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Kaci Hickox: Public Health and the Politics of Fear

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Kaci Hickox was a nurse who worked with persons who were infected with Ebola in West Africa. When she returned to the United States, the governors of New Jersey and Maine intervened to confine her to inpatient quarantine despite the fact that she was asymptomatic and had no serological evidence of infection. She defied the quarantine which resulted in enormous public attention and discussion of quarantine and public fear. This article summarizes the case discussing the history of the case, the government actions, and the final legal rulings.

Keywords: communicable disease, Ebola, hemorrhagic fever, medical ethics, nursing ethics, professional ethics, quarantine

Kaci Hickox is a nurse who went to Sierra Leone with Doctors Without Borders to treat the emergency with Ebola. She is professionally brave, articulate, and well trained. Sierra Leone, with 5000 cases, is one of the epicenters of the Ebola epidemic (Centers for Disease Control and Prevention 2015; Schieffelin et al. 2014). She was last exposed to patient care on October 21 (State of Maine, Aroostook 2014). On Friday, October 24, she returned to the United States, entering at Newark International Airport in New Jersey. There she was met by a disorganized set of officials who tried to determine what to do with her. She was repeatedly interviewed. Her temperature on arrival was normal but was repeatedly taken several times using a forehead scan thermometer, which will give falsely high readings of persons under stress. Eventually, her temperature read high (Hickox 2014). She was sent to a University Hospital in Newark, which found her to be afebrile and asymptomatic.

Nevertheless, New Jersey Governor Chris Christie intervened and ordered her to be confined, saying she was “obviously sick.” She was placed in isolation, facing a possibility of 21 days of hospitalization, and promptly threatened to sue for violation of her civil liberties and unjustified confinement. On October 27, an unapologetic Governor Christie allowed her to be discharged with the expectation she would go directly to her home in Maine, saying, “I didn’t reverse any decision. … She hadn’t had any symptoms for 24 hours. And she tested negative for Ebola. So there was no reason to keep her. The reason she was put into the hospital in the first place was because she was running a high fever and was symptomatic” Robbins, Barbaro, and Santora 2014. She traveled to her home in Fort Kent, a town of 4000 persons in northern Maine.

Governor Paul LePage of Maine ordered her to be confined to home for 21 days and threatened to enforce this by obtaining a court order if she would not voluntarily comply. On the same day that Ms. Hickox arrived in Maine, that state’s Center for Disease Control and Prevention published its Ebola policy (Maine Center for Disease Control and Prevention 2014a). It also issued a press release:

2. A traveler who did come into direct contact with or treat Ebola-positive individuals and who is not currently exhibiting symptoms of the disease. In addition to the federal CDC guidelines outlined above, Maine will require active monitoring to be followed in this instance. In addition Maine will take further measures, out of an abundance of caution, to ensure public safety. We will work collaboratively with the affected individual to establish quarantine of the individual in his or her home for 21 days after the last possible exposure to Ebola. Twenty-one days is the longest time it can take from the time a person is infected with Ebola until that person has symptoms of Ebola. This protocol for a higher-risk individual will be implemented for the first time when a healthcare worker who came into contact with Ebola-positive individuals returns soon from New Jersey. Under this policy, Maine will make every possible effort to implement an agreed-upon in-home quarantine. We fully expect individuals to voluntarily comply with an in-home quarantine. (Maine Center for Disease Control and Prevention 2014b)

The policy and press release are unusual in three respects. First, they were tailored to Ms. Hickox by referencing New Jersey. Second, as we show in the following, the undefined and vague standard of “abundance of caution” directly conflicted with the provisions of Maine’s quarantine
MAINE'S QUARANTINE LAW

The quarantine provisions of Maine law are defined in Title 22, Subtitle 2 801–818 Maine Revised Statutes Title 22: Health and welfare n.d.. They require the state to prove that there is a public health threat—defined as "any condition or behavior that can reasonably be expected to place others at significant risk of exposure." They also state that "A condition poses a public health threat if an infectious ... agent is present in the environment under circumstances that would place persons at significant risk of an adverse effect on a person's health from exposure to or infection with a notifiable disease or condition." In other words, the law makes no provision for quarantining a person who is not known to be infected. The law confirms this by speaking of prohibited behavior where it repeatedly speaks of the "infected person" acting "to create a significant risk of transmission of a communicable disease" or failing to "cooperate with a departmental contact notification program" or "with any part of either a cease and desist order or a court order." Since Ms. Hickox was not demonstrably infected, Maine could not by its statutes confine her regardless of the newly minted Ebola policy.

To establish that a public health threat is present, Maine was legally obligated to make an investigation and examination that "finds probable cause to believe that an individual has a communicable disease and that the individual is unwilling to submit to a physical examination, which may include X-ray studies or other diagnostic studies, as requested by the department, or that the individual refuses to make the results of that examination available to the department." There was no probable cause to believe that Ms. Hickox had an infection or was unwilling to cooperate with symptom and serologic monitoring.

Nevertheless, Maine did file a petition with the District Court, where it must have known that its probable cause would face a much stricter test. "§ 812. If, based upon clear and convincing evidence, the court finds that a public health threat exists, the court shall issue the requested order for treatment or such other order as may direct the least restrictive measures necessary to effectively protect the public health." On Sunday, October 30, the court issued a temporary order for quarantine to buy time to reflect on the petition. On Monday, October 31, the court promptly dismissed the state petition (State of Maine, Aroostook. 2014), saying that the evidence supported that asymptomatic persons were not infectious. It supported by clear and convincing evidence the need for active monitoring until November 21, reflecting the consensus on a 21-day incubation period. It rejected the notion by clear and convincing evidence that quarantine of the asymptomatic Ms. Hickox was necessary.

The court concluded:

We would not be here today unless Respondent generously, kindly and with compassion lent her skills to aid, comfort, and care for individual stricken with a terrible disease. We need to remember as we go through this matter that we owe her and all professionals who give of themselves in this way a debt of gratitude.

Have said that, Respondent should understand that the court is fully aware of the misconceptions, misinformation, bad science and bad information being spread shore to shore in our country with respect to Ebola. The Courts is fully aware that people are acting out of fear and that this fear is not entirely rational. However, whether that fear is rational or not, it is present and it is real. Respondent's actions at this point, as a health care professional, need to demonstrate her full understanding of human nature and the real fear that exists. She should guide herself accordingly.

The aftermath of this ruling is yet to be seen. Maine, according to its website, has converted its policy to conform to CDC guidelines. In general, it seems that asymptomatic health professionals are much less likely to be subjected to the type of state threat that was levied against Ms. Hickox.

Responsibility for Maine's imprudent and unsuccessful actions lies squarely in its political system. Governor LePage, who was in the last week of a very close election, bruited the call for quarantine. Commissioner of Health Mary Mayhew came from the public affairs private sector and holds a BA in political science. She showed herself to be insufficiently expert to defend Maine's "abundance of caution" standard that exceeded the federal Centers for Disease Control and Prevention standards, incapable of mobilizing public health experts to address the governor's statements, and unable to avert the inevitable legal defeat as Maine's petition collided with its statutory requirement for clear and convincing standard of an infectious threat.

As a matter of bioethics, this case is not about the triumph of autonomy claims over public health laws that are intended to contain pandemic or grave infectious disease. This small case simply affirms that personal civil rights are an appropriate grounding for appealing against the situation where a government motivated by antiscience, irrational fear, or politics attempts to abuse public health laws to infringe on civil liberties.

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