FINANCING HEALTH CARE: COMPETITION VERSUS REGULATION: THE PAPERS AND PROCEEDINGS OF THE SIXTH PRIVATE SECTOR CONFERENCE, MARCH 23 AND 24, 1981. By Duncan Yaggy, Ph.D., and William G. Anlyan, M.D. (Ballinger Pub. Co., 54 Church St., Cambridge, MA 02140) (1982) 239 pp., $28.75.

Health Facility Management

Kendrick WL, *Legal Aspects of Hospital Security*, RISK MANAGEMENT FOUNDATION FORUM 3(4): 3-4, 8 (July/August 1982) [10-463].

Thompson MJ, Scott CD, *Antitrust Considerations and Defenses in Reorganizing for Multi-Institutional Activities*, SAINT LOUIS UNIVERSITY LAW JOURNAL 26(3): 465-509 (April 1982) [10-672].

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Rankin JW, Wilson RG, Sausalito Pharmacy *and the Antitrust Consequences of Insurer-Imposed Maximum Limitations on Fees*, SAINT LOUIS UNIVERSITY LAW JOURNAL 26(3): 601-25 (April 1982) [10-676].

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DEREGULATING THE HEALTH CARE INDUSTRY: PLANNING FOR COMPETITION. By Clark C. Havighurst (Ballinger Pub. Co., P.O. Box 281, 54 Church St., Cambridge, MA 02138) (1982) 500 pp., $37.50.

Health Maintenance Organizations

Benor D, *Procedural Requirements for Revocation of Federal Health Maintenance Organization Qualification*, SAINT LOUIS UNIVERSITY LAW JOURNAL 26(3): 679-709 (April 1982) [10-678].

Court of Appeals. By that time, however, the protection that Brant would have the unwary reader believe was provided to John Storar by court involvement was at best academic: he was long dead!

The issues raised by Professor Richard Sherlock are important. Yet, we must examine the alternative that would result from his rejection of the standard formulated in my address. This alternative is found in the indictment recently announced by the District Attorney of Los Angeles.[7] On August 18, 1982, two physicians who had in 1981, at the request of the family, turned off a respirator and removed the IVs from a 55 year old patient in an irreversible coma were indicted for murder. I trust that medical ethics, the law, and public policy can be more nuanced than that.

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6. Paris, J.J., *The New York Court of Appeals Rules on the Rights of the Incompetent Dying Patient*, NEW ENGLAND JOURNAL OF MEDICINE 304(23): 1424, 1425 (June 4, 1981).
7. *See* Los Angeles Times, August 19, 1982, at 1, 15; Los Angeles Times, September 14, 1982, at 1, 3, 15.

Dear Editors:

In his letter in the September issue, Richard Sherlock listed three points which he considers to be decisive in the case against selective non-treatment of severely handicapped newborns: (1) there is no logical reason to limit such a policy to newborns; (2) no one has yet offered a persuasive definition of a life not worth living, which Sherlock says must be done in order to avoid the established legal prohibitions against child neglect or abuse; and (3) neither common law nor statutory law distinguishes between letting someone die by withholding necessary treatment and actively killing him, yet most writers who favor passive euthanasia are opposed to the active killing of handicapped newborns.

I will try to respond to each of these points in turn.

1) In fact, the law has already recognized both the morality and legality of withholding life-prolonging treatment from adults where the quality of that life had an extremely poor prognosis, and where the means required to prolong it were very difficult, expensive, painful, or fraught with side effects (for example, the well-known *Quinlan* and *Saikewicz* cases). The reason that so much discussion focuses on the handicapped newborn may be that recent advances in medical technology have made it possible to sustain the lives of extremely premature and extremely handicapped newborns, but only at great expense and often with poor prognoses. Thus, the birth of an extremely premature or severely handicapped child requires a prompt

Hospices

Mudd P, *High Ideals and Hard Cases: The Evolution of a Hospice*, HASTINGS CENTER REPORT 12(2): 11-14 (April 1982) [10-684].

Smith DJ, Granbois JA, *The American Way of Hospice*, HASTINGS CENTER REPORT 12(2): 8-10 (April 1982) [10-683].

Hospital Law

Blaes SM, *How to Stay out of Court: Tips to Trustees from a Lawyer*, TRUSTEE 35(8): 18-20 (August 1982) [10-494].

Horty JF, *Hospital, as Public Agency, Pressed to Give Documents to Newspaper*, MODERN HEALTHCARE 12(8): 170, 174 (August 1982) [10-466].

Samuels A, *The Basis of the Legal Liability of the Hospital*, MEDICINE, SCIENCE AND THE LAW 22(2): 140-42 (April 1982) [10-666].

GUIDE FOR PREPARATION OF CONSTITUTION AND BYLAWS FOR GENERAL HOSPITALS (American Hospital Association, 840 N. Lake Shore Dr., Chicago, IL) (1981) 32 pp., $10 AHA members, $12.50 others [10-175]. This pamphlet is a revision of the 1973 edition and is primarily directed toward the not-for-profit voluntary hospital, although the Foreword indicates that many suggestions can be adapted by publicly owned and investor-owned hospitals. The Introduction notes that the *Guide* is designed to complement the *JCAH Monograph Medical Staff Bylaws*. Basic matters relating to the appointment, duties, and responsibility of the medical staff are included in the governing board's bylaws since they have the legal responsibility to establish the appropriate level for the quality of medical care received by hospital patients.

a) Labor Law

LaViolette S, *Nurses Have 'Best' Case for Equal Pay*, MODERN HEALTHCARE 12(8): 50, 52 (August 1982) [10-464].

b) Staff Privileges

Foster HS, *Exclusive Arrangements Between Hospitals and Physicians: Antitrust's Next Frontier in Health?* SAINT LOUIS UNIVERSITY LAW JOURNAL 26 (3): 535-59 (April 1982) [10-674].

Hershey N, *Avoiding Litigation Through Effective Credentials Review*, HOSPITAL MEDICAL STAFF 11(7): 2-3, 6-8 (July 1982) [10-477].

Comment, *Denial of Open Staff Hospital Privileges: An Antitrust Scrutiny*, SAINT LOUIS UNIVERSITY LAW JOURNAL 26(3): 751-74 (April 1982) [10-681].

decision whether or not to initiate such treatment. A handicapped child who has survived the neonatal period has already demonstrated its ability to survive and has probably entered a reasonably stable state requiring no immediate decisions regarding life-saving treatment. Were the older child's condition to deteriorate suddenly, a similar decision-making process would be required.

2) The lack of a clear and precise definition of a life not worth living cannot be considered a serious objection to legalizing the non-treatment of severely defective newborns. Handicapped individuals do not fall into two well-defined categories: those whose lives are worth living, and all the others. Rather, there is a continuum, with many different degrees of handicap from one extreme to the other; clarity as to whether or not the individual's life is worth living may exist at the extremes, but not at many intermediate points along the continuum. "Negligence" is another legal concept which has never been given a clear and precise definition, yet legal decisions which employ it are made daily by the thousands. The fact that there is no "bright line" separating those whose handicaps make their lives not worth living from the others may be less an argument for abandoning the attempt to make such decisions than for granting some leeway to the decision-makers to take into account such factors as the parents' ability to deal with the handicap in question and the cost to society of maintaining such a life, where the handicap falls somewhere between the two extremes.

3) Sherlock states that the law does not, and in his opinion, should not, distinguish between active and passive killing, because to do so would require adoption of the principle of double effect, which in turn would require investigation of the decision-maker's subjective intent. He cites the difficulties of proving subjective intent in the areas of voting rights litigation and fraud to support his argument. Even if he is correct in saying that the active-passive distinction requires a determination of subjective intent, it is difficult to believe that intent is really an issue in most cases where medical treatment is withheld from severely handicapped newborns. The motives which lead parents and physicians to withhold treatment from a premature infant weighing less than two pounds, where treatment costing hundreds of thousands of dollars and necessitating many months of hospital care may result in a child who survives only to be blind and severely brain-damaged, are hardly as opaque as the motives which inspire politicians to establish a given set of criteria for eligibility to vote.

Sherlock's logic may be impeccable, but many difficult decisions cannot be made on strictly logical grounds alone. The law has already recognized that such considerations as the prevention of human suffering and the minimization of costs to society have a role in some life-and-death decisions. Applying those principles to cases involving handicapped newborns would not represent an unprecedented departure from existing moral and legal standards.

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