

## Likely Ethical, Legal, and Professional Challenges Physicians will Face During an Influenza Pandemic

Janelle A. Rhyne, MD

**H**ealth care workers are some of the most integral front-line responders during natural and biological disasters. As such, they often face serious risks to their health and well-being. Many physicians volunteer to assist during crises because they recognize the value of their skills to the needs at hand. However, other physicians are reluctant to expose themselves, and by extension, their families, to such risks. In preparing for a public health crisis like an influenza pandemic, it is important to take steps to eliminate or minimize the risks physicians will incur if they choose to assist with serving the needs of the population.

Events of recent years provide examples of inadequate measures to properly minimize risks to physicians. The outcomes of these situations illustrate the importance of preparedness for public health emergencies and natural disasters. In 2005, Hurricane Katrina hit the Gulf Coast Region and in its aftermath, 6,000 physicians left the area. This led to a need for additional medical personnel to travel to the region to assist with the injured and deceased. Furthermore, many of those who left have yet to return and some have no plans to do so.<sup>1</sup> Now, much of the region has a shortage of providers, which may adversely affect reconstruction efforts.

The 2003 Severe Acute Respiratory Syndrome (SARS) outbreak in Canada offers another example of risks to health care professionals and the challenges faced in minimizing their risks. Forty-three percent of those falling prey to SARS were health care workers with a case fatality rate of about 15%.<sup>2</sup> As a result, staffing at Canadian facilities treating SARS patients became a problem because many providers did not want to expose themselves to danger. In addition to the health risks, 49% of SARS health care workers reported social stigmatization and 31% reported ostracism by family members.<sup>3</sup> Regardless of these physical, social, and emotional challenges, failure to report to work resulted in permanent dismissal of hospital staff. As a result,

many health care workers voluntarily left the profession for new careers rather than expose themselves and their families to risks associated with caring for patients with potentially lethal infectious diseases.

Ensuring a positive work environment for physicians is important because a recent analysis published in *Health Affairs* projected a shortage of physicians that will grow even worse within the next fifteen years.<sup>4</sup> Therefore, developing a plan to minimize the stresses that could affect physicians during a public health crisis is more critical than ever. Furthermore, it is important to remember that practicing physicians and other health care workers are not the only ones providing services during an emergency. Medical students, interns, residents, and other training health care professionals provide emergency assistance and are the future caregivers. In addition, the health care workers

*“If, for the public good, society expects physicians to voluntarily expose themselves to potentially lethal risks, what ought society provide physicians in return?”*

themselves are not the only ones at risk when they expose themselves to potential infections. Many health care workers are concerned about the safety of their families in the event that they were to become infected. Therefore, society needs to safeguard families as well as physicians and medical trainees.

In preparing for a public health crisis, it is important to understand the ethical and professional standards that guide physicians in their practices. Current North Carolina Medical Board policies and regulations only address the obligations of a physician to an established patient. The Board does not assert

---

**Janelle A. Rhyne, MD, FACP**, is President-Elect of the NC Medical Board and practices at New Hanover County Health Department. Dr. Rhyne can be reached at jrhyne@phrst2.org or 2029 S. 17th Street, Wilmington, NC 28401.

an ethical requirement for a physician to accept a new patient or treat or care for anyone. In its policy statement entitled "Termination of the Physician-Patient Relationship," the Board "recognizes the physician's right to choose patients and to terminate the professional relationship when he or she believes it is best to do so."

Several national professional societies addressed ethical imperatives to provide care after the September 11, 2001 terrorists attacks by adopting policy statements that focus on the medical professional's duty to care in a public health emergency. The American Medical Association (AMA) Policy E-9.067 Physician Obligation in Disaster Preparedness and Response says:

National, regional and local responses to epidemics, terrorist attacks, and other disasters require extensive involvement of physicians. Because of their commitment to care for the sick and injured, individual physicians have an obligation to provide urgent medical care during disasters. 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.

The AMA Ethics Manual statement H-140.873 says: "Front-line physicians have an increased ethical obligation to avail themselves of safe and effective protective and preventive measures (for example, influenza vaccine)."

The American College of Physicians (ACP) Ethics Manual addresses medical risk to physician and patient and the responsibility to work with the following statements:

Traditionally, the ethical imperative for physicians to provide care has overridden the risk to the treating physician, even during epidemics. In recent decades, with better control of such risks, physicians have practiced medicine in the absence of risk as a prominent concern. However, potential occupational exposures such as HIV, multidrug-resistant tuberculosis, severe acute respiratory syndrome, and viral hepatitis necessitate reaffirmation of the ethical imperative. Physicians should evaluate their risk for becoming infected with pathogens, both in their personal lives and in the workplace, and implement appropriate precautions. Because the diseases mentioned above may be transmitted from patient to physician and because they pose significant risks to the physician's health, some physicians may be

tempted to avoid care of infected patients. Physicians and health care organizations are obligated to provide competent and humane care to all patients, regardless of their illness. Physicians can and should expect their workplace to provide appropriate means to limit occupational exposure through rigorous application of infection control methods. The denial of appropriate care to a class of patients for any reason, including disease state is unethical.

According to these statements, medical professional associations and societies support the safety of physicians, but also assert an ethical obligation and responsibility to work during a public health crisis despite personal risks. The preeminence of the AMA and the ACP notwithstanding, the ethical imperatives to work they elucidate do not bind physicians who may, in good conscience, believe otherwise.

Nonetheless, whatever obligations physicians may have, surely the public has reciprocal obligations. If, for the public good, society expects physicians to voluntarily expose themselves to potentially lethal risks, what ought society provide physicians in return?

The following suggested remedies address some of the concerns that may contribute to a physician's reluctance to provide care in a health crisis situation such as an influenza pandemic.

- 1 Establish liability immunity for good faith medical treatment and triage<sup>a</sup> judgments.
- 2 Provide antiviral medications and vaccinations for physicians and their families.
- 3 Provide personal protective equipment such as masks, gloves, gowns, etc.
- 4 Provide community support services (ie, health services, food, and supplies) for physicians' families in the event of extended absence from home.
- 5 Suspend Health Insurance Portability and Accountability Act (HIPAA) regulations enforcement in cases of necessary and/or inadvertent violations in a crisis situation.
- 6 Provide a compensatory program modeled on workman's compensation for physicians who die or become disabled as a consequence of providing care in a pandemic.

The development of policies by our legislature to ensure the safety of our practicing physicians and physicians in training will benefit the present and future care of patients in North Carolina. If, however, reciprocal obligations to physicians are not acknowledged, failure to do so may adversely affect physicians' decisions to continue practicing medicine and it may dissuade others from becoming physicians in the first place. **NCMJ**

---

a The American College of Emergency Physicians Policy on triage states that "when the number of patients and severity of their injuries overpower existing resources, triage decisions must classify patients according to both their need and their likelihood of survival. The overriding principle should be to focus health care resources on those patients most likely to benefit who have a reasonable probability of survival."

## REFERENCES

- 1 Federation of State Medical Boards. Responding in times of need: Katrina and beyond. Dallas, TX, 2006. Available at: [http://www.fsmb.org/pdf/PUB\\_Responding\\_In\\_Times\\_of\\_Need.pdf](http://www.fsmb.org/pdf/PUB_Responding_In_Times_of_Need.pdf). Accessed February 2006.
- 2 Reid L. Diminishing Returns? Risk and the Duty to care in the SARS Epidemic. *Bioethics*. 2005;19:348-361.
- 3 Kon D, Lim MK, Chia SE, Ko SM, Quia F, Ng V, et al. Risk perception and impact of Severe Acute Respiratory Syndrome (SARS) on work and personal lives of health care workers in Singapore: what can we learn? *Med Care*. 2005;43:676-682.
- 4 Cooper RA, Getzen TE, McKee HJ, Laud P. Economic and Demographic Trends Signal an Impending Physician Shortage. *Health Aff*. 2002;21(1):140-154.

### Eat Smart, Move More Health Tip



# Tame the Tube— and Get Moving

Many of us say we don't have time for physical activity, yet we spend 3 to 4 hours in front of the TV. Not only are we inactive while watching television, we often snack on high-calorie foods at the same time. Trade TV time for physical activity. Walk or bike with your family after dinner. By planning TV time, you'll have more time for physical activity.

For more tips on how to tame the tube where you live, learn, earn, play and pray, visit

[www.EatSmartMoveMoreNC.com](http://www.EatSmartMoveMoreNC.com)

