Duty to Care &Triage: Moral Choices When Not All Can Be Saved & Professionals Face Risks

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History of Health Care's Response to Pandemics

- 20th Century Pandemics
  - ***1918 "Spanish" Influenza***
    - ***40-50 mil died (500th in US)***
    - **Lowry, *21st Century* (Fall 2005) 32.**
  - 1957: Asian Influenza (H2N2)
  - 1968: Hong Kong Influenza (H3N2)
- 21 Century
  - 2009 H1N1 (Antigenic shift from swine)
  - Anticipation of H5N1 (Avian Flu: antigenic shift from birds); 50% mortality

H1NI: As of Jan 2010

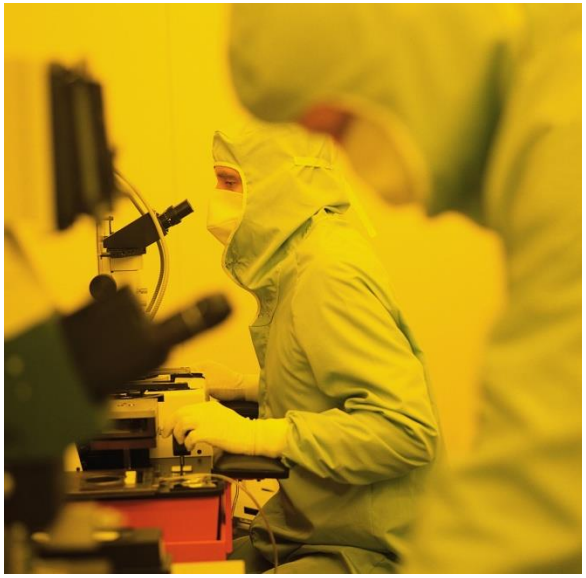
- 208 countries world wide
  - 12799 deaths (but may be much greater)
- US
  - CDC reports under-estimations. Each DX case may represent 79
  - 800 "median range" deaths
    - > in 18-64 year olds
    - Then 0-17 year olds
    - Pregnant women > risk (6% deaths; 1% pop.)

SARS 2003: 48% HCW Willing to Report to Duty

- Fear; concern for family/self; personal health problems. [Qureshi, *et al*, *Journal of Urban Health* 82:3 (2005), 378-388.]
- Fears of infecting others/family members =/> fears for self. [Ho, *et al*, *Journal of Consulting and Clinical Psychology* 73:2 (April 2005) 344-9.]
  - RX on-sight for family members increases commitment to work. [Syrett, *et al*, *Prehospital Emergency Care* 11:1 (Jan-Mar 2007) 49-54.]
- HCW perceived as potential source of infection in community. [Dy, *Annals, Academy of Medicine, Singapore* 35: 5 (May 2006) 374-8.]

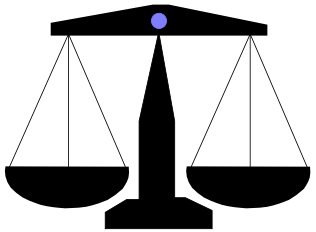
Risk with SARS: 2003

- 30% cases health care professionals, some of whom died
- Dr. Carlo Urbani, WHO, succumbed performing professional duties.



[Ruderman, *et al*.]

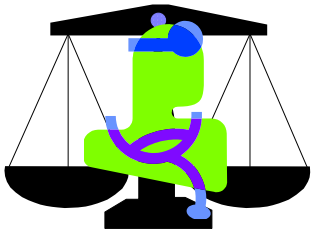
Legal, Ethical and Moral Imperatives: Duty to Care



Legal: medical negligence and liability.

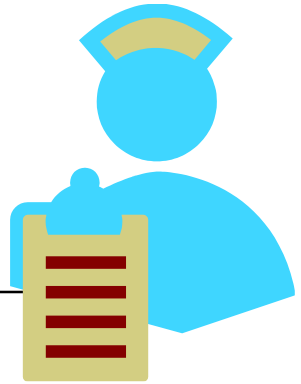
- Three pronged analysis: prevent damage
  - Proximate relationship of HCW to victim;
  - Damage must be a reasonable foreseeable consequence of the negligence;
  - Imposed liability just and convenient. [Nair, *Ethics & Professionalism*, p. 1, http://www.sma.org.sg/sma_news/3307/duty_of_care.pdf.]
- Duty to care linked to voluntary assumption of responsibility, including fiscal responsibility for negligence.

Impact Triage?



- Physician has duty to care for those with whom he/she has established a physician-patient relationship. [Nair]
- Facilities accepting certain types of public funding, may have obligations to treat
- ER's may be required to provide care to those with life-threatening conditions. [Buchanan & Beckering, *Michigan Medical Malpractice*, http://www.michiganpatient.com/michigan_medical_malpractice_duty_of_care.php.]

Negligence: Practice Acts



- Model Nursing Practice Act (National Council of State Boards of Nursing): "Moral turpitude:"
  - Intentional, knowing or reckless conduct that causes injury or places another in fear of imminent harm.
  - Conduct knowingly contrary to justice/ honesty.
  - Conduct that contrary to accepted/customary rule of **right and duty that person owes to fellow human beings/society in general**.

Focus Individual Patient Needs:
NCSBN Model Nursing Act

Article Two: Scope of Nursing Practice

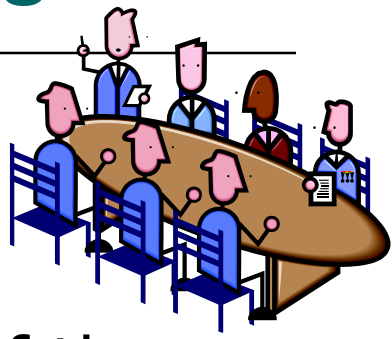
- Section 2. Registered Nurse
  - G. ***<u>Advocating for clients</u>*** by attaining and maintaining what is in the best interest of clients.

Triage Not Mentioned, But…: NCSBN Model Nursing Act

Ch 2. Standards of Nursing Practice

- 2.2.2 Standards Related to Registered Nurse Responsibility for Nursing Practice Implementation.
  - K. Evaluates the impact of nursing care, the client's response to therapy, the ***need for alternative interventions***, and the need to communicate and consult with other health team members.
- 2.2.4 Standards Related to Registered Nurse Responsibility to Organize, Manage and Supervise the Practice of Nursing
  - C. Matches client needs with personnel qualifications, ***available resources*** and appropriate supervision.

Negligence: MD Practice Acts



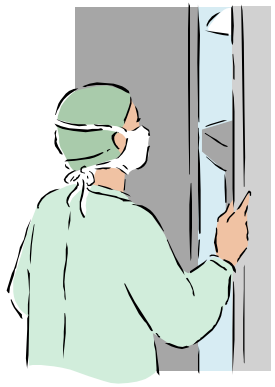
- Federation of State Medical Boards of the United States, Inc.: "A Guide to Essentials in a Modern Medical Practice Act"
  - Negligence: defined by state medical board.
  - Does not contain the word "duty."
  - No reference to "triage."
  - "Moral turpitude," but only as an unlawful act, as determined by a court.

AMA Ethical Policy Statement "Physician Obligation in Disaster Preparedness Response," 2004.

- *This ethical obligation holds even in the face of greater than usual risks to their own safety, health or life.*
- *The physician workforce, however, is not an unlimited resource; therefore, when participating in disaster responses, physicians should balance immediate benefits to individual patients with ability to care for patients in the future.*
- *"Triage" not mentioned.*

Ethics: Duty to Care

- Duty to care ethically obligatory upon assuming chosen health care profession.
  - Subtle instrument of intimidation. [Sokol, *Emerging Infectious Diseases* 12:8 (August 2006) 1238.]
  - Professions are legitimated by their contracts with society, resulting in obligation to be available in times of emergency. [Ruderman, et al, *BMC Medical Ethics* 7:5 (April 20, 2006).]



AMA Before 1970

- Admonition to alleviate suffering, even to the point of jeopardizing one's own life. [Ruderman, *et al*.]

ANA Moral Obligation or Duty, vs. Moral Option to Care: 4 Criteria*

- Patient at significant risk of harm, loss, or damage if the nurse does not assist;
- Nurse's intervention or care is directly relevant to preventing harm;
- Care will probably prevent harm, loss, or damage to the patient;
- Benefit the patient will gain outweighs any harm the nurse might incur and does not present more than an acceptable risk to the nurse. [ANA]
- In 1926 a suggested *Code of Ethics:* "…the most precious possession of this profession is the ideal of service, extending even to the sacrifice of life itself...."[ANA, *American Journal of Nursing* (1926).]
- *ANA Board of Directors, *Position Statement: Risk and Responsibility* (June 21, 2006).

ANA to US CDC Oct 2009

- "Employers need to improve their commitment to support and protect RNs…."
  - Shortages of fitted N-95 respirators
- Oppose mandatory seasonal flu vaccine policies
  - Strongly encourage RNs to get H1N1 Vac.

www.NursingWorld.org/LetterToCDC

ANA to CDC, cont'd re Mandatory RN H1N1 Vaccinations

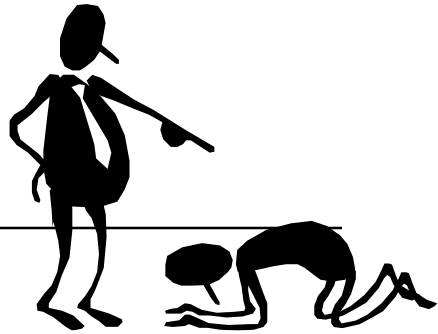
- Must be from highest level authority (e.g., state government)
- Suitable exemptions (e.g., allergies)
- Prohibit discrimination against non-participants
- Part of comprehensive program including protective equipment
- Free and convenient
- Employer union negotiate conflicts.

Joint Commission Accreditation Program: Hospital 2009

The emergency triage process will typically result in patients being quickly treated and discharged, admitted for a longer stay, or transferred to a more appropriate source of care.

- **Elements of Performance for EM.02.02.11**
  - The Emergency Operations Plan describes the following: How the hospital will manage the activities required as part of patient scheduling, triage, assessment, treatment, admission, transfer, and discharge.

IOM: Consent



- *Guidance for Establishing Crisis Standards of Care for Use in Disaster Situations: A Letter Report*

  Institute of Medicine, 2009.

  - "The disaster context is agonizing because treatment could be withdrawn without or against the patient's expressed wishes. …but disaster triage protocols may permit doctors to initiate such orders when life-sustaining treatment is reallocated." P.46

Beneficence: Can Consent Be Violated?

Foundational principle of patient-provider relationship, [Entralgo, *et al*, in *Encyclopedia of Bioethics*, Ed. W. Reich (NY: Simon and Schuster, 1995).]

Further patient welfare and to advance patient well-being. [Ruderman, *et al*.]

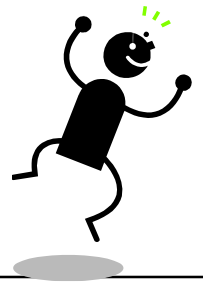
Ethical Frameworks

- Ethical frameworks: apply ethical theories to ethical situations/dilemmas.
- Ethical theories: analytical methods/modes of philosophical reasoning (e.g., teleological and deontological methods) utilized in ethical decision-making within ethical situations. [Payton]

Teleological Methods

- Relativistic and subjective.
- No human act, in and of itself, is considered good or bad.
- The act is made good or bad relative to some other criterion.
- Include situationism, consequentialism, and utilitarianism.

Utilitarianism: The “Good”



- Whatever maximizes pleasure/minimizes pain, for the greatest number of persons.

- Manner of how many laws are promulgated.
  - Recipients of these acts best if in the majority.
  - Secularists view of “ethical” response to pandemic

Objective Reasoning: Deontology; Law Ethics

- Objective: dictate that some actions may never be done regardless of the circumstances.

- Deontological reasoning (duty and obligation, regardless of consequences):
  - Must always provide every RX/every patient
  - One always is to report to duty, in all circumstances.
  - Can lead to legal positivism: Legal = Ethical.
  - Reliance on the law by some physicians in Nazi Germany led to the Nuremberg Trials.

Moral Reasoning: "Ethic of the Good;" "Natural Moral Law"

- Objective reasoning by the virtuous person.
- Virtuous person: Socrates, Plato, Aristotle.
- Aristotle:
  - Person's soul is virtuous; virtue natural to humans.
  - Virtuous person acts reasonably; acts on behalf of ends perceived as goods in pursuit of happiness.

- Aquinas: Creator/determinant of human nature, is the ultimate source of this happiness.
- Theological or Aristotelian perspective, natural moral law is part of the natural order and, thus, is consistent with reasoning.

Virtuous Person: Duty

- Virtuous person would report to duty in a pandemic, because it is virtuous to serve others in need.
  - "Golden rule" fosters the good of society, leading to happiness.
  - Virtuous person also would act reasonably in assuming duties.
  - E.g., nurse with an immuno-suppressed family member not **direct** care giver to those who have contracted a pandemic flu.

Societal Duty to HCW

- Protective equipment, access to antivirals, and vaccines.
- Sufficient HCWs: preparation, recruitment and retention programs.
- Justice pursuant to allocation of resources/allocation HCW.
  - Equal distribution of rights and equitable distribution of resources to all patients.

Ethical and Religious Directives for Catholic Health Care Services

- "Catholic health care ministry seeks to contribute to the common good. The common good is realized when economic, political, and social conditions ensure protection for the fundamental rights of *all* individuals and enable all to fulfill their common purpose and reach their common goals." [Intro, Part One]
- Rights of employees must be protected.

Rationing

- Triage, the concept of determining who will live when not all can live, involves the rationing of scarce resources, including health care workers. [John Arras, *Hastings Center*.]

Options for Rationing in a Pandemic*

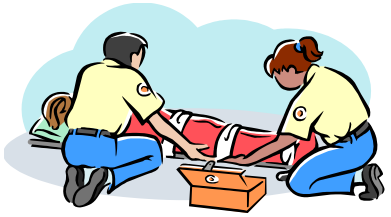
(2) Prioritizing to protect essential medical/scientific personnel (with specialized training and a duty to care);

(3) Prioritizing health and safety infrastructure (delineating obligations of workers who have been prioritized, above).

*Gostin, *JAMA* 295:5 (February 1, 2006) 554-56.

Justice in Rationing in a Pandemic*

- (1) prioritizing to prevent new infections (reserving vaccines and antiviral drugs);
- (4) prioritizing patients/populations with greatest medical needs; not by age, disability or other discriminatory criteria.
- (5) prioritizing patients/populations who are chronically underserved (reflecting fairness in application of actions).



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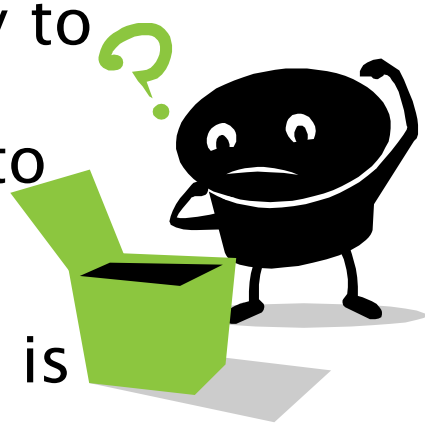
Who Decides: ERDs

- 32: While every person is obliged to use ordinary means to preserve his or her health, no person should be obliged to submit to a health care procedure *that the person has judged*, with a free and informed conscience, not to provide a reasonable hope of benefit without imposing excessive risks and burdens on the patient or excessive expense to family or community.
- Also ERDs 56 & 57

Triage: Obligation to Individual Patient is Sacrosanct.

- Key Questions:
  - Will the patient benefit from initiating treatment with limited resources, including personnel needed to sustain the application of these resources, when they cannot be provided indefinitely to that patient?
  - Only benefit if they could continue to receive what eventually becomes unavailable?
  - ERGO: Care is not being withheld: it is not available.



Altered Standards of Care (Univ. Indiana; State Dept. Health)*

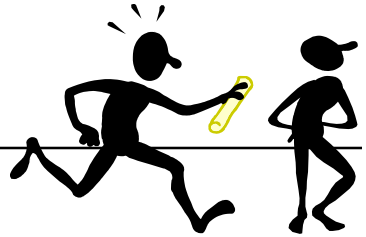
- SX influenza separated pregnant, heart attacks, broken bones, lacerations, and other non-contagious diseases.
- All patients, regardless of the nature of their illness/injury, will be evaluated using the same criteria.
- Bedside clinician is not triage agent

Triage: Initial Categories by Prognosis

1. Potential to benefit from scarce resources.
    1. Requiring critical care
    2. Supportive home care
    3. No one at home to provide care
2. Unlikely to survive regardless of treatment provided.
    - Palliative Care
3. Those certain they are ill but display no physical symptoms.
    - Refer on-site counseling

*See Indiana State Dept. of Health, "DRAFT – Altered Standards of Care Guidance with an Emphasis on Pandemic Influenza," Aug 08.

Exclusion Criteria for Ventilators: Adults *

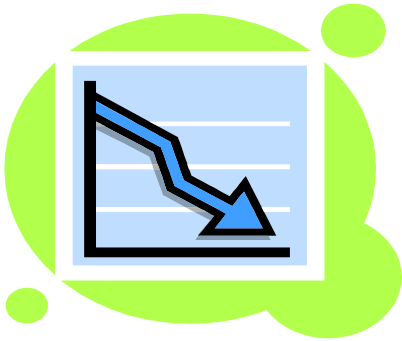


- Cardiac arrest: un-witnessed; recurrent; unresp. to standard measures; trauma related
- Incurable malignancy with poor prognosis
- Severe burn >40%, severe inhalation injury
- End-stage organ failure

* See Indiana State Dept. of Health, "DRAFT – Altered Standards of Care Guidance with an Emphasis on Pandemic Influenza," Aug 08.

Sequential Organ Failure Assessment (SOFA) Score

- Parameters
  - PaO2/FiO2
  - Platelets
  - Bilirubin
  - Hypotension
  - Glasgow Coma Score
  - Creatinine
- Ergo: Can the patient benefit?



Color Coding Critical Care Triage Tool with SOFA*

- Initially; 48 hours; 120 hours
- Categorizes patients by exclusion criteria and scores on organ failure, **e.g., Initially**
  - **Presence of exclusion criteria or high SOFA score = medical management/palliative care.**
  - **Low score or single organ failure = high priority**
  - **Mid-range SOFA = intermediate**
  - **No significant organ failure = refer**
- Later assessment categories are based on progress made

*See Sequential Organ Failure Assessment (SOFA) Score in: Indiana State Dept. of Health, "DRAFT – Altered Standards of Care Guidance with an Emphasis on Pandemic Influenza," Aug 08.

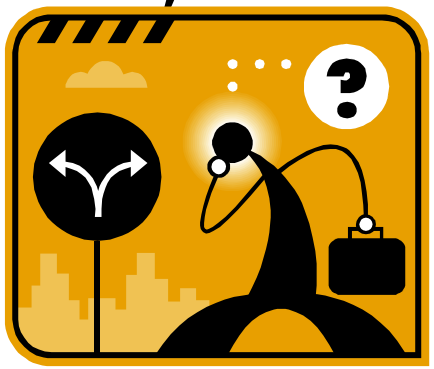
Adult Sequential Organ Failure Assessment (SOFA)

Adapted from Ferreia, FI, et al, *JAMA* 2001:286 (14), by Indiana State Dept. Health and further by Sisters of St. Francis Health Services

Variable	0	1	2	3	4
PaO2/FiO2 mmHg	>400	≤400	≤300	≤200	≤100
Platelets, x 10^3/µL (x 10^6/L)	>150 (>150)	≤150 (≤150)	≤100 (≤100)	≤50 (≤50)	≤20 (≤20)
Bilirubin, mg/dL (µmol/L)	<1.2 (<20)	1.2-1.9 (20-32)	2.0-5.9 (33-100)	6.0-11.9 (101-203)	>12 (>203)
Hypotension Dop, Epi, Norepi in µg/kg/min	Adults: None Children: >70 + (2 X age in years)	Adults: MABP <70 mmHg Children <70 + (2 X age in years)	Dop ≤5	Dop >5, Epi ≤0.1, Norepi ≤0.1	Dop >15, Epi >0.1, Norepi >0.1
Glasgow Coma Score*	15	13-14	10-12	6-9	<6
Creatinine, mg/dL (µmol/L)	<1.2 (<106)	1.2-1.9 (106-168)	2.0-3.4 (169-300)	3.5-4.9 (301-433)	>5 (>434)

Critical Care Triage Tool Scoring

- Appendix
- Courtesy of Sisters of St. Francis Health Services
- Adapted by Indiana State Dept. of Health from Ferreia, FI, et al, *JAMA* 2001:286 (14).



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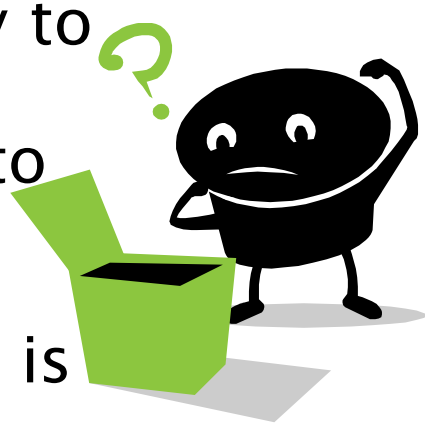


US CDC: *Faith-Base & Community Organizations Pandemic Influenza Preparedness Checklist* Jan 06

1. Plan for impact on organization/mission.
2. Communicate/educate staff, members and those served.
3. Plan for impact on those listed above.
4. Establish policies.
5. Allocate resources to protect those listed above.
6. Coordinate with external organizations.

US CDC: *Hospital Pandemic Influenza Checklist,* June 07 (Planning)

- Surveillance/detection illness patients/staff
- Communication plan coordinated with local health authority
- Education personnel/patients/visitors prevention/control
- Triage plan
- Plan for populations disproportionately affected
- Facility access: admission/contingencies; visitors
- Security
- Infection control plan
- Human resources: staff illness, absence
- Vaccine/anti-viral access
- Surge capacity coordinated with regulatory agencies (services; staffing; equipment/supplies; beds; post mortem care)

Mandated Reporting/Quarantining: Protecting Privacy & Consent

- Community involved pre-planning; ID stake holders
- Proportionate, equitable, least restrictive
- Policy Transparency
- Method for on-going decision-review and post crisis analysis

Pastoral Care
"Pandemic Planning Checklist for Faith-Based Organizations," *Health Progress, Nov/Dec 09;* Planning Phase

- Planning committee
- Prioritize functions periodic review plan
- Stakeholders/linkages
- Operations continuity
- Infection control
- ID persons special needs
- Communication plan
- Inform parishioners changes
  - Liturgy & sacraments
  - Care sick/dying
  - Parish outreach team

Duty to Care: FOR INDIVIDUAL??

Legal

Professional Liability

Preexisting HCW-Patient Relationships

Vague Practice Acts

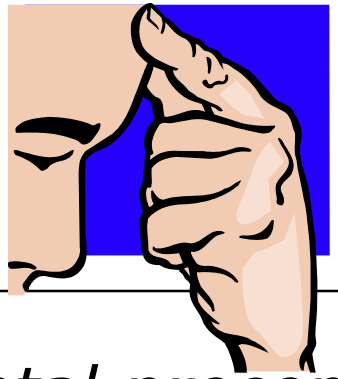
Professional Codes

Subjective re Rights/Duty

Ethical Theories

Varying Approaches

Natural Moral Law



"The grasping of the fundamental precepts of the natural moral law, whether undertaken theologically within the realm of faith, or outside it, comes about through the intuition of the 'instinctus rationis' that perceives the ordering of nature toward that which is most appropriate to it." [Giertych, International Congress on The Moral Natural Law: Problems and Prospects (Rome: Pontifical Lateran University, 24 Feb 2007).]

Virtuous Person: Reason

- Act reasonably in assuming duties.
  - Allocation of responsibilities while on duty consistent with the abilities and other obligations of the health care worker.
- Recognizes that all society at risk, including themselves and their loved ones, if the pandemic is not contained.
- Recognizes that in serving ***each member*** of society, serving self/family/society.

There is ONE Duty to Care

- Self
- Family
- ***Individual patient***
- Society

Questions and Answers

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