

## **Physician work stoppages and political demonstrations – economic self-interest or patient advocacy? Where is the line?**

*This is the 31st in a series of case studies with commentaries by the American College of Physician's Ethics and Human Rights Committee and the Center for Ethics and Professionalism. The series uses hypothetical examples to elaborate on controversial or subtle aspects of issues not addressed in the College's "Ethics Manual" or other position statements.*

### **Case History**

John Ferguson, MD, a well respected internist with specialty training in cardiology, has for years been the person to call for treating high risk OB patients with cardiac complications. Late one evening he receives a call from his old friend Marjorie Gavin, an OB with whom he has consulted many times.

Dr. Gavin says, "I've got a 32-year-old patient who, after two miscarriages, is just entering her second trimester. It's just like that aortic insufficiency case we worked on together in '96. I am anxious to have her cardiac condition carefully managed right from the start. Can you take her on?"

With obvious regret, Dr. Ferguson explains, "My new group practice can't support my continued work with high risk patients. Their existing insurance won't cover it and the additional premium for adequate coverage is prohibitive. They allowed me to finish up with the patients I brought, but I can't take on cardiac care for new OB patients. Now neither General nor Sacred Heart has regular cardiac coverage for these patients. No other cardiologist would take it on and my cross-cover won't allow it. Both hospitals have been trying for months to recruit, so far without success. Last month I would have sent you to Samuels, but he closed his practice to follow his neurosurgeon wife to California. I'd call Dick Brown at Cambridge Memorial. He's a terrific cardiologist and works extensively with high risk OB patients. Unfortunately, he's 90 minutes south of here -- quite a trek for your patient."

Gavin sighs. "This situation is totally out of hand. One of my partners is retiring and we've been trying to recruit her replacement for over a year. We haven't had a single experienced candidate and those fresh from training have no interest in practicing in this state. They can't afford the premiums on top of their student loans. With the number of insurers dropping out, it's questionable whether they could get coverage even if they could afford it. My partner's agreed to stay three more months, but when she goes, we'll have to start turning patients away."

Ferguson asks, "Are you going to the demonstration at the State House next month to support the tort reform bill? I've always been against physician strikes to resolve economic issues. It seems unethical to limit patient care for matters of self-interest."

Dr. Gavin affirms her plans to attend. "This isn't just about economic self-interest anymore. It's about the obligation to advocate for long term patient access to quality care."

Events are scheduled for a Friday and Saturday. Dr. Ferguson's practice is meeting later this week to vote on whether to close down on Friday so the entire group can participate both days and he's struggling with what to do. He appreciates the access and quality of care implications of the malpractice situation and is comfortable that the rally is not a strike, but advocacy in support of a specific bill. The fact that the bill also provides some funding for a patient safety pilot program adds to its appeal. However, he has major concerns about closing the practice on Friday so that he and his colleagues can participate. Most importantly, he is worried that closing the office will damage patient trust by limiting care and inconveniencing patients to focus attention on an issue they may view as economically self-serving. In contrast, at least one of his colleagues views the closing and group attendance at the two-day event as a crucial public demonstration of the seriousness of the issue to the practice as a whole and feels that, as long as each physician is available by phone and the local emergency rooms are available as a safety

net, patients will have adequate access to care. Dr. Ferguson also feels strongly that the decision to publicly advocate for anything should be a free and individual choice and he is concerned that closing the office will make some in the practice who are uncomfortable about participating in the rally feel coerced.

## Commentary

Changes in the health care environment can make it difficult for physicians to provide quality care, have challenged independent clinical judgment, and have made it increasingly difficult to sustain a medical practice.<sup>1</sup> The medical liability crisis represents one complex element in that changing environment and Dr. Ferguson's confusion over how best to respond is completely understandable.

**Governing Principles: The Primacy of Patient Interests and the Professional Duty of Advocacy**  
Dr. Ferguson's reticence about participating in the upcoming rally stems from the ethical principle of beneficence, and the corresponding obligation to place the interests of the patient before self-interests.<sup>2</sup> That obligation is at the core of the American College of Physicians (ACP) and the American Medical Association (AMA) historical policies against physician strikes.<sup>3 4</sup> The ACP policy states that "...physician efforts to advocate for system change should not include participation in joint actions that adversely affect access to health care or that result in anticompetitive behavior. Physicians should not engage in ... organized actions that are designed implicitly or explicitly to limit or deny services to patients that would otherwise be available."<sup>2</sup> Similarly, in addressing collective actions, the AMA specifically states that physicians should refrain from strikes because they reduce or delay access to necessary care and interfere with continuity of care, all of which are contrary to professionalism and the physician's ethical obligations.<sup>4</sup>

If Dr. Ferguson agrees with Dr. Gavin that the current medical liability situation is leading to real problems with healthcare access and quality, the principles of medical professionalism would support his individual decision to participate in the rally provided he makes appropriate arrangements to ensure his patients have access to needed care. Joint decisions to engage in actions that may harm patients are not supportable.

Physicians have a well documented professional mandate to advocate for equitable access to quality health care and for policies that will improve health.<sup>2 5 6</sup> In following up its prohibition against physician strikes, the ACP Ethics Manual specifically encourages physicians to "individually and collectively find advocacy alternatives such as lobbying lawmakers and working to educate the public, patient groups and policymakers about their concerns. Protests and marches that constitute protected free speech and political activity can be a legitimate means to seek redress, provided that they do not involve joint decisions to engage in actions that may harm patients."<sup>2</sup> Similarly, the AMA charges physicians to use tools such as public demonstrations, lobbying and publicity campaigns to press for needed reforms as long as those options do not limit services to patients.<sup>4</sup>

### Self-Interest or Advocacy?

Dr. Ferguson's challenge is to determine whether the upcoming rally and his participation constitute an unethical physician work stoppage or an appropriate advocacy initiative. In making this determination he must consider:

- What is his intent in participating in the activities? What is the goal of the rally and what are the goals of the practice in closing down on Friday? (i.e., is inconveniencing patients in order to draw their attention to the malpractice issue part of their group goal?)
- Is his participation in the rally a free individual choice or will it be the result of colleague coercion to participate in a collective work action that has the potential to harm patients?
- Are patients ensured access to care during the rally?

Physician activism in response to the changing health care environment over the past several years has been a study in contrasts. For example, some physician strikes, such as those in New Jersey and Illinois, were specifically intended, at least in part, to inconvenience patients as a means of focusing public attention on the malpractice issue.<sup>7</sup> Both the AMA and Illinois State Medical Society declined to support

the Illinois action because of the unprofessional nature of physician strikes and out of concern that it could damage the trust between patients and their physicians.<sup>8</sup> In contrast, the Rhode Island Medical Society organized a March 2003 State House rally to draw public and political attention to concerns about the state's troubled health care system in general. Participants included doctors, nurses, hospital staff, advocates, patients, legislators, etc. and speakers addressed access, coverage, malpractice and other barriers to quality health care. An ad campaign leading up to the rally focused on how financial pressures within the system threaten the patient-physician relationship.<sup>9</sup> The New Jersey and Illinois work stoppages were intended to reduce patient access to care as a means of focusing public attention on the malpractice crisis. In contrast, the Rhode Island physicians were rallying with patients, advocates and other health care providers to protect the quality of the health care system for the benefit of patients. Participating physicians made sure that care for patients was adequately provided for during the rally.

## Conclusion

Dr. Ferguson reviewed the flyers and email notices promoting the rally and confirmed that it is in support of specific pending tort reform legislation. None of the press coverage characterized the rally as a physician job action or strike. Nonetheless, he should raise his concerns about closing the practice on Friday prior to the vote at the group practice meeting. In particular he should point out that the group decision to close could damage patient trust in that patients may perceive it as a choice to limit access to care in order to address issues that patients perceive as self-interested. He should ask the group to articulate its goal in closing the office. If the group goal is joint support of legislation that will benefit both physicians and patients, then closing the office with appropriate alternative coverage would be acceptable.

With regard to his concern about individual free choice to advocate, Dr. Ferguson might suggest an alternative to the yes/no vote on closing the practice, such as polling practice members regarding their interest in participating in the Friday session. If all members wish to participate, discussion can move toward ensuring that their patients have access to emergency care and communicating with patients to avoid any misunderstanding that might damage the patient-physician relationship.

*Acknowledgement: The Ethics and Human Rights Committee would like to thank Cathy Leffler, JD, Ethics and Health Policy Associate in the ACP Center for Ethics and Professionalism, author of the case history and commentary.*

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<sup>1</sup> Medicine as a Profession Managed Care Ethics Working Group. Ethics in practice: Managed care in the changing health care environment. *Ann. Intern Med.* 2004;141:131-136.

<sup>2</sup> American College of Physicians. American College of Physicians Ethics Manual, 5<sup>th</sup> ed. *Ann Intern Med.* 2005;142:561-83.

<sup>3</sup> American College of Physicians-American Society of Internal Medicine. Physicians and joint negotiations. A position paper. *Ann Intern Med.* 2001; 134:787-792.

<sup>4</sup> American Medical Association Council on Ethical and Judicial Affairs. Code of Medical Ethics: Current Opinions with Annotations, 2004-2005 ed. Chicago: AMA Press. 2004.

<sup>5</sup> American Medical Association. Declaration of professional responsibility. Available at: <http://www.ama-assn.org/ama1/pub/upload/mm/465/declartn.doc>. Accessed January 18, 2005

<sup>6</sup> Medical Professionalism Project. Medical professionalism in the new millennium: a physician charter. *Ann Intern Med.* 2002;136:243-246.

<sup>7</sup> Jacobs A. Anatomy of a strike: doctors' e-mail shows depth of anger. *NYTimes* March 10, 2003 B1.

<sup>8</sup> McGuire P. Doctors struggle to balance professionalism with the pressures of everyday practice. *ACP Observer.* 2003; April.

<sup>9</sup> Ziner KL. Doctors losing patience. Nurses and physicians gather at the state house to assail skyrocketing malpractice premiums and cuts in reimbursement fees. *Providence Journal* March 13, 2003