# AMERICAN JOURNAL OF LAVV D & MEDICINE VOLUME 7 NUMBER 1 SPRING 1981

Editorial: Communication Between the Antitrust and the Health Law Bars: An Appeal for a New Rule of Reason

Applying Antitrust Law to Medical Credentialing

Selected Recent Court Decisions

Book Review: Law in the Practice of Psychiatry: A Handbook for Clinicians, by Seymour L. Halleck; The Uses of Psychiatry in the Law, by Walter Bromberg

Environmental Health: An Analysis of Available and Proposed Remedies for Victims to Toxic Waste Contamination

Statutes of Limitations: the Special Problem of DES Suits

Index to Volumes 5 and 6, with Abstracts

John A. Norris, J.D., M.B.A. David S. Szabo, J.D.

Philip C. Kissam, LL.B.

John A. Norris, J.D., M.B.A. Muriel Fudala, B.A. Bruce L. Watson, J.D.

Wesley Sokolosky, M.D., J.D.

Warren J. Hurwitz

Cynthia Alice Feigin

Published by the American Society of Law & Medicine and the Boston University School of Law

# AMERICAN JOURNAL OF LAW & MEDICINE VOLUME 7 NUMBER 1 SPRING 1981

### BOSTON UNIVERSITY SCHOOL OF LAW

#### STUDENT BOARD of EDITORS

EDITOR-IN-CHIEF J. David Canarie

MANAGING EDITOR Mary E. Bowler

ARTICLES EDITOR Ronald Grosser

CASE and NOTE EDITORS Denise Lachance James E. Needell Laurence J. Shulman Susan E. Silbersweig EXECUTIVE EDITOR Linda V. Tiano

**BUSINESS EDITOR** Donald B. Shanin

TOPICS EDITOR Nina P. Silfen

EDITORS Cynthia A. Feigin Judy K. Mencher Ellen B. Shankman Lawrence B. Slater Michael Tabb

# STUDENT STAFF

Ilyse Dawn Barkan Robert J. Carolla Randee L. Cassel Ross Eatman David F. Eisner Michael Fertig Linda Galler Frederic Paul Gallin Nancy R. Gottlieb Kenneth S. Greenberg Janet Isak Hawley Karen J. Herlich Marian Hertz Lawrence R. Leonard Theresa M. Mady Susan Rosenfeld Scott L. Salat Matthew B. Schiff Susan M. Schmidt Harvey Shapiro Vicki Volper

# BOSTON COLLEGE LAW SCHOOL

#### STUDENT EDITORS

William F. Grieco Warren J. Hurwitz Scott Sherman

## FACULTY ADVISER

Frances H. Miller, J.D. Professor of Law Boston University The AMERICAN JOURNAL OF LAW & MEDICINE was founded in response to the need for a scholarly yet pragmatic publication encompassing all aspects of medicolegal relations. The JOURNAL seeks to provide a broad perspective on our complex health care system, to encourage interdisciplinary communication, and to stimulate creative solutions to the pressing medicolegal problems of our time.

In addition to serving as a forum for analyses and proposals in such areas as health law and policy, legal insurance medicine, and bioethics, the JOURNAL offers a wide variety of pertinent reference materials in these and related areas.

The JOURNAL serves persons from a variety of fields who seek to understand and to influence medicolegal developments: physicians, other health care providers, and health administrators; lawyers; health analysts and planners; researchers and educators in health specialties; judges, legislators, and government administrators; insurance officials; consumer advocates and concerned members of the general public.

The JOURNAL is published in the Spring, Summer, Fall, and Winter by the American Society of Law & Medicine and the Boston University School of Law. All decisions concerning the content of the JOURNAL are made by the joint American Society of Law & Medicine/Boston University School of Law Editorial Policy Committee. Statements of fact and opinion are the responsibility of the authors alone, and are not necessarily endorsed by the editors, the Society, or the law school.

The Editors invite the submission of manuscripts on medicolegal topics. For details, see inside back cover. Editorial communications, including original manuscripts, and requests for permission to reproduce JOURNAL material, should be addressed to Editor-in-Chief, American Journal of Law & Medicine, 209 Bay State Road, Boston, Massachusetts 02215. Editorial phone: (617) 353-2953.

Business correspondence, including subscription and advertising correspondence, should be addressed to the Executive Director, American Society of Law & Medicine, 520 Commonwealth Avenue, Boston, Massachusetts 02215. Business phone: (617) 262-4992.

Missing copies of the JOURNAL will be sent free of charge to subscribers or members of the Society provided that notice of such claim is received at the Society's subscription office 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 \$10.

Subscriptions: \$40.00 per year for institutions, and for individuals who are not members of the American Society of Law & Medicine. Foreign subscribers should remit, for a year's subscription, an additional \$15.00 for air mail postage or an additional \$5.00 for surface rate postage.

Members of the American Society of Law & Medicine receive a free subscription to the JOURNAL as part of their dues (\$70.00 for 1981). Information concerning membership is available from the Executive Director, American Society of Law & Medicine, 520 Commonwealth Avenue, Boston, Massachusetts 02215. Society phone: (617) 262-4992.

Copyright © 1981 by the American Society of Law & Medicine, Inc. and the Boston University School of Law. All or any part of materials appearing in the JOURNAL may not be republished without the express written consent of the Editorin-Chief.

Articles in the JOURNAL are indexed in Index to Legal Periodicals, Contents of Current Legal Periodicals, Index Medicus, Social Sciences Citation Index, Current Contents: Social and Behavioral Sciences, and Biosciences Information Service of Biological Abstracts.

Library of Congress Catalog Card Number: 75-645516 (Shelf No. K1.M445). ISSN 0098-8588.

U.S. postage paid at Boston, Massachusetts, in accordance with Permit No. 55855 (Nonprofit Org.).

# AMERICAN JOURNAL OF LAW & MEDICINE VOLUME 7 NUMBER 1 SPRING 1981

# **BOARD of EDITORS**

EDITOR-IN-CHIEF John A. Norris, J.D., M.B.A. Attorney & Consultant in Health Law Tufts Univ. School of Dental Med. Boston Coll. & Boston U. Law Schools

EXECUTIVE EDITOR A. Edward Doudera, J.D.

MANAGING EDITOR Judith Lesser, J.D., M.S.

ASSISTANT MANAGING EDITOR Thomas J. Lewis, J.D.

BOOK & PERIODICAL REVIEW EDITOR

Jay Alexander Gold, J.D., M.P.H.

CONTRIBUTING EDITOR Stephen M. Weiner, LL.B.

Mark D. Altschule, M.D. Harvard University Donald B. Barkan, M.D., F.A.C.P. Director, Employee Health, Lynn & **Union Hospitals** Charles H. Baron, LL.B., Ph.D. Boston College Law School Patrick Carroll, J.D. Senior Vice Pres. & Legal Counsel, Massachusetts Hospital Ass'n William J. Curran, LL.M., S.M. Hyg. Harvard University Douglas Danner, J.D. Trial Attorney Lee J. Dunn, Jr., J.D., LL.M. General Counsel, Northwestern Memorial Hospital Richard F. Gibbs, M.D., J.D. Attorney & Consultant in Health Law Harvard Medical School Clark C. Havighurst, J.D. Duke University School of Law Bernard D. Hirsh, J.D. General Counsel, Am. Med. Ass'n Richard G. Huber, J.D. Dean, Boston College Law School Alan K. Kaplan, LL.B., M. Sci.

Attorney & Consultant in Health Law Georgetown Univ. Medical School Jay Katz, M.D. Yale University Sylvia A. Law, J.D. New York University School of Law Peter Martin, J.D. Dean, Cornell Law School Frances H. Miller, J.D. Boston University School of Law Aubrey Milunsky, M.B.B.Ch., M.R.C.P., D.C.H. Harvard Medical School Irwin N. Perr, M.D., J.D. Rutgers Medical School, College of Medicine and Dentistry of New Jersey Harvey E. Pies, J.D., M.P.H. Attorney & Consultant in Health Law Honorable Max Rosenn United States Court of Appeals Elliot L. Sagall, M.D. Harvard Medical School Boston College Law School William Schwartz, J.D., M.A. Dean, Boston Univ. School of Law E. Donald Shapiro, J.D., LL.D. Dean, New York Law School Margery W. Shaw, M.D., J.D. Director, Medical Genetics Center University of Texas at Houston Robert B. Shira, D.D.S. Dean, Tufts Univ. School of Dental Med.; Past Pres., ADA Arthur F. Southwick, J.D., M.B.A. Grad. Sch. of Business Administration Univ. of Michigan Richard E. Speidel, J.D., LL.M. Northwestern Law School Cyril H. Wecht, M.D., J.D. Director, Pittsburgh Inst. of Legal Med.; Coroner, Allegheny County

RESEARCH ASSOCIATES Muriel Fudala, B.A. Steven G. Speil, J.D., M.P.H. Bruce L. Watson, J.D.

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

#### PRESIDENT

Elliot L. Sagall, M.D. Boston College Law School Harvard Medical School

#### FIRST VICE-PRESIDENT

John A. Norris, J.D., M.B.A. President, Norris & Norris, International Health Lawyers Editor-in-Chief, the JOURNAL

#### VICE-PRESIDENT

Sidney Scherlis, M.D. Univ. of Maryland Medical School

#### SECRETARY

Aubrey Milunsky, M.B.B.Ch., M.R.C.P., D.C.H. Harvard Medical School Director, Genetics Division, Shriver Center

#### TREASURER

Lee J. Dunn, Jr., J.D., LL.M. General Counsel, Northwestern Memorial Hospital, Chicago

#### EXECUTIVE DIRECTOR

A. Edward Doudera, J.D. Managing Editor, Medicolegal News Executive Editor, the JOURNAL

#### GENERAL COUNSEL

Douglas Danner, J.D. Trial Attorney

#### EDITORIAL POLICY COMMITTEE OF THE AMERICAN JOURNAL OF LAW & **MEDICINE**

John A. Norris, J.D., M.B.A., Chairman Frances H. Miller, J.D. Editor-in-Chief, the JOURNAL

A. Edward Doudera, J.D. Executive Editor, the JOURNAL Elliot L. Sagall, M.D. President, the Society

Faculty Advisor, the JOURNAL

Judith Lesser, J.D., M.S. Managing Editor, the JOURNAL

Lawrence R. Leonard Student Editor-in-Chief, the JOURNAL William Schwartz, J.D., M.A. Dean, Boston University School of Law

Stephen M. Weiner, LL.B. Director, Boston University Center for Law & Health Sciences

#### BACK ISSUES OF THE JOURNAL

Microfilm or microfiche copies of back issues of the JOURNAL are available from University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106. Bound copies of Volumes 1 through 5 of the JOURNAL are available from William S. Hein & Co., 1285 Main Street, Buffalo, NY 14209. Individual back issues within these volumes are also available from Hein & Co. Individual back issues of Volume 6, Numbers 3 and 4, are available from the Society, 520 Commonwealth Avenue, Boston, MA 02215, at the single issue price of \$10.00.

#### AMERICAN SOCIETY OF LAW & MEDICINE JOSEPH D. NORRIS, ESQ., FUND

In 1980, the Joseph D. Norris, Esq., Health Law Fund of the American Society of Law & Medicine was established. Thus far, the Fund has awarded three health law fellowships for educational activities associated with the JOURNAL. Each has carried a stipend of \$1000 to support a fellow for three weeks' full-time (or its part-time equivalent) for research and educational activities. The Fund intends to award two or more of these fellowships per year.

In addition, the Fund has the following purposes: (1) to solicit charitable contributions for use in financing JOURNAL fellowships and other educational activities specified by the Trustees of the Fund; (2) to finance and support the acquisition of important publications for the Sagall Library of Law, Medicine & Health Care; and (3) to fund such other educational activities related to health law education and research as the Trustees shall deem reasonable.

The most recent recipient of the Joseph D. Norris, Esq., Health Law Fellowship is Ronald Grosser, 1980-81 Articles Editor of the JOURNAL, J.D., Boston University School of Law, 1981.

Those interested should apply to the Editorial office of the JOURNAL, 209 Bay State Road, Boston, MA 02215, (617) 353-2953.

# AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 7 NUMBER 1 SPRING 1981

# EDITORIAL

Communication Between the Antitrust and the Health Law Bars: An Appeal for a New Rule of Reason John A. Norris, J.D., M.B.A. David S. Szabo, J.D.

# ARTICLE

Applying Antitrust Law to Medical Credentialing Philip C. Kissam, LL.B.

## MEDICOLEGAL REFERENCE LIBRARY

Selected Recent Court Decisions John A. Norris, J.D., M.B.A. 35 Muriel Fudala, B.A. Bruce L. Watson, J.D.

Wesley Sokolosky, M.D., J.D.

Book Review: Law in the Practice of Psychiatry: A Handbook for Clinicians, by Seymour L. Halleck; The Uses of Psychiatry in the Law, by Walter Bromberg

# NOTES AND COMMENTS

Environmental Health: An Analysis of Available and Proposed Remedies for Victims of Toxic Waste Contamination

Statutes of Limitations: the Special Problem of DES Suits

INDEX TO VOLUMES 5 AND 6, WITH ABSTRACTS Warren J. Hurwitz

61

91

107

51

i

1

Cynthia Alice Feigin

https://doi.org/10.1017/S0098858800012399 Published online by Cambridge University Press