

THE JOURNAL OF LAW, MEDICINE & ETHICS

Volume 53:3 • Fall 2025

A Journal of the American Society of Law, Medicine & Ethics • www.aslme.org



- 415 Wrestling the Two-Headed Hydra: On the Consequences of the Bifurcated Concept of “Undertaking” in EU Competition Law**
Lukasz Grzejdziak

Independent Articles

- 426 Compassionate Release and COVID-19: Analyzing Inconsistent Applications of the First Step Act by Federal Courts**
Helen Mooney, Kayla Larkin, and Mara Howard-Williams

SYMPOSIUM

Public Health, Markets, and Law

GUEST EDITED BY Mina Hosseini and Imelda Maher

- 337 Rupturing the Temporality of Pharmaceutical Patents: A Sketch for a New Temporal Economy of Pharmaceutical Markets**
Susi Geiger
- 345 On The Quiet Power of National Decisions: Hospitals, State Aid, and Services of General Economic Interest**
Mary Guy
- 356 EU’s Extraterritorial Obligations for Global Medicine Access Under the Convention on the Rights of Persons with Disability (CPRD)**
Katrina Perehudoff
- 365 Trust Beyond Borders: European External Regulatory Influence on Access to Medicines**
Pramiti Parwani, Katrina Perehudoff, and Anniek de Ruijter
- 379 Abuse of Dominant Position, Effective Judicial Protection and Abuse of Procedure**
Carmen de Vivero de Porras and Enrique Sanjuán y Muñoz
- 388 Competition Law and Ethics of Innovation as Catalysts for Fairness: Reimagining the EU’s COVID-19 Vaccine Strategy**
Mina Hosseini
- 398 Intellectual Property Rights and Global Access to Health Technologies During Pandemics: Reflecting on Vaccine Nationalism, COVID-19 & the WHO Pandemic Agreement Negotiations — The Need for Collective Action and Institutional Change**
Aisling M. McMahon

Plus more inside...

ISSN: 1073-1105

 **CAMBRIDGE**
UNIVERSITY PRESS

The Journal of Law, Medicine & Ethics (JLME): Material published in *The Journal of Law, Medicine & Ethics* (JLME) contributes to the educational mission of the American Society of Law, Medicine & Ethics (ASLME), covering public health, health disparities, patient safety and quality of care, and biomedical science and research, and more.

The Journal of Law, Medicine & Ethics is published by Cambridge University Press on behalf of the American Society of Law, Medicine & Ethics.

ISSN: 1073-1105

E-ISSN: 1748-720X

Copyright © 2025, the American Society of Law, Medicine & Ethics. All rights reserved. No portion of the contents may be reproduced in any form without written permission from the publisher

Printed in the USA by The Sheridan Group

Editorial Office

Journal of Law, Medicine & Ethics, 765 Commonwealth Avenue, Suite 905, Boston, MA 02215 USA
Phone: 617-262-4990; Fax: 617-437-7596
E-mail: publications@aslme.org

Letters to the Editors: Comments on articles in the Journal should be addressed to the Editor at the editorial office or emailed to publications@aslme.org

Submission Guidelines: For submission guidelines, please contact the editorial office at publications@aslme.org or go to cambridge.org/jlme/submit

Supplements: Initial inquiries should be directed to the Editor at the editorial office or emailed to publications@aslme.org

Subscribe or Recommend a Subscription to your Librarian: Go to cambridge.org/jlme/subscribe or email subscriptions_newyork@cambridge.org (in the USA, Canada or Mexico) or journals@cambridge.org (elsewhere).

Copyright and Permissions: To request permission for republishing, reproducing, or distributing material from this journal, please visit the desired article at cambridge.org/jlme and click "Rights & Permissions." For additional information, please see cambridge.org/about-us/rights-permissions.

Advertising and Reprints: Contact ad_sales@cambridge.org. Acceptance of advertising in this journal in no way implies endorsement of the advertised product or service by Cambridge University Press, the American Society of Law, Medicine & Ethics or the journal editor(s). We reserve the right to reject any advertising it deems as inappropriate for this journal.

Member Subscription Information: American Society of Law, Medicine & Ethics member inquiries, change of address, back issues, claims, and membership renewal requests should be addressed to Membership Director, American Society of Law, Medicine & Ethics, 765 Commonwealth Avenue, Suite 905, Boston, MA 02215; telephone: (617) 262-4990. Requests for replacement issues should be made within six months of the missing or damaged issue. Beyond six months and at the request of the American Society of Law, Medicine & Ethics, the publisher will supply replacement issues when losses have been sustained in transit and when the reserve stock permits.

Claims or Change of Address for Non-Members: Should be directed to subscriptions_newyork@cambridge.org (in the USA, Canada or Mexico) or journals@cambridge.org (elsewhere).

Discover the Entire JLME Back Archive: cambridge.org/jlme/read

THE JOURNAL OF LAW, MEDICINE & ETHICS

VOLUME 53:3 • FALL 2025

EDITOR-IN-CHIEF

Aaron S. Kesselheim, M.D., J.D., M.P.H.

EXECUTIVE DIRECTOR

Katie Kenney Johnson, American Society of Law, Medicine & Ethics, USA

MANAGING EDITOR

Nicole Gustas

BOARD OF EDITORS

Jacob M. Appel, MD, MFA,
MPH, MPhil
Icahn School of Medicine at Mount Sinai

Kiarash Aramesh, MD, PhD
*The James F. Drane Bioethics Institute,
PennWest University*

Sydney A. Axson, PhD, MPH,
MHS, RN
Pennsylvania State University

Leila Barraza, JD, MPH
*University of Arizona, Mel and Enid
Zuckerman College of Public Health*

Benjamin A. Barsky, JD, PhD
UC Law San Francisco
Nir Ben-Moshe, PhD
University of Illinois Urbana-Champaign

Barbara Pfeffer Billauer, BS, JD
The Institute of World Politics

Lori Bruce, DPhil, HEC-C
Yale University

Daniel Buchman, MSW, PhD
Centre for Addiction and Mental Health

Eric Caplan, PhD
Wesleyan University

Anthony Ciolli, LL.M., JD, MBE
Supreme Court of the Virgin Islands

Brietta Clark, JD
LMU Loyola Law School

Ellen Wright Clayton, MD, JD
Vanderbilt University School of Medicine

Carl H. Coleman, JD
Seton Hall University School of Law

Jonathan Crane, MPhil, PhD
Emory University
Parker Crutchfield, PhD
*Western Michigan University Homer Stryker
M.D. School of Medicine*

Peter DePergola, PhD, ThDc, MTS,
HEC-C, CT
*University of Massachusetts Chan Medical
School – Baystate*

Doron Dorfman, LL.B., LL.M., JSM, JSD
Seton Hall Law School

Jennifer Dvorak, PhD
Canterbury Christ Church University

Rachel Fabi, PhD
SUNY Upstate Medical University

William Feldman, MD, DPhil, MPH
Harvard Medical School

Linda C. Fentiman, JD, LL.M.
*Elisabeth Haub School of Law,
Pace University*

Jill A. Fisher, PhD
*University of North Carolina at
Chapel Hill*

Jacqueline Fox, JD, LL.M.
University of South Carolina

Barry Furrow, JD
*Drexel University Earle Mack School
of Law*

Ezra Gabbay, MD, MS, FACP
Weill Cornell Medicine

Lance Gable, JD, MPH
Wayne State University Law School

Rupali Gandhi, MD, JD
Advocate Children's Hospital

Jeremy Garrett, PhD
Children's Mercy Bioethics Center

Roy Gilbar, LL.B., LL.M., PhD
*School of Law, Netanya Academic College,
Israel*

Al O. Giwa, LL.B., MD, MBA, MBE
*Cincinnati VAMC/University of Cincinnati
College of Medicine*

Melissa Goldstein, JD
*George Washington University Milken
Institute School of Public Health*

Lawrence O. Gostin, JD, LLD (Hon.)
*Georgetown University Law Center,
Johns Hopkins University*

Jed Adam Gross, JD, MPhil
University Health Network

Meghan Halley, PhD, MPH
*Stanford University Center for
Biomedical Ethics*

Ann M. Heesters, PhD
University Health Network

Blake Hereth, PhD
*Western Michigan University Homer Stryker,
MD, School of Medicine*

Laura Hermer, JD, LL.M.
Mitchell Hamline School of Law

James G. Hodge, Jr., JD, LL.M.
*Sandra Day O'Connor College of Law,
Arizona State University*

Sharona Hoffman, JD, LL.M., SJD
*Case Western Reserve University School of
Law*

Dana Howard, PhD
The Ohio State University

Ana Smith Iltis, PhD
Wake Forest University

Louise King, MD, JD
Brigham and Women's Hospital

Peter Koch, PhD
Villanova University

Aaron Levine, MPhil, PhD
School of Public Policy, Georgia Tech

Abigail E. Lowe, PhD
*College of Public Health, University of
Nebraska Medical Center*

Susanna Marinelli, JD, PhD
*School of Law, Polytechnic University of
Marche, Italy*

Wendy K. Mariner, JD, LLM, MPH
Boston University School of Public Health

Matthew McCoy, PhD
University of Pennsylvania

Maxwell J. Mehlman, JD
Case Western Reserve University

Benjamin Mason Meier, JD, LLM, PhD
University of North Carolina — Chapel Hill

Eric M. Meslin, PhD
*University of Toronto Dalla Lana School of
Public Health*

Somayeh Momenyan, PhD
University of British Columbia

E. Haavi Morreim, JD, PhD
University of Tennessee College of Medicine

Jean O'Connor, JD, MPH, DrPH
Econometrica, Inc.

Christopher Ogolla, MPH, JD, LLM
*Barry University Dwayne O. Andreas School
of Law*

Anthony W. Orlando, PhD
California State University, Pomona

Efthimos Parasidis, JD, MBE, BA
Ohio State University

Wendy E. Parmet, JD
Northeastern University School of Law

Govind Persad, PhD, JD
University of Denver Sturm College of Law

Jordan Potter, PhD
Community Health Network

Marc A Rodwin, JD, PhD
Suffolk University Law School

Jason L. Schwartz, PhD, MBE
Yale School of Public Health

Scott Schweikart, JD, MBE
American Medical Association

Michael Sinha, JD, MPH
Saint Louis University School of Law

Hunter Jackson Smith, MPH, MBE
*DoD Global Emerging Infections
Surveillance Branch*

Stephe Smith, JD, PhD
Cardiff University

Daniel P. Sulmasy, OFM, MD, PhD
Georgetown University

Michael R Ulrich, JD, MPH
Boston University School of Public Health

Gvidas Urbonas, PhD
Lithuanian University of Health Sciences

Liza Vertinsky, PhD, JD
*University of Maryland Francis King Carey
School of Law*

Steven D. Waldman, JD, MBA
Society for Pain Practice Management

Lindsay F. Wiley, JD, MPH
University of California — Los Angeles

Susan M. Wolf, JD
University of Minnesota Law School

Y. Tony Yang, ScD, LLM, MPH
The George Washington University

Ruqaiijah Yearby, MPH, JD
*Moritz College of Law, The Ohio State
University*

Rocksheng Zhong, MD, MHS
University of Texas Medical Branch

THE JOURNAL OF
LAW, MEDICINE & ETHICS

Volume 53:3 • Fall 2025

Public Health, Markets, and Law

Guest Edited by Mina Hosseini and Imelda Maher

Symposium Articles

- 337 Rupturing the Temporality of Pharmaceutical Patents: A Sketch for a New Temporal Economy of Pharmaceutical Markets**
Susi Geiger
- 345 On The Quiet Power of National Decisions: Hospitals, State Aid, and Services of General Economic Interest**
Mary Guy
- 356 EU's Extraterritorial Obligations for Global Medicine Access Under the Convention on the Rights of Persons with Disability (CPRD)**
Katrina Perehudoff
- 365 Trust Beyond Borders: European External Regulatory Influence on Access to Medicines**
Pramiti Parwani, Katrina Perehudoff, and Anniek de Ruijter
- 379 Abuse of Dominant Position, Effective Judicial Protection and Abuse of Procedure**
Carmen de Vivero de Porras and Enrique Sanjuán y Muñoz
- 388 Competition Law and Ethics of Innovation as Catalysts for Fairness: Reimagining the EU's COVID-19 Vaccine Strategy**
Mina Hosseini
- 398 Intellectual Property Rights and Global Access to Health Technologies During Pandemics: Reflecting on Vaccine Nationalism, COVID-19 & the WHO Pandemic Agreement Negotiations — The Need for Collective Action and Institutional Change**
Aisling M. McMahon
- 415 Wrestling the Two-Headed Hydra: On the Consequences of the Bifurcated Concept of "Undertaking" in EU Competition Law**
Eukasz Grzejdziak

Independent Articles

- 426 Compassionate Release and COVID-19: Analyzing Inconsistent Applications of the First Step Act by Federal Courts**
Helen Mooney, Kayla Larkin, and Mara Howard-Williams
- 433 Commentary**
Grappling with Judicial Discretion in Complex Times
Samantha Bent Weber
- 435 The Rise and Fall and Rise of Pronatalism: A Disingenuous Policy that Harms the Health of People and Society**
Rasadokht Forati and Deborah Bartz

444 *Commentary*

Futile and Harmful “Pronatalism” in the Post-Dobbs United States

Susannah Baruch

446 Psychiatrists’ Awareness and Use of Voluntary Self-Prohibition as a Firearm Suicide Prevention Tool in Virginia

Bryan Barks, Shannon Frattaroli, and Paul S. Nestadt

452 *Commentary*

Mitigating Firearm Suicide with Trusted Messengers in Health Care

Michael R. Ulrich and Cassandra Devaney

454 Walking Backward to Ensure Risk Management of Large Language Models in Medicine

Daria Onitiu, Sandra Wachter, and Brent Mittelstadt

465 *Commentary*

Do Specialized Medical LLMs Demand a Radically New Approach Under the EU’s Medical Device Regulation?

Hannah Louise Smith and W. Nicholson Price II

467 An Analysis of Anti-Bullying Laws in the United States

Dane Alexander White, Gabrielle F. Miller, Kyle Rosenblum, Christopher Dunphy, Riley Wagner, and Molly Merrill-Francis

473 *Commentary*

The Evolution and Limitations of Anti-Bullying Laws

Emily Suski

Columns: Public Health and the Law

475 “Everything is Tuberculosis” – Except the Law?

James G. Hodge Jr

Columns: Health Policy Portal

478 Advance Market Commitments and Their Role in Public Innovation

Sarosh Nagar, Anil Cacodcar, and Aaron S. Kesselheim

Columns: Global Health Law

482 Expanding the Core Foundations of Global Health Law Through a Pandemic Agreement

Pedro A. Villarreal

Columns: Currents in Contemporary Bioethics

486 Maintaining the Integrity of the Biomedical Research Record Through Timely, Appropriate Corrective Action

Lauren Walsh, Minal Caron, Carolyn T. Lye, Mark Barnes, and Barbara E. Bierer