

EDITORIAL

From the Editor-in-Chief

James J. James, MD, DrPH, MHA

In this issue of *Disaster Medicine and Public Health Preparedness*, Gebbie et al present the findings of a multidisciplinary workgroup on care under extreme conditions.¹ The authors discuss the challenges that health professionals face meeting the usual care expectations during a disaster and suggest that situational circumstances require adapting standards of care. The authors conclude that health care providers have a professional responsibility to be ready to adapt and provide essential care during extreme conditions. In addition, they provide policy recommendations to address the anxiety providers face regarding liability for the difficult choices made during a disaster.

The invited commentary by American Medical Association President Nancy H. Nielsen, MD, PhD, examines the case of Anna Pou, MD, who stayed behind to help patients following Hurricane Katrina.² As many of you likely recall, Dr Pou along with 2 nurses were accused of second-degree murder following the death of 4 patients at Memorial Medical Center in New Orleans. Although the criminal charges against Dr Pou and the nurses were eventually dropped, civil cases are pending almost 4 years later. The inability to fully resolve this landmark case contributes little to alleviating the anxiety levels among potential responders to future events as noted above.

The policy recommendations proposed by Gebbie et al seeking to limit the liability of health care providers are also consistent with the findings of a study by Hoffman et al in this issue.³ The article describes the concepts of liability and standards of care and analyzes the various liability protections and sources of immunity available to emergency responders. In legal terms, the standard of care is defined as what a reasonable practitioner would do under similar circumstances. Practitioners may be found liable if the care they provide deviates from the expected standard. Although most practitioners realize that the expected standard of care cannot be maintained during a mass casualty event, when resources are scarce, definitive guidance in this area is lacking. The provision of such guidance is further complicated by the fact that the legal standard (that applied in legal proceedings) is not uniformly defined throughout the United States. In fact, Lewis et al have reported that “although 29 states and the District of Columbia have adopted a national standard, 21 states maintain a version of the locality rule, in which the standard of care by which a physician is judged is the standard of care in a particular locality.”⁴

When considering the many iterations of licensed health care providers who respond to events in locations outside their home state, all of which have differing “standards” defined by statutory law and interpreted by the courts in various jurisdictions, in large part through medical malpractice cases, the provision of reasonable and/or useful guidance appears infeasible without major, national legal redefinition. As Hoffman et al point out, this lack of guidance, coupled with immunity protection provisions that are “a patchwork with many gaps and inconsistencies,” may affect a responder’s willingness to serve in a disaster situation.

It should be noted that the federal government has provided funding and guidance to help states prepare for medical surge, including planning for altering established standards of care. However, a 2008 report by the Government Accountability Office found that some states “had not begun work on altered standards of care guidelines, or had not completed drafting guidelines because of the difficulty of addressing the medical, ethical and legal issues involved.”⁵ Resources such as the Agency for Healthcare Research and Quality’s *Mass Medical Care with Scarce Resources: A Community Planning Guide* and *Altered Standards of Care in Mass Casualty Events* provide some assistance to states on this issue, but additional support is needed.

The Institute of Medicine’s Forum on Medical and Public Health Preparedness for Catastrophic Events is organizing 4 regional public workshops on the topic “Standards of Care During a Mass Casualty Event” to help provide additional guidance in this area.⁶ The regional workshops, taking place in Irvine, CA, Orlando, FL, New York City, and Chicago, will feature invited presentations and discussions exploring efforts to establish standards of care. The objectives of these workshops include illuminating the progress and successes of efforts underway to establish local, state, and regional standards of care protocols; improving regional efforts by facilitating dialogue; discussing the roles and responsibilities of community stakeholders; examining what resources, guidelines, and expertise have been used to establish standards of care protocols; and identifying and discussing requirements of federal, state, and regional authorities to advance the development of protocols. These Institute of Medicine workshops are open to the public and the journal encourages robust participation from those concerned with this timely and vital topic.

In closing, I would like to express some personal thoughts on this issue and what, I feel, is the most feasible way to address it. Although the establishment of altered standards is an admirable goal, I feel it is unattainable for all of the reasons noted in this editorial, as well as the fact that as health care evolves, “standards” will themselves need to be altered, and we may well worsen the predicament of responders by applying static norms to a dynamic environment. Rather, we would benefit from applying Occam’s razor: the simplest of competing theories be preferred to the more complex. The goal of all of our efforts is, I would hope, to encourage health care personnel to respond when needed and to provide the best care possible given the circumstances under which they must perform and the resources available. To achieve this goal, health care personnel willing to respond under extreme conditions to protect the individual and public health must be guaranteed protection from personal liability. To do less as a nation weakens us all.

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