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On February 27 and 28, 2004, a distinguished group of scholars, practitioners, health care providers, industry representatives, and consumer advocates gathered at Seattle University School of Law to participate in a conference titled "Corporate Ethics and Governance in the Health Care Marketplace: An Interdisciplinary Perspective." This conference resulted from a unique collaboration between the Center on Corporations, Law & Society at Seattle University School of Law; the University of British Columbia Faculty of Law; and the Pacific Northwest Center for Health, Law and Policy.[2] The *raison d'être* for the symposium was to explore the intersection of corporate theory and health care, with a particular focus on issues of health care governance and ethics in the United States and Canada. By applying the corporate lens to health care delivery systems, the participants sought to provide an intellectual framework for understanding such critical and timely issues as access to quality medical treatment and affordable prescription medicines, the conversion of hospitals and insurers from nonprofit to for-profit entities, and the growing problem of Medicare and Medicaid fraud.

Debacles such as Enron and WorldCom provide a useful background for this exploration. Scholars within the corporate arena have examined the events that gave rise to these scandals, and have asserted that they can best be understood through a careful deconstruction of corporate structure, governance, ethics, culture, and law. The six articles in this symposium reveal the strength of corporate governance analytical tools and their

relevance across the full breadth of corporate health care activities—from the relationship between mission and action in a religiously affiliated hospital to bioethics decision making within the biotechnology industry, and from corporate governance in the Canadian health care system to whether a corporate ethic of care can exist within health care. This symposium is but the beginning of dialogue and scholarship on the linkage between the critical health care issues of our day and the corporate form. By asking whether health care might be the next Enron, we hope to stimulate creative discussion and innovative solutions to ensure that it is not.

In *Corporate Ethics in the Health Care Marketplace*,[3] Lynne Dallas begins the work of breaking down the corporate divide. Building on her earlier scholarship,[4] Professor Dallas focuses on the climate and culture within organizations that may lead to ethical or unethical decision making. Her thesis is that individuals who hold positions of leadership within an organization create, either explicitly or implicitly, an ethical climate and moral tone that sets the stage for, and determines the outcome of, individual decision making in the corporate setting.[5] Professor Dallas explores contextual factors within the work environment that contribute to this ethical climate and emphasizes that formalistic mechanisms such as ethical codes of conduct are far less important than more intangible factors such as offering support and encouragement, modeling, rewarding ethical behavior and decision making, and fostering an environment that is open to discussing ethical issues within the corporation.[6] By focusing our attention on the importance of corporate ethical climates and culture, Professor Dallas lays the foundation for the symposium articles that follow.

Arthur LaFrance's piece, *Merger of Religious and Public Hospitals: Render unto Caesar…*,[7] is a fascinating application of Professor Dallas's thesis. Although he would undoubtedly agree that leadership sets the moral and ethical tone for the organization, Professor LaFrance asks unsettling questions about the potential consequences of importing a private hospital's

religious mission (a particular form of ethical climate) into a public hospital through a *de facto* merger between the two.[8] In raising these questions, he suggests that a health care corporation may do everything "right" in Dallas's terms—the creation of a strong ethical corporate climate that is based on a clearly articulated and consistently applied set of values—and yet negatively impact the public good. He does this by focusing particularly on the issue of governance: to what extent would the Ethical and Religious Directives for Health Care Services promulgated by the American Catholic Bishops Association dictate the types of health care services that could (or could not) be provided by the public hospital should the merger go through?[9] As legal counsel for a group opposing the merger, Professor LaFrance gives us a bird's-eye view of the ethical and legal issues raised by a religiously affiliated health care institution that puts its mission into action. In addition, Professor LaFrance does us a great service by going beyond theoretical discussions of hospital corporate governance, ethical climate, and mission to examine the ways in which a litigator must take legal theories rooted in the First Amendment in order to develop and prove facts supporting those legal theories. His article shows the impact on a rural community and its citizens should its public hospital be taken over by a Catholic health care entity. This kind of scholarship, rooted in corporate and constitutional theory and grounded in practice and the reality of people's lives, is precisely what the legal academy needs.[10]

I take a slightly different tack in *Ethics^2: The Ethics of Bioethics in the Biotechnology Industry*,[11] by utilizing the concept of a corporate ethical climate to examine whether biotechnology corporations can or should incorporate bioethics principles and public debate into their decision making regarding the use of human embryos and stem cells in research. Much of the bioethics literature assumes that health care decision making takes place at a relational level—between an individual and his or her health care provider—but the reality is that health care and the related pharmaceutical and biotechnology industries operate primarily through the

corporate form. If an ethical climate is at heart the meaning attached by employees to organizational policies, practices, and procedures,[12] how might a biotechnology company construct an ethical environment in which its researchers value and take into account bioethics theories and principles, as well as public views, on controversial issues such as the use of human embryos and stem cells in for-profit research? The private ethics advisory board is one such mechanism that I use as a springboard for discussing the benefits and problems associated with importing bioethics into the corporate boardroom.[13] The central question in my article—whether the use of private ethics consultation is either a genuine corporate effort to bring societal values and concerns to bear on contested areas of scientific research or an attempt to co-opt bioethicists in the pursuit of corporate profits—is a microcosm of a much larger question: whether private, for-profit health care entities have any responsibility to society or the public good that goes beyond maximizing financial return on investment.

Providing a highly informative comparative viewpoint, Janis Sarra in *Contemporary Corporate Theory Applied to the Health Care Sector: A Canadian Perspective*[14] essentially turns on its head the question of whether for-profit health care entities have a social responsibility. Because the goal of the Canadian health care system is universal access to essential health care services (i.e., the public good), Canada publicly funds most health care services, which are provided primarily by not-for-profit entities.[15] Although this structure substantially limits profit-maximizing behavior that might harm the public's interest in obtaining services, it raises governance and accountability issues precisely because the private market is not operating. According to Dr. Sarra, whether the health care system in question is public, private, or something in-between, in a world of scarce resources, we can find common ground in the need for effective governance.[16] She identifies disclosure of information, oversight, and accountability as the principal determinants of effective governance, and she details how these challenges differ in the contrasting American and Canadian health care systems.[17] By

the conclusion of Dr. Sarra's article, the reader is left with a sense of the push-pull between competing models for the delivery of health care services; each is far from perfect, and both must operate within the reality of limited resources and seemingly unlimited health care needs.

Kimberly Baker and Arissa Peterson pick up the corporate governance thread in *Post*-Caremark *Implications for Health Care Organization Boards of Directors*.[18] Their article focuses on the duty of care in the wake of the *Caremark* decision, the demise of Enron, and the passage of the Sarbanes-Oxley Act. As health law practitioners, the authors are uniquely situated to sound the warning that the duty of care owed to a health care organization by its board of directors will come under increasing scrutiny as government expands its efforts to root out health care industry fraud and abuse.[19] In reviewing the recent case law on the duty of care in the context of alleged illegal corporate acts, Baker and Peterson caution that the potential clearly exists for individual director liability for failure to act to prevent, or to at least identify and put a stop to, corporate health care fraud.[20] Furthermore, the passage of the Sarbanes-Oxley Act, which applies to publicly held companies, has added another layer of board responsibility, including reporting obligations, protecting whistleblowers, and the possibility of criminal liability for failure to comply. After describing the perilous legal environment that confronts health care boards of directors today, the authors detail the necessary elements of an individually tailored corporate-compliance program aimed at reducing health care fraud and abuse.[21] Their expert advice on implementing and maintaining corporate compliance is remarkably congruent with Professor Dallas's description of the guidance and monitoring factors essential to the creation and maintenance of an ethical corporate climate.[22]

The final article in this symposium, *A Corporate Ethic of 'Care' in Health Care,*[23] authored by Professor Mark Hall, is an ideal bookend to Lynne Dallas's introductory piece. Hall takes on the philosophical, almost existential, question of whether a health care entity can really care about the

individuals that it serves; he concretizes it by examining the means a health care corporation might use to promote a "caring culture."[24] He looks to profit status, ethical codes, compliance programs, and market competition on the basis of a reputation for caring. Professor Hall concludes that in order to promote a genuine ethic of caring, we must develop mechanisms to measure caring. So central, so important, and yet so elusive is the concept of care. Professor Hall's article reminds us that in this age of corporate delivery of health care services, we must not lose sight of the "care" in health care, which brings us full circle to Dallas's thesis that this can best be accomplished by the deliberate and intentional creation of an ethical corporate climate in which care is a core value.

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[1] Annette E. Clark is Professor of Law at Seattle University School of Law.

[2] The Pacific Northwest Center for Health, Law and Policy is a consortium of the Seattle University, University of Washington, and Lewis & Clark law schools.

[3] Lynne L. Dallas, *Corporate Ethics in the Health Care Marketplace*, 3 SEATTLE J. SOC. JUST. 213 (2004).

[4] *See, e.g.*, Lynne L. Dallas, *A Preliminary Inquiry into the Responsibility of Corporations and Their Officers and Directors for Corporate Climate: The Psychology of Enron's Demise*, 35 RUTGERS L.J. 1 (2003).

[5] Dallas, *supra* note 3, at 214.

[6] *Id.* at 215.

[7] Arthur B. LaFrance, *Merger of Religious and Public Hospitals: Render unto Caesar . . .*, 3 SEATTLE J. SOC. JUST. 229 (2004).

[8] *Id.* at 230.

[9] *Id.* at 234.

[10] In a creative melding of scholarship and technology, the *Seattle Journal for Social Justice* posted Professor LaFrance's work product as legal counsel in this case (depositions, briefs, etc.) to the *Journal's* Web site. It can be accessed at http://www.law.seattleu.edu/sjsj.

[11] Annette E. Clark, *Ethics[2]: The Ethics of Bioethics in the Biotechnology Industry,* 3 SEATTLE J. SOC. JUST. 311 (2004).

[12] Dallas, *supra* note 3, at 214.

[13] Clark, *supra* note 11, at 317.

[14] Janis Sarra, *Contemporary Corporate Theory Applied to the Health Care Sector: A Canadian Perspective,* 3 SEATTLE J. SOC. JUST. 345 (2004).

[15] *Id.* at 347.

[16] *Id.* at 361.

[17] *Id.*

[18] Kimberly D. Baker & Arissa M. Peterson, *Post-Caremark Implications for Health Care Organization Boards of Directors,* 3 SEATTLE J. SOC. JUST. 387 (2004).
[19] *Id.*
[20] *Id.* at 389.
[21] *Id.* at 398.
[22] *See* Dallas, *supra* note 3, at 224.
[23] Mark A. Hall, *A Corporate Ethic of 'Care' in Health Care,* 3 SEATTLE J. SOC. JUST. 417 (2004).
[24] *Id.* at 420.