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ARTICLES

“Just Scanning Around” with Diagnostic Medical Ultrasound: Should States Regulate the Non-Diagnostic Uses of This Technology? A. ALEXANDER, M.D., J.D., LL.M. 1

This article examines how the non-diagnostic uses of medical ultrasound may violate the prudent use of this technology and supports the proposal of state-based legislative efforts to protect consumers from abuse. The author identifies the potential health risks to consumers and reviews the existing federal and state regulations, ultimately recommending increased legislation and mandated control of this technology.

Excusable Neglect in Malpractice Suits Against Radiologists: A Proposed Jury Instruction to Recognize the Human Condition CHARLES CALDWELL, M.D., M.A. 43
& EVAN R. SEAMONE, J.D., M.P.P.

This article unwraps the nature and source of human errors involved in Radiology, revealing unique elements of the specialty that warrant special consideration in medical malpractice cases. The authors compare these errors to negligent practices in other professions and conclude that a general concept of negligence cannot adequately address the complexities of decision-making in Radiology. After analyzing legal precedent, they develop an innovative jury instruction that recognizes particular situations of error in Radiology that occur in the absence of negligence.

Give Them What They Want? The Permissibility of Pediatric Placebo-Controlled Trials Under the Best Pharmaceuticals for Children Act HOLLY FERNANDEZ LYNCH J.D., M. BIOETHICS 79

This article discusses the Best Pharmaceuticals for Children Act and the FDA’s request for placebo-controlled studies of drugs to treat OCD and depression in children. First, the article explains the need to test drugs in children and examines the reasons this testing has not occurred. Next, the article describes the legislative and administrative responses to remedy this lack of research and assesses the ethics and legality of their implementation. The article concludes that these initiatives are legally and ethically acceptable until a safe and effective treatment is determined--at which point the use of placebos in pediatric testing must be replaced with active controls.

**Releasing Managed Care's Chokehold
on Healthcare Providers KRISTIN L. JENSEN, J.D. 141**

This article addresses the imbalance of power between managed care organizations and physicians regarding the content of treatment information given to patients. The author provides a thoughtful discussion surrounding informed consent issues in a managed care environment, and how managed care organizations maintain their control over physicians. The author concludes by offering varied and insightful methods to even out the disparity of power.

**Will Pay for Performance Be Worth the
Price to Medical Providers? A Look
at Pay for Performance and Its
Legal Implications for Providers STACY L. COOK, J.D., LL.M. 163**

This article explores the legal implications of pay for performance programs from the perspective of healthcare providers. The author provides an informative background on the emergence of pay for performance programs and examines the structure and operation of these programs. She then explores the liability issues of health plans and managed care organizations and delves into evidentiary issues related to pay for performance information. Her article concludes with some practical suggestions for providers in preparing for an expansion of these quality initiatives.