

# Medical Doctors' Strike Actions – Ethical Reflections

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## ABSTRACT

Medical Doctors' strike actions had been relatively rare events in medical history. However, in recent times over the past two decades, they have become commonplace in most developing countries, including Nigeria. Most strike actions have been called over issues bordering on welfare/pay packages, quality of health infrastructures and patient care. The outcomes of these strike actions have either been favourable or unfavourable, depending on which side of the divide you belong to.

Doctors' strike actions may be explicable due to various reasons, but they are not ethically entirely justifiable beyond any doubt, apart from when the utilitarian viewpoint (bringing the greatest good to the greatest number of people) is adopted. Strike actions are better prevented by all the stakeholders in the health sector. The medical profession should be prepared to give up strikes as industrial pressure tools, and rather look for equally effective methods consistent with their unique roles as caregivers.

*Niger Med J. Vol. 48, No. 3, Oct. – Dec., 2007: 105 –109 .*

**Keywords:** Doctors, strike actions, ethical, reflections.

## INTRODUCTION

The medical profession has over the years been traditionally conceptualized as a special occupation category with unique and distinguishing traits, called to provide a much needed vital service to mankind. These traits, often assumed to be unproblematic or taken for granted, are brought to the fore when doctors seek measures to balance their concerns for professional autonomy/welfare and allegiance to the employers with their primary call to beneficence; to act for the patients medical benefit or good. Such measures may be extreme as in a situation where medical doctors may be compelled by a variety of reasons to down tools or embark on a strike action.

Physicians, once almost beyond reproach and pillars of respected societies the world over, now find themselves more answerable to their patients, employers, administrators and institutions, as medical practice undergoes a paradigm shift from

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a 'physician-directed paternalistic' approach to a "patient-centered" care globally. Doctors, previously recognized traditionally as independent/private entrepreneurs with rare skills that are always on demand, are over the years being transformed into small-time bureaucrats<sup>1</sup> and wage-contract salaried employees. The traditional autonomy of the doctor has altered, as has his role and the expectations from him. With the technological developments and the enunciation of elaborate ethical codes and declarations, the physicians' responsibilities to his patients, employers, colleagues and society have only become greater<sup>2</sup>. It is therefore, clear that a situation may arise when doctors are dissatisfied with their living/working conditions and the quality of care rendered to patients, and are seemingly powerless to change them. A recourse to a strike action then becomes inevitable.

Strike actions by physicians had been relatively rare events in medical history, until the advent of increasing socialization of medical care and the technological revolution<sup>2</sup>. When they occur, they arouse intense debate and controversy over their ethical justification among professionals and the public alike, notwithstanding what caused the strikes. In such actions, the universal moral and ethical values based on the Hippocratic Oath and promoted by the profession are often endangered, and this represents a huge challenge to traditional notions of medical ethics. This paper attempts to explore the ethical issues and challenges inherent in a doctors' strike action, with a view of determining possible ways of resolving the extraordinary moral misgivings and the ethical dilemmas which confront the average medical doctor in such situations.

## Why do Doctors Strike, and what are the Possible Sequelae of such Actions?

Doctors' strikes have become commonplace in most countries. In Nigeria, incessant strikes by doctors and other health workers have become a metaphor of the unending crisis associated with the sorry state of the Nigeria health sector<sup>3</sup>. Most strike actions have been called over issues bordering on welfare/pay packages, living/working conditions, quality of care, decaying infrastructures, and ailing contractual relationships. Even in the USA, doctors have among other reasons, gone on strike to protest the prohibitive cost of medical practice insurance, and arbitrary malpractice awards which amount to "legalized looting". Strikes have occurred in New Zealand, Australia, Canada, France, India, Israel, Chile, Ghana, Germany and the UK to name but a few<sup>4</sup>.

Many of these strikes have caused lasting damage from which health systems have struggled to get over, have been

## MEDICAL DOCTORS' STRIKE ACTIONS

very costly (both in the short and long term), and have not totally achieved what the doctors appear to have wanted. The issues which precipitate a doctors' strike are often forgotten in the vociferous reactions and threats of the authorities. Every time health workers go on strike, a battle is waged not only between the strikers and their managements, but also between the right to strike and the ethics of doing so.

The outcomes of these strike actions have either been favourable or unfavourable, depending on which side of the divide you belong to. For the strikers, outcomes may include upward review of welfare/pay packages, improvement in working conditions and quality of care, development of infrastructures, and enhancement of contractual relationships, stoppage of wages, persecution/intimidation and suspension/dismissal of the strikers.

These strikes are usually an affront to the physician-patient relationship, and at times, decrease the public's respect for the medical profession. At times though, particularly when the governments and management accede to the demands of the striking doctors, the doctors come out, in the eyes of the public, as a powerful and privileged group who successfully use their status to pursue their interests. More importantly, most people would argue that strikes cause unnecessary and easily avoidable harm, suffering and death, to the public including the striking doctors and considerable, long lasting dysfunction in certain hospitals.

Surprisingly, a call for a strike does not usually get universal approval from doctors, as would be the case for many other professions. Depending on one's moral and ethical backgrounds, different conclusions are usually reached upon the justifiability of a strike.

### Should Doctors engage in Strike Action?

If there is a 'scourge' that is prompting doctors to walk off their jobs, it is crucially important to investigate the situation exhaustively. In the doctors' strikes across the world, there is usually one common factor that is omnipresent: government controls or interference<sup>1</sup> or insensitivity to health issues by government or its acolytes.

As physicians increasingly find employment within government hospitals and organizations as wage-contract/salaried employees and their work becomes more highly rationalized, more physicians will get more interested and more involved in labour issues to protect both their economic and professional interest. With an exacerbation of labour strife in most human development sectors in many countries, situations may arise which threaten those interests of the health workers. As a result, the doctor is made to come more and often to terms with the use of the strike action weapon, in the face of difficult and stiff-necked opposition from governments and administrators.

On the surface, many doctors' strike actions may not seem justifiable, but in certain defined situations, a strike would be not only permissible but justifiable. Some definitely would argue that a strike action by doctors would endanger human lives and would be against the code of ethics doctors are sworn to; would be a breach of the implicit contract doctors have

entered into with their patients and society; and would amount to holding to ransom an uninvolved, innocent, third party (the ill, weak and vulnerable patients and their relations) for material gains. They believe these constitute a *prima facie* prohibition against such actions. They argue that the whole idea of deliberately punishing these patients in order to apply pressure on someone else is a 'bizarre-ethic indeed' and not justifiable by any means<sup>5</sup>. Opinions have been expressed that the suffering caused by a doctor's strike action violates the 'raison d'être' of the medical profession.

Opponents of doctors' strike actions contend that in a democratic society where physicians are free to resign their positions, strikes which impose suffering on an innocent third party, the patient, violate the physician-patient relationship and cannot be justified. They suggest that doctors should rather "stand above the common herd" and set an example by not using strike actions as a negotiating instrument, unlike other trade unions. These opponents of doctors' strikes also argue that though to strike is every worker's constitutional right and a legitimate form of protest in most democracies, nevertheless the people's right to health and a regular health service is even greater.

One pertinent question at this stage would be 'whose duty is it to provide this regular health service and to enable people exercise their rights to giving and receiving health care?' In this vein, it can be argued that the government, on behalf of society, has an obligation<sup>6</sup>. Indeed, some contend that in countries where society pays doctors' salaries, an independent body should set up the wages and working conditions. As with the earlier stated *prima facie* obligation, there are justifying conditions that may override the moral prohibition, though the problem may lie in accurately determining the level of such a justifying condition. Gordon<sup>7</sup>, on his own part, states that the propriety or impropriety of a doctors' strike depends upon (1) the patient-care implications of the grievance causing the strike (2) the gravity of the grievance leading to work stoppage, (3) the consequences of the strike for patient care and (4) the other alternatives available. In his view, doctors' strike may be justified when it arises from a grievance relating to patient care as well as self-aggrandizement. He states that "If the strike is the only effective method of making known conditions prejudicial to patient care, including conditions which regularly and systematically cause loss of health and life, the physician may be obliged to engage in such a strike, rather than desist from such action".

He concludes that as professionals shift from being private entrepreneurs to salaried employees, they will be compelled to use a collective bargaining approach for professional, as well as economic concerns. These concerns, as I contend, range from wages, duty hours, working conditions and issues related to quality of patient care. Even with regard to the apparently most mundane of reasons for a doctors' strike (in the eyes of the government and/or public), which is economic, if a doctor is dissatisfied with his remuneration or living/working conditions, directly or indirectly, sooner or later, these conditions are bound to result in sub-optimal work quality and output, inter professional disputes and eventual total health system

failure.

Though altruism and beneficence may presumably be the essence of medicine, it should be a matter of grave concern to governments and the public when an otherwise selfless, self-effacing, humble doctor decides to embark on a strike action. More often than not, these doctors seemingly or obviously persist with attempts using bureaucratic channels to make their problems and grievances known to the authorities and anyone who cares to listen. Often when there is extreme reluctance of the bureaucratic machinery to bring the matter to a mutually logical expedient conclusion, these doctors then go on strike action; only at that point is a semblance of reaction elicited from those in power.

However, no matter the explanation for a strike action by doctors, the strike cannot be separated from its outcomes for patients. Patient-care definitely suffers during a doctors' strike action, the scale being dependent on the role played by doctors in the respective health units, types of cases under treatment and the duration of the strike. Is it then possible for doctors to get broad support at all levels for the strike action and their profession without regard to patients' suffering? Should a strategy which may ignore such suffering be the best option? Can there really be found for the doctors' strike action an ethical premise for justification?

#### **In search of an Ethical Justification**

**Autonomy (*Voluntas aegroti suprema lex*):-** When doctors embark on a strike action, their individual and professional autonomy comes into conflict with the patients' autonomy. In this case, the patients' right is based on his self-determination to access care at the hospital of his choice, and the doctors' professional autonomy to decide to exercise his constitutional right to embark on strike action, thereby denying the patient health care at the specified point in time.

**Beneficence (*Salus aegroti suprema lex*):-** This is the obligation to do good to the patient, and to help others. This would clearly object to a doctors' strike action, though one can argue that beneficence can be in the short-or-long term, and that the doctors' promise is with only current and not prospective patients. It can also be argued that beneficence may be interpreted in two ways, first as the patients understand it and second as doctors conceive it. In other words, if the physician considers a strike action at that specific time as being "good" or in the best interest of the patients for whom he is providing care, then the action is justifiable. This is definitely subject to controversy.

**Non-Maleficence (*Primum non nocere*):-** This is construed as first doing no harm to the patient. It may really be difficult to defend a strike action on this premise as most people including the striking doctors readily admit that most strike actions cause some degree of harm or suffering to the public, especially patients.

**Justice:-** There is a conflict here, as well. Justice as fairness would include fairness to one's patients, employers, medical

union, oneself and one's family, and a duty to self improvement. As Sachdev noted, one could argue in favour of a strike if the injustice caused by it to the patients is outweighed by the justice done to the doctors and their families<sup>2</sup>. No doubt, the matter becomes quite problematic when one considers death and disabling complications as a consequence of the strike actions. Where then is the justice?

**Deontological Justification:-** This bases morality of an action on specific, foundational principles of duty or obligation. The duty-based theory as propounded by Kant agrees that we have moral duties to oneself and others, such as developing one's talents and keeping our promises to others (e.g. patients). For Kant, people should be treated as an end, and never as a means to an end. He believed that the morality of all actions can be determined appealing to a simple, self-evident principle for reason that he called the "categorical imperative," in which an agent's action is based on a principle which he would be willing to become a universal law. He argued that society should permit individuals to develop according to their convictions, as long as they do not interfere with expression of freedom by others, but he also insisted that we sometimes are obligated to seek to persuade others when they have false or ill-conceived views<sup>8</sup>.

Applying Kant's principle, would doctors or other workers in similar situations be justified in striking and would striking doctors support such a strike if they are in government or administrative positions or if they were patients themselves? The Kantian approach may make us think that a strike is not inherently necessarily immoral, though the decision process in anyone particular case is laden with a lot of subjectivity<sup>2</sup>. As the universability of this principle in a strike action is difficult to determine, it may be burdensome to justify such actions on the presence of the deontological theories.

A more recent duty-based theory by the British Philosopher W.D. Ross emphasized *prima facie* duties which he believes reflects our actual moral convictions<sup>2</sup>. His list of duties included fidelity, gratitude, justice, beneficence, self-improvement and non-maleficence. He recognized that situations will arise when we must choose between two conflicting duties, as in a doctors' strike action. According to Ross, one will intuitively know which of these duties is one's actual duty, and which is one's apparent or *prima facie* duty. In such cases, one's actual duty as determined by the individual has primacy over the *prima facie* duty. This stand is also laden with so much subjectivity and does not lend readily to an ethical justification of a doctors' strike action.

**Social contract theory justification:-** The social contract theory, as developed by Thomas Hobbes, is a normative theory which suggests that rules be developed and enforced among moral agents, as the agent is better off living in a world with moral rules than one without moral rules; and for without moral rules, we are subject to the whims of other people's selfish interests<sup>8</sup>. Therefore, for purely selfish reasons, we devise a policing agency to punish us if we violate these rules.

In this light, doctor's are assumed to have a professional contractual agreement with their patients, employers and society

## MEDICAL DOCTORS' STRIKE ACTIONS

which places a unique responsibility on them to look after their patients. In some countries, such a contract involves invoking the "no work, no pay" policy when doctors abandon work. However, Sachdev argues that a person who chooses to become a doctor does not also declare that he eschews self-interest for all time to come<sup>2</sup>. Also, he contends that a doctor cannot be said to have a special obligation towards individuals who might become his patients in the future were he to continue practising medicine, nor does he have a moral duty to always continue being a doctor, or to never be absent from work or fall ill or cancel an appointment for any other reason. Though a doctor has a contract with society to act responsibly when at his duty post, he has no obligation to be always available under all circumstances.

Even when the doctor enters into contracts with the patients through the government hospitals, the sanctity of such a contract becomes debatable if the hospital or government withdraws from its contract of providing the doctor with adequate facilities to fulfill his obligations to his patients. He went ahead to argue that if physicians have special obligations, they can demand special benefits as long as they do not make unreasonable demands, strike without adequate notice, or actively undermine patient care. In that sense, a strike may be justified, if the need arises. However, it is obvious that the social contract theory does not provide an ethical justification for doctors' strike, except when the contract is breached by the employers.

**Virtue-based ethical justification:-** This places emphasis on virtues, or moral character of the agents and encourages development of character traits such as benevolence, wisdom, courage, temperance, justice, fortitude, compassion, love, generosity, and integrity. It is obviously practically impossible to justify a doctors' strike action on this basis.

Opponents to strike actions would argue that self-sacrifice as a virtue, along with benevolence and compassion, ordinarily would not encourage a moral agent to abandon his responsibility to a fellow human being, particularly a vulnerable one.

**Consequentialist ethical justification:-** This suggests that the correctness of moral conduct be determined solely by a cost-benefit analysis of an action's consequences. An action in the utilitarian approach, is morally right if the consequences of that action are more favourable or bring the greatest good to the greatest number of people. In that case, a utilitarian ethical justification can be made for doctors' strike. The short-term inconvenience such a strike action may cause must be balanced against an improvement of health care - as a result of allowing doctors to have better work and living conditions and being better rested, and so then being able to do their job better resulting in better health for a large section of the people.

If doctors truly believe that a strike action is important for better patient-care, then utilitarians may argue that doctors must sometimes have the courage to do things that are regarded unpopular and difficult. If the conditions under which doctors

work place patients at greater risk, then they are morally obliged to strike<sup>4</sup>. Though the community may benefit on the long run from a successful resolution of a doctors' strike action, opponents of the utilitarian viewpoint may then ask if the loss of any human life can ever be a just price for any end, and whether immediate needs should be set aside in anticipation of future benefits? Definitely, the traditional Hippocratic physician would say "No" to these two queries<sup>2</sup>.

**Conclusion – where do we go from here?** To say that it is unethical for doctors to embark on strike action as a blanket statement may be unrealistic. A doctors' strike action may be explicable due to various reasons, but is not entirely ethically justifiable beyond any doubt, apart from when the utilitarian viewpoint is adopted. The pertinent question at this point is "whether health workers, including doctors, should blindly copy traditional trade union methods or should they look for equally effective methods consistent with their roles as caregivers who have a special moral contractual obligation to their patients and society?"

The best way to avoid doctors' strike action is to prevent them: the society and the government/hospital authorities have the ethical obligation to create work conditions that preclude conflicts. To settle disputes between physicians and health institutions, the creation of a permanent arbitration body agreed upon *ab initio* by physicians and the authorities could be necessary. This could be a high level committee comprising respected individuals, leaders of opinion and physicians. One way to avoid strike actions is to manage workers fairly, communicate with them constantly, and develop consensus for difficult decisions where possible. The implementation of policies and management practices which enhance physicians' participation in the development of patient-care management processes and in managerial decisions which affect patient-care management processes and managerial decisions which affect patient care appear to be crucial. This will increase job satisfaction among physicians, as well as the productivity and quality of service provided by them.

The medical profession should be prepared to give up strike as industrial pressure tools. In exercising their rights, they should be sensitive to the ethical issues involved in the methods of struggle. Such sensitivity may help doctors radicalize their struggle by moving from a strike (no patient-care)<sup>9</sup> to alternative care (referral to private or other institutions), or limited care (emergency care only)<sup>10,11</sup> or hospital occupancy (continued patient care under self-management). While the latter may be difficult to achieve, doctors may never transcend their present constraints and achieve loftier goals, if they fail to re-consider the justification for strike actions in the light of the ethical constructs and the needs of the struggle.

## ACKNOWLEDGEMENT

This paper was prepared as part of my course work in the Bioethics programme of the West African Bioethics Centre, Ibadan, Nigeria.

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