editorial

GOODBY AMA

There's a tendency on the part of the public to view physicians and surgeons in the United States as a reactionary group of greedy business people who are out to make a mint from others' misfortune and helplessness – hence the widespread public acceptance of various national health insurance schemes. When the average citizen hears that representatives of the American Medical Association have been called to testify before a Congressional committee, he has a vision of a group of staunch free market advocates defending the privacy of the individual doctor-patient relationship against the onslaught of various liberal do-gooders – if the citizen happens to be of a conservative bent he cheers for the AMA and if a liberal he cheers for the legislators. But in either case the citizen thinks that the testimony of organized medicine is always a reflexive "no" to any governmental health program.

The citizen is mistaken.

Far from being the poor, oppressed *victims* of the State, M.D.'s, through their major professional organization (the AMA), are major *supporters* of government intervention into the medical market place. In the past Congressional session, the AMA sponsored or supported over 26 pieces of legislation, all calling for *more* government intervention, not less.

For instance, the American Medical Association has testified many times over the years in favor of governmental financial assistance to medical schools, medical students, nurses, students, schools of public health, etc., and they repeated their testimony this summer, calling for *maximum* funding under the Comprehensive Health Manpower Training Act of 1971. Apparently the AMA not only wants to run a closed shop (since the law specifies that medical schools and their graduates must be AMA-certified in order to teach or practice medicine) but it wants the taxpayer to foot the bill! True, getting a medical education is expensive (most things in limited supply are expensive, and the requirement of AMA accreditation for medical schools assures a limited supply of schools) but once that education is obtained the new M.D. can expect to make $50,000 + per year. Perhaps the medical students could use *loans,* but they hardly need subsidies!

Another program the AMA supported was the Indian Health Care Improvement Act based on 25 specific recommendations the AMA House of Delegates adopted for improving the health of American Indians. It's unclear whether the Indians were consulted in the matter, but it *is* clear that the AMA's paternalism was hardly consistent with the private, voluntary physician-patient relationship the AMA is believed to espouse.

AMA paternalism is also in evidence in their support for an extension of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act, which calls for, in essence, taking one citizen's money in order to prevent another citizen from spending *his* money on booze. Along that same line, the AMA supported a three-year extension of the Drug Abuse Education Act, which aims to control and eliminate drug abuse through education about drugs. (Apparently they ignored evidence such as that presented by Consumers Union in their book *Licit and Illicit Drugs* which indicates that drug education programs serve to arouse curiosity about drugs and can actually result in increased drug use among those opposed to the program!)

Another program the AMA has supported is the Lead-Based Paint Poisoning Prevention Act, which aims to control the use of lead-based paint and thereby eliminate the hazards of poisoning, particularly of children. This Act had the apparently unforeseen effect of creating a shortage of low-cost housing in Philadelphia and elsewhere (since landlords couldn't afford to repaint), forcing rents up, even for poor people without small children (few adults need to be protected from the hazards resulting from eating paint).

The above, of course, are only some of the programs the AMA has supported which call for further government involvement in the health services field – others, such as the National Health Insurance/Medicredit program (which is designed to give every person in America under the age of 65 equal access to high quality health care regardless of their ability to pay) and the Hill-Burton Hospital Construction Program (which subsidizes the construction of tax-exempt hospitals and medical centers, and has resulted in a surplus of hospital beds but not a reduction of the cost of hospitalization) have already been criticized in REASON and elsewhere.

The point of the recitation of the "sins" of the AMA is not, however, to attack the physicians of this country, but rather to urge them to wake up to what they are supporting when they join and remain associated with the AMA or any similar statist group. The AMA is not the friend of M.D.'s who value their freedom – next to the government itself, the AMA is the worst enemy a freedom-loving doctor could have.

The AMA, by calling for subsidies for medical education, is calling for making doctors wards of the state – it's the height of naivete to think that a government that finances one's education is not going to demand something in return. *Individuals* aren't that altruistic and one can't really expect a collective to be, either! Subsidies mark the start of enslavement – it's that simple.

Plus, the AMA, by putting out free market sounding rhetoric praising private practice and the sanctity of the doctor-patient relationship at the same time that its representatives are in Washington urging bigger and better government health programs, serves to make all the doctors associated with it look like a bunch of money-grubbing hypocrites. It's no wonder doctors can generate little public support in their fight against socialized medicine!

Now, it's quite possible that the AMA does reflect in its actions as a corporate entity the will of its membership – if so, then the doctors of this country should face up to the fact that they are getting in the way of government coercion exactly what they asked for. It's tragic, but just.

On the other hand, perhaps the AMA's actions do *not* reflect the wishes of at least some of its members. Perhaps some AMA members are libertarian enough to believe that they and the State should leave each other strictly alone and that Big Brother should butt out of the doctor's office. *Perhaps those AMA members should get out of the AMA.*

The AMA (and other professional organizations that actively lobby for statist measures) exists because it has the at least tacit sanction of its members. And they in turn are colored by its image. This country is getting closer and closer to compulsory national health care – if any doctors care to resist enslavement *now* is the time to make a stand, and boycotting an organization that is working hand in glove with the enslavers is a good first step.

Boycott the AMA.

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GOLD CLAUSES

With the restoration of the right of American citizens to own gold, it would be well to consider the availability of "gold clauses" in contracts as a means of inflation protection.

A gold clause in a contract calls for payment in gold, gold coin, or its equivalent. This device was developed in the United States in response to the "Greenback inflation." Greenbacks were unbacked banknotes issued by the Union to finance the Civil War. By 1864, the greenbacks had declined to about one-third the value of gold dollars.

As a consequence of this phenomenon, a number of cases were brought. The best known of these, *The Legal Tender Cases,* were decided by the Supreme Court in 1884. In these cases the plaintiffs had challenged the authority of the Federal Government to issue notes unbacked by gold or silver and declare them "legal tender," that is, to declare that they must be accepted in payment of legal obligations. The principal contention of the challengers was that the provision of Article I, Section 10 of the Constitution, "No State shall . . . make any Thing but gold and silver Coin a Tender in Payment of Debts . . . , " applied as well to the Federal Government and prohibited the issuance of the unbacked notes.

While the Supreme Court held that the issuance of such notes was lawful, they had in an earlier case also held that a contract which called for payment in gold dollars, rather than banknotes, was enforceable. This ruling formed the basis for upholding the validity of "gold clause" contracts.

Gold clauses continued in use until the Roosevelt reforms of 1933, when gold ownership was outlawed and American citizens were required to turn in their gold coins. At this time gold clauses were declared unenforceable by Congress.

Various suits were brought to challenge these actions, but in 1935 the Supreme Court ruled, in *The Gold Clause Cases,* that the Government had had authority to invalidate these contract provisions.

This decision was by a Court split 5-4 and some of the language, which could be taken to mean that the parties had not actually suffered a loss, gave rise to the hope that the cause was not completely lost. However, in 1937, the Court made its position even clearer by refusing to enforce a contract which specified payment in a specific type of gold coin. A good overview of the legal history and related problems is Wormser and Kemmerer, "Restoring 'Gold Clauses' in Contracts," 60 *ABA Journal* 942 (1974).

With the legalization of gold ownership, the question naturally arises as to the availability of gold clause contracts to protect parties from the current round of inflation.

The "public policy" grounds allegedly present in 1933 no longer appear compelling. Whereas in those days it was claimed that the Government's constitutional power to "regulate the value" of money permitted regulation of what was then a prime monetary asset, the much-heralded decline in the official monetary role of gold should obviate that argument. It might also be argued that the widespread acceptance of cost-of-living and escalator clauses demonstrate that there is no "public policy" against contractual hedging against loss in the value of money.

There are, however, two possible "policy" barriers to overcome. It is possible that a contract which may call for repayment of substantially more dollars than were borrowed may run afoul of state usury laws. These laws already have become a serious obstacle to the use of higher nominal interest rates to offset inflation. There seems to be no clear precedent on this point and, in the absence of legislation (or, in some cases, amendment of state constitutions), there is the possibility of a need to await a state-by-state resolution through decisions of the various state supreme courts. A good discussion of the current status of usury laws is Bowsher, "Usury Laws: Harmful When Effective," *Bulletin,* Federal Reserve Bank of St. Louis, August 1974.

A second possible "public policy" attack on the enforceability of gold clauses stems from the present judicial hostility toward freedom of contract. Under the influence of curious social and economic notions, courts have begun striking down contracts in whole or part in which they perceive an unequal bargaining strength of the parties. Given the propensity of certain courts to re-write contracts to reflect their own ideas of social justice, it is not beyond the range of possibility that a gold clause calling for repayment of a significantly larger number of dollars than the original obligation will be declared invalid as between a corporate creditor and an individual debtor because the debtor lacked equal bargaining power. A summary and criticism of the current law on this point is Schwartz, "Seller Unequal Bargaining Power," 49 *Indiana Law Journal* 367 (1974).

In the event such agreements are upheld, the question will arise as to the tax consequences. The Treasury has been adamant on the position that a dollar is a dollar for tax purposes and that any nominal dollar gain in a transaction will be taxed without reference to any effects of inflation. If this rule is followed, it is likely that the nominal dollar increase will be taxed as a capital gain, either long or short term as the underlying transaction may dictate. Even this result, of course, will permit a significant degree of inflation protection and will likely result in creditors seeking higher prices to offset the tax penalty.

Another impediment to the widespread use of gold clauses is the legal rule that in order to be negotiable an instrument must be for a "sum certain." The potential revaluation inherent in the gold clause would apparently run afoul of this provision. Since negotiable instruments are widely used in commerce, the inability to employ a gold clause in such instruments may restrict the range of uses to which the clause is applicable.

There has been an upsurge of interest in this problem and we may hope that the legal status of these gold clause contracts may be clarified. A workable gold clause would undoubtedly lower nominal interest rates as lenders would no longer need to demand an inflation factor in their rates. Without these protective arrangements, lenders will be increasingly hesitant to enter long-term transactions.

Since the principal impediment to the introduction of these clauses seems to be uncertainty as to the willingness of the government courts to enforce freely-entered-into private agreements, we see once again the disruptive nature of the state. Private parties, if left free to order their own affairs by contract, should be able to adapt even to the disruption inherent in irresponsible government monetary policy. It is ironic, though by no means unheard of, that they should be restrained from doing so by uncertainty as to how much some court will determine their freedom of contract to be consistent with a court's "evolving" notion of good public policy. ◻

Davis Keeler's Money column alternates monthly in REASON *with John J. Pierce's Science Fiction column.*