

Medical-Legal and Ethical Challenges during the Pandemic

Retina Society 2020

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Financial Disclosure

- Dr. Jiong Yan is a Vitreo-Retinal Surgeon at the Emory Eye Center, recently received Juris Master's degree from Emory School of Law
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- No Financial Disclosure

Summary

- Covid-19 has presented unprecedented challenges for health providers, including Retina Specialists
 - Entering unknown territory of ethical and legal complexity
- Ethical guidance and medical-legal frameworks are an increasingly common component of disaster response plans
- Raising awareness and having a plan in place will
 - Ease anxiety
 - Maximize readiness
 - Allow us to focus on patient care in times of crisis

Real World Dilemma

- My office is closed, what do I do with patients with urgent problems?
- a 75 year-old patient with wet AMD on anti-VEGF injection, should he come in for a scheduled injection?
- Patient has a Mac-on Retinal Detachment, but our hospital has only limited weekend OR access, what do I do?
- A physician who is Jewish refuses to treat a patient because he knows the patient's grandfather was a commandant at a concentration camp
- A physician refuses to treat a patient because he believes the patient cannot pay

Public Health Background

- Mass quarantine orders
 - Legal basis: states' general authority to protect the general public's health and safety, known as the **police power**
 - The police power is a very broad power regulating individual rights to protect the interests of society
- The federal government has limited but specified powers granted by the Constitution
- The U.S. Supreme Court's recognition of state's police power to protect public health dates back to 1905
 - In *Jacobson v. Massachusetts*, the Court upheld a government requirement for smallpox vaccination when that virus was spreading.

Ethics guidance during a pandemic (AMA)

- **Physician Responsibility:** Because of their commitment to care for the sick and injured, individual physicians have an obligation to provide urgent medical care during disasters. This obligation holds even in the face of greater than usual risks to physicians' own safety, health, or life. (Opinion 8.3)

Ethics guidance during a pandemic (AMA)

- **Physician Stewardship:** During public health emergencies, physician's commitment of fidelity to the individual patient is counterbalanced by the need to protect the welfare of community and the betterment of public health and to be prudent stewards of limited societal resources entrusted to them. (Opinion 11.1.2)

Ethics guidance during a pandemic (AMA)

- **Institution's Obligations to Protect Health Care Professionals:** duties to protect health care personnel, such as making every effort to provide adequate personal protective equipment, as well as striving to obtain the clinical resources physicians need to discharge their responsibility to patients

Ethics guidance during a pandemic (AMA)

- **Protecting health care personnel:** Whether physicians can ethically decline to provide care if PPE is not available depends on several considerations, particularly the anticipated level of risk.
- The benefits of protecting physicians and all health care personnel, especially those who are most immediately at risk by virtue of their service to patients, accrue to the public at large.

Malpractice Liability

- Two areas of risk:
 - Outside of scope of care: Ophthalmologists who are answering the call/reassignment to assist overwhelmed hospitals
 - Within Ophthalmology: Cancelled or postponed care
- Balance risk of significant visual loss and risk of contracting COVID-19 infection with in person visit
- Standard of care vs. crisis care

Malpractice Liability

- Physicians have a duty to all patients under our care or on call
 - Inadequate supply of PPE from hospital
 - Law of abandonment
- A Good Samaritan law cannot be relied upon
 - Covers care outside of medical facilities
 - Rendered to individuals to whom we do not owe a duty

Immunity Law Protection

- Federal Protection:
 - Under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Congress provided liability protection to **volunteer** health care professionals providing health care services during the Pandemic
 - Not extended to *non-volunteer* health care providers
 - Senate and House bill to limit broad liability for healthcare providers
- State Protection:
 - Certain states have extended liability protection to healthcare professionals through governor’s executive orders: NY, GA, IL, etc

Duty Calls for care outside of ophthalmology

- Know what you can and cannot do
- informed consent if possible
 - patients may not be in a position to select their caregivers
- Immunity laws do not cover gross negligence
 - acting so recklessly that it shows a disregard for patient safety
 - For example: accepting to intubate a patient when you are 20 years into an ophthalmology practice

Ethical Practice in Telemedicine

- New way of delivering care, minimizing face to face contact
- Fundamental ethical responsibilities do not change
 - To place patient's welfare above other interest
 - To disclose any financial conflict of interest
 - To maintain data accuracy and integrity during health information transmission
 - To prevent unauthorized access and protect patient privacy during the electronic transmission
 - To advise patient the limits of the telemedicine visits, and to arrange for follow up care if needed
 - To uphold the same standards of professionalism as in person care

Ways to Limit Liability

- Practice good patient care with ethical guidance
- Maintain documentation of any changes from the standard of care
 - Reasons for deviation from standard policy
 - May help support the reasonableness or necessity for those changes in the event that the appropriateness of these actions are questioned in the future

Thank you!