# AMERICAN JOURNAL OF LAW & MEDICINE

### **VOLUME XI NUMBER 2 1985**

### **ARTICLES**

THE PATIENT WHO REFUSES MEDICAL Martha Swartz
TREATMENT: A DILEMMA FOR
HOSPITALS AND PHYSICIANS

Nurse Practitioner Challenges to Karla Kelly the Orthodox Structure of Health Care Delivery:
Regulation and Restraints on Trade

### NOTES AND COMMENTS

KELLY V. GWINNELL: SOCIAL HOST LIABILITY—HOW GREAT A BURDEN?

HECKLER V. CHANEY: JUDICIAL AND ADMINISTRATIVE REGULATION OF CAPITAL PUNISHMENT BY LETHAL INJECTION

### MEDICOLEGAL REFERENCE LIBRARY

SELECTED RECENT COURT DECISIONS
SELECTED BOOK RELEASES

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 the 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 and advertising correspondence, should be addressed to the Executive 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 \$15.00 for air mail postage or an additional \$5.00 for surface rate 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.

Members of the American Society of Law & Medicine receive a free subscription to the JOURNAL as part of their dues (\$85.00 for 1984). Information concerning membership is available from the Executive 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

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

CATHERINE TIERNY, B.A., M.S., Interim Director, Law Library

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

### OFFICERS OF THE AMERICAN SOCIETY OF LAW & MEDICINE

AUBREY MILUNSKY, M.D., President
ANGELA R. HOLDER, LL.M., President-Elect
MARGARET A. SOMERVILLE, A.U.A., LL.B., D.C.L., Secretary
JANE L. GREENLAW, R.N., M.S., J.D., Treasurer
ELLIOT L. SAGALL, M.D., Founder and First President
THOMAS E. CARGILL, JR., Immediate Past President
JO ANN KANTOROWITZ, J.D., M.T.S., Acting Executive Director

## AMERICAN JOURNAL OF LAW MEDICINE

### **BOARD of EDITORS**

FACULTY EDITOR-IN-CHIEF Frances H. Miller, J.D. Boston University School of Law EDITOR-IN-CHIEF EMERITUS AND FOUNDER John A. Norris, J.D., M.B.A.

EXECUTIVE EDITOR Jo Ann Kantorowitz, J.D., M.T.S.

**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, J.D., M.P.H. Texas A&M University College Station, Texas

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.
Dean, Boston College Law School
Jay Katz, M.D.
Yale Law School
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

**VOLUME XI NUMBER 2 1985** 

### **BOSTON UNIVERSITY SCHOOL OF LAW** STUDENT BOARD OF EDITORS

### **EDITOR-IN-CHIEF** Abby B. Wayne

### EXECUTIVE EDITOR Catherine Butler

### MANAGING EDITOR Michael A. Berkowitz

### PROJECTS EDITOR

Stephen Filler

### CASE & NOTE EDITORS ARTICLES EDITORS John Arbab

Bill Bogdan Greg Chafee Steve Golub Jennifer Goodnow Linda Gorby Ellen Holzman Anne Murphy

**Edward Gelles** Mark Gregory David M. Levine Michele Stolls Bruce Todesco

### THIRD YEAR EDITORS

Brian Bosch James Burton Lincoln Briggs Timothy Caron Elizabeth Cohen Donna DeSisto Kevin Donnelly

Eric Gouvin Cynthia Greco Joe Jacobson Gary Kessler Paul Kleinman Jeff Knisley Laurence Moelis Lynn Norman

Frederic Pratt Rosalind Rowen Joseph Simon Ellen Tepperman Robert Treat Douglas Warner Jordan Yospe

### MEMBERS

Bruce Bagdasarian Deborah Barnard Seth W. Brewster David A. Bunis Scott Caplan-Cotenoff John Catino Margaret Daley Lawrence DiGiammarino Leslie Demaree Steven Ellis Helaine C. Fisher Laura B. Frankel

Christopher Genther Alan Gordee Nicholas S. Guerrera Gregg A. Hand David C. Harlow Daniel R. Holland Jonathan M. Joseph Tracey Kammerer Gregg Kander James Kaufman Dina Khajezadeh Kenneth Lench

Lois R. Lupica Peter J. Martin Paul McDowell Jeffrey S. Perlstein Dixon Pike John C. Re Shari Ann Rivkind Carolyn Rosenthal Carolyn Shuko Peter Silverman Scott Sinrich Gary Tischler

### PUBLICATIONS ASSISTANT

Nina Lubell

Kathryn M. Gavigan

### FACULTY ADVISOR

Frances H. Miller

## AMERICAN JOURNAL OF LAW MEDICINE

VOLUME XI NUMBER 2 1985

### **ARTICLES**

THE PATIENT WHO REFUSES MEDICAL TREATMENT: A DILEMMA FOR HOSPITALS AND PHYSICIANS

Martha Swartz

Nurse Practitioner Challenges to the Orthodox Structure of Health Care Delivery: Regulation and Restraints on Trade Karla Kelly

147

195

Copyright 1986 by the American Society of Law & Medicine, Inc. and the Boston University School of Law. All or any part of materials appearing in the Journal may not be republished without the express written consent of the Editor-in-Chief.

## AMERICAN JOURNAL OF LAW MEDICINE

### **VOLUME XI NUMBER 2 1985**

| NOTES AND COMMENTS   |     |
|--|-----|
| Kelly v. Gwinnell: Social Host Liability—How Great a Burden?   | 229 |
| Heckler v. Chaney: Judicial and Administrative Regulation of Capital Punishment by Lethal Injection        | 251 |
| MEDICOLEGAL REFERENCE LIBRARY  |     |
| SELECTED RECENT COURT DECISIONS  | 279 |
| Federal Preemption—Blood Donor Policy—Hillsborough County, Florida v. Automated Medical Laboratories, Inc. |     |
| Federal Preemption—Mental Health Benefits—Metropolitan Life Insurance Co. v. Massachusetts                 |     |
| Handicapped Minors-Education-Parks v. Pavkovic   |     |
| Medical Licensing Boards—Immunity from Civil Rights<br>Actions—Manion v. Michigan Board of Medicine        |     |
| Rehabilitation Act of 1973—Sovereign Immunity—Atascadero State Hospital v. Scanlon                         |     |
| SELECTED BOOK RELEASES   | 289 |

Copyright 1986 by the American Society of Law & Medicine, Inc. and the Boston University School of Law. All or any part of materials appearing in the Journal may not be republished without the express written consent of the Editor-in-Chief.