

# MILLION MED MARCH SPEECH

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Good afternoon.

Thank you Dr. Chudacoff for inviting me here today to speak to you, the physicians. The professionals.

A profession. Professionals. Physicians are one of the few true professionals.

Unfortunately, the word “professional” is losing its meaning. Misconstrued, society has rushed to call anyone who takes pride in her work a professional. But, in context of the true meaning of the word, that is not, nor should not be the case. Garbage collectors are not professionals. Taxi drivers are not professionals. Politicians are not professions. Physicians are professionals. Or, are you?

To be a profession, an occupation, and industry, must meet a four part test. First, it must center around a highly complex subject matter which is essential, which is critical to the functioning of society. Second, because the topic is complex, the members of the occupation must have extensive education. Third, due to the complexity of the topic and the education needed to master such, the public has no choice but to rely on the occupation for providing the related essential services to society. Finally, due to the complexity of the topic, the only persons capable of judging the appropriateness of actions taken by a member of the occupation are other members of the occupation – thus, the final element is self regulation. According to respected sociologist Elliot Freidson, there are only four true professions, academia, law, theology and medicine.

For the first part of the twentieth century, physicians did an excellent job in fulfilling and maintaining the four requirements of a profession. The sovereignty of the medical professional entailed the restriction of competition, the limiting of regulation by government or private

organizations, and the authority to define and interpret the standards of the understandings that govern medical work. However, with the transition from indemnity fee-for-service, so too began the transition away from the professionalism of medicine. Physicians are no longer the single, dominating claimant in the medical industry. Government is no longer sympathetic of the autonomy of physicians. The deterioration of the internal cohesiveness and strong collective organizations have driven a wedge between the different segments of the medical profession, and, in doing so, have not only diminished the voice of the physician, but, have eroded the foundation upon which medicine, as a profession, was built.

Today, however, I must ask: Physicians, are you truly, are you still a professional?

Last night, a physician shared with me a brilliant observation. You are no longer physicians, but, rather, you have been demoted to providers. In the current health care debate, you have been grouped with all other health care providers. In the current health care debate you are no different than any other health care technician. What happened to the honored physicians?

I would surmise that if you were still a professional, we would not be here today. Physicians, to be blatantly honest, you have failed. You have failed to maintain the sovereignty of your profession. You have failed in one major area – the last requirement of a profession – the requirement for self-regulation. In an effort to build and develop your practices. In an effort to gain wealth. In an effort to create your own medical fiefdoms, you have failed to participate in the necessary and perpetual regulation of your own profession.

History speaks for itself. All was well when the corporate practice of medicine was illegal. All was well when third party payors paid on a fee-for-service basis based upon what physicians charged. However, it became glaringly evident that simply writing your own paychecks through submissions of unfettered claims would become unbearable for payors. The obvious defect in the indemnity fee for service model of the first half of the twentieth century was the absence of any effective restraint. No limits were placed on the number or variety of medical specialties, while specialists received higher insurance reimbursements than general practitioners. Almost every conceivable encouragement was given for hospitals to grow. Most

insurance covered hospital care; doctors services, if given in hospitals, were more likely to be covered and paid at a higher rate.

Finally, in the late 1960's, American medicine seemed to be caught in a political vise between the concern of government and business about the high costs of health care and the demands of protest movements and liberals for equality and participation in medical care. The tide turned against doctors. One writer stated in a 1970 edition of Fortune that "the doctors created the system. They run it. And they are the most formidable obstacle to its improvement."

In response to such a backlash, the Nixon administration spent significant resources in health care reform. At a news conference on June 3, 1971, undersecretary of the Department of Health, education and Welfare, John Veneman, stated "In the past, decisions on health care delivery were largely professional ones. Now the decisions will be largely political." And he was right. Two years later, the Nixon administration passed the 1973 HMO Act.

And where were the physicians? Silent. Membership in the American Medical Association fell to less than 50% in 1972. The minutes of the Congress of the AMA in 1972 reflect a call for action by the AMA leadership to physicians, however, such call fell on deaf ears. The 1973 HMO Act passed with truly minimal opposition by physicians. The Nixon administration's goal was that by 1976 over 1700 HMOs would be created enrolling an estimated 40 million people. This was not a silent or hidden goal. Not until the late 1980s did physicians begin speaking out against HMOs; you were too late. Physicians, you lost control of health care finance almost 40 years ago.

But control over system finance is not the only area of self-regulation in which you have failed. You have also failed to effectively self-regulate with respect to the quality of care you provide. The mechanism which has been inherent within medicine for quality assurance, peer review, is no longer a viable tool. Peer review has become a sham. Used more as a tool to foster good-ol boy networks than to ensure true collegial discussions and self-improvement, peer review has destroyed more careers of good physicians, than it has taken bad physicians out of the industry.

No wonder why the plaintiff's bar is so strong – physicians, you have failed to convince society that you are capable of self-regulation. You have failed to convince society that you are capable of protecting the public.

Recently, in defending a physician against a sham peer review, I successfully argued that a physician's medical staff privileges are a constitutionally protected property interest. This was a novel holding. Seriously. It took until 2009 for a federal judge to say that the necessary golden ticket that enables a physician to practice in a hospital is a protected property interest. Until now, attorneys have tried, over and over, most unsuccessfully, to make this point through pages of legal argument. What does this mean? Public hospitals simply have to be cognizant that there are a series of procedural hoops that must be jumped through before a physician is disciplined through peer review. Nonetheless, physicians are still at risk for sham peer review, as constitutional protections do not apply to private hospitals. Hence, sham peer review will continue.

And, moreover, physicians have stood by while the government enacts and operates tools that further the deterioration of your status as a professional. The National Practitioner Data Bank is one of the most dangerous weapons that exist. There is a reason that there is not a similar data bank for any other profession – they would not stand for it! Akin to the national sexual predator's registry, the NPDB lists all physicians whose privileges have been adversely affected by a hospital. The difference, however, is that with the sexual offender's registry, at least there is an assurance that the offender was provided due process before they are listed. Under federal law, physicians are included in the NPDB 30 days after an adverse action is taken, not after all due process has been afforded and a physician was given an adequate opportunity to defend himself. This, in my opinion, is unconstitutional. And where are the physicians? Silent. Only after a physician has personal experience with this topic will he try to take action; however, at that point, the concern about the competency of the physician often shadows, if not mutes, any calls for actions that the physician may make.

Your failure to participate in the regulation of your industry continues today. As we speak, my office is embroiled in a bitter battle with the State of Nevada Board of Medical

Examiners over their improper interpretation of state law and illegal attempts to push through emergency regulation. And who is spearheading this action? The executive director of the Board who is not even a physician, but rather a lawyer! In fact, numerous physician board members have stated that they don't agree with the Board's position; however, they are too afraid to speak out publicly. Hence, private physician practices throughout the state are being crippled and patients are not able to obtain vital medical services.

Am I being hard on physicians? Absolutely. However, my criticisms today are not because of a lack of affection for physicians. My criticisms are meant to be a wake up call. Physicians, you should take back the regulation of your industry! You must take back the regulation of medicine. Do not be fooled - without physicians there is no health care industry. No matter what government may do, they cannot take away the fact that medicine is a highly complex field that requires substantial training and expertise. No matter what PR campaigns payors initiation, they cannot overcome the fact that the public must rely on a physician's health care expertise when critical health care decisions must be made by a patient. Capitalize on that!

But, in doing so, recognize that self regulation begins at home. How many of you have read the bylaws for the various medical staffs of which you hold privileges? How many of you are truly familiar with those bylaws? How many of you regularly attend medical staff meetings? How many of you participate in regulatory rule making in your state? How many of you know the members of your state's medical board on a first name basis? And you are the activists! You are the FEW who actually took the initiative to come here today.

Physicians, do not allow the practice of medicine to become another occupation. Retain your professionalism. Grab the reigns of health care as the rightful drivers of health care. Financing health care does not make one a professional.

Thank you.