Physicians’ Ethical Duty to Treat in Disasters and Pandemics

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Head and neck cancer surgeon
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On staff at Memorial Medical Center, New Orleans,
Aug. 29-Dept. 1, 2005 (Katrina)
Memorial Medical Center

- Private, for-profit hospital (Tenet)
- No electricity
- No fresh water
- First floor flooded
- No working sanitation system
- Interior temperature 100°F
- 2000 people in building
- As of Sept. 1, no clear plans to evacuate remaining patients

Outcomes at Memorial

- 34 patients died
- More than 200 evacuated
  - Okie, *NEJM* 358:1, 2008
Scenario 1

- Dr. Pou was a hero, remaining at her post and trying to serve her patients in near-impossible conditions
- Attempted comfort care and sedation for a group of hopelessly ill when evacuation appeared impossible

Scenario 2

- Dr. Pou and some staff murdered a group of patients by injecting lethal overdoses
- May have had benevolent intentions
- Given uncertainties of evacuation, any choice of patients to die must have been arbitrary and indefensible
Questions

- Would you stay at your post and work under circumstances faced by Dr. Pou?
- Are you obligated to do so?
- If so, on what basis does that obligation exist?
  - Is this a professional obligation?

“Disasters”

- Natural disasters such as Katrina
  - Texas Gulf Coast
- Threatened pandemic of an illness such as H5N1 influenza
  - “Not if but when”
Important Differences

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<tr>
<th>Hurricane etc.</th>
<th>Pandemic</th>
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<td>No special risk to physician</td>
<td>Physician faces risk of illness, death</td>
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<td>Evacuation is key goal</td>
<td>Quarantine or containment key goal</td>
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<tr>
<td>“Outside world” can send aid</td>
<td>“Outside world” depends on extent of pandemic</td>
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Focused Question

- What obligation does a physician have to remain available to care for patients, in the face of significant infectious risks to her own life or health?
“...when pestilence prevails, it is [the physicians’] duty to face the danger, and to continue their labours for the alleviation of the suffering, even at the jeopardy of their own lives.”

- AMA Code of Ethics (1847)
Ethical Consistency?

- The AMA 1847 code of ethics is probably the single strongest statement of an ethical duty to treat.
- It is not necessarily representative of ethical views on this subject either before or since.

14th-17th Century Europe

- Physicians
  - Members of the gentry
  - They (along with their patients) commonly fled town in epidemic
- Surgeons, Apothecaries
  - Members of tradesman class
  - Felt duty bound to remain in city and offer treatment
AIDS, 1980s

- Generation of physicians who entered medicine during an era when infectious disease thought to be conquered
- Many decided that any risk of infection was excessive and that care of HIV+ patients not a professional duty

The AMA’s Ethical Dilemma

- Original statement of a strong duty to treat despite serious risks
- Later evolution of ethical “code” toward almost exclusive focus on physician as free, private entrepreneur who always may choose when and whom to serve
“Resolution” in AIDS

- AMA eventually came down on side of regarding refusal to treat HIV+ as invidiously discriminatory
- Major factor in “resolving” ethical problem = realization of extremely low risks of infection
- Therefore “solution” not applicable to SARS, H5N1

Public Health Law

- Model State Emergency Health Powers Act
  - Enacted in 16 states as of 2002
  - Introduced in 34 states
- Governor can declare public health emergency
- Can waive licensure requirements
  - Med students can be drafted!
Public Health Law (II)

- Health professionals can be ordered to “assist in vaccination, testing, examination, and treatment of patients”
  - Gostin et al., JAMA 288:622, 2002
- Appears most physicians unaware of this legislation

The SARS Experience: Canada

- Solidarity principal moral value at work in assuring a duty to treat
  - If I did not come to work tomorrow, I can look across the room and see the face of the co-worker who will have to do extra work and assume extra risks because I am not here
  - Reid, Bioethics 19:348, 2005
Solidarity in Pandemics

- Could actually be dysfunctional if viewed solely as a professional value
- Adequate response to pandemic requires sense of solidarity across:
  - Different health professions
  - All staff including “non-professionals”

Professional and Other Responsibilities

- Traditional model of professional ethics assumes physician freed from all competing responsibilities
  - Male physician with wife charged with care of house and children
- Today, many professionals also have duties to care for other family members
Professional and Other Responsibilities (II)

- No “code of ethics” currently available to advise health professional how to balance these disparate duties to provide care
- Complicated by distancing and segregation measures that might be imposed during pandemic

Social Solidarity?

- If the professional goes to work and assumes some personal risk during pandemic...
- Is the community willing to promise help in caring for children or aged parents, etc.?
Social Solidarity? (II)

- Health professionals will be expected to implement a community-wide pandemic preparedness plan
- Will this plan be a demonstration of true social solidarity?
- Or will it look like post-Katrina New Orleans?

Why Attend to Most Vulnerable Populations?

- Likely to be most severely affected by pandemic
- Likely to be further stigmatized by surrounding community
- Likely to have least trust of public officials and so least likely to follow public health recommendations unless special needs addressed
Tentative Conclusions

- Professionalism in medicine requires a commitment to the patient’s well-being, as assuming priority over many of the physician’s own interests.
- It is nevertheless hard to "track" a clear ethical duty to treat in pandemic settings.

Tentative Conclusions (II)

- Duty to treat particularly hard to reconcile with duties owed to others in dependent relationships.
- Of various moral values at stake, *solidarity* may be especially worth exploring as a key contributor.
- Social solidarity entails special concerns for vulnerable populations.
Acknowledgements

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