DISASTER MEDICINE AND THE LAW: A CLASSROOM PRIMER

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AN INTRODUCTION TO ONTARIO'S MEDICO-LEGAL INFRASTRUCTURE (FROM THE DEEP END)

Students being introduced to our legal and judicial system should be familiar with institutions such as the police, the courts, and three levels of government. Criminal offences. Drug use and possession. Driver licensing. Young people are understandably concerned most with the limits imposed on them, their rights and their responsibilities while they explore what it is to be "me."

Understanding the role of medicine in law and order in a modern, peaceful society such as Ontario is sometimes hard. We need not cast our net very far beyond our borders, or reach far back into history, to see how precious and fragile the infrastructure can be:

> *NEW ORLEANS, July 18, 2006 (Reuters) - A doctor and two nurses at a New Orleans hospital have been charged with murder in the investigation of possible "mercy killings" of patients after Hurricane Katrina, a state spokeswoman said on Tuesday.*
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> *Tenet Healthcare Corp., which owns Memorial Medical Center, said the attorney general alleged the three people may have administered pain medication to quicken the deaths of patients in the chaotic aftermath of Hurricane Katrina. ...*

These are issues that transcend modern politics, law and public administration. Decisions made during civil unrest are not made by supreme courts after deliberations and careful research. While it is difficult to fathom the decision to euthanize patients in the circumstances of the Memorial Hospital story, it must also be recognized as a failure of

public administration. Can such an event happen in Ontario? Our right to be smug must be earned, by public education and careful planning. Is Ontario prepared to meet the medico-legal challenges of such a crisis? These are questions which your students must ask themselves, and for which they must demand answers.

The Medico-Legal Society of Toronto offers this presentation to the Ontario Justice Education Network to suggest a secondary school level lesson plan for the civics or law curriculum. The information provided is not intended to state any point of view but to spark questions in the classroom about the intersection of law and medicine in the preservation of our values and way of life. Nowhere are these institutions tested more than in a crisis involving health and social disorder. If the next pandemic is around the corner, are we ready for it? Will we understand the institutional forces in play? In the front end, we must consider what our rights and obligations are in the face of the emergence of a communicable disease outbreak. Later, when our health care system is overloaded and taken over by disaster response, who will receive treatment? Who won't?

PART ONE: CONTROL OF COMMUNICABLE DISEASES IN ONTARIO

The duties of various public health stakeholders in the event of an outbreak of a communicable disease are set out in Part IV of the *Health Protection and Promotion Act*, R.S.O. 1990, Chapter H.7. This was the medico-legal infrastructure in Ontario that responded to the 2004 SARS crisis in the Greater Toronto Area. You or your students will undoubtedly have some recollection of the pressures on the community and its institutions. Reading about the legislative framework will assist in understanding how public health officials were guided in this response.

Communicable Diseases

Communicable diseases under the *Act* are designated by Ontario Regulation No. 558/91. The following is an incomplete list of diseases which may be familiar to students, some of which are obvious public health risks, and other which may come as a surprise to members of the public as being reportable under the law:

- Acquired Immunodeficiency Syndrome (AIDS)
- Anthrax
- Botulism
- Chickenpox (Varicella)
- Chlamydia trachomatis infections
- Cholera
- Diphtheria
- Encephalitis, primary viral
- Food poisoning, all causes
- Gastroenteritis, institutional outbreaks
- Gonorrhoea
- Group A Streptococcal disease, invasive
- Haemophilus influenzae b disease, invasive
- Hemorrhagic fevers, including Ebola virus disease
- Hepatitis, viral,
- Influenza
- Lassa Fever
- Legionellosis

- Leprosy
- Malaria
- Measles
- Meningitis, acute
- Meningococcal disease, invasive
- Mumps
- Pertussis (Whooping Cough)
- Plague
- Pneumococcal disease, invasive
- Poliomyelitis, acute
- Psittacosis/Ornithosis
- Rabies
- Respiratory infection outbreaks in institutions
- Rubella
- Rubella, congenital syndrome
- Salmonellosis
- Severe Acute Respiratory Syndrome (SARS)
- Shigellosis
- Smallpox
- Syphilis
- Transmissible Spongiform Encephalopathy
- Trichinosis
- Tuberculosis
- Tularemia
- Typhoid Fever
- Verotoxin-producing E. coli infections
- West Nile Virus Illness
- Yellow Fever

The inclusion of chicken pox in this list might be the most surprising, because of the commonly held perception that it is a relatively benign disease that afflicts most people in early childhood. That it can be a serious illness causing death among children and adults accounts for its inclusion. What must be remembered is the purpose of protecting public health, that it is not a crime to come down with a communicable disease, and that like any law there is a discretionary element in enforcement. Most parents would keep their children home from school if their child comes down with the chicken pox, and report this to their school principal. No school administrator would then file a formal report to

the medical officer of health, whereas he or she would be expected to report a case of West Nile.

While it is not a crime to succumb to a communicable disease or to become a carrier, some of your students or their family members might come from ethno cultural backgrounds where victims or carriers are treated quite differently. (For all the talk of the avian influenza pandemic, Africa has been fighting a regional HIV-AIDS epidemic for many years. In Sub-Saharan Africa, an estimated 24.5 million people were living with HIV at the end of 2005 and approximately 2.7 million new infections occurred during that year. In just the past year the epidemic has claimed the lives of an estimated 2 million people in this region. More than twelve million children have been orphaned by AIDS.)

What, however, if there was a serious outbreak, or if the family to refuse to isolate their infected child and seek appropriate treatment?

Duty to Report

The following persons have a duty to report persons suspected of carrying a communicable disease to the local medical officer of health (sections 25-30):

- Hospital administrators, in the case of hospital patients
- Doctors, nurses, dentists, pharmacists and optometrists, in respect of persons who are not receiving treatment in a hospital
- School principals
- Laboratories
- Doctors issuing death certificates

The duty to report persons who have or carry communicable diseases is a significant exception to the duty to maintain the confidentiality of personal and health information. The report is to be made to the municipal medical officer of health, who has the power to make orders of varying encroachment on civil liberties. Sanctions begin with requests for voluntary submission to medical examination, confinement, treatment or hospitalization, to orders requiring submission to these constraints, to forcible enforcement by application to a judge of the Superior Court of Justice.

Contingency Planning

This is the legislative and regulatory foundation for the public health infrastructure. In the event of a serious public health crisis, each level of government has developed working protocols for the co-ordination of officials, individuals and institutions in the event of a major public health crisis.

Questions for the Classroom:

What should be the limits on individual freedom in the event of a widespread crisis involving communicable disease?

Is a system which relies on the power of a civilian court and due process to enforce public health capable of meeting the needs of public safety and protection in a crisis?

Carol, a doctor, has diagnosed Matthew, a long-standing patient and single father of two young children, with exposure to tuberculosis. Matthew pleads with Carol because he cannot afford the time off work, and there are no family resources to look after the children if he has to be hospitalized and quarantined. What should Carol do?

PART TWO: TRIAGE AND RIGHT TO TREATMENT

From a philosophical perspective, the law can sometimes resemble the world before Columbus. Perhaps not so much that the map of the world is flat, but that the operation of ethical rules is more effective in the centre of the map than around the edges. Consider this: In the event a civil crisis, and you require treatment for something completely unrelated to the spread of a communicable disease, what are your rights to reasonably competent medical care? What if you have contracted the disease?

In the same way that most insurance policies do not respond to acts of god, times of war, insurrection, and other "extreme" situations, the courts are likely to be lenient on doctors and nurses in times of public health crisis. Nevertheless, students must consider whether times of public upheaval should provide health care institutions and providers with *carte blanche* for ruthless application of medical triage, putting public health above individual need. The questions for the classroom, below, should prompt students to consider how the law should respond.

In Canada, the courts have had to grapple with the rationing of health care. For the most part, in civil medical negligence cases, the approach is to pretend that scarcity does not exist. This is not a uniquely Canadian problem. In the United States, one approach has been to allocate the consequences of medical scarcity to liability insurers. In the United Kingdom, a raging debate remains largely unsettled over the role of rationing public health between treatment of elderly and middle-aged patients. The legal and political analysis arising from the nexus between the right to care in a public health care system

and the priorities of a crisis may be beyond an introductory level. However, it is vital to a vibrant, thinking society that the debate extend beyond legal academics, judges and university bioethicists.

Questions for the Classroom:

Jeremy, a teenager, suffers from treatable cancer for which he receives regular treatments from his district hospital. If the treatment is interrupted, there is a serious risk that his cancer will become untreatable. As a result of protocols published by the medical officer of health, the hospital is required to give priority to the inoculation and isolation of patients sent to it under the Health Protection and Promotion Act. The crisis arises from a respiratory disease, which is spreading quickly through the community, which is fatal to the elderly and to young children, but which is not fatal to most adults. Jeremy is finding it difficult to receive his treatments, not for lack of availability of his doctor, but the rationing of nursing and administrative staff to deal with the emergency directives. The hospital is bursting at the seams with healthy baby-boom age patients seeking pre-emptive diagnosis and treatment for the disease.

1. ***What should be Jeremy's right to treatment, in relation to the rights of the healthy patients seeking pre-emptive diagnosis and treatment?***

2. ***What legal guidelines should be given to doctors and hospital administrators when choosing between the young and the elderly, when a crisis leaves no third option but to choose between saving one life over another?***