AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 6 NUMBER 2 SUMMER 1980

Dialogue: Editorial Comment on Readers' Responses to the Journal Questionnaire Rutherford, Privitera, and Chad Green: Laetrile's Setbacks in the Courts Physicians and Lawyers: Science, Art, and Conflict Selected Recent Court Decisions

Highlights of Federal Legislative and Executive Action Short Reviews of Selected Books and Articles Selected Book Releases, Annotated Payton v. Abbott Laboratories: An Analysis of the Massachusetts **DES Class Action Suit** Tax Policy and Health **Maintenance Organizations:** The Case for a Section 501(c)(3)Tax Exemption Nursing Home Patients' Rights in Massachusetts: Current Protection and Recommendations for Improvement

Judith Lesser, J.D., M.S.

Jonathan Brant, J.D. John Graceffa, J.D.

Joan M. Gibson, Ph.D. Robert L. Schwartz, J.D. John A. Norris, J.D., M.B.A. Gail Garinger, J.D. Nancy C. Kurtz, J.D. Harvey E. Pies, J.D., M.P.H.

Jay Alexander Gold, J.D., M.P.H.

Denise Provost, B.A.

Susan E. Silbersweig

Anne J. White

Nina P. Silfen

Published by the American Society of Law & Medicine

Editorial support provided by Boston University School of Law

AMERICAN JOURNAL OF LAW MEDICINE

VOLUME 6 NUMBER 2 SUMMER 1980

BOSTON COLLEGE LAW SCHOOL

BOSTON UNIVERSITY SCHOOL OF LAW

STUDENT BOARD of EDITORS

EDITOR-IN-CHIEF Madeline S. Mirabito

MANAGING EDITOR

Mary M. Rudser TOPICS EDITOR Peter D. Goldstein

CASE and NOTE EDITOR

William A. Lowell

ARTICLES EDITOR

Linda Bucci EDITOR Diane Breslin EDITOR-IN-CHIEF Joanne P. Acford

EXECUTIVE EDITOR

David S. Szabo

MANAGING EDITOR
Nancy Elizabeth Jones
TOPICS EDITOR
Elizabeth D. Schrero

CASE and NOTE EDITORS

Scott E. Cooper Eve T. Horowitz Laurie A. Kamaiko

EDITORS
Emily Jane Donovan
Ellen P. Epps
Joanne G. Petrie
Shari B. Rubin
Genise W. Teich
Jay L. Zucker

STUDENT STAFF

William F. Grieco Anna Hirai Warren J. Hurwitz Stephen M. Sheehy Natalie A. Simon Anne H. Sivek Scott Sherman Peter Silberstein John A. Tarantino Harriet Travilla

Mary E. Bowler J. David Canarie, Jr. Cynthia A. Feigin Ronald Grosser Denise Lachance Judy K. Mencher James E. Needell Donald B. Shanin Ellen B. Shankman Laurence J. Shulman Susan E. Silbersweig Nina P. Silfen Lawrence B. Slater Michael Tabb Linda V. Tiano Anne J. White

FACULTY ADVISERS

Charles H. Baron, LL.B., Ph.D. Professor of Law

Frances H. Miller, J.D. Professor of Law

The AMERICAN JOURNAL OF LAW & MEDICINE was founded in response to the need for a scholarly yet pragmatic publication encompassing all aspects of medicolegal relations. The JOURNAL seeks to provide a broad perspective on our complex health care system, to encourage interdisciplinary communication, and to stimulate creative solutions to the pressing medicolegal problems of our time.

In addition to serving as a forum for analyses and proposals in such areas as health law and policy, legal insurance medicine, and bioethics, the JOURNAL offers a wide variety of pertinent reference materials in these and related areas.

The JOURNAL serves persons from a varity of fields who seek to understand and to influence medicolegal developments: physicians, other health care providers, and health administrators; lawyers; health analysts and planners; researchers and educators in health specialties; judges, legislators, and government administrators; insurance officials; consumer advocates and concerned members of the general public.

The JOURNAL is published in the Spring, Summer, Fall, and Winter by the American Society of Law & Medicine. Editorial support is provided by Boston University School of Law. All decisions concerning the content of the JOURNAL are made by the Editor-in-Chief on behalf of the American Society of Law & Medicine. 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, 209 Bay State Road, Boston, Massachusetts 02215. Editorial phone: (617) 353-2953.

Business correspondence, including subscription and advertising correspondence, should be addressed to the Executive Director, American Society of Law & Medicine, 520 Commonwealth Avenue, Boston, Massachusetts 02215. Business phone: (617) 262-4992.

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 single issue price of \$10.

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.

Members of the American Society of Law & Medicine receive a free subscription to the JOURNAL as part of their dues (\$60.00 for 1979). Information concerning membership is available from the Executive Director, American Society of Law & Medicine, 520 Commonwealth Avenue, Boston, Massachusetts 02215. Society phone: (617) 262-4992.

Copyright © 1979 by the American Society of Law & Medicine, Inc. All or any part of materials appearing in the JOURNAL may not be republished without the express written consent of the Editor-in-Chief.

Articles in the JOURNAL are indexed in Index to Legal Periodicals, Contents of Current Legal Periodicals, 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 Boston, Massachusetts, in accordance with Permit No. 55855 (Nonprofit Org.).

AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 6 NUMBER 2 SUMMER 1980

BOARD of EDITORS

EDITOR-IN-CHIEF
John A. Norris, J.D., M.B.A.
Attorney & Consultant in Health Law
Tufts Univ. School of Dental Med.
Boston Coll. & Boston U. Law Schools

EXECUTIVE EDITOR A. Edward Doudera, J.D.

MANAGING EDITOR Judith Lesser, J.D., M.S.

ASSISTANT MANAGING EDITOR Thomas J. Lewis, J.D.

BOOK & PERIODICAL REVIEW EDITOR
Jay Alexander Gold, J.D., M.P.H.

CONTRIBUTING EDITOR Stephen M. Weiner, LL.B.

Mark D. Altschule, M.D. Harvard University

Donald B. Barkan, M.D., F.A.C.P. Director, Employee Health, Lynn & Union Hospitals

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

Patrick Carroll, J.D. Senior Vice Pres. & Legal Counsel, Massachusetts Hospital Ass'n

Roger C. Cramton, J.D. Dean, Cornell Law School

William J. Curran, LL.M., S.M. Hyg. Harvard University

Douglas Danner, J.D. Trial Attorney

Lee J. Dunn, Jr., J.D., LL.M. General Counsel, Northwestern Memorial Hospital

Richard F. Gibbs, M.D., J.D. Attorney & Consultant in Health Law Harvard Medical School

Clark C. Havighurst, J.D. Duke University School of Law Bernard D. Hirsh, J.D.
General Counsel, Am. Med. Ass'n
Richard G. Huber, J.D.
Dean, Boston College Law School
Alan K. Kaplan, LL.B., M. Sci.
Attorney & Consultant in Health Law
Georgetown Univ. Medical School

Jay Katz, M.D. Yale University

Sylvia A. Law, J.D. New York University School of Law

Frances H. Miller, J.D.
Boston University School of Law
Aubrey Milunsky, M.B.B.Ch.,
M.R.C.P., D.C.H.

Harvard Medical School

Irwin N. Perr, M.D., J.D. Rutgers Medical School, College of Medicine and Dentistry of New Jersey

Harvey E. Pies, J.D., M.P.H. Attorney & Consultant in Health Law

Honorable Max Rosenn United States Court of Appeals

Elliot L. Sagall, M.D. Harvard Medical School Boston College Law School

E. Donald Shapiro, J.D., LL.D. Dean, 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 Univ. School of Dental Med.; Past Pres., ADA

Richard E. Speidel, J.D., LL.M. Dean, Boston University School of Law

Cyril H. Wecht, M.D., J.D. Director, Pittsburgh Inst. of Legal Med.; Coroner, Allegheny County

RESEARCH ASSOCIATES Gail Garinger, J.D. Nancy C. Kurtz, J.D. Denise Provost, B.A. Karen Sullivan, J.D.

OFFICERS OF THE AMERICAN SOCIETY OF LAW & MEDICINE

PRESIDENT

Elliot L. Sagall, M.D. Boston College Law School Harvard Medical School

FIRST VICE-PRESIDENT

John A. Norris, J.D., M.B.A. Attorney and Consultant in Health Law, Boston, Massachusetts Editor-in-Chief, American Journal of Law & Medicine

VICE-PRESIDENT

Sidney Scherlis, M.D. University of Maryland Medical School

SECRETARY

Aubrey Milunsky, M.B.B.Ch., M.R.C.P., D.C.H. Harvard Medical School Director, Genetics Division, Shriver Center

TREASURER

Barry C. Reed, LL.B. Trial Attorney

EXECUTIVE DIRECTOR

A. Edward Doudera, J.D.

Managing Editor, Mediolegal News

Executive Editor, American Journal of Law & Medicine

GENERAL COUNSEL

Douglas Danner, J.D. Trial Attorney

BACK ISSUES OF THE JOURNAL

A limited number of back issues through Volume 1 of the JOURNAL are available from the subscription office of the American Society of Law & Medicine, 520 Commonwealth Avenue, Boston, Massachusetts 02215, at the single issue price of \$10.00, or per volume as follows:

Vol. 1 (1975)	\$15 (2 issues)	**. *.	Vol. 4 (1978) \$30 (4 issues)
	\$15 (2 issues)		Vol. 5 (1979) \$40 (4 issues)
	\$30 (4 issues)		Vol. 6 (1980) \$40 (4 issues)

Notice of American Journal of Law & Medicine Fellowship

The first two Joseph D. Norris, Esq., Health Law Fellowships for assisting in the publication of the American Journal of Law & Medicine have been announced. They have been awarded to Karen Sullivan and Muriel Fudala, both of Boston, Massachusetts. Each fellowship award carries a stipend of \$1,000 for scholarly service to the American Journal of Law & Medicine for three weeks full-time or six weeks part-time. Those interested should apply to the Editorial Office of the American Journal of Law & Medicine, 209 Bay State Road, Boston, Massachusetts 02215, (617) 353-2953.

AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 6 NUMBER 2 SUMMER 1980

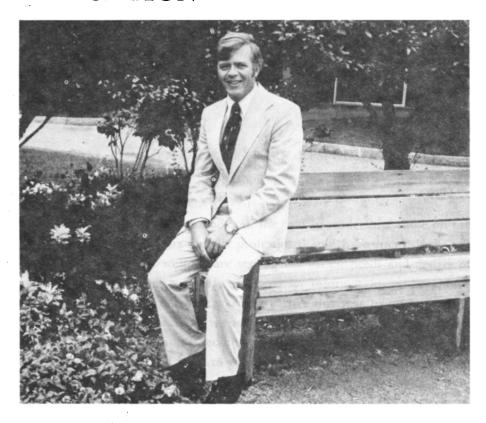
DIALOGUE		1979 1980
Editorial Comment on Readers' Responses to the Journal Questionnaire	iii	Judith Lesser, J.D., M.S.
ARTICLE		
Rutherford, Privitera, and Chad Green: Laetrile's Setbacks in the Courts	151	Jonathan Brant, J.D. John Graceffa, J.D.
COMMENT		
Physicians and Lawyers: Science, Art, and Conflict	173	Joan M. Gibson, Ph.D. Robert L. Schwartz, J.D.
MEDICOLEGAL REFEREN	CE L	IBRARY
Selected Recent Court Decisions	185	John A. Norris, J.D., M.B.A. Gail Garinger, J.D. Nancy C. Kurtz, J.D.
Highlights of Federal Legislative and Executive Action	197	Harvey E. Pies, J.D., M.P.H.
Short Reviews of Selected Books and Articles	213	Jay Alexander Gold, J.D., M.P.H
Selected Book Releases, Annotated	226	Denise Provost, B.A.
NOTES AND COMMENTS		
Payton v. Abbott Laboratories: An Analysis of the Massachusetts DES Class Action Suit	243	Susan E. Silbersweig
Tax Policy and Health Maintenance Organizations: The Case for a Section 501(c)(3) Tax Exemption	283	Anne J. White
Legislative Comment: Nursing Home Patients' Rights in Massachusetts:		Nina P. Silfen

315

Current Protection and Recommendations for

Improvement

DEDICATION



On behalf both of the Faculty Board of Editors and of the Student Board of Editors, we are pleased to dedicate this issue of the *Journal* to Dean Richard E. Speidel. After serving as Dean of Boston University School of Law for the past three years, Dean Speidel is returning to teaching.

Dedication of this edition to Dean Speidel is especially appropriate in light of his genuine concern for and action on behalf of the Journal. While at Boston University, he played an instrumental role in the growth and development of the Journal by serving on our Faculty Board of Editors and by securing for us the Law School's very substantial academic and material support. As an active member of the Board of Editors of the Journal, Dean Speidel displayed the same vitality and commitment as he displayed in his capacity as Dean of the Law School; in both capacities, his energetic and skillful work as well as his engaging personality made him admired and respected.

We at the *Journal* and at the Law School shall miss having Richard Speidel physically present at the Law School. We are grateful for his efforts on our behalf and we wish him well in his new endeavors.

John A. Norris, Faculty Editor-in-Chief J. David Canarie, Jr., Student Editor-in-Chief-elect