

Introduction:

“Lies, Damn Lies and Statistics: How Empirical Research Shapes Health Law and Policy”

A Symposium in Celebration of the Tenth Anniversary of the Center for Law and Health

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This symposium commemorates the tenth anniversary of the Center for Law and Health at Indiana University School of Law—Indianapolis. The Center was founded in 1986 as the Program for Law, Medicine and the Health Care Industry—the fulfillment of a longtime dream of many law school faculty and then Dean Gerald L. Bepko. The Board of Trustees established this program as a formal university center in June 1987. The program made great sense as nearly all the health professional schools of Indiana University, including the medical school, are located at the Indianapolis Campus. It is fitting that one of the first projects of the new Program was a symposium in the *Indiana Law Review* on “Financing and Regulating Health Care Services: Hard Choices and Ethical Dilemmas.”

Chance and luck have much to do with the course of human events and the history of the Center for Law and Health is no different. In 1987, Professor Eleanor Kinney, the Center’s founder and co-director, applied for and received a grant under The Robert Wood Johnson Foundation’s Medical Malpractice Program to evaluate Indiana’s Malpractice Act, an early and important effort at tort and insurance reform in a troubled area of tort law. With this project, the Center launched a commitment to empirical research.

Since 1987, the Center has engaged in many empirical studies addressing such topics as Medicare coverage policy, quality improvement for community-based, long-term care, barriers to health insurance for people with serious illness and designing strategies for expanding health coverage for the working poor. In addition, Professor Kinney has conducted many studies of grievance and appeal procedures as well as rule and policy making procedures for the Medicare and Medicaid programs with support from the Administrative Conference of the United States.

In 1995, Professor David Orentlicher joined the faculty at Indiana University

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School of Law—Indianapolis. Shortly thereafter, Professor Orentlicher became the co-director of the Center. With his national reputation as an excellent scholar in the field of bioethics, he brought a new dimension to the Center's work. His work has focused on the withdrawal of life-sustaining treatment, physician-assisted suicide, the effect of managed care on the patient-physician relationship, and rationing of health care.

The Center and its leadership are committed to the teaching mission of the law school. In addition to expanding the health law curriculum, the Center's leadership has sought to expand opportunities for students to learn more about health law and policy through internships, educational programs and employment opportunities to work on Center research projects. In the early 1990s, the Center worked with interested students to establish the student Health Law Society which organizes educational and social opportunities in the health care field. Annually, the Health Law Society and the Center sponsor a colloquium on important health law topics of current interest.

The paramount mission of the Center is research and scholarship. The Center's leadership shares a commitment that the Center's scholarship provide imaginative, practical and innovative ideas and approaches to the important problems facing the American health care system. Specifically, its scholarship should enhance access to high quality care for the most vulnerable of our society who are often excluded from the tremendous capabilities and services of the American health care system. It should also sort out the critical ethical dilemmas facing providers, payers and policy makers as they engage in the organization and delivery of health care services. Finally, the Center should serve as a resource to the State of Indiana as it faces new challenges in the financing, regulating and delivery of health care services.

Empirical scholarship has been one way in which the Center has distinguished itself historically. Thus, it is fitting that this symposium address the question of what impact empirical research has had and should have on health law and policy.

The subjects of the articles and commentaries all address areas of the Center's research both past and future. The Symposium opens with an article by Professor Sandra Johnson of Saint Louis University School of Law which reviews the empirical evidence on how end-of-life decisions are made and focuses, more importantly, on how that evidence is used by providers and policy makers to ensure better decisions in these trying circumstances.

The next three articles address empirical evidence and coverage policy. Professor William M. Sage of Columbia Law School analyzes judicial opinions on health insurance coverage and, specifically, the degree to which they can and should provide empirical evidence on coverage decision-making. Professor Maxwell Mehlman of Case Western Reserve University takes the analysis further in questioning what other credible empirical evidence on coverage decision-making besides case law is available. Karen A. Jordan, a professor of law at the University of Louisville School of Law and a graduate of this law school, rounds out the discussion of the use of judicial decisions as empirical evidence by analyzing how empirical studies of judicial decisions affect the coverage policy making process.

Following are three articles on empirical evidence and antitrust law beginning with Professor James Blumstein's article on the interrelationship of empirical and normative issues in antitrust analysis. In the next article, a leading Indiana practitioner in health law, John C. Render of Hall Render Killian Heath & Lyman, comments on anomalies in the health market which should influence antitrust analysis in the health care field. The symposium concludes with an article from Professor Michael Jacobs of DePaul University School of Law who addresses how empirical evidence has recently been used in hospital merger analysis.

All articles make important contributions to legal scholarship and hopefully shed some light on the question of how empirical scholarship influences health law and policy. This inquiry on the role of empirical research on health law and policy addressed in this symposium will continue in an upcoming issue of the *Indiana Law Review* when Randall R. Bovjberg's article on empirical evidence and medical malpractice will appear in a separate symposium on Indiana's Medical Malpractice Act and the Supreme Court's consideration of four cases that challenge the constitutionality of that Act.