Volume VII:1 Winter 2007

©2007 by the Yale Journal of Health Policy, Law, and Ethics. All rights reserved. ISSN 1535-3532.

SUBMISSIONS: We invite the submission of germane manuscripts to the Yale Journal of Health Policy, Law, and Ethics. Submissions are accepted on a rolling basis. Please include (1) an electronic copy of the manuscript (double-spaced); (2) your current address, telephone number, email address, and CV; and (3) a 100-word abstract. Submissions should be emailed to yjhple.submissions@yale.edu. Details about our editorial style are available on our website.

PEER REVIEW: Articles submitted to the *Journal* are peer reviewed. For a detailed description of the process, please visit our website.

SUBSCRIPTIONS: The *Journal* is published biannually. Subscriptions are \$29 per year for individuals and \$39 for institutions. Institutional rates apply to libraries, law firms, institutions, and individuals whose employer pays for subscriptions. Please add \$10 for overseas mailing.

Claims for non-receipt of issues should be made within 90 days of the month of publication for domestic subscribers and within 180 days for overseas subscribers. Thereafter, the regular back issue rate will be charged for replacement. All subscriptions will be renewed automatically unless the subscriber provides cancellation notice prior to September 1 of each new publication year. Please allow three months for overseas deliveries.

LEGAL NOTICES: The *Journal* is published by the Yale Schools of Law, Medicine, Epidemiology and Public Health, and Nursing. The Editorial Staff, with the assistance of the Advisory Board, makes all decisions regarding the content of the *Journal*. Statements of fact and opinion are the sole responsibility of the authors, and are not necessarily endorsed by the editors, Yale University, or any of Yale's professional or graduate schools. For permission to photocopy articles or other materials appearing in the *Journal*, contact the Editorial Staff at the address below.

MAILING ADDRESS

Yale Journal of Health Policy, Law, and Ethics P.O. Box 208215 New Haven, CT 06520-8215

OVERNIGHT DELIVERY ADDRESS

Yale Journal of Health Policy, Law, and Ethics 127 Wall Street New Haven, CT 06511

www.yale.edu/yjhple Tel: 203.436.0774

101: 203.430.0774

E-mail: yjhple@yale.edu

Founding Members

Chetan Gulati, J.D. Chris Herndon, M.D.

Leslie A. Meltzer, J.D., M.Sc., Ph.D(c) Jason Silvers, M.D., J.D.

YALE JOURNAL OF HEALTH POLICY, LAW, AND ETHICS

VOLUME VII

WINTER 2007

EXECUTIVE EDITORIAL BOARD

Editor-in-Chief Melissa A. Cox

Executive Editors
Jon Donenberg
Max Helveston

Managing Editors
Dennis Hsieh
Anant C. Shah

SENIOR EDITORIAL BOARD

Articles Editors

Medha Devanagondi Ravi Gupta David Tannenbaum

Commentary Editors

Sarah Martin Natalie Ram

Notes Editor
Joshua Hudner

Business Editor Brian Wayda

Case Study Editors
Alina Engelman
Josh Rolnick

Submissions Editors

Andrea Gelatt, Co-Chair
Chad Flanders, Co-Chair
Saideep Bose
Heidi Brown
Lu Anne V. Dinglasan
Jessica Federer
Diane Martinez
Nathan Nagy
Martina S. Spight
Brian Wayda
Marlynn Wei
Rivka Weiser

i

YALE JOURNAL OF HEALTH POLICY, LAW, AND ETHICS

VOLUME VII WINTER 2007

STAFF EDITORS

Amice M. Adasczik
Elizabeth Barfield
Cathy Barnard
Debjani Bhaumik
Saideep Bose
Rupak Datta
Betsy Danford
Diane Durgan
Jessica Federer
Kathryn Foti
Joe Hero
Kathy Hunt
Daniel Kim
Vivian Lee
Ariel Ludwig

K 29 .A335 v.77 2007 Samantha Lutfi-Proctor
Daniel Luskin
Laura Mattaliano
Sue Meng
Nathan Nagy
Elliot J. Rapp
Daniel Reid
Amanda Shanor
Smita Singh
Laura Snow
Mohini Venkatesh
Anthony Vitarelli
Tammy Yahner
Christen L. Young

Advisory Board

- Henry J. Aaron, Ph.D., Senior Fellow, Brookings Institution
- Lori B. Andrews, J.D., Professor, Chicago-Kent College of Law
- George J. Annas, J.D., M.P.H., Professor, Boston University Schools of Law, Medicine, and Public Health
- John D. Arras, Ph.D., Porterfield Professor of Biomedical Ethics, University of Virginia M. Gregg Bloche, M.D., J.D., Professor of Law, Georgetown University, and Co-Director, Georgetown-Johns Hopkins Joint Program in Law & Public Health
- Troyen A. Brennan, M.A., M.D., J.D., M.P.H., Senior Vice President and Chief Medical Officer, Aetna Inc.
- Scott Burris, J.D., Professor, Temple University School of Law
- Robert A. Burt, J.D., Alexander M. Bickel Professor of Law, Yale Law School
- James F. Childress, Ph.D., Professor, University of Virginia
- Paul D. Cleary, Ph.D., Dean and C.E.A. Winslow Professor of Epidemiology and Public Health, Yale University School of Public Health
- Ruth R. Faden, Ph.D., M.P.H., Philip Franklin Wagley Professor of Biomedical Ethics and Director, The Phoebe R. Berman Bioethics Institute, Johns Hopkins University
- John C. Fletcher, Ph.D., Professor Emeritus, University of Virginia School of Medicine
- Lawrence O. Gostin, J.D., L.L.D., Professor and Director, Center for Law and the Public's Health, Georgetown and Johns Hopkins Universities
- Christine Grady, R.N., Ph.D., Head, Section of Human Subjects Research, Department of Clinical Bioethics, National Institutes of Health
- Dean M. Hashimoto, M.D., J.D., M.P.H., Associate Professor of Law, Boston College, and Chief of Occupational and Environmental Medicine, Massachusetts General Hospital and the Brigham and Women's Hospital
- Timothy S. Jost, J.D., Robert L. Willett Family Professor of Law, Washington and Lee University School of Law
- Ruth Katz, J.D., M.P.H., Dean and Walter G. Ross Professor of Health Policy, George Washington University School of Public Health and Health Services
- David Kessler, M.D., J.D., Dean, University of California, San Francisco School of Medicine, and Former Commissioner of the U.S. Food and Drug Administration
- Alvin K. Klevorick, Ph.D., John Thomas Smith Professor of Law and Professor of Economics, Yale Law School and Yale University Department of Economics
- C. Everett Koop, M.D., Sc.D., Senior Scholar, C. Everett Koop Institute at Dartmouth College and Former Surgeon General of the United States
- Jerold R. Mande, M.P.H., Director of Policy Programs, Yale University School of Medicine Theodore R. Marmor, Ph.D., Professor, Yale University School of Management and Yale Law School
- Leslie Meltzer, J.D., M.Sc., Greenwall Fellow in Bioethics and Health Policy. Georgetown University Law Center and the Johns Hopkins Bloomberg School of Public Health
- Elyn R. Saks, M.Litt., J.D., Orrin B. Evans Professor of Law, Psychology, and Psychiatry and the Behavioral Sciences, University of Southern California Gould School of Law