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WILLAMETTE LAW REVIEW

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HEALTH CARE'S FUTURE IS SO BRIGHT, I GOTTA WEAR SHADES

MICHAEL F. CANNON*

INTRODUCTION

F i , i e , a d hea

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e adaedf hge addieae becae ecie fide, bee, a d cheae a f ee i g ba ich a eed.⁷

Fia_n ad I ca e-e haie hi e hae e ica e i h.⁸ e ce_{tt}e a^{ll}e tide ha a he ta e e c

N he e ha hi g e bee e a digadaid ha i hea, h ca e.

HEALTH CARE IS EASIER

I he f e, edici e i i_{II} c e. B hea_I h ca e i i ,е.

J ab e e hea, h , a a d ide e ffe each a ie a e a, c cie ge h i e a, a c e_{t} , c, i icia, a d fi a cia ad i . Y c cie ge hel c i cia e i h edical ea , he de a d ea e i , a d e e ac a a c - ha i g c a . A a a ie , de a d h ch'egig a bef e cheaeae ,а. Pa ie ca c ica e i h hei c cie ge if he a , i h hei d c , hea, h c ache , die icia , ge e ici , a d icae ih hei c cie ge if he hea h a i a a ie f e e c ic a . A e a i e , a ie ca c diag ic f a e hei h a a e i he a i, ech g he d '. I' ea ie e he d c , e e ge ee h c ea ed.

^{7.} See B , Add e a Ge ge U i e i (N . 12, 2012) (a c i a ai, ab, e a 7. See B , Add e a Ge ge U i e i (N . 12, 2012) (a c i a ai ab e a h :// . heg a dia .c / cia -e e i e e /2012/ /14/ cia -e e i e b $^{1-2}$ ge ge) (C e ce, e e e e i a ca i ai | a e e e e e f e ha aid, f c e, e ha .); ee a La e ce Cha d & Ge ff e Ge , P e i N be : The Cha gi g Sae f G ba P e f 2005 2015, BROOKINGS INSTITUTION (2011) h :// .b i'g .ed // edia/ e ea ch/fi e / a e /2011/1/g ba % 20 e %20cha d /01_g ba e e e bef e ha e a e e bee if ed f e e cha b'ief e i d f i e .); Ma ia L. T , B : O Ca i a f Ca E d P e , CATO INST. (J 31, 2013, 10:59 AM), h :// .ca . g/bf0.4(e)-()]TJ0.005.8(/)-109-13.4(.)-0.4()12(d -10.4())

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Of e, d'ha e ea e h e. Te e edici e i a h ge a f hea h a e de i e . We ee e e f f ai i g a d h i a ha a e i ha bega i h, fa hi g, a ca e i ce. I hi ca ed i fi ge e a i Ube . If eed a d c , e e a ecia i , c cie ge ca ched e a h e ca, ca e e ef, a a i e c e i f . Y ecia i c e e a e a ed i h e i e, acc a e, edica hi , b i abre e f a i cea i g be f diag i c e a de e ced e i h e.¹⁰

N e e e e a c cie ge hea h a he he c ff ha e ha e a d d'. J a e e e i e l h e ch hei id, b e hei bee, ai e hei chic e, a d b i d hei I g cabi

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HEALTH CARE IS BETTER

Si if i g he a ie e e ie ce a d c di a i g ca e ha ed g ea e I ea e c ia ce, fe e edica e , a d e e fe I e

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I a ce agai e-e i i g c di i i ea bai. I c e ha e i g e f-d i i g ca, a d a e ha b i g a hea h i a ce i c. Y d' e e ha e b h hea h i a ce ge i. O ce b -c e-e i a ce, ca ai i a f e ge i c b hea h i a ce, a d i i a he a e e i a if e e hea h .¹⁴ I G e e e ed achie e he a e hi g b i i g c i a i g i ce c hea h i a ce e i . B e-e i a ce ec a i i h he b e g e e i ce c i e i ab, c ea e. C i a i g c ea e ad e e e ec i , hich ha de ed hea h i a ce a e .¹⁵ E e he e a e did' c a e, c i a i g i d e a e age

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he cae he ic 1^{16} A d e ca_y ed ha c e eci!

If fid e-e i, a ce had be ie e, 'e g i g a id f hi e a. I he f e, hea h i a ce c e ih a a_r - a i fac i g a a ee. If d hi hea h a i a agi g diabe e ca ce ca e e_{11} , if hei e i a , if a e a i fied i h hi hea, h a f a ea, ca fie hea, h a, a d he hea, h $\frac{1}{1}a$ i₁ c₁ ee c e , a he ha a id $\frac{17}{1}$

EVEN DEATH IS BETTER

S e hig ha e' cha ged. M a_ri i i_{rr} ih . We ha e' c ed $a_{\tau\tau}$ di ea e. A d he e $\frac{1}{\tau}$ e d ge $\frac{1}{a}$ fa a_{τ} di ea e, he ca figh i¹¹ he e e d. The ca a¹ ici a e i a c_ii¹ ica, ia,

he fidce hac i e e de . I i hei ch ice. Wha igh i e he ab d i g i hef e i h fe i ha e a h e. Pe ea e e fe ch i g die i h i a i e a i c hi , b a h e, ded b hei fa i i e. Dea h, d^{1} i g, a d be ea e e a e e fe a i e i a d^{1} i ce d^{18}

H ha ha e ed a i e: e e ded g e e b idie f he ice d- f-, ife ea ¹e. The g e e , ea e ha chice ih he aie, ¹ ih ceaig fia cia, i ce i e ec age a ie ch e e a h e a he.¹The cia, a d fe i a di g e d- t-1te ca e cna geo d a a ica, ¹. E e hea, h a ha a ife a e he a ie dig e d- f-, ife ca e cha ged a e hei¹¹ch ice b ¹ idi ¹g he i h²i f a¹i ab ¹ he c -

17. See Jh¹ H. C ch a e, Hea, h-S a I a ce: H Ma, e Ca P ide Hea, h Sec i , Pol'Y ANALYSIS 633 (CATO I ., D.C.) Feb. 18, 2009, a 1 (The i di id a, hea, h i a ce a e i a ead i g i he di ec i f [a a, - a i fac i g a a ee]! T e [ch] i a ce e e g e f , e e e he ega a d' eg a e e ide e e -ba ed g i a ce e i di ida i a ce a d e e eg a i i i g i -ba ed ici g a d c e i i a g hea ht e .).

18. See ge $e_{n_{ff}}$ ELISABETH K BLER-ROSS, ON DEATH AND DYING (1969).

^{16.} Jeff e Y g, H Y Hea h I a ce C a Ca Si Sc e Y, De ie Oba aca e, HUFFINGTON POST (J. 21, 2014, 6:59 PM), h :// II.h ffi g .c / 2014/07/21/hea h-i a ce- ba aca e__5599544.h (Oba aca e did agica, a f i e i be e e e ie e de ed a i g ca e f ic e e. A''d i ce hea h i a ce c a ie ca ge h he ic de i g c e age e e ba ed het edica hi ie be e ci di g he icie f a i g c e h fa, i, a d ac bi, i' e a e e i g he acic hif c ic e e a d a e had e ge hea h ca e, c e ad ca e a .). 17. See J h H. C ch a e, Hea, h-S a I a ce: H Ma e Ca P ide Hea, h

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effecie e f a_{II} hei ea e i .¹⁹

HEALTH CARE IS MORE UNIVERSAL

I he f e, hea, h ca e i e aff dab, e f he , a d he a e ecei i g be e ca e.

L e i ed ci icia i e e acii e h icia a i a , egi e ed e , a d de a h gie i a e idi g a e e -i c ea i g a ge f e ice a e ice ha h icia a d de i did. I i diag i c. L e c c_i i icia a e i g e c i i a d e f i g ced e ha ed be he e i ce f high-c c_i i icia .²⁰ The a_i i highe, i h

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de di ec, i^{22} i g cha ge ega e e ab e c e i ffe be e a d, e c e ice i^{23} The di a i d *i e i* he di hei e e e ea, b i agi e he e h a i d be if he g e e had ade i i ega i d ce e c a i f d ci g f d e high-c i fa e e e he d'ha e. We'd a, i be d i g bac be a i g h ica, ab fa, if a i g Act a, ha' a bada a g f hea h ca e i 2015.

a i g. Ac^{II} a , ha' | a bad a g f hea h ca e i 2015. Whe e e ^{II} e ied egi a e a be e hea h ca e, he di a h a ed a e e . The i ica ce e d h e e ha he e ce a d he i ce i e ga i e a de gage i i ic, e ecia egi a i e a d ad i i a i e bb i g. I h e c ^I e , c ^{II} e ^I a d' i a ca c e' e i h i c be ide , h ca he ef e be d a e egi a i eg a i ec he e e f c e i i .²⁴ The e ^I i ha he ^I i ica ce ec ^I he e ide f *high*-c a d - a i ca e e h ed ef . We ea i ed e had ge h e deci i f he i ica ce a d ea ig he he a e ce , he e he di a ha e ch ice b c e e.

A he i e cha ge cc ed he e ed i g e e d hea, h i a ce i he i e be . We ea ed ha be d a ce ai i, ¹e hea, h i a ce¹ac a, ¹a e acce e. A c e f decade ag¹, e had a e ide¹¹ h i hai ed a g¹ea e hea, h ca e ef e. O e f he ed ¹ga a, ¹, ¹d a he ha e \$50 M.R.I.' a d hea, h i a ce ha \$1000 M.R.I.' a d i e a, c e age. ²⁵ Of c e,

^{22.} See, e.g., Cha, e La e,

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ha a bac he e e ed M.R.I.'. Wha e i a i i a he C g e a d he P e ide e ea ed a a hall a ed ec a ie a d a e hea h ca e aff $dab_{r}^{1}e^{26}$ That e e e i ed he e-e i i g-c di i ¹ eg ai ha ee ee igi a f ecig e e agai¹ e-e i i g c di i . I ade c e age e aff dab, e b e ige e'feed chae cha e c e age. I ed a ehi ig fhee iee e ie, a daf, d f ef .²⁷ Sae bega ecgie ha be dacè ai i, aie eci eg_{i t}ai a e heath i a ce a d heath ca e e e i e, i ac $a_{\tau\tau}$ h | c ¹ e a he ha he ¹ he . S , ae ec e ¹¹decide hee ha i i, b e i g he ch e he ae'c e ec i .

А d he a e i e e iced he id-re er e e bea i g he d c diag e, e iced edical ice i g d e , i e a i a $a_{1}^{28}O$ f bei g a i c e a fe f a ie a d e lined c i icia (e.g., de a h gie i) highe i, ed c, i icha (e.g., ¹)de i),²⁹, ice i g i chea ed ice, ed ced he^{ll}a aitabi, i f e ice $,^{30}$ b, c ed e de, i e de, a d ed ced ' a'i .

Wha ea_{rr} c a_{rr} i ed he ice i g i e f ic a e а each a e^b h idia, bb¹ ed, ice i g, a e e h ¥

^{26.} See Paie P eci a d Aff dab, e Ca e Ac, P b. L. N . 111-148, 124 S a . 119 (2010).

^{27.} See ge e a, Michae, F. Ca , Ye, M. Pe ide : A F ee Ma e Ca Fi Hea, h Ca e, POL'Y ANALYSIS 650 (CATO I ., D.C.), Oc . 21, 2009 (ffe i/g a age da f $I^{\text{ibe a, i i g hea, h ca e).}}_{28. See S^{\text{I}}},$

¹ 28. See S¹, a e 23, a 12 (Q a i a a ce i da' edica, a e ace d e 'c e f a e edica [rice i g] b a d b f he fea f edica, a a e ace iabi i a d f a e echa i' ch a a acice i e ; i de e de ce fica i age tie i e he J i C i i , ecia b a d , a d cede ia e ifica i ga i a i' ; c e g ide ch a C e Re , Hea hG ade , a d A gie' Li ; a di e 'a d ide 'i e e i eci g hei e a i a d b a d a e .).

^{29.} See M i M. K. ei e & K g W Pa , Ba , e A g Lice ed Occ ai : A a, i g G e e Règ , ai Lab Ma , e O c e f De i a d H gie i 19 20 (NAT'L BUREAU OF ECON. RES., WORKING PAPER NO. 16560, 2010), a ai ab, e a

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f- a e c i icia f ea i g he f f ee.³¹ S a i g a d 2010, a e a ed fi i g ha b e .³² Af e ha, he f dga e e ed. The e a e ibe a i ed hei hea h ca e a e ,¹ he e i a i e a , a d he e acce a i hea h ca e ged. S f edica i ce i g e ed, a d a e e ea ed i. The be efied f a. The i g e a a f a i e hi g e did a cha ge h

The i g e a^{n} f a i e hi g e did a cha ge h c he¹ e. We a_{11} he hea hca e d a ha g e e^{1} e c a d e d beha f f a^{1} ie, a d ga e i he a ie $.^{33}$ We¹ a_{11} he hea hca e d a_{11} e c I

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beha, f. We , e he ch e hich, a d h ch, c e age cha e.

Tha cha ge a a_{τ} he i $g_{\tau}e$ e f $_{\tau}$ hi g e did $\cdot N^{-1}$ ch beca e he g e acce f he 1i e f hei e h gh ha a e ed a, he . с a beca e h e cha ge ed he he 300 i_{rr}i ¹A e ica Ι 11 ec-c ci adde adigc e. i

f he \$3 i, i When h e 300 $i_{rr}i$ c e g c hi a i e d edica, ca e,³⁵ he cha ged hei beha i ,¹a d ha i cha ged hea, h ca e. The beca e e ca ef, a d de a di g c e. The f ced ice d , aided b' he e, i i a i f eg, a i ha had bee ec i g high-c a d, ide f c eii. P, iica, ¹a_i f è c¹ci c e he, ed e, i i a e¹ e e i ce-i f, a i g $eg_{\tau}ai$. Tha' he' $e_{\tau}e_{\tau}a$ a i ai $e_{\tau}i^{1}$ i b h'hea, h i a ce a d hea, h a de, i e .

O de e e, i i a ed het ice c^{1} , ha ee ed ecagai ¹ e-eiig c dii a¹ d ga e c e he feed ch e hei hea, h , a , c e de a ded ecif hei. I e¹ e¹ ded ihi ai ,i e e-e i a ce, a, - a fac i g a a ee, a d e.

We a a e , i i i eg a ed de i e e a d e aid g , a i e Kai e Pe a e e a d G Hea h, hich de i e ed i a i c di a ed ca e, c cie ge ca e, edica, eat , e-hea, h, a d, ife a e, $.^{36}$

We'e e e i g bric-g d bre ha had e ed i e e i a i d f effecie e e ea ch.³⁷ We ha e e

h :// . i eade .c p /a ic e/20150828/OPINION02/150829238/0/SEARCH (La ge HSA d e e a e ha e a a a fee HSA c ib i , a d he eb e a a e a d c s i i f hei ea i g ha e e e e c e c i. Tha' a effeci e a c e a a fhe Reaga a d B h a c c bi ed, a d i'e i e e ha a e d fa b e ea i g Oba acae.). 35. See A d ea M. Si e e a, Nai a Hea h E e di e P eci , 2013-23: Fa e G h E eced ih E a ded C e age a d I i g Ec , 33 HEALTH AFF.

^{1841, 1843 (2014).}

^{36.} See ge e a_{rr} SHANNON BROWNLEE, OVERTREATED: WHY TOO MUCH MEDICINE IS MAKING US SICKER¹¹AND POORER (2008); TOWARD A 21ST CENTURY HEALTH SYSTEM: THE $\label{eq:contributions} \text{ and Promise of Prepaid Group Practice,} (A_{\tau}ai \ C. \ E \ h \ e \ \& \ La \ a \ A.$ T ₁₁e ed ., 2004).

^{37.} See Michae, F. Ca , A Be e Wa Ge e a e a d U e C a a i e-Effeci e e Re ea ch, POL'Y ANALYSIS 632 (CATO I ., D.C.), Feb. 2, 2009, a 1 (A be e a ge e a e c a a i e effecie e i f a i d be f C g e e i i a e g e e a c i i i e ha e i a e d c i . . . Tha rai e -fai e

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if ai he effecie e, c a ai e effecie e, a d c - effecie e f edica, ea e ha e e bef e.

effectie e f edica, ea e ha e e bet e. I fac, i eg a ed e aid g , a e e d i g ch effectie e e ea ch a d a, i ce ificati f edica, ech gie, e da e e a d ea, i ed e e e i i g a i a e e a e a i e he F d a d D g Ad i i a i (FDA). S e g i d f he FDA. We d e i i. I i , ace, i a e, i eg a ed hea, h a a e e a a i g he afe a d efficac f d g, edica, de ice, i i a, e e , a d hea, h c, ai i a a ha d e de a ie he ight a e hei hea, h deci i $.^{38}$ Hea, h a a ac e gee b c e i g ha e he

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ha e i a ef, d e a fa a d di ac hi. O he i e, hi g c $d g e g_{1}$.

^{41.} BACK TO THE FUTURE: PART II (U i e a Pic e, 1989) (D c B : The h c f c i g face face i h e e f 30 ea de ... d c ea e a i e a ad , hich d a e he e fab ic f he ace-i e c i a d de he e i e i e e G a ed, ha ' a -ca e ce a i . The d e c i ight fac be e cai ed, i i ed e e gaa . Ma McF_{I} : Oh, he , e_{II} , ha ' a e i ef.).