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Foreword

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Foreword

In this Winter Issue of Volume 17, the 2007-2008 *Annals* Executive Board is pleased to offer articles that provide challenging and practical approaches to divergent topics in health law, from organ donation and diabetes registries to *qui tam* litigation and patent reform. Although the Executive Board began its review of submissions without particular topics in mind, we agreed on certain requisite characteristics of our selections: they must be progressive, distinctive, and stimulating. We are proud of the contribution each piece makes to the advancement of health law scholarship and hope that you enjoy this issue.

As a society, we place a high level of importance on guaranteeing the privacy of our personal information, especially when it relates to our health. In our first article “Whose Business is Your Pancreas? Potential Privacy Problems in New York City’s Mandatory Diabetes Registry,” Professor Harold J. Krent, Dean of Chicago-Kent College of Law, and the Chicago-Kent Honors Scholars take a penetrating look at the recently developed New York City diabetes registry. After distinguishing this diabetes registry from other existing and past registries, the authors draw attention to its potentially significant privacy implications. To address these privacy concerns, the authors offer suggestions for changes to the current statutory framework of the registry that can also be applied to the creation of similar public health registries in other cities.

After examining the privacy implications of New York City’s diabetes registry, we offer two articles that focus on the critical shortage of organ donors. As an Executive Board, we hope for the opportunity to select articles that advocate solutions to important health law policy issues. As I write this Foreword, 98,148 individuals are on the wait list for an organ and only 9,759 organs have been recovered from living and deceased donors since the start of the year. Both articles offer very different solutions, and yet each author makes a very convincing argument for his proposal. Charles C. Dunham IV takes a bold approach in “‘Body Property’: Challenging the Ethical Barriers in Organ Transplantation to Protect Individual Autonomy” by advocating the recognition of organs and tissues separated from the body as a distinct category of personal property. Ultimately, Mr. Dunham proposes a futures market for organs, in which individuals before death, or surviving family members after death, are permitted to sell the decedent’s organs in a private contract. We selected Mr. Dunham’s arti-

cle from the top twenty percent of articles submitted to the Eighth Annual Epstein Becker & Green Health Law Writing Competition.

In addition to Mr. Dunham's article, we are pleased to present another perspective on the shortage of organ donors. Joseph B. Clamon proposes the use of tax policy to encourage blood and organ donation in "Tax Policy as a Lifeline: Encouraging Blood and Organ Donation Through Tax Credits." After critiquing the ethical and logistical problems posed by other commercial and non-commercial solutions, Mr. Clamon demonstrates how tax credits can be used as an effective and ethical solution to address the shortage of donors. Mr. Clamon also offers two model statutes that provide guidance as to how a nonrefundable tax credit for blood and organ donation might operate in the tax code. By publishing these scholarly pieces, it is our sincere hope that we advance the development of a viable solution to this critical concern.

Our next author, Carolyn V. Metnick, addresses a very different type of problem in her article, "The Jurisdictional Bar Provision: Who is an Appropriate Relator?" Medicare fraud and abuse cost the government billions of dollars per year. After explaining the role of *qui tam* litigation in fighting Medicare fraud and abuse, Ms. Metnick examines how various courts have interpreted the jurisdictional bar provision of the False Claims Act, a common road block for *qui tam* litigators. Ms. Metnick provides a thorough evaluation of how different circuits have interpreted this law with the goal of assisting litigators in choosing favorable jurisdictions to bring their *qui tam* actions.

Finally, Kristin Nugent examines the intersection of the medical device industry and patent law in "Patenting Medical Devices: The Economic Implications of Ethically Motivated Reform." The Executive Board felt this article was an excellent example of the many junctures between health law and other legal specialties, in this case, intellectual property law. In her article, Ms. Nugent explores whether the current patent system strikes the optimal balance between providing incentives to inventors to bring new medical devices to the marketplace and promoting public health by ensuring that these medical devices are widely available at a reasonable price. Ms. Nugent concludes that an alternative patent system for medical devices is needed and that a combination of changes to the current system, including a reduced grant of monopoly power and government-sponsored incentives, most equitably account for the interests and needs of both healthcare device consumers and producers.

In conclusion, we hope that you find this Winter edition of the *Annals of Health Law* meets our goals of being progressive, distinctive, and stimulating. The staff extends its appreciation to the authors of

these articles for the opportunity to publish their work and for their collaboration throughout the editorial process. We also would like to thank the Beazley Institute for Health Law and Policy for their continued support. We look forward to your input and wish you the very best for the New Year!

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