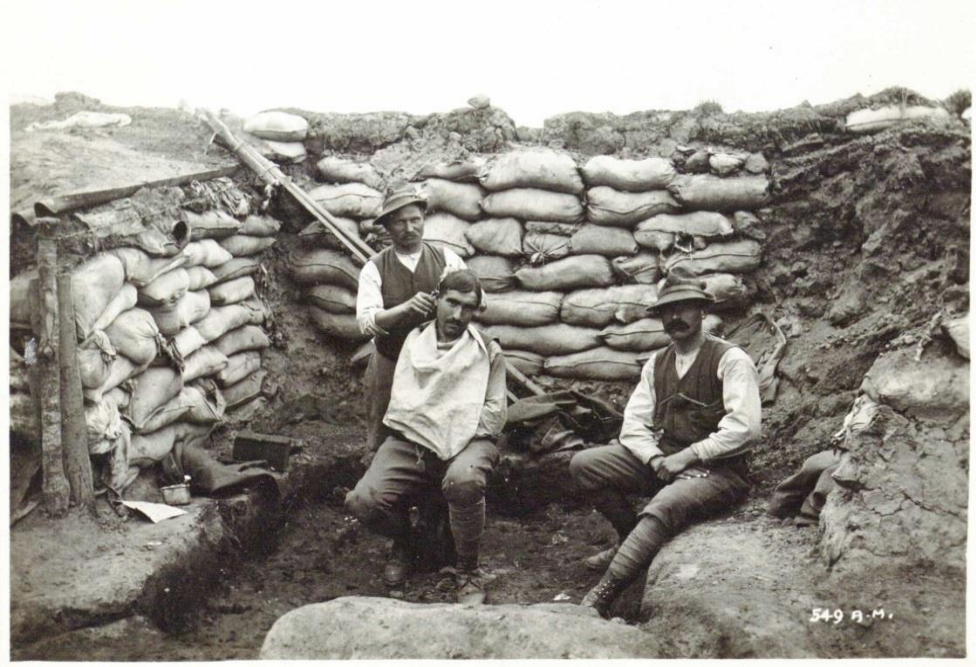
Corporate Practi$e of Medicine…

…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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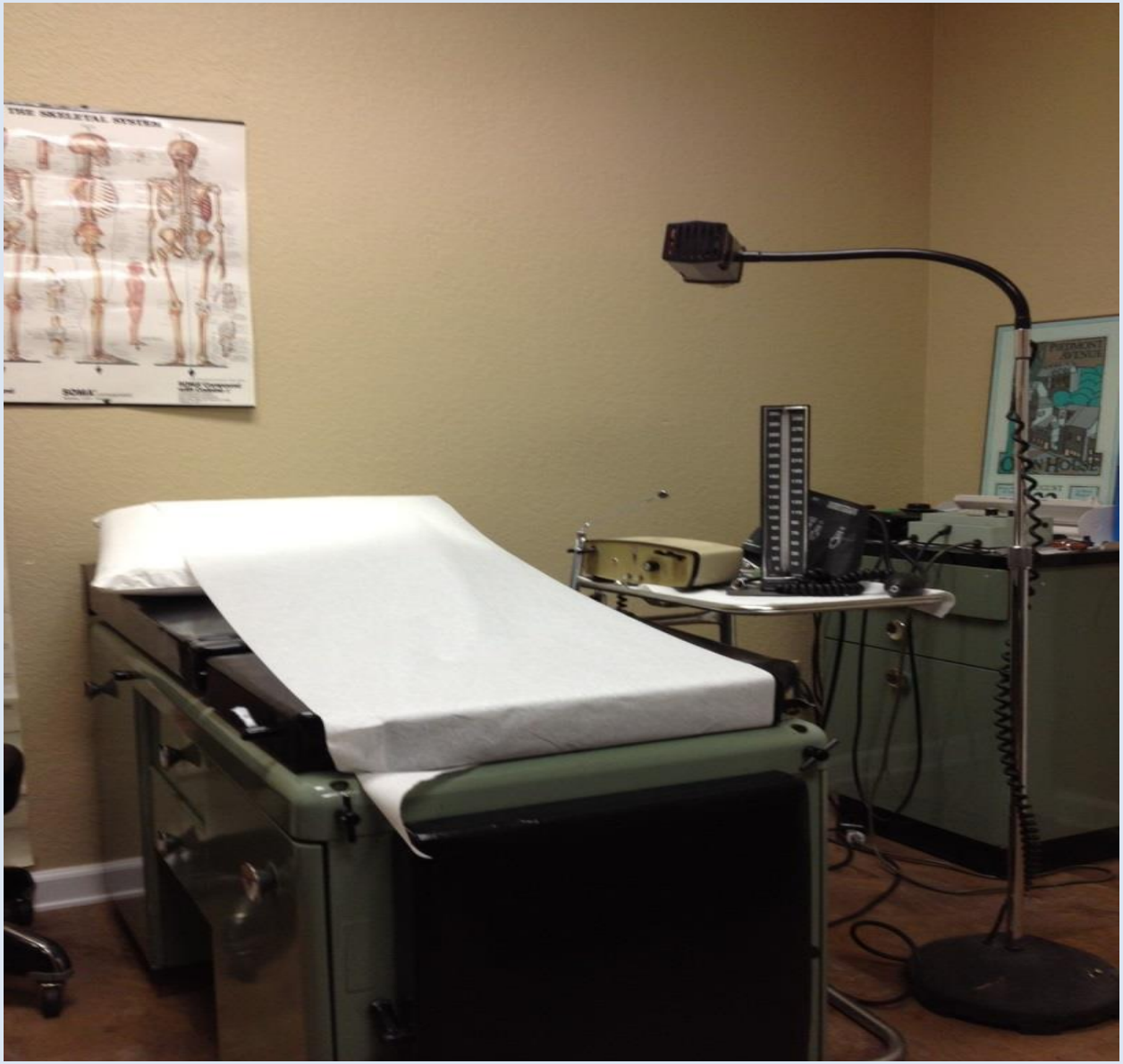
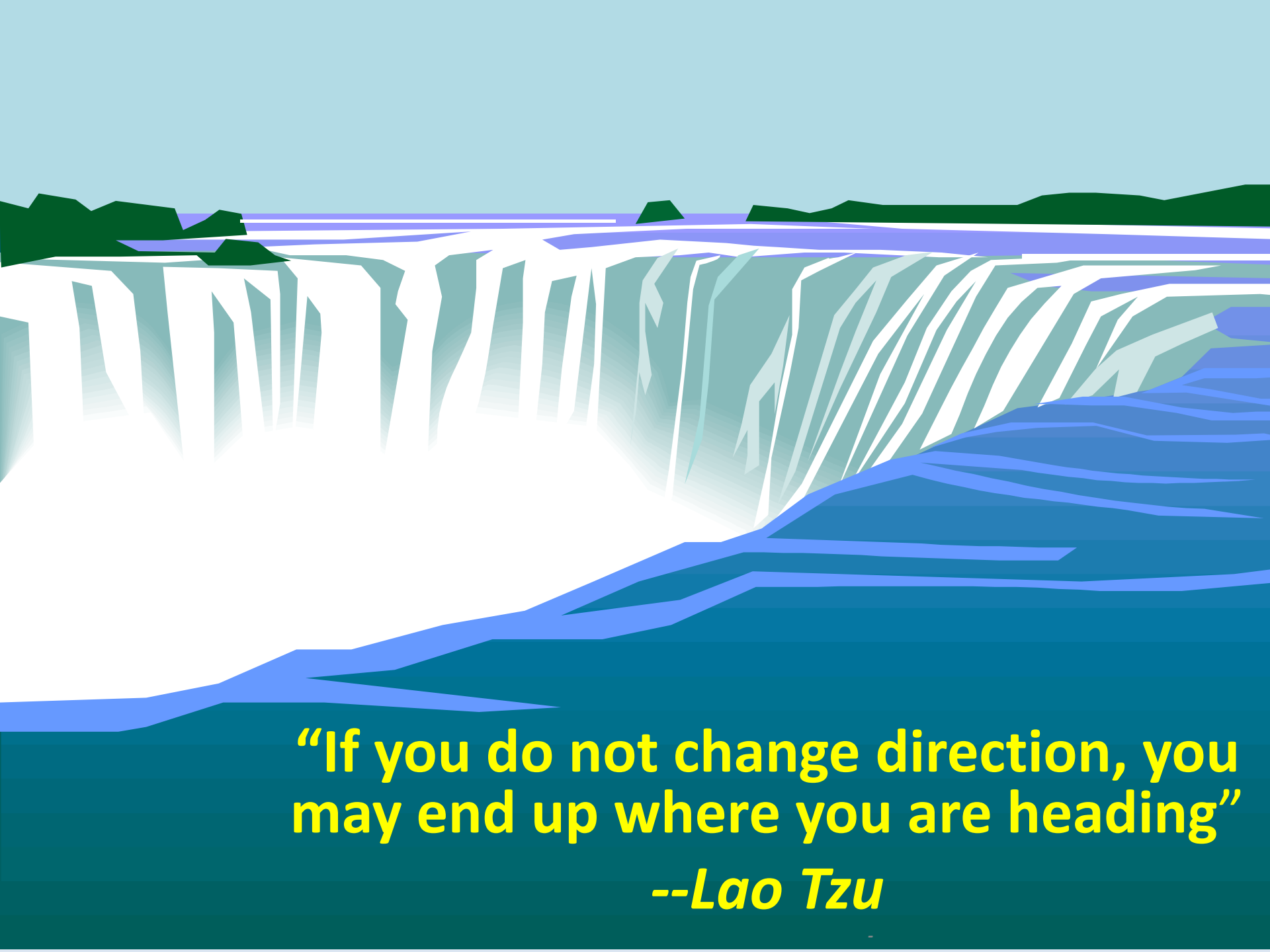
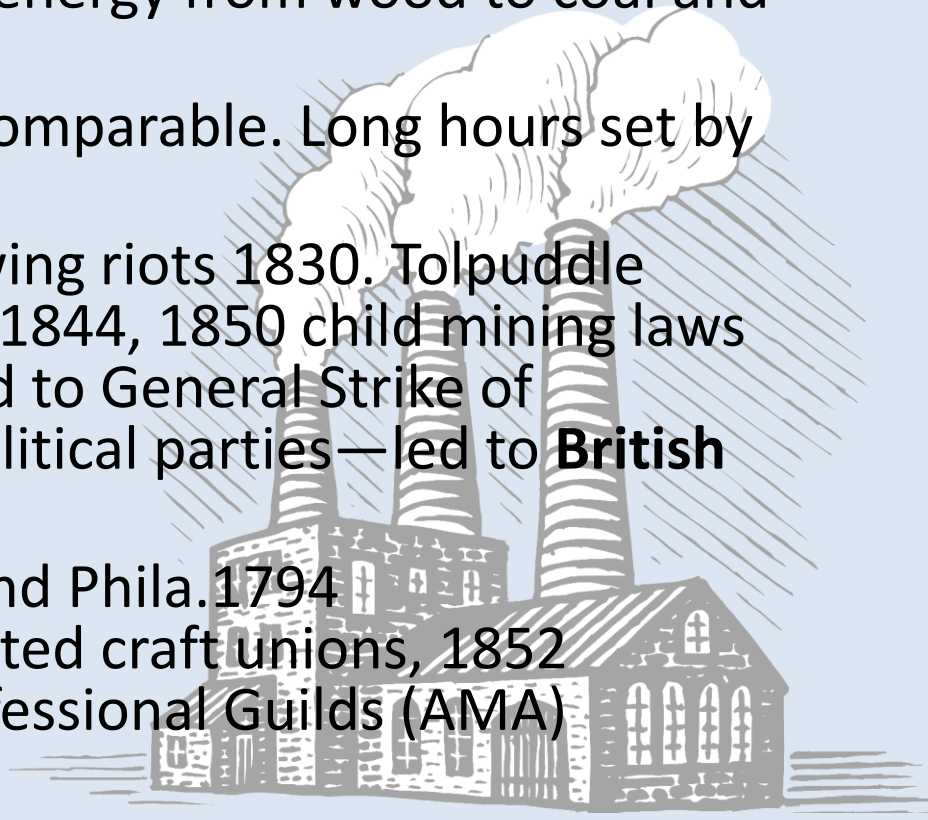

THE SKELETAL SYSTEM


“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.
- Luddite movement 1811. Capt.Swing riots 1830. Tolpuddle Martyrs 1834 Factory Acts 1833,1844, 1850 child mining laws in UK. **The Chartist movement** led to General Strike of 1842...Trade unions supported political parties—led to **British Labour Party** formation
- **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 State

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 o worker's tasks
4. Divide work equally between managers who plan the work and workers who perform the tasks.

Relevant labor laws and miletones – Sherman Antitrust(1890) and Clayton(1914) Acts

AFL created 1886 CIO 1928 Merger 1955

Pullman Railway Strike of 1894

Department of Labor Created 1912

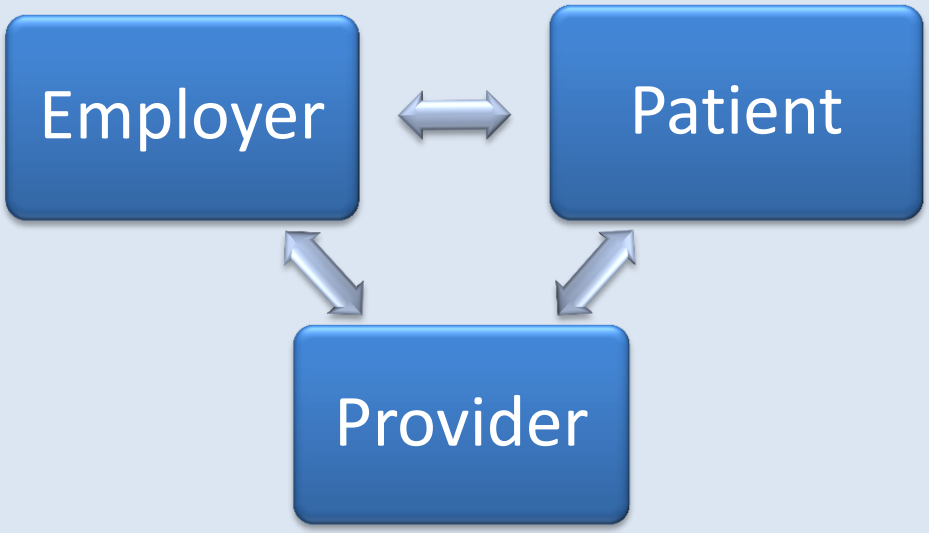
Digital/Information Revolution: 1950s --Present

- 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

<u>Increasing Employment Means Provider Accountability</u> to patients, hospitals, insurers, medical groups, IPAs, ACOs, attorneys and to…Employers.

Doctor ⟷ Patient relationship is changing

Into…



<u>SYSTEM</u>

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

The NEW ENGLAND JOURNAL of MEDICINE

Hospitals' Race to Employ Physicians — The Logic behind a Money-Losing Proposition

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

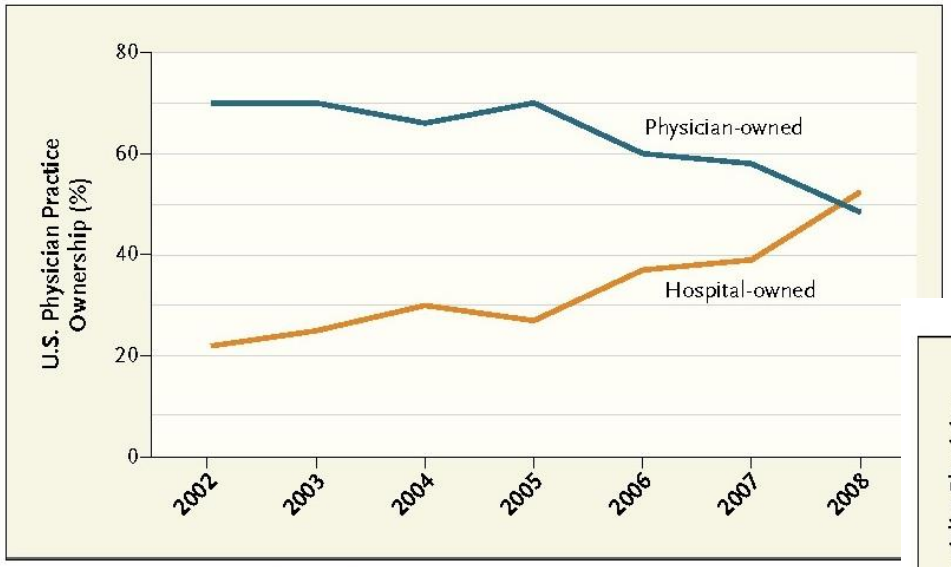


Figure 1. Percentages of U.S. Physician Practices Owned by Physicians and by Hospitals, 2002–2008.

Data are from the Physician Compensation and Production Survey, Medical Gr Management Association, 2003–2009.

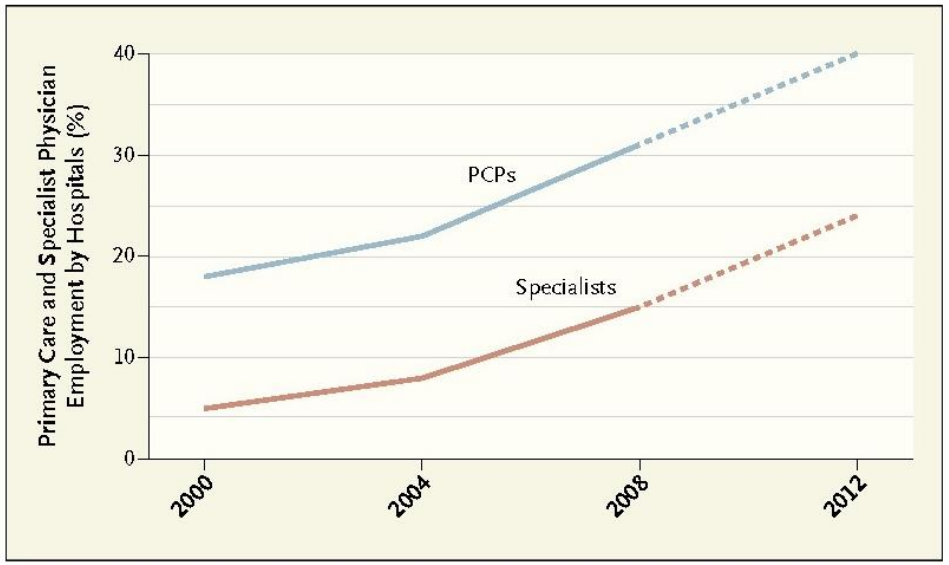
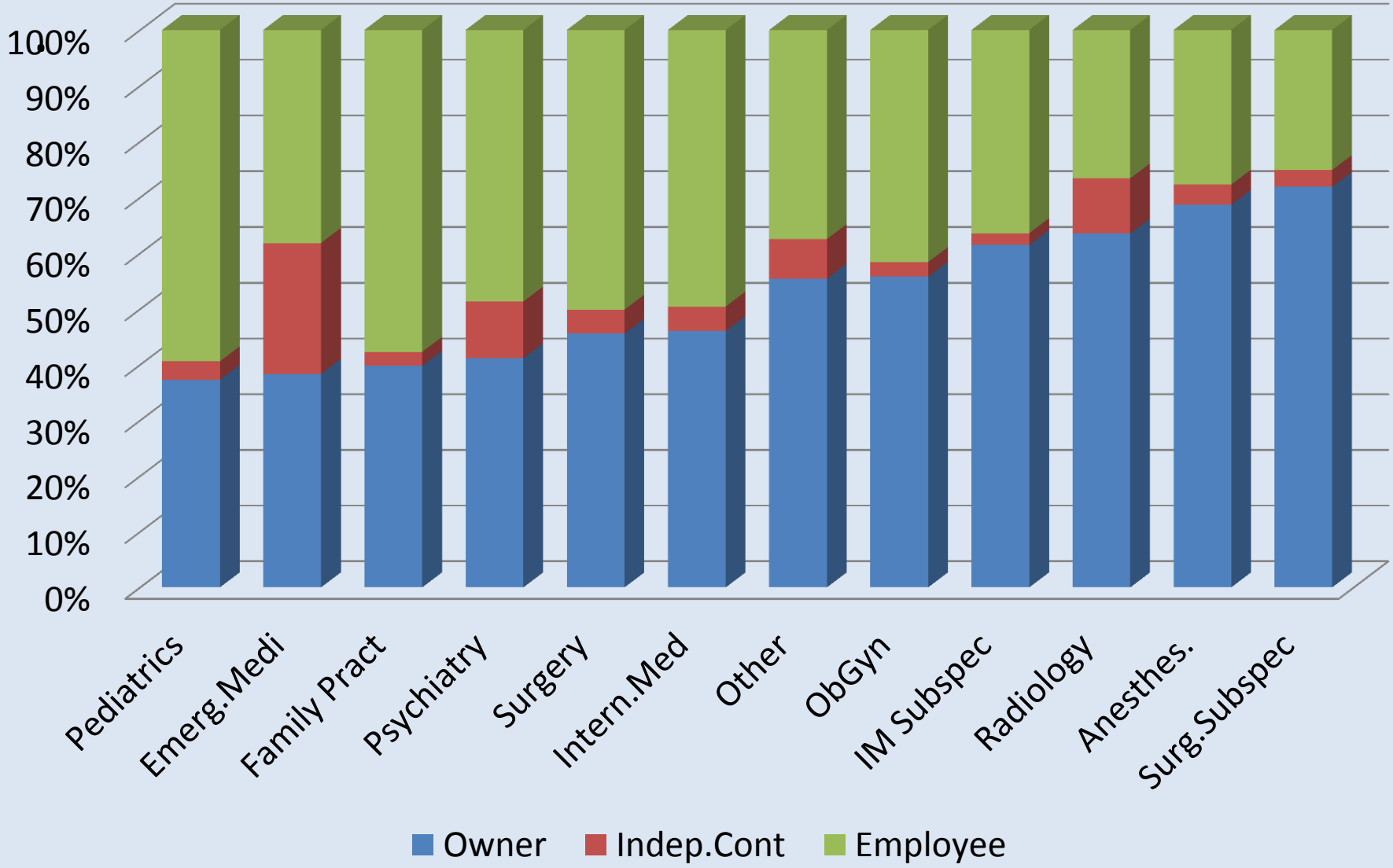


Figure 2. Percentages of Active U.S. Primary Care Physicians (PCPs) and Specialist Physicians Employed by Hospitals, 2000–2012.

Data are from the Physician Compensation and Production Survey, Medical Group Management Association, 2003–2009.

Physician Ownership by Specialty



Projected Supply and Demand, Full-time Equivalent **Physicians Active** in Patient Post Health Care Reform, **2008-2025** *AAMC Workforce Studies 6/*2010

YEAR	Phys. Supply (All Specialties)	Phys. Demand (All Specialties)	Phys. Shortage (All Specialties)	Phys. Shortage (Non-Primary)
2008	699,100	706,500	7,400	None
2010	709,700	723,400	13,700	4,700
2015	735,600	798,500	62,900	33,100
2020	759,800	851,300	91,500	46,100
2025	785,400	916,00	130,600	64,800

Primary Care Provider Projection,2010-25 *Health Affairs, 11/2013*

Provider Type	2010 Number	2010 % Total	2025 Number	2025 % Total
Physicians	210,00	71%	216,000	60%
NursePractitioners	56,000	19%	103,000	29%
Phys.Assts.	30,600	10%	42,000	12%

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:

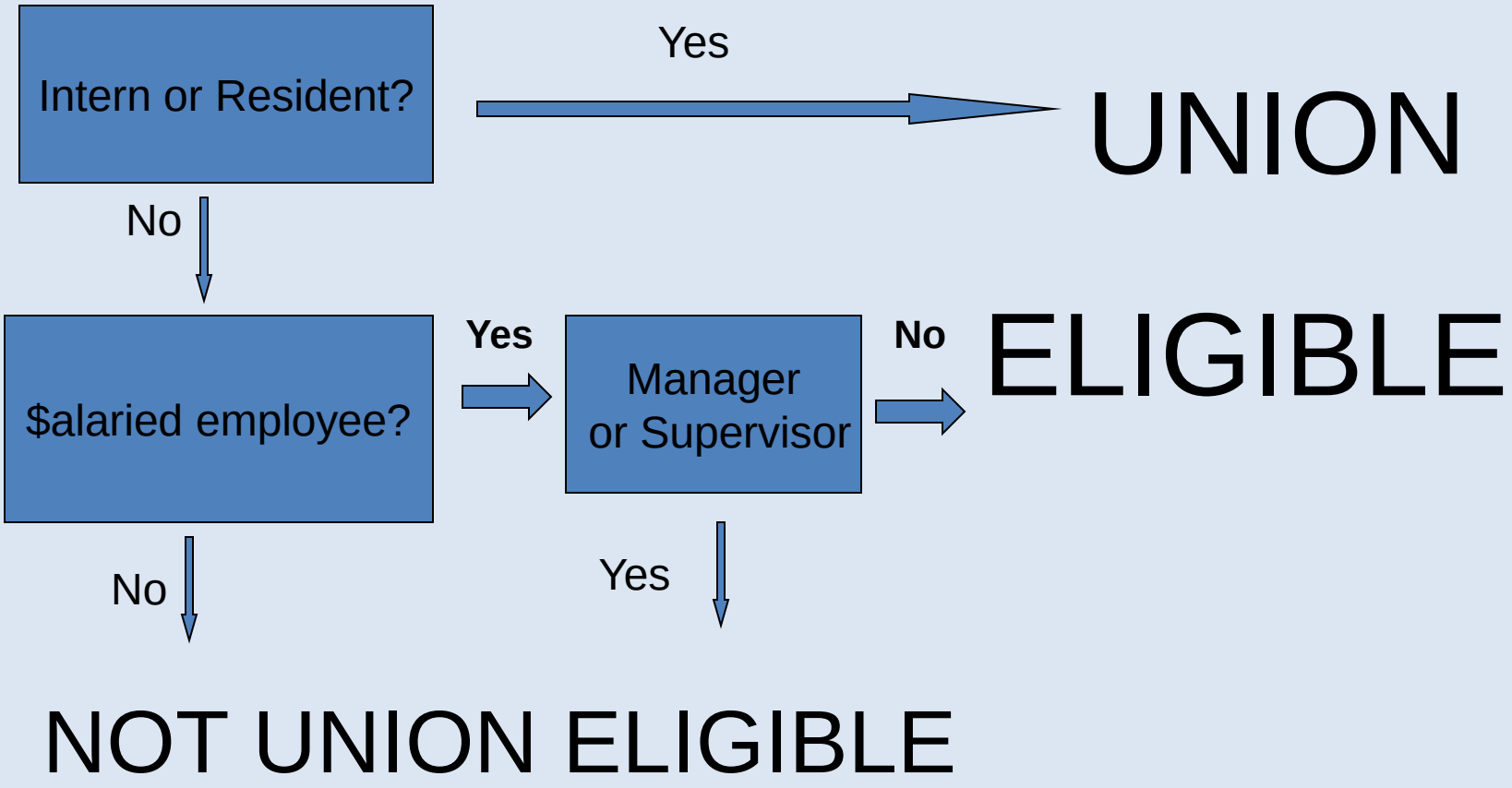
- Fees and Reimbursement (68%)
- Burden of Paperwork (56%)
- Healthcare Reform (54%)
- Value of Primaries v. Specialists, Midevels (43%)
- Third Party Interference (43%)
- Malpractice/Tort Reform (39%)
- Doctor Shortage (29%)
- EHRs (28%)
- Account.Care Organizations(17%)

Source: Medical Economics 11/2013

Reemerging Interest in Physician Unions?

- 1st 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.

Physician Unions in the Medical Industrial Revolution



Physician Unions in the Medical Industrial Revolution

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

Physician Unions in the Medical Industrial Revolution

Supervisory v. Nonsupervisory Employees

NLRA section 2(11) Employee is "supervisor" if:

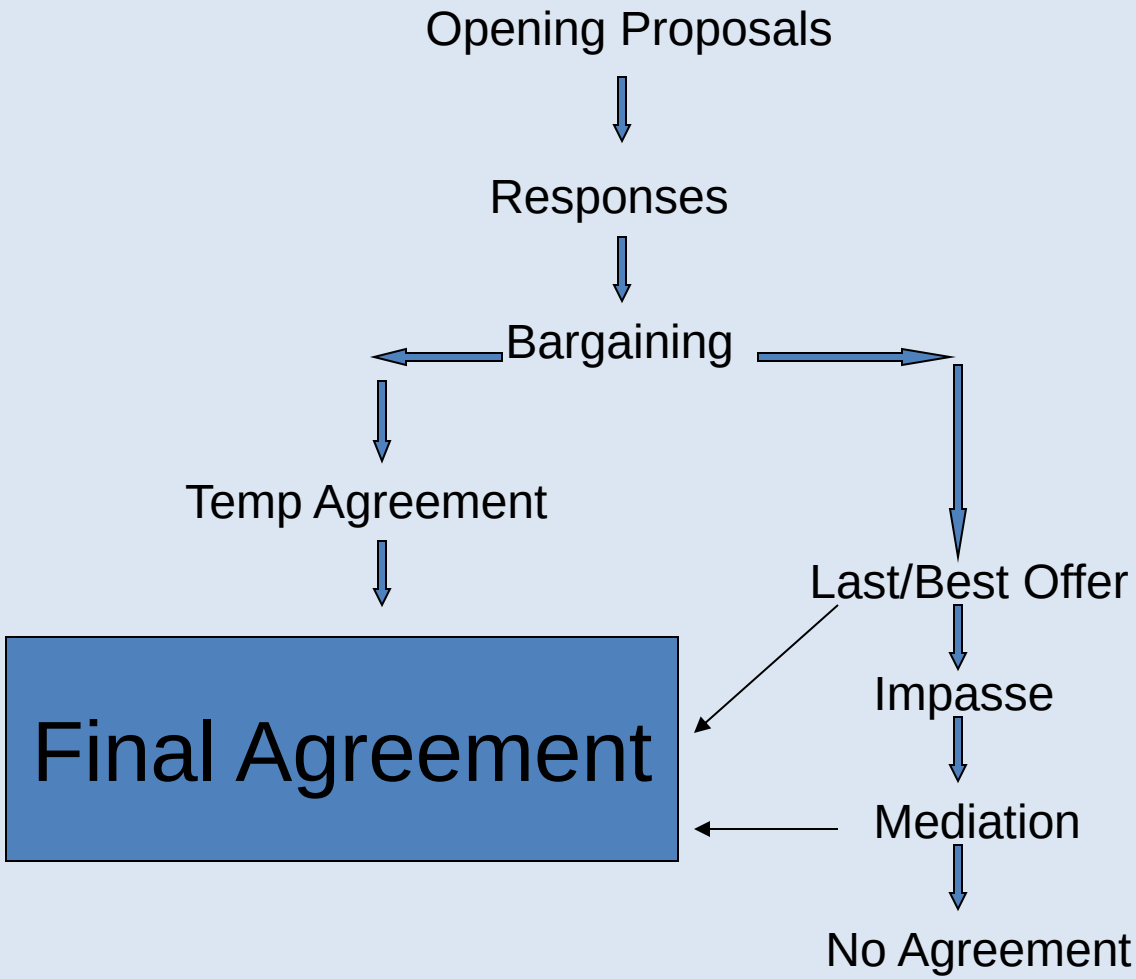
-authority to hire,fire,transfer,suspend,layoff,recall, promote,assign,reward,discipline,adjust grievances or responsibly direct.

-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 Heathcare 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”

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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
- Pres. Reagan v. PATCO 1981
- 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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References: *When Doctors Join Unions*, Grace Budrys, Cornell University Press, 1997, New England J.Med.,2011,364:1790-3, University of Chicago Law Review, Vol.40 (1972)pp. 185-205.