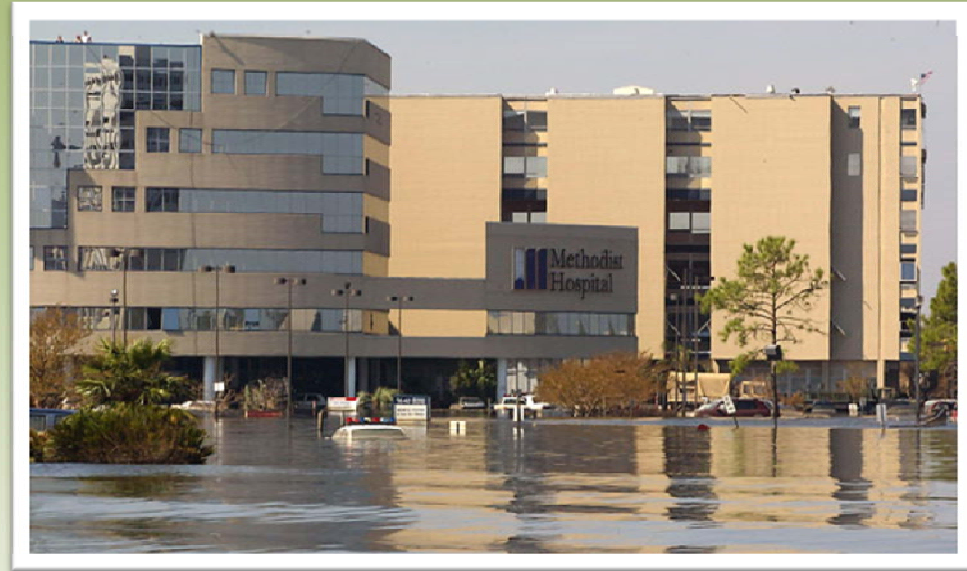


Legal Preparedness: A Necessity Too Often Neglected

Joseph Tricarico, Jr., D.M.D., JD

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Can we ever be prepared for...



Organization Preparedness

- Prepare a legal and procedural strategy to:
 - Lessen the loss of property
 - Lessen the loss of life
 - Ensure organization viability

Law is...

- Agreed upon expectations
- Situational guidance
- Equitable settlement of unanticipated events

Aspects of Law

- Many aspects of law are involved in proper preparedness:
 - Contract Law
 - Employee Law
 - Tort Law
 - Administrative Law
 - Constitutional Law

Jurisdictional Authority

- Every state has unique interrelationship jurisdictionally
- Smooth “ramp up” is essential for timely effective response
 - Federal/State/Local/DOD
- Political concerns should be minimized

Civil Liberty Issues

- Social Distancing
- Commandeering of supplies, facilities, and labor
- Smooth and effective due process
 - Conform constitutionally, but not impede effective response
- Tort – Protection should be in place for responders.

Preventive Law

- Disconnect between responders & decision makers
- Existing statutory authority may provide false sense of security
 - EMAC
 - Emergency Health Powers Act
- Need more engagement of “decision makers” in legal preparedness at all levels of government
 - Local
 - State (particularly AG)
 - Federal
- Determine legal strategy “preventively” before an event

Exercising the “Legal Plan” is essential

- Do not make assumptions and skip over legal process in exercise design
- Act first & seek forgiveness later not acceptable
 - A well thought out legal plan would anticipate and be prepared for legal entanglements

Alternate Standards of Care

- Allocating scarce equipment and personnel in a way that saves the largest number of lives

Many Legal Impediments to Accomplish

- H1N1 masks
- Mobile hospitals

Tort Issues

- Duty
- Breach of Duty
- Causation
- Damages

Tort Protections

- Volunteer Protection Act
- Good Samaritan Laws
- Emergency Health Powers Act

Negligence

- Definition

The “Katrina” Case

- Criminal Liability
- Civil Liability

Legal / Ethical Conundrum

- Statutory and regulatory codification of alternate standards of care
- Ethical considerations of alternate standards of care
- Political and social ramifications

Next Steps

- Actively engage “decision makers” to become familiar with all hazards preparation
 - Legal relationship
 - Legal authorities
 - This education should be cost effective and in plain language
- Use existing check lists to ascertain legal readiness
 - CDC checklist
- Comprehensive review of existing legal structures and authority
 - Identify gaps
 - Propose statutes & regulations to fill them

Conclusion

- Significant progress has been made to formulate laws to deal with terrorism
- Academic work has been done in the field, but this information has not successfully been transferred to “decision makers”
- Time delay in education during the event could be very costly in terms of life and property

Questions We Need to Ask

Joseph Tricarico, Jr. D.M.D, JD

Email: joseph.tricarico.jr@gmail.com