



## EDITORIAL

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# Physician walkouts and the fraying of the social contract

*The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate and in which each, while uniting himself with all, may still obey himself alone and remain as free as before.*

—Jean-Jacques Rousseau, *The Social Contract*

Are strikes by doctors ethical? This question has come to the forefront in the media lately, thanks to recent job actions taken by physicians around the country. First, surgeons in West Virginia took a “leave of absence,” markedly reducing elective surgical services in their area. Others soon followed suit. Eight hundred doctors in Florida staged a walkout in late January, and in February, thousands of physicians across the state of New Jersey conducted their own job action.

Tantamount to strikes, these moves protested the rapid escalation in professional liability insurance premiums—and the government’s inability thus far to correct the problem. Pundits may debate the ethics of such actions, but, seen from the perspective of a “social contract,” the doctors’ moves are beyond reproach. The job actions are a proportionate response to a societal situation—an out-of-control “jackpot” medical liability system that undermines the relationship between physicians and society.

### Navigating managed care

Physicians commit their lives to caring for the sick and preserving the health of the

well. They sacrifice thousands of hours acquiring the specialized skills necessary to practice medicine effectively. Once in practice, they work day and night—often 60 or more hours per week—to support their patients. Most physicians are willing to accept these conditions; they recognize that the social contract requires them to dedicate their lives to their craft. In turn, however, they expect substantive autonomy as professionals and protection from intolerable working conditions—both of which are currently threatened.

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The biggest determinates of career satisfaction among physicians are clinical autonomy and the ability to obtain necessary outpatient and inpatient services for their patients.<sup>1</sup> There is little doubt that protecting this autonomy is in the best long-term interest of both patients and physicians. Still, for the past 20 years some managed care organizations, in an effort to control health-care costs, have deployed techniques that threaten clinicians’ clinical autonomy by limiting patient access to tests and services. In geographic areas where managed care restrictions are excessively burdensome, career satisfaction among physicians is on the decline.

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### An insurance system in turmoil

Still, the work actions were motivated by more than the limitations of managed care. The spark that really ignited these walk-outs? The recent professional liability insurance crisis.

To a large degree, professional practice revenue has not increased in the past decade. In the last 2 years, for example, Medicare has

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reduced payments to physicians for the procedures they perform. In contrast, the costs of practicing medicine continue to escalate and professional liability insurance premiums have spun out of control.

In many states, professional liability insurance is in the range of \$100,000 per year for \$2 million worth of insurance. And it is likely these rates will increase swiftly during the next few years, largely due to a rapid escalation in the size of liability awards. With the recent increase in the number of large awards, many liability judgments exceed the insurance carried by physicians. As a result, plaintiff attorneys have attempted to attach the physician's assets (homes, retirement plans, cars) to judgments awarded to their clients. The possibility that a runaway jury could seize all a doctor's possessions represents the ultimate breach of the social contract.

### Is legislation the answer?

In the 1970s California passed the Medical Injury Compensation Reform Act (MICRA), which capped awards for pain and suffering and helped slow the increase in insurance premiums. California continues to provide extremely high-level medical care, which clearly indicates that liability reform does not threaten quality of care. Last year the US

House of Representatives passed a moderate liability reform package, but the Senate failed to act on it. In the next year, another attempt will be made to pass federal legislation similar to California's MICRA laws.

Until society addresses the twin problems of clinical autonomy and professional liability premiums, it is likely that physicians will continue to exercise their right to withhold services in the face of intolerable working conditions.

Patients and physicians must work with legislators to ensure a stable social contract that supports the working conditions of physicians, so that we can continue to support the health of Americans. ■



#### REFERENCE

1. Landon BE, Reschovsky J, Blumenthal D. Changes in career satisfaction among primary care and specialist physicians, 1997-2001. *JAMA*. 2003;289:442-449.

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