Features

Chroniques

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Despite some PR fallout, proponents say MD walkouts increase awareness and may improve health care

Nicole Baer

In brief

THIS FALL ONTARIO BRACED FOR POSSIBLE STRIKES by public servants and teachers. A year earlier, the province's physicians were preparing their own job action. Walkouts by physicians, which have not been uncommon since the introduction of medicare, create two camps. In one are physicians who say legal job actions are ethical and often improve health care for patients. In the other are some doctors and ethicists who question whether doctors have an ethical right to withdraw services, even if it is legal to do so. Nicole Baer interviewed members of both camps.

En bref

LES FONCTIONNAIRES ET LES ENSEIGNANTS PEUVENT DÉCLARER LA GRÈVE cet automne en Ontario. Les médecins de la province préparaient l'an dernier leurs propres moyens de pression au travail. La grève surprise, phénomène qui n'est pas nouveau depuis le lancement du régime d'assurance-maladie, a divisé les médecins en deux groupes. Il y a d'un côté ceux qui considèrent que les moyens de pression au travail respectent l'éthique et permettent souvent d'améliorer les soins de santé aux patients. D'un autre côté, certains médecins et éthiciens se demandent si les médecins ont le droit du point de vue de l'éthique de retirer leurs services, même si la mesure est légale. Nicole Baer a interviewé des membres de chaque groupe.

Gisele Zacharias was about 3 months pregnant when she began bleeding profusely last December. She headed to the Ottawa General Hospital's emergency department, and waited. And waited. She waited for more than 8 hours in all, while the bleeding continued.

"I began to get very upset," recalls the 26-year-old Ottawa dental receptionist, who was expecting her second child. "I thought they were going to send me home without even examining me or giving me an ultrasound to see if the baby was alive."

Zacharias was a victim of bad timing: obstetricians had shut down operations that day for a "study session," part of a protracted, province-wide job action by Ontario physicians. She was frightened, and she was mad.

"I felt like I had walked into a veterinary clinic instead of a hospital. They said, 'Well, you're bleeding and we're not quite sure why, but there's nobody here to see you so just sit around and wait. So it was like I was sitting around waiting to have a miscarriage, because they just put me in a room and left me there."

Eventually Zacharias was examined by a gynecologist, assured that her problem was a low placenta that should pose no serious danger, and sent home. And indeed, her pregnancy proceeded normally — a healthy girl was born June 13.

Defenders of the right of doctors and other health care workers to withhold services argue that even if patients like Zacharias suffer "inconvenience," legal work stoppages serve legitimate objectives. Were the doctors' actions ethically justifiable in this case, or in any other instance in the rocky history of public medicine in Canada?

Given the polarized nature of this issue, the answer depends on whom you ask. Some say that job action by health care workers is virtually never ethically acceptable; others deem it legitimate provided it follows a prescribed and orderly course.

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Most, however, stick to the mushy middle ground. Doctors, lawyers and ethicists who were questioned pinpointed delicate distinctions separating right from wrong. Did the doctor, for example, have an existing relationship with the patient? Is the physician a salaried employee or a fee-for-service entrepreneur? Are the reasons for the strike selfish (based on greed) or merely self-interested (based on expecting what is fair)?

CMA ethicist Michael Yeo says a range of "morally relevant variables" must be considered when assessing the ethics of withdrawing professional services. What will the strike's impact be on others? How weighty are the reasons for the strike? He noted that doctors' specialized knowledge and skills afford them special status, along with certain extraordinary powers such as self-regulation. Moreover, through their regulatory bodies doctors have a monopoly over the practice of medicine, which adds another complicating moral dimension to any job action.

McMaster Photographers

John Laplume: In Manitoba, assertive action has been in patients' long-term interest

The most unambiguous opinions come from the more militant defenders of physicians' unfettered right to strike. Lawyer John Laplume, executive director of the Manitoba Medical Association and chief negotiator during 2 recent strikes by emergency physicians and pathologists, sees no ethical conundrum.

The salaried doctors, employees of the hospital, were in a legal strike position in 1993 and 1995. They gave appropriate notice of their intent to strike and when the walkouts began they turned the care of patients over to physician supervisors.

Laplume says physicians withdraw their services all the time: when they go on vacation, retire, move to another community or begin a legal strike. Their only ethical obligation is to ensure that patients are duly forewarned so alternate arrangements may be made.

Laplume noted that rural physicians in Manitoba, after becoming overburdened by on-call duties, served notice that they would no longer be available after hours and on weekends. Now it's up to hospitals to admit that extended hours are not available, or to find a new way of staffing.

Far from harming patients, said Laplume, such assertive action is in their long-term interest. "If a physician burns out, how is that going to help continuity of care? Or if he doesn't burn out, but continues to absorb more and more mistreatment, the physician's attitude and disposition toward his work would suffer, and then patient care would suffer. It's not fair for patients to have to receive their care from demoralized, angry physicians."

Laplume insisted that physicians' ethical obligations extend only to patients already in their care. It may seem unjust to new patients like Gisele Zacharias, but a doctor cannot be held accountable for hypothetical future relationships.

"I would certainly agree that it would have been an inconvenience to new patients not being able to get an obstetrician, but how do you balance that against the harm and the burden carried by the physician who is going bankrupt?"

Despite his hard-line views, Laplume insisted that doctors would never let down patients in genuine need. During the 2 Winnipeg strikes, doctors came, without pay, to stabilize people with severe trauma. "It goes to show that we need not be unduly concerned about physicians discharging an ethical responsibility not only to individual patients but also to the greater society in times of need."

Dr. Diamond Allidina, an Ottawa psychiatrist, is no fan of strikes because he thinks no one wins. But, as an Ontario Medical Association board member, he supported the withdrawal of services by doctors last fall and winter. He confesses that he was surprised by the pent-up frustration manifested by the grass-roots action. "These are good clinicians, traditional doctors, who would not say 'boo' to anybody. But they were desperate. They said, 'Enough is enough!'"

Allidina says service withdrawal is not a matter of morality because it boils down to a straightforward contractual dispute between doctor and paymaster. "It was a contract and the government was breaking the contract. All I was saying was, 'Pay up or get off the pot, or tell the patients, the public, how much service you're willing to provide.' "

He said the public must make their feelings about health care clear to politicians. If they want an extensive buffet of services, they must lean on legislators to fund them; if they don't want tax increases, then press to have some items dropped from the public insurance plan. "The patient, instead of playing the role of victim, has to take an assertive position one way or the other. I don't see the patient as a pawn — patients have a choice and they have to make a decision."

Dr. Robert McMurtry, an orthopedic surgeon and dean of medicine at the University of Western Ontario, also wants to see medicare reforms, but he considers medicine a "moral enterprise" and rejects the notion of strik-

ing to effect change. "Strike action against patients is non-negotiable," he insisted. "We have a sacred trust toward people who are in need or have been rendered vulnerable by virtue of illness or injury and to deny them care is not acceptable at any level."

Even so, he accepts that the government is acting without a legitimate public mandate to cut health care; moreover, doctors are frustrated by politicians who unjustly accuse them of "abusing the system."

McMurtry argued that the system should be taken out of politicians' hands — he envisages a professionally managed single-payer system that is more representative of the broader public interest. Faced with the prospect of losing control of the health care system, McMurtry believes governments would become more reasonable and treat physicians more fairly.

Dr. Margaret Somerville of the McGill Centre for Medicine, Ethics and Law says doctors' ethical obligations to deliver care is a given. "It's in society's interest to have an ethical profession, just like you want to know that you have ethical judges and lawyers and engineers. You're not a profession unless society has an interest in you having this professional ethos and tone, which you're responsible for maintaining."

Somerville also argued that governments have an ethical duty not to box doctors in so that their only options are to act unethically or in a manner they find repugnant. She said the problem arises when governments send conflicting messages about physicians' role and status. On one hand governments treat physicians like ordinary employees but on the other they expect them to do without the same range of rights, including strike action, available to other government workers. Somerville's solution? Create a high-level, well-respected body that can mediate credibly and effectively.

Professor Arthur Schafer, director of the University of Manitoba's Centre for Professional and Applied Ethics, believes strikes by doctors are virtually never justifiable as a means of personal enrichment; job action may, however, be legitimate if it draws attention to dangerous situations or a gross infringement of professional integrity.

He suggests that physician job action reflects a profession experiencing a rocky transition from the traditional "model of professionalism to a more entrepreneurial

Physician job action nothing new

Ontario may have been the site of the latest extended dispute between doctors and government, but similar standoffs have occurred throughout Canada for more than 30 years and disputes are seldom far from the surface in different parts of the country.

The first full-blown strike took place in Saskatchewan, the home of medicare, during an organized protest against the introduction of public health insurance. In 1962, 90% of Saskatchewan doctors walked off the job and were replaced by doctors imported from Britain. The strike lasted 23 days.

In 1970, some specialists walked out in Quebec to protest the introduction of public health insurance. Ontario's most recent action began to boil up in 1996 after the provincial government announced it would cut its 9-year-old practice of subsidizing malpractice-insurance dues. In an effort to reverse the decision, obstetricians, who generally pay the highest insurance dues, threatened to stop delivering babies.

By the fall of 1996, obstetricians and orthopods had stopped accepting new patients, and they were later joined by some general surgeons and family physicians. The job action culminated with 1- and 2-day partial withdrawals of medical services.

The government eventually backed down and partially restored the subsidy. Last winter Justice Charles Dubin released a report on the malpractice issue that urged governments to continue carrying a portion of malpractice insurance costs, but not before further clashes erupted between the province and its doctors over pay issues.

The job action ended in January 1997, with the province eventually agreeing to spend $150 million to top up doctors' salaries and reduce clawbacks imposed on their billings by the previous government.

This latest confrontation came 10 years after Ontario doctors clashed with the then Liberal government over the issue of extra-billing. That often rowdy 25-day dispute, marked by highly publicized protests on the front lawn of the legislature, involved about 40% of the province's physicians.

Quebec has also been the scene of recent tension, in this case because of public-sector cutbacks. Last December, Quebec doctors staged a 1-day study session to protest the cuts. A proposed 6% fee reduction was postponed from January until July of this year. Quebec doctors also withdrew services during disputes in 1982, 1987 and 1991.

In Winnipeg, meanwhile, 5 of 7 hospital emergency rooms were shut down in 1993 and 1995, for 10 and 30 days respectively. Staff emergency-room physicians and pathologists withdrew services to protest pay levels and working conditions.

model." Schafer believes the professional model is worth preserving — he argued that its erosion results from a system that subjects doctors to a dozen years of harsh training at "starvation wages and slave-labour conditions," thereby leaving them with an unrealistic and inflated sense of entitlement when they enter practice.

The inhumane training process interferes with young physicians' chances of developing normal personal and professional lives. In turn, the resulting "delayed gratification" drives young doctors into the billing mill the moment the opportunity arises. "That's almost a guarantee for a lot of dissatisfaction," Schafer pointed out. "A lot of people feel doctors are greedy and self-serving, and a lot of doctors are feeling oppressed and hard done by."

Dr. Michael Gordon, vice-president of medical services at Toronto's Baycrest Centre for Geriatric Care, is an outspoken critic of doctors' strikes. He said the Hippocratic oath and CMA Code of Ethics offer only severely limited scope for failing to attend patients.

Even as an Israeli air force doctor, said Gordon, "I could not deprive my enemy of required medical treatment. So, there would have to be very, very strong reasons to deprive someone who is not my enemy of treatment."

He would set the bar high. For example, forcing physicians to engage in crimes against humanity would be reason enough to withdraw or withhold services, but a demand for higher pay would not.

Gordon, who also teaches medicine and bioethics at the University of Toronto, acknowledged that doctors feel frustrated but he is convinced that withholding patient care is not the answer because it hurts an innocent third party.

Ethically, bad behaviour by government, including even the breaking of a contract with physicians, cannot be used to rationalize strike action. "A person's individual actions must stand alone and not relate to the precipitating events that may explain those actions. Those events do not remove the professional and ethical responsibility for the resulting actions."

Instead, he said, doctors have to look to other forms of political action, such as lobbying or declining to respond to government initiatives. This may not seem forceful enough for a group that considers itself under siege, Gordon conceded, and the measures may even be ineffective.

Gordon warned that doctors must be aware that withdrawing services leaves a long-term legacy. "If job actions are repeatedly undertaken for what seem to be self-centred gains, they may eventually result in compromised professional credibility."

Fortunately, Gisele Zacharias bore no lingering resentment against her obstetrician after her ordeal in the hospital waiting room. "As soon as the strike was over, that was it for me. I didn't care about what happened before. I was just glad it was over and that I had my doctor back." ❓