

WORKS OF ELEANOR D. KINNEY

SUSAN DAVID DEMAINE*

Eleanor D. Kinney was a prolific scholar throughout her thirty-five years as a professor at Indiana University Robert H. McKinney School of Law. She authored or co-authored more than seventy-five journal articles, publishing in numerous peer-reviewed medical and health journals, as well as law reviews. She wrote three books, edited a fourth, and published nine book chapters.

Professor Kinney's work has been cited in at least ten court opinions. Her work has garnered more than 700 citations in law review articles, and nearly 200 in medical and health policy journals. The influence of her work places her within the top 1,000 most cited legal scholars.¹ Although a scholar of many aspects of health care law, Professor Kinney's work on Medicare and Medicaid was particularly influential. Her 1990 report to the Administrative Conference of the United States, reprinted in the *Ohio State Law Journal* under the title *Rule and Policy Making for the Medicaid Program: A Challenge to Federalism*, helped establish her national reputation as an expert in the field. Just over a decade later, her *Guide to Medicare Coverage Decision-Making and Appeals*, became an essential tool for those practicing in administrative health law. After her retirement, she continued to publish in this area, with additional books appearing in 2015 and 2017.

Professor Kinney also developed an interest in health law at the international level when the idea of an "international human right to health" attracted notice. Several of her most cited articles address this right, and she went on to write about related subjects such as global responses to health crises, comparisons between various national constitutions' provisions regarding health and health care, and the differences in laws regarding information for consumers. She also wrote about the development of international administrative law more generally.

Medical malpractice and its reform were other areas of interest and influence for Professor Kinney. Over the course of her career, she published more than a dozen articles and book chapters in this area, and her 2002 book *Protecting American Health Care Consumers* added a discussion of medical malpractice concerns to the conversation, ongoing at the time, about patient protection and reforms in policymaking.

In *Protecting American Health Care Consumers*, she also looked closely at procedural reform and uninsured health care consumers, describing the impending crisis as a "thunderhead on the horizon." Prior to Professor Kinney's work, patient protection discussions largely ignored the uninsured. Not

* Associate Director, Ruth Lilly Law Library, and Lecturer in Law, Indiana University Robert H. McKinney School of Law. J.D. 1999, University of Kentucky; M.S.L.S. 1995, University of Kentucky.

1. According to HeinOnline's author report, Prof. Kinney ranks 964 for "Cited by articles," 729 for "Cited by articles (past 10 years)," 248 for "Cited by articles (previous year +YTD)," and 254 for "Cited by cases." All of these numbers reflect only those citations appearing in HeinOnline's databases, which include most law reviews but not many journals in other fields such as health policy or medical ethics. As a result, her rankings may be artificially somewhat low.

surprisingly, when the Affordable Care Act (ACA) was passed in 2010 to address the crisis and make insurance available to everyone, Professor Kinney's scholarship kept up with the changes; although retired as a faculty member, she published *The Affordable Care Act and Medicare in Comparative Context* with Cambridge University Press as well as multiple law review articles on the ACA. Her last article, published in 2018, was written in response to the 21st Century Cures Act of 2016. Her interest in health law and her productivity simply never flagged.

The following bibliography is a nearly exhaustive list of Professor Kinney's publications, excluding only the many short updates (a few paragraphs each) she wrote for the American Hospital Association's *Health Law Vigil* newsletter when she worked in the AHA's Office of Legal and Regulatory Affairs in the early 1980s.

PUBLICATIONS

Books

ELEANOR D. KINNEY, *PROTECTING AMERICAN HEALTH CARE CONSUMERS* (Duke University Press, 2002).

ABA SECTION OF ANTITRUST LAW, *GUIDE TO MEDICARE COVERAGE DECISION-MAKING AND APPEALS* (Eleanor D. Kinney, eds., 2002).

ELEANOR D. KINNEY, *ADMINISTRATIVE LAW OF HEALTH CARE IN A NUTSHELL* (West Academic, 2017).

ELEANOR D. KINNEY, *THE AFFORDABLE CARE ACT AND MEDICARE IN COMPARATIVE CONTEXT* (Cambridge University Press, 2015).

Articles in Peer-Reviewed Medical Ethics and Health Policy Journals

Jason T. Eberl, Eleanor D. Kinney, & Matthew J. Williams, *Foundation for a Natural Right to Health Care*, 36 J. MED. & PHIL. 537 (2011).

Lance Gable, Brooke Courtney, Robert Gatter, & Eleanor D. Kinney, *Global Public Health Legal Responses to H1N1*, 39 J.L. MED. & ETHICS 46 (2011).

Heather A. McCabe & Eleanor D. Kinney, *Medical Legal Partnerships: A Key Strategy for Addressing Social Determinants of Health*, 25 J. GEN. INTERNAL MED., Supp. 2 S200 (2010).

Eleanor D. Kinney, *Realization of the International Human Right to Health in an Economically Integrated North America*, 37 J.L. MED. & ETHICS 807 (2009).

Ulla Connor, Miguel F. Ruiz-Garrido, William Rozycki, Elizabeth Goering, Eleanor D. Kinney & Julia M. Koehler, *Patient-Directed Medicine Labeling: Text Differences between the United States and Spain*, 5 COMM. & MED. 117 (2008).

Eleanor D. Kinney, *The Corporate Transformation of Medical Specialty Care: The Exemplary Case of Neonatology*, 36 J.L. MED. & ETHICS 790 (2008).

Eleanor D. Kinney, *The Origins and Promise of Medical Standards of Care*, 6 VIRTUAL MENTOR 574 (2004).

Eleanor D. Kinney, *An Empirical and Critical Look at the Current Medical Liability Crisis*, 20 FRONTIERS HEALTH SERV. MGMT. 31 (2003).

Eleanor D. Kinney, John Kennedy, Cynthia A. Loveland Cook, Jay A. Freedman, Kathleen A. Lane & Siu L. Hui, *A Randomized Trial of Two Quality Improvement Strategies Implemented in a Statewide Public Community Based, Long-Term Care Program*. 41 MED. CARE 1048 (2003).

Eleanor D. Kinney, *Administrative Law and the Public's Health*, 30 J.L. MED. & ETHICS 212 (2002).

Eleanor D. Kinney, *The Brave New World of Medical Standards of Care*, 29 J.L. MED. & ETHICS 323 (2001).

Tom L. Beauchamp, Bruce Jennings, Eleanor D. Kinney & Robert J. Levine, *Pharmaceutical Research Involving the Homeless*, 27 J. MED. & PHIL. 547 (2002).

Nancy L. Swigonski, Eleanor D. Kinney, Deborah A. Freund & Thomas Kniesner, *Unfinished Business: Inadequate Health Coverage for Privately Insured Seriously Ill Children*, 30 CHILD. HEALTH CARE 219 (2001).

Kevin T. Stroupe, Eleanor D. Kinney & Thomas Kniesner, *Chronic Illness and Health Insurance-Related Job Lock*, 20 J. POL'Y ANALYSIS & MGMT. 525 (2001).

Kevin T. Stroupe, Eleanor D. Kinney & Thomas Kniesner, *Does Chronic Illness Affect the Adequacy of Health Insurance Coverage?* 25 J. HEALTH POL. POL'Y & L. 309 (2000).

Eleanor D. Kinney, Ming Tai-Seale, James Y. Greene, Rilla Murray & William Tierney, *Three Political Realities in Expanding Coverage for the Working Poor: One State's Experience*, 18 HEALTH AFF. 188 (1999).

Eleanor D. Kinney, Deborah A. Freund, Mary Elizabeth Camp, Karen A. Jordan & Marion Christopher Mayfield, *Serious Illness and Private Health Coverage: A Unique Problem Calling for Unique Solutions* 25 J.L. MED. & ETHICS 190 (1997).

Eleanor D. Kinney, Tom Robison, Jay A. Freedman & Cynthia A. Loveland Cook, *Automating Assessment for Community-Based, Long-Term Care: Indiana's Experience*, 21 GENERATIONS 62 (1997).

Jay A. Freedman, Cynthia A. Loveland Cook, Tom Robison & Eleanor D. Kinney, *Collaborative Quality Improvement in Community-Based, Long-Term Care*, 21 JOINT COMMISSION J. ON QUALITY IMPROVEMENT 701 (1995).

Eleanor D. Kinney, *Malpractice Reform in the 1990s: Past Disappointments, Future Success?* 20 J. HEALTH POL. POL'Y & L. 99 (1995).

William P. Gronfein & Eleanor D. Kinney, *Bringing the Patient Back In: The Rhetoric of Victimization and Medical Malpractice*, 6 PERSP. ON SOC. PROBS. 47 (1994).

Eleanor D. Kinney & Suzanne K. Steinmetz, *Notes from the Insurance Underground: How the Chronically Ill Cope*, 19 J. HEALTH POL'Y POL. & L. 633 (1994).

Charles M. Clark & Eleanor D. Kinney, *The Potential Role of Diabetes Guidelines in the Reduction of Medical Injury and Medical Malpractice Claims Involving Diabetes*, 17 DIABETES CARE 155 (1994).

Charles M. Clark & Eleanor D. Kinney, *Standards for the Care of Diabetes: Origins, Uses and Implications for Third-Party Payment*, 15 DIABETES CARE Supp. 1 10 (March 1992).

William P. Gronfein & Eleanor D. Kinney, *Controlling Large Medical Malpractice Claims: The Unexpected Impact of Damage Caps*, 16 J. HEALTH POL. POL'Y & L. 441 (1991).

Eleanor D. Kinney & Bob Lefkowitz, *Capital Cost Reimbursement to Community Hospitals Under Federal Health Insurance Programs*, 7 J. HEALTH POL. POL'Y & L. 648 (1982).

Law Review Articles

Eleanor D. Kinney, *21st Century Cures Act and Medical Device Regulation Departure from Principles or Catching the Wave*, 44 AM. J.L. & MED. 269 (2018).

Eleanor D. Kinney, *The Accidental Administrative Law of the Medicare Program*, 15 YALE J. HEALTH POL'Y L. & ETHICS 111 (2015).

Eleanor D. Kinney, *The Affordable Care Act and the Medicare Program: The Engines of True Health Reform*, 13 YALE J. HEALTH POL'Y L. & ETHICS 253 (2013).

Eleanor D. Kinney, *The Potential of Captive Medical Liability Insurance Carriers and Damage Caps for Malpractice Reform*, 46 NEW ENG. L. REV. 489 (2012).

Eleanor D. Kinney, *Prospects for Comparative Effectiveness Research Under Federal Health Reform*, 21 ANNALS HEALTH L. 79 (2012).

Eleanor D. Kinney, *The Real Truth about Death Panels: Comparative Effectiveness Research and the Health Reform Legislation*, 36 OKLA. CITY L. REV. 667 (2011).

Eleanor D. Kinney, *Comparative Effectiveness Research Under the Patient Protection and Affordable Care Act: Can New Bottles Accommodate Old Wine?*, 37 AM. J.L. & MED. 522 (2011).

Eleanor D. Kinney, *Administrative Law Protections in Coverage Expansions for Consumers Under Health Reform*, 7 J. HEALTH & BIOMED. L. 33 (2011).

Eleanor D. Kinney, *Realizing the International Human Right to Health for Noncitizens in the United States*, 1 NOTRE DAME J. INT'L COMP. & HUMAN RTS. L. 94 (2011).

Eleanor D. Kinney, *Realizing the International Human Right to Health: The Challenge of For-Profit Health Care*, 113 W. VA. L. REV. 49 (2010).

Eleanor D. Kinney, *For-Profit Enterprise in Health Care: Can It Contribute to Health Reform?*, 36 AM. J.L. & MED. 405 (2010).

Eleanor D. Kinney, Heather A. McCabe, Amy Lewis Gilbert, & Janna Jo Shishler, *Altered Standards of Care for Health Care Providers in the Pandemic Influenza*, 6 IND. HEALTH L. REV. 1 (2009).

Eleanor D. Kinney, *Health Care Financing and Delivery in the US, Mexico and Canada: Finding and Establishing Intentional Principles for Sound Integration*, 26 WIS. INT'L L.J. 934 (2009).

Eleanor D. Kinney, *Hospital Peer Review of Physicians: Does Statutory Immunity Increase Risk of Unwarranted Professional Injury?* 13 MICH. ST. U.J. MED. & L. 57 (2009).

Eleanor D. Kinney & William M. Sage, *Dances with Elephants: Administrative Resolution of Medical Injury Claims by Medicare Beneficiaries*, 5 IND. HEALTH L. REV. 1 (2008).

Eleanor D. Kinney, *Recognition of the International Human Right to Health and Health Care in the United States*, 60 RUTGERS L. REV. 335 (2008).

Eleanor D. Kinney, *Can the Medicare, Medicaid and SCHIP Programs Meet the Challenges of Public Health Emergencies*, 58 ADMIN. L. REV. 559 (2006).

Eleanor D. Kinney & William M. Sage, *Resolving Medical Malpractice Claims in the Medicare Program: Can it be Done?* 12 U. CONN. J. INS. L. 77 (2006).

Eleanor D. Kinney, *Administrative Law Approaches to Medical Malpractice Reform*, 49 ST. LOUIS U.L.J. 45 (2005).

Eleanor D. Kinney & Brian Alexander Clark, *Provisions for Health and Health Care in the Constitutions of the Countries of the World*, 37 CORNELL INT'L L. REV. 285 (2004).

Eleanor D. Kinney, *The New Medicare Coverage Decision-Making and Appeal Procedures: Can Process Meet the Challenge of New Medical Technology?*, 60 WASH. & LEE L. REV. 1461 (2003).

Eleanor D. Kinney, *The Emerging Field of International Administrative Law: Its Content and Potential*, 54 ADMIN. L. REV. 1139 (2002).

Eleanor D. Kinney, *The International Human Right to Health: What Does it Mean for Our Nation and World*, 34 IND. L. REV. 1457 (2001).

Eleanor D. Kinney, *Tapping and Resolving Consumer Concerns about Health Care*, 26 AM. J.L. & MED. 335 (2000).

Eleanor D. Kinney, *Clearing the Way for an Effective Federal-State Partnership in Health Reform*, 32 MICH. J.L. REFORM 899 (1999).

Jana K. Strain & Eleanor D. Kinney, *The Road Paved with Good Intentions: Problems and Potential for Employer-Sponsored Health Insurance under ERISA*, 31 LOY. U. CHI. L. REV. 29 (1999).

Eleanor D. Kinney, *Introduction (Symposium: The Independent Counsel Statute)*, 51 ADMIN. L. REV. 627 (1999).

Eleanor D. Kinney, *Behind the Veil Where the Action Is: Private Policy Making and American Health Care*, 50 ADMIN. L. REV. 145 (1999).

Eleanor D. Kinney, *Indiana's Medical Malpractice Reform Revisited: A Limited Constitutional Challenge*, 31 IND. L. REV. 1043 (1998).

Eleanor D. Kinney & Myra C. Selby, *History and Jurisprudence of the Patient-Physician Relation in Indiana*, 30 IND. L. REV. 263 (1996).

Eleanor D. Kinney, *Procedural Protections for Patients in Capitated Health Plans*, 22 AM. J.L. & MED. 301 (1996).

Eleanor D. Kinney, *Medicare Managed Care from the Beneficiary's Perspective*, 24 SETON HALL L. REV. 101 (1996).

Eleanor D. Kinney, *Resolving Consumer Grievances in a Managed Care Environment*, 6 HEALTH MATRIX 147 (1996).

Eleanor D. Kinney, Lisa Clark Copp, & Marcia Gonzales, *The Merits of State Action Antitrust Immunity to Promote Hospital Collaboration: A Good Idea for Indiana?*, 28 IND. L. REV. 1169 (1995).

Eleanor D. Kinney, *Rule and Policy Making under Health Reform*, 47 ADMIN. L. REV. 403 (1995).

Eleanor D. Kinney, *Protecting Consumers and Providers under Health Reform: An Overview of the Major Administrative Law Issues*, 5 HEALTH MATRIX: J. L. MED. 83 (1995).

Eleanor D. Kinney, Jay A. Freedman & Cynthia A. Loveland Cook, *Quality Improvement in Community-Based, Long-Term Care: Theory and Reality*, 20 AM. J.L. & MED. 59 (1994).

Eleanor D. Kinney, *Private Accreditation as a Substitute for Direct Government Regulation in Public Health Insurance Programs: When is it Appropriate?*, 57 L. & CONTEMP. PROBS. 47 (1994).

Vaneeta M. Kumar & Eleanor D. Kinney, *Indiana Lawmakers Face National Health Policy Issues*, 25 IND. L. REV. 1271 (1992).

Eleanor D. Kinney, *The Role of Judicial Review in Medicare and Medicaid Program Policy: Past Experience and Future Expectations*, 35 ST. LOUIS U.L.J. 759 (1991).

Eleanor D. Kinney & William P. Gronfein, *Indiana's Malpractice System: No Fault By Accident?*, 54 L. & CONTEMP. PROBS. 169 (1991).

Eleanor D. Kinney, William P. Gronfein, & Thomas P. Gannon, *Indiana's Medical Malpractice Act: Results of a Three Year Study*, 24 IND. L. REV. 1275 (1991).

Eleanor D. Kinney, *Legal and Ethical Issues in Mental Health Care Delivery: Does Corporate Form Make a Difference?*, 28 HOUS. L. REV. 175 (1991).

Eleanor D. Kinney, *Rule and Policy-Making for the Medicaid Program: A Challenge to Federalism*, 51 OHIO ST. L.J. 855 (1990) (republication of report prepared by request of the Administrative Conference of the United States, Nov. 1990).

Eleanor D. Kinney, *In Search of Bureaucratic Justice in the Medicare Program: Adjudicating Medicare Home Health Benefits in the 1980s*, 42 ADMIN. L. REV. 251 (1990).

Eleanor D. Kinney, *Setting Limits: A Realistic Assignment for the Medicare Program?* 33 ST. LOUIS U.L.J. 631 (1989).

Eleanor D. Kinney & Marilyn M. Wilder, *Medical Standard Setting in the Current Malpractice Environment: Problems and Possibilities*, 22 U.C. DAVIS L. REV. 421 (1989).

Eleanor D. Kinney, *National Coverage Policy under the Medicare Program: Problems and Proposals for Change*, 32 ST. LOUIS U.L.J. 869 (1988).

Eleanor D. Kinney, *The Medicare Appeals System for Coverage and Payment Disputes: Achieving Fairness in a Time of Constraint*, 1 ADMIN. L.J. 1 (1987).

Eleanor D. Kinney, *Coordinating Rate Setting and Planning in States with Mandatory Hospital Rate Regulation: What Makes a Difference?* 8 J. LEGAL MED. 397 (1987).

Eleanor D. Kinney, *Making Hard Choices under the Medicare Prospective Payment System: One Administrative Model for Allocating Medical Resources under a Government Health Insurance Program*, 19 IND. L. REV. 1151 (1986).

Eleanor D. Kinney, *Medicare Payment to Hospitals for a Return on Capital: The Influence of Federal Budget Policy on Judicial Decision-Making*, 11 J. CONTEMP. L. 453 (1985).

Eleanor D. Kinney, Comment, *"The Know Your Customer" Rule of the NYSE: Liability of Broker-Dealers under the UCC and Federal Securities Laws*, 1973 DUKE L.J. 489.

Articles in Foreign Journals

Eleanor D. Kinney, *Derecho Administrativo de los EE.UU.: Desafíos para los Estados con las Nuevas Responsabilidades del Derecho Administrativo*, 22 REVISTA ARGENTINA DEL RÉGIMEN DE LA ADMINISTRACIÓN PÚBLICA 9 (2000).

Eleanor D. Kinney, *Análisis Crítico de los Sistemas de Salud en los EE.UU. y en la Argentina: lecciones para su reforma*, 6 APORTES PARA LA INTEGRACION LATINAMERICANA 67 (2000).

Book Chapters

Eleanor D. Kinney, Heather A. McCabe, & R. Hall, *Hays v. Sebelius*, in TOP 20 FOOD AND DRUG CASES, 2009 & CASES TO WATCH (John Reiss, ed., Food & Drug Law Institute, 2010).

Eleanor D. Kinney, *The International Human Right to Health in Domestic Constitutional and Statutory Law*, in LAW AND ETHICS IN RATIONING ACCESS TO CARE IN A HIGH-COST GLOBAL ECONOMY (Wendy K. Mariner & Paula Lobato de Faria, eds., Luso-American Foundation, 2008).

William M. Sage & Eleanor D. Kinney, *A Malpractice System for Medicare*, in MEDICAL MALPRACTICE REFORM IN THE UNITED STATES: NEW CENTURY, DIFFERENT ISSUES (William M. Sage & Rogan Kersh, eds., Cambridge University Press, 2006).

Eleanor D. Kinney, *Medicare Beneficiary Appeals*, in GUIDE TO MEDICARE COVERAGE DECISION-MAKING AND APPEALS (Eleanor D. Kinney, ed., American Bar Ass'n, 2002).

Eleanor D. Kinney, *A Case Study of Indiana*, in MEDICAID AND STATE BUDGETS: AN OVERVIEW OF FIVE STATES' EXPERIENCES IN 2001 (Kaiser Comm'n on Medicaid & the Uninsured 2002).

Eleanor D. Kinney, *Administrative Law Issues in Professional Regulation*, in REGULATION OF THE HEALTHCARE PROFESSIONS (T. Jost, ed., Health Admin. Press 1997).

Eleanor D. Kinney, *Medical Practice Guidelines: Evolutionary Trends and Future Implications*, in HEALTH CARE DELIVERY AND TORT: SYSTEMS ON A COLLISION COURSE? (E. Rolph, ed., RAND Inst. for Civ. Just. 1991).

Eleanor D. Kinney & Bob Lefkowitz, *Chapter II: Legislative History*, and *Chapter VIII: Implications for Hospitals*, in HEALTH PLANNING: LESSONS FOR THE FUTURE (B. Lefkowitz, ed., Aspen 1983).

Robert C. Maynard & Eleanor D. Kinney, *The Statute of Limitations in Medical Malpractice Law*, in DEFENSE OF MEDICAL MALPRACTICE CASES (D. Hirsch, ed., Defense Research Institute, Inc. 1977).

Book Reviews

Eleanor D. Kinney, *Health Care Choices: Private Contracts as Instruments of Health Reform* by Clark C. Havighurst, 17 J. LEGAL MED. 331 (1996).

Eleanor D. Kinney, *Murders and Madness: Medicine, Law and Society in the Fin de Siècle* by Ruth Harris, 14 LEGAL STUD. F. 435 (1990).

Miscellaneous Publications

Heather A. McCabe & Eleanor D. Kinney, *Health Care Funding*, in THE CHILD: AN ENCYCLOPEDIA COMPANION (Richard A. Shweder, ed., U. Chicago Press 2009).

Eleanor D. Kinney, *Administrative Law: Proposing Reforms to Administrative Procedure Act*, NAT'L L.J., Aug. 1, 2005, at S3.

Eleanor D. Kinney, *Changes in the Adjudication of Medicare Beneficiary Appeals in the New Medicare Prescription Drug Legislation: Reform or Retreat?*, 29 ADMIN. & REG. L. NEWS 6 (2004).

Eleanor D. Kinney, *Would a Single Payer System Provide Universal Health Coverage in the United States?*, L. & BIOETHICS REP. 5 (2003).

Eleanor D. Kinney, *Congress Enacts Sweeping Changes in Medicare Procedures*, 26 ADMIN. & REG. L. NEWS 7 (2001).

Eleanor D. Kinney, *Consumer Grievance and Appeal Procedures in Managed Care Plans*, 10 HEALTH LAW. 17 (1998).

Eleanor D. Kinney, *Health Insurance Coverage in Indiana: Is There a Problem*, 1 IN-ROADS 8 (1996).

Eleanor D. Kinney, *New Standards for the Standard of Care*, LEGAL TIMES, Nov. 18, 1991, at Supp. 29.

Eleanor D. Kinney, *Elderly Health Care: For Many, Insurance an Empty Promise*, LEGAL TIMES, Jul. 25, 1988, at 16. Same article in other papers: *Medicare, Is It Fulfilling Its Promise?* THE RECORDER, Aug. 1, 1988, at 6; *Shedding Light on Medicare: Decisions on Coverage Need More Input from Public*, FULTON CTY. DAILY REP., Jul. 27, 1988, at 2; *Government Must Stop Making Rules on Medicare Coverage Behind Closed Doors*, MANHATTAN L., Aug. 2-8, 1988, at 14.

Eleanor D. Kinney, *Better Safe than Sorry: Federal Antitrust Laws have a Major Impact on Payment, Efficiency, and Expansion Activities*, 1 MULTIES (1983).

Eleanor D. Kinney, *Federal Policy on Hospital Capital Investment: Review and Outlook*, 55 HOSPITALS 75 (1981).