

2005

Foreword

Sarah Guyton
Loyola University Chicago, School of Law

John Blum
Loyola University Chicago, School of Law, jblum@luc.edu

Follow this and additional works at: <http://lawcommons.luc.edu/annals>



Part of the [Health Law and Policy Commons](#)

Recommended Citation

Sarah Guyton & John Blum *Foreword*, 14 *Annals Health L. i* (2005).
Available at: <http://lawcommons.luc.edu/annals/vol14/iss1/2>

This Prefatory Matter is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in *Annals of Health Law* by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Foreword

The Winter edition of Volume 14 of the *Annals of Health Law* concludes the 20th Anniversary year of the Institute for Health Law with the publication of a journal replete with timely, scholarly, and innovative articles. The five articles set forth in this edition reflect current legal, ethical, and political trends in the health care arena, and reflect some of the current health policy issues dominant in the recent presidential election. Relevant to practitioners, academics, legislators, students, and policymakers alike, the topics addressed in this issue inspire thoughtful consideration of key issues facing a swiftly changing industry.

In numerous discussions regarding traumatic brain injury and the dilemmas encountered by those shackled with treatment decisions, many articles have focused on the tragic circumstances of Terri Schiavo, a young woman who has been in a persistent vegetative state in Florida for several years now. In the wake of media accounts and emotional pleas, it is often easy to lose sight of the larger moral and ethical issues amidst the sensationalism. Stacey Tovino and William Winslade's article leading this edition provides a thorough examination of the legal and ethical issues faced by the victims of traumatic brain injury and their families and friends.

Like Terri Schiavo, fifteen year-old Mathew Kosbob was diagnosed with a severe brain injury several years ago, and what was another senseless tragedy reported by the newspapers quickly gave rise to ethical, legal, and moral dilemmas involving treatment options, religious preferences and mandates, and court battles. In their article "A Primer on the Law and Ethics of Treatment, Research, and Public Policy In the Context of Severe Traumatic Brain Injury," the authors discuss the March 2004 statement of Pope John Paul II, new and controversial treatment options, and the current research regarding therapeutic deep-brain stimulation. Our thoughts and prayers are with the Kosbobs and each family touched by similar tragedy.

In his article, author Lee Taft, a practicing attorney for many years, presents an innovative examination of the ameliorative properties of apology in the context of medical mistake. An interesting conglomeration of psychology, sociology, and jurisprudence, the article carefully dissects the conundrum faced by

many physicians and medical practitioners in the event of medical error—to apologize or not to apologize?

As tort reform was often hailed throughout the 2004 presidential campaign as the solution to the medical malpractice crisis sweeping health care, Mr. Taft argues that physicians and medical facilities who take responsibility for and admit their mistakes are less likely to be the targets of medical malpractice litigation. In a response to one physician's essay detailing his own mistake and the struggle of both physician and patient to heal, Mr. Taft discusses the nature of true apology, its necessity in the healing process, and its impact on the concept of tort reform.

Matthew Brown's article tackles another topic oft addressed by the presidential candidates and close to all those impacted by the wars in Afghanistan and Iraq—bioterrorism and homeland security. Years after the tragedy of the Twin Towers' collapse in New York City, the world is still reeling from the tremors caused by such an unprecedented disaster. This article takes several steps back and examines the legislation enacted in the wake of 9/11. Mr. Brown looks critically at the Model State Emergency Health Powers Act (MSEHPA) developed quickly in response to the country's declaration of a "War on Terror." In his article, Mr. Brown offers opinions regarding the real threat of bioterrorist attack, the inadequacies of MSEHPA, and posits suggestions on legislative reform directed toward making our country's bioterrorist responses more effective and the world a safer place.

Throughout the 2004 election coverage, millions of Americans watched the debates between Senator John Kerry and President George W. Bush closely, with a specific interest in prescription drugs and the Medicare prescription drug benefit slated to take effect in January of 2006; along with tort reform and homeland security, prescription drugs were one of the recurring themes of the candidates' speeches. Authors Daniel Katz and Monica Deshpande provide a thorough examination of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and offer their suggestions regarding modifications to make the legislation more effective. Analysis of the "donut hole" created by Medicare Part D is especially significant in that the prescription drug benefit will be implemented in January of 2006.

Winner of the Epstein Becker & Green 6th Annual Health Law Writing Competition, Andrew Oldham's cleverly titled "The MedSouth Joint-(Ad)venture, Big & Beautiful or Collusive & Criminal?" is a detailed examination of physician joint ventures and their impact on the managed care world. The article's analysis of the Federal Trade Commission's (FTC) surprising endorsement of physicians' joint ventures and apparent disregard of antitrust regulation is as timely as the ideas proffered by the issue's other published authors. Mr. Oldham discusses MedSouth, a Denver individual practice association, and its correspondence with the FTC regarding antitrust considerations. Through MedSouth, the FTC opened the door to unprecedented competition in the managed care industry, and Mr. Oldham's examination of the circumstances is both thorough and enlightening.

In the confines of academia, it is often easy to immerse oneself in books, papers, and examinations and ignore the rest of the world as life happens one deadline at a time. With this issue of the *Annals of Health Law*, academia meets world with articles that confront pressing issues of health law and policy. It is the hope of the *Annals* editors and the staff of the Institute for Health Law that our readers will find this edition especially thought-provoking, and remember what a vast array of opportunity is available for those of us fortunate enough to work in such an important field. Happy Holidays to you and your families, and thank you for your continued support of the *Annals of Health Law*.

Sarah Guyton
 Editor-in-Chief
 J.D. Candidate, May 2005

John Blum
 Interim Director
 Institute for Health Law