No One May Be Refused Emergency Medical Treatment

Ethical Dilemmas in South African Emergency Medicine

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When confronted with a medical emergency, health care providers have a moral obligation to help without fear, favor, or undue financial hardship.
• In South Africa, this duty is bound by section 27(3) of the Constitution, which states that ‘no one may be refused emergency medical treatment.’

• South African patients are still denied access to emergency departments

• ambulances drive from hospital to hospital seeking basic emergency medical care

• confusion stems from statute books & Constitutional Court – failed to provide clear guidance on definition of a medical emergency and basic emergency medical treatment in modern-day SA
Objectives of this session

• Current SA definition of a medical emergency; who is excluded from treatment based on this definition

• Your ethical responsibilities as a HCP when faced with a medical emergency that may not fit the definition under law

• Alternatives to the current definition (eg should the Constitution be amended to change “no one may be refused” to “everyone shall receive”)

• The feasibility of viewing emergency medical treatment as a basic absolute right despite the resource challenges facing the SA medical system

• You will leave this session with a clear understanding of the legal and ethical complexities of refusing or providing basic emergency medical treatment.
So what is an emergency?

• No clear definition in the legislation

• Reasonable inference can be drawn that an emergency would entail imminent death or serious & irreparable damage to the patient’s health
• Supported & expanded in the Sooberamy case where court held that there should be “suddenness or unexpectedness”

• Condition must be acute

• Use sound objective judgment in assessing whether the patient is an “emergency”

• Err on the side of caution before refusing treatment

• Err on the side of commission
emergency medical condition

sudden and, at the time, unexpected onset of a health condition that requires immediate medical or surgical treatment, where failure to provide medical or surgical treatment would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person’s life in serious jeopardy
Ethical decision making

- Principles
- Utilitarianism
- Deontological approach
- Ethics of responsibility
Ethics quick tests & Heuristics
• **Values test** – does it fit with your values – personal, professional, workplace
• **Safety test** – could it directly or indirectly endanger someone or cause injury
• **Law test** – is it legal & in line with relevant policies and standards?
• **Conscience test** – does it fit with my personal values?
• **Newspaper test** – would I feel comfortable with the decision?
• **Family test** – what would I tell my spouse, parent or child to do?
• **“Feel” test** – what’s my intuition / gut feel? If it feels bad, then it probably is...
So what are the imperatives or duties we are obliged to abide by?
Section 27. Health care, food, water & social security

1. Everyone has the right to have access to -
   - health care services, incl reproductive health care;
   - sufficient food and water; and
   - social security, including, if they are unable to support themselves & their dependants, appropriate social assistance.

2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

3. No one may be refused emergency medical treatment.
5. A health care provider, health worker or health establishment may not refuse a person emergency medical treatment.
- What is a health care provider?
- What is a health care worker?
- What is a health establishment?
- Can this include private practices?
What about fees?

- None of the legislation states that health services – emergency or otherwise – must be rendered free of charge.

- In an emergency situation, health services must be rendered to the patient.
Health care practitioners have a responsibility to make the care of their patients their first concern.
Health care practitioners have a duty to give priority to patients on the basis of clinical need, while seeking to make the best use of resources and using up to date evidence about the clinical efficacy of treatments.
Health care practitioners must not allow their views about, for example, a patient’s age, disability, race, colour, culture, beliefs, sexuality, gender, lifestyle, social or economic status or other irrational grounds to prejudice the choices of treatment offered or the general standard of care provided.

A non-discriminatory policy also applies to patients infected with HIV.
EMERGENCIES

In an acute life threatening emergency where any delay might prejudice the outcome & where it is impossible to obtain all relevant information or hold any consultations required - or where there is uncertainty about the diagnosis or the likelihood of recovery, health care practitioners should start treatment which may be of some benefit to the patient until a clearer assessment can be made
• If the treatment referred to in para above, was done without the consent of the patient the health care practitioner should inform the patient about the procedures that were done – as soon as the patient is mentally capable of understanding such information.
When the HCP does not wish to take on a patient’s care...

- There is a legal & ethical obligation to take on the care of the patient
- Can the HCP refuse to see the patient
  - in an emergency?
  - when the patient is abusive / violent?
  - Has outstanding accounts with the practitioner?
  - Cannot pay the fees?
  - Is an illegal alien?
  - Who has just hijacked and allegedly murdered?
NO!

• It’s as easy and straightforward as that...

• Provided it is an emergency, a condition that is ill-defined and lacks clarity, being open for misinterpretation and bias
• Patient should be advised of the reasons for the practitioner’s refusal and should be referred elsewhere for treatment...

• Save in the instance of...
• Right of admission? A health care institution (public or private) may refuse to admit or see a patient...

• Save in the instance of...

• Ref – National Health Act, chapter 2.
scenario

• Pt presents at emergency dept (pubic or private) with non-emergency condition

• Can the treating doctor refuse to admit and/or to call the specialist?

• Is there an obligation for the specialist to come in and see the patient, if the patient demands it?
scenario

• Public ambulance is turned away from a private hospital because the patient is indigent, with no medical aid and is likely unable to pay the required deposit...

• Is there risk of liability?
scenario

• An ambulance brings a pt into a public hospital
• The crew is told in no uncertain terms that the hospital is closed and they cannot accept the patient
• Is this reasonable and defensible?
Summary

• Err on the side of commission, always...

• Ethics of responsibility dictates that the patient in an emergency should be treated

• What does this mean?

• A clearer definition is required to manage & regulate the emergency care of patients