

Must Doctors Always Tell Their Patients the Truth?

The Freehof Institute of Progressive Halakhah, 2021

If you're the sort of person who reads our website, the question posed by our title is likely a non-starter for you. We progressives disagree on a lot of things, but we all tend to believe that patient autonomy is the central principle of bioethics. Patients have the right to decide about their medical care, and the right to decide or to give consent, if it means anything at all, must be based on accurate information. When physicians withhold from patients vital data about their medical condition - let's be blunt: when they *lie* to patients about their medical condition - they make a mockery of our liberal commitment to the moral autonomy of the individual. True, when physicians do lie or withhold information from patients, they tend to justify their action on grounds of another principle of bioethics, that of beneficence, the requirement that doctors act in their patients' interests or welfare. But the suggestion that the physician knows what's best for the patient smacks of paternalism, an approach to the physician-patient relationship that we have thoroughly rejected in our time. As a noted textbook in the field has famously put it, "paternalistic interventions are seldom justified, because the right to act autonomously almost always outweighs obligations of beneficence toward the autonomous agent."^[1]

We emphasize, though: "seldom justified." This implies that there *are* instances, however rare, when physicians are morally entitled to withhold information, to shade the truth, and perhaps even to lie to the patient. In [a recent op-ed](#), Dr. Daniela Lamas, a critical-care physician, recounts an episode in which she told the truth to a dying patient - and now wishes she hadn't. The patient, who arrived at the hospital "gaunt" and "wasted" from metastatic colon cancer, insisted that "there was nothing wrong with him" and loudly demanded to leave the hospital. The physician told him the truth: "You're dying. It could be hours now. I don't think you will make it through the night." The patient reacted with an anger and despair that convinced the physician that she had made a grievous mistake. "Denial was my patient's only defense mechanism. And as soon as the words left my mouth, I realized how cruel it was to try to take this defense from him in the final hours of his life." Her conclusion: "I caused harm as a result," a clear violation of the old medical maxim *primum non nocere* ("above all, do no harm"). While the physician acknowledges that in most cases the doctor's responsibility is to tell the truth, in *this* case, had she but told the patient that he was going to go home - an outright lie - "that small kindness might have done more for him than the truth."

Sometimes, in other words, we feel the need to decide for beneficence over patient autonomy.

As progressive halakhists (as well as progressives), we think that the *halakhah* has something to contribute to this discussion. That contribution begins in the so-called minor tractate *S'maḥot* (*Evel Rabati*) 2:2-3:^[2]

נטה למות, אומרים לו התוודה עד שלא תמות, הרבה שנתוודו ולא מתו, והרבה שלא התוודו ומתו ...
שמא בזכות שאתה מתודה אתה חיה.

When one is approaching death, he should be told “recite the final confession of sins (*vidu'i*) before you die. Many have recited the confession and did not die at that time, and many who did not recite the confession did die... perhaps by the merit of your reciting the confession you will recover.”

This *halakhah* is clearly trying to achieve two goals, both of them positive but potentially conflicting. On the one hand, we want an individual to recite the *vidu'i*, and this may be his or her last opportunity to do so. On the other hand, we do not wish to cause the patient to despair, to lose all hope of recovery, and thus to hasten his or her death.[3] So we offer encouragement, perhaps to the point of disguising the gravity of the patient's situation.

כל הדברים האלה אין אומרים אותן לא בפני עם הארץ, ולא בפני קטנים, ולא בפני נשים, שלא יבכו ויפחדו את לבו.
מת לו מת, אין קורעין חלוקו שלא ישברו את לבו, אין בוכין ואין מספידין לפניו שלא ישברו את לבו.

Do not say these things in the presence of unlearned people, children, and women, who might cry and frighten the dying person.

If during this period a close relative of the patient should die, we do not perform *k'ri'ah* (ritual cutting) on his garment, lest he become despondent (literally, “so as not to break his heart”). Nor do we cry or eulogize (for the dead relative) in the patient's presence, lest he become despondent.

Making allowances for the Rabbis' unenlightened views on gender, we see that the theme continues: our overriding concern is that the dying person not be deprived of hope, and out of that concern we are entitled to withhold information, to shade the truth... in short, to lie, if the situation demands it. Much of this is cited as codified *halakhah* in *Tur* and *Shulhan Arukh Yoreh De'ah* 337 and 338:1. The late-19th century *Arukh Hashulhan (Yoreh De'ah* 337, par. 2) summarizes the rule as follows:

ומזה יש ללמוד שאסור לגרום שום צער להחולה ויראו לשמח לבבו בכל היכולת.

From this, we learn that it is forbidden to cause the patient any pain or sorrow. Rather, we should see to it that we make him as happy as possible.

The *halakhah* that emerges from these texts would support a physician's decision not to reveal the whole truth to a dying patient.

But what about the principle of patient autonomy? We all know that traditional *halakhah* does not (to put it mildly) privilege our freedom of choice but is rather more interested in determining what we *ought* to do in any given situation. Nor does it make a fetish out of truth-telling. While honesty is a critically important moral obligation, it gives way to other duties that take precedence in particular situations. We encounter this idea in the following two famous texts.

B. Ketubot 16b-17a

תנו רבנן : כיצד מרקדין לפני הכלה?
בית שמאי אומרים : כלה כמות שהיא, ובית הלל אומרים : כלה נאה וחסודה.
אמרו להן ב"ש לב"ה : הרי שהיתה חגיגת או סומא, אומרי' לה, כלה נאה וחסודה? והתורה אמרה :
מדבר שקר תרחק!
אמרו להם ב"ה לב"ש : לדבריכם, מי שלקח מקח רע מן השוק, ישבחנו בעיניו או יגננו בעיניו? הוי
אומר : ישבחנו בעיניו, מכאן אמרו חכמים : לעולם תהא דעתו של אדם מעורבת עם הבריות.

The Rabbis taught: What is the proper way to praise the bride when dancing in her presence at the wedding?

The school of Shammai says: we describe her as she is. The school of Hillel says: "what a lovely and graceful bride!"

The school of Shammai said to the school of Hillel: suppose she is lame or blind. Do we still say "What a lovely and graceful bride"? Doesn't the Torah tell us "Keep far from a lying word" (Exodus 23:7)?

The school of Hillel said to the school of Shammai: Apply your logic to the following case. Suppose a person makes a bad purchase in the marketplace. Should we praise it to him or degrade it to him? Obviously, we ought to praise it. This is why the Sages say: one should always strive to be pleasing to other people (i.e., to tell them what they want to hear; see Rashi).[4]

B. Y'vamot 65b

דבי רבי ישמעאל תנא : גדול השלום, שאף הקדוש ברוך הוא שינה בו, דמעיקרא כתיב : ואדוני זקן, ולבסוף כתיב : ואני זקנתי.

A teaching from the school of Rabbi Yishmael: How great is peace, for the sake of which even[5] the Holy One resorted to falsehood, as in Genesis 18, where it is first written "and my husband is old" (v. 12) and is then written "I am old" (v. 13).

We are permitted a "little white lie" at a wedding, and even God is prepared to "revise" Sarah's words when reporting them to Abraham. This suggests that the duty to tell the truth can yield to the goals of promoting domestic peace and avoiding needless shame and humiliation.

Sometimes, it seems, other people's best interests require that we lie or at least conceal information from them. In the language of ethical philosophy, the principle of beneficence sometimes assumes priority over the principle of autonomy, which as we've seen demands that the individual be given all the data necessary upon which to make responsible decisions.

Does this mean that the *halakhah* permits the physician to lie with impunity to the terminally ill or critically ill patient? Not necessarily. What the *halakhah* demands is that the interests of the patient, his or her physical and mental health, occupy the center of our concern. At times, these interests may call for concealment of the whole truth; at other times, they call for honesty and openness. Dr. Shimeon Glick, an emeritus professor of internal medicine at Ben Gurion University and an observant Jew, has written on this issue.[6] He notes that there are numerous

reasons *besides* the principle of patient autonomy that justify full disclosure of medical information to the patient. These include: the need to establish trust and confidence between the patient and the physician; the need to secure the patient's full cooperation in the treatment regimen, something difficult to achieve without informing the patient of the relevant facts; the fact that knowing the truth can actually improve the morale of the patient and thereby improve the chances for recovery; the fact that the patient in any case is likely to discover the truth, at least in part, from one of the many medical professionals or attendants caring for him or her. In short, modern medicine has established that in many (most?) situations a patient is better off knowing the whole story rather than suspecting that the physicians are hiding the truth. As to the claim that this stance conflicts with that of the *halakhah*, Glick responds (p. 15):

בעידן המודרני בעולם המערבי ברור ממחקרים ומתצפיות מדעיות שלעיתים קרובות אמירת האמת היא היא שמורידה את הסבל ולא להיפך. במצבים האלו נדמה לי שאנו חייבים לפעול בדרך שעוזרת לחולה.

In this modern age and in the Western world, scientific research and observation have established that frequently we are able to reduce suffering by telling the truth rather than by concealing it. In such situations, it seems to me that our obligation is to act in such a way that benefits the patient.

Note that Glick supports telling the truth to patients on grounds of *beneficence* - that which is good for the patient - rather than of patient autonomy, a principle that, as a good Orthodox Jew, he criticizes.[7] In his view the *halakhah* neither demands that we conceal bad news from the patient nor that we tell the patient everything. Rather, it requires that we act for the patient's good, which means that *at times* we tell the patient everything and *at times* we don't, a judgment entirely dependent upon the patient's physical, mental, and spiritual condition.

As progressive halakhists, we can adopt Dr. Glick's perspective, with a slight but significant adjustment. He doesn't think much of autonomy as a principle; we progressives do. The patient's right to know the facts of her or his condition is stitched into the fabric of medicine as it is practiced today in our societies. We expect to be told everything by our doctors, and in general physicians ought to honor that expectation.[8] As we indicate at the outset of this essay, exceptions ought to be rare. But our reading of the *halakhah* teaches us that autonomy is not and cannot be the *exclusive* principle that governs our ethical behavior. In the sphere of medical ethics, autonomy must coexist, converse, and stand in creative tension with beneficence, the principle that physicians must act for the patient's benefit. The decision to override the patient's right to know on the grounds that the information would harm him or her must ultimately rest with the physician. That is not an easy judgment. But as Dr. Lamas intuits, it is - or should be - part of the physician's job.

The *halakhah* agrees with her.

[1] Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, Third Edition (New York: Oxford University Press, 1989), p. 247.

[2] See *B. Shabbat* 32a for a slightly different version.

[3] The *Tur* (*Yoreh De'ah* 338): שלא ישבר את לבו, "so as not to break his heart," a point that *S'maḥot* is about to make explicit.

[4] The *halakhah*, as usual, follows Beit Hillel; *Shulḥan Arukh Even Ha'ezer* 65:1.

[5] See the immediately preceding text in *Y'vamos* 65b, where we find examples of human beings telling lies for the sake of peace. The Hebrew אף emphasizes that *even* God is willing to do so.

[6] פרופ' שמעון גליק, "דיווח אמת לחולה", *ספר אסיא* 42-43 (1987), עמ' 8-15.

[7] Shimon M. Glick, M.D., "Unlimited Human Autonomy - A Cultural Bias?" *New England Journal of Medicine* 336 (March 27, 1997), pp. 954-956.

[8] We might say this expectation is an implicit *t'nai* (stipulation) governing the contract between physician and patient. On that basis, Jewish law would insist upon its fulfillment.