

HALACHIC IMPLICATIONS OF CONDOM AVAILABILITY IN JEWISH COMMUNITY CENTERS

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From the Fall of 1994 until the spring of 1995, the Board of Governors of the JCC MetroWest struggled with the issue of allowing its youth workers to make condoms available to teens in crisis. The board ultimately decided against making condoms available, choosing to establish a firm policy on the importance of contraceptive education. This article examines the issues presented to the board and some of the halachic implications of the discussion. It also addresses some of the perceived conflicts between Jewish and social work values that could affect the determination of whether a condom should ever be made available to a teenager.

In July and August 1994, two MSW-youth workers at the JCC MetroWest were independently contacted by two teenagers who were engaging in unprotected sex. Both teens were aware of the dangers of contracting HIV and AIDS, but were nevertheless choosing not to engage in safe sexual practices. Although the circumstances in the lives of the teens were slightly different, both identified themselves as being unable to speak to their parents "about anything," and both adamantly refused to allow the youth workers to initiate a dialogue with their parent(s).

Adolescence is a time of sexual exploration. However, in today's sexual climate, it is imperative to view unprotected sex as a dangerous, risk-taking behavior (Cates, 1991). Between June 1993 and June 1994, the Centers for Disease Control reported that the number of reported AIDS cases among 13- to 24-year-old males increased by 28 percent (1994). Although AIDS is the sixth leading cause of death for 15- to 24-year-olds, it is the leading cause of death for men aged 25 to 44 and the fourth leading cause for women aged 25 to 44 (Centers for Disease Control, 1994). Because of the long period between HIV infection and the diagnosis with AIDS, it is highly probable that most 20- to 27-year-olds were infected during their teen years.

In both cases at the JCC MetroWest, the youth workers identified the behavior of the teens as self-destructive because the teens were aware of the risks involved in unprotected sex, yet were choosing to engage in that behavior. One of the teens was able to resolve the issue for himself quickly, choosing to modify his behavior to a safer mode of expression. The other continued to act in a self-destructive manner.

Had the teen been engaging in an illegal act or in an immediately life-threatening behavior, the youth workers would have had an easy recourse—contact the teen's parents and/or the authorities. However, in the case of a teen engaging in unprotected sex, several difficult issues emerge:

- If the worker believes that the teen is engaging in a self-destructive behavior, can the worker give a condom to that teen based on the laws of *Pikuach Nefesh* (saving a life)?
- If this is indeed a case of *Pikuach Nefesh*, does the worker have a responsibility to contact the teen's parents, or does this notification violate the laws of confidentiality if the teen has demanded that the worker not speak to his or her parents?
- Furthermore, what are the Jewish values that assist or resolve conflicts evoked by any and all of these decisions?

THE ROLE OF CONDOMS IN JUDAISM

There are very few absolutes in Judaism. Perhaps the only circumstances presented as an absolute are cases of *Ya'hareg V'al Y'Avor* where one should be killed rather than commit idolatry, engage in illicit sexual unions, or murder. A Jew must sacrifice his or her life, rather than violate these commandments. In these instances, the circumstances are clearly delineated and cannot be transgressed.

In other areas, Judaism provides a broad panorama of choices and alternatives, especially around delicate circumstances. Condoms are not permitted in traditional Orthodox Judaism as an *a priori* method of birth control for the able bodied. Maimonides states in *Issurei biah* 21, 18 "It is forbidden to destroy seed." However, there are circumstances where the use of condoms has been allowed. In the responsa of R. Eliyahu Klatzkin of Lublin, a petitioner writing in 1899 asks whether condoms would be permitted if other forms of birth control would be unsafe. R. Klatzkin suggests that, when there are no other alternatives, there may be room to allow the petitioner to use condoms (Feldman, 1968).

Several other notable scholars, including R. Hayyim Ozer Grodzensky (writing in 1935), R. Moshe Feinstein (writing in 1961), and Rabbi Yehuda David Bleich (writing in 1991), have found circumstances when the use of condoms would be allowed (Bleich, 1991; Feldman, 1968). Grodzensky permitted it in a situation when there was a pregnancy hazard for a woman and there was no other means of birth control. In this situation, he stated that condom usage could be considered the normal course of intercourse (Feldman, 1968). Feinstein disagrees with Grodzensky's viewpoint that the condom can ever be considered part of a normal act of intercourse, because the sperm does not remain with the woman. However, although the act is unnatural, Feinstein permits the use of a condom because it is the only method of maintaining

the sexual relationship in the union. Bleich (1991), writing specifically about the spread of AIDS and its halachic implications, rules that a husband is obliged to use a condom if he or the wife is infected with a dangerous sexually transmitted disease, such as AIDS.

Thus, there are occasions within Judaism when the use of condoms may be permitted. It is interesting to note that there are no situations where abstinence is prescribed as a means of birth control, because tradition recognizes the vital role that sex plays within licit relationships.

THE ROLE OF PIKUACH NEFESH

Although condoms per se may not be allowed as a method of birth control for able-bodied adults, the situation in question allows for some interpretation based on the laws and values concerning *Pikuach Nefesh*, saving a life. The holiness of life enjoys primacy in Judaism. All laws reflect an awareness that the human condition is continuously in flux and that actions are determined by the situations in which they occur. The Torah states, "Which if a man perform them (the commandments of the Torah), he shall live by them" (Leviticus 18:5). The sages interpret this statement to mean that "he shall live by them and not die because of them" (Babylonian Talmud, Yoma 85b).

As Jews, it is our primary function in life to choose situations that perpetuate life. Jews are also enjoined to protect themselves and others from coming into harm's way. For example, the individual is commanded to safeguard his house. The Torah states, "When you build a new house, you must put a parapet around the roof" (Deuteronomy, 22:8). The parapet was a railing for flat roofs to prevent anyone from falling off. The *Kitzur Shulchan Arukh* also states, "And not only roofs must be protected against danger to human life, but any place where there exists a danger to human life requires protection" (Book 4, 190:1-2).

THE ROLE OF CONFIDENTIALITY FOR THE SOCIAL WORKER

Confidentiality refers to the boundaries surrounding shared secrets and to the process of guarding these boundaries (Bok, 1983). The guidelines on confidentiality set by the National Association of Social Workers (NASW) state

Whereas confidentiality is a professional mandate, privileged communication is a legal issue in which a client's right to privacy is protected by state law. Many courts have held that the right belongs to the client and only the client can waive the protection.... Client's informed and express consent should be a prerequisite to transmitting or requesting information from third parties. (NASW *Policy on Confidentiality and Information Utilization*, 1993).

A client's right to confidentiality is one of the basic tenets of social work. At what point does a worker ever breach confidentiality? The legal system has provided a basis for answering this question in the precedent-setting case of *Tarasoff v. Regents of the University of California* (1976). This case, more than any other, has attempted to set limits on a client's right to confidentiality, and Reamer (1991) highlights its implications for working with AIDS patients in his article entitled "AIDS, Social Work, and the Duty to Protect." In the *Tarasoff* case a young man sought counseling from a student health center at the University of California, Berkeley and told his therapist that he intended to kill his ex-girlfriend. The therapist informed campus police, who after interviewing the young man, concluded that his claims did not contain an imminent threat. The psychiatrist in charge of the health center, because of his concerns for confidentiality, requested that the campus police return all information concerning the case. Two months after his contact with the police, the student murdered his ex-girlfriend.

The therapist and other state officials were sued by the girl's parents for failure to

detain a dangerous client and for not warning their daughter about the threat to her life. The California Supreme Court ruled that psychotherapists do have the "duty to warn" a potential victim when the professional determines such action will protect third parties (Lamb et al., 1989; Lewis, 1986). The court concluded,

We recognize the public interest in supporting effective treatment of mental illness and in protecting the rights of patients to privacy and the consequent public importance of safeguarding the confidential character of psychotherapeutic communication. Against this interest, however, we must weigh the public interest in safety from violent assault.... We conclude that the public policy favoring protection of the confidential character of patient-psychotherapist communications must yield to the extent to which disclosure is essential to avert danger to others. The protective privilege ends where the public peril begins (Tarasoff, 1976).

The ethical standard of confidentiality within Judaism can be drawn from the Jewish concept of *Loshon Hara* (translated as evil speech). Rabbi Zelig Pliskin, adapting the works of the great sage Rabbi Yisroel Meir Kagan, known as the Chofetz Chaim, states that under the laws of *loshon hara*: "If someone tells you private information about... any personal matter, you are forbidden to disclose it to others.... Even if the speaker did not request that the matter remain secret you are not allowed to repeat" (Pliskin, 1975).

The Chofetz Chaim enumerates 31 biblical laws that are tied into the concept of *loshon hara*. These range from the obvious, such as "You shall not utter a false report" (Exodus 23:1), to the sublime, such as "To Him you shall cleave" (Deuteronomy 10:20). From the last verse, the Chofetz Chaim implies that individuals should surround themselves with learned people who forsake *loshon hara*; by joining with people who speak *loshon hara*, the commandment has been violated.

POSSIBLE RESOLUTIONS OF THE VALUE CONFLICTS

In an article by Rabbi Barry Freundel (1987) entitled "AIDS: A Traditional Response," there is an important story about the parameters of a potentially dangerous situation. Freundel records a halachic ruling based on an incident in the life of the noted sage, the Hazon Ish. The Hazon Ish was asked whether a person in Israel could violate Shabbat by running to a bomb shelter during wartime. Determinants involved in the decision included that the siren could only be a test, that the bombs may not fall in the person's direct vicinity, and that there is a much greater likelihood that the bombs will miss the particular individual. Despite these factors, the Hazon Ish ruled that Jews could violate the biblical prohibitions in this situation, because people were afraid based on the concept of *Safek Sakanah*—the possibility of danger.

In the case of handing over a condom to a teen in crisis, there is the element of *Safek Sakanah*. Although the teen or the teen's partner may not be seropositive for HIV, there is a chance that he or she may be. When teens are engaging in unprotected sex as a cry for attention, the youth worker must choose between notifying their parents or giving a condom to the teens in a course of treatment to modify their behavior. The worker must choose whether to break confidentiality with the teen to inform the parents or act without the consent of the parents. The worker must ask—will breaking confidentiality advance or hamper the eventual resolution of the conflict?

The only situation in which youth workers may breach confidentiality with their teen clients is when they feel that the life of the teen is immediately in need of direct intervention. Breaching confidentiality in other situations could quite possibly yield more negative than positive results. In a dysfunctional family, the involvement of parents might victimize the teen while removing the safe haven that the JCC provides in that teen's life. Perhaps the teen is

in crisis as a result of physical or sexual abuse, and parental involvement might result in greater harm for the teen. The youth worker may not be privy to all facets of the teen's life, and the teen's adamant refusal to allow parental intervention may stem from the realistic appraisal that there will be no redress of the crisis through parental intervention.

The youth workers may also be undermining their function at the JCC through parental notification. A fundamental premise of confidentiality is that people have the right to individual autonomy over personal information (Bok, 1983). Workers must respect that individuals are capable of having secrets. Teenagers are to be granted this same right as adults.

In terms of breaching confidentiality, a meeting point of Jewish values and the American legal system arises from the biblical statement, "Neither shall thou stand idly by the blood of thy neighbor" (Leviticus 19:16). If a teen is in need, a youth worker may need to notify the parents. He or she may also need to give the teen a condom in the case where the teen is engaging in unprotected sex and parental notification may not resolve the issue. But is there any religious basis for ever making a condom available to a teen in the situation listed above?

One can argue that halachic implications implore an individual to do so. The *Kitzur Shulchan Arukh* states

If one sees that a neighbor is in trouble, he shall do whatever he can or come to his rescue if he cannot do it himself....If one keeps away from doing so, one is guilty of transgressing the injunction (Leviticus 19:16) "Neither shalt thou stand idly by the blood of thy neighbor." Our sages tell us (Mishnah, Sanhedrin 37a) "He who saves one life in Israel, is considered as if he saved the whole world" (Book 4, 184.8).

Feldman brings further evidence by supporting the violation of Shabbat in order to save the life of a fetus (Feldman, 1968). The laws of Shabbat can be set aside in or-

der to save a life. However, the fetus has a unique status in Jewish law as a potential life and is not in the same category as a human being. If the life of the pregnant mother is in danger, then Shabbat clearly should be violated (Yoma 82a). However, if only the fetus is in danger, then it is unclear whether it can be violated. Ultimately, the sages deduce that it can. Although the fetus does not yet fit into the category of "which if a man perform them (the commandments of the Torah), he shall live by them" (Leviticus 18:5) since it cannot be considered a man, a special dispensation is allowed to save the fetus. The Talmud states: "Violate for him this Sabbath so that he (remains alive to) keep many Sabbaths" (Yoma 85b).

The logic of this argument directly ties into our scenario. Giving a condom, which violates the positive commandment against destroying seed, allows teens in crisis to protect themselves so that they can eventually end their dangerous behavior.

Rabbi Bleich (1991) considers whether condoms can be made available by guidance counselors in public schools to Jewish and non-Jewish students. He ultimately reasons that the guidance counselor is allowed to distribute the condom because while giving a condom to a teen may cause him or her to engage in an act where halachah will be violated as semen is wasted, Bleich posits that the teen is already violating halachah by engaging in sexual intercourse and

It is permissible to allow a friend to further transgress a negative precept in order to save them. The situation is similar to an individual who is willing to endanger himself and others by driving on the evening of the holy Sabbath without headlights....It is permissible to give such a person headlights in order to use the car, even though it is causing him to violate the precepts of lighting and extinguishing a light on the Sabbath (translated by S. Schauder).

THE DECISION

The Board of Governors of the JCC Metro-

West chose not to allow its staff to issue condoms to teenagers under any circumstance. The majority felt that it was not within Jewish values to give condoms to teens in crisis. Instead, they formulated a policy outlining the agency's responsibility to educate and inform teenagers about sex, including contraceptive education and the proper use of condoms (see sidebar).

I applaud the conviction of the Board of Governors of the JCC MetroWest to address this issue regardless of the outcome and to worry about its implications based on Jewish values. My concern then and now is that the full gamut of Jewish values may not have been taken into account when making the decision. I hope this issue will one day be revisited by this or another board in order to create a policy that permits the distribution of condoms to teenagers in times of crisis.

In the aftermath of the Korach rebellion, G-d decrees a divinely originated plague of the Israelites (Numbers 17:6-15). The Torah recounts the following:

And Moses said to Aaron, Take the fire pan and put it in the fire from the altar and incense, and carry it quickly to the congregation to atone for them for the anger has gone out from G-d. And Aaron took, as Moses commanded, and he ran into the midst of the assembly and behold the plague had started among the people, and he put in the incense and atoned for the people. And he stood between the dead and the living, and the plague ceased (Numbers 17:11-13).

Rabbi Freundel (1987) points out that this is the only situation in the Torah where it mentions Aaron "running." Aaron, at 85 years old forgets his age and forgoes his stature to heal the sick and stop the dying.

The Jewish Community Center movement is not in the forefront of the fight against AIDS. Too few JCCs are willing to provide substantial measures to combat this deadly virus. Why isn't every JCC board struggling with this issue of the distribution of condoms? It is quite telling, that in the

biblical passage cited above, Aaron needed to be in the midst of the congregation, standing between the "dead and the living" until the dying stopped. Hillel taught that we should be "disciples of Aaron" (Mishna Avot 1:12). This ancient dictum resonates today. We have much to emulate from Aaron.

ACKNOWLEDGMENTS

This article is dedicated to Ilene Greenbaum and Leah Weiss, chairpersons of the Teen Services Committee during 1994 when this issue was presented to the board. Their unflinching resolve in seeing this controversy through was both courageous and inspiring. I would also like to thank Rabbi Phil Miller, Rabbi Yitzhak Breitowitz, and Dr. Norman Linzer for the time and reading materials they provided me in preparing this article.

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PROCEDURES AND POLICY FOR DEALING WITH SEXUALLY ACTIVE TEENAGERS

The youth workers of the JCC are viewed as positive Jewish role models who attempt in their work to promote positive self-growth in a supportive Jewish environment. In the course of their work they encounter a broad array of teens each with different circumstances and situations. The largest aggregate of these teens develop relationships with the youth workers that augment the productive relationship that these teens enjoy with their parent(s); these teens are very cognizant of the support systems that exist for them. During times of crisis these teens approach the youth workers for advice on how to best approach their parent(s) with difficult issues. The youth worker will maintain contact with the teen, and perhaps the parent(s), to monitor the situation for a successful resolution.

A smaller percentage of our teen population seeks out the youth workers to explore their feelings, relationships, and perspectives in a much more significant way. These individuals state that they are much less connected to their parent(s). When faced with crisis, these teens may require the assistance and intervention of the youth workers to facilitate the introduction and resolution of these crises with their parent(s). The youth worker will exhibit more direct service to the teen, and the family, to help them solve their problems.

A minute percentage of our teen population is those in a major life crisis who are in tremendous need. This crisis may be as a result of their strained or unhealthy relationships with their parent(s). Frequently, the nature of these relationships between the youth worker and teen will have therapeutic overtones. Most of these individuals do not recognize the support systems that may exist for them. In many of these cases, referrals will be made to Jewish Family Services, or an appropriate therapist.

The youth worker, when working with this type of teen in crisis, will do everything in her/his power to foster a healthier and more sound family situation. However, the parent(s) may not necessarily respond to the overtures of the youth worker. These teens occasionally put themselves at risk as a product of their desire for attention. If their activities violate the law, or if the teen has voiced a desire to end his/her life, then the youth workers are mandated by the state, by social work ethics, and by Jewish values to inform the parent(s). The youth workers will maintain close and steady contact with the family to assist them through their hour of need.

In the situation where the teen is putting themselves at risk through a behavior that is life threatening, but not against the law, the youth workers are faced with a difficult quandary. While promoting and advocating the introduction of parental guidance to help respond to the behavior in kind, the teen may demand that the youth worker not inform the parent(s) of the behavior. The youth worker has no choice, by the guidelines of confidentiality set by the National Association of Social Workers (NASW), than to yield to the wishes of the teen. This policy states: "Whereas confidentiality is a professional mandate, privileged communication is a legal issue in which a client's right to privacy is protected by state law. Many courts have held that the right belongs to the client and only the client can waive the protection....Client's informed and express consent should be a prerequisite to transmitting or requesting information from third parties." (NASW Policy on Confidentiality and Information Utilization, 1993). NASW does not differentiate in policy between an adult and an adolescent in the matter of confidentiality.

Our current system of education that we provide for every teen and their family is:

1. Promotion of Abstinence—Abstinence is the official policy of the JCC of MetroWest whether we are discussing sex, alcohol, or drug use. We promote abstinence for two reasons—because it is the standard within Judaism, and because it is the safest way of protecting oneself against the spread of HIV.
2. We encourage teens to address the issue of sexuality with their parent(s), rather than discuss it with the youth workers. The youth workers may role play the presentation of the scenario with their parent(s), yet will leave the addressing of the sexual issue to the family. The youth worker will maintain follow-up with the teen, and with the family, if they desire the youth worker's intervention.
3. While encouraging the teenager to address the issue of sexuality with their parent(s), the youth worker may assume a more direct role. He/she may call the family together, at the teen's request, to convene a meeting. The worker's role after that point will be determined by the wishes of the family.
4. If a teen is not agreeable to abstaining from sexual behavior, and is unwilling to discuss their sexuality with their parent(s), then the youth workers will engage the teens in discussions on safe sex and contraception. The youth workers who engage in these conversations will be professionals trained and comfortable in discussing sex and contraceptive education. During these discussions, the youth workers will continue to stress the importance of abstinence as a Jewish value and as the safest means of protection against a sexually transmitted disease. The youth workers will also stress the primacy of addressing these issues with their parent(s). These discussions may include demonstrations on the proper uses of condoms and other means of contraception.

The Board is being asked to adopt the statement listed above as the official policy of the JCC in dealing with sexually active teenagers. It is the responsibility of the JCC to educate teenagers about HIV and AIDS. While we shall continue to stress abstinence as the official policy of the JCC, the JCC realizes that its staff must provide the support necessary to help teenagers live in today's modern world.