AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME XII NUMBER 2 1986

ARTICLES

SEVERELY HANDICAPPED INFANTS Dixie Snow Huefner WITH LIFE-THREATENING

Conditions: Federal Intrusions Into the Decision Not to Treat

DEREGULATING MANDATORY MEDICAL Chester N. Mitchell

PRESCRIPTION

NOTES AND COMMENTS

RADON GAS: CONTRACTOR LIABILITY FOR AN INDOOR HEALTH HAZARD

U.S. Industries v. Director: "CLAIM" VERSUS "CONDITION" IN THE ANALYSIS OF WORKERS' COMPENSATION CASES

MEDICOLEGAL REFERENCE LIBRARY

SELECTED RECENT COURT DECISIONS

GUEST BOOK REVIEW

William J. Curran

SELECTED BOOK RELEASES

CORRESPONDENCE

LETTERS TO THE EDITOR

Jeffrey D. Parker David J. Sokol

Published by the American Society of Law & Medicine and the Boston University School of Law

The AMERICAN JOURNAL OF LAW & MEDICINE is published in the Spring, Summer, Fall, and Winter by the American Society of Law & Medicine and the Boston University School of Law. All decisions concerning the content of the JOURNAL are made by a joint American Society of Law & Medicine/Boston University School of Law Editorial Policy Committee. Statements of fact and opinion are the responsibility of the authors alone, and are not necessarily endorsed by the editors, the Society, or the law school.

The Editors invite the submission of manuscripts on medicolegal topics. For details, see inside back cover. Editorial communications, including original manuscripts and requests for permission to reproduce JOURNAL material, should be addressed to Editor-in-Chief, AMERICAN JOURNAL OF LAW & MEDICINE, 765 Commonwealth Ave., Boston, Massachusetts 02215. Editorial phone: (617) 353-2912.

Business correspondence, including subscription correspondence, should be addressed to the Membership Director, American Society of Law & Medicine, 765 Commonwealth Avenue, 16th Floor, Boston, Massachusetts 02215. Business phone: (617) 262-4990.

Subscriptions: \$40.00 per year for institutions, and for individuals who are not members of the American Society of Law & Medicine. Foreign subscribers should remit, for a year's subscription, an additional \$20.00 for air mail postage.

Missing copies of the JOURNAL will be sent free of charge to subscribers or members of the Society provided that notice of such claim is received at the Society's subscription office within one month of receipt of the next issue published. Requests made after this period will be billed at the regular issue price of \$10 (plus \$3 for postage and handling).

Members of the American Society of Law & Medicine receive a free subscription to the JOURNAL as part of their dues (\$85.00 for 1987). Information concerning membership is available from the Membership Director, American Society of Law & Medicine, 765 Commonwealth Avenue, 16th Floor, Boston, Massachusetts 02215. Society phone: (617) 262-4990.

Articles in the JOURNAL are indexed in Index to Legal Periodicals, Legal Contents, Index Medicus, Social Sciences Citation Index, Current Contents: Social and Behavioral Sciences, and Biosciences Information Service of Biological Abstracts.

Library of Congress Catalog Card Number: 75-645516 (Shelf No. K1.M445). ISSN 0098-8588.

U.S. postage paid at Worcester, Massachusetts, in accordance with Permit No. 5 (Nonprofit Org.).

ADMINISTRATIVE OFFICERS OF BOSTON UNIVERSITY SCHOOL OF LAW

JOHN R. SILBER, B.A., M.A., PH.D., LL.D., (hon.), LH.D., (hon.), President, University Professor and Professor of Philosophy and Law

WILLIAM SCHWARTZ, M.A., J.D., Dean and Professor of Law

COLIN S. DIVER, B.A., L.L.B., Associate Dean

BARBARA LAUREN, B.A., J.D., Ph.D., Assistant Dean

Lois H. Knight, B.S., J.D., Assistant Dean for Student Affairs

DANIEL FREEHLING, B.A., M.S., Director, Law Library

MARGARET D. HAGOPIAN, A.C.S., Executive Assistant to the Dean

OFFICERS OF THE AMERICAN SOCIETY OF LAW & MEDICINE

ANGELA R. HOLDER, LL.M., President

RONALD E. CRANFORD, M.D., President-Elect

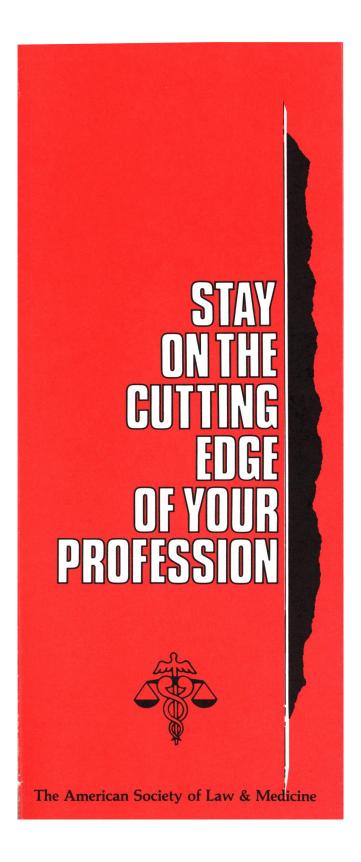
ALEXANDER M. CAPRON, LL.B., Secretary

JANE L. GREENLAW, R.N., M.S., J.D., Treasurer

ELLIOT L. SAGALL, M.D., Founder and First President

AUBREY MILUNSKY, MB.B.Ch., D.Sc., F.R.C.P., D.C.H., Immediate Past President

LAWRENCE O. GOSTIN, J.D., Executive Director



THE AMERICAN SOCIETY OF LAW & MEDICINE

The Medicolegal Tradition

Since its inception fifteen years ago, the American Society of Law and Medicine (ASLM) has grown from a small group of Massachusetts physicians and attorneys with a vision to one of the largest and most prestigious professional societies in America.

ASLM brings together professionals — attorneys, physicians, health care administrators, educators, nurses, judges, insurers — who are concerned with the interrelationships of law, medicine and health care. Members are bound by their desire to learn, to better serve their clients or patients and to progress in their careers.

ASLM promotes the finest in continuing education and professional recognition in the fields of law and medicine. It continues to accomplish this by tackling the major issues of the day — malpractice, risk management, AIDS, drug testing and drug dependency, health care financing, death and dying and new medical technologies. ASLM provides leadership in these critical societal issues and needs your support to fulfill its vision.

Through the initiation of projects, sponsorship of conferences, and the publication of two major journals, ASLM can keep you on the cutting edge of your profession.

Law, Medicine and Health Care and the American Journal of Law and Medicine are the journals published by the Society. LMHC is edited by prestigious board members, including Larry Gostin (editor-in-chief, Harvard), Jay Katz (medical editor, Yale), and Bernard Dickens (legal editor, University of Toronto).

Forthcoming in the *American Journal of Law* and *Medicine* is a commemorative edition for Harry Blackmun, U.S. Supreme Court Justice.

BENEFITS OF ASLM MEMBERSHIP

- Become a part of the largest and most prestigious medicolegal society in America.
- Stay at the top of your profession by receiving up-to-date information about today's vital legal and medical issues.
- Annual subscription to Law, Medicine and Health Care (four issues).
- Annual subscription to the *American Journal* of Law & Medicine (four issues).
- Periodic editions of ASLM's newsletter, ASLM Briefings.
- Invitations to Society sponsored conferences including:
 - registration fee discounts.
 - continuing education credit.
- Price discounts on Society Books.
- ASLM Book Purchase Service.
- ASLM Photocopy Service.
- Participate in ASLM Speakers' Bureau.
- Receive an elegant Membership Certificate suitable for framing. This certificate exemplifies your stature as a member of the law and medical profession.
- And much, much more . . .



ASLM MEMBERSHIP FORM

Yes, I wish to become a member of the American Society of Law & Medicine.

Regular member: \$85.
Full-time health law or bioethics teacher: \$65.
Graduate student without a doctorate level degree (enclosed is a copy of my full-time student I.D.): \$40.
☐ Foreign postage: \$20.
TOTAL US\$
Check enclosed. Please charge my: VISA MasterCard Card No.
Signature Exp. Date Please print your name as you would like it to appear on your membership certificate:
Mailing Address ☐ Home ☐ Business
Profession
Institution
Street
City
State Zip
Country
Please remit in full to: American Society of Law and Medicine 765 Commonwealth Ave., 16th Floor Boston, MA 02215 (617) 262-4990

The American Society of Law & Medicine is a non-profit, educational association organized under Section 501 (c) (3) of the States Internal Revenue Code. Contributions are deductible to the extent provided by law.

AMERICAN JOURNAL OF LAW M & MEDICINE

BOARD of EDITORS

FACULTY EDITOR-IN-CHIEF Frances H. Miller, J.D. Boston University School of Law

EXECUTIVE EDITOR Lawrence O. Gostin, J.D.

DIRECTOR OF PUBLICATIONS American Society of Law & Medicine Joyce Coleman

CIRCULATION MANAGER Sharin Paaso

EDITORS

Michael Baram, J.D. Boston University Schools of Law and Public Health

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

Henry Beyer, J.D. Boston University School of Law

Patrick R. Carroll, J.D. Senior Vice Pres. & Legal Counsel, Massachusetts Hospital Association

William J. Curran, LL.M., S.M. Hyg. Harvard University School of Public Health

Lee J. Dunn, Jr., J.D., LL.M. Shagory & Shagory Boston, Massachusetts

Richard F. Gibbs, M.D., J.D. Harvard Medical School

Jay Alexander Gold, M.D., J.D., M.P.H. St. Vincent's Medical Center Bridgeport, Connecticut

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

Nathan Hershey, J.D. University of Pittsburgh Graduate School of Public Health

Bernard D. Hirsh, J.D.
General Counsel
American Medical Association

Edward E. Hollowell, J.D. Hollowell & Silverstein Raleigh, North Carolina

Richard G. Huber, J.D. Boston College Law School

Jay Katz, M.D.
Yale Law School
Sylvia A. Law, J.D.
New York University School of Law

Peter Martin, J.D. Dean, Cornell Law School

Aubrey Milunsky, MB.B.Ch., D.Sc., F.R.C.P., D.C.H.
Boston University School of Medicine

Irwin N. Perr, M.D., J.D. University of Medicine and Dentistry of New Jersey

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

Honorable Max Rosenn United States Court of Appeals for the Third Circuit

Elliot L. Sagall, M.D. Founder, American Society of Law & Medicine Harvard Medical School

William Schwartz, J.D., M.A. Dean, Boston University School of Law E. Donald Shapiro, J.D., LL.D. New York Law School

Margery W. Shaw, M.D., J.D. Director, Medical Genetics Center University of Texas at Houston

Robert B. Shira, D.D.S. Dean, Tufts University School of Dental Medicine

Arthur F. Southwick, J.D., M.B.A. Grad. Sch. of Business Administration University of Michigan

David G. Warren, J.D. Duke University

Cyril H. Wecht, M.D., J.D.
Director, Pittsburgh Institute of Legal
Medicine

AMERICAN JOURNAL OF LAW MEDICINE

VOLUME XII NUMBER 2 1986

INTERNATIONAL BOARD of EDITORS

Dr. M.A.M. Wachter Director Institute for Bioethics The Netherlands

Dr. S.S. FlussChief, Health Legislation
World Health Organization
Switzerland

Prof. Dr. Erwin Deutsch Institute for Pharmaceutical and Medical Law University of Gottingen Federal Republic of Germany

Bernard M. Dickens, Ph.D., LL.D. Professor Faculty of Law & Faculty of Medicine University of Toronto Canada

Prof. Dr. H.J.J. Leenen Instituut voor Sociale Geneeskunde Universiteit van Amsterdam The Netherlands

The Honorable Justice Michael J. Kirby President, Court of Appeals Supreme Court Australia Koichi Bai Professor of Law Faculty of Law

Tokyo Metropolitan University Japan

P.D.G. Skegg Faculty of Law University of Otago New Zealand

Prof. Dr. Iur. Dieter Giesen
Institute for International, Foreign
and Comparative Law
Director,
Working Centre for International
Studies in Medical Malpractice Law
The Free University of Berlin
Federal Republic of Germany

Professor Amos Shapira Lubowski Professor of Law & Biomedical Ethics Faculty of Law Tel Aviv University Israel

AMERICAN JOURNAL OF LAW

VOLUME XII NUMBER 2 1986

BOSTON UNIVERSITY SCHOOL OF LAW STUDENT BOARD OF EDITORS

EDITOR-IN-CHIEF

Gregg A. Hand

EXECUTIVE EDITOR

Peter Martin

MANAGING EDITOR

Laura Frankel

PROJECTS EDITOR

Steven Ellis

ARTICLES EDITORS

David Bunis Margaret Daley Kenneth Lench Nina Lubell

SYMPOSIUM EDITOR

Christopher Genther

CASE & NOTE EDITORS

Bruce Bagdasarian Deborah Barnard Seth Brewster

Jonathan Joseph

James Kaufman Lois Lupica Shari Ann Rivkind Carolyn Shuko

THIRD YEAR EDITORS

Scott Caplan-Cotenoff John Catino Leslie Demaree Lawrence DiGiammarino Helaine Fisher Alan Gordee Nicholas Guerrera David Harlow Daniel Holland Tracey Kammerer

Gregg Kander Dina Khajezadeh Paul McDowell Jeffrey Perlstein Dixon Pike John Re -Carolyn Rosenthal Scott Sinrich Gary Tischler

STAFF MEMBERS

Scott Baker Donald Bollella Susan Clement Laurence Cote Paul E. Dwyer Christine Fedas Denise A. George Lori Goldstein Gail K. Gordon Brian Kehoe Lori B. Krauss

Ann Lamport Peter Lash Mark Leonard Duncan Maio Beth Margolis David L. McEvoy Michael D. Povman Wendy Ravitz Steven Reske David Rosen Debra Rosen

Cheryl B. Schreiber Thomas K. Schulte Bruce Shapiro Lisa Sheeler Amy Spitofsky Susan E. Stenger Ilene Taback Robert Whalen Pamela H. Worstell Jean Zoubek

DATING CORRECTION

Two previous issues of the American Journal of Law & Medicine carried incorrect dates. The correct date for Vol. XI No. 4 is 1985; the correct date for Vol. XII No. 1 is 1986. We apologize for any inconvenience these errors may have caused.

EDITOR'S NOTE

In the last issue of the AMERICAN JOURNAL OF LAW & MEDICINE, a student author's name was inadvertently omitted. Paul Kleinman is the author of *The Hazardous Waste Facility Siting Controversy: The Massachusetts Experience*. We thank him for his fine contribution to the JOURNAL and apologize for the error.