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Foreword

Susan Danial
Loyola University Chicago, School of Law

Billy Thomas
Loyola University Chicago, School of Law

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Foreword

Volume 11 of the *Annals of Health Law* has a slightly different format from previous editions, thanks to the Institute for Health Law's inaugural Colloquium on Health Law and Policy, which took place October 26th, 2001. This Colloquium, entitled "The Role of Law in Quality Health Care," provided a forum for academics and practitioners in both law and medicine to gather and discuss this ever-timely issue. Three keynote speakers presented papers that day, along with several respondents. These presentations produced seven articles which form the basis of Volume 11 of the *Annals*, and further reflect the success of the Institute for Health Law in creating an open discourse and positive exchange of ideas between health lawyers and health care professionals.

As a whole, these seven papers discuss the effects various legal forces can have, do have, and should have in the pursuit of better quality health care. Two papers discuss the benefits of patient empowerment in the field of health care. Professor Kathy Cerminara examines class-action lawsuits and concludes that the class-action device acts to empower individuals and encourage corporate responsiveness, while Robert Kane examines the role patients play as consumers of health care in an evolving marketplace, and emphasizes their role as decision-makers.

The remaining authors discuss various aspects of this evolving marketplace, and the roles government regulation and market forces should play. Professor John Jacobi analyzes the spectrum of various governmental responses to quality of care crises, while Illinois Department of Human Services Secretary Linda Baker emphasizes the critical need for governmental participation in any health care scenario. Alexander Eremia discusses the advantages of market force regulation, professional self-regulation, and private litigation as methods of quality control, and concludes that regular and consistent government oversight is necessary to achieve this goal.

Professor James Blumstein's article focuses on models of legal liability that are commonly used in both litigation and in regulation and concludes that traditional notions of liability must be harmonized with the realities of a controlled marketplace. Finally, Sharon Donohue, General Counsel for the National Com-

mittee for Quality Assurance, also considers the class-action device, but in contrast to Professor Cerminara's model of patient empowerment, she argues that class-action devices benefit plaintiff's attorneys more than plaintiffs, and that the current tendency of class-action plaintiff's lawyers to use the quality assessment data collected by third-party accreditors of health care plans harms consumers instead of helping them.

Aside from these insightful discussions on the complex interaction of legal forces in the health care arena, we are pleased to also present two student articles, both of which were selected from articles submitted to the annual Health Law Writing Competition sponsored by the law firm of Epstein, Becker, and Green, P.C. This well-known national firm designed its competition to encourage scholarly work in the field of health law, and kindly provided the *Annals* these articles for consideration. The first author, Ms. Randi Heitzman, addresses the impact of HIPAA on business entities who come into contact with regulated health care entities, and concludes that current regulations are too ambiguous and complex to achieve the statute's intended purpose. Ms. Laura Hermer, on the other hand, discusses the controversy surrounding the unique status of intersex persons, sometimes known as hermaphrodites. Her analysis focuses on the informed consent doctrine, emphasizing the need for physicians to provide parents with complete information and referral to support groups in making the often-difficult decision regarding gender assignment for a young intersex child.

In conclusion, we believe Volume 11 of the *Annals* provides an insightful and provocative examination of the salient features of the current debate regarding how to maintain and improve quality of care in the American health care system, as well as quality student articles that respond to timely and well-articulated concerns in the field of health law. While all our editors provided thorough and excellent work, we would like to thank Maria Heidbreder and Chae Yi in particular for their exceptional service. We would also like to thank the Institute for Health Law and Professor Larry Singer for including us in the Colloquium, as well as providing the financial and moral support that made the quality and diversity of Volume 11 possible.

Susan Danial & Billy Thomas,
Editors-in-Chief