PREFACE

This volume is the second in a two-volume collection that explores the relationship between medical ethics and the law in a uniquely comprehensive and insightful fashion. The companion volume, published earlier, entitled Medical Ethics: Codes, Opinions, and Statements, brought together in published form, for the first time, the ethical codes of 26 different medical specialty organizations. These statements provide guidance on virtually every aspect of physicians’ relationships to patients, to other physicians, and to society as a whole. The ethical statements in the companion volume provide insight into the ethical standard of care for matters ranging from abortion to zygote intrafallopian transfers.

In this volume, the authors have undertaken an exploration of the relationship between these ethical pronouncements and the development of the law in 20 particularly important and controversial areas. The chapters in this volume were written because of our recognition that the ethical codes were relevant to—but virtually never coextensive with—the rules of law governing health care. The chapters therefore summarize the positions taken in the ethical codes of the 26 professional associations and then analyze the legal approach to these same issues. The legal analysis is timely, comprehensive, and written with attention to the needs of a multi-disciplinary audience. The authors note, where possible, the possible impact of ethical codes on the development of law within a particular field. The authors also note occasions in which the legal regulation of a particular field appears to be at odds with the ethical approach preferred by one or more professional medical organizations.

A little over half of the chapters in this volume study the relationship between medical ethics and the law in developing areas of bioethics. Ethical pronouncements clearly have had an impact on the development of legal rules governing abortion (Chapter 2), brain death and organ transplantation (Chapter 4), and decisionmaking at the end of life (Chapter 7), for example. Outside the limelight of intense public controversy, however, the courts and the legislatures have been busy developing legal approaches to other bioethical controversies, including confidentiality (Chapter 6), genetics (Chapter 9), infectious diseases (Chapter 10), informed consent (Chapter 11), mental illness (Chapter 14), public health (Chapter 17), reproductive medicine (Chapter 18), and research (Chapter 19).
In recent years, the ethical advisory bodies of the medical professional societies have given great attention to the economic aspects of medical care. Legislatures, regulatory agencies, and courts have also been greatly concerned with these issues. The remaining half of the chapters in this volume thus provide extensive coverage of the relationship between medical ethics and the law in the business, economic, or organizational aspects of health care. The relationship between ethics and law is discussed in chapters dealing with discrimination (Chapter 3), commercial relationships (Chapter 5), ethics committees (Chapter 8), professional and interprofessional relationships (Chapter 12), institutional issues (Chapter 13), financing or payment systems in health care (Chapter 16), the physician-patient relationship (Chapter 16), and health policy (Chapter 20).

The breadth of this volume mirrors the breadth and comprehensive coverage of the ethical codes found in the companion Codes volume. The legal regulation of the health care system is multilayered and complex. Specific laws and regulations are issued by the federal government, federal agencies such as the Department of Health and Human Services, the fifty states, and the regulatory agencies found in those states. At the same time, federal and state courts at every level decide specific health care disputes in ways that can have a profound impact on the practice of medicine. This volume uniquely brings together both the ethical and legal approaches to the regulation of currently vexing problems in health care practice. The authors plan to update the volume at regular intervals to respond to the inevitably rapid developments in the laws governing these areas.

These well-annotated chapters will thus be extremely useful to:

- Physicians who practice in a variety of settings, including individual practice, group practice, hospital settings, and managed care entities.
- Physician or non-physician managers or executives of health care organizations.
- Lawyers who represent individual physicians, insurance companies, or health care institutions such as hospitals, HMOs, nursing homes, and other facilities, in business transactions.
- Lawyers who represent individual physicians, insurance companies, or health care institutions such as hospitals, HMOs, nursing homes, and other facilities, in liability claims.
- Lawyers who represent individual physicians, health care entities, or government in criminal cases arising out of health care transactions.
- State or federal regulators, including licensing authorities, members of accrediting bodies, and leaders within public agencies.
- Scholars of medicine, law, and public health.

No task as daunting as this has been can have been completed without the help and support of our colleagues, research assistants, and, of course, our families. The authors certainly wish to thank these persons for their efforts. In addition, the authors wish to thank the following persons who have made particularly large contributions to the completion of this project: Cheryl Erwin, Tiffany Schreiber Frost, Sherry Fuller, Amanda Green, Katie Isaac, Jennifer Jasper, Pei-Chih Lee, Brian Melton, Amy McGuire, Lois Miller, Anthony Newton, Yoo Sun Park, Ellie Paukert, Laurel Thorpe, and Jill Vogel.