

AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 4 NUMBER 3 FALL 1978

The *Saikewicz* Decision: A
Medical Viewpoint

Arnold S. Relman, M.D.

More on Regulation: A Reply to
Stephen Weiner

Clark C. Havighurst, J.D.

*Pain and Profit: The Politics of
Malpractice*, by Sylvia Law and
Steven Polan

Jay Alexander Gold, J.D., M.P.H.

Report on the American Society
of Hospital Attorneys of the
American Hospital Association

W. Thomas Berriman, LL.B.

Selected Recent Court Decisions

John A. Norris, J.D., M.B.A.
Pamela J. Anderson, J.D.
Jay Alexander Gold, J.D., M.P.H.

Highlights of Federal Legislative
and Executive Action

Harvey E. Pies, J.D., M.P.H.

Selected Book Releases,
Annotated

Elliot L. Sagall, M.D.

Selected Articles from Various
Journals

Jim McMahon, J.D.

The "Brave New Baby" and the
Law: Fashioning Remedies for
the Victims of *In Vitro*
Fertilization

Mark E. Cohen, J.D. Candidate

Published by the MIT Press for the American Society of Law & Medicine

Editorial support provided by Boston College Law School and Boston University School of Law

The AMERICAN JOURNAL OF LAW & MEDICINE was founded in response to the need for a scholarly yet pragmatic publication encompassing all aspects of medicolegal relations. The JOURNAL seeks to provide a broad perspective on our complex health care system, to encourage interdisciplinary communication, and to stimulate creative solutions to the pressing medicolegal problems of our time.

In addition to serving as a forum for analyses and proposals in such areas as health law and policy, legal and insurance medicine, and bioethics, the JOURNAL offers a wide variety of pertinent reference materials in these and related areas.

The JOURNAL serves persons from a variety of fields who seek to understand and influence medicolegal developments: physicians, other health care providers, and health administrators; lawyers; health analysts and planners; researchers and educators in health specialties; judges, legislators, and government administrators; insurance officials; consumer advocates; and concerned members of the general public.

The JOURNAL is published in the Spring, Summer, Fall, and Winter for the American Society of Law & Medicine by the MIT Press, Cambridge, Massachusetts, and London, England. Editorial support is provided by Boston College Law School and Boston University School of Law. All decisions concerning the content of the JOURNAL are made by the Editor-in-Chief on behalf of the American Society of Law & Medicine. Statements of fact and opinion are the responsibility of the authors alone, and are not necessarily endorsed by the Editors, the publishers, or the Society.

The Editors invite the submission of manuscripts on medicolegal topics. For details, see inside back cover. Editorial communications, including original manuscripts and requests for permission to reproduce JOURNAL material, should be addressed to Editor-in-Chief, American Journal of Law & Medicine, 454 Brookline Avenue, Boston, Massachusetts 02215. Editorial phone: (617) 969-0100, ext. 4394.

Business correspondence, including subscription matters, should be addressed to American Journal of Law & Medicine, MIT Press, 28 Carleton Street, Cambridge, Massachusetts 02142. Claims for missing copies must be made immediately upon receipt of the next published issue.

Subscriptions: \$25.00 for individuals and \$35.00 for institutions (foreign subscribers add \$3.00 for postage). Back copies: \$9.00 apiece. For back issues from Volumes 1 and 2, write to 454 Brookline Avenue; for later issues, write to 28 Carleton Street.

Advertising: Price list available from Journals Department, MIT Press, 28 Carleton Street, Cambridge, Massachusetts 02142.

Copyright © 1978 by the American Society of Law & Medicine and the Massachusetts Institute of Technology. All or any part of materials appearing in the JOURNAL may not be republished without the express written consent of the Editor-in-Chief.

Articles indexed and abstracted in *Index to Legal Periodicals*, *Index Medicus*, *Social Sciences Citation Index*, *Current Contents: Social and Behavioral Sciences*, and *Biosciences Information Service of Biological Abstracts*. Library of Congress Catalog Card Number: 75-645516 (Shelf Number K1.M445). ISSN 0098-8588.

U.S. postage paid at Boston, Massachusetts in accordance with Permit No. 54518 (Nonprofit Org.).

AMERICAN JOURNAL OF LAW & MEDICINE

BOARD of EDITORS

EDITOR-IN-CHIEF

John A. Norris, J.D., M.B.A.
Attorney & Consultant in Health Law
Tufts Univ. School of Dental Med.
Boston College Law School

EXECUTIVE EDITOR

Elliot L. Sagall, M.D.
Harvard Medical School
Boston College Law School

MANAGING EDITOR

Jim McMahan, J.D.

ASSISTANT MANAGING EDITOR

Judy Lesser, J.D.

Mark D. Altschule, M.D.
Harvard University

Donald B. Barkan, M.D., F.A.C.P.
Health Director, Lynn Hospital School
of Nursing

Charles H. Baron, LL.B., Ph.D.
Boston College Law School

Patrick Carroll, J.D.
Senior Vice Pres. & Legal Counsel,
Massachusetts Hospital Ass'n

Roger C. Cramton, J.D.
Dean, Cornell Law School

William J. Curran, LL.M., S.M. Hyg.
Harvard University

Douglas Danner, J.D.
Trial Attorney

Lee J. Dunn, Jr., J.D., LL.M.
General Counsel, Northwestern
Memorial Hospital

Richard F. Gibbs, M.D., J.D.
Attorney & Consultant in Health Law
Harvard Medical School

Clark C. Havighurst, J.D.
Duke University School of Law

Bernard D. Hirsh, J.D.
General Counsel, Am. Med. Ass'n

Richard G. Huber, J.D.

Dean, Boston College Law School

Alan K. Kaplan, LL.B., M. Sci.
Attorney & Consultant in Health Law
Georgetown Univ. Medical School

Jay Katz, M.D.
Yale University

Sylvia A. Law, J.D.
New York University School of Law

Frances H. Miller, J.D.
Boston University School of Law

**Aubrey Milunsky, M.B.B.Ch.,
M.R.C.P., D.C.H.**
Harvard Medical School; Director,
Genetics Division, Shriver Center

Irwin N. Perr, M.D., J.D.
Rutgers Medical School, College of
Medicine and Dentistry of New Jersey

Harvey E. Pies, J.D., M.P.H.
Attorney & Consultant in Health Law

Honorable Max Rosenn
United States Court of Appeals

E. Donald Shapiro, J.D., LL.D.
Dean, New York Law School

Margery W. Shaw, M.D., J.D.
Director, Medical Genetics Center
University of Texas at Houston

Robert B. Shira, D.D.S.
Dean, Tufts Univ. School of
Dental Med.; Past Pres., ADA

Richard E. Speidel, J.D., LL.M.
Dean, Boston University School of Law

Cyril H. Wecht, M.D., J.D.
Director, Pittsburgh Inst. of Legal
Med.; Coroner, Allegheny County

RESEARCH ASSOCIATES

Pamela J. Anderson, J.D.
Jay Alexander Gold, J.D., M.P.H.

ADMINISTRATIVE ASSISTANT

Cecily Anne Wells

OFFICERS OF THE AMERICAN SOCIETY OF LAW & MEDICINE

PRESIDENT

Elliot L. Sagall, M.D.
Boston College Law School
Harvard Medical School

FIRST VICE-PRESIDENT

John A. Norris, J.D., M.B.A.
Attorney and Consultant in Health Law, Boston, Massachusetts
Editor-in-Chief, American Journal of Law & Medicine

VICE-PRESIDENT

Richard F. Gibbs, M.D., J.D.
Harvard Medical School
President, American College of Legal Medicine

SECRETARY

Michael D. Jusell
Senior Claims Supervisor
Employers Insurance of Wausau

TREASURER

Barry C. Reed, LL.B.
Trial Attorney

EXECUTIVE DIRECTOR

A. Edward Doudera, J.D.
Managing Editor, Medicolegal News

HONORARY SECRETARY-TREASURER

J. Robertson Knowles, M.D.
Former Secretary-Treasurer, Massachusetts Society of Examining Physicians

GENERAL COUNSEL

Douglas Danner, J.D.
Trial Attorney

AMERICAN JOURNAL OF LAW & MEDICINE

VOLUME 4 NUMBER 3 FALL 1978

ARTICLE

- The *Saikewicz* Decision: A Medical Viewpoint 233 Arnold S. Relman, M.D.

COMMENT

- More on Regulation: A Reply to Stephen Weiner 243 Clark C. Havighurst, J.D.

BOOK REVIEW

- Pain and Profit: The Politics of Malpractice*, by Sylvia Law and Steven Polan 255 Jay Alexander Gold, J.D., M.P.H.

GUEST ORGANIZATION

- Report on the American Society of Hospital Attorneys of the American Hospital Association 269 W. Thomas Berriman, LL.B.

MEDICOLEGAL REFERENCE LIBRARY

- Selected Recent Court Decisions 277 John A. Norris, J.D., M.B.A.
Pamela J. Anderson, J.D.
Jay Alexander Gold, J.D., M.P.H.
- Highlights of Federal Legislative and Executive Action 291 Harvey E. Pies, J.D., M.P.H.
- Selected Book Releases, Annotated 295 Elliot L. Sagall, M.D.
- Selected Articles from Various Journals 311 Jim McMahan, J.D.

NOTES

- The "Brave New Baby" and the Law: Fashioning Remedies for the Victims of *In Vitro* Fertilization 319 Mark E. Cohen, J.D. Candidate