


**Lesson 5**

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**Legal and Ethical Issues  
in Disaster**



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**Learning Objectives**

- Describe general legal and regulatory framework for disaster response
- Discuss three core ethical issues common in disaster planning and response
- Explain standard of care in disasters

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**Individual Rights**

**Individual liberty restrictions**

- Compelling interest
- Well-targeted intervention
- Least restrictive means
- Due process

**US Constitutional Amendments**

- 5<sup>th</sup> – Due process
- 14<sup>th</sup> – Equal protection

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**Federal roles**

- Interstate commerce
- National defense
- Tax and spend for public welfare

**State roles**

- Public health law
- Police powers
- Protect public health and welfare
  - Public health emergency powers

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**Public health emergency powers**

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**Disaster Declarations**

HHS Secretary: public health emergency  
President: Stafford Act

State requests assistance

Triggers public health emergency powers

State declares state of emergency

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### Federal Context

#### Insurrection Act (1807)

- Limits use of federal forces within state

#### Posse Comitatus Act (1878)

- Prohibits use of federal forces for law enforcement

#### Stafford Act (1988)

- Governor requests assistance
- President declares disaster
- FEMA responds

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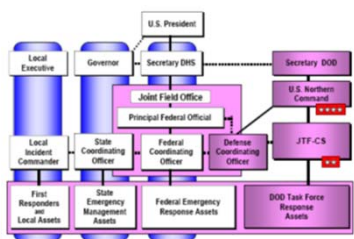
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### Three Pillars of Civil Support



JTF Command Briefing, 2005.

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### Ethics in Disaster Response

<b>R</b>	<b>Responsibility</b> to care despite personal risk <ul style="list-style-type: none"> <li>▪ Duty to treat</li> </ul>
<b>R</b>	<b>Restrictions</b> on liberty <ul style="list-style-type: none"> <li>▪ Quarantine, isolation, and social distancing</li> </ul>
<b>R</b>	<b>Resource</b> allocation dilemmas <ul style="list-style-type: none"> <li>▪ Rationing and crisis standards of care</li> </ul>

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### Duty to Treat

- Social contract
- Moral obligations of special training
  - Capability
  - Proximity
  - Degree of need
  - Absence of other sources of aid
- Nondiscrimination



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### Limits of Duty to Treat

- Continuing care for other casualties
- Reciprocal social obligations
  - Provision of personal protective equipment
  - Compensation and care when injured
  - Liability protection
- No absolute universal threshold

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### Volunteer and Worker Compensation

- Responder status: employee or volunteer
  - Some states define volunteers as state employees during disasters
  - Some volunteers, as temporary employees, may be eligible for benefits from receiving institution



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### Volunteers and Regulatory Issues

**State**

- Licensure and credentialing
- Waivers of licensure in declared disasters
  - Emergency Management Assistance Compact
  - UEVHPA
  - Medical Reserve Corps

**Federal**

- Federal health care providers
- Federalized health care providers (DMAT)

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### Volunteers and Liability

**Criminal liability**  
**No immunity**



**Gaps in liability protection**

**Civil liability**  
**Immunity**

- Mutual aid compacts
- Good Samaritan statutes
- State emergency health powers statutes
- UEVHPA
- Federalized providers

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### Uniform Emergency Volunteer Health Practitioner Act (UEVHPA)

- Triggered by state or local declaration of emergency:
  - License reciprocity
  - Immunity from liability
  - Workers' compensation benefits
- Volunteers in authorized registration system
- Not for volunteers in pre-existing employment agreement
- Adopted by 16 states and DC (2015)

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### Encouraging Organized Volunteers



Registered volunteers  
(ESAR-VHR, MRC)



Affiliated volunteers  
(Red Cross)



Federal level  
(DHHS temporary, DMAT)

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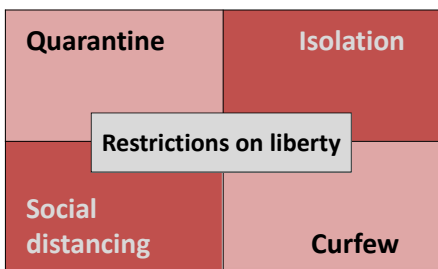
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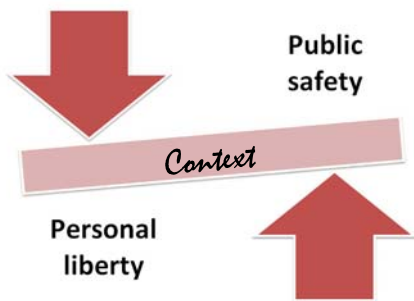
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### UN Siracusa Principles

Coercive public health measures must be

- Legitimate
- Legal
- Necessary
- Nondiscriminatory

*"Least restrictive means appropriate to the reasonable achievement of public health goals"*

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### Ethical Predications

**J.S. Mill's "harm principle"**

Power rightfully exercised over any member of a civilized community, against his will, to prevent harm to others

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Ethical dilemma eased if proposed restriction prevents harm to others

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### Effectiveness

Social Characteristics	Disease and Injury Factors
Social cohesiveness	Duration
Trust	Transmissibility
Knowledge	Recovery rate
Affective social groups	Environmental stability

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### Mixed Effectiveness

- Real human behavior (survival instinct)
- Panic from aggressive quarantine
- Effective communication essential
- Mass screening limited value

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### Quarantine Sacrifices

- Employment
- Family duties
- Potential overcrowding
- Exposure to illness
- Stigma
- Potential discrimination
- Privacy
- Mental health

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### Waiver of Federal Rights

**Condition: President declares emergency and HHS secretary declares public health emergency**

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- May be waived for seventy-two hours
  - Emergency Medical Treatment and Active Labor Act (EMTALA)
  - HIPAA privacy rules
- Applicable in emergency area and disaster-activated hospitals

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### Potential Rationing Principles

- Save most lives (higher risk)
- Save most life years
- Save most productive life years
- Women and children
- First come, first served
- Market-based

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### Standard of Care

- Perform to the highest reasonable standard under given circumstances
  - Standard of care depends on context
- Disaster context is not normal routine
  - Not possible to attain routine standard without resources

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### Crisis Standards of Care

- Substantial change in operations and level of care
- Made necessary by pervasive or catastrophic disaster
- Justified by specific circumstances
- Formally declared by state government
- Sustained period of altered operations
- Enables specific powers and protections

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### Crisis Care Implementation

Fairness

Equitable process

Participatory engagement

Governed by rule of law

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### Core Ethical Challenges

Resources for injury and illness  
Deep discomfort, yet forced choice

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- Withdrawal of care
- Palliative care
- Expectant care

} ≠ euthanasia

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### AMA-ANA Joint Statement

- Very concerned about criminalizing patient care decisions when medical personnel and supplies are severely compromised
- During disaster, health providers work together to make best decisions given available resources
- Real fear of having best judgments second-guessed in disasters

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**Use limited resources fairly**

- Achieve greatest benefit
- Preserve ethical obligations
- Comfort always

**Make decisions based on situational awareness**

- Transparent
- Consistent

**Avoid ad hoc decisions by individuals**

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**What is the first level of civil support in disasters?**

- a) Defense support
- b) Homeland Security
- c) Local
- d) State

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**What is isolation?**

- a) Mandatory social distancing
- b) Quarantine
- c) Separation of ill people
- d) Shelter in place

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**The standard of care in disasters...**

- a) is dependent on context
- b) permits euthanasia
- c) refers to the routine standard
- d) requires government intervention

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**Lesson Summary**

- State and federal response: tiered and coordinated
- Ethical framework with three Rs
  1. Responsibility
  2. Restrictions
  3. Resources
- Standard of care always depends on context

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