

# AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 26 NUMBER 4 2000

## ARTICLES

**TAPPING AND RESOLVING CONSUMER CONCERNS ABOUT HEALTH CARE** Eleanor D. Kinney

**A PRESCRIPTION FOR MENTAL DISTRESS: THE PRINCIPLES OF PSYCHOSOMATIC MEDICINE WITH THE PHYSICAL MANIFESTATION REQUIREMENT IN N.I.E.D. CASES** Narbeh Bagdasarian

## NOTES AND COMMENTS

**THE AMERICANS WITH (OR WITHOUT) DISABILITIES ACT: PRE-EMPLOYMENT MEDICAL INQUIRIES AND THE NON-DISABLED** Allyson R. Behm

**MEDICAL RECORDS AND YOUR PRIVACY: DEVELOPING FEDERAL LEGISLATION TO PROTECT PATIENT PRIVACY RIGHTS** Sharon J. Hussong

**BOOK REVIEW: 'THE POLITICS OF MEDICARE' BY THEODORE MARMOR** John Larkin Thompson

PUBLISHED BY THE AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS  
AND THE BOSTON UNIVERSITY SCHOOL OF LAW

A JOURNAL OF THE AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS

The AMERICAN JOURNAL OF LAW & MEDICINE (AJLM) is published by the American Society of Law, Medicine & Ethics (ASLME) and Boston University School of Law (BUSL). All decisions concerning the content of AJLM are made by a joint ASLME-BUSL editorial policy committee. Statements of fact and opinion are the sole responsibility of the authors, and are not necessarily endorsed by the editors, ASLME or BUSL.

The editors invite the submission of manuscripts on medicolegal topics. For details, see the inside back cover. Editorial communications, including original manuscripts, should be addressed to Editor-in-Chief, AMERICAN JOURNAL OF LAW & MEDICINE, 765 Commonwealth Avenue, Suite 1672, Boston, MA 02215. Telephone: 617-353-2912.

Address subscription or membership correspondence to the Membership Director, ASLME, 765 Commonwealth Avenue, Suite 1634, Boston, MA 02215. Telephone: 617-262-4990 ext. 15. Fax: 617-437-7596. Requests for permission to reproduce AJLM material should be addressed to the Publications Director, at the preceding address. Telephone: 617-262-4990 ext. 13. Fax: 617-437-7596.

AJLM subscriptions are \$195 per year for institutions; and \$105 per year for individuals (payment for individual subscriptions must be on a personal check) who are not members of ASLME. All foreign subscribers must remit an additional \$35 per year for foreign postage fees. ASLME members receive AJLM as part of their member benefits (see details in the back matter). AJLM is published quarterly: Spring; Summer & Fall; and Winter.

Missing copies of AJLM will be sent free of charge to ASLME subscribers or members provided that notice of such a claim is received by ASLME *within one month of receipt of the next issue published*. Requests made after this period will be billed at the regular single-issue price of \$25 (members) and \$35 (nonmembers) and the regular double-issue price of \$35 (members) and \$45 (nonmembers).

AJLM is online, indexed or abstracted in *LEXIS*, *Westlaw*, *Index to Legal Periodicals*, *Legal Contents*, *Index Medicus*, *MedWebPlus*, *Social Sciences Citation Index*, *Current Contents: Social and Behavioral Sciences*, *SSRN Health Law & Policy*, and *EMBASE/Excerpta Medica*.

Library of Congress Catalog No. 75-645516 (Shelf No. K1.M445). ISSN 0098-8588. U.S. postage paid at Lincoln, NE, in accordance with Permit No. 264 (nonprofit organization).

#### **ADMINISTRATIVE OFFICERS OF BOSTON UNIVERSITY SCHOOL OF LAW**

JON WESTLING, LL.D. (hon.), *President and Professor of Humanities*

JOHN R. SILBER, M.A., Ph.D., LL.D. (hon.), L.H.D. (hon.), *Chancellor, University Professor and Professor of Philosophy and Law*

RONALD A. CASS, J.D., *Dean and Professor of Law*

JOSEPH F. BRODLEY, LL.B., *Senior Associate Dean for Research and Professor of Law*

STEPHEN MARX, J.D., *Associate Dean for Academic Affairs and Professor of Law*

DANIEL J. FREEHLING, J.D., *Associate Dean for Administration and Professor of Law*

CHRISTINE A. MARX, J.D., *Assistant Dean for Student Affairs*

#### **OFFICERS OF THE AMERICAN SOCIETY OF LAW, MEDICINE & ETHICS**

RUTH MICKELSEN, J.D., M.P.H., *President*

SARA ROSENBAUM, J.D., *Secretary*

KEITH GHEZZI, M.D., *Treasurer*

PHILIP REILLY, J.D., M.D., *Immediate Past President*

BENJAMIN W. MOULTON, J.D., M.P.H., *Executive Vice President*

ELLIOT L. SAGALL, M.D. (dec.), *Founder and First President*

# AMERICAN JOURNAL OF LAW & MEDICINE

## BOARD OF EDITORS

### FACULTY EDITOR-IN-CHIEF

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

### FACULTY EDITOR-IN-CHIEF

**EMERITUS AND FOUNDER**  
**John A. Norris, J.D., M.B.A.**

### MANAGING EDITOR

**David B. Clarke, D.Min., J.D., M.P.H.**  
American Society of Law, Medicine & Ethics

### MEMBERSHIP DIRECTOR

**Sarah Black**  
American Society of Law, Medicine & Ethics

### EXECUTIVE VICE PRESIDENT

**Benjamin W. Moulton, J.D., M.P.H.**  
American Society of Law, Medicine & Ethics

## EDITORS

**Gail B. Agrawal, J.D., M.P.H.**  
University of North Carolina School of Law

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

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

**Barry A. Bloch, J.D.**  
Hollowell, Peacock & Meyer, Raleigh

**Lee J. Dunn Jr., J.D., LL.M.**  
Private Practice  
Boston, Massachusetts

**Jay A. Gold, M.D., J.D., M.P.H.**  
Wisconsin Peer Review Organization

**Ernest M. Haddad, Esq.**  
Partners HealthCare System, Inc., Boston

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

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

**David A. Hyman, M.D., J.D.**  
University of Maryland School of Law

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

**Timothy S. Jost, J.D.**  
Ohio State University College of Law

**Jay Katz, M.D.**  
Yale University Law School

**Sylvia A. Law, J.D.**  
New York University School of Law

**David T. Morris, J.D.**  
Latham & Watkins, San Francisco

**Joseph P. Newhouse, Ph.D.**  
Harvard Medical School Department of Health Care Policy

**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.**  
University of San Diego Law School

**Philip R. Reilly, M.D., J.D.**  
Shriver Center for Mental Retardation

**Marc A. Rodwin, J.D., Ph.D.**  
Indiana University School of Public & Environmental Affairs

**Mark A. Rothstein, J.D.**  
University of Houston Law Center

**E. Donald Shapiro, J.D., LL.D.**  
New York Law School

**Sidney Shindell, M.D., LL.B.**  
Medical College of Wisconsin

**David S. Szabo, J.D.**  
Nutter, McClennen & Fish, LLP, Boston

**Linda V. Tiano, Esq.**  
Empire Blue Cross Blue Shield

**Sidney D. Watson, J.D.**  
Mercer University School of Law

**Cyril H. Wecht, M.D., J.D.**  
St. Francis Central Hospital

**James G. Zimmerly, M.D., J.D., M.P.H.**  
AEGON, Monumental Life Insurance Company

# AMERICAN JOURNAL OF LAW & MEDICINE

## INTERNATIONAL BOARD OF EDITORS

**Koichi Bai**  
Director, Institute of Medical Humanities  
Kitasato University School of Medicine  
Japan

**Erwin Deutsch**  
Faculty of Law  
University of Göttingen  
Germany

**Bernard M. Dickens, Ph.D., LL.D.**  
Faculties of Law and Medicine  
University of Toronto  
Canada

**S.S. Fluss**  
World Health Organization  
Switzerland

**Honorable Justice Michael D. Kirby**  
President, Court of Appeal  
Supreme Court of New South Wales  
Australia

**H.J.J. Leenen**  
Instituut voor Sociale Geneeskunde  
Universiteit van Amsterdam  
The Netherlands

**Christopher Newdick**  
Reader in Health Law  
University of Reading  
England

**Amos Shapira**  
Faculty of Law  
Tel Aviv University  
Israel

**P.D.G. Skegg**  
Faculty of Law  
University of Otago  
New Zealand

**M.A.M. Wachter**  
Director, Institute of Bioethics  
The Netherlands

# AMERICAN JOURNAL OF LAW & MEDICINE

AMERICAN JOURNAL OF LAW & MEDICINE  
STUDENT BOARD OF EDITORS FOR  
2000–2001

## EDITOR-IN-CHIEF

Jamison R. Narbaitz

## EXECUTIVE EDITOR

Kristin O'Connell

## MANAGING EDITORS

Joanna Bergmann

Amanda Kessel

## SYMPOSIUM EDITOR

Tony Maida

## PROJECTS EDITOR

Stefanie McNamara

## ARTICLES EDITORS

Jennifer Doran

Ryan Engle

Kathleen Gabriel

Janett Patiero

## CASE & NOTE EDITORS

Nieve Anjomi

Allyson Behm

Melissa Freiling

Alex Lycoyannis

Peter J. Van Hemel

## THIRD-YEAR EDITORS

Emily Babalas

Adrienne Chieng

Lucille Ferreira

Gregory Hayken

Sharon Hussong

Kapono Kiakona

Deborah Lavoie

Kurt Machermer

Matthew Morton

Savitha Reddy

Shaun Ryan

Jennifer Serafyn

Diane Serritella

Thuy Wagner

Cara Weddleton

Christine Willgoos

Alina B. Zanetti

## STAFF MEMBERS

Melissa Arnold

Jennings Aske

Randi Burnstine

Michele Carlucci

Nicole Castagna

Andrea Curti

Edward F. Dombroski, Jr.

Kerry Dunne

Cara Feldberg

Taruna Garg

Aviva Halpern

Jodie Hamill

John Hofmann

Brian Holohan

Sabre Kaszynski

Danielle Krause

Laura Martin

Elizabeth McGinty

William Mekrut

Ruth Miller

Francine Murray

Catherine Olender

Ian Prior

Vineetha Reddy

Kathleen Romanow

Tal Sapeika

Sarah Smegal

Amy Stewart

Thomas Utzinger

Nicholas Vegliante

Angela Verrecchio

Mary Katherine Welti

Brian Winner

Mary Zendran

# AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 26 NUMBER 4 2000

## ARTICLES

- TAPPING AND RESOLVING CONSUMER CONCERNS ABOUT HEALTH CARE 335 Eleanor D. Kinney
- A PRESCRIPTION FOR MENTAL DISTRESS: THE PRINCIPLES OF PSYCHOSOMATIC MEDICINE WITH THE PHYSICAL MANIFESTATION REQUIREMENT IN N.I.E.D. CASES 401 Narbeh Bagdasarian

## NOTES AND COMMENTS

- THE AMERICANS WITH (OR WITHOUT) DISABILITIES ACT: PRE-EMPLOYMENT MEDICAL INQUIRIES AND THE NON-DISABLED 439 Allyson R. Behm
- MEDICAL RECORDS AND YOUR PRIVACY: DEVELOPING FEDERAL LEGISLATION TO PROTECT PATIENT PRIVACY RIGHTS 453 Sharon J. Hussong
- MEDICARE PLAY-BY-PLAY: A REVIEW OF THEODORE MARMOR'S 'THE POLITICS OF MEDICARE' 475 John Larkin Thompson

## RECENT DEVELOPMENTS IN HEALTH LAW

- SELECT RECENT COURT DECISIONS 479
- INDEX TO VOLUME 26 490
- ASLME CONFERENCE CALENDAR 492

Copyright 2000 by the American Society of Law, Medicine & Ethics, Inc. and Boston University School of Law. All rights reserved. For permission to photocopy articles or other materials appearing in the AMERICAN JOURNAL OF LAW & MEDICINE, contact Copyright Clearance Center, 222 Rosewood Dr., Danvers MA 01923; tel. 978-750-8400; fax 978-750-4470; or contact the Managing Editor, American Society of Law, Medicine & Ethics, 765 Commonwealth Ave., Ste. 1634, Boston MA 02215; tel. 617-262-4990 ext. 13; fax 617-437-7596; email [kbowdren@aslme.org](mailto:kbowdren@aslme.org).