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ARTICLES

“Just Say No!”: The Right to Refuse Psychotropic Medication in Long-Term Care Facilities GEORGE P. SMITH, J.D., LL.M., LL.D. 1

This article examines the rights of patients, particularly incompetent patients, in long-term care facilities to refuse psychotropic medication. In exploring this topic, the author focuses on the provisions of the Omnibus Budget Reconciliation Act of 1987 which was part of a Congressional solution to afford greater protection to residents of long-term care facilities. Because the legislation has not lived up to expectations, the author advocates for further legislative action to protect the dwindling bundle of rights of the elderly.

The Relation Between Autonomy-Based Rights and Profoundly Mentally Disabled Persons NORMAN L. CANTOR, J.D. 37

A chapter from his forthcoming book “Deciding for the Profoundly Mentally Disabled,” Professor Norman Cantor argues persuasively for the right of incompetent persons to have a surrogate make critical medical decisions on their behalf, particularly in the context of refusing life-sustaining treatment. While abusive surrogate decision-making is always a concern, Professor Cantor recommends both substantive and procedural protections in order to preserve intrinsic human dignity for the profoundly disabled.

Damned if They Do, Damned if They Don’t: The Need for a Comprehensive Public Policy to Address the Inadequate Management of Pain AMY J. DILCHER, J.D., LL.M. 81

Amy Dilcher examines the need for a comprehensive pain policy and argues that opioids—highly effective drugs for pain management—should be legally and practicably accessible to medical professionals and their patients, as and when needed to provide relief from pain. The article synthesizes a number of perspectives regarding the regulation of pain management and demonstrates that the inadequate treatment of pain stems from a multitude of barriers. After reviewing Congressional action on the topic, Ms. Dilcher concludes with recommendations for a more comprehensive pain policy that would enhance the management of pain.

An EMTALA Primer: The Impact of Changes in the Emergency Medicine Landscape on EMTALA Compliance and Enforcement TIANA MAYERE LEE, J.D. 145

Tiana Lee's article provides an overview and update on the latest in the Emergency Medical Treatment and Active Labor Act (EMTALA). Reviewing the history of the statute, explaining some of the relevant regulations, and exploring government enforcements efforts to date, Ms. Lee highlights the benefits and drawbacks of the statute and recommends ways to ameliorate EMTALA's weaknesses.

Considerations in Medicare Reform: The Impact of Medicare Preemption on State Laws MICHAEL J. JACKONIS, J.D., LL.M. 179

This article explores the key issues involved in understanding the impact of Medicare preemption on state laws affecting the federal purchase of managed care products, as a consideration in future Medicare reform. Author Commander Jacksonis argues that any further Medicare reform must address the impact of federal preemption on quality and quantity of care purchased in order to ensure the existence of a market of product providers, as well as to ensure protection of patient rights and benefits.

Independent Medical Review: Expanding Legal Remedies to Achieve Managed Care Accountability LEATRICE BERMAN-SANDLER 233

Author Leatrice Berman-Sandler reports on independent medical review (IMR), a state-based statutory remedy used to resolve disputes over coverage between patients and their health plans. Ms. Berman-Sandler explores the connection between ERISA preemption and IMR, and opines that in light of recent Supreme Court decisions, the stage has been set for expansion of IMR. Accordingly, Ms. Berman-Sandler concludes that there are strong legal and policy reasons for state legislatures to broaden the application of IMR and for the Court to continue to narrow ERISA preemption in order to increase accountability in the managed care arena.

Comparing Ethics Education in Medicine and Law: Combining the Best Of Both Worlds ERIN A. EGAN, M.D., J.D., KAYHAN PARSI, J.D., PH.D., & CYNTHIA RAMIREZ 303

This article compares various models of ethics education and how these models are employed by both medical schools and law schools. The authors suggest ways in which each profession can enhance their ethical teaching and argue that ethics education in both medicine and law should combine the best elements of each education model, thereby producing graduates who are more knowledgeable and appreciative of ethical issues in practice.