

Confidentiality and Professional Ethics

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Question: Confidentiality is a vital concern that impacts the freedom of expression of quite a number of professions. Many professionals receive confidential information as part and parcel of their normal involvement with their clients and/or patients. Rabbis are also privy to confidential data. At issue is whether halakha (Jewish law) provides any guidelines or rules pertaining to this matter?

Response: In terms of a general overview, it should be noted that the medical profession considers confidentiality as a cardinal precept of medical ethics. Indeed, for centuries doctors have committed themselves to the Hippocratic Oath upon assuming a medical career. The modern version of that Oath as replaced by the Declaration of Geneva adopted by the World Medical Association states, “I will respect the secrets which are confided in me, even after a patient has died”. In other words, as a doctor one may hear very private concerns. The doctor takes an oath that he or she will not divulge such information. The patient came to the doctor assuming confidentiality will govern their relationship and, therefore, the doctor must guard any and all private matters from becoming public. Yet, complications and moral quandaries may develop. A psychiatrist or therapist may have revealed to them information that might be potentially dangerous if kept confidential. Are they required to remain silent when such silence will negatively affect the community at large? Should they, for example, relate that a young man who recently proposed marriage to a young lady has AIDS? And what about, for example, the problems of the legal profession? In America, due to the rules of attorney-client-privilege and Codes of Professional Responsibility a lawyer may not reveal any information received in confidence or secret, even if necessary to prevent fraud. As such, knowledge emanating from the attorney-client relationship that Mr. X is an outright thief, may not be revealed to prevent others from being duped in a fraudulent scam. Rabbis, moreover, hear a litany of very private, painful confessions. At times, their investigation prior to serving as a wedding performer discloses very embarrassing details. Some deal with actions or illnesses that would taint the reputation of families should such information be revealed. Are rabbis obligated by Jewish law to preserve the confidentiality of their information? Or, to prevent a community liability or social problem, does Jewish law provide to rabbis the authority to reveal private information?

The first important principle is that unlike the medical and legal profession, the clergy, especially as noted by halakha, has, no special oath or rule proscribing the revealing of private, personal matters to others. In other words, there is no specific rabbi rule against violating confidentiality. It is not just rabbis who are forbidden to divulge secrets. Everyone, every Jew, no matter his or her profession or lack of a profession, is prohibited by Biblical law from telling private matters to others.

The Bible overtly states, “Thou shalt not go about as a talebearer among thy people”, (Lo Telekh ra’hil – Leviticus 19:16); the verse then concludes, “and thou shall not stand inactive (idly) by the blood of thy neighbor, I am God”. (translation, Rabbi Samson Raphael Hirsch) The practical application of this is expounded by the Rambam. He rules, ...”telling tales is a great sin. It served as the cause for the murder of many Jews. [Indeed,] this is the reason why adjacent to it [the verse prohibiting talebearing] is the verse prohibiting one to not stand idly by the blood of one’s friend.” The process of talebearing takes place “when a person goes from one to another and says this is what so-and-so said, this is what I heard

about so-and-so, even though it is the truth, such is destructive of the world. A worse sin included in this [Biblical] prohibition is the sin of *lashon hara*. That is the telling of something which is negative to one's friend, even though it is truthful. (Rambam, *Hilkhot De'ot* Chapter 7: Laws 1 and 2.) Thus the sin of revealing private, confidential information is operational whether it is negative or positive. The sin is graver when the information is or may be negative. Also, the truth or falsity of the information revealed does not in any way provide a halakhic permit to divulge a confidence. (See also, *Sanhedrin* 31a and *Yoma* 4b)

There is a fascinating Talmudic citation corroborating this concept in *Pesahim* (113:b). The Talmud reports that a man by the name of Tuvia sinned. He committed adultery. A man called Zigud was aware of this sin and by himself, without another witness, he came to Bet Din, the Rabbinical Court to testify against Tuvia proclaiming that Tuvia was an adulterer. Rav Papa, the senior Rav of the Bet Din, punished Zigud for testifying. Zigud was appalled. He called out in protest, "Tuvia sinned and Zigud is punished?" In other words, the Bet Din did not punish Tuvia for the alleged sin of adultery. Zigud was, however, punished for he was guilty of *lashon hara*, telling negatives about another. In Jewish law sins relating to adultery require the presence of a minimum of two qualified witnesses. Bet Din will not accept the testimony of a singular witness in matters pertaining to adultery. Accordingly, Zigud should have known that Bet Din would not act upon his testimony. Thus, Zigud was in effect merely spreading gossip about Tuvia. The fact that the allegation may have been true was of no concern. Zigud was punished for informing others of slanderous material. He should have kept knowledge of the immoral act to himself.

I believe that those involved in professions that deal with confidential information and subsequently divulge such private concerns to others, may be deemed to have transgressed greater sins than ordinary people who tell tales and are involved in gossip. I have no actual halakhic ruling on this, but, I do believe Biblical law intimated this concept. The Torah details the punishments to be given to different types of theft. It states that whosoever steals an ox and/or sheep pays more than a crook who robs jewels from a house. Indeed, the Torah says, "he shall pay five oxen for the ox and four sheep for the sheep". (Exodus 21:37) Rabbi Samson Raphael Hirsch suggests that the reason for the onerous punishment for stealing an ox or sheep is that such animals are generally kept outside in the open air. As such, one must trust the community not to violate private property even though the animals are not locked up in a home. To the extent that one must place greater trust in people concerning the security of animals, the punishment for the violation of this trust must be greater than a case where something was locked up in a home. Thus, whenever there is a situation wherein confidence is assumed, the violation of such trust should generate a more onerous punishment, not just from society, but also from religious law.

Of major, practical interest is that there is a vital provision that alters the above halakhic prohibition. Namely, the Biblical prohibition to divulge confidential information is limited to cases wherein the intention of the talebearer is to hurt the feelings or merely to disparage in some way the reputation of another. But what about a case wherein the intention is to prevent crime, to withhold damage from a community, to help the person involved, in such circumstances, many rabbis rule that halacha would permit the divulging of private, confidential information. The basic source for this is the Rambam who rules, "whoever is able to save another and does not endeavor to do so, violates the [prohibition of] 'do not stand idly by the blood of your friend, therefore, one who witnesses his friend drowning in the sea or brigands attacking him and he [has the ability to] save him, or he heard that people seek harm to him...and he does not contact his friend to reveal this, he is in violation of the Biblical prohibition of 'do not stand idly over the blood of your neighbor.'" (Rambam, *Hilkhot Ro-tzeah* Chapter 1:14 See also *Shulhan Arukh Hoshen Mishpat* 42:1, cited by Rav Ovadia Yosef, *Responsa Yehaveh Daat*, Volume 4: *Siman* 60) Indeed, Rav Ovadia Yosef contends that the reason the Biblical verse starts with a prohibition against standing idly by the blood of your neighbor is to manifest that saving a neighbor from damage is more important than maintaining the confidentiality of certain information.

Thus, the rabbi and the professional practitioner are permitted and may even be required to reveal information that may prevent harm to others. This, for example, would mandate revealing knowledge that a prospective bridegroom had AIDS. It would, moreover, require one to reveal to a prospective employer that a certain person has a serious heart condition and should not be entrusted with becoming a bus driver for young children. It would, also obligate one to divulge information that will prevent monetary damage to others even though it could destroy the reputation of the person who confided the private information. This generates a difficult moral as well as professional dilemma. The fact that a psychologist may reveal to others, the foibles or illness of their clients to hopefully prevent communal damage may jeopardize the psychologist's entire career. Word will get out that the psychologist does not honor a code of confidentiality. Accordingly, clients will feel that they cannot trust the therapist to withhold divulging private information. Once such a rumor takes hold in the community, no one will be willing to confide in the professional. At issue is whether a person is required to jeopardize his or

her professional career by revealing confidential information detrimental to others. Namely, is a person obligated to sacrifice one's own career to prevent others from being hurt? What ruling does halakha provide in such a quandary?

When confronted with the cost of observing a mitzvah, the rule is that one is not required to expend more than one fifth of income. As such, should an item required for the performance of a mitzvah cost more than one-fifth of one's income, the Jew would not be obligated to purchase such a costly item, even as a result he would not observe the mitzvah. This rule relates only to the observance of positive mitzvot. When dealing with the violation of negative mitzvot, there is no financial limit imposed upon the Jew. All funds must be expended to forestall the violation of a Biblical negative command. (Rama, Shulchan Aruch Orach Chayyim 656) Scholars, however, finely hone this rule. They contend that the issue of concern is not whether the cost of observing a mitzvah is either a violation of a positive or a negative mitzvah. The issue is whether a positive action is necessary in order to violate the negative mitzvah, or whether a violation takes place by inaction, (as termed in Talmudic parlance, shev v'al ta'aseh). (Pit-hei Teshuva, Yoreh Deah 157:4) As such, silence in the face of a crime that may occur to others, does not obligate any professional to jeopardize their careers. In a way, it revolves around the pivotal issue of conscience and personal judgment. The key question is not necessarily what does Jewish law say, but, rather, can you live with yourself by the judgment you, yourself may have made. Namely, to speak or not to speak, that is the question.

Not many years ago a woman revealed to her Rabbi in Long Island that her husband was not aware that she stopped going to the Mikvah. The Rabbi, in an attempt to prevent the husband from committing a sin, revealed this information to her husband. The woman was aghast at this violation of confidentiality. The Rabbi defended himself by stating that it was his moral and religious obligation to prevent the husband from committing sin. Regardless of who was right, one glaring truth emanated from this incident. No one in the community would ever trust again confidential matters to the Rabbi in question. His role as a trusted professional was over. Once the word is out that a Rabbi may reveal confidential matters, then the public will most probably not confide in him again. One means of ameliorating the difficulties of the decision making process, is to seek the advice of an objective third party. The Mishna Berura, for example, contends that in matters pertaining to money, it is best never to make a decision by oneself. In these matters the evil inclination will seek out legal loopholes of support. (Orach Hayyim 605:1) In other words, the decision of an outsider will be much more objective and less tainted. So too in matters relating to moral quandaries. Seek out an objective voice. Many times, the Rabbi will be asked to make the judgment as to whether it is more ethical to be silent or to reveal confidences. His decision (hopefully) will be based upon Torah and moral principles, not just personal judgments. At times, the old rule that discretion is the best of valour serves as the guiding standard. This issue needs community dialogue and input.