

AMERICAN JOURNAL OF LAW & MEDICINE

Volume 47, Number 4 • 2021

ARTICLES

- 351** **Applying a Common Enterprise Theory of Liability to Clinical AI Systems** *Benny Chan*
- 386** **Adolescent Medical Decisionmaking Rights: Reconciling Medicine and Law** *Doriane Lambelet Coleman and Philip M. Rosoff*
- 427** **When Medical Devices Have a Mind of Their Own: The Challenges of Regulating Artificial Intelligence** *Jessa Boubker*

NOTES & RECENT CASE DEVELOPMENTS

- 455** **Toward a Preliminary Theory of Organizational Incentives: Addressing Incentive Misalignment in Private Equity-Owned Long Term-Care Facilities** *Alesha Ignatius Brereton*
- 477** **Reformulating *Graham v. Connor's* Excessive Force Test to ADapt for Individuals with Disabilities** *Christiana Prater-Lee*
- 507** **Recent Case Developments**

A Journal of the American Society
of Law, Medicine & Ethics
www.aslme.org



Published by the American Society
of Law, Medicine & Ethics and
Boston University School of Law.
Copyright held by the Trustees of
Boston University.



The American Journal of Law & Medicine (AJLM) is North America's leading health law journal devoted exclusively to the analysis of issues at the nexus of law and medicine. Its broad editorial scope includes health law and policy; updates on significant legal decisions and developments affecting health care; legal, ethical and economic aspects of medical practice, research and education; book reviews; and much more. The editors invite the submission of original manuscripts on medicolegal topics. For details, see the inside back cover.

The American Journal of Law & Medicine is published by Cambridge University Press on behalf of the Trustees of Boston University and the American Society of Law, Medicine & Ethics.

ISSN: 0098-8588

E-ISSN: 2375-835X

Copyright © 2022 by Trustees of Boston University. All rights reserved. No portion of the contents may be reproduced in any form without written permission from the publisher.

Printed in the USA by The Sheridan Group

Editorial Office

American Journal of Law & Medicine, 765 Commonwealth Avenue, Suite 1702, Boston, MA 02215 USA

E-mail: ajlm@bu.edu

Submission Guidelines: For submission guidelines, please contact the editorial office at ajlm@bu.edu or go to cambridge.org/ajlm/submit

Subscribe or Recommend a Subscription to your Librarian: Go to cambridge.org/ajlm/subscribe or email subscriptions_newyork@cambridge.org (in the USA, Canada or Mexico) or journals@cambridge.org (elsewhere).

Copyright and Permissions: To request permission for republishing, reproducing, or distributing material from this journal, please visit the desired article at cambridge.org/ajlm and click "Rights & Permissions." For additional information, please see cambridge.org/about-us/rights-permissions.

Advertising and Reprints: Contact ad_sales@cambridge.org. Acceptance of advertising in this journal in no way implies endorsement of the advertised product or service by Cambridge University Press, the Trustees of Boston University, American Society of Law, Medicine & Ethics or the journal editor(s). We reserve the right to reject any advertising it deems as inappropriate for this journal.

Member Subscription Information: American Society of Law, Medicine & Ethics member inquiries, change of address, back issues, claims, and membership renewal requests should be addressed to Membership Director, American Society of Law, Medicine & Ethics, 765 Commonwealth Avenue, Suite 1704, Boston, MA 02215; telephone: (617) 262-4990 ext. 15. Requests for replacement issues should be made within six months of the missing or damaged issue. Beyond six months and at the request of the American Society of Law, Medicine & Ethics, the publisher will supply replacement issues when losses have been sustained in transit and when the reserve stock permits.

Claims or Change of Address for Non-Members: Should be directed to subscriptions_newyork@cambridge.org (in the USA, Canada or Mexico) or journals@cambridge.org (elsewhere).

Discover the Entire AJLM Back Archive: cambridge.org/ajlm/read

ADMINISTRATIVE OFFICERS OF BOSTON UNIVERSITY SCHOOL OF LAW

ROBERT A. BROWN, PH.D., PRESIDENT

ANGELA ONWUACHI-WILLIG, J.D., M.Phil., PH.D., DEAN; PROFESSOR OF LAW

FREDERICK TUNG, J.D., ASSOCIATE DEAN FOR ACADEMIC AFFAIRS; HOWARD ZHANG FACULTY RESEARCH

JAMES E. FLEMING, J.D., PH.D., ASSOCIATE DEAN FOR RESEARCH AND INTELLECTUAL LIFE AND PROFESSOR OF LAW

KRISTIN COLLINS, J.D., ASSOCIATE DEAN FOR INTELLECTUAL LIFE; PETER PAUL CAREER DEVELOPMENT PROFESSOR; PROFESSOR OF LAW

MARGARET MAISEL, J.D., ASSOCIATE DEAN FOR EXPERIENTIAL EDUCATION, CLINICAL PROFESSOR OF LAW

OFFICERS OF THE AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS

JAIME S. KING, J.D., PH.D., PRESIDENT

LINDSAY F. WILEY, J.D., M.P.H., IMMEDIATE PAST PRESIDENT

ELLIOT L. SAGALL, M.D. (DEC.), FOUNDER AND FIRST PRESIDENT

AMERICAN JOURNAL OF
LAW & MEDICINE

Volume 47, Number 4 • 2021

BOARD OF EDITORS

Faculty Advisors

Kevin Outterson, J.D., LL.M.
Kathryn Zeiler, M.S., J.D., Ph.D.
Christopher Robertson, M.A., J.D., Ph.D.
Boston University School of Law

**Faculty Editor-in-Chief
Emeritus**

Frances H. Miller, J.D.
Boston University School of Law

Editor

Edward J. Hutchinson
*American Society of Law,
Medicine & Ethics*

Founding Editor

John A. Norris, J.D., M.B.A.
Health Discovery Corp.

EDITORS

Gail B. Agrawal, J.D., M.P.H.
University of Iowa College of Law

Michael Baram, J.D.
Boston University School of Law

Charles H. Baron, LL.B., Ph.D.
Boston College Law School

Jay A. Gold, M.D., J.D., M.P.H.
MetaStar Inc., Madison

Ernest M. Haddad, J.D.
Boston University School of Law

Clark C. Havighurst, J.D.
Duke University School of Law

Nathan Hershey, LL.B.
*University of Pittsburgh
Graduate School of Public Health (Retired)*

David A. Hyman, M.D., J.D.
University of Illinois College of Law

Sheila Jasanoff, J.D., Ph.D.
Harvard University Kennedy School of Government

Timothy S. Jost, J.D.
Washington and Lee University School of Law

Stephen Latham, J.D., Ph.D.
*Yale University
Interdisciplinary Center for Bioethics*

Silvia A. Law, J.D.
New York University School of Law

David T. Morris, J.D., M.B.A.
AbbVie, Chicago

Joseph P. Newhouse, Ph.D.
Harvard University

Irwin N. Perr, M.D., J.D.
University of Washington School of Medicine

Harvey E. Pies, J.D., M.P.H.
Blue Cross and Blue Shield of Florida

Arti K. Rai, J.D.
Duke University Law School

Philip R. Reilly, M.D., J.D.
Third Rock Ventures, LLC

Marc A. Rodwin, J.D., Ph.D.
Suffolk University Law School

Mark A. Rothstein, J.D.
*University of Louisville School of Medicine
Institute for Bioethics, Health Policy and Law*

David S. Szabo, J.D.
Locke Lord

Linda V. Tiano, J.D.
Healthfirst, Inc.

Sidney D. Watson, J.D.
Saint Louis University School of Law

AMERICAN JOURNAL OF
LAW & MEDICINE

INTERNATIONAL BOARD OF EDITORS

Koichi Bai

*Director, Institute of Medical Humanities
Kitasato University School of Medicine*

JAPAN

M.A.M. de Wachter

*Director, Institute of Bioethics
THE NETHERLANDS*

Erwin Deutsch

*Faculty of Law
University of Göttingen*

GERMANY

Christopher Newdick

*Reader in Health Law
University of Reading*

UNITED KINGDOM

Bernard M. Dickens, Ph.D., LL.D.

*Faculties of Law and Medicine
University of Toronto*

CANADA

Amos Shapira

*Faculty of Law
Tel Aviv University*

ISRAEL

Honorable Justice Michael D. Kirby

*President, Court of Appeal
Supreme Court of New South Wales*

AUSTRALIA

Peter D.G. Skegg

*Faculty of Law
University of Otago*

NEW ZEALAND

AMERICAN JOURNAL OF
LAW & MEDICINE

STUDENT BOARD OF EDITORS
2021-2022

Editor-in-Chief
Meghan McCarthy

Senior Articles Editor
Alexandra Maulden

Executive Editor
Alexandria Conrad

Managing Editors
Amelia Melas
Grant Shearer
Megan Kira

Articles Editors
Amanda Joffe
Christina Fuleihan
Olivia Meadows

Notes Editors
Angela Nelson
Charlie Cai
David Hidalgo
Kimberly Flores

Special Projects Editor
Alesha Ignatius Brereton

Administrative Editor
Rebecca Fliegel

Symposium Editors
Aris Margosian
Jack Quinn

Communications Editor
Shabeena Sharak

Staff Members

John Busse
John Daly
Philip Dutko
Jessica Gedallovich
Sabrina Geisler
Leah Gervin
Anna Gunning
Rory Hanrahan
Morgan Hill
Chisara Ibezim

Jannat Irshad
Rawan Khalili
Minji Kim
Annabel Kupke
Garrett Linderman
Savannah Luschei
Mikaela Moore
Katrina Morris
Julia Novick
Sheridan Organ

Sarah Perno
Ryan Platt
Madeline Reyes
David Quattrochio
John Toomey
Alexander Utz
Alexandra Wainwright
Gwendolyn Walker
Julia Watson

AMERICAN JOURNAL OF
LAW & MEDICINE

Volume 47, Number 4 • 2021

ARTICLES

- 351 Applying a Common Enterprise Theory of Liability to Clinical AI Systems** *Benny Chan*
- 386 Adolescent Medical Decisionmaking Rights: Reconciling Medicine and Law** *Doriane Lambelet Coleman and Philip M. Rosoff*
- 427 When Medical Devices Have a Mind of Their Own: The Challenges of Regulating Artificial Intelligence** *Jessa Boubker*

STUDENT NOTES

- 455 Toward a Preliminary Theory of Organizational Incentives: Addressing Incentive Misalignment in Private Equity-Owned Long-Term Care Facilities** *Alesha Ignatius Brereton*
- 477 Reformulating *Graham v. Connor*'s Excessive Force Test to ADapt for Individuals with Disabilities** *Christiana Prater-Lee*

RECENT CASE DEVELOPMENTS

- 507 Episode III: *California v. Texas*** *Julia Watson*
- 513 *Alabama Association of Realtors v. Department of Health and Human Services*** *Christina Fuleihan*
- 523 The Optum-Atrius Transaction: A Model for Reviewing Mid-Sized Health Transactions** *Minji Kim*