Chapter 6

FIDUCIARY DUTY IN PROFIT & NONPROFIT MODELS

Often associated with financial care, "fiduciary" is not limited to financial areas. Tellingly, even Investopedia.com notes the expansive range of relationships where the term "fiduciary" can apply:

> A fiduciary, in any context, is a person who is ethically or legally obliged to act in the best interests of another party. A doctor or an accountant takes on a fiduciary role.[164]

This section addresses fiduciary duties of the following:

- Physicians
- Financial Advisors & Guardians
- Twentieth-Century Corporations
- Modern Corporations
- DCEs & ACO/REACH
- Case Study of Private Equity (PE) Control of ERs

Fiduciary Duties of Physicians

When most people think of the duty of physicians to their patients, they think of the Hippocratic Oath, an oath that may not have originated with Hippocrates, often called "The Father of Medicine," a Greek who lived 2500 years ago when the Parthenon was being designed and constructed. Today, most physicians still swear an Oath, almost all of which declare a first duty to the health and well-being of the patient above all other considerations.[165]

Changes in medical practice and approach have triggered variations in the oath, now sometimes called a pledge. Most particularly the promise to never introduce a deadly drug to take a life has been adapted to allow abortion and euthanasia, just as the stricture against ever taking a knife to a patient has given way to surgery as a respected field, just as the paternalistic approach of physicians making all decisions for patients has evolved into discussions of patient's rights, informed consent, and culturally competent care. As medicine has evolved, the complexity of moral and ethical decisions has also evolved, but there is widespread agreement — among physicians and patients — that the oath ought to require

[164] Investopedia.com: https://www.investopedia.com/financial-edge/0912/5-misconceptions-about-a-fiduciary.aspx

[165] Rachel Hajar, "The Physician's Oath: An Historical Perspective," Heart Views 2017 Oct-Dec; 18(4): 154–159. doi: 10.4103/Heartviews.Heartviews_131_17

physicians to focus their efforts on the well-being of the patient, that is, the well-being of an informed patient (or their conscientious and informed health proxy) and their agreement.

What Is "Moral Injury"?

"Moral injury," as a concept, has been recognized for millennia, according to Elizabeth Svoboda, in an article for *Scientific American* in 2022, although the term was coined, she wrote, in the 1990s by Veterans Administration psychiatrist Jonathan Shay.[166] Shay said that moral injury

> arises when a service member does something in war that violates their own ideals, ethics, or attachments. The diagnosis PTSD does not capture this. PTSD does a pretty good job of describing a kind of fear syndrome.... PTSD, as officially defined, is rarely what wrecks veterans' lives or crushes them to suicide. Moral injury ... does both.[167]

Svoboda wrote about the pandemic creating moral injury among health professionals, as:

> a specific trauma that arises when people face situations that deeply violate their conscience or threaten their core values. Those who grapple with it... can struggle with guilt, anger and a consuming sense that they can't forgive themselves or others.[168]

Worse, the moral injury caused by the pandemic, Svoboda wrote, had broad repercussions for our greater sense of community, as well as for individual doctors:

> The need to abandon her own standards and watch people suffer and die was hard enough for McGowan. Just as disorienting, though, was the sense that more and more patients no longer cared what happened to her or anyone else. She had assumed she and her patients played by the same basic rules—that she would try her utmost to help them get better and that they would support her or at least treat her humanely.[169]

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[166] *Scientific American*, "Moral Injury Is an Invisible Epidemic That Affects Millions," 9/19/2022, Elizabeth Svoboda, https://www.scientificamerican.com/article/moral-injury-is-an-invisible-epidemic-that-affects-millions/#:~:text=Ancient%20Origins,predates%20its%20naming%20by%20millennia.

[167] Jonathan Shay, "Moral Injury," *Intertexts*, Spring 2012, https://muse.jhu.edu/article/492650/pdf 10.1353/itx.2012.0000

[168] Ibid, Svoboda

[169] Ibid, Svoboda

Does today's privatized health system exacerbate moral injury among MDs?

Sharon Clark argues that physicians in Ancient Greece were regarded as **tradesmen**, for having the goals of "treating the rich and looking out for themselves." The oath transformed public perception of those who took it; no longer tradesmen but professionals, using their knowledge to "serve the best interests of the patients." Today, she sees most physicians as continuing to believe in the professional creed, but frustrated by the business of medicine:

> Modern challenges demand that physicians deal more and more with insurance companies and corporate medicine. As financial entities increasingly try to control physicians, the practice of medicine may become less and less of a profession able to achieve ideal goals for the individual patients. Medicine, as a noble profession, faces the conflicting forces of health economics on a daily basis and even with varying forms of "economic credentialing." At the same time as health care becomes more controlled and more infiltrated by businesses, the physician has been demoted to a "provider." [170]

Clark, posits that when doctors must work in an increasingly corporate environment, the idealism expressed in the Oath may contribute to their feeling morally compromised:

> This difference of the physicians' ethical perspectives from the business leaders regarding the philosophy of the value of the individual's health and life may be related to some aspect of physician burnout.[171]

Clark might usefully have commented on how these changes have also affected patients, specifically their trust in physicians:

> More and more people talk of health care less as a noble profession and more as a business.[172]
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> With fewer and fewer Americans having a "family doctor," almost half avoiding even routine care because they can't afford cost-sharing, and even affluent Americans sometimes struggling to pay for care,[173] it is no wonder

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[170] Sharon A Clark, "The Impact of the Hippocratic Oath in 2018: The Conflict of the Ideal of the Physician, the Knowledgeable Humanitarian, Versus the Corporate Medical Allegiance to Financial Models Contributes to Burnout," Cureus. 2018 Jul; 10(7): e3076, Published online 2018 Jul 30. doi: 10.7759/cureus.3076. See also: "Feeling like the enemy: the emotion management and alienation of hospital doctors," John-Paul Byrne , et al., Front Sociology, 2023 Aug 24:8:1232555. doi: 10.3389/fsoc.2023.1232555. eCollection 2023.

[171] *Ibid.*, Clark.

[172] *Ibid.*, Clark.

[173] "Remarkably, [even] a high-income person in the U.S. was more likely to report financial barriers than a [non- U.S.] low-income person relative to nearly all the other countries surveyed: Australia, Canada, France, Germany, the Netherlands, New Zealand, Norway, Sweden, Switzerland, and the U.K," Commonwealth Fund, "Press Release: New International Study: U.S. Health System Ranks Last Among 11 Countries; Many Americans Struggle to Afford Care as

> that a two-millennium tradition of professionalism risks devolving into something more transactional, more like the ancient Greek medical "tradesmen" who served themselves by treating only the rich. This "deterioration of hospital doctors' relationship with work," writes John-Paul Byrne , "is a threat to health systems and organizations."[174]

Despite the challenges and threats to trust in the today's physician-patient relationship, Gallop polling on honesty and ethics suggests the relationship, while frayed, exceeds all other professions —except for nurses, who have ranked #1 for trust by double digits for 33 of the past 34 years. Doctors' trail nurses by 14 to 22 points, but Gallop typically finds that nurses, doctors, pharmacists and vets, are all in the top five.[175]

Despite the harm suggested by all the above — to doctors and nurses and other providers, patient trust, our sense of community, and our health systems and organizations — there may be some hope that so many health care workers are suffering moral injury: namely, their ideals remain focused on putting the well-being of patients first.

Fiduciary Duties of Financial Advisors & Guardians

When people hear the phrase "fiduciary duty," they often think of **financial advisors** who pledge to put the financial interests of the investors they advise above their own financial interests. Companies that offer investment services meeting "fiduciary standards" often mention that their advisors are legally required to avoid all conflicts of interests, meaning avoiding situations where the advisor's (personal or corporate) financial interest might be in conflict with their client's. They promise to avoid investments that other advisors might recommend, such as investments in annuities or managed funds that deliver hidden commissions— or other "back-door" financial incentives — that benefit the advisor to the detriment of the investor. That said, the onus is on investors to recognize whether their advisor is, indeed, legally required to be a fiduciary. If an investor is harmed by trusting someone who isn't legally a "fiduciary," there is often limited legal recourse, or none.[176]

Income Inequality Widens," Aug 04, 2021, https://www.commonwealthfund.org/press-release/2021/new-international-study-us-health-system-ranks-last-among-11-countries-many

174 "Feeling like the enemy: the emotion management and alienation of hospital doctors," John-Paul Byrne , et al., Front Sociology, 2023 Aug 24:8:1232555. doi: 10.3389/fsoc.2023.1232555. eCollection 2023.

175 "Charted: The most trusted professions in America, according to Gallup" *Advisory Board*, March 2023, https://www.advisory.com/daily-briefing/2023/01/18/trusted-professionals#:~:text=2%2C%202022.,for%20over%2020%20years%20now, and Gallop, https://news.gallup.com/poll/467804/nurses-retain-top-ethics-rating-below-2020-high.aspx

176 *WaPo*, Michelle Singletary, "Should your financial adviser act in your best interest? You decide," 2/9/2017, https://www.washingtonpost.com/business/get-there/should-your-financial-adviser-act-in-your-best-interest-you-decide/2017/02/09/3c207270-ed6d-11e6-b4ff-ac2cf509efe5_story.html

We may also think of those who act in a legal capacity as having fiduciary duties. People appointed by a Court to be "**legal guardians,**" for example, are expected to protect and serve "wards" who are not considered capable of advocating for themselves, e.g., minors, adults with diminished cognition or neurological incapacity, and, too often, nursing home patients, regardless of capacity. Conflicting financial incentives can corrupt this trust, for example, by nursing homes and hospitals who sue for guardianship (sometimes without notifying the next of kin), not to protect the patient, but purely to collect on debt. One study by the *Syracuse Law Review* provided multiple case studies, noting that 29% of the hundreds it investigated were filed by hospitals and nursing homes — one such case study involved a Virginia hospital abusing guardianship for hundreds of nursing home patients by creating highly conflicted relationships that enriched lawyers beholden to the hospital.[177]

Similarly, a study by Hunter College reported in the *New York Times* details a case study where an elderly husband, protesting a sudden doubling of co-pays in bills presented by his 90-year-old wife's nursing home, could not prevent the nursing home from gaining guardianship over all her finances (and therefore his). The study found that of 700 guardianship cases brought in Manhattan over a decade, 28% were brought by nursing homes and hospitals, noting that

> ... lawyers and others versed in the guardianship process agree that nursing homes primarily use such petitions as a means of bill collection — a purpose never intended by the Legislature when it enacted the guardianship statute in 1993.[178]

Fiduciary Duties of 20th-Century Corporations — How Car Manufacturers Evolved

Both Private Equity (PE) and ACO/REACH investments in health care, sometimes described as capitalism on steroids, have sometimes put physicians on their boards or listed them as owners. It is reasonable to ask, "Does having a physician, whose first duty is to patients, on a corporate board cause that corporation to reduce its emphasis on investor/shareholder value?" The short answer is "No."

Seventy or eighty years ago, the answer might have been, "Yes."

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[177] *Syracuse Law Review*, Alison Hirschel & Lori Smetanka, "The use and misuse of guardianship by Hospitals and nursing homes," vol 72:255, Sept 2022, pp. 263-266, https://lawreview.syr.edu/wp-content/uploads/2022/09/255-289-Hirschel-2.pdf

[178] *NYTimes*, by Nin Bwenarwin, To Collect Debts, Nursing Homes Are Seizing Control Over Patients," 1/25/2015, https://www.nytimes.com/2015/01/26/nyregion/to-collect-debts-nursing-home-seizing-control-over-patients.html

To make this shift in attitudes starker, Wartzman quotes 1950's business leader J. D. Zellerbach:

> The majority of Americans ... regard business management as a stewardship, and they expect it to operate the economy as a public trust for the benefit of all the people.[190]

Corporations Focus on Shareholders — and Short-Term Profits

That social contract of the 1950s and 1960s, according to Wartzman,

> began to fray in the 1970s, and it has since been totally ripped apart. Myriad culprits are to blame, including rapidly advancing technology, heightened global competition, the weakening of unions and, perhaps more than anything, **a horribly misplaced mindset that has elevated stockowners above all other groups**.[191]

Where did this "horribly misplaced mindset" come from? Milton Friedman, the University of Chicago free-market economist, who wrote in 1970:

> There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits.[192]

It was slow to be accepted in the 1970s, but Friedman's approach gained ground in the 1980s. So-called "corporate raiders" launched hostile takeovers fueled by junk bonds. Business leaders began seeing stock price as either a vulnerability or a weapon. The social contract went from frayed to destroyed as corporate executives

> tossed aside their more complacent and paternalistic management style, and with it a host of inhibitions against laying off workers, cutting wages and benefits, closing plants, spinning off divisions, taking on debt, moving production overseas.[193]

Greed became "good," to quote Gordon Gekko in the 1987 Hollywood hit "Wall Street." Robert Reich, Former United States Secretary of Labor, described the period like this:

> During the whole of the 1970s, there were only 13 hostile takeovers of big companies valued at $1 billion or more. During the 1980s, there were 150. Between 1979 and 1989, financial entrepreneurs mounted more than 2,000

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190 *Ibid.* Wartzman, emphasis added. Zellerbach was chairman of the board of the Crown Zellerbach Corporation, which produced the specially-coated paper that gave *Time* and *Life* magazine their glossy colored photographs

191 *Ibid.* Wartzman, emphasis added

192 https://www.mckinsey.com/featured-insights/corporate-purpose/from-there-to-here-50-years-of-thinking-on-the-social-responsibility-of-business

193 *The American Prospect*, "When Shareholder Capitalism Came to Town" by Steven Pearlstein, 4/19/2014 https://prospect.org/economy/shareholder-capitalism-came-town

> leveraged buyouts, in which they bought out shareholders with borrowed money, each buyout exceeding $250 million.
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> As a result, CEOs across America, facing the possibility of being replaced by a CEO who would maximize shareholder value, began to view their responsibilities differently. Few events change minds more profoundly than the imminent possibility of being sacked.[194]

According to Reich, this dramatic increase in hostile takeovers triggered a "decline of the common good over the last four or five decades," and

> Wall Street became the most powerful force in the economy, and CEOs began to devote themselves entirely and obsessively to maximizing the short-term value of shares of stock — whatever it took.
>
> **Before then, it was assumed that large corporations had responsibilities to all their "stakeholders"— not just their shareholders, but also their employees, the communities where their operations were located, their customers, and the public at large.**
>
> In the 1940s and 1950s, CEOs of major corporations like GE, General Motors, Coca-Cola, and Eastman Kodak ...[lobbied] for measures to expand jobs... argued that unions "serve the common good" ... [and even] lobbied for stronger environmental protections and for passage of the Environmental Protection Act.
>
> Starting in the 1980s ... a wholly different understanding of the corporation emerged.
>
> **The raiders targeted companies that could deliver higher returns to their shareholders if they abandoned their other stakeholders — by fighting unions, cutting workers' pay or firing them, automating as many jobs as possible, outsourcing other jobs, and abandoning their original communities by shuttering factories and moving jobs to states with lower labor costs or abroad.**[195]

Corporations Now Exist to Maximize Shareholder Value

Over the course of the period Reich describes, from the 1980s through the 2000s, corporate raiders made extraordinary profits by dismantling the companies they acquired. A niche business evolved, as some (usually privately held) companies began rebranding, rehabilitating their activities as dedicated to making under-performing corporations operate more "efficiently" — asserting they created (or salvaged) value, rather than destroying it:

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[194] Robert Reich, "The End of Stakeholder Capitalism," 9/1/23, https://robertreich.substack.com/p/jack-welch-and-the-end-of-stakeholder

[195] *Ibid.*, Reich, emphasis is in the original

As Reich puts it:

> SINCE THEN, corporate raiders have morphed into more respectable “private equity managers” and “activist investors.” Hostile takeovers have become rare because **corporate norms have changed: It’s now *assumed* that corporations exist only to maximize shareholder returns**.
>
> Corporations have used their profits to give shareholders dividends and to buy back their shares of stock — thereby reducing the number of shares outstanding and giving stock prices short-term boosts. All of this has meant more money for the top executives of big companies, whose pay started to be linked to share prices in the early 1990s. **CEO pay soared from an average of 20 times that of the typical worker in the 1960s to almost 380 times by 2023.** [196]

Although the protagonists of the 1987 movie "Wall Street" seem headed to prison at the end of the movie, they project glamor and glitz:

> In reviewing the film's sequel 23 years later, *Variety* noted that though the original film was "intended as a cautionary tale on the pitfalls of unchecked ambition and greed, Stone's 1987 original instead had the effect of turning Douglas' hugely charismatic (and Oscar-winning) villain into a household name and boardroom icon – an inspiration to the very power players and Wall Street wannabes for whom he set such a terrible example."[197]

The 1990 Hollywood hit "Pretty Woman" features a corporate raider seeking to dismantle a family-owned business, only to change his mind because he falls in love with a woman who offers him redemption when he chooses to confess, atone, and sin no more. In stark contrast, is the raider's corporate lawyer who is so enraged by his boss's scuttling the deal that he shows himself both immoral and criminal. The movie has it both ways: the Gear character is redeemed by a good woman, but his business practices, which have made him so wealthy, at the end taint only the lawyer.

Popular Backlash — Still Fringe

In the past decade, there has been periodic commentary on the dangers associated with Friedman's "horribly misplaced mindset." A recent McKinsey white paper — on the 50-year anniversary of Friedman's answer to "a fundamental question: what is the role of business in society?" noted

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[196] *Ibid*, Reich, emphasis added

[197] *Variety*, "Wall Street: Money Never Sleeps," Justin Chang, 5/14/2010, https://variety.com/2010/film/markets-festivals/wall-street-money-never-sleeps-1117942753/, quoted in https://en.wikipedia.org/wiki/Wall_Street_(1987_film)

> That view has long influenced management thinking, corporate governance, and strategic moves. But more recently, many leaders have sought to expand that definition to consider all the stakeholders who stand to gain—or lose—from organizations' decisions.[198]

In 2019, for example, a Harvard Law School Forum on Corporate Governance, entitled "*Towards Accountable Capitalism: Remaking Corporate Law Through Stakeholder Governance*" argues against "shareholder primacy," describing it as a "singular goal" for "maximizing shareholder value" which

> often comes at the expense of investments in workers, innovation, and long-term growth—has contributed to today's high-profit, low wage economy. [199]
>
> They describe it as a "flawed theory in corporate law and policy" that ignores "Increasing economic evidence ... that shareholder primacy is not benefiting other corporate stakeholders, including workers, suppliers, consumers, or communities," and has allowed corporations to organize trillions of dollars of capital and create wealth beyond what most countries possess, ultimately exacerbating economic inequality by building incredible **wealth for shareholders while contributing to decades of wage stagnation**.[200]

They recommend a number of public policy changes:[201]

- "Rewrite corporate purpose statements, so that corporations are committed by law to act in the public's best interests"
- Extend Board Fiduciary Duty to All Stakeholders (so that directors no longer "are only accountable to shareholders for their decisions") because it "would benefit corporate prosperity at large."
- Federalize Corporate Governance — to disable the "state-driven incorporation model, which exploits states' pursuit of incorporation revenue and has driven a "race to the bottom" for shareholder-friendly incorporation laws"— by establishing "federal chartering for our large corporations"[202]

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198 https://www.mckinsey.com/featured-insights/corporate-purpose/from-there-to-here-50-years-of-thinking-on-the-social-responsibility-of-business

199 Harvard Law School Forum on Corporate Governance, entitled "Towards Accountable Capitalism: Remaking Corporate Law Through Stakeholder Governance," posted by Lenore Palladino, Kristina Karlsson, 2/11/2019 https://corpgov.law.harvard.edu/2019/02/11/towards-accountable-capitalism-remaking-corporate-law-through-stakeholder-governance/#comments

200 *Ibid*, HLS Forum

201 All points from *Ibid*, HLS Forum

202 *Ibid*, HLS Forum: "Today, 66 percent of Fortune 500 corporations are established in Delaware due to its lax corporate laws."

DCEs & ACO/REACH — Do MDs on Boards Ensure Fiduciary Care to Patients?

As part of the ACA (Affordable Care Act, AKA Obamacare), CMS created the CMMI (Centers for Medicare & Medicaid Innovation). Its purpose: to improve quality and control costs within Medicare by testing new payment models. CMMI introduced DCEs (Direct Contracting Entities) during the Trump Administration and they were (briefly) continued under the Biden Administration until public outcry caused a CMMI to replace them with ACO/REACH programs (also discussed elsewhere in this study report.)

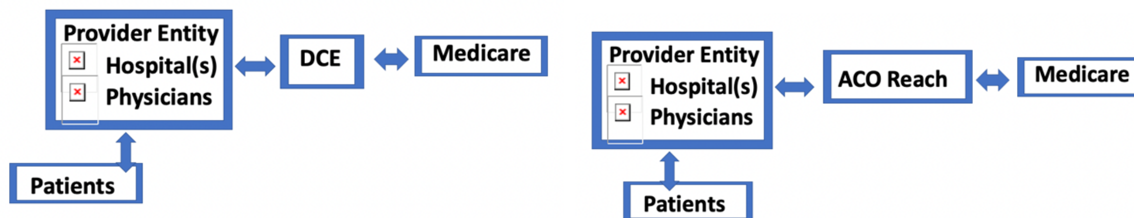
Both DCEs and ACO/REACH programs put physicians on their boards — promoting them as different from other investor-owned middlemen that siphon off taxpayer dollars for private profit. Their premise: board members who are physicians will ensure that patient needs are protected, just as ACOs (Affordable Care Organizations) protect patients.

Neither history nor common sense supports the premise that putting physicians on the boards of investor-owned corporations changes the business models of those corporations.

ACOs are providers. The boards of ACO's are established boards of existing hospitals (or already existing medical groups), rather than new entities. They are ACOs by virtue of having shared savings contracts with Medicare where, at the end of the year, per patient costs are compared to their benchmark, e.g., per patient costs of prior years.

By contrast, DCE entities are third-party corporations that sit between providers and Medicare — and patients may not learn they are in a DCE despite having constrained care or being guided away from physicians they have seen before.

ACOs provide healthcare. DCEs and ACO/REACH entities are investor-owned corporations and don't themselves provide healthcare services. ACO-REACH entities are DCEs that have been rebranded with a new name. Both capture unknowing patients who had chosen Traditional Medicare. They stand between providers and Medicare, operating with their own business models, typically as for-profit corporations regulated by the SEC (or as private equity, not really regulated by the SEC). Like other private corporations, their investors are motivated by profit, not social or environmental benefit. In 2021 over half of GLO PRO DCE's had Private Entity or Venture Capital investors, signaling how highly profitable they can be.



ACO-REACH entities claim to be like ACOs because they require having providers and at least one patient on their boards, but the presence of diverse stakeholders on corporate boards does not change the fiduciary responsibility of boards. Any assumed "social impact" influence by such board representation will be legally constrained. ACO-REACH board decisions will be required to maximize investor value, not focus on those served by any provider network with which they have a contract. Besides the legal constraints on board members, financial incentives offered to investors/members will conflict with (and thus discourage) any other considerations.

Bluntly, physicians and patients who serve on a corporate (for-profit) board must make decisions to maximize shareholder/investor value or put themselves at risk of legal challenges. As one poster to a recent Harvard Law School Forum on Corporate Governance wrote:

> The dominant framework of corporate governance is "shareholder primacy," or "shareholder value maximization." ...A corporation's board owes its "fiduciary duties" exclusively to shareholders ...Crucially, if corporate leaders' decisions are driven by other priorities, they can be challenged either by "activist" investors threatening to take over boards, or by legal action ...What's more, corporate insiders have been further incentivized to run companies with share price maximization as their north star because company executives receive increasing amounts of their compensation in ways that tie it to rising share value, ultimately uniting their interests with shareholders.[221]

This theory of "shareholder primacy," as discussed above, is most compellingly associated with economist Milton Friedman who described the doctrine of corporate "social responsibility" as:

> a "fundamentally subversive doctrine" in a free society, ...[because] in such a society, "there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long

[221] "Towards Accountable Capitalism: Remaking Corporate Law Through Stakeholder Governance," by Lenore Palladino and Kristina Karlsson, Roosevelt Institute, Feb 11, 2019 https://corpgov.law.harvard.edu/2019/02/11/towards-accountable-capitalism-remaking-corporate-law-through-stakeholder-governance

> as it stays within the rules of the game, which is to say, engages in open and free competition without deception fraud."[222]

The Business Roundtable recently announced a new "standard" that would loosen shareholder primacy so that corporate boards could include in their decision making such concerns as climate change, wage issues, health and safety issues. That announcement, also discussed above, has been criticized as a public relations gambit designed to tamp down on regulation. Although others have offered substantive arguments for how shareholder primacy has harmed American workers, communities, corporations themselves, and even democracy, they have largely gone unheeded because, as *Fortune* notes,

> There is no requirement on corporations to look after their stakeholders and for the most part they do not, because if they did, they would incur the wrath of their shareholders. That was illustrated all too clearly by the immediate knee-jerk response of the Council of Institutional Investors to the Roundtable declaration last year, which expressed its disapproval by stating that the Roundtable had failed to recognize shareholders as owners as well as providers of capital, and that "accountability to everyone means accountability to no one."[223]

Case Study of Private Equity Control of Emergency Rooms (ER)

Should anyone doubt the insignificant value of appointing doctors to boards of directors or their "supervising" business operations of investor-owned corporations, we can look to some of the examples detailed in Gretchen Morgenson and Joshua Rosner's *These Are the Plunderers: How Private Equity Runs — and Wrecks America.*[224]

They describe the role of private equity's takeover of Emergency Medicine; by 2020, Blackstone Inc. and Kohlberg Kravis Roberts & Co (also known as KKR & Co. Inc. or KKR,) owned contracts on more than a third of all emergency rooms (ER) and other PE firms brought the total to 40%. Envision HealthCare (owned by KKR) provided physicians and other healthcare staff to 540 facilities in 45 states.[225]

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[222] "A Friedman doctrine —The Social Responsibility Of Business Is to Increase Its Profits," Milton Friedman, *NY Times*, 9/13/1970. https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html

[223] https://fortune.com/2020/09/13/milton-friedman-anniversary-business-purpose/ quoting Council of Institutional Investors here: https://www.cii.org/aug19_brt_response

[224] Gretchen Morgenson and Joshua Rosner, *These Are the Plunderers: How Private Equity Runs — and Wrecks America,* Simon & Schuster, 2023

[225] *Ibid*, p.196.

The authors note many state laws that prohibit corporations from practicing medicine and doctor fee-splitting with non-doctors, that require providers to put patient needs first, and that only licensed providers may own/operate healthcare facilities, etc. They then describe organizational structures that appear to be run by physicians (which therefore appear legal), but actually have corporate control (violating the spirit of the law, if not its letter).

The doctors receive a title and a salary "for the use of their licenses," but have "no oversight of the operation and can be terminated by the corporation states.[226] One such doctor (who we will return to in a few paragraphs), **Gregory Byrne**, "owned" 300 practices in California, Florida, Massachusetts, New York and elsewhere; the address of all those practices was the Envision headquarters in Tennessee, and the profits flowed to Envision.[227] When Envision was sued by “activist investors" (who happened to be emergency room physicians angry about what they saw as a corporation practicing medicine), Envision stonewalled.

Morgenson describes one "most disturbing example" from 2017. An ER doctor name Ray Brovont sued for wrongful dismissal from Overland, a Kansas City ER owned by HCA, "which often contracts with Envision and TeamHealth to run its emergency departments."[228] When Brovont began working at Overland, which required having an MD available 24/7, he was told that ER physicians were required to leave the ER whenever a "code blue" occurred.

> elsewhere in the hospital, even if it meant leaving the emergency department without a physician to handle code blues there. For many hours each day, the emergency department was staffed with only one MD.[229]

Then the hospital added a "new and separate pediatric emergency room" which doubled its size. This staffing violated guidelines of the American College of Surgeons and it violated federal law, the Emergency Medical Treatment and Labor Act."

Brovent began advocating up the corporate chain to solve this problem by hiring another MD. He received an email response saying,

> HCA is a for-profit company traded on the New York Stock Exchange... Many of their staffing decisions are financially motivated. EmCare is no different. Profits are in everyone's best interest.

After continued advocacy because the staffing dangers were not being resolved, Brovont was told that he was "unfit" to remain as Medical Director, with the comment:

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226 *Ibid*, p.196.

227 *Ibid.*,p.198.

228 *Ibid.*, p.199.

229 *Ibid.*, p.201. Also source for the next three quotes.

> You know you cash the check every month to be a corporate representative, and there is a responsibility as the corporate representative to support the corporation's objectives.[230]

Worse than just being fired, he was also blackballed from all nearby facilities, and his colleagues who had signed letters and petitions suddenly found themselves in a

> “weird cult of coercion" where you'd be fired if you didn't do what you were told. Younger doctors, shouldering significant amounts of student loan debt, reported being especially fearful of losing their positions if they complained. So they went quiet.

After finally finding a job, Bovine sued Envision for wrongful termination, and discovery brought forth more distressing details. The titulary owner of the Overland ER practice was **Gregory Byrne**, who had had no role in the Overland's ER operations or in the termination of Brovont. Indeed, Brovont had "never met or heard" of him.[231]

This is what the corporate practice of medicine looks like. Fiduciary care goes to shareholders, not to patients, nor to physicians, nor to the community.

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[230] *Ibid.*, p.202. Also source for next quote

[231] *Ibid.*, p.203.