shulchan Aruch Yoreh Deah 340:5

העומד בשעת יציאת נשמה של איש או אשה מישראל, חייב לקרוע...

One who is present when the soul of a Jewish man or woman leaves must tear...

28. Rabbi Eliezer Waldenberg (20<sup>th</sup> century Israel), Tzitz Eliezer 13:35:4

מה שיש לומר בזה, דהעיקר דהוא משום תקנת המת כדי שימצאו בנקל מי שיעמוד בשעת יצ"נ וכנ"ז, ואולי סמכו גם משום דעל פי רוב לא מבודק להעומד אם הוא אמנם אדם כשר שיש חיוב לקרוע עליו... וספק קריעה להקל. וברופאים ואחיות בבית חולים יש עוד צד קולא, שהבגד העליון שלבושים הוא לא שלהם אלא של רכוש הציבור...

One could say that the essence is to help the dead, so that they will easily find people to be present at the time of death. Perhaps they also rely on the fact that, in general, those who stand there do not know if this was a 'kosher' person, for whom they would be required to tear... And one is lenient in cases of doubt regarding tearing. And for doctors and nurses in a hospital there is another reason for leniency, for the upper garment they wear is not theirs; it is communal property...

29. Rabbi Moshe Feinstein (20<sup>th</sup> century USA), Igrot Moshe Choshen Mishpat 2:73:10

והוא טעם קלוש לבטל חיוב ממש שמפורש בברייתא במו"ק דף כ"ה ע"א... שבשביל חשש קטן דאינשי דלא מעלי או אינשי עניי לא ירצו לבא לעמוד בשעת יציאת נשמה דבר שחז"ל לא חששו לזה אף שהם חששו ביותר להפסד ממון דאינשי, והוא רק טעם על מה שלא מיהו באלו שאין קורעין אבל לא טעם על מה שאינשי מעלי ינהגו כך ולכן ודאי צריך לקרוע כדינא.

This is a weak reason to cancel an actual obligation, explicit in Moed Katan 25a... for the minor concern that unworthy people or poor people would not wish to come be there during death – that which did not concern our Sages, even though they were very concerned for people's loss of money! This is only a reason why they did not protest against those who don't tear, but to a reason for good people to practice this. Therefore, certainly, one must tear, as per the law.

30. Rabbi Maurice Lamm

[https://www.chabad.org/library/article\\_cdo/aid/281545/jewish/Initial-Care-of-the-Deceased.htm](https://www.chabad.org/library/article_cdo/aid/281545/jewish/Initial-Care-of-the-Deceased.htm)