

Broader Perspectives in Health Law

by Barry R. Furrow, J.D.

The task of keeping up with new developments and controversies in health care has gotten increasingly difficult in recent years. New diagnostic tools have created dilemmas for pregnant women whose fetuses are discovered to have genetic defects. New life-sustaining techniques have made the neonatal nursery a battleground, as the Baby Doe controversy demonstrated. The emergence of new categories of allied health professionals has complicated credentialing, treatment, and finance. New institutional creatures have proliferated — e.g., surgicenters, emergicenters — while regulation and case law lumber along behind, out of step and out of breath. Increased knowledge of occupational diseases has led to a greater sensitivity by workers to job-related hazards. Malpractice suits have increased in frequency, much to the chagrin of medical professionals. The enormous costs generated by the American health care system have spawned intricate new government regulations, such as Medicare's prospective payment system and diagnosis-related groups, which aim to control costs. The list goes on and on, until finally those of us interested in the interface of law and medicine begin to feel the first involuntary twitches of Alvin Toffler's future shock.

As complexity and controversy proliferate, the importance of a forum — in which these topics can be discussed, analyzed and placed in perspective — is apparent. *Law, Medicine & Health Care* aims to occupy such a central role. As I mentioned in the September 1983 issue, we have been striving for greater variety in *Law, Medicine & Health Care*: scholarly legal articles, empirical research, debates on controversial topics, per-

sonal essays, and perspectives from other disciplines on health law topics.

A backward glance at the topics covered in recent issues suggests the breadth of our coverage. The changing shape of health care delivery and the law's effects have been thoroughly discussed: Miles Zaremski and Darryl Fohrman looked at emergicenters; Fred Kerr considered the merits of a health services holding company; Robert Nord evaluated the impact of antitrust law on providers; and Joanne Stern predicted new problems facing health maintenance organizations. The difficult and troubling issues surrounding fetuses and newborns were analyzed from several angles: Charles Baron, in an elegant essay, considered the concept of person in the law; Carson Strong, John Paris, Anne Fletcher, and Ed Doudera looked at the problem of impaired newborns, as I did in my article on wrongful life suits. The increasingly important role of the nurse in health care delivery was evaluated by Nathan Hershey, Nancy Baker, and Sarah Cohn.

Finally, new perspectives were offered on many of these complex issues. *Law, Medicine & Health Care* has striven over the past year to publish original empirical research which takes discussion beyond traditional analysis into the realm of new proposals. Thus, David Kaufner *et al.* proposed a model and a test for improving medical consent forms, moving beyond the often uninformative, traditional legal analysis of case law. Howard Rubenstein *et al.* researched bedrail use for the elderly, presenting troubling conclusions as to the pernicious interaction of tort standards of care and medical practice. Most recently, Stuart Youngner *et al.* presented data on the perceived value of ethics committees.

In this second issue of Volume 12, we lead off with an article from the perspective of another discipline. Professor Irwin Press, a medical anthropologist who has done field work in Colombia and in United States city hospitals,

offers insights into why patients sue. He looks at the cultural component of disease and patients' perceptions of illness and medical treatment. Press suggests that it is not medical nor hospital errors but rather the patient's perception of his treatment that is the prime cause of claims. His article proposes ways to increase patients' satisfactions in their encounters with doctors and hospitals. We have all had experiences which confirm Press's observations; what he offers is a coherent framework for understanding why patients sue.

Scholarly legal analyses of problems facing health care professionals and hospital administrators are also presented in this issue of *Law, Medicine & Health Care*. David Brushwood looks at new problems facing the pharmacist, while Ed Hollowell evaluates hospital liability for employees' intentional torts. Finally, Sarah Cohn deepens our continuing analysis of the quickly expanding nursing role, in her article reporting on nurses' authority to prescribe.

Future issues will continue to offer a variety of perspectives on current controversies. The controversy surrounding surrogate motherhood will be aired; one article will offer a careful and sympathetic look at problems in the surrogate motherhood contract, while another critiques this new way to form a family. Readers will also see the struggles and successes that practitioners have in attempting to develop a consensus on treatment decisions for the elderly, when *Law, Medicine & Health Care* publishes a set of guidelines for use in nursing homes, accompanied by an opposing commentary.

We take seriously our obligation to discuss new issues cogently, providing new angles on old problems and conceptual frameworks for emerging ones. We need your help in this endeavor. Please write to suggest topics; better still, submit your own articles, research, book reviews, or letters. *Law, Medicine & Health Care* can only be as good as its submissions.

Mr. Furrow, Editor-in-Chief of *Law, Medicine & Health Care*, is Associate Professor of Law at the University of Detroit, in Detroit, Michigan.