

Physician Strikes
Y.D. 336:1
Rabbi Jay M. Stein

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שאלה

May doctors strike and if so under what circumstances?

תשובה¹

The health care system in America² is undergoing radical change. Different groups in the industry are gaining and losing control of the decision making process. No longer is healthcare simply between doctor and patient. In America doctors, patients, government and insurance companies, pharmaceutical companies, research institutions and hospitals all play significant roles in providing health care. Each has rights and responsibilities, protections and obligations. In the current debate, those rights and responsibilities are regularly shifting.

A national trend of physicians leaving private practice and moving to hospital employment, is the reason for our renewed concern of whether or not physicians are ever permitted to strike. The move from private practice to hospital employment is due to “higher costs.”³

The abstract of an article by Salmon Thompson explains this phenomenon well:

Current conditions surrounding the cost of medicine-including corporate and government cost-containment strategies, increasing market-penetration schemes in health care, along with clinical scrutiny and the administrative control imposed under privatization by managed care firms, insurance companies, and governments-have spurred an upsurge in physician unionization, which requires a revisiting of the issue of physician strikes. Strikes by physicians have been relatively rare events in medical history. When they have occurred, they have aroused intense debate over their ethical justification among professionals and the public alike, notwithstanding what caused the strikes. As physicians and other health care providers increasingly find employment within organizations as wage-

1 Although the CJLS advises the entire Conservative movement, this responsum is applicable only in America. Because the health systems of Israel, Europe, Canada, and Latin America are so vastly different, it is difficult to apply this responsum outside of the United States. However, certain principles may be extrapolated.

2 This teshuva addresses the responsibilities of Jewish physicians and their obligation to save life. Jewish physicians are obligated to save non-Jews in the same way they are obligated to save Jews.

3 <http://newsroom.accenture.com/news/more-us-doctors-leaving-private-practice-due-to-rising-costs-and-technology-mandates-accenture-report-finds.htm>

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

contract employees and their work becomes more highly rationalized, more physicians will join labor organizations to protect both their economic and their professional interests. As a result, these physicians will have to come to terms with the use of the strike weapon. On the surface, many health care strikes may not ever seem justifiable, but in certain defined situations a strike would be not only permissible but an ethical imperative. With an exacerbation of labor strife in the health sector in many nations, it is crucial to explore the question of what constitutes an ethical physician strike.⁴

In a study conducted on behalf of The Physicians Foundation, the website claims, 3) The independent, private physician practice model will be largely, though not uniformly, replaced. 4) Most physicians will be compelled to consolidate with other practitioners, become hospital employees, or align with large hospitals and health systems for capital, administrative and technical resources.⁵

As physicians move from self-employment to employee, issues of workplace safety, compensation and challenges to autonomy will become more prevalent for doctors.

While capitalism, free market economy and other forces are dominant in American culture, our tradition maintains a commitment to care for each other. Certainly, Jewish law requires saving a life.⁶

The Torah states,

לא תלך רכיל בעמך לא תעמד על דם רעך אני ה' :

You shall not go up and down as a slanderer among your people; nor shall you stand against the blood of your neighbor; I am the Lord.⁷

Rabbi Yosef Karo (1563) goes one step further indicating that withholding care is killing.

ואם מונע עצמו הרי זה שופך דמים.

And if he does withhold [care], that is spilling of blood.⁸

4 *Strikes by physicians: a historical perspective toward an ethical evaluation*. Thompson, Salmon. International Journal of Health Services, Vol. 36, Number 2/2006, pages 331-354.

<http://www.ncbi.nlm.nih.gov/pubmed/16878396>

5 http://www.physiciansfoundation.org/uploads/default/Health_Reform_and_the_Decline_of_Physician_Private_Practice.pdf

6 Rabbi Joseph H. Prouser in his *teshuvah* about organ donation lays out the centrality of and guidelines for what constitutes “saving a life” and each person’s obligation. YD 336.1995 *Hesed or Hiyuv?* The Obligation to Preserve Life and the Question of Post-Mortem Organ Donation

7 ויקרא, פרק י"ט, פסוק ט"ז

8 שולחן ערוך יורה דעה הלכות ביקור חולים ורפואה ונוטה למות וגוסס סימן שלו סעיף א

לא תראה את שור אחיך או את שיו נדחים והתעלמת מהם השב תשיבם לאחיק: ואם לא קרוב אחיק
אליך ולא ידעתו ואספתו אל תוד בידך והיה עמך עד דרש אחיק אתו והשבתו לו: וכן תעשה לחמרו וכן
תעשה לשמלתו וכן תעשה לכל אבדת אחיק אשר תאבד ממנו ומצאתה לא תוכל להתעלם:

And if your brother is not near you, or if you know him not, then you shall bring it to your own house, and it shall be with you until your brother seeks after it, and you shall restore back to him. In like manner shall you do with his ass; and so shall you do with his garment; and with every lost thing of your brother's, which he has lost, and you have found, shall you do likewise; you may not hide yourself.⁹

Rambam (Maimonides 1135-1204) applies the law of returning lost objects to restoration of health. He explains that a doctor must heal the sick because of the requirement to return to someone something they have lost.

[ד] ... שהיא מצוה כלומר שחייב הרופא מן הדין לרפאות חולי ישראל והרי הוא בכלל אמרם בפירוש הכתוב והשבתו לו...

It is obligatory from the law for the physician to heal the sick of Israel, and this is included in the explanation of the scriptural phrase 'and though shalt restore it to him.'¹⁰

Rabbi Karo further codifies the obligation to save a life.

הרואה את חברו טובע בים, או לסטים באין עליו, א] או חיה רעה באה עליו, ויכול להצילו הוא בעצמו א או שישכור אחרים להציל, ולא הציל... עובר על לא תעמוד על דם רעך (ויקרא יט, טז).

One who sees a person drowning in the water, or being attacked by vermin or a wild animal is coming towards him, and is able to save him by himself or he may call others to help save him and does not... transgresses the commandment of not standing idly by the blood of your neighbor.¹¹

Rabbi Karo's examples are in an emergency and are of people who are able to save a life. By applying this principle to physicians, doctors who have the ability to save another person's life are required to act.

נתנה התורה רשות לרופא לרפאות. ומצוה היא ובכלל פקוח נפש הוא.

"The Torah gives permission to the doctor to heal. And it is a commandment as it [falls under] the principle [of] saving a life."¹²

דברים פרק כב:א-ג 9

Rabbi David Bleich writes: "Human life is not a good to be preserved as a condition of other values but an absolute, basic, and precious good in its own right. The obligation to preserve life is commensurately all-encompassing."
Rabbi L. David Bleich, Contemporary Halakhic Problems (New York: Ktav, volume 1 p. 1).

פירוש המשנה לרמב"ם מסכת נדרים פרק ד 10

שולחן ערוך חושן משפט הלכות שמירת נפש סימן תכו סעיף א 11

שולחן ערוך יורה דעה הלכות ביקור חולים ורפואה ונוטה למות וגוסס סימן שלו סעיף א 12

Rabbi Karo goes even further, adding that a physician must bring healing with or without compensation and may not refuse at that moment.

הרופא, אסור ליטול שכר החכמה וההלימוד, אבל שכר הטורח והבטלה, מותר

A doctor is forbidden to charge for their expertise, however, they are permitted to charge for their effort and expenses.¹³

Rabbis Dorff and Mackler in their *teshuva* of 1998 on the responsibilities for the provision of healthcare wrote,

It is necessary to understand their guidance addresses both the physician and patient.

1. Jewish law requires that people be provided with needed health care,¹⁴ at least a 'decent minimum' that preserves life and meets other basic needs, including some amount of preventive care. The responsibility to assure this provision is shared among individuals and families, physicians and other health care providers, and the community.
2. Individuals have the responsibility to care for their own health, and the primary responsibility to pay (directly or through insurance) for health care needed by themselves or by family members. When they cannot do so, they may and should avail themselves of publicly funded programs to acquire the health care they need. In any case, one should seek to prevent illness rather than wait to cure an illness that has already occurred.
3. Physicians and other health care professionals must treat patients in cases of emergency, and they have some responsibility more generally to make health care available to those who cannot afford their normal fees. At the same time, health care professionals legitimately may expect compensation for their efforts and expenses, and should be able to earn a living. (see note #23)¹⁵
4. The community bears ultimate responsibility to assure provision of needed health care for individuals who cannot afford it, as a matter of justice as well as a specific halakhic obligation. The 'community' that bears that responsibility in our day is the national society, through its government, health care institutions, insurance companies, and private enterprise. Jewish citizens should support (by lobbying and other means) general societal institutions that will fulfill this responsibility. The Jewish community, through its federations, synagogues, and other institutions, must assess whether and to what extent it should support hospitals and other forms of health care. It should balance that purpose against its commitment to those important Jewish needs, such as Jewish education and social services, in light of contemporary patterns of funding health care.

13 שולחן ערוך יורה דעה הלכות ביקור חולים ורפואה ונוטה למות וגוסס סימן שלו סעיף ב

14 While I cannot presume the intention of Rabbis Dorff and Mackler, it makes sense that they are referring to health care that saves life at a minimum. Consistently, the prohibition against shedding blood and spilling blood and the requirement to save a life are intermingled. "Standing by" and "killing" are not equivalent. The prohibition against killing is the equivalent to standing by and doing nothing while life is at risk.

15 The physician in these cases does have the right to seek compensation utilizing all the legal apparatus at his/her disposal including billing, collection and the courts.

The guarantees of provision of needed health care does not extend to all treatment that is desired, or even all that might provide some benefit. Even needed treatment might be limited when it is so extraordinarily expensive that its provision would deprive other patients of needed care. Still, possible limits to interventions must be weighed against the value of human life and healing, and the injunction that a physician who fails to provide needed health care is considered as one who sheds blood.¹⁶

The Israel Medical Association website offers the following summary to the issues, In 1983, during the physicians' strike that took place in that year, the Chief Rabbis of Israel, Rabbi Avraham Shapira and Rabbi Mordechai Eliyahu, held that as long as the employers did not accept the physicians' demand for arbitration, the physicians were permitted to strike. Rabbi Yitzhak Yaakov Weis and Rabbi Shlomo Zalman Auerbach in that year also hinted that the physicians were entitled to disrupt the healthcare system to the extent that it would operate on a Sabbath schedule.

The Israel Medical Association website continues, Rabbi Shlomo Goren, who served *inter alia* as Chief Rabbi of Israel, emphasized in 1983 that the Government bore the responsibility for public health, and not the physicians. Rabbi Goren distinguished between a situation in which there was an employment agreement — and therefore it was more problematic to disrupt the healthcare system — and a situation where such an agreement was not valid. 'Were we speaking of the time stipulated in the employment agreement between the physicians and their employers, the problem would be more serious,' Rabbi Goren held, 'but when we are speaking of a renewal of a salary agreement of the framework that exists between the physicians and the Ministry of Health, where everyone admits that the physicians' claims are in principle justified, but the Ministry of Finance is concerned that the general framework of employment agreements in Israel will be undermined, and if they make concessions to the physicians, others will also come to make strong demands and to threaten strikes, perhaps this is not a ground for compelling the physicians to work for poor salaries' (emphases not in the original). **Ultimately, the Rabbi's conclusion was that 'the striking physicians may not prevent the giving of aid to patients, but there is a duty to pay them salary in accordance with the demand of the Medical Association.'**¹⁷

16 YD 336:1.1998 *Responsibilities for the Provision of Health Care*, Rabbis Elliot N. Dorff and Aaron L. Mackler. This paper was approved by the CJLS on September 9, 1998. The introduction and Part I were approved by a vote of sixteen in favor and four abstaining (16-0-4). Part II was passed by a vote of fourteen in favor and six abstaining (14-0-6). And Part III was passed by a vote of twelve in favor, one opposed and seven abstaining (12-1-7).

17 http://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/19912000/dorffmackler_care.pdf
17 <http://www.ima.org.il/ENG/ViewCategory.aspx?CategoryId=6147>

This is keeping in line with Rabbi Karo's statement regarding compensation.¹⁸

Physicians' Right to Compensation

While it is necessary to address the role of every participant and provider in the health care system, this *teshuva* only addresses physicians' role. This is not to say patients have no responsibility or accountability within the system. As outlined by our codes, they do.¹⁹

The Talmud in Sanhedrin (73a) requires a person who is capable of saving a life to do so.

ת"ל (ויקרא יט) לא תעמוד על דם רעך והא להכי הוא דאתא האי מיבעי ליה לכדתניא מניין לרואה את חברו שהוא טובע בנהר או חיה גוררתו או לסטין באין עליו שהוא חייב להצילו ת"ל לא תעמוד על דם רעך אין

Our Rabbis taught: (Leviticus 19) Thou shalt not stand by the blood of thy neighbor. Whence do we know that if a man sees his fellow drowning, mauled by beasts, or attacked by robbers, he is bound to save him? From the verse, Thou shalt not stand by the blood of thy neighbor!²⁰

Rabbi Yisroel Meir HaKohen (The Chofetz Chaim 1838-1933), obligates a person who is capable of saving life to spend all of his money, explaining that when Rabbi Akiva states "your life comes first," it means only your life comes first; not your money.²¹ Rabbi Yisroel Meir HaKohen states that a person may have to undergo loss to save a life and that person is still obligated to do so.

Many have written on this subject.²² Rabbi Yechiel_Michel Epstein (1829-1908) offers the following synopsis,

ולעניין שכר הרופא כתב הטור בשם הרמב"ן דמותר ליטול שכר בטילה וטירחא אבל שכר הלימוד אסור דאבידת גופו היא והתורה אמרה והשבתו לו לרבות אבידת גופו ואמרינן בעניין עשיית המצות מה אני בחנם אף אתם בחנם הלכך שכר החכמה והלימוד אסור אבל שכר הטורח ושכר הבטלה מותר

18 See note 13

19 Ibid., *Duty and Healing: Foundations of a Jewish Bioethic*, Freedman, Benjamin. Routledge, New York/London, 1999.

20 Soncino Translation

21 Ahavat Chesed 2:20 as cited in *At What Cost Saving Lives?* by Rabbi Chaim Steinmetz <http://www.jlaw.com/Commentary/whatcost.html>, as well as in Torah Sparks, Parshiyot Vayakhel-Pekudei Shabbat Parah Mevarchim HaHodesh March 17, 2012 by Rabbi Joseph H. Prouser

22 RoSh - Asher ben Jehiel (1250 or 1259 – 1327) ורפא ירפא. שאני"ר בלע"ז וכן תרגום ואגר אסייא ישלם פ"י יתן שכר הרופא: and the שו"ת רדב"ז מכתב יד - אורח חיים, יורה דעה (חלק ח) סימן קצד Radbaz-Rabbi David ben Zimra(1462-1572) מהרש"א חידושי אגדות מסכת ברכות דף ס עמוד א Maharsha-Samuel Eidels (1555 – 1631) As well as more modern scholars some already cited above as well as others, such as, Bleich, J. D. "Physicians' strikes," Tradition, New York, Fall 1984, Vol 21, No 3, pp.80-84. שו"ת ציץ אליעזר חלק ה - רמת רחל סימן כד - (1915-2006) Eliezer Yehuda Waldenberg,

עכ"ל כלומר שכר החכמה והלימוד הוא כשאומר לו קח סם פלוני אבל כשהולך אצל החולה הוא שוכר טירחא וכן כשכותב לו לבית הרוקח ליתן כך וכך הוא שוכר טירחא ומותר:²³

Regarding the issue of payment to the physician the Tur wrote in the name of Nachmanides one must pay a physician for his time and effort, however, compensation for his studies is forbidden [the doctor must attend to the patient] because it is a loss [of health] to his (the patient's) body and the Torah says that he (the doctor) must return it to him as is the case with anyone who [has a loss of health to his] body. And it states with regards to performance of a mitzvah, just as I must do it for free so too you must do it for free. Therefore, compensation for his (the doctor's) wisdom and learning is prohibited. However, compensation for his (the doctor's) time (time he might have been using to earn money) and effort is permitted.

A patient should compensate the doctor. While a doctor is required to administer lifesaving protocols, this in no way absolves the patient from compensating that doctor. It is difficult to make the case that doctors' wages are dangerously low even if one factors in the cost of malpractice insurance and cost of schooling. Therefore, one may not make the case that a doctor's life is also at stake if they are not paid. Therefore, if a patient does not have the means to compensate a doctor, the over-arching obligation is saving a life - פקוח נפש - and "do not stand idly by the blood of your neighbor - לא תעמוד על דם רעך -".

Two scenarios in which striking may be considered acceptable

Physicians have rights as workers, and physicians have responsibilities to their patients.

1. To ensure their own safety:

If a physician's life is in danger due to dangerous working conditions, this would be a reasonable argument for permitting such a strike. One can imagine a doctor working at a facility in a dangerous neighborhood in which proper precautions are not taken to ensure the safety of the personnel. By working in that facility a doctor is literally putting himself/herself in harm's way.²⁴

In Talmud Bava Metzia (62a) there is a discussion about sharing water when two people are traveling through the desert. The hypothetical case suggests there is only enough water for one to survive. Ben Petura dictates they divide the water and both die, rather than have one watch the death of the other. Rabbi Akiva teaches that is not the correct approach. "Your life comes first." The owner of the water must save his life first, even if the other person will die. Rabbi Akiva's opinion is the halakhic norm.²⁵

23 ערוך השולחן יורה דעה הלכות ביקור חולים ורפואה ונוטה למות וגוסס סימן שלו סעיף ג

24 One such example can be seen in this article <http://www.friesenpress.com/bookstore/title/119734000017832211/Dr.-Denise-E.-Hall-In-Harm's-Way%3A-Professional-Health-Care-Workers-at-Risk>

25 There is a debate about a case of uncertain danger. Hagahot Maimmoniot (Rotzeach 1:14) says there is an obligation for a bystander to place himself in uncertain danger in order to save the victim from certain danger. Radvaz in Pitchei Teshuva (YD 157:15) says that it is forbidden to place oneself in danger, and the principle of "your life comes first" applies to cases of uncertain danger as well.

In the circumstance where a physician works in a place in which there is serious danger and for example, it is possible someone will enter the facility to do harm, the doctor may demand metal detectors and other safety protocols be established for their wellbeing. (See “Fearing a Shootout at the E.R. Corral” New York Times, FEB. 14, 2014.²⁶) Physicians have every right to demand a safe environment for themselves and their patients.

2. To ensure the safety of their patient

Another justification for physicians to exercise the collective bargaining strategy is when they are forced by employment circumstances to put their patients’ lives at risk. Doctors who are obligated to work long hours and carry too large a patient load might be providing substandard care and in some cases become hazardous to the patient.²⁷ A doctor who is exhausted from working too many hours may be deprived of the critical rest for good judgment and may make fatal mistakes.

More specifically, when physicians are regularly asked by their employers (hospitals) to see more patients, either by working longer hours or by shortening the amount of time they spend with each patient, this is detrimental to the care of the patient and may cause serious danger to the patient as well as the physician. While interns’ and residents’ hours and performance are carefully monitored so as to prevent poor care and promote greater health among that group, attending physicians’ hours are not regulated in the same fashion.²⁸

In both of these scenarios, striking is permissible and it is forbidden to attempt measures to break the strike.

Rabbi Jill Jacobs highlights the p’sak of Rabbi Ovadiah Yosef when she writes, Rabbi Ovadia Yosef declared that unions may "make use of strikes in order to raise wages, or to ease work conditions, or other such things" (Yechaveh Da'at 4:58).

Rabbi Moshe Feinstein, a preeminent 20th-century American rabbi, even concluded that if a majority of workers goes out on strike, the minority may not cross the picket line to work. Furthermore, he wrote, the company may not hire non-union replacement workers. He based this decision on the principle of "*ka paskat lei l'hiyuti*" -- one person (the replacement) may not take away the livelihood of another (the striker) (Igg'rot Moshe Choshen Mishpat 59).²⁹

26 http://www.nytimes.com/2014/02/16/magazine/fearing-a-shootout-at-the-er-coral.html?ref=theethicist&_r=0

27 <http://www.ncbi.nlm.nih.gov/pubmed/24662409>, <http://annals.org/article.aspx?articleid=717988>

<http://jama.jamanetwork.com/article.aspx?articleid=208648>

Conclusion: The ACGME duty hour reform was associated with significant relative improvement in mortality for patients with 4 common medical conditions in more teaching-intensive VA hospitals in post reform year 2. No associations were identified for surgical patients.

28 *Fatigue Among Clinicians and the Safety of Patients*. Gaba DM, Howard SK. N England Journal of Medicine. 2002;347:1249-1255.

According to the American Medical Association, doctors are first and foremost altruistic professionals.³⁰ According to our sages, doctors are furthering the aims of working in partnership with God to restore health. They are people with specialized skill, who fully understand the risks of their profession and who nonetheless set aside all such usual and customary working conditions. Only when their own lives and the lives of their patients are at risk, is there reason for them to take such a potentially life threatening step of striking.

Conclusion:

Many doctors have come together to form groups. They have practices in which they are co-owners. Sometimes those groups are purchased by hospitals and other healthcare institutions. Regardless of the circumstances that bring a doctor into the employ of an institution, at the onset of those agreements there ought to be fair and reasonable expectations set and then each party should remain dedicated to those commitments. Regardless, the patients' health must remain the core concern. In this extremely complicated system of providing care to patients with multiple groups, people, institutions and companies responsible for the delivery of those services, it is easy to lose sight of the basic principle of saving a life.

Rabbi Shlomo Goren responding to a physician strikes in Israel wrote,

לכן בנידון דידן, גם אם ייגרם לרפאים נזק כספי גדול ע"י זה שיהיו נאצלים לשבור את השביתה, כדי לטפל בחולים, כתוצאה מכך לא ייענו לטביעתם, אין משחרר אותם מן החובה לערת חולים, מטעם "לא תעמוד על דם רעך".

Therefore, in our present case being judged, even if there is significant monetary loss to the doctors from this, (i.e.,) that it is necessary to break this strike in order to care for patients, (and) as a result of this, their (the doctors') claims will not be answered, this does not free them (the doctors) from their obligation to heal the sick from the vantage point of 'do not stand idly by the blood of your neighbor.'³¹

In the field of medicine there is:

Emergency care - Emergencies left unattended will result in fatality, and therefore, fall under the category of saving a life. This category should include ongoing treatment such as chemotherapy that in its absence would result in fatality.

Acute care - Acute care are circumstances in which immediate care is not required. In those cases other doctors and health care institutions may be sought. For example, an ear infection is not likely to result in a fatality. There is an urgency, yet there is no real or serious danger to life. Therefore, this does not fall under the category of saving a life and a doctor may not be compelled by Jewish law to attend to these patients.

29 Rabbi Jill Jacobs, "There Shall Be No Needy: Pursuing Social Justice Through Jewish Law and Tradition Posted:" December 20, 2010 03:13 PM

30 <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/principles-medical-ethics.page>

31 Goren, S. "Physician Strikes in the Light of Halacha," Assia, Vol.5 Rubin Mass, Jerusalem 1986, pp. 41-54

Elective care - Elective procedures that may be put off indefinitely, and therefore, no case can be made for doctors' services to be demanded. Examples of this are some cases of plastic surgery. Here too, a doctor cannot be compelled by Jewish law to attend to these patients.

Preventative care. – Preventive care is a circumstance in which people can put off for a reasonable amount of time care such as vaccines and routine examinations.³²

In cases where a doctor's care is required immediately in order to save a life, a physician may not withhold care while in cases that are less acute or are purely elective a doctor may decide to set his/her own guidelines for care. In cases that are indeterminate a doctor must err on the side of safety and saving a person's life.³³

There are methods with which physicians may put pressure on their employers in order to leverage better working conditions. These include work actions such as "slowdowns" and "work to rule" approaches. These techniques should only be employed in circumstances in which life is not at stake. If circumstances dictate such efforts, doctors should make every effort to warn their patients that these actions are going to happen, giving their patients ample time to find alternative care.

Psak

Physicians may strike only when striking will not put human life in serious danger.

Appendix 1 American Labor Law

By way of context it is valuable to understand that while American law³⁴ permits physicians to form unions and to bargain collectively, American law limits the cases in which it is permissible

32 "The articles analyzed five strikes around the world, all between 1976 and 2003. The strikes lasted between nine days and seventeen weeks. All reported that mortality either stayed the same or decreased during, and in some cases, after the strike. None found that mortality increased during the weeks of the strikes compared to other time periods. The paradoxical finding that physician strikes are associated with reduced mortality may be explained by several factors. Most importantly, elective surgeries are curtailed during strikes. Further, hospitals often re-assign scarce staff and emergency care was available during all of the strikes. Finally, none of the strikes may have lasted long enough to assess the effects of long-term reduced access to a physician. Nonetheless, the literature suggests that reductions in mortality may result from these strikes." *Doctors' strikes and mortality: A review* Solveig Argeseanu Cunningham, Kristina Mitchell, K.M. Venkat Narayan, Salim Yusuf see <http://www.sciencedirect.com/science/article/pii/S0277953608005066>

33 ואף על פי שיש מצוה עליו לרפאותו; שכל מצות עשה דרמיא אכולי עלמא, אם נזדמנה לאחד ולא רצה לקיימה אלא בממון, אין מוציאין הממון מידו, ולא מפקיעין מידו חיוב שלהן (טור).

Even though he is required to treat him, with any mitzvah that applies [equally] to anyone, if it happens to fall to one person and he will not do it without pay [so one pays him to get him to do it then make a claim of restitution in court] we do not demand the return of the payment, nor [if it is before the payment has been made] do we release [the patient] of the responsibility to pay [as he has agreed to secure the services].

34 The principle of *Dina D'malchuta dina*- the law of the land, does not apply in this circumstance because Jewish law and American law do not come in conflict with each other. As is explained in this teshuva both American law and Halacha are in concert with one another.

to strike. Congress approved the National Labor Relations Act in 1935³⁵ to encourage a healthy relationship between private-sector workers and their employers, which policy makers viewed as vital to the national interest...

Right to strike and right to collective bargain

THE RIGHT TO STRIKE. Section 7 of the Act states in part, “Employees shall have the right. . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.”

Strikes for a lawful object. Employees who strike for a lawful object fall into two classes “economic strikers” and “unfair labor practice strikers.”

Both classes continue as employees, but unfair labor practice strikers have greater rights of reinstatement to their jobs.³⁶

“Finally, with regard to units in the health care industry, the Board also is guided by Congress’ concern about preventing disruptions in the delivery of health care services, and its directive to minimize the number of appropriate bargaining units.”³⁷

CONCILIATION OF LABOR DISPUTES IN THE HEALTH CARE INDUSTRY

Sec. 213. [§ 183.] (a) [Establishment of Boards of Inquiry; member- ship] If, in the opinion of the Director of the Federal Mediation and Conciliation Service, a threatened or actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt³⁸ the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service³⁹

35 National Labor Relations Act. NATIONAL LABOR RELATIONS ACT

Also cited NLRA or the Act; 29 U.S.C. §§ 151-169 [Title 29, Chapter 7, Subchapter II, United States Code]

36 Economic strikers defined. If the object of a strike is to obtain from the employer some economic concession such as higher wages, shorter hours, or better working conditions, the striking employees are called economic strikers. They retain their status as employees and cannot be discharged, but they may be replaced by their employer. If the employer has hired bona fide permanent replacements that are filling the jobs of the economic strikers when the strikers refuse, unconditionally to go back to work, the strikers are not entitled to reinstatement at that time. However, if the strikers do not obtain regular and substantially equivalent employment, they are entitled to be recalled to jobs for which they are qualified when openings in such jobs occur if they, or their bargaining representative, have made an unconditional request for their reinstatement.

Unfair labor practice strikers defined. Employees who strike to protest an unfair labor practice committed by their employer are called unfair labor practice strikers. Such strikers may be neither discharged nor permanently replaced. When the strike ends, unfair labor practice strikers, absent serious misconduct on their part, are entitled to have their jobs back even if employees hired to do their work have to be discharged.

37 *Summary of the Act* http://www.nlr.gov/nlr/shared_files/brochures/basicguide.html

38 “Substantially interrupt” is an effort whereby services are obstructed without causing a threat to human life.

39 *Summary of the Act* http://www.nlr.gov/nlr/shared_files/brochures/basicguide.html

The legal issues surrounding unionization of medical professionals is summarized in an article by Philip H. Lebowitz of Pepper Hamilton's Labor Practice Group. Lebowitz wrote, "In summary, although recent decisions about doctors' right to organize appear contradictory, a closer look at the underlying facts demonstrates that the NLRB consistently has allowed doctors who are medical facility employees to unionize, a right guaranteed by the Labor Management Relations Act."⁴⁰

Federal law permits physicians to unionize and thereby exert collective pressure on employers. However, the action of withholding care is at odds with values that guide physicians' code of conduct. The American Medical Association's Code of Medical Ethics states:

Strikes and other collective action may reduce access to care, eliminate or delay necessary care, and interfere with continuity of care. Each of these consequences raises ethical concerns is contrary to the physician's ethic. Physicians should refrain from the use of the strike as a bargaining tactic. In rare circumstances, individual or grassroots actions, such as brief limitations of personal availability, may be appropriate as a means of calling attention to needed changes in patient care. Physicians are cautioned that some actions may put them or their organizations at risk of violating antitrust laws. Consultation with legal counsel is advised.

There are some measures of collective action that may not impinge on essential patient care. Collective activities aimed at ultimately improving patient care may be warranted in some circumstances, even if they create inconvenience for the management.⁴¹

40 "Legal issues of Physician Unionization," Philip H. Lebowitz, Esq. Published March 1998
www.physiciansnews.com/law/398wp_lebowitz.html

41 E-9.025 (AMA Policy Database), "Collective Action and Patient Advocacy," <http://www.ama-assn.org/resources/doc/hod/a-05ceja.pdf>