

# A Urologist Dissects Apostate\*

*By Aaron Spitz, M.D.*

*Dr. Spitz is a urologist in part-time academic and private practice in Orange County. He is very active in the American Urological Association (AUA), and is a specialty delegate to the AMA House of Delegates.*

*The recently enacted federal HCR bill, H.R. 3590, was opposed by the ASA, which joined with a coalition representing 240,000 surgical specialists in articulating opposition by sending a strong letter to Speaker Pelosi. (This letter appears at the end of the article.) The AUA was one of the specialty societies that joined with the ASA in this effort.*

*Dr. Spitz conveys his perspective on what happened and why, and what will happen to our profession if physicians do not get to work immediately to change the politics that produced this legislation. He offers some novel suggestions for how we can act to turn things around.*

—Kenneth Y. Pauker, M.D., Associate Editor

This past March, I attended the AUA's Joint Advocacy Conference in Washington, D.C. I was there the very weekend that the healthcare reform bill passed. It was a historic weekend. It was like being in the eye of a hurricane. The public face of the legislation was that it was an effort to fix a broken system. America was notified that the AMA supported it, and that after much careful deliberation, this legislation was the best compromise deliverable to our nation. I had the opportunity to hear directly from legislators, aids, and pundits. It was clear that after several congressmen who are physicians spoke with us that the process of the current healthcare reform legislation neither sought meaningful input from physicians, nor did it make any meaningful concessions to physicians. Incredibly we learned that the legislation was actually a "housing bill" with a 2,700 page "amendment," sent back from the Senate to the House for its approval. Even Democrat members of the House had trouble with some of the provisions in this "amendment."

The real crisis facing our healthcare system is its unsustainable costs. In 2008, the latest year for which data is available, healthcare expenditures were 16.2 percent of the Gross Domestic Product (GDP). In 70 years, at current trends, this figure will grow to 100 percent. Of course the breaking point would happen well before that, perhaps at 25 percent or 35 percent, but there is no mistaking that it is coming soon. The two main drivers of these almost unimaginable expenditures are (1) an ever-increasing utilization of expensive technology by an ever sicker and older population, and (2) an ever more

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\* "One who has abandoned one's religious faith, a political party, one's principles, or a cause." <http://dictionary.reference.com/browse/apostate>

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virulent malpractice environment that every day silently stimulates utilization in the service of keeping lawyers at bay. Physician fees account for 12 percent to 15 percent of all healthcare expenditures. Even if physicians worked for free, the projected cost curve would bend only slightly. The new legislation does absolutely nothing material to bend the cost curve, except potentially to make physicians work for less, and many argue that it indeed bends the curve in the wrong direction. Insurance premiums are uncapped, the pharmaceutical conglomerate (PhRMA, the Pharmaceutical Researchers and Manufacturers of America, so called “*Pharma*”) has secured stunning safeguards, lawyers are protected, and 30 million more lives are added onto the governmental health plan responsibilities.

At this point, the only recourse available to us is to repeal and replace the federal legislation. Physicians, for the most part, sat virtually mute on the sidelines as the AMA, which, for better or for worse, is perceived to represent physicians, failed America’s physicians by supporting healthcare reform legislation from conception to adoption. No meaningful concessions were won. The Sustainable Growth Rate fix never came.

Moreover, even if the SGR fix does come, going forward, the Independent Payment Advisory Board (IPAB) has been empowered to undercut it, eventually and with impunity. IPAB cuts to physicians will begin in 2015, but initial modest reductions will give way to potential major slashing by 2019. CMS is already attacking urology payments, independent of any SGR cuts, by simply re-designating the RVU values of many of our bread and butter office procedures. In fact, starting in 2012, urologists will see a 30 percent to 35 percent reduction in payment for common office procedures, the lifeblood of a urology practice.

The IPAB is charged with finding \$500 billion in cuts from Medicare. Given that under the new law, brand name biotech drugs have 12 years of protection from generic competitors; there is a 50 percent discount mandated for Medicare patients in the donut hole but there are federal subsidies, more patients, and *pharma* sets prices to be discounted from; there can be no importing of cheaper drugs; and Medicare price negotiations will not occur,<sup>1</sup> it seems clear that the “savings” are not coming from *pharma*. That leaves physicians, hospitals, and surgery centers squarely in IPAB’s crosshairs.

The provisions in the legislation pertaining to tort reform are a real non-starter. Fifty-three million dollars has been earmarked for tort reform demonstration projects. Fifty-three million out of a 1 trillion dollar bill? As my teenage son would say, “Really? Wow, really?!” Trial lawyers spent 220 million dollars compared to medicine’s 96 million dollars in lobbying efforts. Do the math.

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The AUA, along with all major surgical specialty societies, representing 240,000 surgical specialist physicians (certainly a huge chunk of the 750,000 practicing physicians in the U.S.), signed onto a formal letter of opposition to the legislation. I never heard that mentioned in any significant media outlet. Hardly anyone appreciates that the AUA or the ASA opposed the legislation. All anyone knows is that the AMA, (against the will of its own House of Delegates Resolution #203), supported the legislation at every step. Perhaps the prospect of more focus on primary care has been alluring to some physicians out there. Granted, there is a shortage of primary care doctors, but already we are witnessing a shortage of surgical specialists as well, especially in Urology. The plight of primary care doctors has been used repeatedly and extensively as a rallying cry to press for the reform of a broken system, while specialists have been vilified by finding the worst apples in the basket and focusing in on their worm holes.

So, now it is high time for the specialists of America to get into the game. We can start a trend that can spread across specialties and ultimately bring repeal. Legislators were clubbed into submission by Speaker Pelosi and President Obama, but they still fear the electorate. We physicians are in a unique position to influence the electorate because ultimately we are the “experts” on healthcare in the eyes of our patients. They repeatedly ask us, “What do you think about the healthcare reform legislation?” and most of us don’t really know what to say. However, whatever we do say, they take as the most authoritative thing that they’ve heard—“straight from the horse’s mouth,” if you will. We physicians, more than any pundit, more than any politician, can sway the opinion of our own patients regarding this new law. I have publicly proposed to the AUA legislative leadership that we immediately craft carefully vetted talking points that are easy for both urologists and their patients to understand, and which make a clear and succinct case for the disastrous nature of this legislation. Furthermore, I requested that they craft a letter, again one that is easy to understand, that could be distributed to patients to sign and to forward to their legislators, calling for repeal of this legislation. Whether a physician or a patient is a Democrat or a Republican, the flaws in the legislation are equally grave. Calling for repeal of the legislation does not in itself mean that we are calling for a legislative turnover from Democrats to Republicans. Because the AUA opposed this legislation, such a proactive move is not in any way radical or “out there,” but instead is consummately professional and consistent with our own professional medical organization’s publicly expressed sentiment. This is true for all the surgical specialty societies that signed on to our formal letter of opposition.

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The time for action is now. The majority of patients, and sadly the vast majority of urologists, has absolutely no idea what this legislation really does. We must rapidly educate and mobilize urologists, and then do the same for their patients. This approach will catch on in other specialties. If there are almost 750,000 doctors and only half agree with this sentiment, then there are 375,000 doctors influencing on average 300 new patients or more a year each. If only half of these patients agree, that's still 42 million voters! That's a tremendous potential for a grassroots tidal wave—so much greater than the Tea Party or any other force out there now. I urge all specialty society legislative staffers to put together talking points and letters as soon as possible. Let's get this flawed legislation repealed, and then let's move forward with a plan that is thoughtful and rational and not an amendment to a housing bill!

I saw a poignant presentation by a general surgery resident at UAB: <http://www.vimeo.com/11378278>. Contained within it is a quote from the 1957 novel by Ayn Rand, *Atlas Shrugged*. The quote is from a character named Dr. Hendricks, who retired from Neurosurgery when the healthcare system became nationalized:

*I quit when medicine was placed under State control, some years ago," said Dr. Hendricks. "Do you know what it takes to perform a brain operation? Do you know the kind of skill it demands, and the years of passionate, merciless, excruciating devotion that go to acquire that skill? That was what I would not place at the disposal of men whose sole qualification to rule me was their capacity to spout the fraudulent generalities that got them elected to the privilege of enforcing their wishes at the point of a gun. I would not let them dictate the purpose for which my years of study had been spent, or the conditions of my work, or my choice of patients, or the amount of my reward. I observed that in all the discussions that preceded the enslavement of medicine, men discussed everything—except the desires of the doctors. Men considered only the 'welfare' of the patients, with no thought for those who were to provide it. That a doctor should have any right, desire or choice in the matter was regarded as irrelevant selfishness; his is not to choose, they said, only 'to serve.' That a man who's willing to work under compulsion is too dangerous a brute to entrust with a job in the stockyards—never occurred to those who proposed to help the sick by making life impossible for the healthy. I have often wondered at the smugness with which people assert their right to enslave me, to control my work, to force my will, to violate my conscience, to stifle my mind—yet what is it that they expect to depend on, when they lie on an operating table under my hands? Their moral code has taught them to believe that it is safe to rely on the virtue of their victims. Well, that is the virtue I have withdrawn. Let them discover the kind of doctors that their system will now produce.*

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*Let them discover, in their operating rooms and hospital wards, that it is not safe to place their lives in the hands of a man whose life they have throttled. It is not safe, if he is the sort of a man who resents it—and still less safe, if he is the sort who doesn't.*

Let's hope this remains a work of fiction and not a prophecy.



Letter from ASA to The Honorable Nancy Pelosi

March 19, 2010  
The Honorable Nancy Pelosi  
Speaker, U.S. House of Representatives  
H-232 The Capitol Building  
Washington, DC 20515

Dear Madam Speaker:

On behalf of the more than 240,000 surgeons and anesthesiologists we represent and the millions of surgical patients we treat each year, the undersigned organizations are committed to meaningful health reform that will make affordable, quality health care more accessible to all Americans. Our organizations have consistently stated that the health care reform package must be built on a solid foundation and in the best interest of our patients. Unfortunately, the Senate-passed *Patient Protection and Affordable Care Act of 2009* (PPACA, H.R. 3590) fails to build such a foundation, and it falls short when considering the needs of our patients. As a result, we are opposed to H.R. 3590.

Over the past year and a half, we have regularly communicated with Congress regarding our concerns such as the creation of the unelected, unaccountable Independent Payment Advisory Board (IPAB), the failure to repeal the sustainable growth rate (SGR) and implement a new Medicare payment system, and other provisions in H.R. 3590. Following the release of the *Patient Protection and Affordable Care Act of 2009* last November, our organizations were left with no choice but to oppose H.R. 3590, and we clearly conveyed our disappointment to Senate Majority Leader Harry Reid in December. Our opposition was also shared with House leadership and the House Committees of jurisdiction. Likewise, our organizations sent a February 19 letter to the President expressing our continued concerns with H.R. 3590. Finally, this letter to the President was also followed by a March 12 letter to you outlining our concerns and the reasons for our opposition to H.R. 3590. In spite of our considerable effort to share our concerns, our fundamental concerns remain unaddressed.

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The surgical coalition remains committed to the passage of meaningful and comprehensive health reform that preserves and improve Americans' ability to access high quality surgical care and health care services. It is this commitment that requires the surgical coalition to oppose a bill that would undermine quality and threaten patient access to surgical care.

Sincerely,

American Academy of Facial Plastic and Reconstructive Surgery  
American Academy of Ophthalmology  
American Academy of Otolaryngology-Head and Neck Surgery  
American Association of Neurological Surgeons  
American Association of Orthopaedic Surgeons  
American Congress of Obstetricians and Gynecologists  
American College of Osteopathic Surgeons  
American College of Surgeons  
American Osteopathic Academy of Orthopedics  
American Pediatric Surgical Association  
American Urological Association  
American Society of Breast Surgeons  
American Society of Anesthesiologists  
American Society of Cataract and Refractive Surgery  
American Society of Colon and Rectal Surgeons  
American Society for Metabolic & Bariatric Surgery  
American Society of Plastic Surgeons  
Congress of Neurological Surgeons  
Eastern Association for the Surgery of Trauma  
Society for Vascular Surgery  
Society of American Gastrointestinal and Endoscopic Surgeons  
Society of Gynecologic Oncologists  
Society of Surgical Oncology

([http://www.asahq.org/Washington/SS\\_HR3590FINAL.pdf](http://www.asahq.org/Washington/SS_HR3590FINAL.pdf).)

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