Corporate Practice of Medicine...

...A View from the Trenches.

Stuart Bussey, MD, JD, President, UAPD
Oversight Hearing of the Senate Business, Professions, and Economic Development Committee, May 2, 2016, Sacramento CA
• CSG Better Hearing Center Suite 101
• Stuart Bussey, M.D. Family/Aviation Medicine Suite 201
• Advanced NeuroTherapy Suite 202
“If you do not change direction, you may end up where you are heading”

--Lao Tzu
Agricultural and First Industrial Revolution—Europe and Northeast
U.S. 1760-1860

• As population and demand for food increased, improvements made in farm practices and machinery. Standards of living and longevity rose.

• Steam engine invention leads to the rise of the factories, transportation and cities. Cotton spinning became mechanized. Textile manufacturing. Change in energy from wood to coal and iron.

• Child labor 1700s/1800s cheap/comparable. Long hours set by machine pace.


• U.S. trade unions began in NYC and Phila. 1794. Shoemakers(!827) Mechanics United craft unions, 1852 International typographical—Professional Guilds (AMA)
The Second Industrial Revolution in the United States: 1860-early 1900s; ---steel, garment and automotive assembly lines

Frederick Taylor (1856-1915) “scientific management “ principles (Taylorism):
1. Scientific studies of the task
2. Scientifically select and train each employee
3. Detailed instruction/supervision of worker’s tasks
4. Divide work equally between managers who plan the work and workers who perform the tasks.

Relevant labor laws and milestones – Sherman Antitrust (1890) and Clayton (1914) Acts
AFL created 1886 CIO 1928 Merger 1955
Pullman Railway Strike of 1894
Department of Labor Created 1912
Digital/Information Revolution: 1950s --Present

- Mainframes, Faxes, PCs, tablets, ipods; 2 billion on web, 5 billion cellphones, socio-political, economic networks
- Objects of labor: matter, energy, information
- *Information*: an increasing factor of production
- Managers develop information control & processing
- Data & Information vs. Knowledge & Wisdom
Increasing Employment Means Provider Accountability to patients, hospitals, insurers, medical groups, IPAs, ACOs, attorneys and to...Employers.

Doctor ↔ Patient relationship is changing

Into...

Employer ↔ Patient

Provider

SYSTEM
Industrialization of Healthcare

Driven by...

Increasing demand for services due to ACA patient influx and an increasingly aged population with...

Greater Efficiencies/Technologies in access, dx/tx, convenience, mobility, communication, education, privacy and information
Hospitals’ Race to Employ Physicians — The Logic behind a Money-Losing Proposition

Robert Kocher, M.D., and Nikhil R. Sahni, B.S.

**Figure 1.** Percentages of U.S. Physician Practices Owned by Physicians and by Hospitals, 2002–2008.
Data are from the Physician Compensation and Production Survey, Medical Group Management Association, 2003–2009.

**Figure 2.** Percentages of Active U.S. Primary Care Physicians (PCPs) and Specialist Physicians Employed by Hospitals, 2000–2012.
Data are from the Physician Compensation and Production Survey, Medical Group Management Association, 2003–2009.
### Projected Supply and Demand

Full-time Equivalent Physicians Active in Patient Post Health Care Reform, 2008-2025

**AAMC Workforce Studies 6/2010**

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<tr>
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<tbody>
<tr>
<td>2008</td>
<td>699,100</td>
<td>706,500</td>
<td>7,400</td>
<td>None</td>
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<tr>
<td>2010</td>
<td>709,700</td>
<td>723,400</td>
<td>13,700</td>
<td>4,700</td>
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<td>2015</td>
<td>735,600</td>
<td>798,500</td>
<td>62,900</td>
<td>33,100</td>
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<tr>
<td>2020</td>
<td>759,800</td>
<td>851,300</td>
<td>91,500</td>
<td>46,100</td>
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<tr>
<td>2025</td>
<td>785,400</td>
<td>916,000</td>
<td>130,600</td>
<td>64,800</td>
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### Primary Care Provider Projection, 2010-25

*Health Affairs, 11/2013*

<table>
<thead>
<tr>
<th>Provider Type</th>
<th>2010 Number</th>
<th>2010 % Total</th>
<th>2025 Number</th>
<th>2025 % Total</th>
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<tbody>
<tr>
<td>Physicians</td>
<td>210,00</td>
<td>71%</td>
<td>216,000</td>
<td>60%</td>
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<tr>
<td>Nurse Practitioners</td>
<td>56,000</td>
<td>19%</td>
<td>103,000</td>
<td>29%</td>
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<tr>
<td>Phys. Assts.</td>
<td>30,600</td>
<td>10%</td>
<td>42,000</td>
<td>12%</td>
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Physician *Employment is... Accelerating*

- As practice ownership hassles (overhead, EHR) go up & profits dwindle; 2012 owner income down 6%, employees up 2%.

- New, younger breed of doctor seeks life balance, has high debt - analogy of industrial worker flight to the factories (hospital)

- Deep pocket Hospitals, Megagroups and MCOs also hiring older docs, etc. to take greater control of the market and the human capital needed to deliver services and capture referrals

- Most states do not have a corporate bar - i.e. hospitals can directly employ physicians, other states allow exceptions

- Will provider (esp. primary care) shortages, economies of scale favor employee income/work conditions in the long run?
Physician Unions in the Medical Industrial Revolution

--Insurer Monopolies, Mega groups, Public Employers promote Micromanagement and the reemergence of Taylorism:

**Examples:** Provider Report cards, economic outliers, sham peer review, “Care Suggestions”, support teams, Pay for performance, Production quotas (esp. for public physician employees)
Most Frequently Cited Professional Concerns:

• Fees and Reimbursement (68%)
• Burden of Paperwork (56%)
• Healthcare Reform (54%)
• Value of Primaries v. Specialists, Midevels (43%)
• Third Party Interference (43%)
• Malpractice/Tort Reform (39%)
• Doctor Shortage (29%)
• EHRs (28%)
• Account.Care Organizations (17%)

Source: Medical Economics 11/2013
Reemerging Interest in Physician Unions?

• 1\textsuperscript{st} physician unions in Germany and UK early 1900s, then 26 US physician unions formed after Medicare in ‘60s...now only a few unions left with 25k members...but with more physician employees and ACA...more interest?

• Current physician organizations (medical groups, IPAs, ACOs, Medical Associations) are not satisfactorily designed for negotiating or maintaining salary, benefits, and working conditions.

• Other healthcare unions (especially nurses) have been successful in increasing salaries and power.
Employee or Independent Contractor Status?
--Public employee physicians-determined by government codes, statutes, bodies

--Private employee physicians- less clear,determined by NLRB. IRS criteria:”employer control”. NLRB v.Hearst Publication(1944)

Amerihealth,Inc.329 NLRB No.76 (1999)

--Hybrid/Joint Employee Physicians- an emerging trend, UAPD v. Ventura County PERB Decision No.2067M(2009)

Employee or Manager?- NLRB v.Yeshiva Univ. 44 U.S. 672,1980 – employed private university faculty who formulate policies are managers
Supervisory v. Nonsupervisory Employees

NLRA section 2(11) Employee is “supervisor” if:
- authority to hire, fire, transfer, suspend, layoff, recall, promote, assign, reward, discipline, adjust grievances or responsibly direct.
- He/she exercises authority in *interest of employer*
- The exercise of authority is not merely routine or clerical, but involves *independent judgment*

In the “Kentucky River Trilogy” Oakwood Healthcare Inc. Croft Metals, Golden Crest Healthcare 348 NLRB Nos.37-39 (2006), NLRB clarifies its definition – supervisors must be *accountable* for other’s acts, must have *actual* authority, use discretionary judgment, at least 15-20% of their time.
Physician Unions: “Collective Bargaining”

- Opening Proposals
  - Responses
    - Bargaining
      - Temp Agreement
        - Last/Best Offer
          - Impasse
          - Mediation
          - No Agreement

- Final Agreement
Physician Unions in the Medical Industrial Revolution

**Pro Union Legislation 1915-**
- Railway Labor Act 1926
- Norris Laguardia Act 1932
- Wagner Act (NLRA) 1935
- Fair Labor Stds. Act 1938
- AFL-CIO merge 1955
- Taylor Act 1967
- OSHA 1970
- Doctor CB Bills 2000/2011
- Employee FreeChoice Act 2007
- Lillie Ledbetter Act 2009

**Anti Union Legislation 1915-**
- State Right to Work Laws 1943
- Taft Hartley Act 1947
- Landrum Griffin Act 1959
- Kentucky River Trilogy 2006
- Municipal Bankruptcies 2008-
- State Coll.Barg. Repeals 2011-
- Anti-Public Pension Bills and Referendums 2012-
- Micro-Union Decision 2014?
- *Harris v. Quinn* SCOTUS 2014
Physician Unions Going Forward

- Contracts: review, negotiate, enforce(grieve)
- Maintain scope of practice, increase doctor supply
- Stop income/job loss to ancillaries, technologies
- Reduce the Hassle Factors
- Ensure due process and fight sham peer review
- Political reforms and legislation: healthcare, insurance, collective bargaining, tort and social.
- Synergy with other medical, healthcare orgs.
Physician Unions in the Medical Industrial Revolution

Thank you for listening!
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