

### Case 1: BRCA Testing: Faith in Gd

*Sarah, age 25 and of Ashkenazi descent, lost her mother and grandmother to breast cancer, each in their early 60's. Sarah would like to be tested for the BRCA gene, but she is concerned that this would demonstrate a lack of faith in Gd. Should she refrain from being tested?*

#### 1. Ramban to Devarim 18:13

וטעם "תמים תהיה עם ד' אלקיך" שנייחד לבבנו אליו לבדו, ונאמין שהוא לבדו עושה כל והוא היודע אמתת כל עתיד, וממנו לבדו נדרוש העתידות, מנביאיו או מאנשי חסידי רצוני לומר אורים ותומים.

The meaning of "You shall be complete with HaShem your Gd" is that we are to dedicate our hearts to Gd alone, and to trust that Gd alone engineers all and knows the truth of all future events. From Gd alone we should seek the future, from His prophets or from His pious ones, meaning the *urim v'tumim*.

#### 2. Rabbi Moshe Feinstein (1973), Igrot Moshe Even haEzer 4:10

כיון שעתה נעשה זה באופן קל לבדוק יש לדון שאם אינו בודק את עצמו הוא כסגירת העינים לראות מה שאפשר לראות, ומכיון שאם ח"ו אירע דבר כזה הוא להורי הילד צער גדול מאד מן הראוי למי שצריך לישא אשה לבדוק את עצמו. ולכן טוב לפרסם הדבר ע"י עתונים ואופנים שידעו העולם שאיכא בדיקה כזו.

Since it is easy to check, one should realize that failure to check one's self would be like closing one's eyes before that which one could see. G-d forbid, such an event would cause the child's parents extraordinary pain, and so it would be appropriate for a man who wished to wed a woman to test himself. It would be good to publicize this in newspapers and other media, to alert people that there is such a test. It is clear that this must be done privately.

#### 3. Talmud, Bava Kama 85a

דבי ר' ישמעאל אומר + שמות כ"א+ ורפא ירפא מכאן שניתן רשות לרופא לרפאות

In the yeshiva of R' Yishmael they said: 'He shall heal' – From here we see that permission is given to doctors to heal.

#### 4. Ramban to Bereishit 1:28

נתן להם כח וממשלה בארץ לעשות כרצונם בבהמות ובשרצים וכל זוחלי עפר, ולבנות, ולעקור נטוע, ומהרריה לחצוב נחשת, וכיו' בזה.  
He gave them power and sovereignty over the land to do as they wished to the beasts, creeping creatures and those that crawl in the dust, to build, to uproot that which is planted, to mine copper from the hills, and so on.

#### 5. Rabbi Shabbtai haKohen, Shach to Yoreh Deah 338:1

נראה דדוקא בנטה למות אומרים לו התודה דאל"כ חושב שמסוכן הוא וישבר לבו אי נמי בלא נטה למות אין אומרים לו כך שהרי עדיין יש לו שהות שיוכל להתודות...

It appears that we only tell him 'Confess' if he is dying; otherwise, he will think he is in danger and his heart will break. Alternatively, we won't say it unless he is dying for he still has time to confess on his own...

### Case 2: BRCA Testing: Informing a fiance

*Sarah, from Vignette 1, tests positive for the BRCA gene. Should she tell her fiance? Should others?*

#### 6. Rabbi Yehudah haChasid, Sefer Chasidim 507

לא יכסה אדם מום בני ביתו, אם צריכים בניו או קרוביו להזדווג אם יש להם חולי שאלו היו יודעים אותם המזדווגים עמהם אותו חולי לא היו מזדווגים יגלה להם, פן יאמרו קדושי טעות היו.

One may not conceal the blemish of a member of his household if his children or relatives need to mate, if they have an illness which, were it revealed, would cause their mates not to join with them. This is lest they say that the marriage was based on error.

7. Rabbi Yisrael Meir Kagan, Chafetz Chaim, Hilchot Rechilut, Klal 9:Tziyur 3:4, 6

ד: אם הוא רואה שאחד רוצה להשתדך עם אחד, וידוע לרואה הזה כי החתן יש לו חסרונות עצומים כפי המבואר לקמן בסעיף ו מה נקרא "חסרונות" לענין זה, והמחותן אינו יודע מזה דבר, ואילו היה יודע לא היה מתרצה לזה, יש לגלות לו....  
ו: אם החסרון הוא מצד חולי גופו, והמחותן אינו מכיר אותו מצד שהוא דבר פנימי אשר לא נגלה לכל, פשוט הוא דאין על המגלה ענין זה חשש איסור רכילות...

4: If he sees that one person wishes to mate with another, and he knows that the groom has great flaws (as is defined further along) and the other family does not know, and if they were to know then they would not agree to the marriage, one should reveal it...

6: If the flaw is a physical disease, and the other family doesn't know because it is private and not visible to all, then it is obvious that there is no concern for violation of the prohibition against gossip...

8. Rabbi J. David Bleich, Genetic Screening, Tradition 34:1 (2000), pg. 80

In light of that information it is doubtful that any rabbinic authority would require, or even permit, a third party to disclose the BRCA carrier state. That, however, does not imply that a young lady should not disclose such information to a prospective fiance at an appropriate time in their developing relationship...

### Case 3: BRCA Testing: Required?

*If the test for BRCA is not a violation of trust in Gd, and is important for the fiance, then is testing required?*

9. Rabbi J. David Bleich, Genetic Screening, Tradition 34:1 (2000), pg. 74, 77

74 - But is there a halakhic obligation to undergo procedures designed to disclose evidence of a malignant disease – mammograms, breast examinations by a physician, self-examination and the like? And, if yes, is there an obligation to determine one's carrier status in order to make such diagnostic procedures more effective [by raising the alertness of the tester – MT]? Is every woman obliged to seek BRCA screening or are only members of high risk groups obliged to do so? I suspect that the intuitive answer is that such obligations do exist. Citation of the verse, "ve'nishmartem me'od le-nafshoteikhem - And you shall be exceedingly watchful of your lives" (Deuteronomy 4:15) is virtually an automatic response...

77 – Genetic testing, including testing for BRCA1 and BRCA2, should be regarded as halakhically mandated in circumstances in which medical science believes that the results are likely to affect treatment in a manner that will enhance longevity anticipation or well-being. Certainly, a person identified as being at risk for a specific disease is obligated to pursue all available measures in order to ward off the disease or to diagnose its presence while the disease is yet in an incipient stage and still amenable to cure.

10. Rabbi Yaakov Emden, Mor uKetziyah Orach Chaim 328

נ"ל דווקא כשרוצה למנוע מהשתמש ברפואה הוודאית (אף הסתמית ע"י רופא מומחה כוודאית חשיבא) ... אבל אם נמנע מפני שאינו מחזיקה לרפואה בדוקה אפילו מדעת עצמו בלבד, כ"ש אם מסייעו רופא אחד... אין כופין

It appears to me that [we compel] only where he wishes to refrain from a definite treatment – and the default assumption regarding an expert doctor is that his treatments are 'definite'... But if he refuses because he doesn't think the cure is tested, even on his own say-so and certainly if another doctor agrees, then we do not compel him.

11. Rabbi Moshe Isserles, Rama to Yoreh Deah 155:3

מותר לשרוף שרץ או שאר דבר איסור ולאכלו לרפואה, אפילו חולה שאין בו סכנה... וכל חולה שמאכילין לו איסור צריכים שתהא הרפואה ידועה או על פי מומחה.

One may burn a crawling creature or other prohibited item and eat it for healing, even without danger... and any prohibited medicine fed to a patient must be a known medicine, or on an expert's counsel.

12. Rambam, Commentary to Mishnah Yoma 8:3, as explained by Rabbi Bleich (Tradition 25:1, pg. 52)

וחכמים אומרים אין עוברין על מצוה אלא ברפוי בלבד שהוא דבר ברור שההגיון והנסיון הפשוט מחייבים אותו, אבל הריפוי בסגולות לא, לפי שענינם חלוש לא יחייבהו ההגיון, ונסיונו רחוק

But the Sages say that one may not violate a mitzvah other than for a cure which is clear, obligated by logic or experience, but not a cure which operates via *segulah*, which is weak and not obligated by logic, and its proof by experience is distant.

13. Shulchan Aruch Even haEzer 2:7

לא ישא אדם אשה לא ממשפחת מצורעין ולא ממשפחת נכפין, והוא שהוחזק שלשה פעמים שיבואו בניהם לידי כך.

One may not marry a woman from a family of lepers or epileptics, if it is established that this has occurred to their family members three times.

14. Dr. Ari Mozenkis, Journal of Halachah and Contemporary Society 34 (Fall 1997), pg. 24

Rabbi J. David Bleich asserts that only women from families of "epileptics" and "lepers"... are included in the talmudic enactment. Rabbi Immanuel Jakobovits, on the other hand, maintains that women predisposed to any hereditary disease are included. Nevertheless, it is not clear if a positive gene test fulfills the criteria of a "three-fold [familial] incident." Furthermore, even if it does fulfill the talmudic criteria, it is unclear if the passage proposes a true prohibition. Though the passage is cited in Shulchan Aruch, several authorities conclude that it is merely prenuptial advice. [Rabbi J. David Bleich, Rabbi Hershel Schacter, Rabbi Immanuel Jakobovits]

15. Rabbi Yitzchak Zilbershtein, Chashukei Chemed to Yoma 82a

משפחה ששלוש דורות נמצאה בהם המחלה, יש ליעץ לאדם בריא שלא יתחתן עמם, וממילא כדאי להם להיבדק, ואם ימצא שכן או בת זו טובלים מהמחלה חייבים לגלות את זה, ואם יעלימו, הקידושין עלולים להיות בטלים, ועכ"פ יש בזה איסור הונאה...

Regarding a family with three generations of the disease, one should counsel a healthy person not to marry them. Therefore, it would be appropriate for them to be tested, and if the son or daughter would be found to suffer from this disease then they would be obligated to reveal it. If they would conceal it, the marriage could be null; at the least, there would be a prohibition against fraud...

#### Case 4: PGD Testing and Results

*Yaakov and Rachel, husband and wife, are carriers for Canavan disease, a fatal autosomal recessive genetic disorder which has no known cure. Should they use PGD to avoid producing a child with Canavan disease?*

16. Talmud, Sanhedrin 57b

משום רבי ישמעאל אמרו אף על העוברין מאי טעמיה דרבי ישמעאל דכתיב שפך דם האדם באדם דמו ישפך איזהו אדם שהוא באדם הוי אומר זה עובר שבמעו אמו...

"They cited Rabbi Yishmael as saying a Noachide is liable even for killing a fetus." Why? Bereishit 9:6 says, "One who spills the blood of man in man, his blood will be spilled." What is the blood of man in man? This is a fetus inside its mother.

17. Rabbi Yosef ben Moshe Trani, Maharit 1:97

כתב שם התוספות "נהי דפטור על הנפלים, אבל לא שרי וכו'", דהא דאסור מדין חבלה הוא.

Tosafot there wrote, "Although he is exempt regarding the abortion, it is not permitted." This is because it is prohibited as an act of wounding.

18. Rabbi Moshe Sternbuch, Bishvilei haRefuah 8, pg. 29

תראה שאיסור הפלה היינו ברחם אשה, שעומד מעצמו להתפתח ולגמור ברחמה, ומשחיתים, אבל כאן חוץ לרחם וצריכים עוד ניתוח להשתיל ברחם האשה, ובלי זה לא יגיע מעצמו לגמר, נלע"ד פשוט דלא נקרא הפלה, ואין כאן גם רציחה כלל

You see, the prohibition against abortion is in the woman's womb, where the fetus will naturally develop and be completed in her womb, and they destroy it. Here, though, it is outside the womb, and surgery is yet needed to implant it in the woman's womb. Without this, it will not develop to completion naturally. In my humble opinion, it is obvious that this is not abortion, and there is no murder here at all.