

2004

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Annals of Health Law

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Recommended Citation

Table of Contents, 13 Annals Health L. (2004).

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ANNALS OF HEALTH LAW

THE HEALTH POLICY AND LAW REVIEW OF
LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW

VOLUME 13, ISSUE 2

SUMMER 2004

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ARTICLES

**Federal Tax-Exemption Requirements
For Joint Ventures Between Nonprofit
Hospital Providers and For-Profit Entities:
Form Over Substance?**..... GARY J. YOUNG, J.D., PH.D. 327

This article discusses the IRS rule on hospital joint ventures and related legal developments. The central thesis is that the IRS’s emphasis on operational control is misplaced from both a legal and a policy perspective, and reflects a decidedly strong preference for the form of a joint venture’s governance over the substance of its charitable and community service activities. More specifically, the article challenges the IRS position that the rule is a corollary of existing tax law principles. Additionally, social science research is presented to demonstrate that the rule is not likely to promote, and may in fact undermine, United States health policy objectives.

**A Dutch Perspective:
The Limits of Lawful Euthanasia** UBALDUS DE VRIES, PH.D. 365

Dutch author Ubaldus de Vries reviews the current state of the euthanasia law in the Netherlands. The legislation, enacted in 2001, creates a medical exception that allows for euthanasia in cases where patients experience “hopeless and unbearable suffering.” A brief history of the Dutch approach to euthanasia is set forth, case law is reviewed, and the unique role of the doctor is examined in seeking to understand the extent of one’s right to euthanasia in the Netherlands. Because the courts must determine what constitutes “hopeless and unbearable suffering,” Professor de Vries analyzes the judicial interpretation of “suffering” and concludes that judicial interpretation has reached its limits, and thus by implication, the limits of lawful euthanasia have been reached.

**Breaking Through the Silence:
The Illegality of Performing
Resuscitation Procedures on
the Newly Dead** DANIEL SPERLING, L.L.B., L.L.M. 393

Israeli author Daniel Sperling brings to a light a disturbing practice that is taking place in some teaching hospitals throughout the world – the practice of resuscitation procedures on newly dead patients without the consent of the next-of-kin. Mr. Sperling examines some of the policies and procedures in place to prevent such practice and also looks at the ethical principles that should guide such procedures. The paper also reviews the general issue of consent in the context of medical decision-making and

discusses potential legal claims that might be available to persons who have not been consulted or informed before such procedures are performed. The evolving jurisprudence surrounding the treatment of the newly dead is analyzed and Mr. Sperling concludes by suggesting ways to improve upon the procedures currently in place at some teaching facilities.

Will the Supreme Court Finally

Eliminate ERISA Preemption? . DAVID L. TRUEMAN, J.D., PH.D. 427

David Trueman’s article reviews the history of ERISA preemption by analyzing seminal Supreme Court cases and predicts the future of ERISA preemption in his analysis of recent federal case law. Traditionally, the ability to hold a managed care entity responsible for its actions has been hampered by a strict interpretation of the preemption clauses of ERISA but as the Supreme Court’s jurisprudence has evolved and loosened, several federal courts have allowed suits against managed care companies to go forward. Conflict among the federal circuits has arisen and the Supreme Court has granted certiorari to two cases from Texas in order to clarify ERISA preemption. Mr. Trueman discusses the future of ERISA preemption in light of these decisions.

**Is There an Acceptable Answer to
Rising Medical Malpractice**

Premiums? WILLIAM P. GUNNAR, M.D. 465

This article explores the key issues involved in the attempts at reform of the present medical malpractice system. Investigating the effects that federal tort reform legislation would have on physicians, patients, lawyers, and the medical malpractice insurers, Dr. Gunnar succinctly outlines the issues surrounding the present “crisis in healthcare” and explores the separate interests involved. The article examines the economic forces influencing the medical malpractice insurance industry, reviews previous tort reform, and predicts the future of federal tort reform legislation. Dr. Gunnar concludes by proposing alternatives for malpractice reform.

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The Medical Malpractice Crisis:

Federal Efforts, States’ Roles and

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