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Foreword

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Foreword

On Thursday, November 18, 2004, the Institute for Health Law held its annual Health Law and Policy Colloquium. The Colloquium was entitled “Oh Darling! 40 Years Later: The Legacy of *Darling v. Charleston Community Memorial Hospital* and the Evolution of Hospital Liability,” and many accomplished health care attorneys and scholars were in attendance, participated in panel discussions, and delivered formal presentations. In this, the second issue of Volume 14 of the *Annals of Health Law*, we have assembled a collection of articles based upon the words of four of our distinguished Colloquium speakers.

Mr. Mitchell Wiet, in his article entitled “*Darling v. Charleston Community Memorial Hospital* and its Legacy,” offers a comprehensive introduction to the *Darling* case and the evolution of hospital liability. Mr. Mark A. Kadzielski’s article, “A New Quality Challenge: Coordinating Credentialing and Corporate Compliance,” discusses the post-*Darling* process of physician credentialing and suggests that centralization of the process will result in a more efficient, higher quality health care system. With such a system, Mr. Kadzielski opines, the hospital liability imposed by *Darling* will simply allow patients to take a pro-active role in their own treatment and care.

“New Governance Norms and Quality of Care in Nonprofit Hospitals,” authored by Professor Thomas L. Greaney, discusses the “three-legged stool” of hospital governance and the impact its structural disconnect has on quality of care. Finally, Professor Nathan Hershey examines the ramifications of the *Darling* case in the broader context of an ever-changing health care industry in his article entitled, “Looking at Accountability 40 Years After *Darling*.” Hopefully, the four articles will provide practitioners, academics, legislators, students, and policy-makers with much fodder for discussion regarding an extremely influential legal decision.

In addition to the Colloquium speakers’ articles, we have also assembled four fantastic articles on a variety of current ethical, legal, and political health care topics. Dr. Thomas R. McLean’s article entitled, “The Offshoring of American Medicine: Scope, Economic Issues and Legal Liabilities” begins the issue. The article addresses the concepts of telemedicine and cybersurgery, and discusses the serious implications of allowing American

medical jobs to be performed overseas. Dr. McLean provides a comprehensive examination of the socioeconomic, political, legal, and technological aspects of this very current issue.

Mr. Brent Rawlings and Mr. Hugh Aaron discuss outlier payments in their collaborative effort entitled, "The Effect of Hospital Charges on Outlier Payments Under Medicare's Inpatient Prospective Payment System: Prudent Financial Management or Illegal Conduct?" In the context of the allegations surrounding Tenet Healthcare Corporation's billing practices, the authors suggest that perhaps, at times, fiscal responsibility is confused with illegal conduct.

Dr. William Gunnar offers a unique look at physician credentialing in his article, "The Scope of a Physician's Medical Practice: Is the Public Adequately Protected by State Medical Licensure, Peer Review, and the National Practitioner Data Bank?" A cardiac surgeon himself, Dr. Gunnar's insider perspective regarding credentialing and licensure is truly unique, and will cause readers to contemplate the adequacy of the current process, as well as consider alternative processes that could better ensure quality of care.

Finally, "An Appropriate Legislative Response to Cloning for Biomedical Research: The Case Against a Criminal Ban," is an interesting approach to the oft-discussed bioethical issue of cloning. Mr. Gusman's article describes the processes of therapeutic and reproductive cloning, discusses the potential for technological and medical advancement, and suggests that a criminal ban on such scientific research would be less effective and more constitutionally questionable than other alternatives, such as tight legislative regulation or voluntary compliance with aspirational, industry-wide standards. The article is comprehensive, but focuses on the potential of embryonic stem cell research, as opposed to existing adult stem cell advancements.

It is the hope of the *Annals* editors and the staff of the Institute for Health Law that our readers will find this issue especially relevant and thought-provoking, and consider carefully the ever-changing field of health law and policy. Thank you for your continued support of the *Annals of Health Law*, and may your summer be productive and blessed.

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