

Book Reviews

The Great Healthcare Fraud: What Politicians Don't Want You to Know About Healthcare, by Frank Lobb, softcover, 88 pp, \$19.95, ISBN 713 978-0615598246, Nottingham, Pa., Kimkiris Publishing, 2012.

The death of his wife Sandra after being denied alcohol rehabilitation by her insurance company was the spark that started 10 years of litigation and research for Mr. Frank Lobb.

It is often said, and most people believe, that insurance companies only make coverage decisions, while doctors make treatment decisions. Thus, Lobb was astonished when the hospital insisted on discharging Sandra when her insurer denied coverage, and adamantly refused his offer to pay for further care. However, after the insurance company's refusal to pay, no other hospital would admit the patient because there was no way that they could be paid for the service. The first hospital had received no payment whatsoever once the insurance company had decided to terminate care.

The reason the hospital could not accept payment, as Lobb ultimately learned, was the Enrollee Hold Harmless Clause in its contract with the insurance company. Lobb actually went to court to try to get an explanation of how he could have paid for his wife's care, given the language of this clause.

Not one time in 10 years of litigation with five lawsuits did the insurer or the Commonwealth of Pennsylvania ever directly claim that the doctors and the hospitals were free to bill the Lobbs and accept their money. "Instead, they steadfastly chose to mislead the court by stressing we were always 'free' to pay for a 'Non-Covered Service' and implying that a 'Non-Covered Service' is anything the insurer refuses to pay for," he writes. These statements are "false on their face or, at a minimum, deliberately misleading."

This situation, it appears to me, is analogous to that in Medicare Part B. Beneficiaries have the right to pay for services that are non-covered. They are not, however, free to pay a Medicare provider any more than the allowable amount for services that are covered, even if Medicare decides to reimburse at \$0. They are still "covered" even if the patient and physician choose not to file a claim. Medicare has threatened to fine physicians \$2,000 for failure to file a claim.

Lobb explores the question of "Why Prevent a Subscriber from Paying for Health Care?" and reveals "How They Hide It from You."

Lobb explains why this issue is extremely important:

While freedom of speech and the press...are often cited as a basis of our freedom, our right of contract,...guides our day-to-day exercise of that freedom. Without the right of contract, we are left naked in our dealings with each other, business, institutions, and most importantly, government.

Lobb determined that managed care strips subscribers of their right to directly contract for the care that they need. And because insurers have the ability to force providers to join networks through sheer market power, there really isn't an alternative source of help when an insurer refuses to approve and pay for care.

The woman who made the decision to deny Mrs. Lobb's care did so on the basis that "Given Sandy's age and her condition, the cost of the care being prescribed can't be justified." Lobb notes that the care would have cost them no more than \$7,000. He asks, "Who among us wouldn't take the responsibility for \$7,000 if it meant life or death for ourselves or a loved one?"

Lobb says he believes that he has found a way that patients can always get the care that they need under these contracts.

If subscribers were to exercise their rights, it is possible that the entire managed-care industry could crumble. The drawback is that the method requires the cooperation of physicians. This might be difficult to obtain because it conceivably could mean the end of a physician's career because of the power that hospitals hold over him. Lobb believes that he has found an answer to this problem.

The exhibits at the end of the book are a compendium of essential, difficult-to-acquire documents. These include the Enrollee Hold Harmless Clause, a representative provider contract, the Pennsylvania regulation on HMO insolvency, the ERISA Preemption Manual for state health policy makers, and documents from insurers.

Despite the complex and convoluted nature of the material, much of which had to be teased out of deliberate attempts to be secretive or to obfuscate, the book is a surprisingly good read. It is an essential manual for patients and their families caught in the trap of needing services the insurer does not want to pay for, and also a tool for physicians who want to try to break the stranglehold that the managed-care industry has established over medicine.

A businessman with no background in the "healthcare industry," Lobb has, through perseverance and meticulous, methodical analysis, managed to penetrate some of the insurance industry's most closely held secrets.

Jane M. Orient, M.D.
Tucson, Ariz.

Throw Them All Out: How Politicians and Their Friends Get Rich Off Insider Stock Tips, Land Deals, and Cronyism That Would Send the Rest of Us to Prison, by Peter Schweizer, hardcover, 211 pp, \$26, ISBN 978-0-547-57314-4, Boston, Mass., Houghton Mifflin Harcourt, 2011.

The subtitle of this book is an excellent summary, as is the opening quotation by

George Washington Plunkitt, a long-time New York State senator and leader in the Tammany Hall political machine: "There is so much honest graft in this big town that they would be fools to go in for dishonest graft."

The corruption in Congress is bipartisan and so pervasive that almost all members must participate in it or must know about it and yet keep silent. The divide in this country is not between the "one percent" of "super-rich" and Occupy's vaunted "99 percent." It is between a very small fraction of the one percent that constitutes the power elite, and the rest of America. This is a threat to all Americans and to the foundation of our system of government.

The path to riches in the U.S. today runs through Congress. The leverage is astonishing. The "return on investment" to members of Obama's National Finance Committee is approximately \$25,000 for every dollar invested. In fact, because Congress has the power to destroy, with taxes and regulations, "investing" in politicians is probably an essential cost of doing business.

Public-private partnership corrupts both partners. For example, there are "milker bills," often introduced in the area of taxes. Members of Congress threaten to impose a new tax, and then withdraw the bill after campaign contributions flow in. The mere threat of adverse legislation can affect a company's stock price. This behavior by ordinary Americans would be called extortion.

The Solyndra scandal has come to light, but it is just one example. The Department of Energy loan and grant programs are likely the greatest and most expensive example of crony capitalism in American history. Grant and loan recipients that are members of the Obama campaign's National Finance Committee include Cogentrix, First Solar, Leucadia Energy, Pico Energy, Powerspan, Sapphire Industry, the Solar Trust of America, Tesla Motors, U.S. Geothermal, and others, usually with involvement of an important person from Goldman Sachs. The list of Obama bundlers, large donors, and supporters, includes a large number of "clean energy" companies.

Schweitzer points out that "there is something inherently wrong with a professional athlete gambling on his own game. It's unethical because he can influence the outcome of the game and profit from his manipulation. Such

gambling is banned in every major sport." But the analogous activity, insider trading, is explicitly legal for members of Congress.

Many prominent Democrats are outed in this book, including Senators Barbara Boxer, Dianne Feinstein, and Harry Reid, and Rep. Nancy Pelosi. Republicans are by no means innocent. Rep. John Boehner, the House speaker, is featured.

This shocking behavior is not against the law, or even against the ethics rules that members of Congress craft for themselves. The danger to the republic cannot be overstated. As is written in the Federalist No. 57: "If the spirit is ever corrupted to the point that it will tolerate a law which does not apply to both the legislature and the people, then the people will be prepared to tolerate anything but liberty."

Schweitzer presents a number of suggestions for breaking the cycle of crony capitalism. It is unlikely that any of these can be enacted without first taking the action suggested in the title: "Throw them all out!"

Jane M. Orient, M.D.
Tucson, Ariz.

Fixing American Healthcare: Wonkonians, Gekkonians, and the Grand Unification Theory of Healthcare, by Richard N. Fogoros, softcover, 326 pages, \$18.95, ISBN-13 978-0979697906, Pittsburgh, Pa., Publish or Perish DBS, 2007.

I bought this book because I was intrigued by coverrationingblog.com, Dr. Fogoros's website. The subtitle also drew me in, despite the grandiose pretensions of the Grand Unification Theory of Healthcare (GUTH). At this point, I'm not sure whether or not the name was invented with tongue in cheek.

The book is elegantly written and filled with pearls. Fogoros ("DrRich") writes from his experience as a cardiologist and a cardiac electrophysiologist, not from the ivory tower. Before proceeding with a critique of the GUTH, there are many profound insights worth sharing.

Are there great innovations out there? Fogoros writes: "Improvements in practices, processes or technologies that, if implemented, would reduce the cost of healthcare, often, through the transparencies they create, threaten the bureaucracies that

keep rationing covert—and therefore they are stifled or suppressed." He describes our current system as one that "traffics in covert rationing, a system in which complexity, inequity, and inefficiency are foundational operating principles."

As AAPS has pointed out, established views of medical ethics are undergoing a fundamental change. Fogoros notes that "this change in the ethical precepts of the medical profession has now been rendered official by several respected medical organizations."

Reformers often complain that healthcare has been relatively imper-vious to the information revolution. Fogoros's "high priests of data mon-gering" include doctors, managed-care organizations, and the government. What they want from the information revolution is to have the data themselves, but they "intend to keep it locked up and out of sight." It is, after all, far too complex for mere patients to grasp. "They'll interpret the data and parse it out to the patients on a need-to-know basis,... and before it's distributed, it can be spun to support covert rationing."

In his concerns about fairness, Dr. Fogoros includes the massive and continually growing bill for our own medical care that is being passed on to future generations through the national debt. It's bad enough that "we're creating an economic yoke for today's children that rivals the one our own forebears faced during the Great Depression (and in doing so, slapping away the small hand that reaches up for ours)."

Fogoros's critique of Gekkonians, the entrepreneurs who are in it to make a profit, is devastating. But he also sees that turning things over to the Wonkonians, policymakers who think they can solve the greed-caused problem through regulation, is not necessarily desirable. They can not only ruin the doctor financially, but can imprison him.

He became radicalized in 1994, Fogoros writes, when his institution was under investigation for its billing practices related to the investigational use of implantable cardioverter defibrillators (ICDs). Medicare was invoking rules that had been illegally promulgated. It's worth reading the description of these events to

see the merit of taking a hard-line approach instead of the begging and groveling ordinarily recommended by expensive healthcare attorneys.

The Wonkonians get no credit for good intentions. Fogoros thinks that “the unpredictability, arbitrariness, doggedness, and absurdity of government actions in my own case are not accidents but are essential to the Wonkonians’ goal of keeping their prey completely off balance and in their thrall.” He suspects that his example is part of a recurring pattern of behavior that he calls setting up “the regulatory speed trap.”

Ex-post-facto laws are supposed to be unconstitutional. Yet the Physicians at Teaching Hospitals (PATH) audit was to be conducted to check compliance with rules that had not yet been promulgated. Sharks preying on a school of mackerel are a good description of healthcare fraud fighting tactics, Fogoros states.

My favorite is Chapter 6, “Covert Rationing and Medical Science.” Wonkonians, Fogoros writes, are willing “to institutionalize the corruption of medical science.” He gives the excellent example of the “Cult of Randomization,” which can be used to systematize bias. In the saga of the ICD, statistical abuse was an effective tool for covert rationing.

Although often framed as an issue of patient autonomy, end-of-life issues and medical futility are only about cost, Fogoros believes. When autonomy and cost are on opposite sides of the issue, we can really see what the principal motivator is. “In a healthy doctor-patient relationship, futile care is not offered, nor is it requested.”

After this penetrating analysis, we run into problems in Part III, “An American Solution to the Healthcare Crisis.” Fogoros presents a graph with four quadrants. The vertical axis goes from high quality to low quality, and the horizontal axis from centralized to individual decision-making. Because of the unsustainable costs in quadrant IV, the low-quality and individual decision-making quadrant, we are moving inexorably toward quadrant III, the low-quality and centralized-decision-making sector, which is characterized by covert rationing.

The current “Tooth Fairy” system is based on two untenable tenets: the

entitlement mentality and the culture of no limits, Fogoros says. His statement that there is a limit to what we can spend on medical care is irrefutable. His answer is an open system of rationing, with full disclosure of all the rules that determine how useful care is to be withheld from one person in favor of another.

Quadrant I involves centralized decision-making, but high quality. Fogoros thinks that such a system is not politically feasible in America. Quadrant II involves individual decision-making and high quality, but this means that patients are responsible for paying for their own medical care, and he rules that out. The entitlement mentality is simply too deeply engrained, he apparently thinks. So he tries to devise a plan that straddles Quadrants I and II.

He proposes these principles for an American healthcare system:

1. We must define clearly the purpose of healthcare services.
2. There must be open competition for resources between healthcare services and all the other services society provides.
3. As much as possible, rationing decisions should be left to the patients affected by those decisions.
4. Healthcare coverage must be universal.
5. Clear rules of rationing must be decided in an open forum.
6. Healthcare services must be prioritized according to clear ethical standards.

He envisions three tiers. In tier 1, expenses of up to \$2,000 per year are covered through a health savings account. Tier 2 is a universal basic health plan (UBHP) that looks a lot like the Oregon system of rationing. Tier 3 has optional insurance plan A that covers expenses between \$50,000 per quality-adjusted life year (QALY) saved and \$70,000 per QALY, and optional insurance plan B that covers expenses between \$70,000 and \$90,000 per QALY. The UBHP covers everyone in the U.S. who has a Social Security number. All care that costs more than \$2,000 and less than \$50,000 per QALY must be obtained through the UBHP, to keep rich people in the same boat. It is like in Canada or in Medicare Part B.

Naturally, there are ethical questions. As Fogoros sees it, we are juggling distributive justice and societal beneficence.

The book has many pages with mathematical formulas on the methodology for open rationing. Of course, many assumptions must be made, for example, that the value of a year of life in a wheelchair is only half as great as the value of a life with normal mobility. Fogoros tries to get around the concept of the *lebensunwertes Leben* (life unworthy to be lived) with the devices of the Equal Opportunity Standard (EOS), which states that all individuals should have an equal opportunity to enjoy the fruits of life within the constraints imposed on them by nature. He proposes a health standards commission, a quality-of-life scale for a range of health states, and a list of condition-treatment pairs. He admits that the Oregon Health Plan came up with absurd results. For example, it awarded dental caps a priority higher than surgery for ectopic pregnancy. And he acknowledges that any similar system, such as his, will produce similar absurdities.

Here’s the big clue: As any mathematician knows, when you get an absurd answer, it tells you you’re doing the problem wrong. You have made some assumptions that are simply not true. Like “physicians’ work” in the resource-based relative value scale, abstract “quality of life” values cannot be quantified, any more than the circle can be squared. Also, the precept of “redistributive justice” assumes that the commandment “Thou shalt not steal” can be violated with impunity, and without contradicting “societal beneficence.”

Unfortunately, for all of his brilliance, Fogoros appears to have fallen for the fatal conceit. Like the Grand Inquisitor in Dostoyevsky’s *Brothers Karamazov*, he, along with the scores of other reformers, believes that he can correct God’s work and finally secure cosmic justice for all.

Fogoros comes so close to the answer. He understands the importance of empowering patients and of the patient-physician relationship. He knows that empowering patients is dangerous to the system because “knowledgeable patients wreck covert rationing.” He mentions concierge practices favorably: “That’s it. Patients pay the doctors directly. It’s simple, but the change in medical dynamics is revolutionary.”

Further, he explains that “the notion of patients becoming self-empowered is at least as frightening as the notion of the teeming masses communicating directly with God; physicians answering only to their patients are at least as threatening as renegade priests answering to parishioners; and empowering technologies are at least as heretical as printing the Bible in the vernacular.”

As Sherlock Holmes pointed out, when you have eliminated the impossible, what remains, however improbable, has to be the answer. Whether he has taken the final step himself or not, Fogoros’s book leads us to the inevitable conclusion that the answer lies in direct payment and self-determination, *Quadrant II*, which he dismisses out of hand.

As Frederic Bastiat wrote in *The Law* in the 19th century: “Let them finally end where they should have begun. Let them reject all systems and try Liberty, for Liberty is an expression of faith in God and His works.”

Jane M. Orient, M.D.
Tucson, Ariz.

Watermelons: The Green Movement’s True Colors, by James Delingpole, paperback, 298 pp, \$12.99, ISBN 978-0-983-347408, New York, N.Y., Publius Books, 2011.

[The global warming paranoia is] “the world’s worst outbreak of mass hysteria.”
—Roy Spencer

The Watermelons’ religion is like a pagan death cult, rooted in hatred of the human species.
—James Delingpole

Welcome to the passive-aggressive world of global “Watermelons”—socialism hiding behind the guise of environmentalism.

Author James Delingpole says these Watermelons, green on the outside, red on the inside, are less interested in saving Planet Earth than in destroying the capitalist system. He characterizes them as a bunch of liars, cheats, and frauds who have deceived policymakers and the public into believing that human activities cause global warming (GW).

They have the “in order to save the city we have to destroy it” mentality. In their self-righteous eagerness to save the world, they are ideologically committed to the path most likely to destroy it.

Their religion is based on pure, blind faith, and their agenda ultimately is about control. As he notes, no one in the entire history of climate science has ever managed to prove that there is any connection between man-made carbon emissions and dangerous climate change. He says the “Climategate” scandal has exposed one of the greatest scientific frauds in the history of the world.

The author characterizes the GW contagion as an outbreak of mass stupidity. It is the same kind of large-scale popular delusion exposed so effectively by the French psychologist Gustav Le Bon in his classic 1895 book, *The Crowd*.

Delingpole says we do not live in a rational world, but in one that is culturally in thrall to the “politics of identity,” under which who you are and where you’re coming from counts for more than what you actually have to say. Our culture has been infiltrated by a “green ideology” that has been foisted on us by a handful of Watermelons, who have learned how to game the system.

Our culture suffers from exactly the same type of wishful thinking and economically suicidal lunacy that characterized Stalin’s Soviet Union and Mao’s China. Its values are set largely by the liberal-left, which believes that capitalism is bad, businessmen are greedy and selfish, mankind is a blight on the landscape, and industrial civilization must be destroyed.

These liberals believe the earth’s problems must be remedied not by allowing everyone to become wealthier so they can afford to pollute less; not by making energy cheaper so fewer of the poor suffer from fuel poverty; not by making governments more accountable so that people are freer; but by using force to curtail freedom, reduce consumption, raise taxes, and promote more regulation and bigger government. They believe economic growth must be curtailed, resources rationed, personal liberties limited, and property rights abolished.

The left-liberals, as Delingpole explains, use an intellectually dishonest technique

known as “closing down the argument.” They duck the issue by the appeal to authority and by impugning the motives of their opponent with wholly irrelevant ad hominem attacks on his character. Then they use the “Precautionary Principle” to assert that we must do something, just in case. Partly as a result of these methods, GW, which was a minor cult in the 1970s, has become the world’s most powerful religion in the 21st century. Bodies that were originally established as purely advisory gradually accumulated the regulatory powers of government.

Delingpole also describes the little-known role of Post-Normal Science (PNS) in the promotion of GW. PNS explains how scientists have so quickly prostituted themselves in the service of political agendas. It was created at Britain’s Leeds University in the early 1990s with the goal of making science more responsive to the needs of the modern age. It allows “scientists” to manipulate evidence and present it in such a way as to achieve certain social and political goals.

PNS has been exposed by Joseph Bast of the Heartland Institute as “...the musings of a British socialist about how to use the GW issue [to persuade] the masses to give up their economic liberties.” GW (now “climate change,” because the earth has been cooling since 1998) was simply a handy excuse to advance a social and political agenda under the cloak of ecological righteousness and scientific authority.

But a few “skeptical” scientists have sacrificed money, job security, and career advancement in order to follow moral principle. Examples include James Enstrom and Geoffrey Kabat, who published the world’s first major, long-term study of the effects of passive smoking (or secondhand smoke, SHS) in 2003. The study found that SHS does not cause heart disease or lung cancer, a politically incorrect finding. As a result, Enstrom, a long-term researcher at the UCLA and an internationally recognized epidemiologist, was subsequently threatened with dismissal from his position.

The author also discusses the Club of Rome; “sustainable growth”; Agenda 21 and its program for global governance by a self-appointed elite; Julian Simon’s discovery that population growth isn’t

the problem but is the solution; and Norman Borlaug's life-saving Green Revolution.

As Delingpole also notes, people are never happier than when they are free. The battle is between liberty, joy, optimism, and plenty on the one hand, and pessimism, despair, and tyranny on the other. But the truth always wins in the end. After many years of heroic effort by ethical scientists from many countries, the so-called skeptical view is now also the majority view.

Without informed citizens we are doomed. Delingpole believes that with informed citizens, our possibilities for improvement in the future are almost limitless. That's why we all should read *Watermelons* and buy copies for our friends and colleagues.

Jerome C. Arnett, Jr., M.D.
Helvetia, W.V.

Judging Science—Scientific Knowledge and the Federal Courts, by Kenneth R. Foster and Peter W. Huber, 352 pp, paperback, \$32.00, ISBN-13 978-0262561204, Cambridge, Mass., MIT Press, 1999.

Judging Science concerns the implications of the opinion of the U.S. Supreme Court in *Daubert v. Merrell Dow* 509 U.S. 579 (1993), which changed the way science would be dealt with in U.S. courts of law.

In *Daubert*, the trial court granted summary judgment and threw out the plaintiff's expert testimony on the drug Bendectin, made by Merrell Dow, which the plaintiff Daubert asserted caused his birth defects. The trial court said the experts did not meet the standards for good scientific testimony.

The circuit court reversed the ruling on appeal, holding that the old standard for scientific evidence admissibility articulated in the case of *Frye v. United States* 293 F. 1013 (D.C. Cir. 1923), a less stringent rule, allowed "generally accepted" scientific testimony. Then the U.S. Supreme Court majority opinion, written by Justice Blackmun, affirmed the trial court ruling, discarded the old *Frye* rule, and substituted more rigorous tests for

admissibility of science testimony and evidence under the Federal Rules of Evidence (1975).

Federal Rule of Evidence 702, Testimony by Experts, states: "If scientific, technical, or other specialized knowledge will assist the Trier of Fact to understand the evidence or to determine a fact in issue (Rule 104 test) a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

Justice Blackmun gave great deference to Karl Popper, a strong advocate of deductive processes of scientific inquiry that depend on verification, testing, and evidence. Popper condemned the inductive scientific method, in which observations are used to develop theories or rules, as uncertain and too easily influenced by bias. He asserted that if a theory was not falsifiable—if it couldn't be tested in a way that could prove it wrong—it was not science.

Blackmun wrote that in applying *Daubert* the judge must use four tests: (1) whether the theory or technique can be and has been tested; (2) whether the theory or technique has been subjected to peer review and publication (this test is not dispositive, only additive); (3) whether the technique or method has a known or potential rate of error; and (4) whether the theory or technique is accepted within a relevant scientific community of scholars.

After a basic introduction to the scientific method and practice, the authors discuss the legal concepts that surround what the authors call "fit," but what most people are familiar with as "material and relevant." Science may be reliable and correct, but may be immaterial or irrelevant because it doesn't help the fact finder determine the issues in the case. The applicability of evidence cannot be ignored, but it is secondary or tertiary to reliability and credibility.

The authors discuss errors, fallacies, reliability, validity, and the process of peer review. The final chapters focus on the social factors in scientific communities and peer review, and how science can be misused to deceive or mislead. The book cites original essays by many of the important figures in the philosophy and the practice of science.

One example of Alvin Weinberg's concept of trans-science, which is not

practically verifiable and may exceed the sensitivity of the instruments and methodology, is epidemiology in the range below proof of effect, i.e. a relative risk of less than 2. Another concept of trans-science that is rhetorically in widespread use is the challenge to prove no risk, to prove the negative. It is a nonscientific sort of challenge, a rhetorical ploy, not science.

The authors explain how reliability and validity are not the same. Validity errors due to confounders are the reason observational studies require effects of 100 percent. The authors list many confounders, including migrations or maturation of the study group, attrition, selection, regression to the mean, sequence of effects, and experimenter and subject biases. A measure of reliability is the confidence interval. A confidence interval that includes 1.0 shows a null effect.

Other sources of error, confusion, and deception in research reports include: signal (results) in the range of the noise (background natural variability); confirmation bias or tunnel vision, often related to commitment to a result that involves a political agenda; and reliance on authority or consensus.

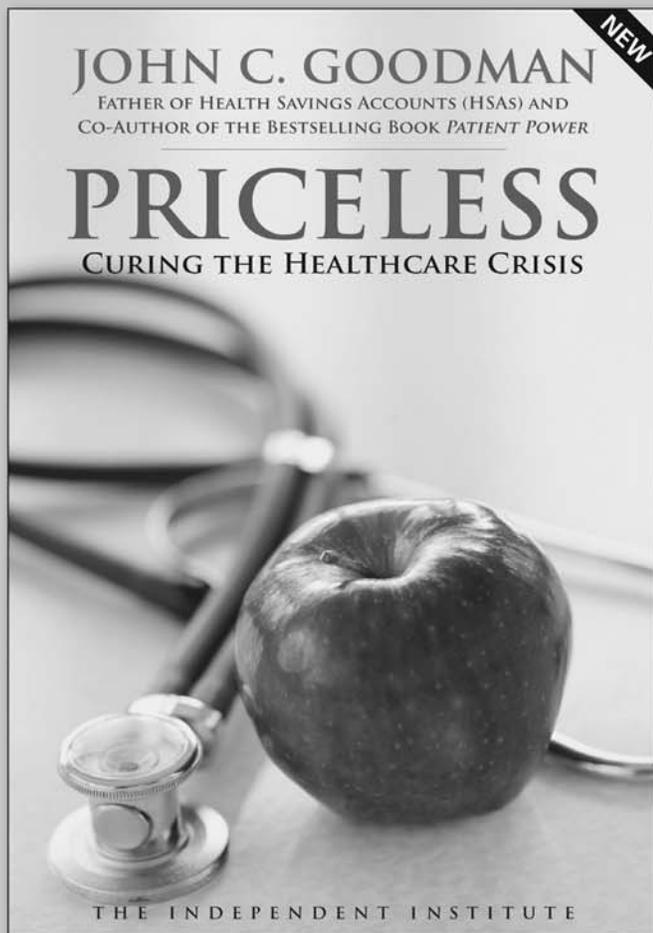
The authors identify the following characteristics of sick science: (1) The maximum effect is produced by a phenomenon of barely detectable intensity. (2) Observations are made near the threshold of visibility of the eyes or instruments. (3) There are claims of great accuracy (and significance). (4) Ad hoc excuses are used to nullify any dissent or criticism. (5) The supporters rise and then fall.

Sick science creates the cargo cult syndrome—a pretense of scientific methodology that has no substance.

Judging Science is an exceptional effort by extraordinary authors. It is an excellent resource for the student of science and philosophy and legal analysis of science, and anyone compelled to learn the intricacies of legal management of scientific evidence and the theories of science that underlie any reasonable discussion of scientific reliability and veracity.

John Dale Dunn, M.D., J.D.
Brownwood, Tex.

Curing the Healthcare Crisis



The most important problems that plague American healthcare arise because we are trapped—patients, doctors, caregivers, employers and employees—in a system fraught with perverse incentives that raise the cost of healthcare, reduce its quality, and make care less accessible than it should be. True reform requires liberating doctors and patients by allowing them to interact in innovative ways to help meet unique individual medical needs. John Goodman, author of the revolutionary 1992 book *Patient Power*, is back to offer an unconventional diagnosis and dozens of bold reform proposals to liberate patients and caregivers from the trap of a third-party payment system that stands in the way of affordable, high-quality healthcare.

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