

**STATE OF MICHIGAN**  
**IN THE COURT OF CLAIMS**

**Peter J. Hammer,**

Plaintiff

vs.

Case # 04-241 MK  
Hon. James R. Giddings

**Board of Regents of the University  
of Michigan,**

Defendant

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Philip Green (P14316)  
Green, Green & Adams, P.C.

Attorney for Plaintiff  
900 Victors Way, Suite 240  
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(734) 665-4036

Richard J. Seryak (P26152)  
Miller, Canfield, Paddock and Stone,  
PLC

Attorney for Defendant  
150 W. Jefferson Ave., Suite 2500  
Detroit, Michigan 48226  
(313) 963-6420

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STATE OF MICHIGAN            )  
  )ss.  
COUNTY OF WASHTENAW    )

**AFFIDAVIT OF FRANCES H. MILLER**

I, Frances H. Miller, being duly sworn, depose and say as follows:

I have personal knowledge of the facts set forth in this Affidavit; and if called as a witness at trial, I am competent to testify to the facts stated herein.

1. I am Professor of Law at the Boston University School of Law, a position I have held since 1975. I also hold full professorships in Boston University's School of Management and in its School of Public Health, but my tenure is in the School of Law.
2. Among the relevant courses I have taught at Boston University School of Law have been Health Law (25 years), Antitrust & the Health Industry (10 years), Health Care Resource Allocation (1 year), and Food & Drug Law (4 years). I have written widely for law review

publications and medical journals on a broad range of healthcare subjects, including approximately half a dozen articles on Antitrust in the Health Sector. I have also lectured extensively, both in this country and abroad, on healthcare antitrust issues. In addition, I am of Counsel to the Boston law firm of Nutter, McClennen & Fish, where I have consulted on healthcare antitrust cases. A true and accurate copy of my curriculum vitae is attached hereto as Exhibit A.

3. I served for several years as a member and Chair of the Boston University School of Law Tenure Committee. I solicited and evaluated both internal and external reviews of the scholarship of my colleagues coming up for renewal and tenure decisions in those capacities. I also solicited and evaluated internal and external reviews of the scholarship of lateral candidates for positions here at the law school.
4. I have written dozens of tenure and promotion reviews evaluating the scholarship of my own colleagues, and of health law scholars at other institutions seeking tenure there.
5. Given my extensive experience with the way the tenure process works in law schools, along with my deep familiarity with healthcare law and policy scholarship, particularly concerning the application of antitrust principles to the health sector, I am knowledgeable about evaluating the strengths and weaknesses of reviews of health law antitrust scholarship.
6. I have read the internal reviews of Professor Peter J. Hammer's Scholarship by Professors J.J. White and Omri Ben-Shahar of the Michigan law faculty, and I understand copies of those reviews will be made part of the record in this action. I have also read the other internal and external reviews of Professor Hammer's scholarship contained in the file. I offer the following comments on Professor White's and Professor Ben-Shahar's reviews, in light of my own knowledge, and in particular in light of the comments of Professor Clark Havighurst's external review.
7. With regard to Professor White's review, he concedes at the outset that he has little knowledge of formal economics or of antitrust law, and from the evidence presented in his "separate view" (which I take to be his minority report of one from the tenure committee recommendation for tenure), I would hazard a guess that he has little knowledge of health systems either. Professor Hammer's use of the term "Hospital Nonprice Competition," to which Professor White takes exception on the first page of his review, is hardly an abstract concept to anyone who reads newspapers, watches television or listens to the radio, and is thus constantly barraged with advertisements from hospitals

trumpeting the excellence of their services.<sup>1</sup> I find it mystifying that Professor White would conclude, "I could only guess about his [Hammer's] main point."

8. Professor White states that Professor Hammer "is not a felicitous writer,"<sup>2</sup> yet the sentence he chooses to highlight (and then re-write) as an example of bad writing<sup>3</sup> would most certainly be crystal clear to any law professor on the Boston University School of Law faculty. In fact, Professor White's re-write is not only clumsy and inaccurate, but it obscures the point Professor Hammer was making. Professor White then goes further and says, "[s]ometimes bad writing means bad thinking," implying Professor Hammer's scholarship falls in that category, although he professes to be concerned only about the "possibility." Planting a negative inference, then dancing away from responsibility for raising a damaging issue, comes across as unprincipled.
9. Professor White seems to hold Professor Hammer's scholarship up against a law and economics template, rather than measuring it by a health law or antitrust standard. Moreover, Professor White simply dismisses the (favorable) reviews of commentators "from the health care side."<sup>4</sup> He lumps two well-regarded health law scholars (Sage and Bloche), who hold law degrees and tenured law school faculty appointments, into that "lesser weight" category because they also happen to "teach . . . in Medicine or public health." Professor Hammer presents as an antitrust and a health law scholar, not as one whose primary interest is law and economics. Professors Sage (Columbia Law School) and Bloche (Georgetown Law Center) both happen to hold M.D. degrees in addition to their J.D. degrees, which one might think would add to their credibility for evaluating health law scholarship, rather than detract from it. Clearly not from Professor White's perspective, however.
10. Professor White concludes that since Professor Hammer seems to have little contact with law and economic [sic] scholars outside the health care field,<sup>5</sup> "has never made a presentation at a law and economics meeting outside of Ann Arbor [and] . . . has never published

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<sup>1</sup> Since most hospital admissions are subsidized by health insurance, thus relegating competition on the basis of price irrelevant to most patients, nonprice competition is a critical factor for hospitals in attracting business.

<sup>2</sup> Many of the other reviewers say just the opposite. See, e.g., Professor Omri Ben-Shahar's statement on p. 5 of his review that Professor Hammer has "an elegant style of writing," and Professor Clark Havighurst's letter of January 10, 2002, p. 5 which says of one of Professor Hammer's articles that it is "courageous and well-written."

<sup>3</sup> Page 2, White review.

<sup>4</sup> Page 4, White review.

<sup>5</sup> Page 5, White review.

in a law and economics journal,<sup>6</sup> he must be bad at what he does. I consider these unprofessional criticisms to appear in a tenure file. I have no idea whether Professor White is correct in his assertions about Professor Hammer's contact with the law and economics fraternity, but I do not believe I have ever before seen a review faulting a scholar for failing to interact *outside his home institution* with theorists having academic perspectives he does not espouse.

11. With regard to Professor Ben-Shahar's review, once again the law and economics template is the standard against which Professor Hammer's work is judged - and found to come up short. Without a trace of irony Professor Ben-Shahar asserts, "[T]his body of work surely does not match the quality of work that is produced by *junior professors of law and economics* in peer elite institutions, or even by recent entry-level candidates."<sup>7</sup>
12. Professor Ben-Shahar wades right in to condemn the methodology and the "*meaningless*" conclusions of Professor Hammer's empirical work in the Columbia Law Review piece as not meeting law and economics standards, without taking on board the fact that the work was exploring emerging forms of antitrust litigation in a brand new context - it was not intended, as Professor Ben-Shahar avers it should have been<sup>8</sup> - to produce definitive contributions about matters of concern to law and economics scholars.
13. Apart from the mean-spiritedness that seems to permeate his critique of Professor Hammer's work, perhaps Professor Ben-Shahar does not know that antitrust law was considered generally inapplicable to the health sector until a series of Supreme Court decisions in the mid-1970s made clear that the health sector did not have a free pass to engage in anticompetitive conduct. The importance of the empirical work Professor Hammer did on these early results of healthcare antitrust litigation lies in the fact that these were new causes of action, and no one before had done large-scale systematic analyses of what was happening - or of whether applying health law in this new arena had had any real impact on health care quality - or anything else.
14. Professor Ben-Shahar's review of Professor Hammer's other scholarship, simply dismissing the Arrow piece as uninteresting and nit-picking the scope of the Michigan piece at some length, continue the "this is not-good-law-and-economics" theme of his critiques. At times, it sounds almost as though Professor Ben-Shahar is litigating against Professor Hammer's work. I would just reiterate that Professor

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<sup>6</sup> Id., at page 6.

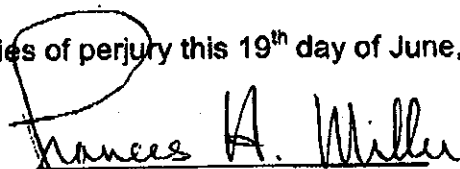
<sup>7</sup> Ben-Shahar review, p. 7.

<sup>8</sup> Ben-Shahar review, p. 5.

Hammer's scholarly objectives go well beyond traditional law and economics themes, and evaluating his work by that narrow template alone is not only erroneous, it could raise questions of political bias.

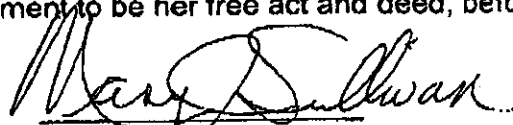
15. Had I requested Professor White and Professor Ben-Shahar to review Professor Hammer's work in my role as Chair of Boston University School of Law's Tenure Committee and they had submitted these reviews, I would have accorded them little weight.
16. One final point. I believe that few knowledgeable scholars would disagree that Professor Clark Havighurst of Duke "founded" health law antitrust scholarship. His writing has applied antitrust principles to the health sector virtually non-stop since the 1970s. Everyone teaching and writing in the field knows his highly disciplined work, cites his articles, and respects his rigorous opinions. He is also known as a meticulous and demanding reviewer of other people's work. Professor Havighurst wrote in his letter to Professor Robert Howse of January 10, 2002, "I believe Professor Hammer is working very conscientiously and stylishly in search of answers to extremely complex questions of law and policy. The overall record is *easily* distinguished enough that your faculty should feel comfortable in granting tenure."<sup>9</sup> To my mind, that statement from the man who has been the pre-eminent figure in all of health law antitrust scholarship over time carries more weight than ten opinions from almost anyone else. He has his quibbles with Professor Hammer's scholarship of course – I would expect no less from him – but his bottom line on tenure for Professor Hammer is profoundly positive – not "guardedly positive" as Professor White chose to characterize it.<sup>10</sup>

Signed under the pains and penalties of perjury this 19<sup>th</sup> day of June, 2006.

  
Frances H. Miller

COMMONWEALTH OF MASSACHUSETTS

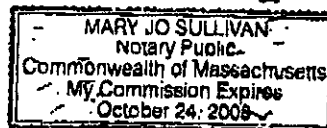
Then personally appeared the above-named FRANCES H. MILLER and acknowledged the foregoing instrument to be her free act and deed, before me,

  
Notary Public

6/19/06

<sup>9</sup> Emphasis added.

<sup>10</sup> White review, p. 3.



April 1, 2006

**FRANCES H. MILLER**  
[Curriculum Vitae]

**ADDRESSES:**

Work: Boston University School of Law  
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Boston, MA 02215  
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Wellesley Hills, MA  
02481  
Tel. (781) 237-2812

**EDUCATION:**

*Post-Legal:* London School of Economics and Political Science, London, U.K. (1965 - 1966). (Institute for Advanced Legal Studies)

*Legal:* Boston University School of Law, Boston, Massachusetts. J.D. cum laude. (1965)  
Class Standing: 4/164 (86.62 average)  
Honors: Graduated cum laude  
Law Review, 1963-1965  
West Pub. Co. Excellence in Legal Writing and Research Prize  
American Jurisprudence awards: highest grades in Evidence and Constitutional Law

*Undergraduate:* Mount Holyoke College, A.B., 1960.  
Major: Political Science - Economics

*Secondary:* Hingham High School, Hingham, MA (1956).  
Class Standing: 3/145  
Honors: National Honor Society  
Finalist, National Merit Scholarships  
Ada Bacon Scholarship: highest academic standing among women.

**EMPLOYMENT:**

- 1981 - present: Professor of Law, Boston University School of Law. Courses taught: Trusts & Estates; Health Law; Family Law; Food & Drug Law; Estate Planning (Seminar); Antitrust Issues in Health Care (Seminar); Health Care Resource Allocation (Seminar); Estate Planning and Future Interests.
- 1997 - present: Professor of Health Care Management, Boston University School of Management.
- 1983 - present: Professor of Public Health, Boston University School of Public Health. (Original appointment was in School of Medicine, where Public Health was then a department.)
- 1993 - present: Of Counsel, Nutter, McClennen & Fish, World Trade Center West,

- Seaport Boulevard, Boston, MA
- 1987 - 1992: Of Counsel, Widett, Slater & Goldman, Boston, MA
- 1976 - 1987: Of Counsel, Bowker, Elmes, Perkins, Meccas & Gerrard, Boston
- 1975 - 1982: Associate Professor, Boston University School of Law.
- 1974: Commissioner, Massachusetts Rate Setting Commission (Set Medicaid and Worker's Compensation rates of reimbursement, and approved Blue Cross reimbursement rates).
- 1973 - 1976: Associate, Powers and Hall, Boston, MA.
- 1968 - 1975: Instructor, Lecturer, Adjunct Associate Professor of Law, Boston University School of Law.
- 1966 - 1971: Ass't to Editor-in-Chief, Association of Trial Lawyers of America. (case analysis and editorial work for ATL Journal and Newsletter.)
- Summer, 1964: Ass't to Director, Legal Studies Institute, Boston University School of Law. (Helped organize U.S. Office of Economic Opportunity poverty law programs.)
- 1960 - 1962: Ass't Program Officer in Economic Development, Bureau of Indian Affairs, U.S. Dept. of the Interior. (Drafted U.S. and state legislation; drafted constitutions, by-laws, and charters for the Indian and Eskimo tribes; worked on economic development for the Alaskan Native Tribes.)
- Summer, 1959: Government Intern in U.S. Dept. of Commerce, Office of Public Information.

## **FELLOWSHIPS & GRANTS**

Fulbright Scholar, January - July, 1998. Grant awarded for continuing research on competition and regulation in British health systems.

Visiting Fellow, St. Catherine's College, Oxford University, Hillary Term 1998

Fulbright Scholar, January - July 1991. Grant awarded for research on the effects of competition on British health systems.

Kellogg Foundation National Fellowship, 1983-1986. Extensive travel studying health care delivery in Europe, Africa, South America, the Middle East, & China.

**VISITING PROFESSOR:**

T. C. Beirne School of Law, University of Queensland, Australia (Spring 2005).

University of Houston Law Center, Houston, Texas (Midwinter term 2006)

**VISITING SCHOLAR:**

London School of Economics Law Faculty. (Jan-Feb 2005).

The Kings Fund, London, for continuing research on the National Health Service and the General Medical Council. (Jan. - July 1998).

Wolfson College and the Faculty of Law, Cambridge University, King College London, and the Kings Fund Institute, for research on introducing internal markets to the National Health Service (Jan - June 1984).

St. Hilda's College and the Faculty of Law, Oxford University, for research on the National Health Service (Jan. - June 1984).

**AWARDS:** Neil M. Pike Scholar in Health & Disability Law, Boston University School of Law (2003 - present)

Yanakakis Faculty Research Scholar, Boston University School of Law (2002-03)

Merck Distinguished Visiting Scholar, Seton Hall Law School (2002)

Class of 1960 Scholar, Boston University School of Law (2000-01)

Honorary Doctorate (of Laws), Mount Holyoke College (1999).

Joseph Lipsitt Faculty Research Scholar, Boston University School of Law (1997-98).

The McDonald-Merrill-Ketcham Memorial Award, Indiana University School of Law & Indiana University School of Medicine (for Furthering Greater Understanding and Exchange of Opinions Between the Professions of Law and Medicine) (1996).

The Joseph M. Healey 1994 Health Law Teachers Award, American Society of Law, Medicine & Ethics (for sustained excellence in health law teaching).

Silver Shingle Award (for service to Boston University School of Law) (1992).

Alumnae Medal of Honor (for service to Mount Holyoke College) (1990).

Metcalfe Cup and Prize for Excellence in Teaching. (Boston University's

highest award for teaching) (1989)

Centennial Award, Boston University Women's Guild (1989).

**GRANT:** Co-Principal Investigator on Grant # 1996/9 from the Nuffield Provincial Hospitals Trust (London, U.K.): A Comparative Analysis of Practice Guidelines in the US and UK: Hurdles and Levers. (UK £33,112)

**LAW REVIEW PUBLICATIONS:**

*Consolidating Pharmaceutical Regulation Down Under*, \_\_ University of Queensland Law Journal \_\_ (forthcoming 2006).

*Globe-Hopping Pharmaceuticals*, 32 Am. J. of Law & Med. Nos 2 & 3, \_\_ (forthcoming 2006).

*Why Can't Doctors & Lawyers (STRANGERS IN THE NIGHT) Get Their Act Together?* 102 Mich. L. Rev. No. 6, 1901 (2004).

*Phase Two of the Genetics Revolution: Sophisticated Issues for Home and Abroad*, 28 Am. J. of Law & Med. 145 (2002).

*Trusting Doctors: Tricky Business When It Comes to Clinical Trials*, 81 B.U.L.Rev 423 (2001).

*Lessons to be Learned from Harvard Pilgrim HMO's Fiscal Roller Coaster Ride*, (with Walter W. Miller, Jr.), 28 J. of Law, Med. and Ethics 287 (2000)

*Doctors in the Executive Suite: Should the U.S. and U.K. Be Putting M.D. Licensure at Risk for Shortfalls in Institutional Quality of Care?*, 31 J. of Health & Hospital Law 217 (1998).

*Health Care Information Technology and Informed Consent: Computers and the Doctor-Patient Relationship*, 31 Indiana L. Rev 1019 (1998).

*Medical Discipline in the 21st Century: Can Purchasers Do It?*, 60 Law & Contemporary Problems 31 (1997). (Symposium issue on Medical Malpractice: External Influences & Controls).

*The Effect of Culture and Economics on Informed Consent in Japan* (with George Annas), in *The Tsukuba Review of Law and Political Science*, The University of Tsukuba, Japan (1997).

*Foreword: Managed Care Phase Two - Structural Changes and Equity Issues*, 23 Am. J. of Law & Med. 188 (1997) (Symposium issue on Managed Care).

*Foreword: The Promise and Problems of Capitation*, 22 Am. J. of Law & Med. 167 (1996) (Symposium issue on Capitation).

*Capitation & Physician Autonomy: Master of the Universe or New Prisoner's Dilemma? (Can the UK's National Health Insurance Experience Teach Us Anything?)*, 6 Health Matrix 125 (1996) (Symposium issue on Physician Autonomy).

*Illuminating Patient Choice: Releasing Physician-Specific Data to the Public*, 8 Loyola Consumer Law Reporter 125 (1995-96) (Symposium on Competition and Consumerism: Striking a Balance).

*The Empire of Death: How Culture and Economics Affect Informed Consent in the US, the UK, and Japan* (with George J. Annas), 21 Am. J. of Law & Medicine 357 (1994).

*Health Insurance Purchasing Alliances: Monopsony Threat or Procompetitive Rx for Health Sector Ills?*, 79 Cornell L. Rev. 1546 (1994).

*Genetic Blueprints, Employer Cost-Cutting, and the Americans with Disabilities Act*, (with Philip A. Huvos), 46 Administrative Law Review 369 (1994).

*Conflicts of Interest & Altruism in US and British Health Care, (essay-review of Medicine, Money & Morals, by Marc Rodwin)* 27 Indiana Law Review 684 (1993).

*Competition Law and Anticompetitive Professional Behaviour Affecting Health Care*, 55 Modern Law Review 453 (1992).

*Denial of Care and Informed Consent in English and American Law*, 18 Am. J. of Law & Med. Nos. 1 & 2, 37 (1992) (symposium issue on health care rationing).

*Surrogate Fatherhood* (essay/review of Surrogate Motherhood by Martha Field), 70 B.U.L. Rev. 169 (1990).

*Health Planning in a Competitive Environment: An Oxymoron?*, (essay/review of Cost, Quality and Access in Health Care: New Roles for Health Planning in a Competitive Environment), 10 J. of Legal Med. 763 (1989).

*Vertical Restraints and Powerful Health Insurers: Exclusionary Conduct Masquerading as Managed Care?*, 51 Law and Contemporary Problems 195 (1988) (symposium issue on antitrust and health care).

*Teaching Antitrust to Health Law Students: Peer Review as a Case Study*, 38 Journal of Legal Education No. 4, 545, (1988).

*A Comment on Posner's Market for Babies*, (with T. Frankel) 66 B.U. L. Rev. 99 (1986).

*Medical Malpractice: Do the British Have a Better Remedy?*, 11 American Journal of Law and Medicine 433 (1986).

*Informed Consent for the Man on the Clapham Omnibus: An English Cure for the "American Disease?"*, 9 Western New England Law Review 301 (1986) (Symposium

Issue).

*Biological Monitoring: The Employer's Dilemma*, 9 American Journal of Law and Medicine 387 (Winter 1984).

*Antitrust and Certificate of Need: of HSAs, The Planning Act & Regulatory Capture*, 68 Georgetown Law Journal 873 (1980).

*PSRO Data and Information: Disclosure to State Health Regulatory Agencies*, 57 B.U.L. Rev. 245 (1977).

*Blue Cross: What Went Wrong?*, by Sylvia Law, (book review) 55 B.U.L. Rev. 147 (1975).

*Wife's Tort Liability as Tenant by the Entirety*, 44 B.U.L. Rev. 247 (1964).

#### **BOOK:**

RIGHTS AND RESOURCES (F. Miller, ed.), volume on health care rights and resources in the English-speaking world edited for THE INTERNATIONAL LIBRARY OF MEDICINE, ETHICS AND LAW (2003).

#### **BOOK CHAPTERS:**

*Practice Guidelines and Medical Ethics and Dialogue: Clinical Practice Guidelines: The Problem of Imposing Industrial Models on Health Care* (in MEDICAL ETHICS: A MULTIDISCIPLINARY APPROACH TO MORAL ISSUES IN MEDICINE AND BIOLOGY (David Steinberg, ed.) (University Press of New England, forthcoming 2006).

*"Medical Error, Adverse Drug Reactions & Patient Safety: The 'Precautionary Principle' in the US & the EU,"* (in THE REALITY OF PRECAUTION, (Jonathan Weiner and Michael Rogers, eds.) (Cambridge University Press, forthcoming 2006).

*Vaccines Against Addiction for Minors: The Legal Issues*, (with Kaley Klanica) NEW TREATMENTS FOR ADDICTION: BEHAVIORAL, ETHICAL, LEGAL, AND SOCIAL QUESTIONS 276 (National Academy of Sciences 2004).

*"Rights and Resources: Two Sides of an Irregular Coin,"* in RIGHTS AND RESOURCES (F. Miller, ed.), VOLUME IN THE INTERNATIONAL LIBRARY OF MEDICINE, ETHICS AND LAW, (2003).

*Health Care Information Technology & Provider Accountability*, in Law & Medicine at the Crossroads 2000 (Michael Freeman, ed.) Avebury Press, U.K. (2000).

*Culture, Economics and Choice* (with George Annas), in George Annas, SOME CHOICE, OXFORD UNIVERSITY PRESS, (1998).

*Maternal/Fetal Conflicts: Narrowing the Controversy*, in PHILOSOPHY AND HEALTH CARE (M. Menlowe, ed.), Avebury Press, U.K. (1992).

*Practice Guidelines and Medical Malpractice Liability*, in PRACTICE GUIDELINES, (M. Field, ed.), Institute of Medicine, National Academy of Sciences, (1992).

*Economics, Fiduciary Standards and Medical Malpractice Liability, Aspetti Comparativi Della Responsibilita Professionale Medica e Prospettive di Reforma* (1991) (translated into Italian as chapter in book generated by Third European Symposium of the International Academy of Law and Mental Health, Castiglione Delle Stiviere, Italy, May 1990).

*Secondary Income from Recommended Treatment: Should Fiduciary Principles Constrain Physician Behavior?*, in THE NEW HEALTH CARE FOR PROFIT: DOCTORS AND HOSPITALS IN A COMPETITIVE ENVIRONMENT, 153 (Bradford H. Gray, ed.) National Academy of Sciences, (1983).

#### **MEDICAL AND OTHER PROFESSIONAL PUBLICATIONS:**

*Review of LAW IN PUBLIC HEALTH PRACTICE*, (Richard A. Goodman, Richard E. Hoffman, Wilfredo Lopez, Gene W. Matthews & Mark A. Rothstein, eds., Oxford University Press) (2002) in \_\_\_\_ J. of Social Science and Medicine \_\_\_\_ (2004).

*Globalizing Pharmaceutical Regulation: Leveling Up or Letting Down Our Guard?*, 3 Law and Bioethics Report, University of Louisville School of Medicine No. 3, 9 (2004)

*The Hidden Hazards of Clinical Trials*, October 2003 Trial Magazine 50.

*Vaccines and Immunotherapies to Control Addiction in Minors: The Legal Framework*, (with Kaley Klanica), National Academy of Sciences (2004).

*The National Resident Matching Program and Antitrust Law*, (with Thomas L. Greaney), 289 JAMA, No. 7, 913 (Feb. 19 2003)

*The Hidden Hazards of Clinical Trials*, October 2003 TRIAL MAGAZINE 48.

*A Roadmap for Health Care Accountability* (Book review of HOLDING HEALTH CARE ACCOUNTABLE: LAW AND THE NEW MEDICAL MARKETPLACE, by E. Haavi Morreim), in 33 Hastings Center Report, No.2, 46 (2003).

*Medical Error Reporting: Professional Tensions Between Confidentiality and Liability*, (with Wendy K. Mariner), MA Health Policy Forum (2001) (pub. @ [http://ihp.brandeis.edu/mhpf/prof\\_liability\\_Issue\\_Brief.pdf](http://ihp.brandeis.edu/mhpf/prof_liability_Issue_Brief.pdf))

*Contracting for Health Care Quality*, Spring 2000 Medical Ethics 4.

*Medical Malpractice Implications of Referral to Providers of Alternative Medicine* (with D.M. Studdert, David M. Eisenberg, D.A. Curto, T.J. Kaptchuk & T.A. Brennan), 280 J. of Am. Med. Ass'n., No. 18, 1610 (November 1998.)

*Hurdles and Levers: A Comparative U.S. - U.K. Study of Guidelines*, monograph (with R. Klein and Patricia Day) published by the (U.K.) Nuffield Foundation (1998).

*Clinical Practice Guidelines: The Problem of Imposing Industrial Models on Health Care: A Response*, Spring 1998 Medical Ethics 7.

*Medical Ethics and Practice Guidelines*, Winter 1998 Medical Ethics 1.

*Doctor Profiling: Why Physicians? Why Now? (& a Realistic Appraisal of Your Concerns)*, 60 Worcester Medicine, No. 8, 10 (Winter 1996).

*Legal Ramifications of the NCCN Practice Guidelines: Good Medicine Is Good Law*, 10 Oncology No. 11, 35. (November 1996) (Symposium issue devoted to NCCN Practice Guidelines for Cancer).

*Gag Clauses, Medical Ethics and the Law*, 2 Lahey Hitchcock Medical Ethics Newsletter No. 2, 4. (1996).

*Infant Resuscitation, a US/UK Divide*, 343 The Lancet 1584 (June 25, 1994).

*Malpractice Liability and Physician Autonomy*, (with Anthony Harrison) 342 The Lancet 973 (Oct. 16, 1993).

*Health Policy, Competition and Professional Behaviour*, Health Care UK - 1991, 142 (A. Harrison, ed.) King's Fund Institute (1992).

*Maternal-Fetal Ethical Dilemmas: A Guideline for Physicians*, 10 Seminars in Anesthesia No. 3, 157 (1991).

*The Doctor's Changing Role in Allocating U.S. and British Medical Services*, (with R. Lee) 18 Law, Medicine & Health Care (Nos. 1 & 2) 69 (1990).

*The Antitrust Perspective on Health Industry Competition*, 12 J. of Health and Human Resources Administration 128 (1989).

*Brain Tissue Implants: the Law's Response*, 2 Massachusetts Medicine No. 6, 21 (1987).

*Cost Control and Physician Liability*, 2 Massachusetts Medicine No. 5, 23 (1987).

*Antitrust Laws: Protecting Competition in an Era of Oversupply*, 2 Massachusetts Medicine No. 3, 23 (1987).

*Physician Autonomy: U.S. v. U.K.*, 2 Massachusetts Medicine No. 1, 19 (1987).

*The Pregnant Woman v. the Fetus at Risk: Rights in Conflict?*, 1 Massachusetts Medicine No. 5, 17 (1986).

*The Painful Prescription: A Procrustean Perspective?*, (with Graham Miller, M.D.), 314 New England Journal of Medicine 1383 (May 22, 1986).

*Informed Consent in Massachusetts: Shoot the Messenger?*, 1 Massachusetts Medicine No. 2, 35 (1986).

*Reflections on Organ Transplantation in the United Kingdom*, 13 Law, Medicine and Health Care 31 (1985).

*Political Analysis and American Medical Care* by Theodore Marmor (book review), 7 Sociology of Health & Illness 118 (1985).

*Standards of Care Based on Consensus Rather Than Evidence: The Case Of Routine Bedrail Use for the Elderly* (with Rubenstein, Postel and Evans), 11 Law, Medicine and Health Care 271 (December 1983).

*Tax Planning for Financing Higher Education*, Winter 1983 Mount Holyoke Alumnae Qtrly 20.

*Why Do We Regulate Health Care?*, Spring 1980 Mount Holyoke Alumnae Quarterly 31.

*The Rights of the Employee As Patient*, December 1977 J. of Occupational Health Nursing 11.

*How to Disinherit the I.R.S. and Other Moral Tales*, Summer 1977 Mount Holyoke Alumnae Quarterly 16.

*New Developments in Hospital Law - The Hill-Burton Act and Delivery of Uncompensated Medical Services*, 2 Medicolegal News 1 (1974).

*The Family and Inheritance*, by Sussman, Cates, and Smith, (book review) 5 Commentaries 2, p. 26 (1973).

Miscellaneous other short publications in The Lancet, Specialty Law Digest; Health Care Law; Orthopedics Today, National College of Probate Judges Law Journal; Family Advocate; Michigan Family Law Journal, etc. Op Ed pieces in New York Times, Boston Globe, etc.

#### **APPOINTMENTS & ELECTIONS:**

Trustee, Mount Holyoke College, 2004 – 2009.

Council for the International Exchange of Scholars, U.S. Fulbright Commission, External Evaluator for Fulbright-Sponsored exchange project re health law and policy between La Paz University, La Paz, Argentina, and Indiana University, Indianapolis, IN.

Board of Directors Member, Joslin Diabetes Center, (1999 - ).

Harvard Medical School/Teaching Hospitals Genetic Testing Advisory Board Member (1999 - 2002).

Ireland/U.K. Fulbright Selection Committee Member for 2000-02, (Chair, 2001 & 2002).

Member, Board of Advisors, Health Law and Policy Abstracts (electronic journal published by the Legal Scholarship Network (1998 - )).

Member, Editorial Advisory Board, Journal of BioLaw & Business (1997 - ).

Member, Human Research Committee (Institutional Review Board), Partners HealthCare (Brigham and Womens, Dana Farber & Massachusetts General Hospitals) IRB, (1995 - ).

Member, Board of Directors, Massachusetts Health Data Consortium (1996 - ), Executive Board Member & Corporate Sec'y (1998 - ). Chair, Search Committee for Board Chairman and President (1997).

Member, Advisory Board, New England Sinai Hospital and Rehabilitation Ctr. (1996 - ).

Member, Institutional Review Board for the Protection of Human Subjects, Brigham and Women's Hospital , Boston, MA (1995 - 1997).

Editorial Advisory Board Member, Medicine and Culture, New York, (1995-2002).

Member, Massachusetts Advisory Committee on Public Disclosure of Physician Information (1994-1995) (Advisory Committee to the Secretary of Consumer Affairs appointed to make specific recommendations regarding needed legislative and public policy changes related to information regarding the competence and character of physicians practicing in the Commonwealth)

Member, Coordinating Group on Bioethics and the Law, American Bar Association (1991-1995).

Member, Honorary Degree Nominating Committee, Mount Holyoke College (1991-1995).

Visiting Scholar, Wolfson College, Cambridge University (Spring Semester, 1991) for research on internal markets in the National Health Service.

Member, Task Force on Criminal Antitrust Enforcement in the Health Care Field, American Bar Association, Antitrust Section, (1989-1993).

Member, LL.M. Advisory Committee, Loyola University of Chicago School of Law (1987-1990).

Chair, Massachusetts Health Facilities Appeals Board (1986- ).

Member, American Bar Association Special Committee on Medical Professional Liability (1985-1986).

Member, Massachusetts Peer Review Organization Data Confidentiality Committee (1986-1990).

Member, Ethical-Legal Advisory Committee of Urban Medical Group (1983-1985) (Managed health care plan for severely disabled adults).

Member, Board of Directors, Data Analysis, Research and Development Fund, Inc. (1982-1983).

Member, Board of Directors, New England Legal Foundation (1982-1991); Member, Executive Committee (1986-1991); Honorary Trustee since 1992; Member, Legal Advisory Committee (1980-1991) Chair, 1985 - 1991). (Public interest law firm serving the business community).

Member, Legal Advisory Board, Family Health Plan, Inc. (Prepaid Health Plan in Framingham, Massachusetts) (1981-1983).

Member, Advisory Board to Adolescent Consultation Services, Inc., (affiliated with the Cambridge Court Clinic) (1980- ).

Member, Career Services Advisory Committee, Women's Educational and Industrial Union (1980-1984).

Public Representative, Mass. Statewide PSRO Council (1979-1981).

Member, Governor's Health Regulatory Agency Reorganization Group, Massachusetts Executive Office of Human Services (1977-1978).

Member, Special Study Commission of the Massachusetts General Court on the Equal Rights Amendment (1976-1977).

Trustee, Mount Holyoke College (1976-1981).

Member, Human Rights Review Committee of the Judge Baker Guidance Center, Children's Hospital Medical Center (1976-1992).

Member, Health Facilities Appeals Board (Massachusetts Certificate of Need Appeals Hearing Agency) (1974-80), Acting Chair, October-January, 1975-1976 and September-February, 1976-77.

Member, Search Committee for President of Mount Holyoke College (1977-1978).

Hearing Officer for Certificate of Need appeals, Maine and New Hampshire (1974-1978) (American Arbitration Association Panel).

Member, Advisory Council, Radcliffe Institute Programs in Health Care (1974-1976);  
Chair, Medical Ethics Subcommittee (1974-1976); Member, Executive Committee (1974-  
1976).

Public Representative, Commonwealth Hospital Admissions Monitoring Program (PSRO  
prototype agency; prospective and concurrent cost and quality screening of Medicaid  
hospitalizations) (1973-1977); Chair, Data Protocol Subcommittee (1974-1977).

Member, Massachusetts Health Policy Development Group (Advising the Department of  
Public Health re organization and delivery of health care services) (1973-1975).

Member, Advisory council on the Licensing of Hospitals, Hospital Surveys, and  
Construction Planning (Hill-Burton Advisory Council) (Health care facility grants, loans,  
and loan guarantees for construction and/or modernization) (1973-1975).

Member, Planned Giving Subcommittee, Board of Trustees, Mount Holyoke College  
(1972-1984)

#### **MISCELLANEOUS:**

Member, Boston University Planned Giving Advisory Council (1999 - )

Editorial Advisory Board, Journal of Biolaw and Business (1997 - ).

Consultant, White House Task Force on Health Care Reform/Working Group on  
Malpractice and Tort Reform (1993).

Consultant, Agency for Health Care Policy and Research, Dept. of Health and Human  
Services (1990 - 1993).

Member, Phi Beta Kappa.

Two television series for PBS, produced by WMHT, Schenectady, NY; This is My Will (4-  
part series on estate planning) - 1983) and Fiscal Fitness (6-part series on estate and  
financial planning - 1985).

Faculty Editor and Faculty Advisor, American Journal of Law and Medicine (1984 - ).

Grant Review Panelist, Office of Program Co-Ordination and Review, Dept. of Health and  
Human Services (1982).

Consultant, National Center for Health Services Research, HEW (1977-1979).

Consultant, U.S. Army, Medical Command Europe, Heidelberg, Germany (1978-1980).

Primary drafter of regulations promulgated by Massachusetts Department of Public  
Health entitled "Regulations Requiring a Minimum Level of Uncompensated Medical

Services in Massachusetts," implementing Hill-Burton Act requirements for free care (September 10, 1974).

Admitted to Practice: Massachusetts (1966), Federal District Court, Massachusetts (1979).

Member, American Health Lawyers Ass'n; American Society of Law and Medicine.

Arbitrator, American Arbitration Association.

Board of Editors, Journal of Nursing Law and Ethics (1977-1982).

Executive Council Member, American Society of Law and Medicine (1981-1983).

Executive Board Member, Boston University Law School Alumni Assn. (1976 - ).