

AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 10 NUMBER 1 SPRING 1984

ARTICLES

Health Maintenance
Organizations and State
DRG Hospital Cost Control
Programs: The Need for
Federal Preemption

Robert F. Blomquist

Electronic Fetal Monitoring:
Physician Liability and
Informed Consent

Myra Gerson Gilfix

NOTES AND COMMENTS

*Beshada v. Johns-Manville
Products Corp.*: The
Function of State of the Art
Evidence in Strict Products
Liability

Reallocating Liability to Medical Staff
Review Committee Members: A
Response to the Hospital
Corporate Liability Doctrine

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 (\$75.00 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 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*

BARBARA ROBINSON-COSTAS, B.A., J.D., *Assistant Dean for Student Affairs*

VIRGINIA J. WISE, B.G.S., A.M.L.S., J.D., *Director, Law Library; Associate Professor of Law*

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

OFFICERS OF THE AMERICAN SOCIETY OF LAW & MEDICINE

THOMAS E. CARGILL, JR., J.D., *President*

AUBREY MILUNSKY, M.D., *President-Elect*

LEE J. DUNN, JR., J.D., LL.M., *Vice-President*

ANGELA R. HOLDER, J.D., LL.M., *Secretary*

GARY R. EPLER, M.D., *Treasurer*

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

SIDNEY SCHERLIS, M.D., *Immediate Past President*

A. EDWARD DOUDERA, J.D., *Executive Director*

AMERICAN JOURNAL OF LAW & MEDICINE

BOARD of EDITORS

FACULTY EDITOR-IN-CHIEF

Austin Stickells, J.D., LL.M., M.B.A.

EDITOR-IN-CHIEF EMERITUS AND FOUNDER

John A. Norris, J.D., M.B.A.

EXECUTIVE EDITOR

A. Edward Doudera, J.D.

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

Sylvia A. Law, J.D.

New York University School of Law

Peter Martin, J.D.

Dean, Cornell Law School

Frances H. Miller, J.D.

Boston University School of Law

**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.

Gardner, Carton & Douglas
Washington, D.C.

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 10 NUMBER 1 SPRING 1984

ARTICLES

- | | | |
|----------------------------------------------------------------------------------------------------------------------------|----|---------------------|
| Health Maintenance
Organizations and State
DRG Hospital Cost Control
Programs: The Need for
Federal Preemption | 1 | Robert F. Blomquist |
| Electronic Fetal Monitoring:
Physician Liability and
Informed Consent | 31 | Myra Gerson Gilfix |

NOTES AND COMMENTS

- | | | |
|---------------------------------------------------------------------------------------------------------------------------------------|-----|--|
| <i>Beshada v. Johns-Manville
Products Corp.</i> : The
Function of State of the Art
Evidence in Strict Products
Liability | 93 | |
| Reallocating Liability to Medical Staff
Review Committee Members: A
Response to the Hospital
Corporate Liability Doctrine | 115 | |

MEDICOLEGAL REFERENCE LIBRARY

- | | |
|------------------------------------|-----|
| Selected Recent Court
Decisions | 139 |
| Selected Book Releases | 145 |

Copyright 1984 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.