



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 92

Number 5 *Health Care Decisions in the New Era of
Health Care Reform*

Article 1

6-1-2014

Table of Contents

North Carolina Law Review

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

North Carolina Law Review, *Table of Contents*, 92 N.C. L. REV. (2014).

Available at: <http://scholarship.law.unc.edu/nclr/vol92/iss5/1>

This Front Matter is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

North Carolina Law Review

VOLUME 92

JUNE 2014

NUMBER 5

CONTENTS

HEALTH CARE DECISIONS IN THE NEW ERA OF HEALTH CARE REFORM

INTRODUCTION: HEALTH CARE DECISIONS IN THE NEW ERA OF HEALTH CARE REFORM: AN OVERVIEW.....	<i>Joan H. Krause & Richard S. Saver</i>	1445
STATES' DECISIONS NOT TO EXPAND MEDICAID	<i>Mark A. Hall</i>	1459
HEALTH CARE SPENDING AND FINANCIAL SECURITY AFTER THE AFFORDABLE CARE ACT	<i>Allison K. Hoffman</i>	1481
PROSPECTS FOR REGULATION OF OFF- LABEL DRUG PROMOTION IN AN ERA OF EXPANDING COMMERCIAL SPEECH PROTECTION	<i>Aaron S. Kesselheim & Michelle M. Mello</i>	1539
HEALTH REGULATORS AS DATA STEWARDS.....	<i>Kristin Madison</i>	1605
HEALTH CARE REFORM AND EFFORTS TO ENCOURAGE HEALTHY CHOICES BY INDIVIDUALS.....	<i>David Orentlicher</i>	1637
PRIVATE CERTIFIERS AND DEPUTIES IN AMERICAN HEALTH CARE	<i>Frank A. Pasquale</i>	1661
THE END OF END-OF-LIFE LAW	<i>Lois Shepherd</i>	1693
CAN PATIENTS IN THE UNITED STATES BECOME SAVVY HEALTH CARE CONSUMERS?	<i>Peter A. Ubel</i>	1749



North Carolina Law Review

VOLUME 92

JUNE 2014

NUMBER 5

BOARD OF EDITORS

EDWARD F. ROCHE, *Editor in Chief*
ANA JEMEC FRIEDMAN, *Executive Articles Editor*
TIMOTHY A. HENDERSON, *Executive Comments Editor*
KENNETH B. DANTINNE, *Managing Editor*
JARED A. KNIGHT, *Publication Editor*

Articles Editors
CHAD T. ANDERSON
DOUGLAS J. DEBAUGH
LAUREN A. DEMANOVICH
J. CLAY DOUGLAS
MOLLY F. MARTINSON
RAMONA H. MCGEE
JOSEPH T. POLONSKY
TROY D. SHELTON

North Carolina Issue Editor
KEVIN L. DENNY

Symposium Editors
LAURA N. KRCMARIC
ANNA H. TISON

Comments Editors
CAROLINE E. CRESS
ELAINE M. HARTMAN
MATTHEW P. HERR
JAMES R. JOLLEY
JOHN B. LYMAN
THOMAS P. WILL

Online Content Editor
JOHN R. AMES

CONTRIBUTING EDITORS

ELIZABETH C. BUCKLEY
REBECCA A. FISS

ADAM A. FLECKENSTEIN

LINDSAY V. SMITH
MORGAN A. WITTMAN

STAFF

LUCILLE C. ANDRZEJEWSKI
MARY WILLS BODE
HAILEY M. BUNCE
CATHERINE S. BURNS
CHRISTOPHER R. CASTRO-RAPPL
JENNIFER M. DAMM
JUSTIN G. DAVIS
BRENT DUCHARME
ANNALISE H. FARRIS
ERIN E. GIBBS
BRADLEY D. HARDER
JOHN E. HARRIS
KELSEY E. HENDRICKSON

CLAY S. HESTER
HEATHER M. HILLAKER
VALERIE M. HUGHES
JULIA M. HURLEY
JENNIFER E. JOYNER
KRISTEN J. KENLEY
PATRICK N. KIRBY
BARTON T. LEE
CHARLES E. LOESER
BEN C. MCMANUS
K. DAWN MILAM
CHRISTINA T. NASUTI
JENNIFER L. NUSBAUM

STEPHEN J. PERRY
JENELLE M. PETERSON
BRIAN C. PHILLIPS
HEIDI J. RICKES
CYDNEY J. RUSSELL
WILLIAM H. SAIN
SAMANTHA H. SCHELLER
LAUREN E. SHOR
WILLIAM K. SMITH
ALISON C. TEMPLETON
KATERI TREMBLAY
BRYAN M. WEYNAND
JONATHAN F. WILLIAMS

FACULTY ADVISOR
THOMAS LEE HAZEN

The views expressed in signed contributions to the Review do not necessarily reflect the opinions of the Board of Editors.

The University of North Carolina
SCHOOL OF LAW

Administration

THOMAS W. ROSS, B.S., J.D., *President of the University of North Carolina*
JOHN CHARLES BOGER, A.B., M.Div., J.D., *Dean and Wade Edwards Distinguished Professor of Law*
JEFFREY MICHAEL HIRSCH, B.A., M.P.P., J.D., *Associate Dean for Academic Affairs and Geneva Yeargan Rand Distinguished Professor of Law*
RICHARD E. MYERS II, B.A., M.A., J.D., *Associate Dean for Student Affairs and Henry Brandis Professor of Law*
JOAN H. KRAUSE, B.A., J.D., *Associate Dean for Faculty Development and Dan K. Moore Distinguished Professor of Law; Professor of Social Medicine in the School of Medicine; Adjunct Professor in the Gillings School of Global Public Health*
CRAIG T. SMITH, B.A., J.D., LL.M., *Assistant Dean for Legal Writing and Academic Excellence and Clinical Professor of Law*
PATRICIA HENNESSEY, B.S., *Associate Dean for Finance and Information Technology*
KRISTINE JENSEN, B.A., *Associate Dean for Advancement*
MICHAEL J. STATES, B.A., J.D., *Assistant Dean for Admissions*
SYLVIA K. NOVINSKY, B.S., J.D., *Assistant Dean for Public Service Programs*
JOHN B. KASPRZAK, B.A., M.A.T., J.D., *Assistant Dean for Student Services*
JENNIFER L. GOTSHALL CLARK, B.S., *Assistant Dean for Finance*
DOUGLAS B. EDMUNDS, B.A., M.S., *Assistant Dean for Information Technology*
CATHERINE PIERCE, B.A., M.P.A., *Assistant Dean for Policy and Special Assistant to the Dean*
BRIAN D. LEWIS, B.G.S., M.A., *Assistant Dean for Career Development*
ALLISON L. REID, B.A., M.A., *Assistant Dean for Communications*
T. BRANDON WRIGHT, B.S., *Assistant Dean for Advancement*

Faculty

DAVID S. ARDIA, B.S., M.S., J.D., LL.M., *Assistant Professor Law and Co-Director of the Center for Media Law and Policy*
TAMAR R. BIRCKHEAD, B.A., J.D., *Associate Professor of Law and Interim Director of Clinical Programs*
KIMBERLY C. BISHOP, B.A., J.D., *Clinical Assistant Professor of Law*
JOHN CHARLES BOGER, A.B., M.Div., J.D., *Dean and Wade Edwards Distinguished Professor of Law*
LISSA LAMKIN BROOME, B.S., J.D., *Wells Fargo Professor of Banking Law and Director of the Center for Banking and Finance*
ALFRED L. BROPHY, A.B., J.D., A.M., Ph.D., *Judge John J. Parker Distinguished Professor of Law*
CAROLINE NICHOLSON BROWN, B.A., M.A., J.D., *Professor of Law*
PATRICIA L. BRYAN, B.A., J.D., LL.M., *Martha Brandis Professor of Law*
BERNARD A. BURK, B.A., J.D., *Assistant Professor of Law*
ALEXA Z. CHEW, A.B., J.D., *Clinical Assistant Professor of Law*
ANDREW CHIN, B.S., Ph.D., J.D., *Associate Professor of Law*
LAURA COLLINS BRITTON, B.A., J.D., *Clinical Assistant Professor of Law*
JOHN MARTIN CONLEY, B.A., J.D., Ph.D., *William Rand Kenan Jr. Professor of Law*
MICHAEL L. CORRADO, B.A., B.S., A.M., Ph.D., J.D., *Arch T. Allen Distinguished Professor of Law*
JOHN F. COYLE, B.A., M.Phil., J.D., *Assistant Professor of Law*
KAREEM U. CRAYTON, A.B., Ph.D., J.D., *Associate Professor of Law*
CHARLES EDWARD DAYE, B.A., J.D., *Henry Brandis Professor of Law and Deputy Director of the Center for Civil Rights*
MAXINE N. EICHNER, B.A., J.D., M.A., Ph.D., *Reef C. Ivey II Professor of Law*
LEWIS MOORE EVERETT, B.A., M.A., J.D., *Clinical Assistant Professor of Law*
BARBARA A. FEDDERS, B.A., J.D., *Clinical Assistant Professor of Law*
VICTOR B. FLATT, B.A., J.D., *Thomas F. and Elizabeth Taft Distinguished Professor in Environmental Law and Director of the Center for Law, Environment, Adaptation and Resources (CLEAR)*
QIANG FU, B.Phil., J.D., S.J.D., *Visiting Assistant Professor of Law*
TIMOTHY J. GALLINA, B.A., J.D., M.L.I.S., *Reference/Emerging Technologies Librarian and Clinical Assistant Professor of Law*
DEBORAH R. GERHARDT, A.B., J.D., *Assistant Professor of Law*
MICHAEL J. GERHARDT, B.A., M.S., J.D., *Samuel Ashe Distinguished Professor in Constitutional Law and Director of the Center for Law and Government*
S. ELIZABETH GIBSON, B.A., J.D., *Burton Craige Professor of Law*
AARON R. HARMON, B.A., M.A., J.D., *Clinical Assistant Professor of Law*
THOMAS LEE HAZEN, B.A., J.D., *Cary C. Boshamer Distinguished Professor of Law*
JEFFREY MICHAEL HIRSCH, B.A., M.P.P., J.D., *Associate Dean for Academic Affairs and Geneva Yeargan Rand Distinguished Professor of Law*
AMANDA S. HITCHCOCK, B.A., J.D., *Clinical Assistant Professor of Law*
DONALD THOMAS HORNSTEIN, B.A., J.D., *Aubrey L. Brooks Professor of Law*
MELISSA B. JACOBY, B.A., J.D., *Graham Kenan Professor of Law*
THOMAS A. KELLEY, III, A.B., J.D., *Paul B. Eaton Distinguished Professor of Law*
JOSEPH E. KENNEDY, B.A., J.D., *Professor of Law*
CATHERINE Y. KIM, B.A., J.D., *Assistant Professor of Law*
JULIE L. KIMBROUGH, B.A., J.D., M.S., *Assistant Director for Collection Services and Clinical Assistant Professor of Law*

P. ANNE KLINEFELTER, B.A., M.S., J.D., *Director of Law Library and Associate Professor of Law*
 JOAN H. KRAUSE, B.A., J.D., *Associate Dean for Faculty Development and Dan K. Moore Distinguished Professor of Law; Professor of Social Medicine in the School of Medicine; Adjunct Professor in the Gillings School of Global Public Health*
 HOLNING S. LAU, B.A., J.D., *Professor of Law*
 WILLIAM P. MARSHALL, B.A., J.D., *William Rand Kenan Jr Distinguished Professor of Law*
 JON PAUL MCCLANAHAN, B.A., J.D., *Clinical Associate Professor of Law and Director of Academic Success Excellence*
 STEVEN J. MELAMUT, B.A., B.S., J.D., M.S., *Information Technology Services Librarian and Clinical Assistant Professor of Law*
 ROBERT P. MOSTELLER, B.A., M.A., J.D., *J. Dickson Phillips Distinguished Professor of Law*
 ERIC L. MULLER, A.B., J.D., *Dan K. Moore Distinguished Professor of Law in Jurisprudence and Ethics and Director of UNC Center for Faculty Excellence*
 RICHARD E. MYERS II, B.A., M.A., J.D., *Associate Dean for Student Affairs and Henry Brandis Professor of Law*
 GENE R. NICHOL, B.A., J.D., *Boyd Tinsley Distinguished Professor of Law and Director of the Center on Poverty, Work and Opportunity*
 DONNA L. NIXON, B.S., J.D., M.S.L.S., *Electronic Resources Librarian and Clinical Assistant Professor of Law*
 SAULE T. OMAROVA, PH.D., J.D., *George R. Ward Associate Professor of Law*
 JOHN V. ORTH, A.B., J.D., M.A., PH.D., *William Rand Kenan Jr. Professor of Law*
 GREGG D. POLSKY, B.A., J.D., LL.M., *Willie Person Mangum Professor of Law*
 BETH POSNER, A.B., M.A., J.D., *Clinical Assistant Professor of Law*
 GERALD J. POSTEMA, A.B., M.A., PH.D., *Cary C. Boshamer Professor of Philosophy and Professor of Law*
 KATIE ROSE GUEST PRYAL, A.B., M.A., J.D., PH.D., *Clinical Assistant Professor of Law*
 ALICE A. RATLIFF, B.A., M.A., J.D., *Clinical Professor of Law*
 DANA A. REMUS, A.B., J.D., *Associate Professor of Law*
 KATHRYN A. SABBETH, B.A., J.D. LL.M., *Assistant Professor of Law*
 OSCAR J. SALINAS, B.A., J.D., M.A., *Clinical Assistant Professor of Law*
 SARA A. SAMPSON, B.S., J.D., M.S., *Deputy Director of the Law Library and Clinical Assistant Professor of Law*
 MELISSA SAUNDERS, B.A., J.D., *Professor of Law*
 MARIA SAVASTA-KENNEDY, B.A., J.D., *Clinical Professor of Law and Director of the Externship Program*
 RICHARD S. SAVER, B.A., J.D., *Arch T. Allen Distinguished Professor of Law and Professor of Social Medicine in the School of Medicine; Adjunct Professor in the Gillings School of Global Public Health*
 NICK SEXTON, B.A., J.D., M.S., *Reference Librarian and Clinical Assistant Professor of Law*
 JAMES W. SHERWOOD, B.A., J.D., LL.M., M.S., *Reference/Foreign and International Law Librarian and Clinical Assistant Professor of Law*
 CRAIG T. SMITH, B.A., J.D., LL.M., *Assistant Dean for Legal Writing and Academic Excellence and Clinical Professor of Law*
 ROBERT J. SMITH, B.A., J.D., *Assistant Professor Law*
 LESLIE A. STREET, B.A., J.D., M.L.I.S., *Assistant Director of Public Services of the Law Library and Clinical Assistant Professor of Law*
 HAOCHEH SUN, LL.B., LL.M., *Visiting Assistant Professor of Law*
 KATHLEEN DELANEY THOMAS, B.S., J.D., LL.M., *Assistant Professor of Law*
 WILLIAM J. TURNIER, B.S., M.A., J.D., *Willie Person Mangum Professor of Law*
 JUDITH WELCH WEGNER, B.A., J.D., *Burton Craige Professor of Law*
 W. MARK C. WEIDEMAIER, B.A., J.D., *Ralph M. Stockton, Jr. Distinguished Scholar and Associate Professor of Law*
 ARTHUR MARK WEISBURD, A.B., J.D., *Reef C. Ivey II Distinguished Professor of Law*
 DEBORAH M. WEISSMAN, B.A., J.D., *Reef C. Ivey II Distinguished Professor of Law*
 ERIKA WILSON, B.S., J.D., *Assistant Professor of Law*
 PO JEN YAP, LL.B., LL.M., LL.M., *Visiting Associate Professor of Law*
 JANINE M. ZANIN, B.A., J.D., *Faculty Supervisor of Externship Programs and Clinical Assistant Professor of Law*

Adjunct Faculty

MICHAEL R. ABEL, A.B., J.D., *Adjunct Professor of Law*
 MICHAEL W. BALLANCE, B.A., J.D., *Adjunct Professor of Law*
 SETH A. BLUM, B.A., M.A., J.D., *Adjunct Professor of Law*
 ELIZABETH BRASWELL, B.A., J.D., *Adjunct Professor of Law*
 ERIC J. BRIGNAC, B.A., J.D., *Adjunct Associate Professor of Law*
 JONATHAN E. BROUN, B.PH., J.D., *Adjunct Professor of Law*
 JOANNA CAREY CLEVELAND, B.A., J.D., M.P.A., *Adjunct Professor of Law*
 FELICE M. CORPENING, B.A., J.D., *Adjunct Professor of Law*
 KAREN DAVIDSON, B.A., M.A., J.D., *Adjunct Professor of Law*
 KEARNS DAVIS, B.A., M.A., J.D., *Adjunct Professor of Law*
 MARK E. DOROSIN, B.A., M.A., J.D., *Adjunct Professor of Law*
 JENNY D. DOYLE, B.B.A., B.A., J.D., *Adjunct Professor of Law*
 JAMES C. DRENNAN, B.A., J.D., *Adjunct Professor of Law*
 TRISTAN FUERER, B.S., PH.D., J.D., *Adjunct Associate Professor of Law*
 JAMES C. FULLER, B.A., J.D., *Adjunct Professor of Law*
 ANTHONY GAETA, JR., B.A., J.D., *Adjunct Professor of Law*
 CALLEY GERBER, B.A., J.D., *Adjunct Professor of Law*
 DEBORAH N. GOLDSTEIN, B.A., J.D., *Adjunct Associate Professor of Law*
 BETH YOUNT GRIMES, B.A., J.D., *Adjunct Professor of Law*
 R. HARPER HECKMAN, B.A., J.D., *Adjunct Professor of Law*
 MALCOLM HUNTER, B.A., J.D., *Adjunct Professor of Law*

SAMUEL S. JACKSON, A.B., J.D., *Adjunct Professor of Law*
ROBERT O. JENKINS, B.A., M.P.A., J.D., *Adjunct Professor of Law*
SALLY C. JOHNSON, B.S., M.D., *Adjunct Professor of Law*
VALERIE A. JOHNSON, B.A., J.D., *Adjunct Professor of Law*
THE HONORABLE ABRAHAM JONES, B.A., J.D., *Adjunct Professor of Law*
MICHAEL G. KADENS, A.B., J.D., *Adjunct Professor of Law*
MAITRI "MIKE" KLINKOSUM, B.A., J.D., *Adjunct Professor of Law*
JOHN LOFTIN, A.B., PH.D., J.D., *Adjunct Professor of Law*
RINA LYUBKIN, B.S., B.S., J.D., *Adjunct Clinical Professor of Law*
THE HONORABLE HARRY MARTIN, L.L.B., L.L.M., *Adjunct Professor of Law*
THE HONORABLE J. MATTHEW MARTIN, A.B., J.D., M.A., *Adjunct Professor of Law*
WILLIAM S. MILLS, A.B., J.D., *Adjunct Professor of Law*
JONAS MONAST, B.A., J.D., *Adjunct Associate Professor of Law*
JOHN M. MOYE, B.A., J.D., *Adjunct Assistant Professor of Law*
BENTLEY OLIVE, B.S., B.S., J.D., *Adjunct Professor of Law*
MARK OLIVE, B.S., J.D., *Adjunct Professor of Law*
THE HONORABLE ROBERT F. ORR, A.B., J.D., *Adjunct Professor of Law*
BARBARA OSBORNE, B.A., M.A., M.Ed., J.D., *Adjunct Associate Professor of Law*
VASILIKI "CELIA" PISTOLIS, B.A., J.D., *Adjunct Professor of Law*
LISA C. SCHIAVINATO, B.A., J.D., *Adjunct Associate Professor of Law*
SCOTT L. SILLIMAN, B.A., J.D., *Adjunct Professor of Law*
ELLIOT M. SILVERSTEIN, B.S., J.D., PH.D., *Adjunct Professor of Law*
RAYMOND A. STARLING, B.S., J.D., *Adjunct Associate Professor of Law*
THOMAS M. STERN, B.A., J.D., *Adjunct Professor of Law*
KATHERINE TOPULOS, B.A., M.A., M.S., J.D., *Adjunct Professor of Law*
DEVON WHITE, A.A.S., B.A., M.A., J.D., *Adjunct Associate Professor of Law*
DORI WIGGEN, B.A., J.D., *Adjunct Associate Professor of Law*
MELVIN F. WRIGHT JR., B.A., J.D., *Adjunct Professor of Law*

Faculty Emeriti

WILLIAM BRANTLEY AYCOCK, B.A., A.M., J.D., LL.D., *Kenan Professor of Law Emeritus*
KENNETH S. BROUN, B.S., J.D., *Henry Brandis Professor of Law Emeritus*
LAURA N. GASAWAY, B.A., M.L.S., J.D., *Paul B. Eaton Distinguished Professor of Law Emeritus*
PAUL HARDIN, B.A., J.D., *Professor of Law Emeritus*
PAUL G. HASKELL, A.B., LL.B., *William Rand Kenan, Jr. Professor of Law Emeritus*
JOSEPH JOHN KALO, B.A., J.D., *Graham Kenan Professor of Law Emeritus*
RONALD CHARLES LINK, A.B., M.A., J.D., *Dan K. Moore Distinguished Professor of Law Emeritus*
ARNOLD H. LOEWY, B.S., J.D., LL.M., *Graham Kenan Professor of Law Emeritus*
RUTH ANN MCKINNEY, B.A., M.Ed., J.D., *Clinical Professor of Law Emeritus*
RICHARD A. ROSEN, B.A., J.D., *Professor of Law Emeritus*

The *North Carolina Law Review* (ISSN 0029-2524) is published six times a year, in December, January, March, May, June, and September, by the North Carolina Law Review Association.

Subscriptions: Annual subscriptions are \$55.00 for domestic subscribers and \$60.00 for foreign subscribers. Applicable state sales taxes are included in the annual rates. Subscriptions are accepted for complete volumes only and will be renewed automatically unless the subscriber provides adequate notice of cancellation. Notification as to change of address should include both the old and new addresses and should be made at least one month before the publication date to ensure prompt delivery. Subscriptions and address changes should be directed to the Publication Editor at the following address:

North Carolina Law Review
School of Law
The University of North Carolina
CB# 3380, Van Hecke-Wettach Hall
Chapel Hill, North Carolina 27599-3380
(919) 962-1526
www.nclawreview.org
e-mail: ncrev@unc.edu

Single and Back Issues: Single copies of current and back issues from the previous five volumes are available from the North Carolina Law Review Association for \$12.00 per copy for Issues 1–4 and \$15.00 for Issues 5–6 (add \$5.00 for international deliveries). Back issues and complete sets of the *Review* are available from William S. Hein & Co., 2350 North Forest Road, Getzville, NY 14608, at prices that may vary. Back issues are also available in PDF format on HeinOnline at <http://heinonline.org>.

Copyright: © 2014 North Carolina Law Review Association. Except as otherwise provided, permission is hereby granted for copies of each article to be made and used by nonprofit educational institutions, provided that (1) copies are distributed at or below cost, (2) the author and the *Review* are identified, (3) proper notice of copyright is affixed to each copy, and (4) the North Carolina Law Review Association is notified of the use.

Publication Information: The text and citations of the *Review* conform to the nineteenth edition of *The Bluebook: A Uniform System of Citation*. The *Review* is printed by Joe Christensen, Inc., in Lincoln, Nebraska. ISSN 0029-2524.

Materials cited “on file with the North Carolina Law Review” will be retained for a maximum of five years from date of publication.

Periodicals postage paid at Chapel Hill, North Carolina and additional mailing offices.

POSTMASTER: Send address changes to: North Carolina Law Review, School of Law, The University of North Carolina, CB# 3380, Van Hecke-Wettach Hall, Chapel Hill, North Carolina 27599-3380.

