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“But Mom Made Me Promise I Wouldn’t Put Her In There:”  
A Jewish Ethic Of Nursing Home Care

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Referee, Professor Barry Kogan

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To my mom: I promise to honor you all the days of your life and take care of you with dignity and with your best interests always as my number one priority;

And finally, to God, for blessing me with all of these people in my life. I pray that I live the rest of my life guided by what my tradition teaches me.

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“But Mom Made Me Promise I Wouldn’t Put Her In There:” A Jewish Ethic Of Nursing

Home Care.

Abstract

The idea of placing a loved one in a nursing facility makes many people feel uncomfortable at best, and fearful at worst. This same statement holds true for the very people who may end up in a nursing facility one day. They too feel uncomfortable and sometimes fearful. My own mother even made me promise that I would never place her in a nursing facility when she became too old and fragile to take care of herself. My mother’s request of me years ago is what inspired me to research the topic of Jewish nursing care and the ethics involved in it.

The introduction to this thesis begin with a historical overview of social arrangements to care for elderly parents and specifically the development of nursing home facilities in the recent past. Communal care for the Jewish aged can be traced to our European heritage centuries ago. In the nineteenth century when people from Eastern Europe started immigrating to the United States, sheltered homes began to be established. The first Jewish homes were opened in the late 1880's in St. Louis and New York. Most of these homes were Orthodox. However, there were also German Reform Jews who opened their own homes. Nursing facilities gained a reputation of a place to avoid due to many reasons. One such reason was due to legislation that contributed to the “big business” of nursing homes. This concept increased the number of nursing home beds and institutions while a decrease in the quality of care soon followed. Today, nursing

home facilities have made tremendous steps in approving the quality of care. They have done this through federal and individual nursing facilities Patients Bill of Rights and other changes in the law.

Chapter one examines Jewish sources that govern the treatment of the elderly. Texts studied for their views on proper treatment of the elderly included biblical, classic, rabbinic, medieval and various other materials drawn from halakhic literature. We saw that the fundamental mitzvah governing how we are to treat the elderly is the fifth commandment, which states that one must, "Honor your father and mother." Also, there is Leviticus 19:3, which states that, "Every person shall revere his mother and father." The Mishnah says that at sixty years of age, one becomes an elder, at seventy, one becomes white with old age, at eighty, one becomes rare with old age, at ninety, one becomes bent over, and at one hundred, one becomes as if he is dead and had passed away from the world. Questions raised in responsa literature deal with what a child's responsibility is to his/or parents, what are the limits of the commandment to honor one's parents, and where is the boundary between independence and filial responsibility.

Chapter two examines the parameters of friendship relations within the context of nursing home facilities. We see in this chapter, four specific cases involving nursing home residents and how the residents, families and staff deal with each case involved.

Chapter three examines issues of personal intimacy involving married and single residents in nursing homes. We see in this chapter, four specific cases involving nursing home residents and how the residents, families and staff deal with each case involved.

Chapter four discusses the larger issue of personal autonomy vs. paternalism as it applies to married and single residents. The concept of paternalism has existed at least

since the time of Aristotle, who argued in his *Politics*, written in the fourth century B.C.E., that some degree of paternalism is justifiable in any society in which certain elite individuals are clearly more informed and wiser than others. More recently, philosophers, such as Gerald Dworkin, have also defined what paternalism is. Dworkin wrote an essay in 1968 that defined paternalism as "interference with a person's liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person being coerced." The concept of autonomy, in contrast, maintains that each individual person is in control of his/her own person, including both body and mind. This principle, if defined in its purest form, assumes that no other person or institution may intervene in order to gain control over a person's desires, whether or not those desires are seen as "right" by others in the situation. Establishing the proper balance between paternalism and personal autonomy when working with nursing home residents is a difficult task, equivalent to walking a fine line. All of the parties involved need to be properly equipped with the information regarding these two principles in order to deal with any issue that may arise.

In my conclusion, I propose that we use all of the information available to us in order to properly handle decisions involving loved ones who enter nursing home facilities. This includes secular sources in conjunction with Jewish sources. I conclude with a list that suggests a number of possibilities about what specific information can be helpful. The last suggestion I offer is that one should consult the rabbi of the nursing home and/or your own rabbi to help you sort out your decisions.

## Introduction

"Cultures can be judged in many ways, but eventually every nation in every age must be judged by this test:  
How did it treat people?" - Former Surgeon General C. Everett Koop

"...Children who seek nursing home placement over their parent's objection must be sure of their motives.  
If they are sure that their motives are not selfish, but for the good of the parent, then it is their duty to  
reason with him until he consents, if only reluctantly." - Rabbi Solomon Freehof

Once, in passing, I heard someone describe human beings as belonging to two categories; the ill, and the not yet ill. Although this can be construed as a pessimistic observation about human life, I think it was meant to put into perspective the fragility of life. Unless one dies suddenly, usually one's health begins to decline first. If we are lucky, this does not begin to happen until we are much older and have experienced a full life.

In Sherwin B. Nuland's book, *How We Die*, he says that:

No one dies of old age, or so it would be legislated if actuaries ruled the world. Every January, just when the harsh autocracy of winter has tightened its hoary hold, the U.S. government releases its yearly 'Advance Report of Final Mortality Statistics.' Neither among the top fifteen causes of death nor anywhere else in that soulless summary is there to be found a listing for those among us who just fade away... Everywhere in the world, it is illegal to die of old age.<sup>1</sup>

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<sup>1</sup> Sherwin B. Nuland, *How We Die* (Alfred A. Knopf: New York 1994).



The aim of this thesis is to address the needs of those people who have the right to live vibrant lives while living in nursing facilities. Yes, vibrant lives. It may sound like an oxymoron, but it need not be. We will see where we have been by looking at our Jewish sources in order to know where we can go in our current lives as an aging population.

Communal care for the Jewish aged can be traced to our European heritage centuries ago. Such care was only designated for the poor and for those who did not have any children, for traditionally the elders of the community moved into their children's homes. So assistance was provided for those who fell into the category of poor or without family. Such places for shelter were set up in additions attached to the synagogue. So it was the synagogue that provided the needs of food, shelter and religious activity. Since people did not live much past their fifties or sixties, the issue of chronic illness did not exist. Therefore, staff was not needed in these places. If one became sick, then they would go to a primitive hospital for a short time.<sup>2</sup>

These communal shelters were called "Hekdesh," stemming from the Hebrew root meaning "holy" and were created in the same vein as almshouses. As many feel today, such places were dreaded, for the people believed that going to a Hekdesh was a death sentence. This thought existed then and today because of the view that the only people who went to such places were the sick and elderly people that no one thought had any chance of recovery.

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<sup>2</sup>Steven Raichilson "The Jewish Home for the Aged in the United States," *The Jewish Aged: Policies, Programs, and Services*. (1994)

When, in the late nineteenth century, people from Eastern Europe started immigrating to the United States, sheltered homes began to be established. The first Jewish homes were opened in the late 1880's in St. Louis and New York. Most of these homes were Orthodox. However, there were also German Reform Jews who also emigrated at this time. This community did not want to sponsor or be a part of the Orthodox facilities, so they opened their own homes, without the Orthodox traditions. In many cities, there were two homes; one was Orthodox and one was Reform. Examples of such cities were in Cleveland and Cincinnati, Ohio. The distinctions that separated the two homes have diminished to a certain extent over time due to issues such as intermarriage, later generations living together, and the cost of building new facilities.<sup>3</sup>

Dr. Leslie S. Libow maintains that:

...The poorhouses of the nineteenth century in the United States were the forerunners of the nursing home. The early twentieth century brought demographic changes, industrialization, and urbanization, but ironically, it was the Social Security Act of 1935 that directly led to the establishment of the 'boarding home.' Because the law denied social security payments to any individual who lived in an institutional setting such as a public poorhouse, these elderly moved into private homes, where they rented rooms and where meals were supplied, and which became known as boarding homes.

In the 1940's because these boarders, having grown older, were less healthy, nurses were hired and the 'nursing home' was created. These were small, usually family-run enterprises. Interest in the care of the elderly was being formalized at this time, largely because of the demographic

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<sup>3</sup>Ibid.

changes and the forecast of a graying America. In the early 1940's the American Geriatrics Society (1942) and the Gerontological Society (1945) were created. In the 1940's, 1950's, and 1960's, gerontologists (MD and non-MD) working in relative isolation from the health care establishment, created research and patient care programs at a few not-for-profit nursing homes. In the 1960's, federal legislation again contributed to the creation of the 'big business' of nursing homes. The number of nursing home beds and institutions increased manyfold as Medicare and Medicaid dollars became available. However, the quality of care was not discernibly better even with the remarkable growth of the nursing home industry. This was well documented in the United States Senate report, 'Nursing Home Care in the United States: Failure in Public Policy.'<sup>4</sup>

This article, written almost twenty years ago, describes the history of all the nursing home facilities, and it addresses concerns that were a reality for that time. However, over the past twenty years, the nursing home establishment has evolved from being perceived as a place to go when we are to die, into an establishment that attends to the needs of the whole person involved. That means that not only is physical health attended to, but the spiritual, social and mental health of residents are seen as a priority in terms of services provided. No longer are nursing homes the dismal places that we dreaded ever being in. They are becoming vibrant places where life continues with dignity and meaning.

Marshall B. Kapp observes that there are more than one hundred sixty-five long term care providers who are a part of the North American Association of Jewish Homes and Housing for the Aging (NAJHHA), affiliated with their Jewish communities.

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<sup>4</sup>Leslie S. Libow, MD, "The Teaching Nursing Home: Past, Present, and Future." *The Jewish Home and Hospital for Aged*. (1983)

Moreover, it is their religious and cultural heritage that is the major force that helps to shape both the institutional mission and philosophy and the expectations and demands of residents and their families.<sup>5</sup>

A headline in the Wall Street Journal back in 1992 stated that: "Older People Will Do Anything to Avoid Life in Nursing Home: In Spite of Federal Reforms, Elderly Opt for Hovels, Abuse, Suicide, the Street."<sup>6</sup> The article outlined abuses in various nursing homes as well as perceived fears among the elderly community. A personal experience with my own mother enables me to understand that perception. When I was a teenager, my mother worked as a secretary in a nursing home. This was back in the early eighties. The nursing home she worked in was not one where quality of life issues seemed to be addressed. At this point she wanted me to promise her that I would never put her in "one of those." Of course I promised, but as we have revisited this topic in my adulthood, I have finally convinced her that the nursing home model has changed. It is no longer a place where people go to die. It is instead an option that can be very real and possibly even exciting at a time in life when living can hurt. We are now at a point where I told her that I would not do anything that was not in her best interest. She trusts me when I say that, and I will not let her down.

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<sup>5</sup>Marshall B. Kapp, JD, MPH, "Journal of Religious Gerontology," Vol. 9(1) (1994).

<sup>6</sup>Michael J. McCarthy, "Older People Will Do Anything to Avoid Life in a Nursing Home." *Wall Street Journal* LXXIV, No.36 (December 3, 1992): A1, A11.

Why did my mom associate nursing facilities with this negative feeling? One reason already stated is that it was perceived as a place to go and die. Caretakers often feel as though they have failed their parents somehow if they place them in a nursing home. However, I have come to discover that the nursing homes are changing and this change is occurring because of societal perceptions. The perception that they are places where people are one step closer to death, the perception that the quality of life is almost non-existent, and the perception that placing a loved one in a nursing home is a sign that the caretaker has given up on caring for this person. Marshall B. Kapp suggests that long term care providers "exert a powerful influence on the manner in which that provider addresses its ethical challenges. Put simply, values are important because they are used to justify and determine institutional behavior. The values that a facility conveys, through formal policies and daily actions, also will influence how residents and families envision their own roles, what expectations they formulate, and thus, how they themselves choose and act; the provider is a teacher."<sup>7</sup>

The following standards were presented by the Omnibus Budget Reconciliation Act of 1987. They are examples of such laws being passed that protect and help serve every resident in any nursing facility. Nursing homes must meet the following national standards outlined in this Nursing Home Reform Law in order to participate in Medicare or Medicaid. This list is sent to every nursing facility and included in each facilities handbook that is given to every resident and their family:

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<sup>7</sup> Marshall B. Kapp, JD, MPH, "Journal of Religious Gerontology," Vol. 9(1) (1994).

Residents Have a Right to:

- be treated with dignity and respect
- exercise their rights, file complaints or voice grievances without fear or discrimination, restraint, interference, coercion or reprisal, and to expect prompt efforts for the resolution of grievances
- equal access to care and services without discrimination
- privacy concerning their personal and medical care, telephone calls, visits, letters and meetings with family and resident groups
- inspect and purchase photocopies of their records
- confidentiality regarding their medical and personal records
- full information about their health, and the right to participate in decisions regarding their care and treatment
- refuse treatment and refuse to participate in experimental research
- information concerning Medicare and Medicaid benefits and how to apply
- information regarding all facility services and charges
- information regarding advocacy groups and ombudsman programs
- manage their own financial affairs; they are not required to deposit personal funds with the facility
- choose a personal physician
- self-administer drugs unless determined unsafe by an interdisciplinary team
- perform or refuse to perform services for the facility; payment for any work done must be at or above prevailing rates

- advance notice of any change in room or roommate
- share a room with a resident spouse
- choose their own activities, schedules and health care and any other aspect affecting their lives within the facility
- organize or participate in resident councils or other groups
- be free from verbal, sexual, physical or mental abuse, corporal punishment and involuntary seclusion.

The Nursing Home Must:

- not require a third-party guarantee of payment or accept any gifts as a condition of admission or continued stay
- not require residents to waive their rights to receive or apply for Medicare or Medicaid benefits
- provide a copy of the latest inspection report and any written plans to correct violations
- provide residents with individualized financial reports quarterly and upon request
- protect resident funds with a security bond
- notify residents when their balance comes within \$200 of the Medicaid eligibility limit
- not charge Medicaid residents for items or services covered by Medicaid, including routine personal hygiene items and services

- not use physical restraints or psychoactive drugs for discipline or convenience; restraints must not be used without a doctor's written orders to treat medical symptoms or to ensure the safety of the resident and others
- provide access to any relevant agency of the state or any entity providing health, social, legal or other services
- use identical policies regarding transfer, discharge and services for all residents
- not discharge or transfer a resident unless his needs cannot be met, safety is endangered, services are no longer required or payment has not been made
- notify a resident of reason(s) for transfer or discharge and provide sufficient preparation to ensure a safe transfer or discharge
- provide written notice of state and facility bed-hold policies before and at the time of transfer
- follow a written policy for readmittance if the bed-hold period is exceeded
- thoroughly investigate all alleged violations and report the results
- provide a private space for residents' group meetings, and then listen to and act upon requests of the group
- provide social services to maintain each resident's highest level of well-being
- provide a safe, clean, comfortable, home-like environment
- allow residents to use personal belongings to the extent possible
- provide housekeeping and maintenance services; clean bath and bed linens; private closet space; adequate and comfortable lighting and sound levels; comfortable and safe temperature levels



These guidelines along with values derived from our Jewish history and sources can help us deal with what many of us will one day encounter: Placing a loved one in a nursing facility. In chapter one, we will discuss our rich Jewish sources pertaining to the issues of honoring our parents and our treatment of the elderly. Chapter two will examine the parameters of friendship relations within the context of nursing home facilities. Chapter three will explore issues of personal intimacy involving married and single residents in nursing homes. Chapter four will address the larger issue of personal autonomy vs. paternalism as it applies to married and single residents. Finally, we will draw some conclusions on how to approach these very emotional topics.

## Chapter 1- What Does Judaism Have To Say About All Of This??

“Said Rabbi Shimon bar Yochai: The most difficult of all mitzvot is ‘honor your father and your mother.’”

- Tanchuma, Ekev 2

Who is old? If I ask my grandmother that question, she will tell me about the ninety-year-old congregant she sees at her synagogue. My grandmother is *only* in her seventies. The first time a child called me, “Ma’am,” when I was in my mid-twenties, I felt old. I received an email saying, “You know you are old when . . .” Half of the examples related to my own life; However, I am just thirty years old. Some people say you are as old as you feel. I felt very old the first time I spotted a gray hair on my head: at twenty-two years old. Secular law says that at eighteen you are *old enough* to vote, at twenty-one you are *old enough* to drink, at fifty-five you are *old enough* to receive a senior citizens discount at food chains, and at sixty-two you are *old enough* to retire and receive social security. However in Jewish law, as expressed in Tractate Avot, Chapter 5, Mishnah 21, Yehuda ben Tema would say: at the age of thirteen, you are *old enough* to be considered an adult in every aspect of life (maybe not for the senior discount). This Mishnah also interestingly says that at sixty, one becomes an elder, at seventy, one becomes white with old age, at eighty, one becomes rare with old age, at ninety, one becomes bent over, and at one hundred, one becomes as if he were dead and had passed away from the world. This is one of the only places in the Mishnah where ages are discussed directly. It is also interesting to note that the last age mentioned, one hundred,

does not say that the person dies at that age, but it is “as if” he is dead, possibly suggesting that the age of one hundred is the oldest one can realistically reach, or the oldest one can live a functional life.

So who is old? In our modern world, age is often dictated by rules and regulations, but when it comes down to our feelings, old age may be described as “you’re as old as you feel.”

Today old age is viewed as belonging in a category that has never existed before. For old age is not seen as the winding down of life, but as a life worthy of living to its fullest. This is mainly due to people living longer and the creation of the concept of retirement. Until recently, people worked their entire lives without the prospect of kicking their feet up in their golden years. In reality, America is one of the few places where retirement is an actuality.

So I ask the question again, “Who is old?” In order to try to answer this, we will delve into our traditional texts to see how “old age” is viewed throughout the centuries. We will begin with a look at biblical sources, and then we will look at *Talmudic* and other later sources.

### **Biblical View of What Constitutes Old Age**

“Who is the oldest person in the Bible?” A question that I often get from children at camps. The answer is Methuselah, who is recorded in the book of Genesis to have lived to be the age of 969. Though Methuselah is the correct answer, there are many others mentioned in the Bible who also deserve attention. Jered comes in second at 962

years, Seth at 912 years and Enosh at 905 years. Then there are the more famous ones such as Abraham who lived to 175 years; Sarah to 127 years; Isaac to 180 years; Rebekah, to around 140 years; Jacob to 147 years, and Moses to 120 years. After Moses however, most leaders lived shorter lives.<sup>1</sup>

Many modern day thinkers do not view these ages literally, but see them as metaphors for living a long life. Some even suggest that the way time was counted is different than the counting system of today. Whatever the case may be, we see in the Bible that living a long life is a sign of blessing and that the ages diminish as we read through Genesis as a sign that humanity has declined.<sup>2</sup>

Though living a long life is seen primarily as a blessing in the Bible, the book of Ecclesiastes shows us a different view of being old:

Remember then your Creator in the days of your youth,  
Before the evil days come,  
And the years draw nigh, when you will say:  
“I have no pleasure in them”;

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<sup>1</sup>Walter Jacob, “Aging and the Aged in Jewish Law,” in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 2.

<sup>2</sup> Ibid., 3.

Before the sun, and the light, and the moon,  
And the stars, are darkened,  
And the clouds return after the rain;  
In the day when the keepers of the house shall tremble,  
And the strong men shall bow themselves,  
And the grinders cease because they are few,  
And those that look out shall be darkened in the windows,  
And the doors shall be shut in the street,  
When the sound of the grinding is low;  
And one shall start up at the voice of a bird,  
And all the daughters of music shall be brought low;  
Also when they shall be afraid of that which is high,  
And terrors shall be in the way;  
And the almond-tree shall blossom,  
And the grasshopper shall drag itself along,  
And the caper berry shall fail;  
Because man goes to his long home,  
And the mourners go about the streets;  
Before the silver cord is snapped asunder,  
And the golden bowl is shattered,  
And the pitcher is broken at the fountain,  
And the wheel falleth shattered into the pit;

And the dust returns to the earth as it was,  
And the spirit returns unto God who gave it.

#### Ecclesiastes 12:1-7

This passage has been seen by commentators as referring to the negative side of old age, deterioration and disability. The book of Ecclesiastes is a pessimistic book that shows us one view of old age, but it should be noted that most of the biblical texts do not take such a position.

The Soncino commentary expresses two interpretations on what the imagery in this passage may mean. In the first one, it is said that Koheleth is describing the waning powers of the organs of the body, using symbolic terms for them. The second interpretation describes the blotting out of the light of life by advancing years as similar to a gathering storm and its effects.

#### **What Do We Call You?**

There are many words which the Bible uses to refer to older members of the community. The most common word is *zaken*, which besides meaning elderly, also means, at its root, beard. This term may initially lead us to a definition of being old, but when we look deeper, we see that this word also implies such meanings as elder, which can be someone of almost any age, possibly referring to learned people. As we will see when we discuss the biblical treatment of the elderly, the terms “to honor and to revere”

are used.<sup>3</sup> Wisdom, *hokhmah*, as seen in Proverbs 1:20-33; and Job 28:12 when personified, is a female figure that is associated with maturity.<sup>4</sup>

### **Biblical Treatment of the Elderly**

The fundamental mitzvah governing how we are to treat the elderly is from the fifth commandment, which states that one must, “Honor your father and your mother.” Also Leviticus 19:3 which states that, “Every person shall revere his mother and father.” According to Ruth Langer in her article, “Honor thy Father and Thy Mother,” these two verbs, k-b-d and y-r-a also appear in connection with commanded human relationships with God. This correlation shows the connection that our relationship with our parents is on the same level as our relationship with God. Showing reverence to parents is equal to showing reverence to God.

Further biblical examples of how one should treat ones parents appear in Exodus 21:15 where it states, “He who curses his father or his mother shall be put to death.” Also in Deuteronomy 27:16 it states, “Cursed be he that dishonors his father or his mother.” Exodus 20:11 states, “Honor your father and your mother, that your days may be long in the land which the Lord your God gives to you.” As we see, these passages relate not just to the elderly but to our parents in general. Specific passages referring to “elders” exist, but not specifically for the elderly, which goes back to the issue that it is not until recently

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<sup>3</sup>Ruth Langer, “Honor Thy Father and Thy Mother,” in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 22.

<sup>4</sup>Walter Jacob, “Beyond Methuselah - Who is Old?,” in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 7.

that “the elderly” have become their own separate group of people with their own needs and concerns. For traditionally, they were not dealt within such a distinctive manner. But we can use these texts as a basis for showing how people should and should not be treated and therefore how people who are our “elders” today should and should not be treated. The one firm statement about the treatment of the elderly that we do have that refers to the aged in our communities, comes from the book of Leviticus in 19:32: “You shall rise up before the hoary head, and honor the face of the old man, and you shall fear your God; I am Adonai.” Though this statement is forceful, we are still not told what constitutes old age except having gray hair.

So how exactly should we treat our parents? What is this reverence or honor that we speak about? It is interesting to note that in the list that tells us to whom we should give charity, the aged are not listed. Old age is not considered a condition of disability, therefore they are not considered needy.<sup>5</sup> From looking at the stories from the Bible, such as Jacob and his children, family members took care of each other no matter what age; accordingly, there was no need to set up a system of taking care of older people. Even though the Psalmist says, “Cast me not off when I am old,” our biblical references support the notion that families were the caretakers of the old.

### **Rabbinic and Medieval Views of the Elderly**

In the *Mishnah*, elders hold positions of authority and exercise power in many cases. For parents, they have some control over their children, even when the child

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<sup>5</sup>Ibid., 8



becomes an adult. The children owe their parents honor and have an obligation to care for their parents. As discussed above, the one place where specific ages are mentioned is found in *Avot*, Chapter 5, *Mishnah* 21. With regard to women we find that in *Masechet Niddah* 1.5, old age is defined as applying to one for whom three periods have passed without any flow.<sup>6</sup>

The following passages are examples of rabbinic and medieval texts that specifically address honoring one's parents and the definition of old. We can look at these texts in many different ways. However, the one thing that is evident is that our tradition has many different perceptions of what constitutes honoring our parents and what defines old age.

In *Sifra Kedoshim* 7:12, which is a part of the genre of *Midrash Halakhah* there is a comment on Leviticus 19:32 which states that "You shall rise before the hoary head, (*seivah*), and honor the face of the old man (*zaken*), and you shall fear your God; I am Adonai":

"You shall rise before then hoary head." The word for hoary head can also be translated as "aged." Possibly, [one would think] even a sinner (*ashmai*). Therefore, we learn [as the verse continues,] *zaken*. A *zaken* is

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<sup>6</sup>Walter Jacob, "Beyond Methuselah - Who is Old?", in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 11.

only a scholar, as it is said, “Gather unto me seventy men from the Elders (*mi-ziknei*) of Israel” (Num. 11:16). Yosi Ha-Galili says: An elder (*zaken*) is only one that acquired wisdom, as it is said (Prov. 8:22): “The Lord created me at the beginning of His way, as the first of His works of old.”

This passage, according to Michael Rosen in his paper, “Standing for the Elder or the Elderly?” tells us that the meaning of *seivah* is replaced with the rabbinic meaning of *zaken*, which for them means scholar. This interpretation, therefore, is being understood as giving respect to the rabbinic class and not to the elderly as such. If we look at the medieval commentary of Nahmanides on Leviticus 19:3, where he cites the divergent opinions of the *Sifre* and the *Talmud*, we see a similar view:

“You shall rise before the aged.” Possibly [one would think] even an elderly sinner (*ashmai*). Therefore, we learn (the verse continues) *zaken*. A *zaken* is only a scholar. This is the language of Rashi and the *Sifra*. Moreover, this is stated in the *Talmud* in tractate *Kedushin*: A *zaken* is only a scholar, as it is said, “Gather unto me seventy men from the Elders (*miziknei*) of Israel.” R. Yosi Ha-Galili says: An elder (*zaken*) is only one that acquired wisdom, as it is said (Prov. 8:22): “The Lord created me at the beginning of His way as the first of His works of old.” We can see that according to both Rashi and the *Talmud* the commandment applies only in regard to a scholar. Onkelos understands the verse in Leviticus to mean:

“In front of one who is learned in Torah you rise and you shall revere the face of an elder.” It therefore appears that he also is of this opinion.

Though we have seen two rulings that support the view that the passage in Leviticus refers only to the scholars, this is not the final *halakhah* on the matter. The *Talmudic* sages quote Issi b. Yehudah, who said that the verse in Leviticus deals with all elderly and not just the scholars. R. Yohanan stated that the *halakhah* is according to the opinion of Issi b. Yehudah: “And therefore it is commanded that all elderly people be given respect, even the *ashmai*.”<sup>7</sup> Elderly here is explicitly described as one who has lived a long life and deserves respect. However, it does not specifically talk about those who are elderly in years.

Maimonides, in the *Mishneh Torah* states:

It is a *mitzvah* to honor a scholar, even if he is not his rabbi. As it is stated: “You shall rise before the aged, and show deference to the old.” A *zaken* is one that acquired wisdom.<sup>8</sup>

Later, however, he adds that:

One stands for one who is an elder by virtue of old age, even though he is

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<sup>7</sup>Michael Rosen, “Standing for the Elder or the Elderly?” in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 105.

<sup>8</sup>*Ibid.*, 106

not a scholar. Even a scholar, that is, a child, stands before one who is an elder by virtue of old age, but he [the scholar] is not required to stand up to his full height, only to rise enough to acknowledge him. We even revere an elderly non-Jew with words and give him a helping hand of support as the verse states: “You shall rise up before the hoary head (aged), and honor the face of the old man.”<sup>9</sup>

In this paragraph, Maimonides calls an old person *zaken hamuflag b'ziknato*. This means he is an elder who is distinguished by his old age, which is a distinction that not only takes into account the amount of wisdom he possesses, but takes into account his age. We see from these texts that the rabbis wanted to equate wisdom with respect, and not with age per se. However, it could be argued through Maimonides' interpretation that both wisdom and age as such deserve respect.

The following texts also express what tradition says about how we should treat our parents and elders:

*Talmud, Kiddushin 30b* states:

Our Rabbis taught: It is said, “Honor your father and your mother” and it is

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<sup>9</sup>Ibid.

also taught, “Honor God with your substance,” thus the *Torah* equates the honor due to parents to that of honor due to God. It is said, “every man will fear his mother and father,” and it is said, “Adonai your God that you fear,” thus the *Torah* equates the fear of parents with the fear of God.

Rambam, *Hilkhot Mamrim*, 6:3 states:

What is the difference between fear and honor? Fear signifies that the child must neither stand nor sit in his father’s place; he must not contradict his father nor decide for or against him. He will not call him by his personal name, neither during his life nor afterwards. What does the word honor signify? The child must provide his father and mother with food and drink and clothing, paid for by the parents. If the father has no money and the son has, he is compelled to maintain his father and mother as much as he can. He must escort his parents in and out, and do for them the kind of service that is performed by servants for their master; he should rise before him, as he should rise before his teacher.

The Rambam in this example seems to be expressing that fear signifies an overall respect on one’s parents, whereas honor represents specific acts designed to maintain one’s parents.

*Kiddushin* 31a states:

Rav Yehuda said in the name of Shmuel, Rabbi Eliezer was asked: How

far does the honor of parents extend? He said to them: Go and see what a certain heathen, Dama ben Netina, did in Ashkelon. The Rabbis sought jewels for the *ephod*, at a profit of 600,000 dinar; Rabbi Kahana taught: at a profit of 800,000 dinar. But since the key was lying under his father's pillow, he did not trouble him.

When Rav Dimi came, he said: He [Dama ben Netina] was once wearing a gold embroidered silken cloak and sitting among Roman nobles, when his mother came, tore it off him, struck him on the head, spat in his face, yet he did not shame her.

This passage, though troublesome, due to the mother's reaction, seems to be showing that even in extreme, possibly irrational acts by a parent, nonetheless, one is still expected to honor the parent.

*Kiddushin* 31b states:

Rabbi Tarfon had a mother for whom, whenever she wished to mount into bed, he would bend down to let her ascend, and when she wished to descend, she stepped down upon him. He went and boasted thereof in the *Beit Midrash*. They said to him, "you have not yet reached half the honor due. Has she thrown your wallet into the sea without your shaming her?"

When Rabbi Yosef heard his mother's footsteps, he would say, "I will

When Rabbi Yosef heard his mother's footsteps, he would say, "I will arise before the approaching *Shechinah*."

In *Mo'ed Katan* 28a, we have a description between an early and a late death and as you will see, we have an actual numerical definition of what constitutes dying young as opposed to dying at a "ripe age" or beyond:

If one dies under fifty years old, that is death by *karet*;

At fifty-two years, that is the death of Samuel of Ramah;

At sixty, that is by the hand of Heaven. Said Mar Zutra: What is the text for this? "You shall come to your grave in ripe age," as the numerical value of the word for "in ripe age" yields sixty.

At seventy, it is the death of the hoary head;

At eighty it is the death of a vigorous old man, for it is written, "The days of our years are three score and ten, or even by reason of strength four score years."

*Shulchan Arukh, Yore Deah, siman 240* states:

**Paragraph four:** What is honor? Feeding them and giving them drinks, clothing and covering them, escorting them in and out. And he must give it to them with a smiling face, because even if he feeds them delicacies

every day but does this with an angry face, he is punished on account of this.

**Paragraph 11:** If he saw his father transgress laws of *Torah*, he should not say to him: “You have sinned against the *Torah*,” rather he should say to him: “Abba, this is what is written in the *Torah*,” as if he is asking him and not warning him, and the father will understand without being embarrassed.

**Paragraph 15:** If his father told him to transgress on the *Torah*, whether it is a positive *mitzvah* from the Torah, or a negative one, even if it is some thing mandated by the rabbis, he should not listen to him.

**Paragraph 18:** A *mamzer* is obligated to honor his father and to fear him. Even if the father was an evil person, he must honor and fear him.

**Paragraph 24:** One is obligated to honor one’s in-laws.

All of the cases just cited under rabbinic and medieval views of the elderly are meant to show what it means to honor, fear and respect your parents and more specifically how those values are supposed to be acted out in reality. Though some of the cases may seem outrageous in modern terms, we need to look at them for their underlying messages; one such message being the elderly of our communities need to be treated with respect and honor for Jewish tradition commands it, even in extreme circumstances. It is interesting to



ponder at this point that the fifth commandment states that we must honor our parents. It does not say one must love our parents. One interpretation that we can glean from that wording is that Jewish tradition acknowledges that some parents may not deserve the love of their children due to cruelty for example. But all parents deserve honor as defined by our passages.

### **Other Halakhic Literature**

There have been many questions asked by people that have been answered in the literature of Reform responsa. One such question raised asks what a child's responsibility is to his or her parents; what are the limits of the commandment to honor one's parents and where is the boundary between independence and filial responsibility? The responsum first responds by acknowledging that the commandment to honor one's parents may come into conflict with other *mitzvot*, commandments, such as Genesis 2:24 which states that "a man shall leave his father and mother and shall cling to his wife," so that they may become one flesh. According to the commentator, David Kimchi, the commandment of establishing a new home takes precedence without voiding the other. The responsum continues by saying that other conflicts could arise with other commandments. One example of this is the conflict between the commandment of honoring parents and the commandment of *aliyah*, which, according to Meir Rothenburg, takes precedence over

honoring parents.

The responsa literature has dealt with such questions in many ways. In the majority of cases, the authorities decided in favor of the children making their own decisions regarding their life. The reason given for this is that they alone could decide what was proper for them. Respecting authority of parents only for its own sake, without any mention of need or frailty as a significant factor, was rejected in favor of helping parents who needed help with sustaining life and health.<sup>10</sup> This line of response can be found both in the responsa of the Middle Ages as well as in the *Shulchan Aruch*.

According to the *Tosefta*, a wife owed her first allegiance to her husband, so honoring one's parent's becomes more the duty of the man. *Sefer Hasidim* says that a young couple should submit to the wishes of the parents. They encouraged children to make a home near their parents, but they were not expected to make unusual sacrifices in order to fulfill this wish. However, they should be close enough to fulfill their needs. But if the father and son do not get along, it was better if they were separated.

The discussion in this particular responsum leads to the view that a balance should be struck between the needs and requirements of two generations. Freedom of the younger generation was seen as important. However, the children were still responsible for caring for the needs of their parents. Though this is true, the children are not at the beck and call

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<sup>10</sup>Walter Jacob, *American Reform Responsa*, (Central Conference of American Rabbis, 1983, New York), #54.

of their parents every desire or whim.<sup>11</sup>

Another question asked in responsa literature asks whether a community can force children to support their parents. The responsum continues with the question that asks whether the community can refuse to support elderly parents on the basis of the children's obligation.<sup>12</sup> According to the responsum, there is a division of opinion between the scholars of the Babylonian *Talmud* and the Palestinian *Talmud* on the issue of financial support. The scholars of the Palestinian *Talmud* thought that children had to support their parents, to show their parents honor and devotion. Therefore, this could be forced by the community. The discussion in the Babylonian *Talmud* also argues for honor and devotion, but differs on the matter of financial support. There are arguments for and against obligatory financial support in the Babylonian *Talmud* present, but the final decision to which the scholars came to was the argument that freed a son from any obligation to support his parents. More emphasis was placed on the devotion and honor than on the financial obligation, although the community could compel the son to give honor and devotion to his parents. However, there are other arguments that show that sons were forced to support their parents financially. The *Midrashim* also take this view and in the

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<sup>11</sup>Ibid.

<sup>12</sup>Walter Jacob, *Contemporary American Reform Responsa*. (Central Conference of American Rabbis, 1983) 44.

end, our tradition also adapted the view of obligatory support.<sup>13</sup>

Some of the later authorities assume that a child will support his parents, but debate over whether such support can be compelled by the community or not became the central issue. The result was that in most cases such giving was seen as a charitable donation, therefore a duty that can be required by the community. Although financial coercion was legitimate in the eyes of the community, the scholars were not so forward about coercing devotion and respect.<sup>14</sup> This point of view may lend itself to the contemporary notion that even though one may have a tumultuous relationship with one's parents, the child is still obligated to care for them. The commandment states "to honor" your parents. It does not state that one is obliged "to love" them.

Returning to the issue of charity, Rabbi Meir of Rothenburg states that charity must first begin with one's parents, before including anyone else. He continues by saying that in medieval Europe, it was the norm to support family members from the tithe which was set aside for the poor. The community could definitely force a son to give such charity. It was even suggested by some scholars, such as Solomon ben Adret, that the synagogue be closed to a son and for him to be shamed publicly until he supported his father. In a compromise, David ben Zimri thought that children should be compelled to support their

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<sup>13</sup>Ibid., 45

<sup>14</sup>Ibid.

parents in a way that is appropriate to the financial status of the children. Later on, Moses Sofer adapted this point which also included that anything that the son possessed must be placed at the disposal of the parents.<sup>15</sup> This particular responsum concludes with the point that communities may go to considerable lengths to force children to support their parents. This particular responsum also understands that while the traditional view mentions only a son's obligation, the rabbi's expand it to include daughters as well. They conclude with saying that if the community does not succeed in getting the children to respond to their parents in this way, then it is the community's obligation to support the parents.<sup>16</sup>

A third responsum, found in, "*Questions and Reform Jewish Answers*," asks the following question:

Many Jewish institutions for the elderly require that all assets be placed into the custody of the institution before placement can take place. This has resulted in a large number of elderly individuals either refusing to use the institutions or giving their assets to their children before placement. This latter method is often used as a way of evading financial responsibility. The individuals then either become wards of the state or place an undue burden upon the Jewish community which supports

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<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

the institution. What is the Jewish attitude toward this kind of subterfuge?

(Howard Fagin, Temple Sinai Atlanta GA)

According to the responsum, there are two points at issues. The first one is the issue of *genevat daat* which can be translated as deception but here implies a kind of legal theft. Relocating one's possessions so as to appear to no longer own them, falls under this category. However, the responsum also acknowledges that the system for which these homes were created no longer financially works in the way it was intended to originally, which was to help the poor in general, and not to force people into poverty by the system. These are some of the economic considerations found in the tradition which bear on this question.

The *Talmud* developed a system for those in need to receive support from the second tithe. One had to fall below a certain level financially in order to receive this support. However, the person may keep his/her home, essential household goods, and clothing. But if the household goods are made of gold or silver, they are to be sold and replaced with ordinary ones. The assets must also be accessible for the person to use, for if they are not, then they cannot be counted toward what the person owns. This *Talmudic* reasoning works when there is sufficient public assistance available to the person in need. In short, it demands the depletion of one's assets, but guarantees a safety net for the

individual. Furthermore, according to the tradition, we are not obliged to provide luxuries for the poor, but if the person was wealthy at one time, then some luxuries should be provided in order to help make their situation more bearable. Although these talmudic rulings are relevant for our question, the responsum on this issue is also quick to note that these rulings were developed to deal with the poor in general, and not with people who were forced into poverty by the system set up to protect them; the healthcare system.

Psychological implications are also relevant in this case. Becoming suddenly dependent on the state or others can be devastating to a previously self-sufficient person. This can lead to depression and possibly to an early death as well. The children of these people also feel a psychological impact as a result of their parents' situation. They see the final years of their parent's life not as a source of relaxation, but as a time that robs them of all their life savings in a matter of only years.

Nevertheless, the subterfuge noted above is wrong. If the system no longer works, then it must be changed. However, we must deal with the reality set before us. Discouraging *genevat daat* is crucial. So, if the parent leaves all his/her assets to his/her children before they enter the home, then the children will have an increased financial obligation. As we mentioned in the earlier responsa, Jewish law makes the demand on children of contributing donations towards the care of parents.

In short, our legal tradition holds the view that though we do not expect the

children of aged parents to bear the full burden of financial responsibility, they are expected to help to support their parents, and they are expected not to abandon them financially.

In other Halakhic literature, great teachers such as Maimonides also spoke about the *mitzvah* of honoring ones parents. The following is what Maimonides wrote of the *Talmudic* teachings:

What is the extent of honoring one's father and mother? Even if they took his pouch of gold coins and, in his presence, threw it into the sea, he should not reproach them or show distress or anger in their presence, but rather he should accept the decree of Scripture (God) and be silent.

What is the extent of revering them? Even if one were wearing expensive clothing, sitting at the head of an assembly, and one's parents came, tore his clothes, hit him on the head and spit in his face, he should not reproach them. Instead, he should be silent and have reverence and fear of the King, the King of kings, who has commanded him thus to revere his parents. For even if a king of flesh and blood had decreed something that hurt him more than this, he could not struggle against it; so how much more so is this the



case regarding the decree of the One who spoke and the world came to be according to His will? <sup>17</sup>

The case that Maimonides discusses is an extreme case that should be seen as such. While this is true, such cases do exist. Maimonides, acknowledging this juxtaposes it with the legal tradition that parents are under obligation to make it possible for their children to fulfill their obligations to show honor and reverence.<sup>18</sup> Parents need to be reasonable with their requests and even give up a little honor in order for their children not to falter. If a parent is physically abusive to an adult child, then a court can excommunicate the parent for the abuse makes it virtually impossible for the child to honor and revere their parent. Although in these extreme cases, parents may be expelled from their community, the *halakhah* is steadfast in its view that children are obligated to honor and revere their parents. It is interesting to note once again that the commandment is to honor and revere ones parents. It does not say that one has to love one's parents. Possibly the *Torah* saw the distinction between honoring, revering and loving your parents and sought to guarantee the essential needs of the parent without obligating love, which may be seen as earned, not commanded.

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<sup>17</sup>Maimonides, *Hilkhot Mamrim* 6:7.

<sup>18</sup>Ruth Langer, "Honor Thy Father and Thy Mother," in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 29.

If a parent is mentally ill or senile, as might be the case in these extreme examples, then one cannot blame the parent for his/her actions, and it is still the obligation of the children to care for their parents' needs. This is true because the way one behaves towards parents reflects on one's relationship with God.<sup>19</sup>

However, there are extreme cases in which the parents' behavior towards their children is so far out of reasonable bounds, that removing oneself from the situation is, in essence, honoring and revering one's parents. Maimonides understands such a scenario to have existed from the *Talmud* with the story about the Babylonian Rav Assi. The story is as follows:

Rav Assi had an elderly mother. She said to him, "I want jewelry." He provided it for her. "I want a husband." He replied, "I'll search for one for you." "I want a husband who will be as handsome as you." He left her and went to the land of Israel. He heard that she was following after him, so he went to Rabbi Yohanan and asked him, "Is it permissible to leave the land of Israel?" Rabbi Yohanan replied, "It is forbidden." Rav Assi continued, "What if I am going to meet my mother?" He replied, "I do not know." Rav Assi waited a bit, and then went back again. Rabbi Yohanan

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<sup>19</sup>Ibid.,30.

said to him, “Assi, you have decided that you want to go. May God let you return in peace.”

Rav Assi went to Rabbi Elazar and said to him, “God forbid, is Rabbi Yohanan angry with me?” Rabbi Elazar asked, “What did he say to you?” He replied, “May God let you return in peace.” Rabbi Elazar replied, “If he were angry, he would not have blessed you.” In the meantime, he heard that it was his mother’s coffin that was coming. He said, “If I had known, I wouldn’t have had to leave.”<sup>20</sup>

This story shows that Rav Assi is torn between two *halakhic* obligations. The first one being to honor and revere his mother and the second one of living in Israel. Initially, living in Israel takes precedence because being around his mother is nearly impossible for him. This decision proved to be very difficult when he heard his mother was coming to Israel also. This story makes clear the struggle that adult children have when deciding to leave their elderly parents behind, even if they leave out of necessity.

What is crucial here, however, is the point that the *Talmud* is saying that what drove Rav Assi away was his mother’s unreasonable demands. According to R. David

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<sup>20</sup>Talmud, *Kiddushin* 31b.

ibn Zimri's writings on Maimonides, these inappropriate demands were also ones she could not make of a stranger.

Rav Assi accommodated his mother as far as he could, but when her demands became insatiable, he no longer needed to give in to his mother's unreasonable demands.

Maimonides interprets this story by placing the mother in the same light as the parent who throws away the child's money or embarrasses the adult child but who must be treated compassionately.<sup>21</sup>

Maimonides writes:

One whose father or mother has become mentally impaired should try to treat them according to their mental ability with pity for them. But if he cannot stand it, because they have become too deranged, he should leave them and go, directing others to treat them appropriately.<sup>22</sup>

Maimonides' interpretation, which became mainstream *halakhah*, is that filial obligations to honor and revere your parents should be honored even under extreme circumstances. In Rav Assi's situation, he tried to honor her, but she pushed him too far

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<sup>21</sup>Ruth Langer, "Honor Thy Father and Thy Mother," in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 32.

<sup>22</sup>Maimonides, *Hilkhot Mamrim* 6:10.

with her demands. When the absolute limit is reached, as in the case of Rav Assi, then it is acceptable under Jewish law for the child to leave his/her parent so that the relationship will not deteriorate and the child will not be forced to break the commandment of honoring and revering their parent. Although the child is permitted to leave, the child is still obligated to provide the care of his/her parent by arranging others to do so in an appropriate manner. This is where in our day and age nursing home facilities come into play. This type of care is appropriate and even desirable under Jewish law when the children can no longer take care of their parent(s). For the risk of not showing the honor and reverence we have discussed thus far is one we must avoid at all costs.

Although the question of when to invite a third party into the care-giving relationship with our parents is a personal decision, one should consult our tradition in order to make educated choices that all parties can accept. The *halakhah* specifically tries to help to establish guidelines that make these decisions easier. It has a realistic approach to care-giving even in the world of the 21<sup>st</sup> century. The approaches mapped out are meant to be guidelines to help the older members of our society to live out the latter parts of their lives with dignity and self-esteem. When making these difficult decisions, we must make sure that our motives are pure and selfless and in the best interest of our parents; for one must remember that they are the ones who helped bring us into this world, along with God.

## **Chapter 2 - But They're Only Friends!! - Case Studies**

"In good times, in bad times, I'll be on your side forever more; That's what friends are for." - Dionne Warwick

How many times have we heard people refer to older people's friendships as "cute?" "Isn't it cute that Marge and Tom are friends?" I always thought that statement was not only bizarre, but patronizing and rude. I wondered, at what point does a friendship turn from being nice to being cute? Then I thought about our language when we refer to children. When two three-year-old children play together in the sand box, we look at them, smile and say, "Isn't that cute?" Then we grow up and it seems as if the terminology that we ascribe to children disappears. But then at some point, it returns. I would dare to say that this is not something that our society should be proud of. Older people are not "cute," and they should be treated with respect.

This chapter will look at four case studies about the issue of how we approach the friendships that our older loved ones make when living in nursing homes. They will address issues such as assaults on dignity associated with aging as well as how to respond to decisions our loved ones make.

## **CASE #1**

### **The Story:**

Rebecca is a seventy-nine year old woman who moved into a nursing home facility eight months ago, when a fall left her unable to take care of herself. In her time there, she met David, an eighty-seven year old gentleman who has been at the home for several years. When Rebecca arrived, David was the first person on their floor to greet her and show her around. The floor that they live on is for residents that are considered the highest functioning in the home. This means that the residents are there for a variety of medical ailments, but mobility of the residents is at its greatest. Both residents have lost their spouses to cancer and both residents have children and family who visit them on a consistent basis.

### **The Residents:**

Rebecca and David are two people who have developed a lovely friendship. Neither of them are looking for what might be considered an intimate relationship. They talk with one another, eat meals together, go to activities together and share their lives with each other. In their view, they give each other companionship.

### **The Family:**

Rebecca's family is worried about this relationship and what it could possibly mean. They see David as a man who is suddenly taking up much of Rebecca's time. He is older and the family fears that if he dies, Rebecca will experience another hard loss.

The family is also experiencing feelings of jealousy, for Rebecca's husband of over 50 years was the only man that Rebecca was so close with. The family has requested that the staff discourage this friendship on the grounds that they do not want their loved one getting intimate with another resident. They have requested that David and Rebecca not be left alone together.

David's family is supportive of this friendship and see no threat in their having a friendly companionship. In their view, this friendship is emotionally helpful for their family member and it is a welcome relationship. David's family is not concerned on any level with this turning into a romantic relationship, if David and Rebecca decide to take that road.

**The Staff:**

The general consensus of the staff is that there is no harm being done in this friendship. No one's rights are being violated, and both Rebecca and David are willing participants in this friendship. The staff has no intention of separating the two of them, but they are under considerable pressure from Rebecca's family. They are now seeking information about what the rules are pertaining to this kind of situation so they can better deal with everyone involved.



## **CASE #2**

### **The Story:**

Fred is a seventy-six year old resident who has been at this nursing home for a little over a year. Similarly, Sadie, a seventy-four year old resident has been at this nursing home for just under a year. Fred has many physical ailments that force him to use a wheel chair. Mentally, Fred is functioning at 100%. On the other hand, Sadie is a resident on the Alzheimer's unit. Fred and Sadie met in the dining room at dinner. Both are widowed for some time. Fred has children who visit once in a while and Sadie has one child who visits once a week along with a few other family members.

### **The Residents:**

Both Fred and Sadie enjoy spending time with each other and look at their relationship as a friendship and nothing more. Fred enjoys being with Sadie and admittedly enjoys looking after her. Sadie looks forward to spending time with Fred when she remembers that he is her friend. The memory issue with Sadie does not seem to bother Fred. He accepts her for who she is and looks forward to the few times when Sadie remembers him and past conversations that they have had.

### **The Family:**

Fred's family is not very involved in his life and has not expressed any concerns about Fred's life at the nursing home. Sadie's family on the other hand has raised some concerns about this friendship. Sadie's daughter is concerned that her mother may not

have the power to make her own decisions and therefore may be taken advantage of by Fred. Though she has met Fred and admits that he seems like a person with no will ill towards her mother, she feels as though she needs to protect her mother, and her mother's safety and well being is more important than the friendship.

### **The Staff:**

The staff initially was concerned about this friendship but have come to the conclusion that both residents have the right to spend time with each other. The staff sees no harm or potential harm being done to either resident, so they do not feel as though they have the right to interfere. However, Sadie's daughter has been pressuring the staff to discourage this friendship. She also threatens to take her mother out of the home if her wishes are not complied with.

### **Case #3**

#### **The Story:**

George is an eighty-eight year old gentleman who currently lives in the nursing home for about two years. Sarah is an eighty-six year old woman who has lived at the nursing home for one and one half years. Both are there as the result of falls that broke various bones. They met because they both are on the rehabilitation floor. George has been a widower for many years, but Sarah is still married to a wonderful man who gets to visit her whenever he can. Her husband is also physically disabled so he can only get to visit her on average two times a week.

### **The Residents:**

Both George and Sarah see their relationship as a friendship due to circumstance. They consider themselves fortunate to find friends in the nursing home. They are not only friends with each other, but there are also a few other residents that they spend time with.

### **The Family:**

George's family includes his three children and his sister. They think it is wonderful that George has settled into the nursing home and has found friends. Sarah's children on the other hand has concerns with her friendships and especially the one with George. Though they know that her relationships are just friendships, they are worried about Sarah's husband's feelings and the possibility of what the friendships can turn into. They are torn between the happiness of their mother, but also the happiness of their father. They are at a loss as to what to do. Their father does not seem aware of their mother's friendships, and the children want to keep it that way until they can talk sense into their mother.

### **The Staff:**

The staff sees no issue with the relationship between George and Sarah, but have been alerted by Sarah's children that they are not happy with this friendship. The children asked if the staff can discourage this friendship. The staff, not wanting to upset Sarah's family, decided to speak with the director of the home. The director then decided

to speak with the family after the family kept calling and complaining. The director had to explain to the family that he had no power to stop any appropriate behavior that the residents willingly are engaged in. For the residents were protected under the Patients Bill of Rights. Upon hearing that from the director, Sarah's children decided to take their mother out of the home and place her in another home. George and Sarah never saw each other again.

#### **Case #4**

##### **The Story:**

Todd is a seventy-nine year old resident living in the Alzheimer's unit in this nursing home for ten months. Joan is an eighty-two year old resident who also lives in the Alzheimer's unit. She has been there for almost two years. Both Todd and Joan enjoy spending time with each other and act as nothing more than friends.

##### **The Residents:**

Todd functions at a higher level mentally than Joan and realizes his medical situation to some extent. He enjoys his friendship with Joan, who is low functioning due to her disease. Todd likes being friends with Joan and helping to take care of her. Joan likes it when anyone is nice to her. She often does not remember who Todd is. However, that does not seem to bother Todd.

### **The Family:**

Todd was married for 32 years before he and his wife divorced. They had four children, two of whom who live close by. All of Todd's children support their father and see nothing wrong with his taking care of Joan. They appreciate the friendship.

Joan was married for a similar length of time before her husband passed away. She and her husband had two children, both of whom live out of town. However, they visit often and keep aware of their mother's health and well being. They too appreciate Todd's friendship with their mother and see no problems with the friendship.

### **The Staff:**

Interestingly, it is the staff who has concerns about Todd and Joan's friendship. There is a rule in this unit that everyone tries to be friendly with each other. Independent friendships that happen can occur but only as a small part of the residents' lives. The theory behind this rule comes from the thought that in order to create community, the focus must be the entire community. The staff therefore tries its best to separate Todd and Joan and to have them spend time with other residents for a good part of the day.

We have four case studies presented here. All of these cases reflect actual people, though their names have been changed, and they represent a larger community of people where such scenarios happen very commonly around the country in most nursing homes. In the first case, we have a scenario in which we have two individuals who are of sound mind and who choose to be friends with each another. One of the families involved feels

a sense of jealousy and they are putting their concerns over the well being of their loved one. In this case, the home is guided by the Patients Bill of Rights and although the concerns of the families are important, they cannot override the residents' wishes.

In the second case, we have a slightly different scenario. We have one resident who has Alzheimer's, a disease that makes their mental functions limited over time. The other resident is fully functioning mentally. The family of the Alzheimer's resident has concerns that their loved one not be taken advantage of. The staff is under pressure here to make the family happy, but are also aware that if no inappropriate behavior is occurring, then both residents' are also protected under the Patients Bill of Rights.

For the third case, we have two fully functioning adults who decide to become friends. When one of the families becomes upset because they perceive this friendship as a threat to their family relationships, they decide to remove their loved one from the home. A right that they have assumed for themselves, though under law, their loved one could have fought, but did not.

In our last case, we have a situation where the family has no concerns with this friendship. It is the staff who has expressed concern. The residents who live on the Alzheimer's unit are restricted under the floor rules to socialize with as many people as possible. Individual friendships that want to exist solely are discouraged.

The following are some of the many issues these cases raise for all of the parties involved:

For the Residents - Where does their personal autonomy come into play?; What legal rights, if any, do they have if family members prevent them from doing what they wish?;

Are the parents obliged to help create Shalom Bayit and therefore give in to their children's wishes?; What does Jewish law have to say about the parents role?

For the Family - What rights do they have in the decision making process for their parents?; What legal rights, if any, do they have in making decisions for their parents?; What does Jewish law have to say about the role of children in treating their parents?

For the Staff - What are the legal implications for the nursing facility if they choose to support one party or the other?; What are the ramifications for the nursing facility in how they are viewed by other residents and their families as well as the community if they side with one party or the other?

In all of these cases, the residents by law are protected under the Patients Bill of Rights, which we cited in the introduction to this thesis. However, nursing homes will generally try to accommodate the family needs first, even if it goes against the patient's rights. Then there are cases like our last one where it is the home which can be seen as violating the rights of the individuals. The scenario becomes harder to deal with when there are residents involved who have limited mental functioning.

We know that secular law can address many of these types of cases, but we also know that reality may play out differently. When it is the family that is paying the bills, it is the family that tends to believe that they have a voice in decisions made on behalf of their family member. And it is the nursing home which tries to accommodate the family, because it does not want to lose any residents to other homes in the area.

Thus, if we find ourselves as family members dealing with such situations, what

else can guide us in making the right decision for our loved ones, even if it does not meet our needs, but it is the right one for them? The answer lies in the first chapter of this thesis which examines extensively how we view the elderly in our society and what it is meant to honor our parents. Most of the questions we have asked allow for numerous answers that could be given. However, we know that Jewish law takes very seriously the commandment to honor one's parents. Our tradition holds this in high regard and stresses the fact that children in most cases should honor their parents' wishes. Children are also obliged to revere their parents and never cause them embarrassment. In today's world however, honoring parents' wishes may not be a reality, but revering them and never causing them any sort of embarrassment is a value that has no reason to be changed. That value needs to be upheld in any decision that we make for our loved ones. It is appropriate to stress the fact that when we make our decisions, as thoughtful and caring Jews, they should be based on careful consideration of what it means to honor our parent's, as defined in the previous chapter.



### **Chapter 3 - Is *THAT* Allowed In A Nursing Home? - Case Studies**

“You shall rise before your elders and allow the beauty, glory, and majesty of their faces to emerge.” -

Danny Siegel’s translation of Leviticus 19:32

In American society, the topic of relationships and specifically sexual relationships have had many interesting opinions attached to them throughout the years. Though we consider ourselves a free society and open to diversity, the reality of such a claim can be challenged in many areas of life. For those who believe that sex is not only for procreation, it is viewed as a right for all adults to partake in if they so choose.

But what happens if we broaden the boundaries about sex and include the possibility of sexual relationships among the elderly population? This includes not just our grandparents who still live at home, but also residents of nursing homes. Residents who are either married and living together at a home, or unmarried and want to “date” other residents? When I asked such questions throughout my research, they responses were all the same. Either they could not believe that elderly people still had sex, or were still able to have sex, or they believed that if the possibility was there, it only involved married residents with each other. For if, as I was suggesting, other residents who were not married decided to engage in this behavior, that would be considered improper behavior. When I asked what was so wrong about it, quoting back to them the reasons they gave me why it was OK for other adults, they could not give me an answer. A look would appear on their faces that told me that either they never thought about it before, or

never would expect it. One person, who dared to put it in words, said plainly, that it was just “gross” and “not right.”

Intriguing for me were the responses I received when I talked with residents of nursing homes. I think I expected a general consensus that sex and meaningful intimate relationships were basically a non-issue and not a priority. Though I did get that response from many people, the percentage that gave me another answer was quite amazing. About 40% of the residents I spoke with either engaged in relations with other residents, whether they were their spouses or not, or said that they would like to if the “right person” came along that developed into an intimate relationship. None of the residents promoted random sexual liaisons, but simply the human desire to love again and to be loved and touched.

Ken Dychtwald, who wrote the book, *Age Power*, cited in “Older Adult Sexuality,” an unpublished article written by Rabbi Richard Address, stated that: “Today, with the postponement of old age that is being caused by extended longevity, we are witnessing a new life stage - *middlescence* - rising up between 40 and 60. Like adolescence, it is emerging because a sizable group is not quite ready for life’s next stages - in this case, late adulthood and old age. Also, like adolescence, this new middlescence will likely turn out to be a period of high-spirited growth and ascension, not retreat and decline.”<sup>1</sup> Dychtwald continues to say that “current research is proving that men and women continue to feel sexy and sensual in later life. While the statistics show a slight

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<sup>1</sup>Ken Dychtwald, *Age Power*. (Tarcher/Putnam. New York City, NY. 1999). Cited from, “Older Adult Sexuality,” an unpublished article for the CCAR Journal written by Rabbi Richard Address.

decrease in sexual activity with increasing age, the facts are far from what the myth would have us believe.”<sup>2</sup> Everyone needs intimacy, but one needs to further define intimacy as not just intercourse, but also as human touch and areas of the non-physical. For these other behaviors are of special importance when we are talking of residents who have severe physical disabilities and/or dementia. According to Rachelle Dorfman, “It is a myth that sexual intercourse is the only fulfilling or ‘real’ sex...A great number of elderly without partners or with very ill partners report pleasure derived from fantasy and self-stimulation. In addition, a number of elderly people...derive tremendous sexual satisfaction with their partners from physical intimacies that do not include intercourse.”<sup>3</sup>

The Hebrew Home for the Aged in Riverdale, N.Y. has even developed a model program that has the goal to affirm the sexual expression of its residents. “Residents have the right to seek out and engage in sexual expression among other residents and visitors. They have the right to obtain materials with sexually explicit content such as books, magazines, videos, and drawings. Access to private space and professional counseling in support of self or others are also defined as resident rights.”<sup>4</sup> Rabbi Address in his writings suggests that it may be time to discuss the development of a document that is similar to the medical living will, which would convey a couple’s wishes and desires

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<sup>2</sup>Ibid.

<sup>3</sup>Rachelle A. Dorfman, “Aging In The 21<sup>st</sup> Century.” (Bruner/Mazel: New York City, NY. 1994). Cited from, “Older Adult Sexuality,” an unpublished article for the CCAR Journal written by Rabbi Richard Address.

<sup>4</sup>Daniel A. Reingold, “Rights of Nursing Home Residents to Sexual Expression.” Clinical Geriatrics. Vol.5. No.4. (April 1997) Cited from, “Older Adult Sexuality,” an unpublished article for the CCAR Journal written by Rabbi Richard Address.

regarding how one's personal life may be conducted if the other spouse is institutionalized with Alzheimer's or dementia.<sup>5</sup>

Rabbi Address continues with an idea that it may be time to look at the issue of sexual relationships that occur between a married person and someone other than his/her spouse. He talks about an article written by Rabbi Daniel Schiff that suggests that not all cases of adultery require the same response. Schiff creates several categories of adultery. One such category is "circumstantial" adultery. This kind takes place under extraordinary conditions such as serious physical or mental impairment of a spouse. Schiff says that in this case, the person going into the sexual situation would be conscious of what he/she is doing. The example used for this case is the following: "If the spouse of the comatose patient finds a committed partner with whom a sexual relationship is shared, adultery will be the result, though it is an adultery that arguably might warrant a moral response different from that given to other categories."<sup>6</sup> Whether we agree with this definition or not, at least it opens up again the possibility of needed dialogue. However, dialogue does not mean that we can talk ourselves into anything we wish. One of the basic questions we need to ask ourselves here is whether we are going to pick and choose among basic moral mandates, which classical Reform Judaism was as absolute as Orthodoxy if not

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<sup>5</sup>Rabbi Richard Address, "Older Adult Sexuality" (Unpublished article for the CCAR Journal).

<sup>6</sup>Rabbi Daniel Schiff, "Separating the Adult From Adultery."- Marriage and its Obstacles in Jewish Law. Walter Jacob and Moshe Zemer, ed. Freehof Institute of Progressive Halakhah. (Rodef Shalom Press. Pittsburgh, PA: 80.) Cited in, "Older Adult Sexuality," from an unpublished article for the CCAR Journal written by Rabbi Richard Address.

more so. Does the fifth commandment trump the seventh commandment? I am not claiming to know the answer to these questions. However, I feel the need to pose them for debate.

Even though some residents have the desire for intimate relationships, nursing homes can have rules about this behavior, and more common, families have a lot to say when it comes to such behaviors. The following are four such cases that I came across in regard to this issue.

#### **CASE #1**

##### **The Story:**

Beth is an eighty-two year old resident who has lived at the nursing home for two and a half years. She came there as the result of a fall that fractured her pelvis. Henry is an eighty-nine year old resident who has been at the nursing home just a few months. He entered the home with a variety of medical problems. Both Beth and Henry have had spouses that died many years before. Their initial friendship has blossomed into a romantic relationship. Beth has family who consistently visits her. However, Henry only has remaining family in another state.

##### **The Residents:**

For Beth and Henry, their blossoming relationship has meant having companionship, someone to count on and the possibility of being romantic which neither

of them has had the opportunity to explore since their spouses have died. They do not feel as though they are “too old” to have a relationship and feel that it is their right to engage in a relationship.

### **The Family:**

Beth has two children who visit her on a consistent basis. Her daughter is supportive of this relationship and sees no harm in it. However, Beth’s son does not think such a relationship is appropriate in a nursing home facility nor for his mother, who in his eyes should be focusing on her health.

Henry has one child and other various family members, but none who live nearby or who are involved in Henry’s life.

### **The Staff:**

The staff has mixed views on this relationship. Professionally, they see no harm coming from this relationship. However, some of the nurses personally feel that such a relationship is inappropriate. Nothing has been said or done in either encouraging or discouraging the relationship.

## **CASE #2**

### **The Story:**

Ruth and George have been married for over sixty years. Three years ago, Ruth entered the nursing home due to chronic health problems that meant she could no longer

live without constant medical attention. Among Ruth's ailments, she has a heart condition that limits her physical activity greatly. George still lives in their home but comes to see Ruth every day. They have three children, two of whom live nearby and visit on a regular basis.

### **The Resident:**

Ruth is 100% in control of her mental faculties. Though she understands the need for her to be in the nursing home, she yearns to be with her husband at home once again. However, she knows that will never be a reality. Ruth and George were discovered to still have an intimate sexual relationship. Though the nursing facility tends to avoid the issue when it comes to married residents, Ruth's doctors have tried to convince her not to partake in this activity for it could have negative consequences in terms of her heart condition. However, Ruth believes that she and George have the right to their relationship in this manner and after discussing this with George, they have decided to take the risk.

### **The Family:**

Needless to say, Ruth and George's children are upset about their parents' decision. Though they understand that their parents have the right to be intimate, they do not agree that this should take precedence over their mother's health. They see this decision as irresponsible on both their mother's and their father's part. One of their children even sought legal advice to find out if they can legally prevent their parents

from, in their eyes, taking this potentially deadly risk.

### **The Staff:**

The staff agrees that the risk is high that Ruth may suffer medical consequences. However, they have no legal recourse to prevent the couple from this activity. Both the husband and wife are of sound mind and have the right to go against medical advice if they so choose.

### **Case #3**

#### **The Story:**

Tim is a sixty-seven year old man who has lived in the nursing home for a little under a year. He entered the home due to complications with his emphysema. Jon is a seventy-three year old man who has lived at the nursing home for only about three months due to an acute heart condition. Tim is open about his being gay and has been for the last 30 years. Jon on the other hand, is not openly gay. He confided in the staff and to a few friends in the home, but Jon's family does not know that this is the case. Tim has never been married, whereas Jon was married for over 30 years. He has been widowed for over five years. Jon has two grown children. One lives nearby and one lives overseas.

#### **The Residents:**

Tim and Jon met when Jon first came to the nursing home for care. They live on the same floor and at first became good friends. However, both residents want the friendship to develop into a romantic relationship, but Tim knows from experience that



such a situation cannot be explored openly. No one has ever given Tim trouble about his sexual preference, as long as he did not act on it. Jon on the other hand feels as though he will be stigmatized if the general population knew that he was gay, and especially if his family found out. However, Jon has expressed to Tim that he would be willing to try a relationship, as long as it was kept quiet. Tim agrees though he does not like the secrecy.

### **The Family:**

Tim's family only consists of a sister who visits him once a week. She is supportive in all areas, including his sexual preference.

Jon's family does not know that he is gay, and he does not plan on ever telling them. He believes that not only will it shatter them, but that they may very well disown him if they found out. Considering Jon's health situation, that would be more than he could bear.

### **The Staff:**

The staff is guided by The Patients Bills of Rights, and though many staff members disagree with homosexual lifestyles, they try to exist on a "don't ask, don't tell" situation.

#### **Case #4**

##### **The Story:**

James is a seventy-seven year old resident who has lived at the nursing home for close to three years. What brought him to this facility were his chronic arthritis and his need for consistent help in taking care of himself. James has been widowed for over four years. They did not have any children together, though he has one step-daughter who comes to see him on occasion. Freida is a seventy-two year old resident who came to the nursing home almost one year ago. She came when a fall broke her hip. However, various other health issues have kept Frieda living at the nursing home. Frieda is still married to her husband of over 40 years. Her husband still lives at home. Frieda and her husband have four children together. Only one however, lives nearby.

##### **The Residents:**

James and Frieda met at a social program about four months ago. Their friendship has turned into a romantic interest on both of their parts. They feel as though they have a right to their privacy and they do not feel as though they need to ask permission for any of their behaviors. Frieda's rationale is that her relationship with her husband was "over" years ago and since he rarely visits her, she wants to move on with her life. When asked about the option of divorce, she says she would like one, but it would be too complicated emotionally for all the parties involved.

**The Family:**

James's step-daughter is the only family he has. She does not know anything about James' relationships, and has no interest in getting involved in James's personal life.

Frieda on the other hand receives frequent visits from one of her daughters, and has visits from her husband only once a month due to his own health concerns. Frieda's daughter is frantic about this situation and feels as though her mother's relationship is inappropriate. She has consulted her siblings who agree with her and together they have decided not to tell their father what is going on. They are afraid it would "kill him." Frieda's daughter has asked the nursing home to discourage this adulterous behavior. They family argues that a Jewish nursing home should not condone such behavior.

**The Staff:**

The staff which includes nurses, doctors and the director have researched Frieda's daughters complaint. They have concluded that Frieda is of right mind and therefore free to make the decisions she is making. With this being said, the nurses do not feel as though the situation is right and are angry that they cannot put a stop to it. One nurse, after being told not to interfere when she told Frieda how she felt, left the nursing home for another job.

All of these cases, as in the previous chapter, are examples of true scenarios and one's that happen very commonly around the country in most nursing homes. In the first case, we have two single individuals who choose to explore a romantic relationship but have come up against opposition from both family and staff. In the second case, we have a married couple who want to continue their romantic lives even though there are health concerns. They believe that they have the right as a married couple to make this decision. In our third case, we have a different situation, though it is a scenario that takes place more frequently than people would expect. Homosexual relationships within nursing home settings are heard of, and will clearly be more prevalent as future generations, which have enjoyed broadened acceptance of homosexual rights, get older. Our fourth case is also a highly controversial issue since we deal with the ethical issue of adultery. Adultery, as seen by most, as well as being one of the commandments, has negative connotations and is not condoned by many people even in the most extreme cases.

All four cases can be seen as protected under the Patients Bill of Rights. The main issue presented in all 4 cases is based on our own understanding of ethical behavior. What is ethical behavior and whose right is it to set the standards? For case number two, the best interest of the patient's health could be invoked on the grounds that the resident is endangering her life. In case number three, the legitimacy of homosexual behavior could be argued. Should such relationships be sanctioned? Are they proper? Whose decision is it to decide? In the fourth case, an adulterous affair also begs further questioning when deciding what is in the best interest of a person. As a liberal rabbi, case number three is not an issue for me. I believe that homosexual relationships are just as

valid as heterosexual relationships. However, case number four presents an interesting challenge for me as a rabbi. I can see the argument the Rabbi Schiff makes about different categories of adultery, but I am hesitant to imply that the fifth commandment somehow overrides the seventh commandment. It is a question that I will have to think more about.

These cases present much harder scenarios than in the previous chapters. So what do we do when we encounter them in our families? Right and wrong in many cases are morally subjective. So how do you evaluate the actions and whose job is it to do the evaluation? If you can make those decisions when you are thirty years old without a major threat of intervention, then why is it different when you are seventy? According to Jewish sources, it does not have to be. The texts cited in chapter one support the rights of the individual. The sources also tell us that revering one's parents is a form of revering God. However, it can be argued that such decisions cannot be made by people who do have the ability anymore to make rational decisions. Once again, it needs to be stressed as it was in chapter two, that no matter what course of action families and facilities take when making decisions for a person, that person's dignity and interest must be the focal point of the discussion. We need to constantly look at our tradition to help us make these hard decisions or at least to understand what we need to do or not to. We are commanded to honor our parents as defined in the first chapter.

**Chapter 4 - So What Are My Rights? - A Discussion Of the Larger Issue Of**  
**Personal Autonomy vs. Paternalism As It Applies To Married And Single Residents.**

I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not other(s') acts of will. I wish to be a subject, not an object.. I wish to be somebody, not nobody. - Isaiah Berlin

**Paternalism**

The concept of paternalism, as distinguished from the reality, has existed at least since the time of Aristotle, who argued in his *Politics*, written in the fourth century B.C.E., that some degree of paternalism is justifiable in a society in which certain elite individuals are clearly more informed and wiser than others. The classic commentary and critique of paternalism appeared in the nineteenth century in John Stuart Mill's essay *On Liberty*.<sup>1</sup> After that publication appeared in 1859, Mill became known as the most noteworthy spokesperson for anti-paternalism, particularly in regard to excessive government intervention. In his essay, Mill presents what has since become the classic critique of paternalism: "The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any

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<sup>1</sup>Frederic G. Reamer, *Ethical Dilemmas in Social Service*. (New York: Columbia University Press, 1990), 80-81.

member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant...Over himself, over his own body and mind, the individual is sovereign.”<sup>2</sup>

Ever since this essay was published, there has been ongoing debate about the nature of paternalism and its justification.<sup>3</sup> For our study of nursing home residents, some of the many questions being asked are, “Do residents of nursing homes have the right at least to participate in decisions that affect their well being? Does the resident have the right to refuse certain treatments?

Gerald Dworkin, a contemporary moral philosopher, wrote an essay in 1968 that defined paternalism as “interference with a person’s liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person being coerced.”<sup>4</sup> For Dworkin, this definition applies only to interferences with a persons physical self. However, the definition of paternalism has expanded over the years to include interference with a persons access to information, interference with a person’s emotional condition, etc.<sup>5</sup>

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<sup>2</sup>Ibid.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid., 82

Philosopher Rosemary Carter defines a paternalistic act as it is reflected in later definitions as “one in which protection or promotion of a subject’s welfare is the primary reason for attempted or successful coercive interference with an action or state of that person.”<sup>6</sup>

Another philosopher, Allen Buchanan, defines paternalism as “interference with a person’s freedom of action or freedom of information, or the deliberate dissemination of misinformation, where the alleged justification of interference or misinforming is that it is for the good of the person who is interfered with or misinformed.”<sup>7</sup>

No matter whose definition of paternalism we use, the key concept is the notion of coercion and other kinds of interference that are justified by reference to the good of the individual who is being interfered with.<sup>8</sup>

There are three types of paternalistic actions that deserve special attention. These are: (1) interference with an individual’s intentions or actions; (2) deliberate withholding of information; and (3) deliberate dissemination of misinformation.<sup>9</sup> Examples of interference with an individual’s intentions or actions might include forcing them to enter a nursing home, having them sign medical paperwork that they do not understand, or insisting that they receive “help” when they say they do not wish it. Examples of

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<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid.



withholding information or giving misinformation can include not telling the resident of a nursing home, results of medical tests, or lying about such results. Also, not informing the residents of the full extent of their rights once they are in a nursing facility and lying about what they are entitled to would be included in this last category.

People and institutions who are involved in paternalistic behavior generally justify their actions by saying that what they are doing is in the best interest of the person involved. The debate is focused on the conflict between the right of clients to well-being and their right to freedom from interference or coercion.<sup>10</sup> The former argues that protecting a client from injury is crucial, but the latter maintains that one has to take into consideration simultaneously the self-determination of that same client. It is a balancing act that caretakers, medical personal and clergy wrestle with constantly. These groups of people I mentioned usually are doing these jobs because they want to help people. But at what point does help, however well intentioned, become hindrance? Where is the line to be drawn? Clearly in some cases, paternalism is appropriate. No one would ever let a blind person fall down a flight of stairs that he does not see, nor would anyone argue that sometimes decisions to hold back some information *is* in the best interest of a resident. However, paternalism turns into something negative when the lines in decision making become blurred and when the actions on the part of the person making decisions goes against the resident's direct wishes.

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<sup>10</sup>Ibid.

## **Personal Autonomy**

The principle of autonomy maintains that each adult individual person is in control of his/her own person, including body and mind. This principle, if defined in its purest form, assumes that no other person or institution may intervene to take over a person's desires, whether or not those desires are seen as "right" by others in the situation.

There is a general rule in social work theory which says that an individual's right to freedom assumes priority over his or her own right to basic well-being. What is generally meant by this statement is that "someone who chooses to engage in self-destructive behavior should be allowed to do so if it can be established that the individual is making an informed, voluntary decision which includes knowledge of relevant circumstances and that the consequences of the decision will not threaten the well-being of others."<sup>11</sup> When we look back at the cases presented in chapters two and three, we as Jews need to at them with this thought in mind, not solely, but as a part of the picture which includes also the concept of Shalom Bayit. However, rabbis know that Judaism has limits to such a theory. If we look at Leviticus 19:16 it states: "Do not profit by the blood of your neighbor." Various commentaries explain that this statement means that one should not act in such a way that you profit by someone's death or injury. It is further explained by tradition that we should not stand idly while our neighbor's blood is shed, and we should not abandon a person when he is in danger. Though these two thoughts, personal autonomy and the verse in Leviticus 19, seem to oppose each other, it is crucial

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<sup>11</sup>Ibid., 63

to look at both concepts in context and decide what is appropriate depending on the facts of the situation presented. Jewish law was developed for real life situations, not just theoretical ones. If the married couple which has decided to have intimate relations but doctors believe it may not be healthy for one of the individuals, we must think about whom this behavior is affecting. By secular law, it could be argued that the healthier partner is harming the other partner, who is ill. However, it could also be argued that the ill partner is a willing participant.

The following is cited by John Christman in his book, "The Inner Citadel" as a "full formula for autonomy:"

A person is autonomous if he identifies with his desires, goals, and values, and such identification is not influenced in ways which make the process of identification in some way alien to the individual. Spelling out the conditions of procedural independence involves distinguishing those ways of influencing people's reflective and critical faculties which subvert them from those which promote and improve them.<sup>12</sup>

According to Joel Feinberg, autonomy is a *right* not to be treated in certain ways. Autonomy is a right against actions that attempt to disrupt the psychological condition of self-government. Brainwashing, threats, manipulation, and acts of violence violate a person's autonomy as right for these acts interfere with a person's ability to control a particular area of one's life. Feinberg continues by saying that autonomy also can be violated in other more subtle ways. He suggests that people treated as if they have no

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<sup>12</sup>John Christman. *The Inner Citadel: Essays on Individual Autonomy*. (New York: Oxford University Press, 1989), 7.

autonomy or without respect for self-autonomy, can be just as damaging. The example he gives for this is in the case of a spouse constantly preempting crucial choices about his/her spouse. This is a violation not because the one spouse is preventing the other spouse from freely analyzing and identifying with his/her desires, but instead by treating him/her *as if* he/she could not do it him/herself adequately.<sup>13</sup>

The following is a Reform responsum that deals Jewishly with the issue of sexual relations on the part of those who are ill:

**The Question:** A thirty year-old male with end-stage multiple sclerosis is a resident in skilled care facility. Though he is confined to a wheelchair and can do virtually nothing for himself, he is still alert and oriented, and quite capable of conversation with others. It is quite doubtful whether he could begin and sustain a relationship with a woman, due to his condition and prognosis. Yet he is constantly thinking about women, and has begun to address and touch the female nursing staff in inappropriate ways. He cannot engage in sexual intercourse. Because of his disability, auto-eroticism is not an option, but he is probably able to achieve orgasm if aroused in other ways. Given his condition, what Jewishly acceptable options for sexual release does this person have? (Rabbi Cary D. Kozberg, Columbus, OH)

**The Answer:** The problem which the MS patient faces is as old as human sexuality and has in fact already been mentioned in the Talmud. There, we find the case of a man who is so lovesick that he is overcome by his erotic dreams about a certain woman. What should be done with him or for him? One rabbi suggested that maybe if the woman were to appear naked before him his desire might be stilled. Needless to say, this was rejected as were other solutions. We cite this because it shows that cases of this kind were taken seriously, and our patient deserves the same attention. An extensive treatment of the question would involve a general discussion of human sexuality in the light of Tradition, and of Reform Judaism in particular. It

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<sup>13</sup>Ibid.,6

might, for instance, treat of such matters as masturbation, use of prostitutes, and the like.

But it must also lead us to consider whether the illness of MS which afflicts the patient excuses him from observing time-hallowed restraints on our sexual behavior. In our opinion it does not. He must be told that nurses have the right to be treated properly as does everyone else, and that MS does not give him an excuse to harass them.

However, we have great sympathy for this unfortunate person who is frustrated in so many ways. Since we do not know any details of his medical condition or of his personal circumstances, we cannot make any useful prescription which could be deemed unexceptionable.

Consequently, we would leave it to you as the man's rabbi and counselor, together with the medical authorities involved, to devise a course of help for him.<sup>14</sup>

This example, though not one that is specifically related to the elderly, shows us the complexity of the issue of personal autonomy. Unfortunately, direct guidance is not offered as an answer to Rabbi Kosberg's question. However, what is offered can serve as a partial guide line for similar cases. Illness does not excuse him from observing time-hallowed restraints on our sexual behavior. This resident must be told that his behavior is unacceptable, for harassing nurses, which can be seen as harmful, is not allowed even if the person is ill. However, what we can add to this answer from the research presented in this thesis if this case were dealing with an elderly person could be the following: That any individual has the right to make choices in his or her life, that are not interfered with by any person, and that a person should be allowed to have what they consider quality of life choices. Honoring our parents demand this quality of life as defined in this thesis.

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<sup>14</sup>Rabbi Cary Kozberg, "Sexual Proclivity of an MS Patient" p. 371-372, cited in *Teshuvot for the Nineties: Reform Judaism's Answers for Today's Dilemmas*, CCAR, 1997, 371-372.

For the case cited above, enabling a person, and for our argument, a parent, to find the pleasure that he so desperately craved could be viewed as our duty depending on the situation and it could be seen as the rabbi's role to help the facility understand the importance of such behavior.

The discussion of paternalism and autonomy is a complex one that we have only touched upon in this chapter. Autonomy is intimately associated with privacy, for the loss of one is usually accompanied by the loss of the other. The issue of exercising autonomy versus losing autonomy is one of the main issues in the struggle that getting older can bring. Learning about the issues is crucial. However, instead of becoming overwhelmed by all of the technical terms surrounding autonomy, it is in my opinion that the most valuable thought one can remember when dealing with these issues in real life is the quote from Isaiah Berlin at the beginning of this chapter:

"I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not others' acts of will. I wish to be a subject, not an object ... I wish to be somebody, not nobody."

A wish that no person, including the elderly, ever really loses.

## **Conclusion - "So Where Do We Go From Here?"**

So where **do** we go from here? We have seen cases in the previous chapters that I am sure ring true for many of us when dealing with our aging loved ones. At this point, one may still not be sure what to do or what to think. "Jewish tradition may say one thing, but I feel another way." Or, "how do I take what I know from our Jewish tradition and apply it appropriately?" "How do I resolve these questions?" To say there are no answers would be cruel. There **are** answers. However, the answers may be very different from person to person, or family to family.

Each nursing home is guided by federal rules and regulations, such as those we saw in the patients Bill of Rights. However, each nursing home also operates along a spectrum that the Bill of Rights presents. All of the nursing facilities that I researched stressed the importance of individual rights. One such nursing home, The Wexner Heritage Village in Columbus, Ohio, has put out much literature regarding these issues. The following is their mission statement:

"Wexner Heritage Village is a Jewish, not-for-profit provider of health, housing, social and spiritual services in the central Ohio community, primarily serving older adults and persons with disabilities. Our mission, guided by Jewish values and traditions, is to assist those we serve in pursuing their fullest human potential.

We Believe:

- ...Each individual is sacred and deserves unconditional respect
- ...In demonstrating pride and ownership in what we are and how we serve
- ...In fostering innovation that reaches out and enriches lives

...Traditions of the past are to be honored and actively acknowledged  
...Those we serve and their families are the center and focus of all we do”

The Wexner Heritage Village, in their brochure, also lists a Residents’ Bill of Rights. Though based on the Federal Bill of Rights, this particular home made adjustments according to what they believed was important. The two most relevant additions which expanded on the Federal Bill of Rights are the following: They allow residents to have room doors closed and not opened without knocking. And they also allow conjugal privacy.<sup>1</sup>

Let us now go back to our Jewish sources. As we discussed earlier, the core of the mitzvah of how we treat the elderly stems from the fifth commandment, “Honor your father and mother.” And as we saw, in Leviticus 19:3, it states: “Every person shall revere his mother and father.” According to one of the commentators, Ruth Langer, the Hebrew words for honor (*kabed*) and revere (*ti’ra’u*), also appear in connection with how we relate to God therefore making the further connection that our relationship with our parents is on the same level as our relationship with God.<sup>2</sup> The decisions that families need to make are often very tough ones, and most families I spoke with believe that they have their loved one’s best interests at heart. However, what became clear in speaking with some of the families is that a blurring of the lines arose when it came to whose interests are being met. They may have intended it to be for their loved ones, but it ended

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<sup>1</sup>Wexner Heritage Village’s brochures, 2000.

<sup>2</sup>Ruth Langer, “Honor Thy Father and Thy Mother,” in *Aging and the Aged in Jewish Law - Essays and Responsa*. (Pittsburgh, PA, 1998), 22.



up being for the family members or nursing home involved. Let's re-visit our case studies in order to see this more clearly. In our first case, in chapter two which dealt with friendships, Rebecca's family disapproved of her friendship with David due to the families feelings of jealousy. In Case #2, Sadie's daughter, though seemingly well intentioned, does not seem to be taking into account the totality of the situation. She is not looking at the level of happiness her mother is gaining, and she is not deciding what to do on any other factor than her mother has Alzheimer's and Fred does not. In Case #3, we have Sarah's children who decided to remove their mother from a nursing home because of a friendship she had with a male resident. They made this decision without consulting their mother's feelings or opinion and therefore did not honor their mother by acting upon her wishes or even asking her what they are. In Case #4, it is the staff that has expressed concerns about the two parties involved. The staff runs the floor according to what they believe is the best method. Though the method of interactions in the unit might be an appropriate one in theory, the staff seems unwilling to take into consideration the wishes of the individual residents. The staff seems to be treating Alzheimer residents as a group only, and not as individuals.

In our first case, in chapter three which dealt with intimate relationships, Beth's son disapproved of any romantic relationship his mother may have. Some staff members also felt that such a relationship is inappropriate. Both family and staff are putting their views of right and wrong on Beth and therefore they are not objectively taking into consideration what is best for Beth. In Case #2, we have a tough situation which involves the rights of a couple who are of sound mind to do as they will, versus potential health

problems that may occur due to their sexual activity. As we discussed in chapter four, there are two ways of looking at this issue. One which says that an individual's right to freedom takes precedence over his or her own right to basic well-being; and one which is a Jewish view in Leviticus 19 which states that one does not profit by the blood of one's neighbor. This is commonly interpreted as requiring that you should not abandon someone who is in danger or stand idly while someone gets hurt. This is a difficult case due to the fact that it is possible to see both sides of the argument. However, the children decided to seek legal counsel. They did this because **they** decided that their mother's health was more important than her right to be intimate with her husband. In Case #3, we have a situation involving a gay couple. We do not have sufficient information in this case to make an accurate assessment here, although in my opinion the same rules of autonomy apply to homosexual relationships. In Case #4, we have the issue of adultery. This is also problematic case for the same reasons noted in connection with Case #2, with the important exception that committing adultery is in violation of one of the Ten Commandments.

What all of these cases try to do is to teach us that when we make any decisions regarding the well being of family members, we need to have at hand an arsenal of information which contain Jewish sources as well as other types of sources and we need to use this, always keeping in mind the person directly affected by the outcome. The following list suggests a number of possibilities about what specific information that can be helpful:

- Read together as a family, including the person entering a home, the Patients Bill of Rights.
- Find out if the nursing home has a mission statement.
- Find out if the nursing home has other rules, not in the Bill of Rights or other literature, that may pertain to your loved one.
- Ask for the names and phone numbers of other residents and their families before making a final decision.
- If your loved one is involved in activities that you may not approve of, before acting, find out all there is to know about the situation. Sometimes, what you see is not the full story. Then take a step back and make sure that the one who should be at the center of your concern is your loved one. If necessary, get an impartial person to help clarify the situation.
- Always remember that your loved one has the same rights that you have and deserves to be treated as such.
- Consult the rabbi of the nursing home and/or your own rabbi to help you sort out your decisions. Look at our Jewish tradition and what it offers to help complete the picture. This will enable you to make decisions with the correct people in focus and with the knowledge that our long history has taught us a few things about life and how to live it well and to the fullest. If we include our decision making with this as one of the fundamental considerations, then our journey will be guided in the way of Jewish tradition and history.

When we hear the word ethics, we tend to think of the “right” way to make decisions and live our lives. In Judaism, ethics helps to guide us on our journey in life. Jewish religious law, *halakhah*, has been our ethical and legal system designed to help us learn how to live our lives. Even if some do not consider themselves *halakhic* Jews by the traditional definition of *halakhah*, most Jews who consider themselves a part of the Jewish community, do follow some standard of living that involves Jewish ideals and rituals.

According to Joseph Dan:

It is the power of the *halakhah* that all distinctions between the ethical and the legal melt away in its framework. It is impossible, within the *halakhah*, to draw distinctions between social laws and reasons, ritualistic laws and reasons, and ethical law. They are all integrated into a system of laws that define how man can conform to the demands that God has put before him and how he can achieve the obscure, never-to-be-understood divine purposes and reasons. The *halakhah* covers all the realms of human activities that are usually regarded as relevant to ethics: business relationships, family affairs in all their aspects and details, social hierarchies, codes of social behavior, responsibilities towards children, elders and partners, and scores of similar subjects. All this is woven together with the daily, weekly, and yearly rituals - prayers, festivals, observance of dietary laws, and the full scope of relationship between man and God. Often, the *halakhah* will quote ethical reasoning, explaining the need of a law for the just treatment of a fellow human being.<sup>3</sup>

Life is a complex endeavor that calls for our gathering all the information that we can acquire to guide us. Our tradition can help fill that role no matter where we place ourselves on the spectrum of religious life. We only need to take hold of it.

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<sup>3</sup>Joseph Dan, *Jewish Mysticism and Jewish Ethics* (Northvale, New Jersey: J. Aronson, 1996).

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The Bible

The Soncino Midrash Rabbah

The Soncino *Talmud*

Over the course of a two-year span, I interviewed 10 nursing home administrators, 14 ethics committee chairs and members, and over 100 residents including the families of 62 residents.

