Journal of American Physicians and Surgeons
Mission Statement
The Journal of American Physicians and Surgeons, the official peer-reviewed journal of the Association of American Physicians and Surgeons (AAPS), is committed to publishing scholarly articles related to the practice of medicine and to promoting open debate and scientific integrity.

Subscriptions and Advertising
aaps@aapsonline.org

Subscription Rates:
AAPS Members (included in annual dues)
Non-members $45 per year
Institutions $75 per year
Students/Residents $15 per year
Foreign $100 per year (US currency only)

AAPS
Omnia pro aegroto

Copy Editor
Stuart Faxon

Cover Design
Noah Snavely

Typesetting and Printing
A Plus Printing
Tucson, AZ

Website
www.jpands.org

POSTMASTER:
Send address changes to

1601 N. Tucson Blvd, Suite 9
Tucson, AZ 85716

Journal of American Physicians and Surgeons (ISSN 1543-4826)
is published quarterly.

Correspondence

Fighting for Freedom of Contract in Canada

In the United States of America, physicians enrolled in Medicare are prohibited from billing a patient for a service covered under Medicare unless the physician opts out of Medicare completely. Since Medicare represents a significant market share in the U.S., many physicians are affected by that prohibition. In Canada, medicare covers all residents, almost all physicians are obliged to enroll in it, and those who enroll are prohibited from billing for a medicare-covered service. Thus, Canada and the U.S. have both effectively discouraged "onerous" private contracting between physicians and Medicare patients. Under the Quebec Civil Code, an "onerous" private contract is one under which a payment is made, in contrast to a "gratuitous" contract, which does not involve payment.

My legal battle, which is now pending before the Supreme Court of Canada, is of interest for Americans, since the freedom to contract privately is at stake. The tentative date for the hearing is set for June 8, 2004. Six provincial governments, as well as the federal government, will present arguments before the Court.

The main question for the Court to decide is whether the Canadian Constitution protects the rights of patients, nonparticipating physicians, private hospitals, and private insurers to enter into voluntary, private contracts for services otherwise covered by medicare. A successful outcome in this case would be a precedent-setting win for freedom in medicine, and it would also establish the basic right of citizens to use their own resources to obtain the type of medical care that they need from the physician and hospital of their choice in a timely manner.

In the U.S., there is mounting pressure, particularly from the Democratic Party, to adopt the Canadian model for a health care system. Such a proposal by socialist groups was recently defeated by a large margin in Oregon in a 2002 referendum on Measure 23.

In my view, several misconceptions have to be corrected. First, mandatory health insurance, for those able to pay, is acceptable only when a state guarantees universal access to medical services. Friedrich Hayek used to agree with that statement. Still, no medical system, to be financed through general taxation, should prohibit a patient and a physician from private contracting. Such a prohibition should be regarded by the courts as a violation of fundamental individual freedom. No court should view such a violation to be in accordance with the "common good."

Courts generally have a tendency to rule against physicians who claim the freedom to bill a patient enrolled in a Medicare program, considering that the "common good" requires keeping physicians' fees low in order to enable people to have access to medical services. I believe that physicians deserve respect as much as patients do. I also believe that government price controls have never worked and that free market forces are inherently superior in determining the "right" price for any good or service.

The ultimate rationale for my claim is that patients must bear responsibility for their own medical care. If a third party pays only a part of the actual value of a medical service that a patient requires, a physician has the right to tell the patient, in advance, that he shall have to pay the physician for the balance. Only a totalitarian state can force people to work for nonremunerative "payment." Until proven otherwise, physicians are still free individuals as opposed to being indentured servants of the state.

Having expressed my grievances and natural opposition to government-sponsored slavery, the next step is to fight for the freedom that we physicians and our patients rightly deserve. I envision a battle on two levels, the second level being much more effective and long lasting than the first.

The first level, which I have started in Canada, relies on the courts. The second level, yet to be started, is to educate the people and set up a political party whose main purpose would be to enable citizens to change their constitution or to enact laws at the national level (and at a State level wherever such a right is not recognized).

Canadian citizens need to be shown that the main reason for poor care and lack of timely access to medical services is the restrictions placed by government, which prevent free private contracting between patients and physicians.

In the U.S., as well as in most countries around the world, people are not aware of a major anomaly: their national Constitution prohibits them from directly modifying their own constitution and from instituting a binding referendum at the national level. In that regard, the Preamble of the American Declaration of Independence (1776), written by Thomas Jefferson, was betrayed by the writers of the American Constitution (1787). The same way, French people were betrayed after the 1789 *Declaration des droits de l'homme et du citoyen*, which used to recognize the right of the people to initiate laws at the national level. Those national constitutions are wrongly applied to provide courts with the power to act as a second level of a Parliament and wrongly to uphold infringements on rights and freedoms.

Jacques Chaoulli, M.D.
Montreal, Quebec

[**Editor's Note**: Dr. Chaoulli has undertaken this precedent-setting lawsuit in the interest of freedom in medicine at great personal risk. Dr. Chaoulli reports that the lawsuit has cost him and his family about $600,000 so far. Moreover, in Canada the loser is usually forced to pay the government's costs. Dr. Chaoulli can be contacted at: 21 Jasper Avenue, Montreal Quebec H3P 1J8. Canada. Email: dr.chaoulli@videotron.ca]

On Hyperbaric Oxygenation

Even though you have already published a letter from Edward Teller[1] on the subject of hyperbaric oxygenation (HBOT), my experience may also be of interest. The article about a child who nearly drowned,[2] which primarily concerned the need for freedom in choice of therapy, reminded me of my own frustrations in seeking to receive HBOT.

About 4 years ago I suffered an acute acoustic trauma (noise injury) resulting in cochlear hydrops, with tinnitus and some hearing loss. The medical literature is replete with recommendations of HBOT for such injuries. In fact, in Japan and Western Europe (where most of the published research was done), HBOT is considered to be "recommended and warranted."[3]

I learned, however, that the gatekeepers to treatment in the U.S. seemingly have little interest in applications outside those (such as diving injuries) approved by their accreditation society, lest the genie escape from the bottle. This "foreign" therapy for acute cochlear hydrops was viewed with suspicion.

During the time I was trying to gain entrance to this therapy, I was acutely aware that the literature conclusively supported not only the efficacy of such treatment, but also the need for treatment to begin within a narrow window of time.

I sympathize with the Weiss family, and wonder what the results might have been had treatment been started earlier. Timely antithrombotic therapy in acute myocardial infarction and intravenous antibiotics within 4 hours of admission to an emergency room for pneumonia are now the accepted standard of care. What will be the future standard for HBOT in near drowning?

I did receive permission from the consultants associated with the hospital for my treatment, and had a successful recovery. I do believe that I was able to receive these treatments in a timely manner primarily because of my personal efforts at amassing a large MedLine bibliography on treatment, and also because no one really wanted to say no to a patient who was concurrently a physician on staff at this same hospital. It is unfortunate for society in general and medicine in particular that only the insiders are to be allowed the best medicine.

Laurence Marsteller, M.D.
Tucson, AZ

1 Teller E. On hyperbaric oxygenation. *J Am Phys Surg* 2003;8:97.
2 Orient JM. Salvage therapy for a neurologically devastated child: whose decision is it? *J Am Phys Surg* 2003;8:117-120.
3 Lamm K, Lamm H, Arnold W. Effect of hyperbaric oxygen therapy in comparison to conventional or placebo therapy or no treatment in idiopathic sudden hearing loss, acoustic trauma, noise-induced hearing loss and tinnitus: a literature survey. *Adv Otorhinolaryngol* 1998;54:86-99.

I am writing to provide additional insights to Jane Orient's excellent analysis of the issues pertaining to ethicists presuming to make pronouncements not only on who should decide on the treatment of an injured child but on what treatments may be used.[1] It is important to publish these ideas since the editor of the *Journal of Perinatology*, which published the fallaciously argued case,[2] has refused to publish my detailed critical analysis (Lawson EE, personal communication, 2004).

In this case, an ethicist was imposing his ethical views on others of a different faith and using his religious credentials to lend authority to his pronouncements, even though they would appear to be contrary to the religion that he himself professes. John Paris, the senior author, is a Roman Catholic priest, a Jesuit, who would in essence have imposed a death sentence on a Jewish child, despite the official position of the Roman Catholic church:

> 4.1.Human life is unique and highest value in our world. Any attempt to destroy human life must be rejected.…
>
> 4.3.To protect human life is an evident ethical consequence of this conviction. Every believer, *particularly religious leaders* [emphasis added], should cooperate in protecting human life. Any attack against the life of a human being runs contrary to the will of God, is a desecration of God's Name, directly opposed to the teaching of the prophets. Taking any human life, including one's own, even in the name of God, is sacrilegious.[3]

Dr. Michael Schreiber, a coauthor, said that the authors were trying to answer what they considered to be a legitimate and very important ethical and philosophical question: Can a physician be required to use a therapy that is not universally accepted as a standard of care? When does a physician stop being a physician and become just a technician? (Schreiber M, personal communication, 2003).

Although this is a legitimate ethical question, the fact is that Paris et al. did not understand the real issues in the case. The problem was not that the family was trying to force the hospital physicians to use a specific form of therapy that was not part of their standard of care, as they contended, but that

physicians and administrators of the hospital were obstructing access of the brain-injured child to a treatment that others were willing to provide. There is a very important distinction between the two situations.

Paris et al. made critical medical judgments in a field of medicine in which they had no training or expertise. None of the authors were trained in HBOT (Schreiber M, personal communication, 2003), nor were they familiar with its detailed theory and usage, current clinical research, or its status within the medical community including the despicable politics pertaining to its use. They even made the basic error of asserting that it takes 15 minutes to decompress a hyperbaric chamber in an emergency when in reality, although it is not recommended unless there is a dire emergency, a chamber can be decompressed within 3 to 5 seconds.

The ethicists asserted that "... the child was discharged home with no reported improvement in his neurological status," despite news reports of improvements. No effort was made to contact the child's father or the director of the hyperbaric clinic (Weiss J, Neubauer RA, personal communication, 2003).

This story shows the danger in allowing so-called ethicists to make medical decisions.

Sheldon F. Gottlieb, Ph.D.
Boynton Beach, FL

[1] Orient JM. Salvage therapy for a neurologically devastated child: whose decision is it? J *Am Phys Surg* 2003;8:117-120.

[2] Paris JJ, Schreiber, MD, Reardon, FE. Hyperbaric oxygen therapy for a neurologically devastated child: whose decision is it? *J Perinatol* 2003;23: 250-253.

[3] Holy See's Commission for Religious Relations with the Jews and Chief Rabbinate of Israel. Commission for the Jewish-Catholic Dialogue. Villa Cavalletti (Grottaferrata - Roma), Feb 23-27, 2003.

Need for Consistency in Free-Market Philosophy

I have perused some of the offerings of various authors writing for and related to the AAPS. That the positions taken are far superior to the drivel emanating from the socialists among our physician colleagues is obvious. However, I have yet to note anyone taking the "free market" position to its logical conclusion.

We must abolish the Medical Practice Acts and the Food and Drug Administration (FDA). These twin demons of American medical care are responsible for the mess we are in. Between them they have driven the cost of medical care beyond the reach of most citizens (or at least have appeared to do so).

A true American should resent the government telling him which physician he can seek medical advice from, and which company he is allowed to purchase his medicines from. He should resent having money taken from him at gunpoint to ostensibly protect others from their own ignorance and alleged incompetence in choosing physicians and medications. Any federal involvement in this process is unconstitutional.

Of course, we and our colleagues would stand to lose a lot if the Acts were repealed: prestige, income, security. But our patients would gain in choice and savings. And the nation would gain in freedom. Do we have the courage to stand for a real free market in medicine?

Jeremy Klein, M.D., F.A.A.F.P.
Louisa, Kentucky