

## CASE AND COMMENTARY

### What Should Physicians Consider Prior to Unionizing?

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#### Abstract

Physicians considering unionization face many practical, emotional, and moral obstacles. Even some who feel that a collective bargaining unit is necessary remain concerned that patient care could suffer if physicians unionize. This article discusses unionized physicians' moral obligations to patient populations and health care systems' share in this responsibility. It argues that unionization can be done ethically as long as union actions are focused on improving patient care.

#### Case

Dr Y has relocated to a new city to begin her internship. Resident physicians in Dr Y's training program recently voted to be represented by a labor union.<sup>1,2</sup> Membership is optional, but a common employment contract has been negotiated with the purpose of protecting the interests of all resident physicians, including those not paying membership dues. As Dr Y begins her postgraduate training, the union is negotiating terms of the organization's contracts with resident physicians for the first time since the program's establishment.

Dr Y has so far not made a decision about joining the union. Some senior resident physician peers have encouraged her to join the union,<sup>3</sup> emphasizing the need for professional solidarity and for everyone to contribute to prioritization of their common interests. Dr Y and others are hesitant to join the union in part because they wonder what exactly collective action might require of individual physicians and how it could affect their patients and careers. Short of an outright strike, union representatives have suggested that actions could include resident physicians' refusal to perform particular tasks, such as entering critical billing-relevant information into patients' health records. Dr Y considers that this action could be justifiable as long as

patients still get needed care.<sup>4</sup> Overall, however, she wonders whether she should join the union.<sup>5</sup>

### Commentary

The right to unionize and strike was guaranteed under the Clayton Act<sup>6</sup> and the Norris-LaGuardia Act<sup>7</sup> and extended to physician employees under the National Labor Relations Act.<sup>8</sup> There are many advantages of physician unions, including collective bargaining for better working conditions, protection from legal action, and the ability to advocate for improved patient care. There is also a potential benefit to patients: one study of hospitals in California showed a 5.5% reduction in patient mortality in those with nursing unions.<sup>9</sup> Most importantly, unions provide physicians a measure of autonomy—something they frequently grant to patients and, with recent health care changes, often cede to their employers. Despite these benefits, relatively few physicians are members of unions, with only 11.4% of health care practitioners and technical workers reporting union membership in 2018.<sup>10</sup> This article discusses what physicians should consider prior to joining unions, ethical complexities of collective action and its consequences, and unionized physicians' and organizations' responsibilities for patient care.

### Considerations in Union Membership

All physicians considering joining a labor union have many factors to consider. First, they must evaluate whether the union's objectives are in line with their values. Ironically, in order to fight for autonomy in clinical practice as union participants, physicians must sacrifice some of their individuality. Once physicians become members, actions taken by the union will reflect on them personally and could affect how they are viewed by their patients, peers, supervisors, and future employers (although their interactions with these groups might be affected by nonmembership as well). Patients, in particular, might feel that unionized physicians are acting unprofessionally or placing personal needs above their best interests, which can compromise the patient-physician relationship.<sup>11</sup> This is especially true if physicians are called upon to participate in collective action as a result of their union membership.

Resident physicians considering union membership face additional challenges. Although all unionized physicians contribute to union dues, the average resident has an income that is less than a third of, and works many more hours than, the average practicing attending physician.<sup>12,13</sup> Resident physicians are especially vulnerable to exploitation due to the **MATCH contract**, which assigns medical students to residencies, thereby removing their ability to bargain for wages and benefits prior to starting their jobs.<sup>14</sup>

Residents are also more at risk for exploitation due to their [learner status](#) and dependency on their supervisors for teaching, feedback, and guidance. Despite these challenges, residents might feel that unionization is necessary or decide to join a union in solidarity with their colleagues. They might also wish to avoid becoming “free riders” (as the House Officers Association at Michigan calls them) who benefit from union actions without contributing dues.<sup>15</sup>

Residents have led several physician strikes over the last 30 years,<sup>16,17,18</sup> likely in part because they do not have final decision-making power when it comes to patient interactions but must instead defer to their attending physicians. This subordinate role makes collective action on the part of residents ethically less complicated, as patient care continues despite resident absence.

### **Ethical Complexities of Collective Action**

Collective action poses ethical complexities for physicians, who are among the few professionals bound by oath to those they serve. A 2015 survey found that 100% of responding medical schools had their [students take an oath](#) at least once during their 4 years of training, and a frequent theme of these oaths is that physicians should do everything possible for their patients.<sup>19</sup> This theme is reiterated by the American Medical Association’s Principles of Medical Ethics, which states, “A physician shall, while caring for a patient, regard responsibility to the patient as paramount.”<sup>20</sup> It is therefore not surprising that physicians feel sworn to value patient care over their own needs and, for this reason, avoid unionization. Unionized physicians might fear breaking their oath if and when collective action harms patients.

There are 2 problems with this thinking, however. The first is that collective action does not necessarily require striking, as physicians have other means of adjusting their workflow to affect their employer without rejecting all clinical duties. Examples of such adjustments include refusing to perform elective surgeries or neglecting documentation to prevent effective billing. Second, studies have found that, historically, physician strikes have not been harmful to patients, with one study finding that the 1976 Los Angeles County physician strike “was responsible for more deaths prevented than lives lost.”<sup>21</sup> In the same vein, medical resident absences from emergency departments have been shown to improve or not to affect efficiency without increasing mortality.<sup>22,23</sup>

Nonetheless, if a group of physicians decides to employ collective action, there are legal and ethical ground rules to follow to ensure patient safety. The

National Labor Relations Act stipulates that physician unions must give employers a 10-day notice of “concerted refusal to work.”<sup>8</sup> Physicians must also ensure that emergency care is still available to those who seek it and that patients who are already hospitalized continue to receive care. If unionized physicians feel that prolonged action is required, they must regularly evaluate the collective effect of their behavior on patient care. Patient safety is most physicians’ priority, but physician strikes will almost always disadvantage patients in some way even if done safely.

The possible disadvantage to patients highlights the crux of the moral issue of physician strikes. In Immanuel Kant’s *Groundwork for the Metaphysics of Morals*, one formulation of the categorical imperative is to “Act in such a way as to treat humanity, whether in your own person or in that of anyone else, always as an end and never merely as a means.”<sup>24</sup> When patient care is leveraged by physicians during strikes, patients serve as a means to the union’s ends. Unless physicians act to improve *everyone’s* care, union action—if it jeopardizes the care of some hospitalized patients, for example—cannot be ethical. It is for this reason that, in the case of physicians looking to form a new union, the argument can be made that unionization should be used only as a last resort. Physician union members must be prepared to utilize collective action and accept its risks to patient care, but every effort should be made to avoid actions that risk harm to patients.

This ethical problem evaporates if physicians strike on behalf of patient care, thereby making patients an end as well as a means. There are several instances in which patient care influenced physicians’ collective actions. One example is a resident strike in 1997 at Boston Medical College to demand translators for non-English speaking patients.<sup>25</sup> If other avenues of change have been exhausted, it is morally acceptable for physicians to unionize and employ collective action—including striking—as long as patients’ best interests are their reason for doing so. Such collective action would not only mitigate ethical complexity but also garner support, and, historically, physician strikes have been more successful when they have strong support from both physician and patient populations.<sup>16</sup>

### **Institutional Responsibility**

When discussing ethics, practicalities, and outcomes of physician unions, the focus is almost always entirely on physicians. Yet to place the weight of responsibility for patient care entirely on unionized clinicians is unjust, as Kant’s reasoning applies to the employing organization as well (hereafter referred to as “the health system”). The health system benefits from

physicians providing patient care; if it then creates working conditions that its employed clinicians do not find sustainable, it violates the categorical imperative by using clinicians as a means to its end. The same can be said of patients, who are used as means to an end if the health system places restrictions on patient care for financial gain. When evaluating the ethics of physician unionization, it is important to realize that the health system has its own corporate [social responsibility](#) to both patients and physicians that is independent of physicians' commitment to patient care.<sup>26</sup> Physicians are expected to consider the effects that their unionization will have on the patient population because they have a responsibility to patient care. The health system shares equally in this responsibility.

### Patients Come First

There are many competing factors for a physician to consider prior to unionization, but the overarching issue is ethical. Physicians can weigh the possible loss of identity against a sense of solidarity, improved wages and benefits against the price of union dues, and improved workplace satisfaction against damage to the patient-physician relationship; but, ultimately, they cannot morally unionize until they have exhausted all other means of negotiation. Unionization comes with at least a threat of collective action, and although collective action by physicians is not necessarily harmful, it poses an ethical issue if physicians are only acting in their own interests. Physicians must consider their responsibility to patients prior to unionizing and work with the health system to improve workplace conditions without threatening collective action. The health system must similarly consider its moral duty to patients and physicians and provide a positive environment for working and healing. Ultimately, responsibility for patient care lies with both parties, who can succeed only when each party prioritizes patient care.

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