**1NC**

**Offense**

**[1] The process of strike uses patients or beneficiaries of work as a means to an end**

**Howard 20** [Danielle Howard,, Mar 2020, "What Should Physicians Consider Prior to Unionizing?," Journal of Ethics | American Medical Association, [https://journalofethics.ama-assn.org/article/what-should-physicians-consider-prior-unionizing/2020-03 //](https://journalofethics.ama-assn.org/article/what-should-physicians-consider-prior-unionizing/2020-03%20/)  LEX JB]

-        Written in the context of doctors, warrant can be used for all jobs

**The** possible **disadvantage to** patients highlights the crux **of** the moral issue of physician **strikes. In** Immanuel **Kant’s** *Groundwork for the Metaphysics of Morals*, one formulation of **the categorical imperative is to “Act in such a way as to treat humanity, whether in your own person or in that of anyone else, always as an end and never merely as a means**.”24 **When patient care is leveraged** by physicians during strikes, **patients serve as a means to the union’s ends**. Unless physicians act to improve *everyone’s* care, union action—if **it jeopardizes** the **care of some hospitalized patients**, for example—cannot be ethical. It is for this reason that, in the case of **physicians looking to form a new union**, the argument can be made that unionization should be used only as a last resort. Physician union **members must be prepared to utilize collective action and accept its risks to patient care, but every effort should be made to avoid actions that risk harm to patients.**

**[2] Freedom to strike cannot come at the expense of others AND they might not have ethical motivations.**

Muñoz 14, Cristian Pérez. "Essential Services, Workers’ Freedom, and Distributive Justice." Social Theory and Practice 40.4 (2014): 649-672. (Assistant Professor of Political Science at the University of Florida) JG

The second objection suggests that the freedom to strike is a fundamental value for a liberal society.Restrictions or prohibitions on this par ticular freedom are equivalent to interfering with basic freedoms such as the freedom of speech and association. This objection presupposes, of course, that preserving individual freedom **possesses a value of high priority.** But it is difficult to defend this idea when the respect for this freedom **potentially causes harm to the recipient populations of essential services**. The only way to defend this position is to show that the benefits of protectingthe freedom to strike (for the specific workers under question) are comparatively larger than the harm (for the recipient populations) it might potentially cause. For example, it should be shown that the objectives of a strike among physicians are in the best interest of the patients they service. The idea is that this bargaining instrument might aid physicians in obtaining the resources they require to improve the services they provide to their patients. However, **that is not always the case**. The motivation behind strikes may **not be directly associated** with the objective of improving the quality of the service that physicians provide.

**[3] An unconditional right to strike is unethical since it treats all strikes as morally neutral which is incorrect.**

Loewy 2K, Erich H. "Of healthcare professionals, ethics, and strikes." Cambridge Q. Healthcare Ethics 9 (2000): 513. (Erich H. Loewy M.D., F.A.C.P., was born in Vienna, Austria in 1927 and was able to escape first to England and then to the U.S. in late 1938. He was initially trained as a cardiologist. He taught at Case Western Reserve and practiced in Cleveland, Ohio. After 14 years he devoted himself fully to Bioethics and taught at the University of Illinois for 12 years. In 1996 he was selected as the first endowed Alumni Association Chair of Bioethics at the University of California Davis School of Medicine and has taught there since.) JG

**It would seem then that the ethical considerations for workers striking in an industry such as a shoe factory or a chain grocery store are quite different from the ethical considerations for workers in sanitation, police, or fire departments, or for professionals such as teachers or those involved directly in healthcare.** Even in the latter “professional” category, there are subtle but distinct differences of “rights” and obligations. **However, one cannot conclude that for workers in essential industries strikes are simply ethically not permissible, whereas they are permissible for workers in less essential industries. Strikes, by necessity, injure another, and injuring another cannot be ethically neutral. Injuring others is prima facie ethically problematic**—that is, unless a good and weighty argument for doing so can be made, injuring another is not ethically proper. **Striking by a worker, in as much as doing so injures another or others, is only a conditional right. A compelling ethical argument in favor of striking is needed as well as an ethical argument in favor of striking at the time and in the way planned. It remains to delineate the conditions under which strikes, especially strikes by workers in essential industries and even more so by persons who consider themselves to be “professionals,” may legitimately proceed and yet fulfill their basic purpose.**

**[4] Violence is intrinsic to certain strikes and are uniquely unethical**

Mlungisi 16, Ernest Tenza. The liability of trade unions for conduct of their members during industrial action. Diss. 2016. (lecturer in the field of Labour Law at the School of Law. He holds a LLM Degree) JG

When expressing themselves through one or more of these forms of expression, they are expected to be peaceful.20 However, over the past few years, workers attempted to heighten the impact of their industrial action by using various tactics during industrial action, tactics whichhave a negative impact on the **lives and property of other people**. These include the **trashing of cities, vandalising property**, forming picket lines **at supermarkets**, and preventing shoppers from doing business with their chosen businesses.21 There have been strike-related disruptions in almost every sector of the economy.22 There have been several incidents where industrial action resulted in violence and disruption of the public peace.23 Other examples include the torching of employers’ property, intimidation and even the killing **of non-striking workers**.24 During the truck drivers’ strike which took place in September 2012, a number of drivers were attacked and killed during violent demonstrations.25 During security workers’ strikes in 2006 and 2013, shops were looted and damage was caused to the property of innocent bystanders, street vendors, spaza-shop owners and employers.26 The Business Times reported that violent strikes in the country’s platinum sector resulted in the death of more than 50 people.27 In April 2016 SATAWU members on strike torched trains in Cape Town.28 These strikes are counter-productive and destructive not only because they are violent but the parties, namely the employer and employees take long to resolve their dispute(s) or reach settlement. This **create health hazards**. For example, a strike by municipal workers could lead to the non-collection of waste and this poses a serious health risk.29 The burning of tyres by demonstrators also leads to pollution and resultant health risks. The harmful conduct resulting from industrial action affects not only the strikers or picketers, but also innocent members of the public, non-striking employees, employers and the economy at large.30 In Garvis & Others v SATAWU & others, 31 it was held that the majority of the population was subjected to the tyranny of the state in the past and such practices should no longer be tolerated.

**That violates the categorical imperative and uses patients as a mere means to an end**

**Aacharya and Varghese 16 [Ramesh P Aacharya, Department of Emergency and General Practice, Tribhuvan University Teaching Hospital, Institute of Medicine, and Sibichan Varghese, Department of Higher Secondary Education, Omanoor P.O. Malappuram, 2016, “Medical Doctors’ Strike: An Ethical Overview with Reference to the Indian Context,” Journal of Clinical Research & Bioethics, https://www.longdom.org/open-access/medical-doctors-strike-an-ethical-overview-with-reference-to-the-indiancontext-2155-9627-1000272.pdf]/Kankee**

**\*the original article is badly formatted when copying to MS Word, replacing “ff” with a special character and missing the capital “T” at the start of sentences – try OCR software or manual corrections if you want to fix it. Find and replace didn’t work**

**2a. Are doctors’ strikes ethically justifiable" Most early literary writings on ethics of physician strikes were analyzed in terms of justice, rights, or moral duties [36,37]. In addition to these, recent debates and literature on doctors’ strike give more emphasize to trust-relationship, non-maleficence, autonomy, and professionalism etc. [23,38-42]. Нere are ongoing discussions and debates regarding the ethical justification of doctor’s strike around the world. However, the ethical basis for these arguments can be found in Kant’s second formulation of the categorical imperative: always treat otherpersons as having individual moral worth and dignity and never treat them merely as a means to one’s own ends. Reitemeier believes that adherence to a few basic ethical principles is required for any protest action that impacts patient care[16]. Otherwise, the lay individual cannot empathize with the notion that highly educated and literate individuals such as medical doctors deign to take industrial action. In theory, a doctors’ profession differs from other workers in that their primary goals are not making money but of savingthe lives of patients with whom they have a fiduciar\ commitment. Нerefore physicians should serve the interests of their patients according to their professional commitments above and beyond their own personal and immediate interests [39]. Jackson opined that in the event of a physicians’ strike for personal financial gain, even if it were possible to delude patients that such a strike was really for ‘their own good’, the action would go against the collective conscience of the profession [38]. Only as a last resort and that under almost inconceivable conditions, might a total strike of health care professionals be justified [32] and one of these conditions is, that their actions will not harm the lives of their patients. Such justification could vary across diوٴerent countries and contexts based on their political, social and cultural background. Health care system is also diوٴerent between nations on account of its structure, funding, infrastructure etc. which is unique to each country. In the medical profession there are a set of shared values which relate to their behavior towards their patients. Нis behavior is regulated by guidelines, recommendations and biomedical principles. 2b. Hippocrates Oath and code of ethics: In the context of doctors’ strike, the significance and meaning of the Hippocratic Oath deserves more attention. The Hippocratic Oath, the first reflective code of professional ethics, is historically taken by doctors swearing to practice medicine ethically. It enables doctors to adopt a more humane and professional approach to the service. Considering the Hippocratic Oath as a coreof the medical profession makes the physicians’ action at work a central issue to the discussion. Pellegrino clearly emphasizes the importance of the Hippocratic Oath - Without the Oath the doctor is a skilled technician or laborer whose knowledge fits him for an occupation but not a profession…….. When the Oath is proclaimed, if it is taken seriously as a binding commitment to place one’s special knowledge and skill at the service of the sick, the graduate has then made his ‘profession’ [40]. He or she enters the company of others with similar commitments. At this moment, one enters a moral community whose defining purpose is to respond to and to advance the welfare of patients – those who are ill, who are in need of help, healing, or relief of suوٴering, pain or disability. Нus his or her commitment becomes ethically challenging for any activity like strike with a focus on personal and financial gain of doctors at the expense of treating patients [17] and violates ethical codes of the conduct of his or her service. Further, diوٴerent Codes of Medical Ethics [43] have also been controlling, directing and guiding doctors in various aspects including refrain from staging collective actions. In India, there are various laws and regulations which also exist to control such collective actions by health care professionals including the national constitution. In a historic judgment in 2003 involving the striking government employees in Tamil Nadu, the Supreme Court ruled that Government employees cannot take society at ransom by going on strike [44]. Нis ruling refers to the moral duties of public employees, such as doctors, concerning the fact that they have no legitimate claim to go on a strike and take the helpless patients at ransom to meet their demands with the government [45]. In the ‘Code of Ethics and Regulations’ framed under the Medical council of India (MCI) Act, it is unconditionally stated that medical doctors cannot refuse treatment to any patient who is in need of emergency medical care and once a physician has undertaken a case, he or she should not neglect the patient, nor he / she should withdraw from the case without giving adequate notice to the patient and the family [43]. In December 2010, the Delhi Medical Council issued a statement in response to doctors’ strike at the Safdarjung Hospital mentioned that it violates the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations and so under no circumstances doctors should resort to strike [27]. Further, in India, the Essential Services Maintenance Act (ESMA), 1981 enables the government to ban strikes and demand conciliation or arbitration in certain essential services to maintain proper functioning of the community [46]. In this Act, ‘essential services’ incorporates any service connected with the maintenance of public health and sanitation including hospitals and dispensaries. Laws like ESMA are not implemented eوٴectivel\ to minimize the negative impact to the public and/or end the strikes. 2c. 1on-maleficence and beneficence  In essence, all strikes are against someone and causing harm to somebody directly or indirectly. Нe first moral reason constituting the ‘deliberative presumption’ (the principles that govern our moral life) against physicians’ strike is that physicians cause harm to patients through their strikes and harm to patients ranges from physical injury to psychological stress or anxiety to prolonged pain and suffering to added expense in accessing care [23]. Further, doctors’ strike may cause anger, resentment, fear, or mistrust in patients. The principle of non-maleficence is more important in this context. It imposes an obligation not to cause harm on others and in biomedical ethics it has been closely associated with the maxim primum non noncere meaning ‘above all do not harm’ [47]. Considering this principle, it is apparent that doctors’ strike definitely harms patients in one way or another. Similar to the principle of nonmaleficence, Mahabharata; one of the two major Sanskrit epics of ancient India says ͦНis is the sum of duty. Do not do unto others that which would cause you pain if done to you.” [48]. %eneficence, referring to actions that promote the wellbeing of others, is considered as one of the core values of health care ethics [47]. In the medical context, this means taking actions that serve the best interests of patients (Salus aegroti suprema lex). ‘Wellbeing’ of the patient is the ultimate goal of medical profession. All health care systems revolve around this core principle. Hence, how can a striking doctor serve the well-being of patients? Whether doctors’ strikes are justifiable if strike is helpful to improve the well-being of future generations especially patients? 2d. Autonomy: Autonomy is one of the most discussed principles in biomedical ethics. Нe autonomous individual acts freely in accordance with a self-chosen plan [47] and respecting autonomy involves acknowledging value and decision making rights of person and enabling them to act autonomously. Here, doctors are autonomous to do work or not, and have right to conduct strike [49] for their needs and resolving problems in their professional situations, especially in a democratic country. Are they autonomous like other professionals to carry out strike by neglecting patient’s dependent condition? Нe new organizational changes are having profound eوٴects on professional autonomy and accountability in virtually every aspect of patient care [16]. In medical profession, there is a set of shared ethical values and they over all relate to the saving of life, the healing of the sick, the wellbeing of the patients and the special responsibility of doctors for their patients [50]. 2e. Deontological versus utilitarian reasoning: Deontological reasoning refers to duty, which is usually determined without regard to circumstances or consequences. According to Kant, man is subject to the moral law; since man is a moral agent, he is responsible for his actions. It is a way of judging ‘moral correctness’ of an action, based on whether or not the action follows established rules. In other words, the ends do not justify the means. Here, strikes are considered as means in democratic society to achieve certain ends. In this context all over the world, doctors’ strikes are ethically not justified since they ‘use’ or ‘instrumentalize’ patients in order to improve their situation[23]. As opposed to this, many contemporary ethicists and philosophers are in line with utilitarian theories which seem to be an eوٴective tool to assess a specific action in terms of its utility [51]. Utilitarian reasoning always considers circumstances and consequences. According to utilitarianism, actions are right insofar as they tend to promote the greatest happiness for the greatest number, and wrong as they tend to promote the opposite [52]. Nevertheless, there are many situations in which maximizing happiness (improvement of health care system due to strike) could conflict with other values and principles, namely nonmaleficence. However, in a context of doctor’s strike, weighing the benefits with harm is a problematic issue when the strikes end up with success which may give benefit to a large group of future patients. All these general ethical reflections on physicians’ strike can be useful to assess Indian doctors’ striking activities in their specific context. 3. Ethical analysis for doctors’ strike in India**

**[2] Going on strike isn’t universalizable – a) if everyone leaves work then there will be no concept of a job b) everyone means the employer even leaves which is a contradiction in contraception**

**[3] No aff offense – no unique obligation of the state to give ability to strike – if a workplace is coercive you can use legal means or just find another job to respond to chime 13**