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Foreword

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FOREWORD

This double issue of the *Journal of Law and Health* recognizes and celebrates the Centennial Year of the Cleveland-Marshall College of Law and the commencement of the second decade of this publication. To honor the College of Law, its faculty, and its students, this issue presents articles and comments written solely by members of the Cleveland-Marshall community. In so doing, as stated in Dean Robert L. Bogomolny's *Foreword* to Volume I (1985-86), we illustrate the scope and depth of our joint commitment to "development of a forum for the vigorous discussion of the legal and moral issues arising when law and medicine intersect."

The editors and staff of the *Journal of Law and Health* are proud to be part of a law school whose mission has always been not only to provide an outstanding legal education at an affordable cost, but also to provide access to numerous students who would otherwise be denied entry to one of the nation's most significant professions. The Cleveland-Marshall College of Law joined with Cleveland State University in 1969. Its history, however, begins with the Cleveland Law School of Baldwin University, founded in 1897, and the John Marshall School of Law, founded in 1916. These schools merged in 1946 and ultimately became the Cleveland-Marshall College of Law as it is known today—a College with a broad curriculum, two law journals, a nationally recognized moot court program, four clinical programs, and an ongoing exchange program with Russian law students.

In accord with its mission of serving all members of the community, the Cleveland-Marshall College of Law was Ohio's first law school to admit women and one of the first to admit minority students. The student body consistently represents one of the most diverse imaginable. Its equally diverse faculty, with varied practice and academic backgrounds, remains committed to this objective. As a direct result of its admission procedures and quality of education, College of Law alumni include the first woman in America elected to a municipal court, the first African-American elected to Cleveland city government, and the first woman to teach in an Ohio law school. Numerous members of the federal and state judiciary have been graduates of the College of Law or served as members of its faculty. This heritage of giving back to the community will, we believe, continue well beyond our first one hundred years.

The *Journal of Law and Health* has been instrumental in bringing to the forefront the remarkable scholarly achievement which now pervades the fields of medicine and bio-ethics. Its pages reflect the many complex issues posed by advances in medical technology unimagined mere decades ago. The wide range of topics related to health law issues, from government regulation to medical research and practice, to ethical considerations, all demand discussion among those who will make decisions which bear upon the life and health of all Americans and, ultimately, all of humanity.

The editors of the *Journal* are proud to present to their readers seven articles authored by members of the Cleveland-Marshall faculty together with four student notes authored by editors of the *Journal*. These articles represent many facets of the issues surrounding health law as well as the commitment of the

faculty and students to a health law curriculum. Indeed, several of the faculty writers do not expressly teach "health law" but incorporate health law issues into other substantive areas including Urban Law and Judaic Law.

As this issue is devoted to writings of the Cleveland-Marshall community, the editors have determined that faculty articles will be presented, with one exception, in order of seniority and student notes alphabetically by author. A brief synopsis of the contents of this issue, in the order of article appearance, is set forth below.

Faculty Contributions:

Samuel Gorovitz, 1996 Baker-Hostetler Scholar, has kindly revised his Baker-Hostetler Lecture, *Is Law the Prescription that Can Cure Medicine?* into article form. Professor Gorovitz describes the changing status of health care in the United States and challenges both the legal community and society to go beyond traditional legal analysis and to formulate solutions to the pervasive issues affecting health care. He observes that "Lawyers and law students need to understand that the important social issues that confound us, including but not limited to issues in health care, cannot be resolved simply by recourse to law."

Stephen J. Werber's, *Ancient Answers to Modern Questions: Death, Dying, and Organ Transplants—A Jewish Law Perspective* explores the Hebrew Bible and Talmud together with current explication of these ancient sources of law to determine whether this body of law can be of assistance to modern American medical practice. The article establishes that these laws, with roots over two thousand years old, provide remarkable insight which can aid in resolution of such current issues as assisted suicide.

Joel J. Finer's, *Therapists' Liability to the Falsely Accused for Inducing Illusory Memories of Childhood Sexual Abuse—Current Remedies and a Proposed Statute* addresses the sensitive issues of recovered memories of childhood sexual abuse. Recent case law has allowed suit against parents based on recovered memory of abuse. This article delves into the after-effects of such lawsuits when the charge is unfounded and arises from improper therapist intervention. Professor Finer explores issues related to this topic and legal doctrine and proposes a legislative resolution (with an exemplar statute) to protect the right of the wrongfully accused parent to bring suit.

Alan C. Weinstein's, *Essay, The Challenge of Providing Adequate Housing for the Elderly . . . Along with Everyone Else* challenges community leaders and society to consider the needs of the elderly for housing in a culture that no longer insists that the elderly live with younger family members. He explores the adverse effects of current community planning and zoning regulations in the context of a changing demography. As noted by Professor Weinstein, "it seems fittingly ironic that a culture as youth-obsessed as ours faces a demographic future in which those over sixty-five will outnumber those under fourteen for the first time in our history."

Dena S. Davis', *Joining a "Cult": Religious Choice or Psychological Aberration?* challenges society to take a less emotional approach to religious or quasi-religious groups that we label as "cults." She suggests that a comparison of cults to formalized religions may require reevaluation of the negative aspects associated with cults. Professor Davis challenges the physical removal of cult

members under the pretext of health intervention and argues that society has moved "the focus of debate from freedom of religion and associations, . . . to definitions and diagnosis of mental illness, a topic on which a tiny percentage of the population can claim an intimidating amount of mysterious expertise."

Karen Mika's *Responsibilities of Employers Toward Mentally Disabled Persons Under the Americans with Disabilities Act* (with Denise Wimbiscus), challenge the ADA's failure to fully address mental illness in the workplace. The authors argue that the ADA needs more precise definition and revision to facilitate the balance between fair employment and efficient business practices in such key areas as mental health evaluation, the right of the employer to inquire about mental disability, and fuller explanation of the rights and obligations of employers.

Susan O. Scheutzow's *A Framework for Analysis of ERISA Preemption in Suits Against Health Plans and a Call for Reform* argues that courts must permit beneficiaries of ERISA regulated health plans to sue the plans for malpractice in a manner similar to the rights of beneficiaries of non-ERISA preempted health plans. She presents the inequities of the present system and calls for action as currently "it is extremely unlikely, absent legislative change, that the courts will allow plaintiffs to bring suits for damages against ERISA regulated health plans for the plan's actions in utilization review and benefit determination."

Student Contributions:

Editors of the *Journal of Law and Health* who graduated in May, 1997 contributed the following Comment and Notes:

Medtronic v. Lohr: State Law Suits May Proceed Against Medical Device Manufacturers, a Comment by Executive Editor Robert A. Gerberry, explores the Medical Device Amendments and the impact of the *Medtronics* decision on the preemption doctrine.

Intercountry Adoption: A Need for Mandatory Medical Screening, a Note by Executive Editor Darya P. Jeffreys, focuses on potential medical problems which arise in the context of intercountry adoption due to the absence of medical screening requirements and then advocates a legislative response.

Mandating Coverage for Maternity Length of Stays: Certain Problems with the Good Idea, a Note by Editor-in-Chief Kate E. Ryan, provides an analysis of the benefits and detriments of the Newborns and Mothers' Health Protection Act and similar state legislation.

Ridicule or Recourse: Parents Falsely Accused of Past Sexual Abuse Fight Back, a Note by Managing Editor Jeffrey M. Whitesell, argues that parents should have standing to sue therapists who improperly suggest that a client was the victim of sexual abuse.

A personal note: As Faculty Advisor to the *Journal of Law and Health*, it gives me great pleasure to present this Centennial celebration issue. Watching the *Journal* mature into a recognized professional journal has been an outstanding experience for which I thank the *Journal* editors and staff and my predecessor faculty advisors.

Stephen J. Werber
July, 1997

