

AMERICAN JOURNAL OF LAW & MEDICINE

Volume 42, Numbers 2 & 3 • 2016

SYMPOSIUM

GLOBAL INFECTIOUS DISEASES: NEW CHALLENGES AND SOLUTIONS

Symposium Authors

George J. Annas
Enrico Baraldi
J.K. Billington
Byron Carson
Francesco Ciabuschi
Mark Eccleston-Turner
Isha Ann Emhoff
Nir Eyal
Ellen Fugate
Gaëlle Groux
Steven J. Hoffman
Thomas J. Hwang
Aaron S. Kesselheim

Ross Leach
Ann Marie Marciarille
Wendy K. Mariner
Chantal M. Morel
Dina Nathanson
Trygve Ottersen
Wendy E. Parmet
Andrew S. Robertson
Christopher T. Robertson
Michael S. Sinha
Michael R. Ulrich
Alexandra Waluszewski

A Journal of the American Society
of Law, Medicine & Ethics
www.aslme.org



Published by the American Society
of Law, Medicine & Ethics and
Boston University School of Law.
Copyright held by the Trustees of
Boston University.



AMERICAN JOURNAL OF
LAW & MEDICINE

Volume 42, Numbers 2 & 3 • 2016

BOARD OF EDITORS

Faculty Advisors

Kevin Outterson, J.D., LL.M.
Abigail Moncrieff, J.D.
Kathryn Zeiler, M.S., J.D., Ph.D.
Boston University School of Law

**Faculty Editor-in-Chief
Emeritus**

Frances H. Miller, J.D.
Boston University School of Law

Editor

Edward J. Hutchinson
*American Society of Law,
Medicine & Ethics*

Founding Editor

John A. Norris, J.D., M.B.A.
Health Discovery Corp.

EDITORS

Gail B. Agrawal, J.D., M.P.H.
University of Iowa College of Law

Michael Baram, J.D.
Boston University School of Law

Charles H. Baron, LL.B., Ph.D.
Boston College Law School

Jay A. Gold, M.D., J.D., M.P.H.
MetaStar Inc., Madison

Ernest M. Haddad, J.D.
Boston University School of Law

Clark C. Havighurst, J.D.
Duke University School of Law

Nathan Hershey, LL.B.
*University of Pittsburgh
Graduate School of Public Health (Retired)*

David A. Hyman, M.D., J.D.
University of Illinois College of Law

Sheila Jasanoff, J.D., Ph.D.
Harvard University Kennedy School of Government

Timothy S. Jost, J.D.
Washington and Lee University School of Law

Stephen Latham, J.D., Ph.D.
*Yale University
Interdisciplinary Center for Bioethics*

Silvia A. Law, J.D.
New York University School of Law

David T. Morris, J.D., M.B.A.
AbbVie, Chicago

Joseph P. Newhouse, Ph.D.
Harvard University

Irwin N. Perr, M.D., J.D.
University of Washington School of Medicine

Harvey E. Pies, J.D., M.P.H.
Blue Cross and Blue Shield of Florida

Arti K. Rai, J.D.
Duke University Law School

Philip R. Reilly, M.D., J.D.
Third Rock Ventures, LLC

Marc A. Rodwin, J.D., Ph.D.
Suffolk University Law School

Mark A. Rothstein, J.D.
*University of Louisville School of Medicine
Institute for Bioethics, Health Policy and Law*

David S. Szabo, J.D.
Edwards Wildman Palmer LLP

Linda V. Tiano, J.D.
Epstein Becker & Green

Sidney D. Watson, J.D.
Saint Louis University School of Law

AMERICAN JOURNAL OF
LAW & MEDICINE

INTERNATIONAL BOARD OF EDITORS

Koichi Bai

*Director, Institute of Medical Humanities
Kitasato University School of Medicine
JAPAN*

M.A.M. de Wachter

*Director, Institute of Bioethics
THE NETHERLANDS*

Erwin Deutsch

*Faulty of Law
University of Göttingen
GERMANY*

Christopher Newdick

*Reader in Health Law
University of Reading
UNITED KINGDOM*

Bernard M. Dickens, Ph.D., LL.D.

*Faculties of Law and Medicine
University of Toronto
CANADA*

Amos Shapira

*Faculty of Law
Tel Aviv University
ISRAEL*

Honorable Justice Michael D. Kirby

*President, Court of Appeal
Supreme Court of New South Wales
AUSTRALIA*

Peter D.G. Skegg

*Faculty of Law
University of Otago
NEW ZEALAND*

AMERICAN JOURNAL OF
LAW & MEDICINE

STUDENT BOARD OF EDITORS
2015-2016

Editor-in-Chief

Melissa Rybacki

Executive Editor

Hannah Perlman

Managing Editors

Victoria Reines

Ting Chiu

Projects Editors

Portia Keady
Sudeshna Trivedi

Symposium Editors

Amanda Hesse
Timothy Murphy

Administrative Editor

Omar Aniff

Articles Editors

Lauren Bentlage
Daryl Berke

Hannah Levin
Dina Nathanson

Cristina Cahn-Speyer
Talene Ghazarian
Christina Lau

Note Editors

Sara Maldonado
Tyler Patterson
Daniel Risica

Third-Year Editors

Caitlyn Bingaman
Jack Brodsky

Hannah Chapel
Colin Creager

Jaime Margolis
Christopher York

Staff Members

Gabriella Andriulli
Casey Baines
Adria Bonillas
Justin Cacciatore
Stephanie Calnan
Yelena Greenberg
Malavika Lobo
Oliver Mavor-Parker

Beatriz C. Menéndez
Shea Miller
Lewis Osterman
Julie Pearlman
Pradyuman Ramlochan-
Tewarie
Kristen Rogerson
Natalie Rowles

Lauren Rubin
Megan Saumier-Smith
Katie Smith
Maryanne Tomazic
Chelsie Vokes
Caitlin Zeytoonian

AMERICAN JOURNAL OF
LAW & MEDICINE

is pleased to introduce its
STUDENT BOARD OF EDITORS FOR 2016-2017

Editor-in-Chief

Maryanne Tomazic

Executive Editor

Shea Miller

Managing Editors

Natalie Rowles

Megan Saumier-Smith

Justin Cacciatore

Projects Editor

Lewis Osterman

Symposium Editors

Casey Baines
Gabriella Andriulli

Administrative Editor

Malavika Lobo

Articles Editors

Yelena Greenberg
Sigourney LaBarre

Kristen Rogerson
Lauren Rubin

Adria Bonillas
Stephanie Calnan
Julie Pearlman

Notes Editors

Caitlin Zeytoonian
Oliver Mavor-Parker
Beatriz C. Menéndez

Third-Year Editors

Pradyuman Ramlochan-
Tewarie

Katie Smith

Chelsie Vokes

AMERICAN JOURNAL OF
LAW & MEDICINE

Volume 42, Numbers 2 & 3 • 2016

ARTICLES

- 223 The Perils of Panic: Ebola, HIV, and the Intersection of Global Health and Law** *Michael S. Sinha & Wendy E. Parmet*
- 256 Law and Politics, an Emerging Epidemic: A Call for Evidence-Based Public Health Law** *Michael R. Ulrich*
- 284 Beyond Lifestyle: Governing the Social Determinants of Health** *Wendy K. Mariner*
- 310 Firm-Led Malaria Prevention in the United States, 1910-1920** *Byron Carson*
- 333 Ebola and Human Rights: Post-9/11 Public Health and Safety in Epidemics** *George J. Annas*
- 356 Ebola Again Shows the International Health Regulations Are Broken: What Can Be Done Differently to Prepare for the Next Epidemic?** *Trygve Ottersen, Steven J. Hoffman & Gaëlle Groux*
- 393 Managing Our Microbial Mark: What We Can Learn About Pay for Performance From Ebola's Arrival at Our Shores** *Ann Marie Marciarille*
- 429 Leveraging Novel and Existing Pathways to Approve New Therapeutics to Treat Serious Drug-Resistant Infections** *Thomas J. Hwang & Aaron S. Kesselheim*
- 451 Exploring the Obstacles to Implementing Economic Mechanisms to Stimulate Antibiotic Research and Development: A Multi-Actor and System-Level Analysis** *Enrico Baraldi, Francesco Ciabuschi, Ross Leach, Chantal M. Morel & Alexandra Waluszewski*
- 487 A New Product Development Partnership Model for Antibiotic Resistance** *J.K. Billington*
- 524 Preserving an Incentive for Global Health R&D: The Priority Review Voucher Secondary Market** *Andrew S. Robertson*

AMERICAN JOURNAL OF
LAW & MEDICINE

543 Vaccines and Airline Travel: A Federal Role to Protect the Public Health
Christopher T. Robertson

572 The Economic Theory of Patent Protection and Pandemic Influenza Vaccines: Do Patents Really Incentivize Innovation in the Field?
Mark Eccleston-Turner

598 Is There a Moral Right to Nonmedical Vaccine Exemption?
Isha Ann Emhoff, Ellen Fugate, & Nir Eyal

NOTES

621 Herd Protection v. Vaccine Abstention: Potential Conflict Between School Vaccine Requirements and State Religious Freedom Restoration Acts *Dina Nathanson*