

Disaster Medical Standards:  
If you ask the wrong question, the  
answer doesn't matter.

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Supporting Materials

<http://biotech.law.lsu.edu/cphl/slides/MCIM-2011.htm>



# The Wrong Question

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How do we change medical standards  
in disasters to avoid legal liability?



## Is This a Type 3 or Type 4 Error?

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- A Type 3 error “is the unintentional error of solving the wrong problems precisely.”
- “In sharp contrast, the Type 4 Error is the intentional error of solving the wrong problems.”
  - Dirty Rotten Strategies:  
How We Trick Ourselves and Others into Solving the Wrong Problems Precisely



# Why Does the Type of Error Matter?

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- Type 3 errors are mistakes
  - Good information sometimes fixes mistakes
- Type 4 errors are tend to be done for two overlapping reasons:
  - There is money in solving the wrong problem.
  - Someone is making money/getting elected keeping people from thinking about the right question.
- People making Type 4 errors fight correct information and resist change.



# Why Are We Worried About Standards for Care in Emergencies?

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# Post-9/11 and The Anthrax Scare

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- Post 9/11, some advocates claimed that the government did not have the legal power to take necessary emergency actions because it did not have enough laws.
  - This implied that the government officials could get into legal trouble if they took actions without more law
  - This led to a push for broad emergency power laws, including immunity provisions for doing your job
  - There was no evidence that more laws and more immunity were needed.
- These new laws did nothing to improve response - See Katrina and H1N1.



# Post-Katrina:

## The Memorial Hospital Question

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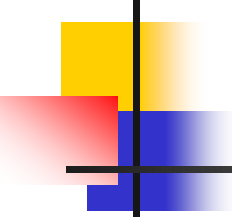
- The events at Memorial Hospital resulted in tort litigation, significant settlements, and arrests.
- The defendants say they just did what any good provider would have done and that this means that we need special standards for disaster medicine.
- The Louisiana Medical Society, though not all docs in Louisiana, bought their story, as did the CDC.
- If you stick around until 4, you can hear it yourself.



# Another Story, and Why it Matters

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- This story starts long before Katrina and is based on the failure of the hospital and the supervising institutions to make proper preparations for the well known risk of hurricane-driven flooding.
- The second part is that once the disaster happened, things were done in the hospital that were crimes and had nothing to do with inadequate standards for disaster medicine.
- No modified medical standards would matter if these stories are true.



# Making up Your Own Mind

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- The Attorney General investigated the deaths and believed crimes were committed
  - The Edwards Constitution
  - Danziger Bridge/Congressman Jefferson/Judge Porteous/...
  - The defendants have taken every possible measure to prevent the release of any of the information from the original investigation.
- ProPublica won a Pulitzer Prize for an investigative report – Deadly Choices at Memorial Hospital - that raised serious questions about care at Memorial.



# The Right Question

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- How do we avoid ending up in situations where we are worried about needing special laws and standards for care?



# How We Answer the Right Question

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- Are we being honest about the risk?
- Are we being honest about what it would take to achieve acceptable response to the risk?
- If we cannot achieve acceptable response, can we reduce the exposure to the risk?
- If we cannot mitigate the risk and cannot achieve acceptable response, have we told the public the truth?



# Answering the Right Question

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## Hurricanes in New Orleans



# Being Honest About the Risk

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- Much of New Orleans is below sea level and continuing to sink
- The ocean is rising so coastal restoration is a scam
- Katrina just grazed New Orleans
- The “new” levees are for a 100 year storm
- FEMA let facilities reopen and people resettle in high risk areas
- Bottom-Line: NO is going to flood again.



# Can We Respond Acceptably?

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- This does not mean your own medical standard, but what does the public see as acceptable.
  - If the public expects more than you can do, you are in trouble
- Self-sufficient power, water, food, staff for at least a week with no resupply.
  - What will it take to do this?
- Bottom-Line: No one can do this.



# Can We Mitigate the Risk?

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- We should not have allowed facilities to reopen without being prepared for the next flood, but that was politically impossible.
- We should have limited the repopulation of the city, but that was politically impossible.
- All that is left is evacuating the facilities on 36 hours notice, without endangering anyone.
- Bottom-Line: This is physically and politically impossible.



# Have We Told the Public the Truth?

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- Are our plans based on the city flooding again?
- Are we planning that the risk will get higher each year?
- Do our plans say that state and federal spending cuts will further weaken our infrastructure and response every year?
- Do our response plans promise much more than we can deliver?



# The Wrong Question

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- As we will see, answering the Right Question requires confronting difficult political problems.
- Answering the Wrong Question lets us avoid these difficult questions and just focus on whether we can lower the legal bar enough to cover-up our failings.



# Are You Making a Type 3 or Type 4 Error?

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- Are you focusing on the Wrong Question by accident because you do not understand what really needs to be done?
- Are you intentionally focusing on the Wrong Question because you are hoping that the problem will not happen on your watch and you do not want political trouble?
- Most importantly (next slide)

**DISASTER  
IS  
GOOD BUSINESS!!**



# Your Legal Liability

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- If you lie to the public and people are injured, you are going to have legal and political problems.
- Keys to limiting legal liability
  - Be honest about your limitations,
  - Speak up about the risks that you cannot control,
  - Act in good faith when things go to hell, and
  - Document why you do what you do.