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Foreword i

ARTICLES

**Access to Medicine in an Era of
Fractal Inequality** FRANK PASQUALE 269

This article evaluates the legitimacy and degree of inevitability of unequal access to medicine. The author introduces ‘fractal inequality’ to the access issue by using the term to describe skewed patterns in distributions of income and wealth that lead to reallocative effects of higher spending on health care by the wealthiest that can cascade down the distributive ladder. ‘Fractal inequality’ is transposed to the U.S. health care sector to explain the trend away from medical need toward ability to pay. The author cautions U.S. policymakers to consider international access problems instead of exacerbating those issues when domestic access to care policies is debated in a vacuum. The author also analyzes some policy proposals designed to reduce inequities in the global trade of medicine.

**Pharmaceutical Pricing: A Review of
Proposals to Improve Access and
Affordability of Prescription Drugs** PAULA TIRONI 311

This article discusses how pharmaceutical innovation achieves remarkable improvements in human health but a significant portion of the U.S. population cannot afford prescription drugs. The author examines ways that patent protection, generics, supply chain complexity, and the cost of innovation and promotion affect access and affordability. The author then looks at the influences of marketing strategies and industry trends such as the patent cliff and pipeline for new drugs, innovations in biotechnology and genomics, comparative effectiveness analysis, and payor and employer strategies on drug prices. An analysis of reform proposals in the context of industry trends suggests that promoting generic drug use and availability through education, prohibiting authorized generics, and restricting the practice of developing follow-on drugs and discontinuing the original formulations upon patent expiration could improve access and affordability most quickly and significantly.

**An Economic Assessment of Patent Settlements
in the Pharmaceutical Industry** BRET DICKEY, 367
JONATHAN ORSZAG,
AND LAURA TYSON

This article demonstrates that in recent years, patent settlements between branded and generic manufacturers involving “reverse payments” from branded manufacturers to generic manufacturers have received close antitrust scrutiny, driven by concerns that such settlements harm consumers by delaying the entry of lower-priced generic drugs. The authors note that such settlements will be a focus of the Obama Administration’s antitrust enforcement policy, yet there is a growing consensus among the courts that

such settlements are anticompetitive only under narrow sets of circumstances. In this article, the authors present an analytical framework for evaluating the competitive effects of patent settlements, including those involving reverse payments, and demonstrate that these settlements can benefit consumers. Thus, the authors conclude that while continued scrutiny of such settlements is important, broad brush treatments are inappropriate and only a more individualized evaluation can correctly determine the competitive effects of a particular settlement agreement.

**Post-Mortem Pregnancy: A Proposed Methodology
for the Resolution of Conflicts Over Whether
a Brain Dead Pregnant Woman Should be
Maintained on Life-Sustaining Treatment . . . ALEXIS GREGORIAN 401**

In this article, the author examines conflicts over whether to maintain a brain dead pregnant woman on life-sustaining treatment. The author cautions that on the rare occasions when courts are confronted with such a conflict, they should employ a consistent methodology for resolution of the conflict and attempt to honor the wishes of the post-mortem mother and her family. The author draws on relevant areas of law to demonstrate the existence of a legal fiction that protects the interests of post-mortem pregnant women in refusing medical treatment. This article then proceeds to propose a methodology that enables courts to account for a post-mortem pregnant woman's interests, her family's interests, and the state's interests in resolving conflicts over whether to remove a post-mortem pregnant woman from life-sustaining treatment.

**A Call for Minds: The Unknown Extent of
Societal Influence on the Legal Rights of
Involuntarily and Voluntarily Committed
Mental Health Patients TERESA CANNISTRARO 425**

This article begins and ends with a call for more empirical research to understand the connection between societal views of mental illness and the legal system. The author asserts that changing social perceptions of mental illness certainly affect legal outcomes and commitment levels, but the degree remains unknown. This article explores the above two topics through the framework of the Circuit Court 'split' regarding the Constitutional rights of persons committed to state mental health institutions. A main facet of the 'split' is centered on the Circuits' disagreement about whether or not all mentally ill patients committed to institutions deserve the same Constitutional protections.

**Perceiving Others as Different: A Discussion
on the Stigmatization of the Mentally Ill MARCHELL GOINS, 441
KYNETRÉS GOOD,
AND CORI HARLEY**

This commentary on the stigmatization of people with mental illness explores social perceptions of them as dangerous and uncivilized. The authors discuss how the legal system suggests that these are people who should be ousted from the community while mental health professionals attempt to reiterate the fact that these individuals are simply human. The authors describe ways people with mental illness have been subjected to discrimination, ridicule, and humiliation. This commentary discusses multiple perspectives of mental illness, from past to present, and how those perspectives influenced social, legal, and psychological frameworks.