On Maintaining A Professional Confidence

Rabbi Alfred S. Cohen

The right to privacy is a privilege very much in the forefront of our concerns. In the past few years in particular, it has been the focus of a great deal of controversy — from the President of the United States, who claimed that his papers and conversations were inviolable, to the high school student who sued — and won — when his school locker was searched without his permission.

Although this is an issue which has surfaced only recently in the American public consciousness, it is a subject which Jewish thought and literature have dealt with extensively over centuries. That which is sought is the proper balance between the rights of a particular individual and the rights of civilized society, which may at times be diametrically opposed. In the present study, we will explore the halachic parameters directing the actions of the person who, by virtue of his professional activities, is caught in the middle between these conflicting demands.1

1. This subject was dealt with in a general manner in an article "The Jewish Perspective on Privacy" in the Journal of Halacha and Contemporary Society, Vol. I, No. I. Here, however, I wish to elaborate specifically on those situations which pose a particular problem for a person whose professional activities cause

Rabbi, Young Israel of Canarsie; Faculty member, Yeshiva University High School for Boys
To get an idea of the complex issues involved, let us consider an actual case which took place about two hundred years ago and which was eventually referred to Rabbi Yechezkel Landau, the world-renowned Noda Biyehudah. For a period of three years, a young man took room and board at the home of a certain family, during which time he was carrying on a clandestine affair with the lady of the house. Later, having repented his behavior, he became engaged to marry the daughter of that family. The questions which were brought to the attention of the Noda Biyehudah included the following: The woman who had had an adulterous relationship was halachically forbidden to her husband. Was the young man required to tell the husband, so as to fulfill the Talmudic directive קאי עידי, to draw him away from sin? And if he did tell the husband, but the husband nevertheless continued to stay married to his wife, should he tell the Beth Din of the city, so that the court could force him to desist from the forbidden relationship? The elaborate and extensive responsum of Rav Landau is a marvel of halachic sensitivity and brilliance.

First of all, the Noda Biyehudah examined the concept of קבודת האדם, respect for human beings. How would publication of such scandalous behavior affect the innocent members of that family or her to be faced with such conflict in a special way.

Although one must hesitate to discuss publicly delicate matters of this sort for fear that some persons may mistakenly, or even deliberately, find herein some unwarranted heter for unconscionable actions, I rely on the decision of the sainted Chafetz Chaim in publishing his classic Shmirat HaLashon. Despite his trepidation, he decided to set down in detail the laws of lashon hora and talebearing so that those honestly seeking the truth could follow his guidelines. In this, he followed the precedent of Rabbi Yochanan ben Zakkai (Baba Bathra 89b), who publicly denounced the financial chicanery of some Jewish merchants, albeit afraid that through his public denunciation, some heretofore honest persons might learn ways to cheat. However, the talmud concludes that he decided to speak out anyway, for עירום רבי, ארוקים ידך על כל אדם ורשעים ונשמתו נשרפ "the ways of G-d are straight, the righteous will walk in them, the sinners will stumble on them."

2. The problem of the young man's own need to repent was also discussed at length by the Noda Biyehudah, but that issue need not concern us here.

3. היכת ב.
family? Must they suffer shame in order to prevent the husband from a sinful relationship? In his conclusion, Rav Landau advised the man that he had to tell the husband, but that it was not necessary for the Beth Din to be informed. It is clear that he must tell.

The ruling was not met with unanimous acceptance. His decision was strongly contested by Divrei Chaim (Or Hachaim 35)

In conclusion according to my humble opinion, the upshot of this is that the man has no obligation at all to tell the husband because of respect for people. And I am still in doubt whether he should even tell the woman that she is forbidden to her husband. And this is the way several rabbinic greats of our generation have ruled when sinners come to them with this sort of thing.

The quandry in which the young man found himself is one which poses a problem peculiar to many persons whose professional activities involve them in other peoples’ private lives. Doctors, lawyers, psychologists, family counselors, and others often are privy to information the revelation of which could have a disastrous effect on their clients’ lives but which might be essential for others to know. The professional receiver of private information is placed in a difficult conflict of interest between his legal or professional requirement to remain silent and his possible religious obligation not to remain silent.

Sometimes the problem arises in the reverse: One time, about a week before Pesach, a woman called me for a psak halacha. Her doctor had prescribed a certain pill, and she needed to know if she could take it on Pesach. Having gotten the name of the pill, I contacted a pharmacist to determine the ingredients, to know if there were chametz in it. To my chagrin, he told me that the pill was a placebo—there was nothing in it at all that could effect a cure. Apparently without her knowledge, she was being used in some
medical experiment to determine the efficacy of a new drug, and she was in the control group. Now, besides the problem of whether the pill was chametz, I had the problem of whether to tell her that she wasn’t really getting any medication at all for her ailment. Was I obligated to let her know so that she could turn elsewhere for help with her illness? Or should I keep silent so that medical science could experiment (possibly to her detriment) in the hope of developing new drugs (for the benefit of society)?

The problem is not unique to clergymen. For centuries, doctors have taken the Hippocratic Oath before embarking on their healing careers:

Whatever in connection with my professional practice or not in connection with it I may see or hear in the lives of men which ought not to be spoken abroad I will not divulge as reckoning that all such should be kept secret.

In the legal profession, too, there are strict canons of ethics prohibiting lawyers from disclosing even fraudulent activities by their clients. Despite much internal debate and opposition, the American Bar Association, in February and again in August, 1983, adopted a code which would require lawyers to keep their clients’ secrets even when the clients commit large financial frauds or other white collar crimes. Obviously, this amendment is going to pose a


In the interval between February, when the ABA Committee passed the resolution, and August, when the general convention of the ABA formally adopted the amendment as part of its revised ethical code, I contacted the ABA for clarification of the issue. In response, I received a letter which confirmed that “in Formal Opinion 341 the Committee concluded that under the Model Code of Professional Responsibility a lawyer may not reveal any information that is protected as a client confidence or secret, even if necessary to prevent a fraud.” My correspondent had the grace to feel uncomfortable about penning such crass “ethics” for a “Model Code”, and added, “I should emphasize two facts. First, the Model Code is advisory only and is binding only to the extent in has been adopted by the lawyer’s licensed jurisdiction (editor: in August, it was adopted nationally). Second, the American Bar Association continually reexamines the ethical standards governing a lawyer’s professional conduct and may amend these provisions from time to time.”
great dilemma for an observant Jewish attorney who, for example, would be legally precluded from warning a friend not to buy a share in his client’s business, when there is a specific mitzva in the Torah — lo ta’amod al dam reyacho — one must try to prevent harm from coming upon another Jew.⁵

Nor are law and medicine the only fields which harbor potential problems. There are myriad situations where a person’s professional obligations can clash with his religious beliefs. A chemist, for instance, may find out that his company is secretly dumping toxic wastes into a stream which pollutes a nearby residential water supply. Can he let a friend buy a house in that development without warning him? But if he lets the word out, his company might fire him or might be put out of business! How does one make a decision like that? What guidelines does the halacha offer? Is there any difference halachically between an individual acting privately and a person whose profession necessitates his receiving information which must remain private?

Professional Confidences

In this paper we will explore the ethical and religious directives to which a committed Jew can turn when confronted by a conflict between the obligations of his profession and the requirements of his religious teachings. When a doctor ponders whether to inform parents that their child is taking drugs, he perceives a moral dilemma; but for the observant Jew, the wrong move could mean violation of seventeen different negative commandments and neglect of many positive mitzvot.⁶ Among other things, he must be concerned, as noted previously, not to let any harm, whether physical, financial, or other, come to another Jew if he can prevent it.⁷ He, too, must consider speaking lashon hora as a sin; telling a secret may be a violation of lo tailaich rachil.

At the outset, it is necessary to clarify why there need be any

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⁵ See Shmirat HaLashon, who maintains that this mitzva applies to lashon rak.
⁶ See Shmirat HaLashon.
⁷ See Terumah D’Rahamim. See also Knesset also discusses whether it is necessary to speak respectfully about a person who is a bad influence on others.
discussion at all — why should a person’s profession exempt him from the laws which govern every Jew’s behavior? What is the rationale for bending any of the rules?

Basically, there are two major reasons which might militate for exempting a person whose profession requires keeping secrets from the strictures which ordinarily apply. First of all, how will his telling affect the community as a whole, not just the individual informed or spoken about? If a school psychologist calls up parents to tell them their child is taking drugs, it might be very helpful for the youngster involved. However, it might effectively stop other students from confiding in that psychologist and thereby prevent their being helped at all. Furthermore, if psychologists could not be trusted to maintain silence, people in general would stop using them. So the question really is, do psychologists benefit society as a whole? Will divulging secrets endanger the practice of that profession? What would be the net result to society if troubled persons no longer had someone to help them cope with personal problems? The question goes far beyond the individual situation; one has to take into account the full scope of the problem, which actually is what effect will the betrayal of a professional confidence have on the community.

The second point to ponder is the cost to the individual involved.* If an accountant calls up his friends and tells them not to invest in the business of Mr. X, his client, because the business will soon go bankrupt, we can praise him for being a good friend; but very few people will want to use him as an accountant. In keeping the mitzva of preventing harm from coming to a fellow Jew, he can cause great harm to himself, by losing clients or being fired from his job. Should that have any bearing on the halacha as far as he is concerned? Is a person obligated to cause financial (or other) damage to himself in order to protect others?

*For the halachic guidelines as to how great a financial loss a person is obligated to incur in the performance of a mitzva or to avoid a transgression, see Journal of Halacha and Contemporary Society, Volume I, pp 83-4.
Whose Welfare?

"Do not place a stumbling block before a blind man."  
Obviously, this biblical command is not limited to its literal meaning — the Torah hereby teaches us that it is forbidden to give someone misleading advice. But what if the advice which would be best for that individual might not be in the best interests of the community as a whole? I remember a case where a young man from a wealthy family asked his Rosh Yeshiva's advice: Should he continue to spend his days in the yeshiva, or should he join his father's lucrative business, for the father was planning to retire? What should his Rosh Yeshiva have told him? For the young man himself, spending a few more years in the yeshiva learning Torah would certainly be the best path for his own personal growth. However, if he were to take over the father’s excellent business, he would be in a position to render enormous service to the yeshiva, enabling scores of men, some much more gifted intellectually than he, to learn intensively. Should the Rabbi have considered the best interest of the person before him or the best interest of the larger group? In that particular situation, the Rosh Yeshiva decided that it would be better for klal Yisrael to have a wealthy supporter of the yeshiva rather than for the young man to enrich only his own life. But it is not an easy matter to decide such things.

In a real-life case which must certainly win some kind of award for callous infamy, a medical experiment was undertaken in rural Alabama in the 1930’s, in which a group of black men who had syphilis were not given any treatment and were not even told of their diagnosis. This was done so that researchers could study the "natural history" of the disease. Perhaps today there is no such blatant instance of disregard for human welfare, but surely medical researchers do know at times that the "treatment" they are offering is worthless or, conversely, that better treatments are available — but if they tell, they will spoil the experiment, or lose the government grant to do further research. Moreover, a researcher

8. Leviticus 19:14  
will almost certainly lose his job if he fails to maintain the standards required by scientific experimentation.

In Gittin 45a the Gemara postulates "We do not ransom captives for more than they are worth." In olden times, it was not unusual for pirates or highwaymen to capture innocent people and demand their ransom from the community; as a protective measure, the Rabbis ruled that "excessive" ransom could not be paid. Clearly, this was a provision enacted for the protection of the community — if pirates became aware of the Jews’ willingness to pay any amount for ransom of their brethren, they would constantly kidnap Jews. Therefore this amendment was made to keep the entire Jewish population from such inordinate danger. Even if a few captives might suffer, it was a ruling that had to be followed in order to provide some measure of security for the Jewish community.

There are times when individual rights must be forfeited for the greater benefit of the community. That is the rationale

10. For this reason, Rabbi Meir of Rothenberg would not allow the Jewish community of Germany to ransom him when he was held hostage in 1293, despite their anxious desire to do so.

11. Transposed to the realities of our own times, this may be seen as the rationale underlying the Israeli Government’s adamantly refusal to negotiate with terrorists. As heartbreaking as it is to allow some to be sacrificed, everyone understands that were the Israelis ever to start negotiating with one group of terrorists holding hostages, it would initiate a wave of terrorism which might ensue in carnage more dreadful than anything we have seen so far.

12. In this rules in a similar situation it is forbidden to rescue some of the hostages being held for fear of reprisals against the remaining ones. However, if one of the captives sees a chance to escape, he may seize it, even if he knows the captors will punish the other hostages when they discover his escape. Also, Tosafot rules that an individual may personally pay whatever amount is demanded for his own ransom or for his wife. In other words, a Rabbi rendering a decision for the community must act in the best interests of the community, but the individual may act for his own best welfare. See also.

13. The well-known exception to this rule: If a city is besieged by the enemy and they stipulate, “Give us one person and we will kill him and let all of you go free. And if not, we will kill all of you,” the halacha is that all of them must die and they may not turn over an innocent person for killing, even if that would save the entire community. See Rambam based on Yerushalmi.
underlying the ruling that captives may not be ransomed at excessive cost to the community. However, it is important to realize always that the operative factor is the principle of community preservation, not the ruling itself. In another text in *Gittin*, 14 there is related the encounter of Rabbi Yehoshua with a young Jew being held captive by the Romans. Standing outside the window of the cell, Rabbi Yehoshua engaged him in conversation. He was deeply impressed not only by the boy’s physical beauty, but also by his keen intelligence. After much effort and tremendous expenditures, he successfully ransomed the youth and brought him back to Eretz Yisrael. Subsequently, that child grew up to become the outstanding scholar, Rabbi Yishmael. Tosafot immediately seizes upon the glaring contradiction between the Rabbi’s action and the Talmudic dictum that captives may not be redeemed at excessive ransom. However, reasons Tosafot, Rabbi Yehoshua must have recognized that this youth possessed exceptional qualities. We may take Tosafot as positing that although the ransom was excessive, yet ultimately it was worth it for the welfare of the community. This potential sage and leader, Rabbi Yishmael, would be able to bring even more good to the Jewish community than might be lost by paying so high a ransom for him. The benefits which would accrue to the people by having such a sage in their midst outweighed the evil which might devolve from whetting the appetite of would-be kidnappers. 15

14. *Gittin*.

15. Tosafot offers an alternative reason for Rabbi Yehoshua’s disregarding the rule: the boy was in danger of being killed, and had to be saved at all cost. The rabbinic ruling was never meant to apply when the captive was in danger of losing his life. The same philosophy, that the preservation of life is a desideratum which takes precedence over virtually all other rules, is further evidenced in Rambam .

Someone who murdered a person but the two witnesses did not see him (do it) simultaneously...or two witnesses saw him do it but did not warn him (that he would be put to death for his crime)...all these type of murderers (who cannot technically be executed by the court) should be put into a *kipah* (cell) and fed very little and be given only little water until their insides shrivel, and then be given heavy foods which will cause their death.

But this is not to be done to other persons who are liable to the
American jurisprudence may not have arrived at the same conclusion as has Judaism in working out the conflict between competing rights. The classic example is the Tarasoff case. In California in 1969, a man named Poddar killed Tatiana Tarasoff. Her parents subsequently sued a Dr. Moore, the psychologist who had examined Poddar prior to the murder, and to whom Poddar confessed his intention to kill the girl. Although he did inform the police (who held Poddar only briefly), he failed to inform either the girl or her parents. Indeed the Court did find the psychologist liable for his negligence. However, I believe that the dissenting view of the minority in this case is more consonant with the authentic Jewish viewpoint on the subject. This is how Judge Clark of the California Supreme Court explained his dissent:

**Deterrence From Treatment**

First, without substantial assurance of confidentiality, those requiring treatment will be deterred from seeking...

decision...but cannot be executed due to a technicality) but only to murderers...for although there are worse sins than murder they nevertheless do not cause the destruction of civilized society as does murder. Even idolatry or sexual immorality...are not as bad as murder because these are sins between man and G-d but murder is a transgression between man and his fellow man...

If we accept the thesis of Rambam that salvaging life has the highest priority, then we would have to posit that the rules governing professional conduct have to reflect that priority. Were a patient to confess to his psychiatrist that he harbors a secret urge to kill someone, how could one justify his not taking steps to prevent that dreadful calamity? Could one make a reasonable argument that if the psychiatrist were to divulge his secret, other persons in need of counseling would be afraid to seek help and ultimately more murders would occur because psychiatrists would not be able to help people? It is an argument that begs for a resolution.

15a. But the American Medical Association, Canon of Ethics, 1982, rule 702, reads as follows:

The record is a confidential document involving the physician-patient relationship and should not be communicated to a third party without the patient's prior written consent, unless it is required by law or is necessary to protect the welfare of the individual or the community.

There is thus some ambiguity when the welfare of the individual does not coincide with the welfare of the community.

assistance . . . It remains an unfortunate fact in our society that people seeking psychiatric guidance tend to become stigmatized. Apprehension of such stigma—apparently increased by the propensity of people considering treatment to see themselves in the worst possible light—creates a well-recognized reluctance to seek aid. This reluctance is alleviated by the psychiatrist’s assurance of confidentiality.

**Full Disclosure**

Second, the guarantee of confidentiality is essential in eliciting the full disclosure necessary for effective treatment . . . .

From another case which appears, on the surface, to be quite different in nature, we may derive the same principle about the need to sacrifice the individual for the welfare of the community. About one hundred years ago, the *Maharam Schick* was asked by Rabbi Zalman Spitzer of Vienna for his advice. Rabbi Spitzer, who was the spiritual leader of the Jewish community in Vienna, had been asked by the *kehilla* in Mattersdorf to serve as their Rabbi. He wanted to know if it was permissible for him to leave his post in Vienna in order to undertake the position, where he would have far more opportunity to learn Torah. In his most enlightening responsum, *Maharam Schick* concedes readily that the new pulpit offers a more desirable lifestyle for Rabbi Spitzer personally. “There you will be able to disseminate Torah, and your heart desires to learn and to teach Torah; undoubtedly, you are right on this point.” Nevertheless, *Maharam Schick* instructs his respondent not to accept the new position because it is more important for the Jewish people that he continue his effective campaign to spread Torah values in the city of Vienna. Moreover, he compares it to a general’s leaving the scene of battle in the middle of a war — he will dishearten all the others too. Your leaving Vienna, he tells the

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17. See *Maharam Schick*, responsa, no. 207.
18. On this point, about a Rabbi’s leaving his pulpit, see *Zenach*, no. 207.
Rabbi, might cause others to abandon the battle for Torah there; therefore you must stay.

The few examples we have cited are representative of the entire thrust of Jewish thinking and reinforce the conclusion that in Jewish ethics the welfare of the community takes precedence over the needs of the individual. Now the problem becomes, how to apply this principle to the realities of life.

There cannot be a hard-and-fast rule that a psychologist should always tell the parents or a family counselor should never tell the husband. The professional, faced with a conflict between the ethics and demands of his profession and the rights of the individual he is treating or the rights of the community, has to seek rabbinic guidance to determine how to proceed in each situation. It may be that maintaining professional secrecy is so absolutely integral to the proper function of that profession and the profession so essential to the welfare of society that the halacha would decide the practitioner must maintain his professional secrets. Or the halacha may be that it is more important for him to reveal the confidential material, even if it will cause him enormous personal damage.

Clearly this is not a question which a person should decide for himself, and the professional practitioner must consult with a competent halachic authority.19 There is no way a person can overcome his own subjective motivations in deciding so sensitive

19. See these citations indicate that it is quite difficult to define the exact extent and implication of this halacha. What does appear to be evident however is the necessity for each person, realizing the limitations imposed by his own subjectivity, to seek the guidance of an objective outsider who is competent to render halachic decisions on matters as serious as these.

The principle is succinctly expressed by the Mishnah Brurah: The principle is that in any matter dealing with money, a person should not render his own decision, for the “evil inclination” (yetzer hora) can find many excuses.
and crucial a question. Sometimes the needs of society will be best served by maintaining the standards of a given profession, but sometimes that may not be the case.

**Administrators and Menahilim**

Doctors, lawyers, and psychologists face the dilemma of choosing between the rights of the individual and the rights of society, but they are not alone in having such conflicts. One of the most vexing situations with which teachers and principals have to cope is the decision to expel a child from a yeshiva. Administrators need to know on what grounds a yeshiva can deny a Jewish child the right to be taught Torah. A variety of causes could prompt a Hebrew school to seek such an option—perhaps poor academic performance, possibly laxity in *minyan* attendance or observing *mitzvot*, or maybe the student is instigating others to rebel against Torah discipline.20

In responsa which he has penned to various yeshiva principals who inquired about expelling students, Rav Moshe Feinstein appears to accept as his criterion the effect which the recalcitrant student has on fellow students. Although each Jewish child is indeed entitled to receive a Torah education, his rights do not supersede the right of a community to maintain a yeshiva in accordance with Torah standards, and if his continued presence makes this difficult or impossible the child may be denied the right to attend. In one case, Rav Feinstein concludes:21

... but if the student has a bad influence on others, certainly it is necessary to send him away. However, this judgment has to be made with great seriousness and much thought, because it is akin to a decision of life and death...

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20. See *Shulchan Aruch HaRav* for a discussion of how it is even permissible to accept a *holamzer* to a yeshiva, since the Gemara in *Avot* says one should not learn with such a student.

21. א"ת י"א"ף י"א"ף, א"ת י"א"ף, א"ת י"א"ף.
In another instance, the mother of a student refused to send him to yeshiva wearing tzitzit, and the administrators wanted to know if this were sufficient reason for not accepting him. Here, Rav Moshe responds:

Therefore a child like this is not to be accepted in a yeshiva. And even though it is known that the mother will not engage a private tutor to learn with him, and this child will receive no Jewish education, nevertheless, the negative impact (he would have) on the other children and on the yeshiva in general takes precedence...

Centuries ago, the author of Sefer Chasidim wrote very sharply to his disciples about the same type of situation that we still face today. A young Jewish man had run away and joined a band of Christians. His family was collecting money in order to try and persuade him, through promises of financial gain, to return to the Jewish fold. Whereupon R. Yehudah HeChasid wrote definitively:

Stop (this undertaking) lest you will have regrets, because (if he returns) he will cause even more harm. It is better to leave him among the heathens and let him not influence others to sin.

A similar approach is seen in R. Yehudah HeChasid’s advice to parents and communal leaders:

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22. א增收ית משן. The same adamance about barring from the yeshiva a child whose presence harms others or affects the yeshiva in a negative way is evident in other responsa as well. See: א增收ית משון ע”י ב. א增收ית משון וייד植入 מ. ע”י: א增收ית משון קפיצה.

23. ספר התחדيص קפיצה.

24. ספר התחדيص קפיצה.
It is better to throw out the one (bad one) in order to improve the others who are good, as the verse says, “Expel a scoffer and strife exits.”

And if a person has several sons and one of them is argumentative or the father fears that he will cause his brothers to sin, let him better send away the wicked one with both hands. 25

This brief survey concerning the conflict between the rights of the individual and the welfare of the group, as it pertains to education, evidences once again the philosophy of Judaism that the rights of the group take priority. But those involved must remember, as Rav Feinstein cautions, that it is a matter of major gravity, for the decision to expel a student is akin to a life-and-death decision for the individual involved.

25. It is fascinating to note in all the halachic directives here a total lack of any Talmudic or biblical source citation. Perhaps the conclusion was so self-evident to these scholars that they did not consider it necessary to cite chapter and verse to support their view. At any rate, later scholars have tried to find a precedent to justify expelling disruptive students from a yeshiva; some have suggested a text in Horiot 7b as appropriate precedent for such a step. There, the Gemara tells of a dispute between the Nasi (Head of the Academy) and Rabbi Meir and Rabbi Nachman. Due to their scheming against the Nasi, the two Rabbis were expelled from the Beth Midrash. However, we cannot accept this incident as a precedent because later in the Talmudic text it is clear that by the next day, Rabbi Meir and Rabbi Nachman were back in the Beth Midrash, and another punishment was substituted for the expulsion. Had they been considered a bad influence, their banishment would not have been rescinded so readily. Thus, we cannot draw parallels or derive solutions for our own question, which is if a recalcitrant student must be tolerated or whether the welfare of the other students is more important.