

2003

Foreword

Jeffrey Kee

Loyola University Chicago, School of Law

Larry Singer

Loyola University Chicago, School of Law, lsinger@luc.edu

John Blum

Loyola University Chicago, School of Law, jblum@luc.edu

Follow this and additional works at: <http://lawcommons.luc.edu/annals>



Part of the [Health Law and Policy Commons](#)

Recommended Citation

Jeffrey Kee, Larry Singer & John Blum *Foreword*, 12 *Annals Health L.* i (2003).

Available at: <http://lawcommons.luc.edu/annals/vol12/iss1/2>

This Prefatory Matter is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in *Annals of Health Law* by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Foreword

This Winter edition of Volume 12 of the *Annals of Health Law* represents a tremendous accomplishment for the Journal, as the *Annals* now moves to a twice yearly format and away from its annual issue history. This expansion of the *Annals* represents a heightened commitment by the Institute for Health Law to share the richness of scholarship undertaken by Loyola University Chicago School of Law health law students, as well as a desire to publish significant articles by academics and practitioners which we will believe will have a strong impact on health law and policy.

The five articles set forth in Volume 12 demonstrate the wide ranging nature of health law, and the ability of the field to grapple with emerging issues of both local and national import.

Stuart Gimbel and Miles Zaremski address the use of restrictive covenants in physician employment agreements. These covenants, which are an important mainstay in any physician employment context, have attracted increased scrutiny by Illinois courts. Significantly, the historical acceptance of these covenants by Illinois courts has always provoked tension between competing state law policies: Freedom of contract, the ability of the individual to continue practicing her profession and the desire of patients to receive care from a provider of their choosing. Illinois courts, like courts in many states, have generally sided with the pro-contract forces, holding that legitimately drafted restrictive covenants are enforceable. Recently, the legality of restrictive covenants in Illinois has once again been called into question. Gimbel and Zaremski review the history of restrictive covenants in Illinois, and examine recent challenges to their acceptance. The authors argue for clarity on behalf of the Illinois Supreme Court regarding the enforceability of these covenants.

Ms. Whetsell addresses the significant issue of medical training in her piece "Changing the Law, Changing the Culture: Rethinking the 'Sleepy Resident' Problem." The issue Ms. Whetsell addresses has been discussed extensively in leading newspapers, which have reported many instances of patient endangerment, and even death, apparently as the result of overly tired medical residents treating seriously ill patients. The prob-

lem itself calls into question the training regiment used to develop physicians, the culture of the medical establishment and how society chooses to finance medical education and, indeed, health care. In her article Ms. Whetsell reviews the forces dictating the training regiment for medical residents, and explores what changes should be made to assure competent care is provided by these residents. She discusses New York's experience in addressing this issue, as New York has assumed a leadership role on the issue given its locus as one of the most highly publicized episodes involving deficient medical care attributed to an overly tired medical resident. The piece argues that the New York experience should be used to shape federal and state efforts to address this important quality of care issue.

This Winter issue also contains two articles addressing the Health Information Portability and Accountability Act of 1996 (HIPAA). HIPAA has dominated the practice of health law during the past two years, as institutions and their legal counsel struggle with interpreting, and implementing, the law. The first article on HIPAA, authored by Julie Bruce, brings HIPAA into the post-September 11th world, examining HIPAA's goal of patient confidentiality in the context of a nation focused on terrorism, with its desire for openness on records which might affect national security. Ms. Bruce extensively discusses the Model State Emergency Health Powers Act, under consideration for passage by many states, and analyzes its provisions in light of the HIPAA privacy thrust. She notes areas where tensions exist between the two approaches, and suggests changes to ameliorate these concerns. In doing so, Ms. Bruce becomes one of the first commentators to address the conflict between the two national policies of privacy and openness, and provides meaningful direction to those individuals thinking through this conflict.

Ms. Guthrie in her piece also addresses HIPAA, but from a technical perspective. Specifically, she explores three significant pieces of HIPAA's "privacy rule:" Preemption Analysis, the Minimum Necessary Standard and the Notice of Privacy Practices. Ms. Guthrie argues that each of these deserves attention, and proposes modifications so as to enhance the ability to comply with the law.

Finally, Gwendolyn Majette, in her article "Access to Health Care: What a Difference Shades of Color Make," raises one of the signal issues in the delivery of health care services: the color barrier between access and quality of care afforded to people of

different races and ethnicities. Professor Majette critically reviews the barriers to health care, and analyzes their disparate impact on people of color. She then proposes that the institutional, provider and payor health care communities come together to improve access and quality of care to racial and ethnic minority groups. Her proposal serves as an important call to arms to assure that all persons in the United States receive adequate health care.

We hope that you find this Winter edition of the *Annals* thought provoking and useful, and welcome your comments (and submissions!).

Jeffrey Kee
Editor-in-Chief

Larry Singer
John Blum
Faculty Editors