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Foreword

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Foreword

The *Annals of Health Law* editorial staff is proud to present our Winter Issue of 2009-2010. In this Issue, the Executive Board selected articles on several timely health law topics. The authors take a thoughtful look at critical issues such as disproportionate access to medicine, access and affordability of prescription medication, an economic analysis of patent settlements in the pharmaceutical industry, life sustaining treatment for brain dead pregnant women, and rights for mentally ill individuals.

Due to rising numbers of uninsured people, along with rising health care costs, there is increasing concern regarding ways to improve access to health care. However, finding a solution has proven to be a formidable challenge. In the first article, Professor Frank Pasquale highlights that in the current health care system those with ability to pay greater sums of money for care have the purchasing power to divert health care resources from the less fortunate. He argues that fractal inequality explains the impact that disproportionate income distribution has on health care. Moreover, the role of specialty hospitals and concierge primary care in perpetuating a cycle of fractal inequality is detrimental to those who are unable to pay for “privileged” medical treatment. He transposes the impact of fractal inequality in international medicine on the U.S. . He concluded that taxation offers several benefits that can generate a more even distribution of access to health care but cautions that this promising strategy is not without its challenges.

The next article focuses on a particular aspect of treatment within the health care system, specifically pharmaceutical treatment. Paula Tironi notes that despite the important benefits of prescription medication, the costs of various coverage plans are prohibitive for many Americans. The author highlights the negative impact this has on vulnerable populations such as children, the elderly, disabled, and those with chronic illnesses. Tironi points out that while generics have been made available at large chain pharmacies and discount stores, this has not improved pharmaceutical drug access for those who need it. The author then reviews payor trends and the impact on drug prices, legal mechanisms that regulate the introduction of patent protected and generic drugs to market, and competitive advertising and pricing.

This Issue also addresses the topic of patents in the pharmaceutical industry. Specifically, Bret Dickey, Jonathan Orzag, and Laura Tyson

take a close look at economic incentives for innovative new drugs and the effect of generic competition on drug prices. The authors describe the Hatch-Waxman Amendments and the impact they have on patent litigation and settlements between brand name and generic manufacturers. Within the framework of the Hatch-Waxman Amendments and an economic cost-benefits analysis, the authors discuss the advantages and disadvantages of patent settlements for manufacturers and their impact on consumers. The authors conclude that reverse payment settlements, under certain circumstances, can have short and long term procompetitive outcomes and benefit consumers in ways that would not otherwise be feasible if such settlements were prohibited.

This Issue also tackles the difficult topic of life-sustaining treatment and the controversy that surrounds it. Alexis Gregorian examines the rights of brain dead pregnant women and whether these rights can be infringed upon by surviving parties and the State. She reviews the legal system's treatment of the deceased to argue that the law promotes a "legal fiction" that the deceased retain their interest. Gregorian applies this analysis to the intent of post-mortem pregnant women and argues that it should extend to their right to refuse medical treatment. The author grounds the conflicting competing individual's interest and the State's interest in abortion precedent and other case law regarding right to privacy. She uses these legal precedents to develop a methodology for resolving conflicts as to when a post-mortem pregnant woman should be sustained on life support to save the fetus.

Our Issue concludes with an important discussion of societal influence and perceptions of people with mental illness and the laws that affect them. In her article, Teresa Cannistraro begins with an overview of the voluntary and involuntary hospitalization process. She examines case law that establishes Due Process protections for civilly committed mentally ill patients and takes a critical look at the distinctions that are made by the courts based on a patient's psychiatric commitment status. The author notes that lawmakers are not immune to the public stigma that surrounds mental illness and they should remain mindful of this when passing law. She concludes with a recommendation for more empirical research investigating the association between media exposure about the mentally ill and the subsequent case law that follows. To further expand on this critical topic, Marchell Goins, Kyneitrēs Good, and Cori Harley provide additional insight on the stigmatization of the mentally ill. The authors discuss the complex cycle of societal perceptions and legal definitions of mental illness. The authors call for mental health practitioners to challenge erroneous

perceptions of the mentally ill and play an active role in advocating for their fair treatment in society.

The *Annals* staff is honored to work with a distinguished group of authors and proud to publish their contributions in this Issue of the *Annals of Health Law*. We would like to thank all of our authors for their professionalism and collaboration throughout the editorial process, and for their outstanding contributions to the dynamic field of health law. We would also like to extend our sincere appreciation to the Beazley Institute for Health Law and Policy for their continued support and assistance.

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