

# Using the Code of Ethics in Complex Political Environments

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## APHA CONFERENCE

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# Biopreparedness: Complex Political Environment

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- ❑ Local Community Biopreparedness  
Case: Hospital triage in a public health emergency
- ❑ Public health *ethics* as a necessary and complementary tool to *clinical* guidelines and to *legal* analysis
- ❑ Guidance from the Public Health Code of Ethics

# Biopreparedness: Complex Political Environment

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- Communities and public health groups struggle politically to prepare for allocating scarce medical resources
  - Stakeholders
    - Hospitals, Physicians, Public Health Officials, Political Leaders, Patients, the Public...
  - Ethical challenges in Public Health
    - Public health system is a “complex network of individuals and organizations...” (2002 IOM Report) with widely varying values
    - Role of professionals, government officials, and the public in developing ethical guidelines
    - Providing ethical justification for policies and decisions

# Biopreparedness: Complex Political Environment

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- Meetings of community physicians, public health officials, and hospital ethics committees
  - Focus: Clinical decision making when resources are scarce
  - Assumption: Rationing happens everyday; more scrutiny, different norms in public health emergency
  
- Case: Hospital triage in a public health emergency
  - Throughout the region, all hospital beds are occupied
  - All ventilators are in use
  - Need to ration ventilators

# Biopreparedness: Complex Political Environment

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- Current approaches to periodic shortages
    - First come, first served (fair equality of opportunity)
    - Patient transfer
  - Emergency with great scarcity
    - Greatest good for greatest number (utilitarian)
      - “Hospitals will be responsible for making decisions regarding responses to critical resource shortages *at the institution and health system level.*”
      - “During a critical resource shortage, hospitals will allocate such resources in a way that does the greatest good for the greatest number.”
- (State Hospital Assoc Planning Guide, based on federal guidance)

# Biopreparedness: Complex Political Environment

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## □ Prioritize patients

- Without guidelines
- Canadian Medical Association Journal guidelines
- Society for Academic Emergency Medicine guidelines

## □ Patients

- 63 yo male hospitalized for diabetes complications
- 72 yo male; heart failure; fever, respiratory distress
- 25 yo female; asthmatic requiring intubation
- 86 yo female cardiologist; respiratory distress, fever, confused
- 56 yo alcoholic; jaundiced, fever, chills

# Local Community Biopreparedness

## *Summary of Case Analysis*

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- *Clinical* consensus guidelines
  - Prioritization by physicians: Different patient priorities using different clinical guidelines
  - Need for “common” clinical consensus guidelines in the local community (fairness)
- *Legal* liability using guidelines
  - Physician liability for negligent substandard care
  - Patient/family rights to appeal decisions
- *Ethical* issues for physicians
  - Physician “patient-centered” medical ethic conflicts with utilitarian goals
  - Physician-patient relationship and patient trust at risk

# Local Community Biopreparedness

## *Summary of Case Analysis*

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- *Ethical* issues implementing “greatest good for the greatest number”
  - Medical good
    - Need: Sickest/worst off?
    - Outcome? Shortest time on ventilator? Quality or years of life?
  - Social good
    - How implement federal “priority” groups when an emergency is declared?
  - Justice
    - At-risk/underserved populations may be disadvantaged as groups given poorer baseline health; disparities in access to physicians, hospital
- *Ethical and legal issues*: Public involvement; public unprepared



# Overlapping Legal and Ethical Issues

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- What care is legally and ethically justifiable?
  - Law: Standard of Care Statutory Definition
    - A practitioner must use “(T)hat degree of skill and diligence practiced by a reasonably prudent practitioner in the field or specialty....”
  - Law: Jury Instructions
    - A practitioner must use “the degree of skill and diligence in the care and treatment of his patient that a reasonably prudent doctor in the same field of practice or specialty in this State would have used under the circumstances of this case.”

# Overlapping Legal and Ethical Issues

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## □ Law: Standard of Care

- No case law on altered standards of care
- Jury will consider unique circumstances
- How individual courts will rule is not clear

## □ Law and Ethics

- Hospitals and physicians need to document what is appropriate care in the circumstances (law)  
*depends on*
- Hospitals and physicians and communities need to decide how resources should be rationed in particular circumstances and cases; what principles or moral considerations provide guidance; the justifications for decisions in particular cases (ethics)

# Biopreparedness: Complex Political Environment

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- ❑ What is the role of public health officials?
- ❑ What guidance is provided by the Code of Ethics?

# Guidance from Public Health Code of Ethics

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## **Developed by Public Health Leadership Society**

### **Relevant Principles for Biopreparedness Rationing**

“Public health policies, programs, and priorities should be developed and evaluated through processes that ensure an opportunity for input from community members.

Public health should advocate and work for the empowerment of disenfranchised community members...

Public health institutions should provide communities with the information they have that is needed for decisions on policies or programs and should obtain the community’s consent for their implementation.

Public health institutions and their employees should engage in collaborations and affiliations in ways that build the public’s trust and the institution’s effectiveness.”

# Guidance from Public Health Code of Ethics

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- How should the public be “engaged” in rationing decisions?
  - Public Consent
    - Depends on political context and social contract; shared legitimate expectations and understandings/norms
      - Shift from individual model: Medical informed consent and presumed consent
      - Public health as public good, like water, food: Consent to rationing of public good should be codified in law; publicly vetted by legislature
    - Information Disclosed: Informed about biopreparedness rationing decisions and ethical justifications
    - Respectful Communication Act: Providing reasons and transparency builds trust
    - Public Involvement
      - Notice or acknowledgement of communication act
      - Invited to participate in community deliberations and hearings
      - Community focus groups and surveys about values, rationing decisions
      - Invited to rotate membership on community ethics committee boards, such as jury duty

# Guidance from Public Health Code of Ethics

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- What is the role of public health officials in community ethics?
  - Convener of community stakeholders
  - Conveyer of information
  - Educator
  - Policymaker: Active role with other government officials in forging public consensus on ethics, collective consent, and political responses
    - “What Cannot Be Said on Television about Health Care” Emmanuel

# Conclusions

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- Local Biopreparedness
  - Political dis-ease in addressing rationing, ethics
  - Requires integrated clinical, legal, and ethical analyses
- Need new models for public involvement and public consent
- Public Health Code of Ethics suggests role for public health leadership in policymaking on public consent