Betraying an American Tradition: The Killing of Charity Hospital

Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.

-U.N. General Comment 14 on the right to the highest attainable standard of health

Introduction

Hurricane Katrina wrought paths of destruction and wove its way through the heart of poor communities throughout the Gulf Coast. As much damage as the storm imposed, however, it did not undermine the strong infrastructure of the oldest hospital in New Orleans. Charity Hospital, serving the sick and poor in the city since 1736, was flooded but its foundation, both moral and physical, remained intact. The doctors, nurses, other staff, and especially the patients, rightly expected to have "Big Charity" (as it was affectionately known) to resume its central role in protecting the human right to health care in a matter of months.

What the community of both providers and patients failed to anticipate was a concerted effort to prevent Charity Hospital from retaining its identity as the health care center for all people. Charity Hospital has been the legendary provider of last resort when all other aspects of the health care system in New Orleans failed. Rather than ensuring the survival of this vital institution, hospital administrators are relentlessly pushing forward a plan to redefine Charity Hospital as an academic training institution that would sidestep the human rights obligation to provide health care for all. In this process, hospital administrators have denied access to inspectors that would determine whether the building was sound, and are betraying the faith of the committed health care professionals that had dedicated their lives to the 250 year old tradition at Charity Hospital to serve those in need despite ability to pay. Their actions are effectively destroying what the hurricane could not – a commitment to the human right to health care in New Orleans.

International Legal Standards Regarding Access to Health Care

Closing a public hospital that serves as the provider of last resort for the most vulnerable members of a community, involves not only moral and public health considerations, but also raises international human rights concerns. Since the adoption of the Universal Declaration of Human Rights (UDHR), international law has recognized access to medical care as a fundamental right. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESR) clearly demands that governments ensure that there is an adequate health care infrastructure in place that makes health care available for all. Clearly public hospitals are a key component of any adequate health care infrastructure. Additionally, a decision to close a public hospital that has a racially discriminatory impact runs afoul of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibition on racial discrimination found in Article 2 of ICERD.

The United States adopted the UDHR, signed the ICESR and has ratified ICERD, making it bound to meet certain minimum standards regarding equal access to health care. These international human rights instruments do not automatically condemn every closure of a public hospital. But, as courts around the world have recognized, where such a decision is not "reasonable both in its conception and in its implementation" and fails to take into account "those whose needs are the most urgent," it violates basic human rights norms regarding access to health care.[1] As evidenced below, the closing of Charity Hospital presents a clear violation of international law.

The History of New Orleans' Charity Hospital

Originally called Hospital of Saint John or L'Hospital des Pauvres de la Charité (Hospital for the Poor), New Orleans' Charity Hospital opened it doors on May 10, 1736.[2] With the original mission of providing health care for the poor, Charity Hospital had become a major institution that had contributed to the advancement of health and medicine in impressive ways. Charity Hospital was home to one of the first blood banks in the United States. As a major research center, it advanced the diagnosis of sickle cell anemia, and was the site where major discoveries in heart disease and the first curative surgery for aneurysms took place.[3] The hospital was also the primary medical teaching facility for Louisiana State and Tulane universities, as well as the Delgado Community College Charity School of Nursing, training 75% of Louisiana's medical professionals.[4]

While dedicated to the poor, Charity Hospital was important to patients from all walks of life. For example, it was metropolitan New Orleans' only Level 1 Trauma Center with a full range of health care professionals in both primary and specialty care.[5] Private and other non-state hospitals as well as public safety and emergency medical professionals dispatched trauma patients to Charity Hospital first, regardless of the patient's health insurance status.[6] Charity Hospital was formally renamed in 1999 and became The Reverend Avery C. Alexander Charity Hospital to honor Reverend Alexander's work on behalf of human and civil rights.[7]

Throughout the years, Charity Hospital has survived fires, hurricanes and financial shortfalls.[8] The hospital and its successors had served the poor in New Orleans for over 250 years, until Hurricane Katrina hit on August 29, 2005.[9] At least two years before the storm, the state started weakening its commitment to the human right to health care through severe state budget cuts to the Charity Hospital system. These cuts eliminated scores of primary care and community-based clinics.[10] Slashing community-based care created the conditions for the over-utilization of Charity Hospital's emergency rooms, as most private health care providers did not offer free or reduced-cost primary health care services.[11]

> *"I'm really suffering. They had such good doctors at Charity. Now, it's pretty hard for me to find that kind of service, especially since I can't afford the private hospitals."*
>
> *Sam Jackson, New Orleans*

Since the storm, officials have refused to reopen the hospital's doors.[12] Yet, the hospital doors were not slammed shut due to lack of efforts by those on the ground after the disaster hit. Indeed, medical staff, assisted by U.S. military personnel, international and federal relief teams and the New Orleans police department worked feverishly to reopen the hospital in the weeks following the storm.[13] The building's twenty floors were cleared of perishable refuse. Floodwaters, which had inundated its basement, were drained.[14] Electrical switches, although ruined by the flooding, were restored.[15] As a result, Charity Hospital's first three floors, housing its world-class Level 1 Trauma Center, scores of outpatient clinics and its 97-bed psychiatric Crisis Intervention Unit (CIU), were prepared to reopen within a month of Hurricane Katrina.[16]

Rather than showering these heroic men and women with honors and awards for their extraordinary effort, hospital administrative operators, the Louisiana State University Health Science Center, and the city of New Orleans threatened staff with trespassing and forced them and the U.S. military to erect an emergency tent hospital in a parking lot next to the flood ravaged sister facility of Charity Hospital, University Hospital.[17]

Subsequent makeshift facilities located in the Morial New Orleans Convention Center, the long-shuttered Elmwood Medical Center and the once-flooded Lord and Taylor Department Store acted as "The Spirit of Charity", providing limited emergency and urgent care services during the storm's aftermath.[18] In September 2005, hospital administrators officially announced the permanent closing of Charity Hospital.[19]

Hospital administrators blame the permanent closing on the extensive damage done to the hospital during the hurricane. Yet, they simultaneously tout a redevelopment plan that turns Charity Hospital from a public hospital serving the health care needs of the city's most vulnerable to a new medical center, based on a state/ federal partnership with the Veterans Administration, that will not be complete by their estimates until the year 2012.[20] The new hospital will focus on academic training and teaching.[21] Despite the directives of Louisiana lawmakers, hospital administrators have refused to allow independent inspectors into the hospital to determine whether the current structure can be salvaged and reopened.[22]

> *"If you call the doctor's office and say 'I need to be seen, but I don't have the $75 to pay for your office visit,' then they're not going to see you. Sorry. If you don't have money you can't come in."*
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> *Becca, New Orleans*[31]

How did the Hurricane Impact Access to Health Care in New Orleans?

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including … medical care and necessary social services.

– Universal Declaration of Human Rights

Prior to Hurricane Katrina, roughly 90% of the medical care for people without health insurance living in New Orleans came from the state-run public hospital, the Medical Center of Louisiana at New Orleans (MCLNO), consisting of Charity and University Hospitals.[23] MCLNO was recognized as the safety-net hospital in the city representing about 14% of all admissions, 19% of all births, and 23% of all emergency room visits for the New Orleans area.[24] Charity Hospital provided the bulk of these services. Additionally, Charity Hospital housed New Orleans' predominant substance abuse and poison control units, as well as the only hospital-based psychiatric CIU.[25]

Charity Hospital served a largely poor, predominantly African American population through inpatient care, a network of outpatient clinics and one of the busiest emergency departments in the United States.[26] These were the highest needs patients in a state that even prior to the storms offered a grossly inadequate health care system to its residents.

Prior to the storms, Louisiana ranked at the bottom of all 50 states in a vast majority of indicators that measure the health of state residents.[27] The state had high rates of chronic diseases and ranked among the worst in the nation for infant mortality, incidences of HIV/AIDS, and diabetes mortality.[28] 21% of all Louisiana residents were without health coverage due to high rates of poverty and limits upon Medicaid enrollment.[29] Challenges to accessing the health care system were particularly acute in African American and elderly communities.[30]

Slamming the Door on Health Care

Surveys conducted post Hurricane Katrina reveal that health problems are among the chief concerns facing New Orleans residents.[32] More than one in ten adults rated their physical health as fair or poor.[33] Additionally, one in twelve rated their mental health as fair or poor, with many suffering from symptoms of depression and Post Traumatic Stress Disorder (PTSD).[34]

Adults reporting fair or poor health were three times as likely to say they had a new or worse health condition or were taking a new mental health prescription after the storm.[35] These are dramatic increases in chronic physical and mental health ailments. The lack of facilities for mental health patients

has led to a crisis in treatment with an accompanying rise in arrests and incarceration.[36]

Health concerns of Katrina survivors primarily revolve around issues of availability of and access to health care providers.[37] Nearly half of the residents surveyed reported some type of access-related problem as a source of their limited health care options.[38] Overall, 43% of adults in New Orleans report that their access to health care was affected in the aftermath of the storm, with 18% saying it was now harder to get to their place of medical care.[39]

Some of the health care availability and access problems facing post Katrina New Orleans residents include:

- A quarter of non-elderly adults (25%) in the Greater New Orleans area lack health insurance, with rates even higher among vulnerable subgroups of the population such as impoverished communities, which are disproportionately African American.
- Over a quarter of adults (27%) in the area do not have a primary source of care other than an emergency room.
- A quarter (25%) of the population has visited an emergency room in the past six months.
- Fewer than four in ten (38%) has received routine or preventive care in the past six months.
- Those who formerly relied on Charity Hospital are facing added challenges accessing health care. Over half of this population is uninsured (56%) and more than six in ten (61%) report having no primary source of care other than the emergency room.[40]

On top of the historically large percentage of residents without health insurance, the New Orleans area has recently seen a huge increase of day laborers. Many day laborers are Latino and have come from other parts of the United States or various countries in Latin America.[41] While re-building the city despite poor labor protections and no benefits (including health insurance), day laborers particularly suffer from lack of access to health care.[42] Even when injured on the job, these workers have had to rely on community clinics, including Common Ground Health Clinic, for medical support.[43] Others have been forced to use the services of private hospitals, acquiring significant medical bills that their meager salaries will never allow them to repay.[44]

Many former Charity Hospital patients now turn to University Hospital for their health care needs.[45] University Hospital reopened for trauma care and limited inpatient services in November 2006, more than a year following Hurricane Katrina.[46] Yet, University Hospital has just one-fourth of Charity Hospital's capacity**.** This forces many uninsured, underinsured and poor residents of New Orleans to travel long distances to receive treatment at one of Louisiana's other public hospitals.[47] In fact, many residents simply forego needed medical care. ***More than one in three New Orleans residents postpone needed medical care and one in four report that they had no doctor, clinic, or pharmacy to turn to for needed care.***[48]

Those who specifically relied on Charity Hospital prior to Hurricane Katrina report substantial health care challenges in post-storm New Orleans. Nearly a quarter reported a decline in their physical (22%) or mental (23%) health, and 32% reported that meeting their health care needs became more difficult after the storm.[49] In fact, many have reported that their overall quality of life has decreased since Hurricane Katrina, with 23% of that number reporting that their mental health has worsened.[50] This comes at a time when mental health services, which Charity Hospital previously provided, have been reduced by half, with no hospital-based CIU care to provide medical stabilization as required by state and federal law.

This extreme deprivation of health care services comes at a time when residents of New Orleans are most vulnerable. Having survived the onslaught of Hurricane Katrina, they now face the challenge of rebuilding their lives amidst the pressures of escalating housing prices, caring for their children and elderly relatives, safeguarding against environmental hazards, confronting Post Traumatic Stress Disorders and the general stresses of the rebuilding process. The city of New Orleans, along with state and federal officials, owe

survivors of Hurricane Katrina much more.

Health Care and Dignity: The Rights of Survivors After the Storm

The forced closure of New Orleans Charity Hospital compromises the international standard that recognizes primary and emergency health care as a human necessity and a human right.

- Brad Ott, Committee to Reopen Charity Hospital

As noted above, all people have a human right to health. This is not simply a right to be healthy, but rather a right to the conditions and services – within existing available resources – that would allow everyone to be as healthy as possible. A functioning health care system that is designed to provide access to health care for all is a fundamental part of the human right to health. Additionally, it is essential for human dignity, and for allowing each person to reach their full potential in society.

> *"We should plan our services by engaging with the local community. To do so is not to sacrifice the good use of resources but to enhance it … hospitals and services that are grounded in local communities … will enable commissioners to realign and re-design care from the point of view of the patient. They are not a relic of the past but a key part of the future."*
>
> Lord Warner of Brockley,
> former UK Minister of Health[54]

In the face of disaster, public attention to health care must be heightened in order to meet human rights concerns. ***Principle 18 of the UN Guiding Principles on Internal Displacement states: "Competent authorities shall provide internally displaced persons with and ensure safe access to essential medical services …"*** [51] This principle applies to protection and assistance during displacement as well as during return and resettlement. At minimum, government and public entities must set out to vigorously restore health care services lost due to disaster. But disaster brings new threats to human health and the government owes the public a responsible and effective response to these threats, including using all available resources to provide any new or additional health care services that may be needed. Somehow public officials in New Orleans have adopted an inverse approach to disaster. Not only have they failed miserably to provide adequate specialized disaster related services – particularly mental health support and environmental health responses – they have used the disaster to destroy previously existing services.

From a human rights perspective, this approach is unacceptable, and deeply incompatible with human dignity. Specifically, Charity Hospital's continued closure amounts to a chronic denial of at least two core principles of the human right to health detailed below.[52]

- **The Right to Timely and Appropriate Health Care**
  The *human right to health* requires the establishment of health facilities, goods and services, such as hospitals and clinics, with trained medical professionals paid at competitive rates that are equally available and of good quality. They must also be physically accessible, affordable, and ensure access to information (such as interpreters for non-English speakers and the Deaf).[53] These facilities must provide basic preventative, curative, and rehabilitative health services, regular screening programs, appropriate treatment of prevalent diseases, illnesses, injuries and disabilities, both physical and mental, and the provision of essential drugs.

- **The Right to Participate in Health-Related Decision-Making**
  The *human right to health* requires the promotion of effective community participation in "setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health."[55] This includes participation in the "provision of preventative and curative health services, such as the organization of the health sector, the insurance system and, in particular, participation in political decisions relating to the *human right to health* taken

at both the community and national levels."[56]

As cited earlier, ICERD, requires the United States "… to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of… [t]he right to public health, medical care, social security and social services."[57] The UN Committee on the Elimination of All Forms of Racial Discrimination, the monitoring body for ICERD, recently raised serious concerns about the treatment of persons displaced by Hurricane Katrina and the lack of adequate health care services available to many racial minorities in the United States. The Committee recommended that the United States eliminate "the obstacles that currently prevent or limit [the access of racial, ethnic, and national minorities] to adequate health care" and "ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them."[58]

Shutting the doors of Charity Hospital is in direct contrast to the Committee's recommendations. Additionally, closing down a major provider of health care to uninsured, underinsured and poor residents without their consultation and input in the decision-making process, and thereby worsening the health care prospects of New Orleans' most vulnerable communities contravene the spirit and obligations under ICERD. Moreover, Charity Hospital's continued closure may discourage survivors displaced by Hurricane Katrina from returning home. In order to respect legally binding duties under ICERD, the city must re-open Charity Hospital.

Comparative Viewpoints: How Community Hospitals Protect the Human Right to Health in the United Kingdom

The British Department of Health has committed to these key human rights principals for community hospitals:

- involving local people, community-based and hospital staff in the design and planning of any new or redeveloped community facilities;
- considering the effective integration of health care services with other sectors, especially social services and education;
- considering how new community services will relate to the rest of the local health economy; and
- reconsidering proposals to close or reduce the scope of community hospitals if their only purpose is to make short-term financial savings.[59]

Recommendations

The government's efforts to restore health care services in New Orleans must progress more rapidly than they have in the initial two years since the hurricane. Officials have been unacceptably slow in the reopening of hospitals and specialty health care services and in attracting medical personnel, which have deprived residents of essential health care.

To move toward ensuring the *human right to health care* for all New Orleans residents, restored health care services should address the gross inequalities in health care that exist in the city and reflect the reality of an increased population without private health insurance.

Specific recommendations include:

- **Re-Open Charity Hospital.** To move towards ensuring the *human right to health care* of New Orleans residents, Charity Hospital must be re-opened, or, alternatively, comparable facilities and access must be provided to the residents of the city. Decisions on the rebuilding of health care facilities in New Orleans must be inclusive, transparent and actively involve multiple stakeholders, particularly community members and those who are former patients of Charity Hospital.

Additionally, consideration should be given to holistic models of health care that incorporate physical, including mental health, social and economic concerns to effectively meet the needs of patients.

- **Increase funding for mental health services.** There must be an increase in access to and funding for mental health services and counseling for survivors, particularly given the severe toll the disasters have had on mental health throughout the city.

- **Survey of Changing Demographics.** Special attention must be paid to the changing demographics of the city, particularly the rapidly growing Latino population. In designing plans around the rebuilding of the city's medical services infrastructure, language services and culture needs of this population must be incorporated, without regard to one's documented status

- **Support Safety-Net Community Clinics.** Given the increased role community clinics have taken as a result of Charity Hospital's closing,[60] increased support to these medical providers must be incorporated into plans for rebuilding the city's medical services infrastructure. Requisite with their investment to address the lack of care provided by many of the now-shuttered Charity Hospital outpatient clinics, community-based providers must be afforded financial waivers that guarantee free primary health care access for those who are declared "medically indigent", meaning those with incomes of up to 200% of the Federal Poverty Line, as recognized under Louisiana state law.

- **Participation by Community Members.** Community members and other stakeholders must be included in all phases of the rebuilding process, and be able to take active roles in designing rebuilding plans and models. Additionally, support to community rebuilding efforts that advance the *human right to health* should be supported.

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Endnotes

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