

# AAPS Defending Private Medicine

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## The Basic Problem

A medical license is worth millions of dollars, and it takes the best years of the lives of students to obtain one. In non-monetary terms, a medical license is worth the difference between life and death for thousands of people. That value and control is something that many people want *without* having worked for it.

If you had \$100,000 in cash, would you leave it lying on the ground for anyone to pick up? Would you leave even a \$50 bill lying for anyone to take? Of course not. Anything worth more than a few thousand dollars is typically secured by placing it in a safety-deposit box under lock and key, and even protected by a bank vault and armed guards.

Actually, the high value of a medical license vastly understates the real money that is at stake. Lab testing, hospital stays, and prescriptions cost far more than visits to the doctor. Doctors influence and control these expenditures, and other people want to take some of that control for themselves.

One-sixth of our nation's economy depends on doctors. The life or death of our loved ones depends on physicians' abilities to render the best possible care. The power of our government increases or decreases depending on how much control it has over the practice of medicine.

Despite all that is at stake, few medical students ever take courses in politics or economics. These are not part of the curriculum. Maybe there isn't time for them. It surprises many doctors to learn how much a politician will lie, cheat, steal, or otherwise harm others in order to be elected or re-elected. The practice of medicine involves very little deceit. The practice of politics is dominated by deceit.

Economics courses teach that the free market is more efficient than any alternative. No one denies this. We can compare the U.S. Postal Service to Federal Express. The post office typically closes at 4:30 p.m.; Federal Express is open until late into the evening. The post office has no early morning delivery service; Federal Express does. If you try to overnight a package to some locations in West Virginia, the post office will tell you it cannot be done. Federal Express does it. Last year the post office lost \$7 billion. Do we want post office-style medicine? Medicare and Medicaid, the government programs in medicine, are also insolvent.

## Interference with Medical Innovation

Many students go into medicine with the hope of developing new ways to help patients and cure diseases. But federal control over medicine is an obstacle to innovation. Nothing new or innovative comes out of the government, or out of insurance.

In fact, if someone develops an improved treatment within a government or insurance program, then he might be (wrongly) accused of fraud. The Senate just passed an amendment to the Baucus bill that gives the Secretary of Health and Human Services the authority to define "cost-effective" medical care for every

condition, and to punish doctors who treat complex, costly medical conditions. No one can develop new cures in this type of straitjacket.

Thomas Edison had thousands of failures in his attempt to invent the incandescent bulb. He said, "I have not failed 700 times. I have not failed once. I have succeeded in proving that those 700 ways will not work. When I have eliminated the ways that will not work, I will find the way that will work."<sup>1</sup>

But neither insurance nor government supports or encourages such innovative work. A government-controlled industry cannot produce innovation. Can anyone identify a single thing invented by government? I can't of anything other than the atom bomb, and even in that case the government merely implemented ideas that were developed outside of government. People have claimed that Teflon was invented by the space program, but not even that is true.

A primary goal of medicine is to find ways to treat people better and to find cures for diseases. This can't happen with a post office-like medical system.

Consider Lasik surgery, the innovative treatment for nearsightedness. At first, neither government nor insurance companies would pay for it. Instead, the free market was the entire incentive for this work. People paid cash. It cost more than \$6,000 initially. I recall my eye doctor doing it, and even holding special seminars. It was in the free market, without any insurance or government involvement. Supply rose to meet demand, as it always does in the free market, and the price decreased, as it always does in the free market. Every economics course teaches that the best tool for reducing costs is the free market. Today, 10 years after Lasik first hit the market, there are advertised prices of only \$99 for it—\$99 for what used to cost more than \$6,000! That's because government and insurance were not in the way. Similarly, airline deregulation has saved passengers \$19.4 billion per year.

As the bishop of the Rockford, Ill., diocese, Thomas G. Doran—a man who has no personal reason to invoke the free market—recently declared, "We need to think of healthcare as more of a *market* than a *system*."<sup>2</sup>

## Mandatory Insurance

Health insurance is not health care. Instead, health insurance is prepayment for something you may or may not use, and even if you do use it, it may or may not be what you need. In New Jersey, no one can buy true health insurance, to cover only catastrophic losses in an affordable way. Instead, if you want real insurance, you must also buy prepaid health in the form of very expensive insurance. People in New Jersey are prohibited from buying low-cost insurance available in other states. People can buy books and clothes from any other state, but not health insurance.

The Baucus bill being pushed through the U.S. Senate forces everyone to buy health insurance. That's great for insurance companies, but not for patients.

The first problem is that not every doctor will take the insurance that patients are forced to buy. We don't have slavery in this country, and we don't force anyone to accept insurance. The best screening place for breast cancer in New Jersey is in Montclair. It does not accept any insurance. It can operate better and more efficiently without insurance companies telling it what it can and cannot do. It's busy because it is good, and women pay cash for it. Are those women also going to be forced to pay for insurance they do not want? Yes, according to the Baucus bill.

The second problem is that insurance companies will gain even greater control over the practice of medicine. As doctors, you will be even more constrained by what an insurance company says you can do. If you don't do what the insurance company wants, such as limiting care to patients, then you can be de-listed from its plan. Then you can go bankrupt. Doctors who treat Lyme disease and many other chronic conditions are constantly struggling with insurance companies. If insurance companies gain greater power through mandatory insurance, then doctors will have less freedom in how they treat patients.

The third problem is that healthy people who do not need to see the doctor will, if required to buy insurance, start to demand to be seen in order to get their money's worth. This has happened in Massachusetts, the only state with mandatory insurance. The doctors' offices have become very crowded, and there are lengthy delays in some areas simply to obtain a physical examination. People who really need to see a doctor can't get an appointment soon enough. Long waiting lists develop.

It gets worse. In Massachusetts, some patients have to endure "group visits" where they see the doctor along with other patients. That's stressful to both doctor and patient. It's the end of personalized medicine.

Liberals say that mandatory health insurance will be like mandatory car insurance, but car insurance is protection against liability, and protection for someone else who might be unfairly hit. Health insurance is different; it is for a service, and mandatory health insurance causes people who do not need a doctor to flood the doctors' offices, as in Massachusetts. It also gives insurance executives, who never went to medical school, greater control over doctors. Did any medical student spend the best years of his or her life to be ordered around by an insurance company?

### Overzealous State Medical Boards

Another front on which AAPS is fighting for freedom in medicine is at the licensure board. In many states, an insurance company or even a disgruntled employee can file an "anonymous" complaint against a doctor, which subjects him to an investigation by the state medical board. In many states, medical boards are very abusive as they try to assert control over doctors. A left-wing group called Public Citizen even ranks states by how many doctors (by percentage) are disciplined by the state medical board, without any real analysis of whether the discipline was appropriate or justified.

Here is what an AAPS member said in a letter to a legislator in Texas, describing the Texas Medical Board:

I have personally experienced frightening and predatory tactics used by the Texas Medical Board against physicians when I was asked to review complaints made to the board. I would be happy to talk to you about this issue, but believe me when I say that not only is the Texas Medical Board overstepping reasonable bounds of an oversight agency, but that because they overprosecute so many issues, the physician community now doesn't believe anyone is guilty. It used to be that when we heard one of our colleagues had been disciplined by the Board, we looked on him or her with suspicion forever afterward. Now that is no longer true. The Board has become a laughingstock among the physician community, not because we are not genuinely frightened of the draconian penalties it hands down, but because the Board has cried "wolf" so many times that it has lost credibility among practicing physicians.

In some states, an insurance company allows substantial accounts payable to a doctor to accrue, and then it files a complaint with the state medical board in order to revoke the doctor's license. If the license is revoked, then by state law the insurance company does not have to pay any of the outstanding bills, even charges performed before the revocation. That's a powerful financial incentive for abuse, and it happens more often than you'd think.

AAPS stands alone among medical societies in working to reform state medical boards, and to help physicians victimized by them.

### Hospital Encroachment: "Sham Peer Review"

Hospitals are increasingly aggressive in controlling doctors, and in destroying any doctors who stand in their way of more profits. Time and time again we see how a good doctor, who stands up for patients or begins to compete in any way with his hospital, is subjected to "sham peer review." Sham peer review is a bad-faith peer review of the doctor's records, looking for any possible basis for revoking his privileges. Once his privileges are revoked, the doctor is listed as a bad doctor in the National Practitioner Data Bank and will probably not be able to obtain hospital privileges anywhere else. There is even a law firm that teaches hospitals, through seminars at luxurious hotels, how to engage in what we describe as sham peer review.

Lawsuits challenging this terrible practice have been unsuccessful, as courts have held that the "bad faith" of the hospital is irrelevant. If there is any flaw in a doctor's records, and there always is because no one is perfect, courts defer to the hospital's decision and the doctor loses.

For now, the only remedy is to recognize a bad hospital early and to get out while you still can (or don't go there in the first place). But don't resign during an investigation—that triggers an entry in the Data Bank.

AAPS has a knowledge base of which hospitals are the worst, and an AAPS leader is one of the few (perhaps only) court-certified experts on sham peer review.

### Overzealous Prosecution of Billing Disputes/Pain Medication

AAPS is the only medical society that helps when doctors are victimized by overzealous prosecution. Our executive director, Jane M. Orient, M.D., wrote an editorial in the *Wall Street Journal* in 1996 that predicted the "criminalization of medicine." Government can gain control of medicine, or certain specialties, by imprisoning a few doctors in a way that terrorizes everyone else.

Dr. Billy Hurwitz, for example, was sent to jail for 25 years at the age of 59—essentially a life sentence—for trying to manage his patients' pain with prescriptions for medication. The jury was told to ignore his good faith. AAPS filed a brief on appeal to overturn the conviction and sentence. We won, thank God, and Dr. Hurwitz is no longer in jail. But other doctors are predictably less willing to take that chance in prescribing medication, even for patients who are clearly in pain and need medication.

AAPS has also helped in many cases of overzealous prosecution of billing disputes. Government and insurance programs do not want to pay bills. We know that. The government programs are going broke, and the insurance companies want to keep as much money as possible as profits. But they overstep their bounds when they claim "fraud" just because they don't want to pay a bill, or when there is a legitimate billing dispute. Yet such allegations and prosecutions have a terrorizing affect on the medical profession.

### Conclusion

AAPS has a monthly newsletter, this quarterly journal, seminars several times a year, an annual conference, and an informal network of knowledgeable and like-minded physicians. We hope you, too, will take part in and defend private medicine.

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