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Dedication

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DEDICATION

The cover story in *TIME* magazine's July 31, 1989, issue was entitled, "Sick and Tired: Uneasy Patients May be Surprised to Find Their Doctors are Worried Too." It detailed the growing distrust among patients of their health care providers and of the co-ordinate response mechanism of defensive medicine practiced by physicians and related providers. Our dedicatees are notable exceptions to many of the disappointed and frustrated physicians who were highlighted in this story. Their collective experiences and committed service over a span of some one hundred and forty years, disclose a record of consistently high and exemplary professional conduct; one of continuing hope, vision and positivism; one of compassion and patient concern; and one of continuing dedication to the fundamental healing service of their profession in medicine and its specific specialities in ethics, pediatric surgery, ophthalmology and health maintenance insurance. We are indeed heartened by their spirit of service and reminded that, for these four physicians, the Oath of Hippocrates of Cos is a daily commitment and, as important, their very essence. The Hippocratic Oath, to which every young physician ascribes before admission to the practice of medicine states:

I swear by Apollo the physician, by Aesculapius, Hygeia, and Panacea, and I take to witness all the gods, all the goddesses, to keep according to my ability and my judgment the following Oath:

To consider dear to me as my parents him who taught me this art; to live in common with him and if necessary to share my goods with him; to look upon his children as my own brothers, to teach them this art if they so desire without fee or written promise; to impart to my sons and the sons of the master who taught me and the disciples who have enrolled themselves and have agreed to the rules of the profession, but to these alone, the precepts and the instruction. I will prescribe regimen for the good of my patients according to my ability and my judgment and never do harm to anyone. To please no one will I prescribe a deadly drug, nor give advice which may cause his death. Nor will I have a woman a pessary to procure abortion. But I will preserve the purity of my life and my art. I will not cut for stone, even for patients in whom the disease is manifest; I will leave this operation to be performed by practitioners (specialists in this art). In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill-doing and all seduction, and especially from the pleasures of love with women or with men, be they free or

slaves. All that may come to my knowledge in the exercise of my profession or outside of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and will never reveal. If I keep this oath faithfully, may I enjoy my life and practice my art, respected by all men and in all times; but if I swerve from it or violate it, may the reverse be my lot.¹

By dedicating this volume of *The Journal of Contemporary Health Law and Policy*, we not only record our high esteem and gratitude to our four dedicatees, but we affirm our abiding faith in the inherent integrity of the healing arts profession.

1. DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 680 (24th ed. 1965).



EDMUND D. PELLEGRINO: A PHYSICIAN-PHILOSOPHER

There are academics whom we honor for the corpus of their published works. Others are renowned for their pedagogy. Medical professionals are cherished for their knowledge and skill as well as their ability to inspire and comfort in the process of healing. University administrators are admired for their ability to orchestrate consensus and build confidence in the present and faith in the future of their institutions. Great professors who direct research institutes and coordinate symposia and conferences are known for their entrepreneurial spirit and innovative ability to test the perimeters of knowledge. Professional school educators are appreciated for their nurturing of students in the difficult process of training. Philosophers speculate in realms of truth and inform and enlighten decision making. In many institutions faculty members with these characteristics would constitute an ideal department or school. At Georgetown University they are brought together in the person of Edmund D. Pellegrino, M.D..

Few scholars are as productive as Ed. A catalogue of his publications includes over three-hundred articles, forty scientific papers, thirty-five abstracts, over seventy-five book reviews and some ten major books and monographs. His lectures take him to every area of the world. His is the voice of the Catholic humanist professional. As the John Carroll Professor of Medicine and Medical Humanities at Georgetown, he is an authority on professional morality and ethics in medicine. We are fortunate in the emerging world of new biology and new technologies to have such a commentator. The decisions ahead for each of us in our personal lives will be guided by Dr. Pellegrino's insights. Our personal physicians cannot avoid the issues he illuminates and cannot afford to ignore the balanced reason he brings to complex life decisions. In this way, Ed touches each of us in our personal lives through his mind and pen.

This integration of science, medicine, philosophy with a commanding personality and practical skills is the source of Dr. Pellegrino's enormous impact. He is a physician as Maimonides was a physician. He cures the body and the mind and ministers to the spirit and the intellect. The great philosophical movements of the Judeo-Christian tradition become in him the normative values of professionalism. Difficult issues are settled and intractable problems are unraveled because the whole of the experience of man is brought to the solution.

Dr. Pellegrino is a man of many aspects. He is warm in his personality and delightful in repartee. His physical and intellectual energy are palpable. A conversation with him is a joy. A project undertaken with him is a fulfil-

ling process. In the difficult daily decision making of the academic administrator he proved to be a master of practical wisdom. Every aspect of a problem was explored. Every relevant person and perspective was brought to the table. The "worst case scenario" was explored. The final decision was the product of deliberation and thoughtful introspection. When a judgement was made the strong executive emerged and the decision implemented. For all it was a learning experience. For none it was a process to regret. The responsibility for the judgment was fully accepted by Dr. Pellegrino and all prior conversation and conversants were merged in the decision. He was the perfect client. He appreciated and understood advice and filtered it through his own high standards of professionalism and rationality.

These practical virtues have been applied to a number of institutions. Ed served as Medical Director at Hunterdon Medical Center; Chairman of the Department of Medicine and Director of Medical Service and Senior Physician at the University of Kentucky; Chairman of the Department of Medicine, Dean of the School of Medicine and Director of the State University of New York Health Services Center at Stony Brook; Chancellor of the Center for Health Services and Vice President for Health Affairs at the University of Tennessee; and President and Chairman of the Board of Directors of the Yale-New Haven Medical Center. He served as President of the Catholic University of America from 1978 until 1982.

To most this would be challenge enough in higher education, but not for Dr. Pellegrino. He served as Director of the Kennedy Institute of Ethics at Georgetown University until 1989 and has recently accepted appointment as Director of the Georgetown University Center for the Advanced Study of Ethics. A better challenge to his talents cannot be imagined. He has undertaken to determine the organizational structure of a university-wide study of ethics. He will create the center as a focal point for the study of ethics in a multidisciplinary major Catholic institution. It would be difficult to create a job description more ideally suited to his professional career and interests.

Because Edmund D. Pellegrino is the physician-philosopher it is particularly appropriate that this issue of the *Journal* is dedicated to him. He was University President when the idea for the *Journal* became reality. He inspired the formation and supported the enterprise with his expertise. He has taken pleasure in the *Journal's* growth and in its commitment to the exploration of those issues which have been the focus of his professional life.

Dr. Pellegrino is a husband and father whose family is both a satisfaction and an inspiration to him. He is warm and generous in his friendships. His knowledge is encyclopedic and his curiosity vibrant. His humanity shines through in all of his endeavors. He earns success and wears honors grace-

fully. He adds to all that he does and enriches those who work with him. In sum, his is a great life well lived.

Steven P. Frankino
Dean, Villanova University Law School
Founding Dean, The Journal of Contemporary Health
Law and Policy, 1984



BENJY F. BROOKS: THE LONE RANGERETTE RIDES AGAIN!

“Who was that masked woman?” asked the observer in the hospital’s pediatric surgery family waiting area. “That was Dr. Benjy Brooks! She just operated on our child and everything’s going to be OK!”

This kind of scene was re-enacted for the faithful listeners to the Lone Ranger radio show three times every week for many years, but for Dr. Benjy Brooks, who is somewhat cavalierly referred to here as the Texan Lone Rangerette, the analogous scene has been a daily affair for almost half a century.

The purpose of a dedicatory essay for a journal such as this one is to convey the sense of the person being honored to the readers who don’t know her. The simplest approach to this kind of task, and possibly the most direct, would be to provide you with data such as her graduation from North Texas State University in 1938, her acquisitions of a Master of Science degree from the same university in 1940, an M.D. degree from the University of Texas in 1948, an M.A. in philosophy from the University of St. Thomas in 1987, and most recently, an LL.D. from the University of St. Thomas. Additional relevant data would include the fact that she is triple-boarded having received certification from the American Board of Pediatrics in 1955, from the American Board of Surgery in 1959 and from the American Board of Pediatric Surgery in 1976. Having pointed out that these various specialty training experiences took her to Philadelphia, Boston and Glasgow, where she received tutelage from many of the great figures in these fields, one could then simply report that she became the founding head of the division of pediatric surgery at the University of Texas School of Medicine in Houston, performing in that post with great distinction from 1976 through 1986. Leaving the operating room at that time, she turned to medical ethics, spent some time at Cambridge University in England and at the University of St. Thomas, preparing herself for a new career of educating people about the ins and outs of medical ethics. Somehow, that simple and direct approach is inadequate to describe her and I abandoned it.

Another approach would be to describe for the reader in qualitative terms what Dr. Brooks has done and what she has meant to so many people with whom she has intersected and to make the connection between those positive outcomes and the receipt of a whole host of outstanding awards and honors that have been bestowed upon her. Following that line, I would spell out the veritable legion of young infants and children, now more fully grown, sometimes into adulthood, who owe their lives to her interventions and who frequently return to an annual pediatric surgery colloquium in her honor. The

families of those patients have formed a Benjy Brooks Foundation for Children and work tirelessly in her name to raise money for children's health. Taken together, these people, who have become her extended family and who love her have been a part of the forces which have led to her election to receive the Gold Medal Award for Life-Saving from the Hospital Order of St. John and the St. John Humanitarian Award.

Dr. Brooks serves other people every day who are not her patients: she serves the cause of women in their quest for equal opportunity professionally and socially. A woman surgeon was uncommon, but a woman pediatric surgeon even rarer when Dr. Brooks returned to Texas in 1958, later to become the highest ranking woman on the University of Texas medical school's faculty as Professor of Surgery and Special Assistant to the President for Ethics. She fought for equal treatment for the burgeoning number of women entering medical school and served as a wonderful role-model for all of them who encountered her. She worked for them by committing countless hours to the thankless work of the medical school admissions committee and was instrumental in establishing a university wide "Status of Women" Committee, charged with enhancing the lives of all of us at the university by insuring that women were more fairly treated. These efforts and the nature of her professional success earned her election to the Texas Women's Hall of Fame, the Distinguished Professional Woman Award from the University of Texas Health Science Center, the YWCA Outstanding Woman's Award, The Houstonian of the Year Award and the Artist of Life Award from the International Woman's Writing Guild. This approach too seemed inadequate to convey her essence to you, so I abandoned it.

The third way would be to point out that her professional achievements have not only been to bring the new specialty of pediatric surgery to the southwestern part of the United States and to operate upon countless patients, but her scholarly interests have culminated in an impressive array of publications ranging from such subjects as the preservation of blood, typhoid fever, cystic fibrosis, and hepatitis to textbooks on pediatric surgery, and most recently to consideration of the ethical dilemmas in the treatment of critically ill newborns. It is likely that these efforts are the ones that led to her being chosen Distinguished alumna of both North Texas State University and of the University of Texas Medical Branch. In 1982, she was chosen to receive The Women in Science Award from the Federation of Houston Professional Women. Possibly the award that gives her the most pleasure ultimately derives from these professional successes as well; she seems personally most pleased to have been chosen to receive the National Horatio Alger Award in 1983. But this approach also seems to fall short in getting her across to you.

As a friend of Dr. Brooks from the time I began a ten year stint in Houston in 1978, I have learned something about the Texas character and of the values that Texans hold dear. Such generalizations are always dangerously inaccurate, but it strikes me as a proudly naturalized Texan that such a perspective on Benjy Brooks as quintessential representative of so many of the best typically Texan qualities might in fact give the reader the sense of specialness about her. Texans are independent, fiercely individualistic, believe strongly in the capacity of the human being to accomplish almost anything; the best of them in their best moments are unafraid to tackle adversity and almost impossible odds. They are also pretty good politicians, knowing how to get people to go along or to join in their cause. If you can imagine what it must have been like to come to a hospital to start a new division of pediatric surgery only to find there was no place for a woman physician to dress for the operating room, then you can sense how Benjy Brooks needed every bit of those supposed Texas qualities listed above in order to survive and to succeed.

I once heard someone divide the human race into two groups: those who serve people and those who use people. I feel confident in fact that all of us fit into both groups at one time or another; and the decision as to where we ultimately fit depends upon how often we belong in the one group or the other. For physicians especially, the great ones must, by definition, see themselves as being around for the purpose of serving people. Benjy Brooks spends her days serving people or attempting to do so; that may be the highest accolade. Since it always seemed to me that that was what the Lone Ranger was about as well, then maybe thinking of her as the Texan Lone Rangerette isn't so out of line after all. Dr. Brooks, we salute you!

*Roger J. Bulger, M.D., President, Association of Academic Health Centers,
President, The University of Texas Health Science Center at Houston,
1978 to 1988.*



JOHN W. MCTIGUE: CHURCHMAN, PHYSICIAN AND FRIEND

John W. McTigue, M.D. is a man who has integrated the life of the dedicated Christian and the life of the dedicated physician. As both Churchman and surgeon his reputation and realm of activity are international in scope and his work is held in highest esteem. Transcending both, however, is his recognition as a friend and reconciler of people.

A pre-medical graduate of the University of Virginia, Dr. McTigue completed his medical education in 1950 at the University of Pennsylvania. His internship and initial residency in Ophthalmology at the Hospital of the University of Pennsylvania were followed by a second residence at the Institute of Ophthalmology at Presbyterian Hospital in New York completed in 1957. He served as a Lieutenant in the U.S. Navy from 1952-54.

Dr. McTigue's training prepared him for numerous appointments to follow. Initially he served as Assistant in Ophthalmology at Presbyterian Hospital in New York and at the College of Physician and Surgeons at Columbia University in New York. Following his move to Washington, D.C., Dr. McTigue was the founder and chairman of and professor in the Department of Ophthalmology at George Washington University. Dr. McTigue also founded the Department of Ophthalmology at Doctor's Hospital in Washington and the National Eye Foundation.

Director of the Washington Eye Center, member of the Senior Attending Staff of the Washington Hospital Center and member of the Executive and Teaching Staff of Doctor's Hospital, Dr. McTigue has also served as consultant in numerous Washington-area institutions including Walter Reed Army Medical Center and the White House. Past surgical director of the Lions of District 22-c Eye Bank and Research Foundation in Washington, Dr. McTigue has been honored as the Lions International Humanitarian of the Year.

Among his many society memberships, Dr. McTigue has been inducted into the American Ophthalmological Society and the Oxford Ophthalmological Congress. His professional service has included being president of the Eye Bank Association of America and the Prevention of Blindness Society and serving as chairman of the Section on Ophthalmic Surgery of the Continuing Education Committee of the American Academy of Ophthalmology.

The list of reference of Dr. McTigue's contributions to medical and surgical literature runs several pages. It reflects his primary interest in diseases and surgery of the anterior segment of the eye and his particular interest in light and electron microscopic studies of the cornea.

Dr. McTigue is engaged in private practice in Washington. He is married to the former Georgene Armstrong Davis; they have four children and live in Washington and Montreat, North Carolina.

As past president and current board member of the National Cathedral Association, Dr. McTigue has worked effectively to advance the completion of the Washington National Cathedral which will occur in 1990. As a member of the Cathedral Chapter and its Executive Committee, Dr. McTigue works to advance the mission of the Cathedral. Through the years, Dr. McTigue has served on the boards of all of the Cathedral institutions being chairman of the Board of Governors of the National Cathedral School and a member of the Council of the College of Preachers.

Dr. McTigue is the first layperson to be named chairman of the Chapter Program Planning Committee overseeing program development for the Cathedral. He is known as someone who asks "the hard questions" and is constantly working towards the broadest possible vision for the Cathedral so that it can truly live out its mandate to be a "House of Prayer for All People." Active in the work of the Episcopal Diocese of Washington, Dr. McTigue currently serves on the Committee on Racism for the Diocese.

Inducted by order of Her Majesty Queen Elizabeth II into the Most Venerable Order of the Hospital of St. John of Jerusalem, Dr. McTigue currently holds the grade of Commander Brother in the Order. Dr. McTigue's induction is particularly appropriate because of the primary work of the Order of St. John which is the St. John Ophthalmic Hospital in Jerusalem. In 1987, Dr. McTigue was elected chairman of the Canterbury Cathedral Trust in America, an organization dedicated to building stronger ties between Canterbury and America.

Beyond his many formal positions, Dr. McTigue has served as friend and councillor to Bishops and other leaders of the Church. He is known as a reconciler for his frequent work in resolving differences and calming anxieties that may arise in the course of the work of the Church.

Though his considerable talents are frequently used in the most important positions, no task is too small or humble for Dr. McTigue. For example, he recently arrived early in at a Cathedral service and found that due to the inclement weather the ushers were not available. Dr. McTigue saw the need and took the situation in hand, seating people and handing out bulletins. He would not ask somebody to do something that he himself would not do.

Cathedral, Diocesan and medical staff, patients and the many others who encounter Dr. McTigue all report his consistently encouraging, friendly and loyal perspective no matter their station or position in life.

Two of the questions in the Baptismal Covenant in the *Book of Common*

Prayer are, "Will you seek and serve Christ in all persons, loving your neighbor as yourself?" and "Will you strive for justice and peace among all people, and respect the dignity of every human being?" John McTigue, M.D., Churchman, Physician and Friend responds to those questions affirmatively by work and deed and so serves as an example of one effectively and powerfully proclaiming the Good News of God in Christ.

The Lord Coggan, the 101st Archbishop of Canterbury
The Rev. Canon Charles J. Minifie, President and warden
of the College of Preachers, Washington National Cathedral
The Rev. Randall C.K. Day, Executive Director,
The Canterbury Cathedral Trust in America



BACHRACH

BARRY S. REED: GIFTED HEALER, SKILLED LITIGATOR
AND ASTUTE ADMINISTRATOR

It is with a special sense of gratification that we dedicate this issue of *The Journal of Contemporary Health Law and Policy* to an alumnus of the Columbus School of Law of the Catholic University of America, one whose career is dedicated to grappling with the problems that arise at the intersection of law, medicine and public policy, Dr. Barry S. Reed.

In one sense, the problems of today are not new; one can find them foreshadowed in the Old Testament. In a passage, seemingly prosaic (Exodus, c. 21, v. 19), detailing the elements of damage chargeable to a tortfeasor who causes physical injury, the cost of healing is included. And as the law developed and was applied, the relative cost of delivery of alternative medical services, including the choice of physician, became an issue. (It should occasion no surprise that the tortfeasor was denied the option of choosing a doctor who would serve at no cost to the injured party.)

Medicine is today light years away from where it was when that Biblical verse was formulated. Similarly, our notions of public and private obligations with respect to the delivery of health services have developed dramatically since that era. And the need to define the interrelationship of health care and economics, far from disappearing from the agenda of public affairs, has undeniably become more complex and more acute.

Precisely because modern medicine has been so successful, more people are acutely sick than in the past. Thus, the need for health care is constantly increasing, at the very time that resources are becoming increasingly limited. More people, those in greatest need, are at risk because of money. And as less subsidies become available from government, pressure increases on private payors — largely insurance companies. Cost containment focused on government programs is familiar front-page news, but containing costs in the private sector may soon emerge as of no less significance. Nor should the problem be thought of in terms of patient interest versus the interests of profit centers. The new technology often entails greater risk to the patient, and there is reason to believe that a great deal of the new technology is used inappropriately; the fundamental question — why are we doing this to this particular patient — too often is not asked.

The field of public health is hardly confined to the delivery of health care. With cancer and heart disease responsible for the majority of deaths in our society, it takes but a moment's reflection to recognize that nutrition is an important factor in public health. Nor can we exclude questions of life-style

and living habits. On the broader canvas, accidents and environmental issues must be included as major contributors to illness and death.

It should occasion no surprise among readers of this *Journal* that no narrow specialist, however qualified in a single discipline, can be expected to deal effectively with the broader issues that confront the country in this area. The man to whom we dedicate this issue is not a narrow specialist. He has had the benefit, not only of a legal education, but of private practice in the law. Litigating in the toxic tort area, he has become aware of what it means to have a deponent die during the course of the litigation. He has had the benefit of practice in medicine, observing heart disease and trauma in the course of working in the field of emergency medicine. More recently he has been serving as Director of Medical Services for the Prudential Insurance Company of America in that company's Northeastern Group Operations.

His formal credentials have been earned from coast to coast in this country and abroad as well. A graduate of the University of Washington in Seattle and of the George Washington University Medical School in Washington, D.C., Dr. Reed has trained at the Middlesex Hospital Medical School and the Westminster Hospital Medical School, both in London, England. He has served in the U.S. Public Health Service, on the Cheyenne River Sioux Reservation and at St. Elizabeth's Hospital in Washington.

Dr. Reed has been certified by the American Board of Quality Assurance and Utilization. For over a decade he has served as Assistant Professor of Clinical Health Sciences at George Washington University and since 1985 has been a member of the Professional Editorial Board of this *Journal*.

Most law students do not participate in the classroom dialogue with their professors as professional equals; and this was the case for Dr. Reed in his first year Property Law course with me here at Catholic University. Even though his quick, dry wit and fertile imagination would surface from time to time (in truth, he was a master of the double entendre as well!) and be recognized and remembered particularly when he would argue the "rights" of health care maintenance were co-equal with the other "rights" of property ownership, his *forte* was to be fully seen in an upper level course which I taught — a seminar in bioethics. When I was teaching this course, Dr. Reed proved himself repeatedly as not only my equal — but, in a surprising number of cases, even my better! His "hands-on" experience in the "trenches" of the emergency room, gave him penetrating observations concerning traumatic medicine. Although his compassion was always clear and obvious in his analyses, his medical objectivity was then and is now equally clear as a stabilizing force in his healing mission.

As observed, his subsequent experiences at the bar and now in health in-

insurance administration have allowed him to enjoy the full scope of reward and responsibility that is the goal of every professional. Supported and encouraged always by his wife, JoAnne — herself an applied medical anthropologist — and his two sons, Nicholson and Graham, Dr. Barry has given much to his professions as lawyer and as physician and, in turn, has received much.

When asked to give a line of poetry or verse that summarizes his philosophical view of the legal and medical professions, Dr. Reed chose two verses of Lewis Carroll's *Jabberwocky*, from THROUGH THE LOOKING-GLASS:

'Twas brillig, and the slithy toves
 Did gyre and gimble in the wabe:
 All mimsy were the borogoves,
 And mimsy were the borogoves,
 "Beware the Jabberwock, my son!
 The jaws that bite, the claws that catch!
 Beware the Jubjub bird, and shun
 The frumious Bandersnatch!"¹

And, when asked further to interpret and apply these lines, he related how he perceived the absurdity of a jabberwocky as akin to a marked hypersensitivity that the professions of law and medicine have developed; a hypersensitivity that places every issue brought within their purview as grave and serious and of such overpowering dimension that the recipients of health care or legal services are often forgotten or forsaken as individuals.

Not one of Dr. Reed's life experiences, nor all of them in combination, adequately describes the man or the qualities of mind and heart that have impelled us to dedicate this issue of the *Journal* to him. Above all, he has enriched those around him, those with whom he works and those who seek his counsel, with his concern for individuals in need as well as for society itself, which surely is in need. He has demonstrated not only compassion, but critical insight and the capacity to critique and to criticize. He is innovative and creative, and a fertilizing intelligence in an area desperately in need of creativity and innovation blended with compassion and concern.

Perhaps, above all, our honoree's view of life is such that he would consider all this nothing more than complying with the Biblical injunction: "Justice, justice shalt thou pursue." It is for that pursuit of justice, in its

1. Carroll, *Jabberwocky*, from THROUGH THE LOOKING-GLASS, in A TREASURY OF THE WORLD'S BEST LOVED POEMS 105 (1961).

broadest and yet most fundamental sense, that we are honored to honor him in dedicating this issue of the *Journal* to Dr. Barry S. Reed.

*A. Leo Levin, Leon Meltzer Professor Emeritus of Law,
University of Pennsylvania
George P. Smith, II, for The Editorial Boards*