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## **INTRODUCTION: "TOBACCO REGULATION: THE CONVERGENCE OF LAW, MEDICINE & PUBLIC HEALTH"**

### **A SYMPOSIUM IN CELEBRATION OF THE INAUGURATION OF THE WILLIAM MITCHELL COLLEGE OF LAW'S CENTER FOR HEALTH LAW & POLICY**

Barbara Colombo<sup>†</sup>

This symposium celebrates the inauguration of the Center for Health Law and Policy at William Mitchell College of Law. The center was established in 1998 because of the leadership role that Minnesota plays in contributing innovative health laws and policies,<sup>1</sup> as well as the significant and unique impact that health care has on Minnesota's economy.<sup>2</sup> The center also realizes Dean Harry Haynsworth's vision of making legal education about health care

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1. Minnesota was among the nation's leaders in enacting comprehensive health care reform legislation known as MinnesotaCare, transforming the manner in which Medicaid services are paid for and delivered, and enacting new laws and policies in response to the AIDS epidemic.

2. Employment in Minnesota's health care industry has increased by 31% since 1988, and the industry now employs about 10% of all Minnesota workers, or 227,889 people. Minnesota's health care industry consists of over 6,600 businesses including manufacturers of medical devices, insurance companies and service providers. With the average wage exceeding \$32,000, collectively the industry paid more than \$7.3 billion in wages in 1996, nearly 13% of total wages paid in Minnesota. Approximately 85% of employment in the health care industry is related to services. Employment in Minnesota's health and medical insurance establishments increased by more than 180% between 1988 and 1996, compared to a 49% increase nationally. Minnesota's 103 health and medical establishments employed 11,681 people in 1996, ranking eighth in the nation in overall employment. Minnesota ranks second in the nation with over 18,000 people employed in the manufacture of medical instruments and supplies. See News Release, *Minnesota's Health Care Industry Growing Steadily*, Minnesota Department of Trade and Economic Development (Mar. 24, 1998).

available to our entire community.<sup>3</sup>

The center has chosen an interdisciplinary approach in tackling new and emerging issues in health law and policy. This type of approach, which benefits from the wisdom of numerous disciplines including law, medicine, public health and health sciences, produces a far superior result both in terms of scope and breadth. We see daily reminders of the convergence of law and health—from the human genome project to cloning, from health care reform to acute illness and contaminated food. Each of these examples, as well as many more, give rise to a host of new challenges that will require a multi-disciplinary approach, drawing upon the insights of lawyers, physicians, and other health care professionals.

The goal of the Center for Health Law and Policy is to make legal education regarding emerging medical, health policy and law-related issues available to law students, attorneys, health care professionals and consumers. The center and its leadership are also dedicated to enhancing the availability of resources to those individuals who have reduced access to health-related information and assistance including children, the elderly, the poor, and the disabled.

To truly “inaugurate” the Center for Health Law & Policy, this symposium’s subject matter had to meet certain criteria and embody several specific characteristics. First, it was important that the symposium address an emerging health care issue, one rich with debate and diverse in opinion. Second, in view of the center’s interdisciplinary philosophy, the subject matter had to transcend professional boundaries, captivating the attention of a wide variety of individual disciplines. Finally, an ideal subject matter for the symposium would be one in which Minnesota played a unique leadership role. One might say timing is everything and, in this case, it clearly played a role in providing the topic for our inaugural event: *Tobacco Regulation: the Convergence of Law, Medicine, and Public Health*.

Tobacco regulation is one of the most controversial public health issues of our time. It has sparked intense debate about the sale and distribution of a product that when used legally has a profound impact on human health. Over the past several years, tobacco litigation has exposed an industry that until recently was es-

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3. The Center for Health Law and Policy is one of three operations initially comprising William Mitchell College of Law’s Centers for Law & Leadership (CLL). An affiliated entity of the college, the CLL also includes the Center for Conflict Management and the Center for Professional Programming.

entially immune from liability.

The "tobacco debate" historically centered around the appropriateness of more traditional public health strategies such as advertising restrictions, public education and awareness campaigns, taxation, regulation of retail establishments including random sting operations, and expanded Food and Drug Administration authority. The emergence of litigation as a public health strategy has dramatically intensified the tobacco debate, placing Minnesota squarely at its epicenter. Minnesota garnered national headlines for its trial with the tobacco industry and, in particular, for its unprecedented success in extracting over thirty-five million pages of formerly confidential industry documents, thereby unlocking the industry's most closely guarded secrets concerning marketing strategies, scientific data, and political lobbying strategies. The trial evoked strong opinion from all sides about the use or misuse of litigation as a public health strategy. As anti-tobacco industry sentiment grew stronger, public health practitioners applauded the efforts of Minnesota's Attorney General Hubert H. Humphrey, III and Blue Cross and Blue Shield of Minnesota for their efforts in finally bringing big tobacco to the negotiating table.

Irrespective of individual opinion concerning the merits of litigation as a public health strategy, the facts associated with morbidity and mortality and tobacco use are well documented. In Minnesota alone, seventeen percent (6,400 deaths) of all Minnesota deaths in 1995 were attributable to smoking.<sup>4</sup> Of the more than 2,000 people who died of lung cancer in Minnesota in 1995, more than 1,600 (eighty-one percent) can be attributed to smoking.<sup>5</sup> Since "smokers' deaths" are considered premature deaths, they represent the loss of nearly 69,000 potential years of life, or about eleven years lost for each person who died in 1995 from a smoking-attributable cause.<sup>6</sup>

While the human costs of tobacco use are noteworthy, economic costs attributable to smoking are equally dramatic. In Minnesota alone, health care costs for smoking-attributable diseases, including costs of hospitals, physicians and health care professionals, nursing homes, and medications, equaled \$513 million for

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4. See MINNESOTA DEP'T OF HEALTH, MINNESOTA ESTIMATES OF MORTALITY AND ECONOMIC COSTS DUE TO SMOKING, BASED ON 1995 DATA (Nov. 1996).

5. See *id.*

6. See *id.*

1995.<sup>7</sup> Moreover, some estimates place the income lost as a result of premature death or disability (including short-term work absences) attributable to smoking at \$766 million.<sup>8</sup>

This symposium examines key issues around tobacco regulation, including a historical account of the evolution of the tobacco industry. For the better part of this century, the tobacco industry was veiled in a coat of armor that protected it under all attacks, as well as an arsenal of weapons powerful enough to prevail on any battle field, whether in a court of law or on Capitol Hill. Through various presenters, the symposium chronicles the shift in power. It examines the pressures imposed upon the industry by the attorneys' general lawsuits, focusing on the Minnesota trial and settlement.

The Center for Health Law and Policy was fortunate in that a faculty rich in diversity contributed to the symposium, allowing for the most accurate depiction of a controversial issue and serving as an effective tool to inform our community. This was evident in the numerous professional disciplines that contributed including law, public health, medicine, health administration, and public policy. Diversity of opinion was evidenced by representation from the tobacco industry. In our pursuit of neutrality and balance, center leadership and *William Mitchell Law Review* editorial staff made numerous attempts to solicit the involvement of additional industry representatives. Those representatives chose not to respond to our invitation to participate in either the symposium or through the submission of articles for this publication. We hope they feel compelled to respond to the essays adapted from the symposium or the accompanying articles that follow the symposium materials.

All essays and articles are thoughtful and insightful. They reflect the highly controversial nature of this issue, as well as its political divisiveness. The essays also underscore the legitimate benefit derived from an interdisciplinary approach to issues of health law and policy. The Center for Health Law and Policy hopes that this symposium will stimulate ongoing discussion among attorneys, health care professionals, and state and federal lawmakers about the topic of tobacco regulation. We are proud to introduce the center through this symposium and look forward to pursuing our

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7. *See id.* This translates into \$1.35 for every pack of cigarettes sold in Minnesota or \$111 per Minnesota resident for the year. *See id.*

8. *See id.* This translates into \$2.01 for every pack of cigarettes sold in Minnesota or \$166 per Minnesota resident for the year. *See id.*

**mission of providing legal education on emerging health laws and policies to all members of our community.**

