



## **Shiduchim and Disclosure of Confidential Medical Information**

*And behold in the morning it was Leah. And he said to Lavan, "What is this that you have done to me? Surely, I worked for you for Rachel. Why have you deceived me?" (Bereishis 29:25)*

Those who are considering marriage usually research potential spouses carefully. Health and medical information is generally considered critical, but that is often confidential and not apparent unless it is intentionally disclosed. If this information is not openly shared by the affected party, many turn to family members or other parties to investigate.

As a general rule, a person with a significant illness is obligated by Torah law to inform a potential spouse of his condition. He may not hide this information and deceive the other side into making a decision without thorough knowledge of the facts.

### **A Third Party's Obligation to Disclose Medical Information in Shiduchim**

Disclosing sensitive information relating to a *Shiduch* is a matter of discussion among the Poskim. Is it forbidden or permitted to divulge information? If it is permitted, how much should be revealed and how should one reveal it? The *Chafetz Chaim (Klal 9)* discusses this topic at length.

He rules that *where the potential spouse would certainly not agree to the Shiduch if they would be aware of the sensitive information*, one is obligated to inform him. This falls under the obligation to warn a person who is being cheated or deceived in order to protect him from loss. This Halacha is codified by the *Rambam (Hilchos Rotzeach 1:14)*:

*Anybody who is able to save [somebody] but does not save [him] transgresses [the sin of] "do not stand by the blood of your friend" ("Lo Sa'amod Al Dam Rei'echa"). Similarly, somebody who sees his friend drowning in the river, or that bandits are assailing him, or that a wild animal is attacking him, and he is able to save him, either [by intervening] directly or by hiring others to save him, and he does not save [him]. Or if he heard idol worshippers or informers plotting evil against him, or preparing a trap for him, and he does not tell his friend of this*



*and inform him [of the danger]. Or if he knows of an idol worshipper or aggressor who are assailing his friend, and he would be able to appease them on behalf of his friend and calm them down. [In all of these cases] and in any similar cases, the person who acts in this way, transgresses the sin of "Lo Sa'amod Al Dam Rei'echa".<sup>1</sup>*

However, one may only reveal this information if a number of conditions are met:

1. The information must be certain and not based on hearsay or rumors.
2. The illness is significant and not merely a weakness or minor complaint that would not prevent the person from living a regular life.
3. The illness must be described accurately without exaggeration.
4. The intent is solely to assist the potential spouse and not due to dislike or hatred of the other party.
5. The disclosure is certain to be beneficial – in other words, it won't be ignored.
6. The *Shiduch* has not yet been settled. If it has been settled, it is forbidden to mention anything at all.

These are the conditions mentioned by the *Chafetz Chaim*. The Poskim add that one should also act with great sensitivity, first attempting to convince the affected person to disclose his illness to the other side. If that isn't successful, it is preferable to hint to the interested party that there is a medical issue without spelling it out explicitly, and he can then choose to investigate further on his own.

### **A Doctor's Responsibility to Disclose Medical Information in *Shiduchim***

This essay will focus on a delicate question – how should a doctor conduct himself when questioned about a potential spouse's state of health? If the doctor is aware of a significant medical issue, how should he proceed?

This question, though it pertains to anybody who is asked to divulge information, is particularly vexing for physicians and other medical professionals. One of the most basic ethical obligations of a doctor is to keep a patient's medical information confidential. This obligation is enshrined both in the Torah and secular law. Abrogating this law is a serious matter and is, according to the Israeli government's Physicians' Ordinance (*Pekudas haRofim*), grounds for revoking the

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<sup>1</sup> For additional sources, see *Pischei Teshuva*, O.C. 156 and *Tzitz Eliezer* (16:4).



license of the perpetrator<sup>2</sup>. Is a doctor expected to violate his duty of confidentiality, perhaps even at the risk of losing his license and thereby his income?

Aside from the basic obligation to respect a patient's rights, the guarantee of confidentiality breeds trust between a doctor and his patients, which is exceptionally important. It is vital that a patient feels that he is able to relate all of his medical concerns to his doctor without concern that the information will be revealed to others.

On the other hand, a doctor may become aware that his patient is withholding his medical information from other parties to whom it may be damaging. If that is the case, would he be obligated to inform those parties of the information or acquiesce to their request to disclose the information?

The *Chelkas Ya'akov* (*Shu"t E.H. 79*) discusses a case of a doctor who was treating a soon-to-be-married young man with a malignant disease that he believed would take his life within a year or two. The *Chelkas Ya'akov* ruled that the doctor was obligated to inform the fiancée or her family of the disease, else he would transgress *Lo Sa'amod Al Dam Rei'echa*, as delineated by the *Rambam* above.

The *Chelkas Ya'akov* proceeds to explain that this is precisely the sort of case that is alluded to by the *Rambam* who wrote "[In all these cases] **and in any similar cases**, the person who acts in this way, transgresses the sin of "Lo Sa'amod Al Dam Rei'echa." "Similar cases", maintains the *Chelkas Ya'akov*, are those where the damage to the other party will occur incidentally without malicious intent, such as the case of the young man who only wished to be married, not to cause his future wife any harm. In spite of this, one must inform the party that may be harmed, or one stands in contravention of *Lo Sa'amod Al Dam Rei'echa*.

A similar ruling was given by the *Tzitz Eliezer* (16:4) regarding a woman who had undergone surgery and was unable to bear children. She asked her doctor to refrain from revealing this to her future husband. The *Tzitz Eliezer* ruled that it was forbidden for the doctor to comply and that, in fact, he was obligated to make contact with the future husband even if he did not inquire of him.

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<sup>2</sup> In Israel, according to Clause 41 of the Physicians' Ordinance (the new version, 1976), the health minister has the power to revoke or suspend the license of a doctor for various misdemeanors, including infringing upon a patient's rights. Clause 19 of "Patients' Rights" forbids a doctor from disclosing any medical information, except in specific circumstances.



However, Rav Yitzchak Zilberstein *Shlit"a*, raises the issue of erosion of trust between patient and doctor as mentioned previously. He cites doctors who expressed concerns that if they were to disclose their patients' medical information, their patients would lose all trust in them. Furthermore, this could even lead to situations of *Pikuach Nefesh* if patients would withhold information from their physicians and would therefore receive incorrect or even harmful treatment.

Therefore, in the event that a doctor is questioned regarding a patient's state of health, the correct approach is for him to say "*I cannot disclose any information without the patient's consent.*" In doing so, he implies that there may be important information to disclose (thus avoiding transgressing "*Lo Sa'amod Al Dam Rei'echa*") but does not reveal anything, thus respecting the patient's right to confidentiality.

The *Chafetz Chaim* (*B'eir Mayim Chayim, Issurei Rechilus* 9, Case 2) makes a similar suggestion, advising that a person say, "*I don't know what to advise you as I am not entirely familiar with his situation.*"

Rav Moshe Shternbuch *Shlit"a* (*Teshuvos v'Hanhagos* 1:879) rules that a doctor may avoid even implying that a person has any medical issue, as long as he doesn't say anything untruthful. He recommends that he say, "*As a physician, I am bound by confidentiality and it is forbidden for me to disclose the state of health of my patients as they revealed [their concerns] to me and paid my fees on the condition of privacy.*"

The *Nishmas Avraham* (*Chelek Even haEzer, Siman 2 Note 6 – 2<sup>nd</sup> edition*) cites a fascinating ruling from Rav Shlomo Zalman Auerbach *zt"l* in this regard. Rav Shlomo Zalman noted that in a case where somebody is aware that another person is a heretic or licentious, the *Chafetz Chaim* ruled unequivocally that, "*one is obligated to reveal it*". However, regarding illness he wrote merely that "*one should reveal it*" and that "*a person who discloses [the information] has not transgressed the prohibition of Rechilus*". This implies that it is merely permitted to disclose the information, not that there is any formal obligation to do so.

According to the *Nishmas Avraham*, this ruling sheds light on our question of whether a doctor is obligated to risk his license by disclosing information. Since, according to Rav Shlomo Zalman, there is no obligation to disclose the information, one would, of course, not be expected to risk his livelihood.

However, it is unclear whether Rav Shlomo Zalman's ruling was given as an answer to a specific question that had been posed to him or merely as a hypothetical



matter<sup>3</sup>. Furthermore, the distinction between matters of *Apikorsus* and significant illnesses is unclear for they would surely both cause great harm to a spouse. Moreover, the *Tzitz Eliezer* (16:4) disagrees with the proof drawn from the wording of the *Chafetz Chaim*, arguing that the reason that he wrote that “a person who discloses [the information] **has not transgressed the prohibition of Rechilus**” is because in that chapter he was only discussing the Halachos of *Rechilus*. He did not mean to imply that there is no obligation to reveal the information to avoid transgressing the prohibition of *Lo Sa’amod Al Dam Rei’echa*.

The Poskim do not explicitly discuss our question of whether a doctor must risk his livelihood by disclosing confidential information in order to prevent harm to another party.

According to the majority of the Poskim, a person must spend all of his money, if necessary, to avoid transgressing *Lo Sa’amod Al Dam Rei’echa*. However, this is only true when attempting to save someone from death or serious injury. When the issue is merely prevention of some sort of damage (for example, refusing to testify in Beis Din and thereby causing a monetary loss to one of the litigants), he would not be obligated to the same extent<sup>4</sup>.

In the majority of cases, refraining from revealing medical information to a potential spouse, while causing untold harm to their quality of life<sup>5</sup>, does not lead to a state of *Pikuach Nefesh*. However, the loss of a medical license is extremely damaging, as it leads to the loss of professional status, career, and income. HaGaon Rav Asher Weiss *Shlit”a* often says that a loss of livelihood should be treated almost as if it is *Pikuach Nefesh*. Therefore, there are grounds to be lenient and allow a doctor to refrain from revealing medical information for a *Shiduch*.

In answer to our specific questions on this topic, Rav Asher answered as follows:

1. Medical confidentiality is exceedingly important. Without it there is a clear danger that patients would not turn to doctors in fear that their secrets would be revealed. Therefore, a doctor should refrain from revealing medical information in all circumstances, including when he is asked questions

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<sup>3</sup> “*Lehalacha v’Lo l’Maaseh*”

<sup>4</sup> We find a similar notion in the *Halachos of Hashavas Aveida* – one is not obligated to spend his own money in order to save his friend’s object. The Torah does not impose financial responsibility upon one person to save someone else from monetary loss. See Sanhedrin 73a.

<sup>5</sup> Such as early widowhood, vast medical expenses, or childlessness.



regarding a *Shiduch*, unless the patient has expressly consented to the release of information.

2. One should treat the risk of losing a license to practice medicine very seriously.
3. If a doctor is asked about somebody for *Shiduch* purposes, he should reply that he is forbidden by law from revealing any information about any of his patients.
4. He must even refrain from intimating that there is anything about which to be concerned.
5. If the *Shiduch* is for a member of his family, he may invoke the rule of “*and from one’s flesh one shouldn’t conceal oneself*” (in other words, one must assist one’s family above others) and should advise them not to proceed with the *Shiduch* without specifying the reason.