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# ANNALS OF HEALTH LAW

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#### **Miranda and the Womb**

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*The doctor-patient relationship is sacrosanct. However, this is not the case in Indiana. Instead, Indiana challenges the doctor-patient relationship with the legislature's requirement of legal and medical mandatory reporters. The imposition of mandatory reporters often results in a breach of trust in the doctor-patient relationship, which not only can severely damage the relationship, but also harm the patient or client. In Indiana, this harm rises to prosecution and prison. Indiana requires doctors to breach confidentiality and assist in prosecuting their patients, with a distinct focus on pregnant women.*

*Ordinarily, when the doctor-patient trust is breached, it can severely damage not only the relationship but harm the patient or client. In Indiana, harm rises to prosecution and prison. Women who may be in critical stages of their pregnancy risk arrest and conviction when they seek medical assistance. Clients who disclose past criminal activity may face prosecution. States assert concern for the fetus when criminalizing the behavior of pregnant women. The concern for the fetus pits the mother against the fetus and the state, and doctors and against the people they serve.*

*Purvi Patel is one example. Purvi sought medical treatment after a miscarriage and wound up with a 20-year prison sentence. In Indiana, pregnant women who seek medical attention need to be Mirandized before being treated and criminal defendants have to withhold communications from their attorneys otherwise they will be blindsided.*

*A doctor assisted law enforcement and testified against his patient, Purvi. The doctor ceased being a medical officer and became a state actor. The constitution requires doctors acting as agents to state warn their patients that they face potential*

*prosecution. Purvi received no such warning. Indiana courts allow for an overbroad application of feticide laws that interfere with criminal defendants' Fifth Amendment right against self-incrimination. A civil Miranda equivalent is needed for vulnerable pregnant women seeking medical assistance.*

### **Uncanny Commodities: Policy and Compliance Implications for the Trade in Debt and Health Data**

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*This Article examines how health data produced in a variety of contexts outside of HIPAA regulations are repurposed by commercial data brokers for marketing, credit risk assessment and purposes other than for the direct healthcare of a patient. The Article describes how a patient's health data end up in the databases of some of the most powerful information brokers in the United States - credit bureaus. Once in their hands, health information are combined with other consumer and financial data that are used to feed financial risk, consumer behavior and other scoring instruments, including "decisioning tools". These algorithmic instruments are used by healthcare providers to predict whether a patient will pay a bill or take medication, and to support clinical decision making, among other purposes. These data brokers also sell these data to third parties, which will use health data for target marketing. This Article considers some of the implications that the repurposing and reselling of patient health data have for privacy and compliance with security policy.*

### **Searching for Adverse Events: Big Data and Beyond**

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*Big Data is coming to health care, albeit slowly. The widespread diffusion of electronic health records into the health care industry means that huge quantities of data can now be generated and stored in data warehouses for use. The benefits of data analytics are potentially groundbreaking for the health care industry. High risk patients can be identified; admission rates predicted to allow better staffing; security fraud can be reduced; patient outcomes can be improved through tracking patient progress.*

*The focus of this article is the use of data analytics to enhance institutional provider power to spot anomalies, such as a doctor's high rate of patients with post-operative infections or hospital readmission. Analytical tools can also spot adverse drug events (ADEs) and reduce such ADEs by scanning patient records for medications prescribed outside standard treatment.*

*This Article will explore the increasing uses of such data mining tools in hospitals, using examples from current caselaw. It will examine peer immunity statutes and other statutory schemes that limit plaintiff lawyer access to discovery of potentially actionable errors in hospitals. It will further consider the courts' emerging approaches to overbroad hospital attempts by hospitals to shield hospital data from*

*plaintiff discovery and use. Finally, it will consider the possible consequences of hospital uses of data analytics, and the risks to physicians of abuses of such analytic techniques, such as staff privileging actions or termination of employment for “substandard” care. The law presents a tangle of statutory defenses against disclosure of internal hospital committee reports on adverse events, both state and federally based; the new technology promises discovery of more physician-caused adverse events without adequate protection of staff and employed physicians against data abuses.*

**Legal and Ethical Impediments to Data Sharing and Integration Among Medical Legal Partnership Participants**

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*Medical legal partnerships (MLPs) respond to the medicalization of poverty by addressing the legal and social problems that cause or contribute to poor health. MLPs achieve their mission through collaboration among health care, legal, and public health professionals. Those MLPs with a highly integrated team of professionals offer more comprehensive, coordinated assistance to patient-clients. The success of this interdisciplinary team model depends on open communication among the various MLP professionals. Unfortunately, legal, ethical, and practical barriers often prevent MLP professionals from sharing patient-client information with one another. This Article identifies these barriers and explains how they may undermine the effectiveness of MLPs by hindering data sharing and integration among MLP professionals.*

**The Technologies of Race: Big Data, Privacy and the New Racial Bioethics**

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*Advancements in genetic technology have resurrected long discarded conceptualizations of “race” as a biological reality. The rise of modern biological race thinking – as evidenced in health disparity research, personal genomics, DNA criminal forensics, and bio-databanking - not only is scientifically unsound but portends the future normalization of racial inequality. This Article articulates a constitutional theory of shared humanity, rooted in the substantive due process doctrine and Ninth Amendment, to counter the socio-legal acceptance of modern genetic racial differentiation. It argues that state actions that rely on biological racial distinctions undermine the essential personhood of individuals subjected to such taxonomies, thus violating a protected privacy interest in avoiding race-based biological classifications by the government.*

*The ascendance of modern de jure genetic racial classifications has received only minimal attention thus far in the literature, with prominent scholars such as Dorothy Roberts addressing the socio-political roots of the phenomenon. This Article contributes to the discussion by further developing a constitutional framework by which to challenge state-sanctioned biological racial taxonomies.*

**Remarks on Patient Privacy: Problems, Perspectives, and Opportunities**

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*Professor Stacey Tovino gave the keynote address at the Beazley Institute for Health Law and Policy's Eleventh Annual Symposium on Health Law and Policy ("Privacy, Big Data, and the Demands of Providing Quality Patient Care"). During her remarks, Professor Tovino addressed one problem, one perspective, and one opportunity relating to patient privacy and health information confidentiality. This Article is a published version of her remarks.*

**Healthcare, Privacy, Big Data and Cybercrime: which one is the weakest link?**

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*This Article is devoted to the issue of cyberattacks against the healthcare sector. Statistics show that the healthcare sector is one of the most vulnerable to cyberattacks, and therefore, has become a frequent target for individual hackers, as well as organized hacker groups. The authors discuss this problem from the perspectives of criminology and criminal law. In the first part, they analyze recent cyberattacks on the healthcare sector in the United States and worldwide. Based on this analysis, they establish a classification of cyberattacks against healthcare institutions. They also use this analysis to point to the key weaknesses that make the healthcare sector an unprotected target for cybercrime. In the second part, the authors discuss the criminal law dimension of the problem. They emphasize the importance of harmonization of legislation in this emerging area of criminal law. In addition, they point to the problem of (or the lack of) universal jurisdiction for prosecuting such crimes.*