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Malingering & Health Policy

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C O N T E N T S

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Symposium Articles

**Malingering
& Health
Policy**

Guest Edited by
Daniel S. Goldberg

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*Letter from
the Editor*

*Cover Image: "Le malade
imaginaire": Argan, a
hypochondriac feigning
illness in front of Béline,
his wife and Dr. Purgon,
his physician, in a scene
from Molière's play. Etching
by G. Schouten after J.B.
Molière. Courtesy of the
Wellcome Collection.*

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**Introduction: Investigating Malingering
and Public Policy Through an
Interdisciplinary Working Group**
Daniel S. Goldberg

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**Person Under Investigation: Detecting
Malingering and a Diagnostics of
Suspicion in Fin-de-Siècle Britain**
Lakshmi Krishnan

In 1889, The *British Medical Journal* published a piece titled, "Detective Medicine," which describes feats of medical detection performed by physicians attending malingering prisoners. Though simulating illness had a long history, the medicalization of malingering at the *fin de siècle* led to a proliferation of such case histories and cheerful records of pathological feigners thwarted.

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**"The Offspring of Drunkards":
Gender, Welfare, and the Eugenic
Politics of Birth Control and Alcohol
Reform in the United States**
Lauren MacIvor Thompson

The social politics of women's alcohol use is controversial given current debates over maternal-fetal health, fetal alcohol syndrome, and debates about welfare. Exploring the early twentieth century intersections of Prohibition, birth control reform, and alcohol politics reveals the historical roots of current recommendations surrounding women, alcohol, and public assistance.

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**The Intertwined History of
Malingering and Brain Injury:
An Argument for Structural Competency
in Traumatic Brain Injury**
Stephen T. Casper

Every year millions of people suffer minor brain injuries, many of which occur in collision sports. While there has been substantial commentary and debate about the nature of this public health crisis, it is clear that the scientific and clinical arguments reflect values preferences and judgments that are often invisible in documents which combine artful language with undue focus paid to sources of uncertainty at the cost of clarity and transparency. This essay gives a brief history of these patterns and proposes a remedy.

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**Toward Complete, Candid, and
Unbiased International Consensus
Statements on Concussion in Sport**
*Stephen T. Casper, Kathleen E.
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Comrie, Sam Gandy, Judith Gates,
Daniel S. Goldberg, Kathryn Henne,
Karen Hind, Daniel Morrison, Francisco
Ortega, Alan J. Pearce, Sean Philpott-
Jones, Elizabeth Sandel, Ted Tatos, Sally
Tucker, and Adam M. Finkel*

Five international consensus statements on concussion in sports have been published. This commentary argues that there is a strong need for a new approach to them that foregrounds public health expertise and patient-centered guidance. Doing so will help players, parents, and practitioners keep perspective about these potentially life-altering injuries especially when they recur.

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**No Excuses: A Brief History of Playing
Through Risk in College Football**

Kathleen Bachynski

Celebrations of playing through risk, skepticism of athletes perceived as faking injuries, unregulated training regimens, the mythos of amateurism, and lack of accountability for preventable health harms have long characterized many college football programs. Setting policies that effectively prioritize player health will require taking this history into account.

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**Doubt & Social Policy: The Long History
of Malingering in Modern Welfare States**

Daniel S. Goldberg

This essay explores the long Western history of anxieties about feigned illness connected specifically to social policy. There is a remarkable consistency of such anxieties across time, as they appear in almost every major historical period in the West since the Middle Ages. Beginning especially with the passage of major poor laws in Europe during the 17th century, Western societies connected even older ideas about deservingness to the entitlements of the burgeoning welfare apparatuses. Anxieties about malingering took on a forensic quality, and it became increasingly important for scientific, medical, and legal experts to distinguish true from false illness claims. The rise of the modern welfare state during the 19th c. greatly accelerated anxieties over malingering, and the racialized, gendered, and classed nature of these concerns became socially and politically transparent. The final portion of the essay connects modern anxieties over malingering to present policy debates in the U.S. and argues that the stigma and disbelief so many people who seek public assistance endure is only explicable in context of these deeper historical and social structures.

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**Medicaid Waivers, Administrative
Authority, and the Shadow of
Malingering**

Nicole Huberfeld

From 2018 through 2020, HHS approved state Medicaid demonstration waivers to impose new eligibility conditions such as work requirements, connecting current “personal responsibility” rhetoric and historical suspicion of malingering. The Biden administration reversed course but advocated to the Supreme Court for expansive administrative discretion. This approach supports health equity now but could enable reemergence of restrictive health policies down the road.

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Pandemic “Disability Cons”

Doron Dorfman

Disability rights law has made issues of access and accommodations much more visible in American life. Yet a byproduct of the increased awareness of disability rights has been “fear of the disability con,” that is, the common apprehension that people are abusing the law to gain an unfair advantage. Many times, this moral panic creates an invisible, oft-overlooked barrier for people with disabilities who desire to utilize their rights. They either are refused the right altogether or give up asking for it in the first place because they are afraid of being accused of being fakers. This Article shows how fear of the disability con surfaced along the progression of the COVID-19 pandemic. It describes the schism between the ways in which people with disabilities generally fared under the pandemic and some popular perceptions regarding the “privileges” they allegedly received because of their protected legal status. Those so-called privileges include mask exemptions, vaccination priority, and permission to continue remote work. The Article concludes with lessons the COVID-19 pandemic experience can teach us about the nature and scope of the fear of the disability con.

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Beyond COVID-19: The State of Telehealth Equity and Best Practices in Underserved Populations

Hassanatu Blake, Jasmine Bihm, Raynna Nkwanyuo, and Taiwo A. Oshodi-Abikan

Telehealth is now a fundamental health approach to address health-related needs in a way that is consistent with the restrictions imposed by the coronavirus pandemic (COVID-19) globally. Since the declaration of the pandemic by the World Health Organization (WHO) in March 2020, there has been an overrepresentation of African American deaths, a greater demand of health services on disadvantaged health facilities in rural and urban US, and growing infection rates in some African countries with fragile health systems. With broad mobile utilization, telehealth provides accessibility to quality health care that addresses both COVID-19 and other health inequities. Future health interventions should focus on securely expanding telehealth offline and via social media to minimize health disparities in vulnerable populations during pandemics and beyond.

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Controlled Donation After Circulatory Determination of Death: A Scoping Review of Ethical Issues, Key Concepts and Arguments

Nicholas Murphy, Charles Weijer, Maxwell Smith, Jennifer Chandler, Erika Chamberlain, Teneille Gofton, and Marat Slessarev

Controlled donation after circulatory determination of death (cDCDD) is an important strategy for increasing the pool of eligible organ donors. Despite the growing use of cDCDD, there is disagreement in the bioethical literature regarding the ethical propriety of aspects of the practice. This review offers a neutral resource which maps the contours of this ethical terrain and signals to those working in this area the prominent locations where further nuance and discussion may be found. We identify key themes, concerns, concepts, and arguments and provide an overview of prominent debates.

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Robert D. Truog

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Shared Decision-Making and Prevention Recommendations: Evolution, Implications, and Challenges for Public Health

Juliana C. Lawrence and Jason L. Schwartz

Recent guidelines and recommendations from U.S. government prevention advisory groups endorsing shared clinical decision-making reflect an emerging trend among public health bodies. These efforts build on the support and demonstrated benefits of shared decision-making initially associated with clinical care. But when applied to prevention and public health, endorsements of shared clinical decision-making over traditional recommendations introduce numerous challenges and complexities. Shared clinical decision-making recommendations reframe traditional approaches to evidence-based prevention, affect insurance coverage and patient access to preventive services, and influence patient-provider discussions and subsequent patient decision-making. Recent shared clinical decision-making recommendations regarding vaccines provide a particularly illustrative setting through which to analyze the implications, opportunities, and challenges posed by this approach to prevention recommendations and to identify actions that could improve their implementation. For this relatively new class of shared clinical decision-making focused recommendations to be most effective, additional efforts would better inform providers, engage patients, facilitate equitable access, and, overall, enhance evidence-based approaches to prevention among public health policy-makers, expert advisory committees, providers, and patients alike.

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