

# Ethical & Legal Aspects Tuberculosis Control

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## Disclosures

- No relevant relationships or interests in commercial entities to disclose
- Financial ties: WA DOH only



## Ethics? TB and the Law?

### Regulated entities

- patients
- clinicians
- health officer and designees
- others



## Learning Objectives

- List at least two guiding principles you can apply when engaging in an ethical review process.
- Describe a framework for evaluating and responding to ethical concerns and conflicts.
- List at least two individual rights that can be affected by a disease control directive.
- Describe the typical escalation of steps in ensuring compliance in the context of persistent non-adherence.



## Terminology

- **Morality:** personal and/or group beliefs about right and wrong
- **Ethics:**
  - a framework for making choices
  - standard for conduct in a particular group or society
- **Law:** “the system of rules which a particular country or community recognizes as **regulating** the actions of its members and which it may **enforce** by the imposition of **penalties**.” (Oxford Languages)



## Health Ethics: Some Guiding Principles

- **Beneficence:** action that is done for the benefit of others
- **Non-maleficence:** to “do no harm” (*primum non nocere*)
- **Autonomy:** free from both controlling interferences by others and from personal limitations that prevent meaningful choice
- **Distributive justice:**
  - patients in the same situation are treated similarly
  - limited resources allocated to the “greatest good”
  - limited resources allocated to those furthest from opportunity
- **Procedural justice:** right to petition/appeal, adjudication
- **Confidentiality:** limiting disclosures to an authorized and need-to-know basis



## Ethical Review Process

- Identify the dilemma or conflict
- Review options, consider consequences of each choice based on principles and values of various parties
- Make a choice
- Follow-up & learn



## TB Control Activities with Potential for Maleficence

- Adverse effects of treatment
- Poorly targeted screening for latent TB
- Psychosocial and economic impacts
  - Medical bills for pre-treatment period
  - Isolation (depression, anxiety, lost earnings)
  - Contact investigations (stigma, guilt, unnecessary news)



## Individual Rights Affected by TB Control Activities

- Privacy
- Freedom of association
- Self-determination (informed consent/refusal)
- Equal protection/freedom from discrimination



## Disease Control's Ethical Dilemma

- At least two customers
  - Patient
  - Community
- Individual liberty and state interests are often aligned
- When they are not, laws establish the rules, and the judicial system enforces them



## Principles of Public Health Law

- Rooted in police power granted to sovereign states by the constitution (Bill of Rights, Amendment X)
- Forms
  - Statutes (legislators)
  - Administrative (boards, executive depts)
  - Common law (court decisions)
- General criteria for validity
  - Compelling state interest
  - Narrowly tailored
  - Least restrictive means



## Typical Local Public Health Powers and Duties

RCW 70.05.070

- Enforce the public health statutes, rules, regulations and ordinances effective within his or her jurisdiction
- Take such action as is necessary to maintain health and sanitation
- Control and prevent the spread of any dangerous, contagious or infectious diseases



## TB Control Activities Addressed in Public Health Law

- Case finding--examination directives
- Surveillance--health care provider reporting
- Case investigation--access to protected health information
- Hospital discharge planning
- Adherence and completion of therapy
- Orders and due process
- Payment for services

WACs 246-170 & 246-100-211



## Health Care Provider Duties

- Report suspected cases (typically within 24 hours of recognition)
- Provide requested information
- Review hospital discharge and treatment plan with TB control prior to discharge
- Cooperate in any other reasonable way the health officer requests
- Reinforce disease control directives to patient
- Refer for DOT/case management
- Report on progress of treatment (if involved in rx)
- Report non-adherence
- Examine or cause to be examined close contacts

WACs 246-101-021, 246-170 & 246-100-211



## Patient Responsibilities

- Cooperate with and complete the evaluation
- Follow infection control directives
- Comply with and complete an approved treatment plan
- Cooperate with public health investigations

*RCW 70.28, WAC 246-170 & 246-100-211*



## Local Public Health Responsibilities

- Capacity for testing, diagnosis, and treatment in accord with ATS/IDSA/CDC guidelines
- DOT and case management
- MD consultant/tuberculosis control officer
- Providing data on cases and contacts to the state health department
- Payment for services in the absence of third-party payment
- Address non-adherence

*RCW 70.28, WAC 246-100-170, WAC 246-170*





## Case 1

- Unsheltered 34 y/o with alcohol use disorder
- Smear positive, cavitary pulmonary TB
- On therapy 2 days, still hospitalized
- EtOH and nicotine withdrawal
- Leaving isolation room
- Threatening to leave facility against medical advice

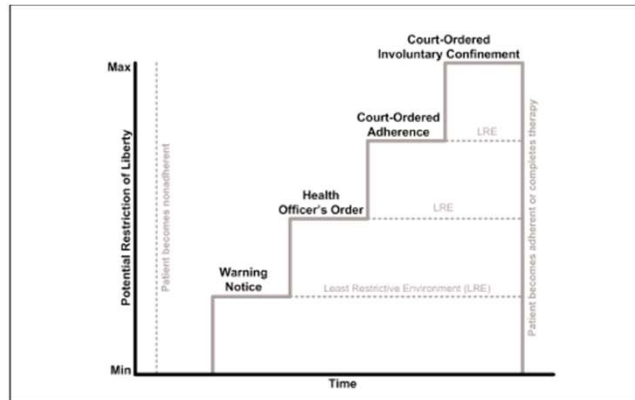


## Case 1—Interactive Poll What Would You Do?

- A) Attempt to reach the emergency contact listed in his hospital demographics
- B) Post security outside his door to block his egress if he attempts to leave
- C) Negotiate a controlled discharge with a few day supply of medications and TB clinic follow-up
- D) Immediately notify TB control officer



## Progressive Steps in the Implementation of Legal Interventions



Source: New Jersey Rutgers Global TB Institute



## Elements of a Health Officer Order

- Remind of the diagnosis and its basis
- What can happen in general with TB
- What this individual has been provided with and what is expected
- What has occurred instead
- Therefore, “threat to public health...” and pursuant to <relevant laws> I order you to do the following...
- When does this order expire?
- If you don’t comply, then I must notify the prosecuting attorney and may petition the court to order your cooperation, which could include detention.



## Preparing for a Legal Process

- Health Officer's order(s)
- Documentation of counseling/agreements regarding isolation, DOT, etc.
- Documentation of shortcomings and efforts to elicit voluntary correction
- Reasonably anticipated outcomes of doing nothing vs. proposed action(s)
- Pursue guidance and representation from legal counsel



## Key Documents for a Court Process

- Petition and order for desired action
- Declaration of health-or-TB control officer
- Declarations of other key witnesses
- Petition and order for law enforcement support
- Order setting date for follow-up hearing
- **Motion and order to seal the record**



## Case 2

- 91-year-old home-bound woman
- Clinical pleural TB, but also had a single positive sputum culture (fully sensitive)
- INH intolerance
- Rx: completed 4 mo RIF-MOX-EMB to-date
- Develops rifamycin hypersensitivity after 4 mo
- Refuses further therapy
- Culture negative since 4 weeks into treatment
- CXR normal since 6 weeks into treatment



## Case 2—Interactive Poll What Would You Do?

- A) Order to comply with treatment plan until completion of a full regimen
- B) Impose indefinite home isolation
- C) Continue to counsel until she accepts further treatment
- D) Stop therapy; begin post-treatment monitoring



# Discussion

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# Resources

- University of Washington. [Public Health Ethics](#).
- Stanford University. [Public Health Ethics](#).
- UCSF. [Population Health & Health Equity](#).
- UCSF. [Bioethics](#).
- [RCW 70.05.070](#)—Local health officer—Powers and duties
- [RCW 70.28](#)—Control of Tuberculosis
- [WAC 246-100-211](#)—Tuberculosis
- [WAC 246-170](#) --TB—Prevention, Treatment & Control
- California TB Controllers Association. [Legal Resources](#).
- [America's Founding Documents](#) (Bill of Rights, etc.)
- [Centers for Law and the Public's Health](#)
- Cabrera OA, Hodge JG, Gostin LO. [Express Tuberculosis Control Laws in Select US Jurisdictions](#). Centers for Law and the Public's Health.
- Anything else by Lawrence Gostin Centers for Disease Control and Prevention. [Public Health Ethics](#).



