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# ANNALS OF HEALTH LAW

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*On February 4, 2010 the Illinois Supreme Court struck down Illinois' medical practice reform bill, P.A. 94-677, when it decided Lebron v. Gottlieb Memorial Hospital. Although the court only considered the unconstitutionality of the cap on non-economic damages contained in that bill, an inseparability provision resulted in the invalidation of all of its provisions. The end result of the Lebron decision extends much further than the striking of the cap on non-economic damages. It affects such areas as medical liability insurance law, physician discipline, public disclosure of information, the admissibility of physician statements into evidence, and expert witness standards. The Lebron holding has raised a significant obstacle to the implementation of a wide range of legislative measures intended to improve both the delivery and quality of healthcare services in Illinois. This article explains the impact of Lebron in these collateral, but important, areas of the law.*

**The Stark Law in Retrospect** .....PATRICK A. SUTTON 15

*Considering the ultimate goals of preventing the over-utilization of medical services and protecting the Medicare program, are the numerous phases of the Stark Law and their concomitant regulations effective; or, conversely, has the legislation served to impede entrepreneurialism among physicians to the detriment of innovations and better integration in the delivery of medical treatment? This article endeavors to answer the above question through an analysis of the policy goals behind the legislation; the evolution of its regulations; its effect on competitiveness in the field of medicine; and the ethical considerations implicated by the issue of physician self-referral. It further offers some proposals which attempt to address the problem of physician self-referral abuse while at the same time reducing the complexity and breadth of the Stark law and its regulations. The article concludes by noting that to truly change the practice of inappropriate self-referral as well as the culture of over-utilization, it is necessary not only to target specific relationships and practices prone to abuse, but to realign the financial incentives created by our current payment mechanisms as well.*

**The False Claims Act and the Eroding  
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*This article addresses the federal government's expansive methods in tackling healthcare fraud, particularly in misapplying the False Claims Act. Although tasked with the obligation to curtail the fraudulent submission of Medicare & Medicaid claims, the U.S. government must rein in the current trend to utilize the False Claims Act*

*against smaller medical providers. As the Act's original focus has ebbed in significance, the government has increasingly applied the False Claims Act to circumstances that do not evince actual fraud. In doing so, federal courts have effectively eroded the statute's critical scienter requirement. The federal common-law doctrines of "payment by mistake" and "unjust enrichment" adequately address the payment of non-fraudulent, albeit false, Medicare & Medicaid claims. Yet the federal government pursues these appropriate remedies only rarely and in the alternative, essentially when the government fails under the False Claims Act. Thus, this article argues for reform, calling for a clearer delineation between remedial and punitive measures. In cases involving smaller medical providers, courts should strictly limit the False Claims Act to those instances where fraud is clearly manifest.*

**Squeezing the Middleman: Ending Underhanded Dealing in the Pharmacy Benefit Management Industry Through Regulation . . . . . MARK MEADOR 77**

*Pharmacy benefit management (PBM) companies are the middlemen of the pharmaceutical industry, designing plans for sponsors and insurers and pushing the products of manufacturers. Their unique position can often create conflicts of interest, which has been the basis of much litigation. This article reviews the structure of the PBM industry and analyzes concerns arising from its handling of prescription drug pricing, manufacturer rebates and discounts, and mail order pharmacies. After surveying several legislative proposals, it concludes with a comprehensive outline for legislation to eliminate underhanded dealing in the industry and lower the cost of prescription drugs.*

**Is State Power to Protect Health Compatible With Substantive Due Process Rights? . . . . . ALLAN J. JACOBS 113**

*Public health laws may mandate drastic limitations on individual liberty, such as forced medication and quarantine. This results in a tension between public health laws and guarantees of liberty such as the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. The Supreme Court has resolved this tension in favor of one or the other of these legal principles, depending on the facts and issues involved. Nevertheless, Supreme Court jurisprudence is internally consistent. The Court has applied a level of scrutiny that, while rigorous, is more flexible than strict scrutiny. I denote this as "enhanced public health scrutiny." Applying this scrutiny, the Court will uphold public health legislation if it protects an inchoate class of people who may not yet be identifiable, who will incur a specific disease or injury absent the law, but who will not experience this disease or injury if the law is enforced. If this doctrine were explicit, it would constitute a clear guideline to courts seeking to balance health and liberty concerns. This guideline would be consistent with current case law, and would not impact on law affecting reproductive liberty.*