Introduction: Conundrums and Controversies in Mental Health and Illness
M. Carmela Epright and Robert M. Sade

"The Incarceration Revolution": The Abandonment of the Seriously Mentally Ill to Our Jails and Prisons
Joseph D. Bloom

It is well known that today jails and prisons house many seriously mentally ill citizens who in prior decades have been treated in mental hospitals and community mental health programs. This paper begins with a brief review of the history of support for mental health programs at the federal level and then, using the State of Oregon as an example, describes the new state era of mental health services which is characterized by the increasing use of the criminal justice system as a cornerstone of the treatment of many seriously and chronically mentally ill individuals. Are there any solutions to our current dilemma? The paper ends with this question, and the reader must determine if any of the suggestions posed in this discussion are realistic and/or feasible given the current fiscal and political climate.

Substance Abuse Is a Disease of the Human Brain: Focus on Alcohol
Raymond Anton

Alcohol and substance abuse are prevalent in our society. Advances in neuroscience have led to a clearer understanding of the effects of abused substances on the brain. Clues are now available regarding how a person goes from a "user" to being addicted based on brain chemistry, anatomy, and genetic risk. During this process the person loses at least partial, if not complete, control, over their compulsive substance use. This article attempts to put modern notions of alcohol and substance abuse and dependency into a societal and cultural context with the hope of reducing the stigma of this illness while shifting the focus a bit more away from criminal solutions to those offered by health care and treatment options.

Proposition: A Personality Disorder May Nullify Responsibility for a Criminal Act
Robert Kinscherff

This article argues in support of the proposition that "A Personality Disorder May Nullify Responsibility for a Criminal Act." Building upon research in categorical and dimensional controversies in diagnosis, neuroscience and the behavioral genetics of mental disorders, and difficulties in differential diagnosis and co-morbidity with personality disorders, this article holds that a per se rule barring personality diagnosis as a basis for a defense of legal insanity is scientifically and conceptually indefensible. Rather, focus should be upon the severity and impact in specific cases of any legally relevant functional deficits arising from a mental disorder (including personality disorders). Failure to do so risks potentially misleading "battles of the experts" about a defendant's diagnosis in criminal responsibility defenses and improper usurpation of the role of the legal finder of fact as mental health expert witnesses are inserted as gatekeepers indefensibly based upon diagnosis. Implications for practice and public policy are considered, including a "modest proposal" for post-trial management of defendants found not guilty by reason of insanity on the basis of functional deficits arising from personality disorder.

Should a Personality Disorder Qualify as a Mental Disease in Insanity Adjudication?
Richard J. Bonnie

The determinative issue in applying the insanity defense is whether the defendant experienced a legally relevant functional impairment at the time of the offense. Categorical exclusion of personality disorders from the definition of mental disease is clinically and morally arbitrary because it may lead to unfair conviction of a defendant with a personality disorder who actually experienced severe, legally relevant impairments at the time of the crime. There is no need to consider such a drastic approach in most states and in the federal courts, where the sole test of insanity is whether the defendant was "unable to appreciate the wrongfulness of his conduct at the time of the offense." This is because the only symptoms that are legally relevant in such jurisdictions are those that impair reality-testing and thereby affect the person's capacity to understand the nature and consequences of her actions. However, if the test of insanity includes a "volitional prong" (inability to control one's behavior), some way must be found to limit the scope of the defense to the core cases (involving psychotic conditions) to which it has traditionally been
applied, and to prevent a shift toward a deterministic account of criminal conduct — i.e., “people can’t help being who they are and doing what they do.” The best way of accomplishing this is to limit the definition of mental disease to severe disorders characterized by gross disturbances of the person’s capacity to understand reality.

**764**

**Physicians Must Honor Refusal of Treatment to Restore Competency by Non-Dangerous Inmates on Death Row**  
*Howard Zonana*

The role of physicians in death penalty cases has provoked discussion in both the legal system as well as in professional organizations. Professional groups have responded by developing ethical guidelines advising physicians as to current ethical standards. Psychiatric dilemmas as a subspecialty with unique roles have required more specific guidelines. A clinical vignette provides a focus to explicate the conflicts.

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**Physicians Should Treat Mentally Ill Death Row Inmates, Even If Treatment Is Refused**  
*Melissa McDonnell and Robert T. M. Phillips*

Competency to be executed evaluations are conducted with a clear understanding that no physician-patient relationship exists. Treatment however, is not so neatly re-categorized in large measure because it involves the physician’s active provision of the healing arts. A natural tension exists between what practices may be legally permissible and what are ethically acceptable. We present an overview of the existing positions on this matter in the process of framing our argument.

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**Non-Consensual Treatment Is (Nearly Always) Morally Impermissible**  
*M. Carmela Epright*

In this paper I examine some of the significant moral concerns inherent in cases of treatment refusal involving patients with psychotic disorders. In particular, I explore the relevance of the principle of autonomy in such situations. After exploring the concept of autonomy and explaining its current and historical significance in a health care setting, I argue that because autonomous choice depends for its existence upon certain human functions such as the ability to reason, judge, and assess consequences, patients cannot be said to be making free and autonomous decisions if these capacities are compromised. I contend further that because psychotic disorders have the potential to compromise these functions in the future, it is appropriate, in some limited cases, to coercing patients with psychotic disorders to undergo treatment in order to preserve their future decision-making capacities and to protect their ability to recognize and respect the autonomy of others.

**Independent Articles**

**807**

**Drug Advertising, Continuing Medical Education, and Physician Prescribing: A Historical Review and Reform Proposal**  
*Marc A. Rodwin*

Through the 1960s, many people claimed that drug advertising was educational and physicians often relied on it. Continuing Medical Education (CME) was developed to provide an alternative. However, because CME relied on grants, industry funders chose the subjects offered. Now policymakers worry that drug firms support CME to promote sales and that commercial support biases prescribing and fosters inappropriate drug use. A historical review reveals parallel problems between advertising and industry-funded CME. To preclude industry influence and improve CME, we should ensure independent funding by taxing medical industries, facilities and physicians. Independent public and professional authorities should create CME curricula. An independent agency should allocate all funds to educational institutions for approved curricula.
816 Health Benefits of Legal Services for Criminalized Populations: The Case of People Who Use Drugs, Sex Workers and Sexual and Gender Minorities
Joanne Csete and Jonathan Cohen

Social exclusion and legal marginalization are important determinants of health outcomes for people who use illicit drugs, sex workers, and persons who face criminal penalties because of homosexuality or transgenderism. Incarceration may add to the health risks associated with police repression and discrimination for these persons. Access to legal services may be essential to positive health outcomes in these populations. Through concrete examples, this paper explores types of legal problems and legal services linked to health outcomes for drug users, sex workers, and sexual minorities and makes recommendations for donors, legal service providers, and civil society organizations.

832 Insuring Against Infertility: Expanding State Infertility Mandates to Include Fertility Preservation Technology for Cancer Patients
Daniel Basco, Lisa Campo-Engelstein, and Sarah Rodríguez

In this paper, we recommend expanding infertility insurance mandates to people who may become infertile because of cancer treatments. Such an expansion would ensure cancer patients can receive fertility preservation technology (FPT) prior to commencing treatment. We base our proposal for extending coverage to cancer patients on the infertility mandate in Massachusetts because it is one of the most inclusive. While we use Massachusetts as a model, our arguments and analysis of possible routes to coverage can be applied to all states’ seeking inclusive coverage for infertility treatment. Furthermore, our proposal can also be applied to people with other diseases who may be rendered infertile by treatment.

840 The Inalienable Right to Withdraw from Research
Terrance McConnell

Most codes of research ethics and the practice of Institutional Review Boards (IRBs) allow human subjects to withdraw from research at any time. Consent forms invariably make a statement to this effect. So understood, a subject’s right to withdraw from research is inalienable; she cannot, through her consent, surrender this right. Recently critics have argued that in selected circumstances the right to withdraw from research is alienable; subjects have the moral authority, through their consent, to obligate themselves not to withdraw. Two kinds of cases have been cited to support this. In one case, there will be great benefits lost if subjects are permitted to withdraw before the completion of the protocol. In the other case, there will be harm to third parties if subjects withdraw from the experiment. In this paper, I defend the inalienability of the right to withdraw from research. I argue, first, that securing the desired benefits and avoiding the feared harms can be achieved without allowing waiver. Second, I show that permitting waiver in these cases does not guarantee that the ends sought will be achieved. And third, I articulate positive reasons for conceiving subjects’ right to withdraw from research as inalienable.

847 How Bioethics Can Enrich Medical-Legal Collaborations
Amy T. Campbell, Jay Sicklick, Paula Galowitz, Randye Retkin, and Stewart B. Fleishman

Medical-legal partnerships (MLPs) — collaborative endeavors between health care clinicians and lawyers to more effectively address issues impacting health care — have proliferated over the past decade. The goal of this interdisciplinary approach is to improve the health outcomes and quality of life of patients and families, recognizing the many non-medical influences on health care and thus the value of an interdisciplinary team to enhance health. This article examines the unique, interrelated ethical issues that confront the clinical and legal partners involved in MLPs. We contend that the ethical precepts of the clinical and legal professions should be seen as opportunities, not barriers, to further the interdisciplinary nature of MLPs. The commonalities in ethical approaches represent a potential bridge between legal and health care advocacy for patient/client well-being. Bioethics has a role to play in building and analyzing this bridge: bioethics may serve as a discourse and method to enhance collaboration by highlighting common ethical foundations and refocusing legal and clinical partners on their similar goals of service for patients/clients. This article explores this bridging role of bioethics, through a series of case studies. It concludes with recommendations to strengthen the collaborations.

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