# LAW & MEDICINE

Volume 41, Numbers 2 & 3 • 2015

#### 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* 

 $\begin{array}{c} \text{Ernest M. Haddad, J.D.} \\ \textit{Boston University School of Law} \end{array}$ 

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

 $\begin{array}{c} {\rm Sidney\ D.\ Watson,\ J.D.} \\ {\it Saint\ Louis\ University\ School\ of\ Law} \end{array}$ 

# LAW & MEDICINE

#### INTERNATIONAL BOARD OF EDITORS

#### Koichi Bai

Director, Institute of Medical Humanities Kitasato University School of Medicine Japan

#### Erwin Deutsch

Faulty of Law University of Göttingen GERMANY

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

Faculties of Law and Medicine University of Toronto CANADA

## Honorable Justice Michael D. Kirby

 $President, Court \ of \ Appeal \\ Supreme \ Court \ of \ New \ South \ Wales \\ Australia$ 

## M.A.M. de Wachter

Director, Institute of Bioethics
The Netherlands

## Christopher Newdick

Reader in Health Law University of Reading United Kingdom

## Amos Shapira

Faculty of Law Tel Aviv University ISRAEL

## Peter D.G. Skegg

Faculty of Law
University of Otago
New Zealand

# LAW & MEDICINE

# STUDENT BOARD OF EDITORS 2014-2015

#### **Editor-in-Chief**

Tanya Jane Beroukhim

## **Executive Editor**

Tulsi Patel

## **Managing Editors**

J. Corbin Carter Kathryn Gevitz Adamantia Giannakis

Projects EditorSymposium EditorsAdministrative EditorJeremy HarbaughHannah FineHannah Tanabe

## **Articles Editors**

## **Note Editors**

Christine Donovan	Rebecca Johnson	Alex Campbell	Gillian Leatherberry
Nick Falcone	Maureen Stringham	Jamie Flaherty	Ashley Tan
	0	Andrea Jacobs	

#### **Third-Year Editors**

Nina Garcia Jeanie Joe	Harrison Kaplan Kate Ramlose	Zach Rothman Caroline Samp
	Staff Members	

Omar Aniff	Colin Creager	Ashley Paquin
Lauren Bentlage	Sherene Davidson	Tyler Patterson
Daryl Berke	Talene Ghazarian	Hannah Perlman
Caitlyn Bingaman	Amanda Hesse	Victoria Reines
Christin Blonde-Trenholm	Hannah Levin	Daniel Risica
Jack Brodsky	Sara Maldonado	Melissa Rybacki
Christina Cahn-Speyer	Jaime Margolis	Portia Smith
Hannah Chapel	Timothy Murphy	Sudeshna Trivedi
Ting Chiu	Dina Nathanson	Christopher York

# LAW & MEDICINE

is pleased to introduce its STUDENT BOARD OF EDITORS FOR 2015-2016

**Editor-in-Chief** 

Melissa Rybacki

**Executive Editor** 

Hannah Pearlman

**Managing Editors** 

Christin Blonde-Trenholm

Victoria Reines

Ting Chiu

**Projects Editor** 

**Symposium Editors** 

**Administrative Editor** 

Portia Smith

Timothy Murphy Amanda Hesse Omar Aniff

**Articles Editors** 

**Notes Editors** 

Lauren Bentlage Daryl Berke Hannah Levin Dina Nathanson Cristina Cahn-Speyer Talene Ghazarian Christina Lau Sara Maldonado Tyler Patterson Daniel Risica

## LAW & MEDICINE

Volume 41, Numbers 2 & 3 • 2015

#### ARTICLES

- **223** Genetically Modified Foods at the Intersection of the Regulatory Landscape and Constitutional Jurisprudence Saby Ghoshray
- **240 Inappropriate Referral:** The Use of Primary Jurisdiction in Food-Labeling Litigation *Diana R. H. Winters*
- The Implementation of the Food Safety Modernization Act and the Strength of the Sustainable Agriculture Movement Samuel R. Wiseman
- 274 The Illusion of Autonomy in "Food" Litigation Paul A. Diller
- **284 Deregulation, Distrust, and Democracy:** State and Local Action to Ensure Equitable Access to Healthy, Sustainably-Produced Food *Lindsay F. Wiley*
- **315** Transparency for Food Consumers: Nutrition Labeling and Food Oppression *Andrea Freeman*
- **331 What's in Store:** A Vision for Healthier Retail Environments through Better Collaboration *Christine Fry, Ian McLaughlin, Alexis Etow & Rio Holaday*
- **357** Addressing Consumer Confusion Surrounding "Natural" Food Claims Efthimios Parasidis, Neal Hooker & Christopher T. Simons
- **374 Dietary Supplements are Not all Safe and Not all Food:** How the Low Cost of Dietary Supplements Preys on the Consumer *Joanna K. Sax*
- **395** The Food Safety Modernization Act: Implications for U.S. Small Scale Farms *Kathryn A. Boys, Michael Ollinger & Leon L. Geyer*
- **The Codex Alimentarius Commission, Corporate Influence, and International Trade:** A Perspective on FDA's Global Role *Sam F. Halabi*

# LAW & MEDICINE

- **422** A Coordinated Approach to Food Safety and Land Use Law at the Urban Fringe Stephen R. Miller
- **447 Whole Foods:** The FSMA and the Challenges of Defragmenting Food Safety Regulation *Stephanie Tai*

## **NOTES**

- **459 If FDA Does Not Regulate Food, Who Will?** A Study of Hormones and Antibiotics in Meat Production *Christine Donovan*
- **483 Repositioning Generics:** The Comparative Value of Liability in FDA's Proposed Rule on Labeling *Nicholas Falcone*
- 505 Recent Case Developments