FOREWORD

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The present volume continues the innovative tradition reflected in earlier volumes of the University of California, Davis Law Review. Like those volumes it is an annual, hardbound, student written publication devoted to a single topic.

As the instructor of a course on Law and Medicine, I am pleased to see that this volume does not seek to narrow artificially the natural breadth of its central theme. Instead, the editors and writers have allowed themselves a healthy degree of freedom in their approach to this subject. The result is not only a surprisingly wide range of topics of appeal to a broad spectrum of readers, but a stimulating analysis of some of the most timely topics in the field today.

The particular subjects dealt with in this volume need no further elaboration. Therefore, I will limit my discussion to several recent developments in the field of medicine which I believe have significant legal implications.

It is increasingly apparent that the delivery of health care is becoming an organized enterprise. Both health care professionals and their patients have begun to perceive that each should fare better as physicians and other medical practitioners band together in order to reap the benefits and efficiencies of shared costs, equipment and facilities. A dramatic example of a comprehensive implementation of this principle is the community health care delivery system now being developed on an 88 acre site in Grand Forks, North Dakota. It is designed to provide a one stop center for all health and welfare services. In addition to the University of North Dakota's rehabilitation hospital and a large acute care hospital, it will include a clinic for almost 50 physicians, an orthopedic clinic, facilities for long term nursing care, medical technician training, mental health care, dental services, pharmacy facilities, and offices for state and local health and welfare service agencies. Several years ago, I proposed a similar plan for California. However, in addition to medical service, it was to include components of the legal and other helping professions. Per-

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haps such a concept will gain support in the near future, as its potential benefits are tremendous.

On a less comprehensive scale, a more traditional form of health maintenance organization (HMO) is increasingly being utilized. Under HMO, members of the public pay a fixed fee in advance, often on a monthly basis, in return for the availability of a broad spectrum of medical and dental services. The Kaiser Plan is a prime example of this development. The concept is not new, having originated in Oklahoma almost 50 years ago. However, its growth was somewhat slow until recent years. Approximately 100 HMO's are now in existence, with around 5,000,000 members.

A key factor underlying this increase in the number and role of the HMO is the Health Maintenance Organization Act of 1973, signed at the end of 1972 by President Nixon. The Act provides $375,000,000 for a five year program to expand and develop HMO's. One provision of the Act overrides restrictive laws in 25 states that have inhibited the development of the HMO. According to HMO supporters, this override provision should produce broader public awareness of the HMO concept.

Another major provision in the Act requires employers with 25 or more employees to give these employees the option of using their employer's health insurance contribution for HMO membership. Significantly, the Act also requires that 20 percent of the Federal funds be expended in medically underserved localities, presumably ghettos and non-urban areas. These, as well as other provisions of the Act, assure creation of many more HMO's serving a broad spectrum of the population.

Whatever their potential, no one would assert that the national government's involvement with HMO's marks the end of Federal concern with health care delivery. It is likely that in the near future we will witness the adoption of a national health insurance program aimed at alleviating the burden of at least large medical care expenditures. Of the many proposals which have been made for such a program, three are presently in contention with one another for passage by Congress. One is an Administration-sponsored proposal calling for employers to provide group health insurance, paying 75 percent of the premium cost. Insurance would be purchased from private carriers and premium costs would be derived from the experience of the work group. Vying with this proposal, the Kennedy-Mills bill seeks to provide financing through increased Social Security taxes. These basic dissimilarities are offset by similar coverage provisions in both proposals, which suggests a strong likelihood of accommodation and eventual adoption of some sort of plan. Another alternative is the Long-Ribicoff plan, formerly called the Catastrophic Health Insurance Act. This proposal is directed at the high expenses of catastrophic illnesses rather than at comprehensive coverage pro-

vided for by the Administration and Kennedy-Mills versions. Perhaps this fragmented approach will make the Long-Ribicoff plan more attractive to those lawmakers bewildered and frustrated by the positives and negatives of the Administration and Kennedy-Mills proposals.

Two other developments in the field of medicine with significant legal implications are the Professional Standards Review Organization (PSRO) and the apparent increase in unionization of physicians and dentists. The PSRO is an interesting concept providing for peer review of medical services. Peer review is not new. It has existed at the hospital level for some time. However, it has rarely been used to supervise the daily activity of physicians in the office. This is one of the aims of the PSRO.

The evolution of the PSRO is traceable to California, where physicians first affiliated themselves with foundations established to provide medical services for particular employee groups such as civil service workers and teachers. With the increasing involvement of corporate and governmental bureaucracy, questions began to arise as to the appropriateness of the medical treatment which had been rendered. Physicians other than those who had rendered the treatment were consulted for answers. With the amendment in 1972 of the Social Security Act, PSRO's are now being created by the federal government to monitor treatment of patients covered by Medicare, Medicaid, maternal health and child welfare programs. Some 50,000,000 persons are covered by Medicare and Medicaid. Furthermore, a PSRO provision may be included in whatever national health insurance plan is finally adopted. This will undoubtedly affect the form of medical treatment offered patients whether or not they are covered by legislation or insurance that includes a PSRO provision.

There are interesting legal implications to the PSRO program. The amendment to the Social Security Act provides for administrative approval of proposed courses of medical treatment as well as a review of such treatment where this is needed. Computerization of records and the kinds of information such computerized records can bring to light raises a host of problems. What, for example, should be done with information which indicates failure-prone or surgery-addicted practitioners? One of the articles in this volume discusses the potential usefulness of such computer profiles in medical malpractice litigation.

Another recent phenomenon with broad implications for the future is the unionization of physicians and dentists. It is estimated that more than 11 percent, some 55,000 physicians and dentists, of the approximately 365,000 physicians and 101,000 dentists in the United States, belong to some kind of union. A recent newspaper account reveals that almost 40 percent of some 7,000 practicing physicians in the San Francisco-Bay Area belong to one union, in

large part because of frustrations with government agencies, hospitals, and insurance companies. The legal profession might well study this phenomenon in planning for Judicare and the delivery of legal services by and to groups.

And finally, the California Occupational Safety and Health Act, which replaced the federal version on January 1, 1974, merits some attention. In California, some 400,000 employers and their millions of employees are affected by the Act. Its provisions are of interest not only to employers and employees, but to specialists in corporate law, workmen's compensation, personal injury, labor relations, and local government law.

In her foreword to last year's volume of the U.C. Davis Law Review, Professor Brigitte Bodenheimer stated that " . . . Family Law cannot exist in isolation, but must reach over into fields concerned with human problems, such as psychiatry, family counseling and psychology." The same can equally be said with regard to Law and Medicine. By its very nature the subject cannot exist in isolation. The articles in this volume reflect that fruitful encounter of scientific discipline and humanistic concern which uniquely marks the field today.