

Eleanor DeArman Kinney

Eleanor D. Kinney, founding director of the school's internationally recognized William S. and Christine S. Hall Center for Law and Health, is one of the nation's leading experts on health law. After graduating from law school, she practiced law for four years, then worked as an estate planning officer for Duke University Medical Center for two years. After earning her master's degree in public health, she served as program analyst for the U.S. Department of Health and Human Services in Washington, D.C. Immediately prior to joining the faculty in 1984, she was assistant general counsel of the American Hospital Association.

A widely published author and respected lecturer on the subjects of America's health care system, medical malpractice, health coverage for the poor, and issues in administrative law, Professor Kinney is author or co-author of numerous law review articles, book chapters and book reviews. She published *Protecting American Health Care Consumers* (Duke University Press 2002) and edited the *Guide to Medicare Coverage Decision-Making and Appeals* (ABA Publishing 2002).

Professor Kinney has served as a consultant to the Administrative Conference of the United States, President Clinton's Task Force for Health Care Reform, and the Indiana Commission on Health Care for the Working Poor. She has been appointed by the governor of Indiana to the Executive Board of the Indiana State Department of Health and to other task forces and advisory boards. She served as chair of the Patient Safety Subcommittee of the Indiana Commission on Excellence in Health Care.

During 1999-2000, Professor Kinney taught and conducted research as a Fulbright Fellow at the National University of La Plata in La Plata, Argentina. She is the executive director of the Latin American Law Program, and also serves as an adjunct professor at the IU School of Public and Environmental Affairs and at the IU School of Medicine.

Recent Activities: Professor Kinney served as chair of the American Bar Association's Section on Administrative Law and Regulatory Practice in August, 2005. She is a member of the American Law Institute.

In February 2006, the *Indiana Health Law Review* held a symposium on “pay for performance” in conjunction with the McDonald Merrill Ketcham Award and Lectureship. This symposium addresses a health care provider payment strategy that, ideally, would alter the way in which public and private health plans pay for health care services. It would reward health care providers that obtain discernible results in the care of patients. If structured correctly, it has the potential to change fundamentally, and hopefully for the better, the way in which health care services are delivered in the United States.

Professor Bill Sage of Columbia University School of Law, the recipient of our highest award, gave the keynote address on “Pay for Performance: Will it Work in Theory?” An article on this topic leads this symposium. Professor Sage is well deserving of the McDonald Merrill Ketcham Award for his considerable contributions to the fields of law and medicine. In brief, Professor Sage has engaged in a career of highly innovative and imaginative legal and policy analysis on issues, such as medical malpractice, of great concern to both professions. He has also moved beyond scholarly analysis to promote his ideas and reforms through vigorous advocacy of new ideas and approaches with policy-makers and opinion leaders. He has pursued his work with courage, integrity, and grace.

Professor Sage joined the Columbia faculty in 1995 where he teaches health law, regulatory theory, antitrust, and professional responsibility. He has also worked as an intern at Mercy Hospital and Medical Center in San Diego and as a resident in anesthesiology and critical care medicine at Johns Hopkins Hospital. In addition, he was an associate at O’Melveny & Myers in Los Angeles, and served on the President’s Task Force on Health Care Reform. He has been the principal investigator for The Pew Charitable Trusts’ Project on Medical Liability in Pennsylvania. His awards and honors include election as Fellow of the Hastings Center, receiving the Robert Wood Johnson Foundation Investigator Award in Health Policy Research, serving on the editorial board of *Health Affairs*, serving on the Institute of Medicine’s Committee on Rapid Advances in Health Care, and the JCAHO Tort Resolution and Injury Prevention Roundtable. He has published widely in the area of health care law and is co-editor of *Uncertain Times: Kenneth Arrow and the Changing Economics of Health Care* (Duke University Press, 2003). Professor Sage received his A.B. from Harvard and his M.D. and J.D. degrees from Stanford where he was the note editor for the *Stanford Law Review*.

We were also honored to have a fine array of commentators on this important topic at the live symposium in February. These speakers have contributed articles to this symposium as well. The first comment, by William H. Thompson, President, Hall, Render, Killian, Heath & Lyman, P.C., is entitled “Aligning Hospital and Physician Incentives in the Era of Pay-for-Performance” and emphasizes the need for proper alignment of incentives if pay for performance is to be a successful strategy.

The next comment is from C. Paul Wazzan, a Principal with LECG, Corp. which provides financial and economic analysis in the areas of securities, options and futures, antitrust, damage analysis, health and labor economics, and intellectual property. Dr. Wazzan’s comment is entitled “An

Economic Analysis of the Impact of Pay-for-Performance Initiatives on Physicians, Patients and Insurance Providers” and continuously explores the economic implications of the pay for performance strategy. Dr. Wazzan is joined as an author by Kali Prasun Chowdhury, William R. Sellman, M.D., and Michael A. Zimmerman, M.D. Mr. Chowdhury is a research analyst at LECG, Corp. Drs. Sellman and Zimmerman are full time practicing physicians in Northern California. Mr. Chowdhury and Dr. Sellman attended the symposium and participated as part of the discussion panel.

The next comment address some of the more technical issues associated with the implementation of pay for performance as well as its implementation in Indiana. David E. Kelleher, who spoke at the symposium, and J. Marc Overhage have contributed a comment entitled: “Pay-for-Performance in Central Indiana.” Mr. Kelleher is President of HealthCare Options, Inc. and Executive Director of the Employers Forum of Indiana. Dr. Overhage is President and CEO of the Indiana Health Information Exchange, Senior Scientist at the Regenstrief Institute, Inc., and Professor of Medicine in the Department of Medicine at the Indiana University School of Medicine as well as a prolific scholar on medical informatics.

At the symposium, two notable speakers provided oral presentations. First, David Lee, M.D., Vice President of Health Care Management in Indiana at Anthem Blue Cross and Blue Shield, spoke on the implications of pay for performance for Indiana providers and payers. Then Thomas B. Valuck, M.D., M.H.S.A., J.D., Medical Officer and the Senior Adviser to the Director of the Center for Medicare Management at the Centers for Medicare & Medicaid Services spoke on what the Medicare program was doing regarding pay for performance.

Also included in this volume is an article written by Richard Dolinar, M.D. and Luke Leininger. This contribution provides a critical viewpoint regarding pay for performance programs and discusses many problems that may arise or are associated with these programs. Dr. Dolinar and Mr. Leininger have researched numerous health care policy topics and written extensively on their findings. This contribution provides a different perspective in that it questions whether pay for performance should be a national policy and abdicates agencies should not implement these types of incentive systems.

This issue also contains the “Report of the Council on Ethical and Judicial Affairs: Physician Pay-for-Performance Programs” (American Medical Association). This contribution was written by Nathan A. Bostick, a Senior Research Assistant with the AMA, Dr. Robert M. Sade, a professor of surgery at the Medical University of South Carolina in Charleston, and Dr. John, W. McMahon, Sr., Corporate Medical Director and Principal Clinical Coordinator of the Mountain-Pacific Quality Health Foundation.

Included in the symposium edition is a comment provided by the Center for Studying Health System Change, “Can Money Buy Quality: Physician Response to Pay for Performance.” HSC is a nonpartisan policy research organization. The mission of the Center for Studying Health System Change is to inform health care decision makers about changes in the health care

system at both the local and national levels and the effects of such changes on people. HSC seeks to provide objective, incisive analyses that lead to sound policy and management decisions, with the ultimate goal of improving the health of the American public. The article provides a unique physician perspective to the pay for performance initiative.

Another contribution is the white paper from the Integrated Healthcare Association entitled "Advancing Quality through Collaboration: The California Pay for Performance Program." The Integrated Healthcare Association is a nonprofit healthcare leadership group in California composed of health plans, physician groups, hospitals, and healthcare systems, plus purchaser, pharmaceutical, technology, consumer, and academic representatives. By engaging the various sectors of healthcare delivery in dialogue and collective action, the IHA develops policy and special projects centered on integrated healthcare and managed care.

On behalf of the student members and faculty advisors of the *Indiana Health Law Review*, it gives me great pleasure to introduce this second issue, focused on this unique and timely topic. We hope you find the materials enlightening and beneficial.

Sincerely,
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