Hurricane Force Winds Destroy More Than Physical Structures

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As I was driving along the highway of Houston the other day I was reminded by a large sign “Keep Your Tanks Full, Hurricane Season Is Here” that indeed it was that time of year. I have found living in Houston, that June not only demarcates the official beginning of summer, but also the official start of hurricane season. It is difficult to believe that another hurricane season has arrived when so much remains in shambles in New Orleans from the hurricane season two years ago. In particular, I think about the lives of one physician and two nurses, accused of murdering patients during Hurricane Katrina and how their lives remain devastated. In order to fully appreciate this situation, one must understand the circumstances of what occurred over a five day period in New Orleans when Hurricane Katrina, and the resultant flooding caused by breaks in levees, destroyed so many lives.

On Sunday, August 28, city officials order an evacuation of New Orleans concerned that the Category Five hurricane barreling across the Gulf of Mexico would land proximate to the city. Many residents are unable or unwilling to leave the city, so they seek shelter of structures such as Memorial Medical Center. Memorial Medical Center is a private 317-bed hospital that had continuously operated in New Orleans since 1926. At the time of Hurricane Katrina, the hospital was owned and operated by Tenet Healthcare Corporation, a large for-profit hospital chain based in Dallas, Texas. One floor of the hospital was leased and managed by LifeCare Holdings, of Plano, Texas. LifeCare is an acute specialty hospital that treats the most complex of cases. Typically, “this unit took care of patients who needed ventilators to breathe or had other life-threatening conditions that couldn’t be handled in a nursing home,” explained Dr. Morrison Berthea who practiced at Memorial.¹ There were 55 patients on the LifeCare floor that day, including 19 that had been transferred in from another LifeCare facility.² By the time the storm hit, Memorial Medical Center was providing shelter to some 260 patients, 500 staff members, 1300 citizens and countless numbers of cats and dogs.³

Over night Hurricane Katrina hit the city of New Orleans with winds of almost 150 miles per hour. Early on Monday, August 29 Memorial Medical Center employees were relieved to find shattered windows and water, but basically very little structural damage to the 79 year-old building.⁴ Around 4:30 a.m., the main power lines to the hospital

³ John Pope and Keith Darce, Acute-care Employees Not Target of Foti Probe; 34 Memorial Patients Died After Storm, Times-Picayune, February 18, 2006, at A7.
failed but the facility continued to operate, relying upon backup generators for power. By Monday evening 18 babies from the intensive care unit and the dialysis patients were able to be evacuated. The city of New Orleans gave a collective sigh of relief that it had once again avoided total destruction by a hurricane.

Thus, it was unexpected when on Tuesday, August 30 the levees surrounding New Orleans and protecting the city from water broke and water began flooding parts of the city. By the end of the day, Memorial was surrounded by nearly 15 feet of water, flooding the basement and first floor of the hospital. Earlier in the day, the administrator of Memorial made a decision to evacuate the hospital and to no longer allow evacuees from the neighborhood to take shelter within the hospital. In preparation for evacuation, employees of Memorial cleared an abandoned helicopter landing pad on top of a parking garage adjacent to the hospital. Lighting for the improvised helipad to guide pilots was created by connecting “extension cords from the generator to the landing pad.” The landing pad was only one variable of the evacuation equation. Transporting patients from the hospital to the helipad required an even more creative operation. Patients were transferred to the maintenance room on the second floor of the hospital where employees made a three-by-three foot hole in the exterior wall leading to the garage next door. Patients were passed through this hole and from there vehicles drove the patients up a ramp to the top of the parking structure. From there, patients were “unloaded and carried up three flights of steps to the landing pad.” Communications were hampered when the hospital’s phone system ceased functioning around 2 p.m. that day and most cell phones had already lost power.

Around 1:30 a.m. on Wednesday, August 31 the generators, which the hospital believed would last six days, began to fail after only two days of operation. It appears that although the generators were placed on the rooftop of the hospital, the pumps that powered them were located in the basement, and were damaged by floodwaters. All electronically powered equipment, such as IV drips, no longer operated. This also meant there were no longer lights or air conditioning inside the hospital. Throughout the day, the temperature inside the hospital rose above 100 degrees and hospital staff “used oxygen carts to smash windows in an effort to provide ventilation.” Officials at Tenet’s corporate office in Dallas assumed government officials would be responsible for evacuating patients from all hospitals in New Orleans. However, on Wednesday the Office of Emergency Preparedness informed Tenet that they would need to “act on their
own” in order to evacuate patients at Memorial Medical Center. Tenet was able to hire six private helicopters which arrived at Memorial later that afternoon but evacuation was a slow process. By the end of the day, only about 100 of the original 260 patients had actually been evacuated from the hospital. To make matters worse, those that were left were “bedridden, very sick patients.”

Early in the morning on Thursday, September 1 four days after the hurricane hit, a staff meeting was held with the remaining employees of Memorial who were instructed that “major help from government entities would not be arriving soon.” Further, private helicopters hired by Tenet were no longer able to land due to gunfire occurring close to the hospital. The staff faced another day of caring for patients in an environment of no electricity, no air conditioning, no plumbing and a diminishing supply of food and water. Rescue efforts by private helicopter and boat were able to resume later that day and by evening all of the patients in the hospital had been evacuated. The remaining seventy employees of Memorial spent that night sleeping on top of the parking garage and were airlifted from Memorial Medical Center on Friday, September 2.

During the four day ordeal, as patients died they were wrapped in blankets as the hospital had no body bags. Some were placed in the chapel and others remained on the wards of the hospital. It was not until September 11, nine days after complete evacuation of Memorial, bodies of patients who had died were recovered from Memorial by the coroner. In total, 45 bodies at Memorial Medical Center were recovered. Ten patients died before the hurricane, 24 were LifeCare patients and the remaining 11 were patients of the Tenet-owned Memorial facility.

By late September, the Medicaid Fraud Control Unit in the office of the Attorney General of Louisiana opened an investigation into the events that took place at Memorial Medical Center. Ten months later, on July 17, 2006, Dr. Anna Pou and nurses, Lori Budo and Cheri Landry, were arrested for murder at the direction of Louisiana Attorney General, Charles Foti. “This is not euthanasia; this is plain and simple homicide,” Foti stated several times at a press conference on the three arrests. The affidavit supporting the arrest warrants accused the three health care workers of “intentionally killing multiple patients by administering or causing to be administered, lethal doses of morphine sulfate (morphine) and/or midazolam (Versed), at Memorial Medical Center.” According to Louisiana criminal code, this action is a violation of R.S. 14:24(30.1) or second degree

16 Fausset & Simmons, supra note 2.  
17 Id.  
18 Id.  
19 Id.  
20 Id.  
22 Petitioner Affidavit at 1, State of Louisiana v. Anna M. Pou, Lori L. Budo, Cheri A. Landry, No. 471829 (July 17, 2006).
murder which carries a punishment of life in prison without parole.\(^{23}\) Although the Attorney General has the authority to order an arrest warrant, that authority does not extend to charge an individual with a crime. In Louisiana, the attorney general can make an arrest on suspicion of a crime, but the district attorney must file the formal charge. The case was turned over to Orleans Parish district attorney to determine whether charges should be filed against the three women.

The case against Dr. Pou and the two nurses progressed at such a slow pace, even the judge became frustrated. At a hearing in November of 2006 Judge Calvin Johnson instructed the district attorney’s office that “this case needs to either go forward or go away.” Still, it was not until March 2007 that Orleans Parish District Attorney Eddie Jordan convened a grand jury to evaluate the evidence gathered by Foti’s office to determine if charges were warranted. In June 2007, the district attorney agreed to drop efforts to charge the two nurses also accused of murder in order to compel them to testify to the grand jury.\(^{24}\) Earlier in the year a report was submitted by the Orleans Parish Coroner finding tissue samples from the deceased patients did not support a finding of homicide. This report may have contributed to the decision of the grand jury declining to charge the two nurses with murder. The deaths were officially classified as “undetermined” indicating that the coroner was not able to conclude whether the deaths were by accident, natural causes, suicide or homicide.\(^{25}\) Finally, on Tuesday, July 24, 2007, the grand jury impaneled by the Orleans Parish district attorney determined the indictment of Anna Pou accusing her of helping to kill nine patients was “not a true bill” thus refusing to charge her with murder.\(^{26}\) Ironically, the grand jury decision came only one week after Dr. Pou filed lawsuits against Louisiana Attorney General Charles Foti and the Louisiana Office of Risk Management, marking one year to the date since her arrest.\(^{27}\) That same day, hundreds attended a rally in New Orleans in support of Dr. Pou and protesting the criminal investigation of her.\(^{28}\)

The magnitude of the economic and social impact on the city of New Orleans caused by Hurricane Katrina cannot be overstated. A definitive count of the lives lost as a result of the storm and damages it caused may never be known as there are so many individuals who have yet to be located. However, we do know almost 1,100 people lost their lives, 154 of those deaths occurred in 13 different health care facilities, most of whom were elderly. While much has been written about the failures of the health care system, an enormous and complicated evacuation effort took place over four days utilizing boats and helicopters. In all, 2,200 patients and 11,000 staff and private citizens were evacuated from 12 hospitals and 3,288 residents of 53 different nursing homes.\(^{29}\)

\(^{24}\) Laura Maggi, \textit{Nurses Offered Deal to Testify; DA Vows to Drop Murder Charges}, Times-Picayune, June 20, 2007, at A1.
\(^{27}\) Filosa, \textit{supra} note 25.
\(^{28}\) Gwen Filosa, \textit{Investigation of Physician in Katrina Case Protested; Care for Patients at Hospital Praised}, Times-Picayune, July 18, 2007, at B1.
\(^{29}\) Rohde, \textit{supra} note 15.
The actions of Attorney General Charles Foti have come under scrutiny by the general public, the medical community and the legal community. In July 2006 Foti called a press conference to announce the arrests of Dr. Pou and nurses Budo and Landry. Foti’s public statement “This is not euthanasia. This is plain and simple homicide.” has been quoted in newspapers as far away as London, England. Members of the legal community speculate whether his public assertion that a homicide occurred may “violate Louisiana’s rules of professional conduct for lawyers.” Certainly the comments of Foti upon the arrest of Pou, Budo, and Landry for four murders seem harsh compared to those he made regarding the arrest of nursing home owners, Mable and Salvador Mangano, suspected of murdering 34 residents during the aftermath of Katrina. In the press conference announcing the Mangano’s arrest, Foti reminded the public “that although these individuals have been charged, they should be considered innocent until proven guilty by a court of law.” A similar reminder was not proffered on behalf of the doctor and two nurses.

Members of the medical community argue that because this case requires knowledge of drug dosages and best practices, medical professionals should be the first to review Dr. Pou’s actions. They believe the Louisiana Board of Medical Practice would be the best choice of an entity to gather and study facts. In normal medical care circumstances, there is a clear, bright line between relieving pain and hastening death. A licensed medical practitioner is allowed to relieve a patient’s pain even if it has a foreseeable but unintended consequence of hastening death. Law professor and bioethicist R. Alta Charo argues that intentional killing, even if it is for merciful reasons, “is something that society draws a bright line against.” However, Dr. Mark Siegler, a bioethicist at University of Chicago, claims that given the conditions in which the doctors and nurses were working at Memorial Medical Center, that line between relieving suffering and hastening death is more like a “narrow gray line.” “Nobody knows how we would react under extreme circumstances.” For twenty-three months, Anna Pou, Lori Budo and Cheri Landry existed somewhere in a shadowy darkness with no clear answers.

There is no happy ending to this story. Dr. Anna Pou still faces multiple civil suits filed against her in connection with patient deaths. Charles Foti is certainly not satisfied by the outcome. The attorney general believes the grand jury “erred” in their decision and is

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31 Fausset & Simmons, supra note 2.
33 Fausset & Simmons, supra note 2.
34 Filosa & Pope, supra note 26.
36 Denise Grady, Medical and Ethical Questions Raised on Deaths of Critically Ill Patients, N.Y. Times, July 20, 2006, at A1.
37 Id.
38 Id.
39 Filosa & Pope, supra note 26.
convinced that the district attorney’s office failed to call important witnesses. The Louisiana Criminal Code clearly states the Louisiana Office of the Attorney General can “investigate, prosecute or intervene” with the consent of the district attorney, thus leaving open the possibility of Foti’s office taking on the case for further prosecution.

After two years the lives of these three health care practitioners remain in shambles not so much from the hurricane force winds of Katrina, but from the hurricane force of the legal system.

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