

# THE JOURNAL OF LAW, MEDICINE & ETHICS

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## Defining Health Law for the Future: A Tribute to Professor Charity Scott



### GUEST EDITED BY

Stacie P. Kershner, Erin C. Fuse Brown, Leslie E. Wolf,  
Paul A. Lombardo, and Yaniv Heled

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**Defining  
Health Law  
for the Future:  
A Tribute to  
Professor  
Charity Scott**

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*Cover image Courtesy of the  
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**Charity's Neighborhoods**

*Mary A. Crossley*

This tribute compares Charity Scott to Fred Rogers, highlighting how Charity nurtured health law colleagues' unique gifts and built community. Continuing the neighborhood theme, it highlights encouraging developments relating to health, housing, and place: Medicaid housing supports and potential reparations for redlining-related health inequities.

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**Teaching Structural Competency  
in Law School: Interdisciplinary  
Inspiration from Medical Legal  
Partnerships and Health-Related  
Disciplines to Meet ABA Standard  
303(c)**

*Sarah Davis*

Law Schools are now required to provide education to law students on bias, cross-cultural competency, and racism under ABA Standard 303(c). Law clinics, with their social justice orientation, have long taught about structural causes of bias and oppression and ways to intervene at system levels to prevent problems. Medical legal partnership (MLP) clinics have done so by employing concepts from social work and health science programs on structural competency. This article examines MLP and related curriculum to meet the ABA mandate.

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**Medical-Legal Partnership Education  
Impacts Resident Physician  
Competencies Relating to Social Drivers  
of Health**

*Madisen A. Swallow, Shashwat Kala,  
Shannon O'Malley, Alice Rosenthal,  
and Ada M. Fenick*

Medical-legal partnerships (MLPs) support patients and clinicians by streamlining legal and medical care and helping identify and address a subset of social drivers of health (SDOH). Less is known on the effect of MLPs on the competency of residents regarding SDOH. The aim of this study was to identify how integration of an MLP into a pediatric residency training program affected residents' experience understanding and addressing SDOH

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**Imagination, Hope, and Joy: Building  
Resilience through Trauma-Informed  
Teaching and Self-Care in Anti-Racist  
Clinics**

*Christina Scott and Amanda Cole*

Teaching students to build resilience is necessary to keep imagining and fighting for a path towards social justice. To do so, clinicians can draw from the communities facing oppression and examine how they remain resilient despite oppression

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**What I Talk about When I Talk about  
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**Strategy, Morality, Courage: Bioethics  
and Health Law after *Dobbs***

*Nancy M.P. King, Christine Nero Coughlin,  
and Beverly J. Levine*

Our paper examines what is required to protect and promote effective public discussion and policy development in the current climate of divisive disagreement about many public policy questions. We use abortion as a case example precisely because it is morally fraught. We first consider the changes made by *Dobbs*, as well as those which led up to the *Dobbs* decision, accompany it, and follow from it.

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**We Have All the Time in the World:  
The Law and Ethics of Time-Limited  
Interventions in Clinical Care**

*Samantha R. Johnson and  
Elizabeth Sivertsen*

The authors consider the legal and ethical considerations of offering a time-limited trial of a potentially non-beneficial intervention in the setting of patient or surrogate requests to pursue aggressive treatment. The likelihood of an intervention's success is rarely a zero-sum game, and an intervention's risk-to-benefit ratio may be indiscernible without further information (often, a matter of time).

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**Mediation: Common Practices and Ethical  
Boundaries**

*Haavi Morreim*

This true story of a mediation in a personal injury lawsuit describes a sequence of events and fairly common practices that raise significant questions about mediation ethics as well as attorney ethics.

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**The Role of the Lawyer as Deal Maker in  
Health Care Acquisitions: From Amoral  
to Immoral?**

*Barry R. Furrow*

This article proposes ethical — and legal — accountability for lawyers representing clients such as private equity (PE) firms who create ownership structures for nursing home systems. Using PE ownership as a case study, I will show that nursing home residents are often harmed and Medicaid costs inflated. I propose private law provides tools to compel such accountability, through (1) aiding and abetting doctrines and (2) fiduciary doctrines that require that the fiduciary be responsible for its vulnerable beneficiaries, not just ethically but for damages and equitable relief. I further propose that the teaching of Professional Responsibility needs to be changed to force law students to consider the effect of legal practice on third parties in situations like health care financing.

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**Health Law and Bigotry Distractions**

*Daniel G. Aaron and Leslie P. Francis*

Bigotry distractions are strategic invocations of racism, transphobia, or negative stigma toward other marginalized groups to shape political discourse. Although the vast majority of Americans agree on large policy issues ranging from reducing air pollution to prosecuting corporate crime, bigotry distractions divert attention from areas of agreement toward

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divisive identity issues. This article explores how the nefarious targeting of identity groups through bigotry distractions may be the tallest barrier to health reform, and social change more broadly. The discussion extends the literature on dog whistles, strategic racism, and scapegoating

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**Operationalizing Power in Health Law:  
The Hospital Abolition Hypothesis**  
*Matthew B. Lawrence*

This symposium Article describes how prison abolitionist arguments also support the hypothesis that a defining goal of health law should be the abolition of hospitals. Like prison abolitionism, the hospital abolition hypothesis can provide a constructive way to shift the focus of legal analysis from substantive dimensions (in health law — cost, quality, access, and equity) to the dimension of power.

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**Rethinking Health Law Architecture**  
*Ani B. Satz*

Neither the individualistic regulatory health paradigm nor the vulnerable populations approach of public health can provide the legal structure necessary to address the most pressing problems in health care today. These approaches fail to address conflicts between individuals and populations as well as challenges to qualifying for care and are in inherent conflict with each other, sometimes within the same statute. As health concerns become more global, it is necessary to move past a vulnerable populations approach to a broader population approach that respects individual choice but does not sacrifice community health for liberty interests.

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Trinidad, Kaitlyn Jaffe, Amanda Greene,  
J. Denard Thomas, Madison Kent,  
Stephanie Morain, David Wilborn, and  
J. Scott Roberts*

The 2022 Office of Science and Technology Policy memorandum regarding increasing access to federally funded research results represents the most recent step in federal data sharing efforts over the past 20 years, including those specific to genomics. Despite these achievements, many of the challenges these federal policies set out to fix remain, such as: (1) clarifying who should bear the burden of sharing data; (2) translating shared data into scientific advancements; (3) clarifying how federal policies intersect with private interests (e.g., journals, industry co-funders, or commercially generated data); and (4) balancing the autonomy interests of those who contribute data (including patients, research participants, and commercial consumers) with the public beneficence attendant to advancing science. It is therefore critical to better understand the goals and challenges of those expected to benefit from and contribute to these shared data resources. We conducted semi-structured interviews with U.S. academic genetic researchers exploring perceived benefits and burdens, industry interests, and autonomy considerations related to data sharing and using shared data resources. Here we provide a background of the major U.S. federal government data sharing policies over the past twenty years, present the results of our qualitative study, and discuss areas for continued improvement for federal governance and support of research.

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**Telehealth after the Federal COVID-19  
Public Health Emergency: Implications  
and Future Directions**  
*Minsoo Kwon, James René Jolin, and  
Carmel Shachar*

May 11, 2023, marked the end of the federal COVID-19 Public Health Emergency (PHE). During the PHE, regulatory flexibilities allowed telehealth to more effectively connect physicians providing care and patients seeking it. This paper discusses the implications of the end of the PHE on telehealth coverage, payment, reimbursement, and licensure, and exposes inconsistencies and inequities in extant state regulations. The end of the PHE, we contend, has constrained patients access to and physicians' ability to provide vital telehealth services. But the substantial authority states wield in this domain means much of telehealth law and regulation exists as a state-by-state patchwork. Stronger inter-state coordination is likely necessary to advance telehealth beyond the emergency period, but the recent overturning of *Roe v. Wade* (1973) presents a challenge to this effort.



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**Ethical and Legal Issues in COVID-19  
Case Investigation and Contact Tracing:  
A Case Study of A Large Academic Public  
Health Partnership**

*Lexi C. White, Laura G. Meyer, and  
Megan Jehn*

In an effort to respond to the large surge in COVID-19 cases in Arizona that began between May and July 2020, the Arizona State University (ASU) Student Outbreak Response Team (SORT) formed a remote, volunteer-based case investigation team that worked in partnership with a local public health department through delegated public health authority. SORT contacted and interviewed individuals who tested positive for COVID-19 in Maricopa County to gather information on demographics, symptoms, and close contacts. At its peak SORT consisted of 225 active volunteers, interns, and staff, with differing academic backgrounds and professional expertise from undergraduate students to retired health professionals located locally and throughout the U.S. This paper provides a critical analysis of the ethical and legal issues the team encountered throughout training and public health practice. This paper underscores the importance of not only legal compliance but broader ethical and equity considerations in implementing a case investigation and contact tracing program that can respond effectively to an active pandemic.

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**USPTO's Lax Policy Leads to Humira  
Formulation Thicket**

*Bernard Chao*

By comparing the U.S. and EU prosecution histories of formulation patents covering Abbvie's blockbuster Humira drug, the current study seeks to start to answer this question. This study found two policy differences between the way that the United States Patent Office (USPTO) and European Patent Office (EPO) treated formulation patent applications. These differences led to twenty-two U.S. patents and just two EU patents. Moreover, the U.S. patents also had greater claim scope than their EU counterparts. After examining the claims, this paper argues that much of the U.S. patent coverage is undeserved and offers potential ways to reign in the scope of these patents.

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**Blurring Boundaries: A Proposed  
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*Sheethal Jose, Juli Bollinger, Gail Geller,  
Jeremy Greene, Leslie Meltzer Henry, Brian  
Hutler, Eric Thomas Juengst, Jeffrey Kahn,  
Anna C. Mastroianni, Graham Mooney,  
Alexandre White, Rebecca Wilbanks, and  
Debra J. H. Mathews, on behalf of the  
BRIDGES Collaboratory Participants*

Contemporary understanding of the mechanisms of disease increasingly points to examples of "genetic diseases" with an infectious component and of "infectious diseases" with a genetic component. Such blurred boundaries generate ethical, legal, and social issues and highlight historical contexts that must be examined when incorporating host genomic information into the prevention, outbreak control, and treatment of infectious diseases.

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**A Proposed Research Agenda for Ethical,  
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**Challenges of Uncertainty in Prenatal  
Decision-Making: Skeletal Dysplasias**

*Naila Ramji, Marie-Eve Robinson, and  
Gregory P. Moore*

When skeletal dysplasias are suspected in the prenatal period, investigation, counseling, and management become especially challenging. By better understanding the complex forces at play and parental values, prenatal health care providers may improve the ways in which they counsel patients to improve the decision-making process under conditions of significant uncertainty, including in cases of prenatally suspected skeletal dysplasia.

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**Vaccine Procurement: The Changes Needed to Close Access Gaps and Achieve Health Equity in Routine and Pandemic Settings**

*Shawn H.E. Harmon, Ksenia Kholina, and Janice E. Graham*

Vaccines are not the only public health tool, but they are critical in routine and emergency settings. Achieving optimal vaccination rates requires timely access to vaccines. However, we have persistently failed to secure, distribute, and administer vaccines in a timely, effective, and equitable manner despite an enduring rhetoric of global health equity.

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*Prashasti Bhatnagar*

**Symposium articles** are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

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A Symposium Guest Edited by Susan Wolf and Tim Pruett