

# Research Paper: Withholding Services

Jackson Wiebe 3519635

PHIL 333

## Question

Critically compare situations in which lawyers and physicians may wish to withhold their services. Do you believe that physicians and lawyers are professionally and morally obligated to provide their services to those in need? In what way are these professions/professionals similar and different in this regard?

## Thesis

Doctors and lawyers, like other professionals, may occasionally have reasons to withhold their services in certain situations, but whether they are morally obligated to provide their services to anyone in need is a complex ethical question. Since the topic question is so large, I would like to focus more narrowly on the medical sector with some focus on the right for medical workers to Strike. The view I will be defending is such that medical services should always be provided at the most fundamental level, however there may be cases that warrant withholding of services. A doctor should always respond to a code blue life threatening event, and a minimum level of care should be provided where possible. However, Doctors and lawyers are people too and deserve fair wages, human rights, and their own lives to consider.

## Rational for Withholding Services

I would like to start my argument by defining a variety of situations where a doctor or lawyer may withhold services. With as little bias as I can present:

- **Inadequate Compensation:** If a client/patient is unable or unwilling to provide reasonable compensation for their services, the professional may choose not to provide care.
- **Conflict of Interest:** If a professional has a personal or financial conflict of interest that could compromise their ability to provide unbiased care, they may choose to recuse themselves from a case.
- **Inappropriate Client/ Patient Behavior:** In cases of abusive or disruptive behavior by a client/patient, services may be refused if it interferes with the safety and well-being of staff or other clients/ patients.
- **Limited Resources:** In situations of limited resources (e.g., during a disaster or pandemic), doctors may need to make difficult triage decisions, prioritizing care for those with the best chance of survival. Consistently Lawyers also have limited time in a day while legal cases can take many many hours of preparation and research.
- **Personal Safety:** Like behavior, in situations where representing a client poses a threat to a lawyer's personal safety, they may choose to withdraw from the case.
- **Conscientious Objection:** Some professionals have strong moral or religious objections to certain medical procedures (e.g., abortion or assisted suicide) and or choices about the existing legal system (e.g., not pursuing a Death Sentence) and may choose not to provide those services.

## Case study: Impact of a province-wide nurses' strike on medical care in a regional referral centre

In 1982 and again in 1988 the medical nurses of Alberta went on strike. Both strikes lasted roughly 30 days and affected about two thirds of the UNA members at the time, shutting down some most hospitals (Lilwall 2023). A group of doctors from the Foothills Provincial general hospital took this as an opportunity to study the impacts on healthcare from the strikes. The referenced study in the Canada Medical Association journal looked at Hospital metrics affecting its operations during the 1982 strike: The number of emergency admissions, the severity of illness, and rate of death in the ICU. The study did not look at less severe illness and patient inconveniences.

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The results of the 1988 strike were not immediately evident in the negotiated settlement, because the most important victory was forcing the employer to remove the takeaways from the table. The 1988 strike set the stage for UNA to make significant gains for nurses in the 1990 contract negotiations. This strike helped define UNA members as a force that would not hesitate take a stand for positive change in our health care system. (Alberta 2013)

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From the Can Medical Journal study, it can safely be determined that the impact on primary medical services was only mildly affected by the strike. "The proportion of admissions to the intensive care unit out of all the hospital admissions from the emergency department was unchanged during the strike." (Stabler C 1984) There were delays placed on non-elective surgery and it seemed the emergency controls put into place were able to cover the increase in system demands.

From a professional perspective a nurse's strike could be considered bad. Nurses have a professional duty to care for their patients, usually in a sworn oath. We also have a reduction in patient safety and access to care. This can quickly erode public trust in the healthcare system. Nurses must navigate the ethical dilemma of whether withholding their labor is justified in pursuit of better working conditions and fair compensation.

*Beneficence* is the ethical value of doing good and promoting well-being. Nurses strike with the aim of improving working conditions, which can indirectly benefit patient care by ensuring a motivated and well-supported healthcare workforce. Using Utilitarianism, we can make an argument that the strike is good overall if it results in a net increase in overall well-being, including both nurses and patients.

We can also look at the Justice of the situation. Justice is the principle of fairness and the impartial distribution of benefits and burdens in society. Nurses may strike to address perceived injustices in their working conditions or compensation. The strike should be conducted in a way that respects the principles of distributive justice (fair distribution of resources) and procedural justice (fair processes). Justice aligns with theories like Rawlsian justice, which emphasizes fairness and the protection of the least advantaged. So again, overall, we can consider the strike a positive good as it contributes to the correction of a injustice which results in a net positive for the staff and the general public.

Overall, the strikes had a long-term positive impact on the compensation in contrast to the reported minor short-term reduction in services. The Nurse strikes of Alberta are a great example where medical professionals can use the negotiation tactic of striking to improve their own working conditions. Thus, I would say that medical staff are only obligated to offer the most rudimentary of medical services but otherwise can withhold services if it is in the interest of improving the profession.

## The Right to Strike

In most modern cultures, it is a citizen's given right to withhold work in the form of a strike. Sylvester Chima from South Africa wrote a very piece on the ethics of healthcare workers to go on strike (Chima 2013). As quoted in his article from the South African supreme court, *The right to strike is of both historical and contemporaneous significance. In the first place, it is of importance for the dignity of workers who in our constitutional order may not be treated as coerced employees. Secondly, it is through industrial action that workers are able to assert bargaining power in industrial relations. The right to strike is an important component of a successful collective bargaining system* (Chima 2013, 3). Using the right to strike as a bargain tool we can advance our industrial society such that all humans are treated equally and not forced into what could be considered slavery.

Again, I would present the concept of Justice, where in this instance it should be just wages for just work. If the wages are not sufficient for the work put in there is an imbalance that needs to be righted for those employees. It should be considered unethical for people to be used as slaves or be forced to work for inadequate wages (slave – like) conditions as there is no moral defense for such actions. From a libertarian ideology people should not have their individual freedoms curtailed either for others or for the good of society in general as this does poorly for the longevity of a society.

From an economics perspective the suppression of wages would generally lead to less employment in the medical sector as prospective students will see the poor treatment of doctors and nurses, dissuading them from entering that profession. There will be a shortage of staff and thus even from the long-term perspectives of utilitarian principles it should be clear that removing a worker's ability to fair wages and striking is not in the long term interests of society. Fair works deserves fair wages to continue the longevity of a society. Protection of individual rights in employment helps to ensure that no group of citizens are unfairly discriminated against in the quest for equal rights for all in a democratic society. (Chima 2013, 7)

Paraphrasing Chima, it must also be stated that Healthcare works around the world generally take a Hippocratic Oath which guides their behavior "The health of my patients will be my first consideration." Therefore, a doctor in good standing cannot professional strike without taking precautions for his/her patients beforehand. This can be in the form of providing minimum services while striking against elective surgery and everyday health checkups. Unions can make prearrangements to provide X employees as minimum service while the remainder strike to achieve their goals. They are still providing this basic level of care to their patients; meeting the oath collectively. One can argue that the resulting improvement in overall quality of healthcare services when negotiated changes are implemented mitigates any short-term harm of strike actions. Therefore indirectly, strike actions by healthcare workers may ultimately result in better healthcare for patients and the public in general and can still be in alignment with their oath.

The summary from Chima is that the right to strike is a fundamental right for all, and without it those employees are without extreme bargain tools and at typically at the mercy of their employers which borders onto ethically and morally indefensible enslavement. There is very little argument to be made that the right to strike is ethical bad and can be generally seen as overall good withholding some short-term problems with the individuals who may be impacted. It should be stressed that minimizing the impact of a strike for the greater good should be the responsibility of all stakeholders, including an equal moral obligation to serve the best interests of their society. Minimum service level agreements should be implemented beforehand and collective bargaining should be done with serious intent to form a resolution before a strike is necessary.

## Ethics at the End of Life

Another area of personal concern for me is the ethics around end-of-life care. When confronted with a pre-mature life limiting diagnosis most patients are conflicted and confused. They typically want the best possible outcome of having an extended life while also maintaining a functional quality of life. Is a doctor morally obligated to push the patient for a potential treatment that will reduce their quality of life through harsh treatments, testing and travel limitation. Or should they encourage the patient to use a shorter amount of time to celebrate their remaining life with a high quality of life for a shorter duration. The context of every situation will change, however there is always a balancing act of sustaining a life or living life.

Frequently, families may wish for their cherished individuals to "persevere," thinking it's crucial to explore any potential intervention that might slightly prolong their lives. Nevertheless, Palliative Care prioritizes optimizing symptom management to alleviate suffering and improve overall quality of life. It advocates preserving elements of life that hold genuine value for the patient within the framework of their medical condition, surpassing the pursuit of interventions that could potentially harm their well-being. In cases where aggressive treatments have significant side effects and may contribute to a lower quality of life, the ethical decision may involve avoiding interventions that could cause harm without clear benefits. It may be the ethical choice of a doctor to resist that option. Avoiding the high risk for harm in the interest of a generally good outcome. This highlights the ethical principles in Medicine of promoting the patient's best interests (beneficence), and doing no harm (non-maleficence)

If the patient is coherent, they may wish to exercise their autonomy in the situation. Now the healthcare worker is conflicted with the choices of respecting an individual's autonomy with the obligation to reduce harm. Acknowledging their right to make decisions about their own life and health, if a person expresses a strong desire to pursue every available treatment option, even if it may decrease their quality of life, respecting their autonomy becomes a central ethical consideration. (Pallium Palliative Pocketbook 2008)

Mostly recently in Canada has implemented legislation that legalizes Medically Assistance in Dying (MAiD). When asking for one's own medical assisted death they have intertwined both themselves and the medical staff with this decision. Bill C-14 defines that if a person's death is reasonably foreseeable and his or her suffering is irremediable, then it is legal to ask someone to assist. (Simpson 2017) Is it moral for a physician to assist in such a request after having taken the Hippocratic oath to do no harm. There is a moral conflict in that, a case could be made for a doctor to respectfully decline such a request for MAiD on their own professional obligations to do no harm. This would be against the legislation and would be quite interesting to explore as its own paper.

It's important to note that ethical considerations are nuanced, and each patient's situation is unique. Shared decision-making between the patient, their family, and healthcare providers is encouraged to ensure that the chosen path aligns with the patient's values, preferences, and understanding of the potential outcomes. Regular and open communication allows for ongoing assessments of the patient's goals and adjustments to the care plan as needed, ensuring that ethical principles are upheld throughout the course of treatment.

## Conclusion

Whether doctors and lawyers are morally obligated to provide their services to anyone in need is a matter of ongoing debate and will vary depending on local cultural, legal, and ethical norms. I believe I have presented enough information to argue that there are cases in which medical services can be withheld in the interest of the greater good. The right to strike should be a basic human right and would be ethically immoral to ban the full rights of an individual to strike.

The case study of the nurses' strike in Alberta serves as an example where striking, despite short-term disruptions, contributed to long-term improvements in compensation and working conditions. This aligns with utilitarian principles, emphasizing a net increase in overall well-being for both healthcare workers and patients. We also looked at the recent legislation, MAiD, adds another layer to the ethical landscape. The conflict between a physician's professional obligations and the legal framework raises important questions about the moral implications of such practices.

There is still the matter of the Hippocratic Oath, on an individual level they should provide a basic level of care but as a group there is actions Health Care worker can take to ensure their employment standards are in line with the global industry and is defensible under the ideology of Justice. We have also looked at the care for end-of-life patients and if it would be morally good or bad to withhold care when dealing with life shortening conditions.

Codes and laws in different jurisdictions will provide guidance on these matters, but the specifics can vary widely. Ultimately, these decisions are often made on a case-by-case basis, considering various factors, including professional ethics, legal obligations, and individual circumstances. We need a balance between individual rights, professional obligations, and societal needs.

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