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ARTICLES

**Re-shaping the Common Good in Times
of Public Health Emergencies:**

Validating Medical Triage GEORGE P. SMITH, II 1

This article discusses the utilitarian principle of triage in the context of governmental response to national disasters, while analyzing the delicate balance between individual liberties and the government actions necessary to promote the common good. The author examines competing conceptions of the common good, and posits that a new philosophy is required for public health emergencies in order to promote balanced and normative standards of conduct necessary for consensus-based decision-making in times of national emergency. The author then demonstrates that the principal of medical triage is a valid construct for the distribution of scarce resources during national emergencies, tests this construct by applying it to model legislative proposals, and finds that distributive justice can be achieved during national emergencies by incorporating the triage principle into federal policy-making instruments and state legislative proposals.

**Public Health Law & Military Medical Assets:
Legal Issues in Federalizing**

National Guard Personnel JAMES BALCIUS 35
BRYAN A. LIANG

This article examines the role of the National Guard in enforcing public health mandates in emergency situations. The authors analyze the activation of the National Guard through Title 10 of the U.S. Code, which prohibits the National Guard from engaging in law enforcement activities under the Posse Comitatus Act (PCA). The authors then discuss the potential role of the National Guard in emergency and disaster response such as quarantine and compulsory vaccination as well as legal liability issues. The authors conclude by proposing revisions to the PCA to clarify the law and to allow for the effective use of military medical assets in emergency and disaster response initiatives.

EMR Metadata

Uses and E-Discovery . THOMAS R. McLEAN, MD, JD, FACS, ESQ. 75

In this article, the author discusses how the metadata found in an Electronic Medical Record (EMR) can be used as evidence in litigation under the 2006 amended Rules of Civil Procedure and the Federal Rules of Evidence. The article first reviews how EMR metadata can profile the actions a physician takes when caring for a patient. The author then looks at the relevant changes to the Rules and analyzes case law concerning both electronic discovery (e-discovery) and metadata. Finally, the author examines how EMR metadata specifically impacts physicians who are involved in litigation, as

metadata may be used as the standard for authentication of the EMR and can give insight into a patient's clinical outcome.

The Promises and Pitfalls of

Health Savings Accounts ADAM LARSON 119

This comment examines the drawbacks and potential efficiencies associated with Health Savings Accounts (HSAs), and discusses whether HSAs will deliver the purported benefits of reducing aggregate healthcare costs by encouraging value-conscious decisions and increasing cost transparency, thereby reducing the number of Americans without healthcare coverage. The author then discusses several initiatives by state, federal, and private organizations that could ensure wider availability of the tax benefits associated with HSAs, which would broaden the appeal of such accounts for lower-income Americans. After analyzing the background of HSAs, recent developments, and potential improvements, the author describes the current political environment surrounding healthcare coverage and the uncertain future of tax-favored accounts.