

LAW & HEALTH CARE

N E W S L E T T E R
Volume XIII Number 2

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FOCUS ON...

HEALTH LAW AND FAMILY LAW

The field of health law is a big tent, encompassing numerous areas of law — torts, contracts, property, criminal law, tax law, antitrust and administrative law, to name just a few. An area of increasing overlap is family law. Health law has long touched on family law issues in those cases where parents must make difficult medical treatment decisions for their children. These decisions include whether to treat severely disabled newborns, whether one child can be used to provide an organ to a sibling, as well as whether to treat an adolescent for cancer when the treatment has a very low probability of success but would significantly improve the child's quality of life. The increasing use of children in drug testing and other clinical trials has sparked renewed concern about the limits of parental decision-making for children. Beginning with Jesse Gelsinger's death just days after his 18th birthday and culminating in the controversial decision in the Kennedy

Krieger lead paint abatement study, a white hot spotlight has turned on the propriety of enrolling children in research studies.

Over the past decade, the common ground between health law and family law has widened, largely as a result of developments in new reproductive technologies. Assisted reproduction technologies like surrogacy, egg and sperm donation, in vitro fertilization, and more recently cloning, raise novel legal and ethical issues for individuals, couples and families about medical decision-making. For instance, recent studies suggest that major birth defects occur in significantly more children conceived through assisted reproduction than occur with naturally conceived infants, although the industry remains largely unregulated. Should parents be allowed to impose such risks on the resulting child? Should surrogacy be available to those who are able but unwilling to have children or

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FROM THE DIRECTOR

The field of health law is broad and overlaps with many other areas of law. In this issue of the L&HCP Newsletter, we highlight some of the exciting work being done by our faculty, students and alumni at the intersection of health law and family law. In addition, we bring you up to date on new health law courses being offered this semester, the many health law conferences the L&HCP has sponsored this year, as well as the activities of the Student Health Law Organization.

Diane Hoffmann, JD, MS
Director

**Law & Health Care
Newsletter**

is published by the
Law & Health Care Program
at the

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500 West Baltimore Street
Baltimore, MD 21201

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There are a number of law school faculty
who contribute to the diversity of the Law
& Health Care Program through their
teaching and scholarship. We share some
of these faculty's selected publications,
presentations, and appointments in
L&HCP Faculty Notes.

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Focus on ...Health Law & Family Law
Cont. from p. 1

should it be accessible only to the infertile? Reacting to this and other evidence of risk, the President's Council on Bioethics asked industry representatives some piercing and sometimes uncomfortable questions at its hearings in 2003 about the nature of the industry's informed consent for these procedures.¹

The unique status of children in the legal system is a blossoming topic of concern for health law academics and their family law colleagues. The capacity of children to appreciate the implications of certain medical decisions, like abortion, is an age-old subject in health law that is now being revisited in light of our increasing knowledge of child development. Scholars question absolute lines drawn by society about when children can make their own decisions and whether the age of consent for one purpose makes sense in light of others. For example, in most states a child between 14 and 16 cannot consent to having sex with an adult for purposes of statutory rape laws, but that same child can consent to an abortion.

A child's capacity to appreciate the implications of her conduct matters greatly in another area, the burgeoning epidemic of violence perpetrated by children. An examination of how children process information is crucial for deciding whether juveniles should be held responsible for their crimes as adults. It is also crucial to evaluating whether children will comprehend "get tough" policies that treat them as adults or if instead we should rely on other means for decreasing juvenile violence. The evaluation of a child's mental health also matters in deciding the appropriate penalty for a child's violence. A growing number of jurisdictions, concerned about the emergence of young super-predators, now assess whether a juvenile offender is a psychopath. This determination, in turn, forms the basis of a number of important prosecutorial decisions. Many social service workers regard "juvenile psychopaths" as untreatable given currently available pharmacological

interventions, while other medical professionals question the validity of any diagnosis of psychopathy in children, arguing that this flawed diagnosis could lead society to "write off" lots of juveniles.

The overlap between family law and health law has not escaped the notice of health care regulatory agencies. Health care regulators from the CDC to NIH are developing a public health approach to improving the lives of children and families. CDC's early work on violence as a public health problem in the 1980s focused initially on child deaths. Because injuries are the leading cause of death for persons younger than 35 in the United States, CDC's violence prevention work now extends to youth violence, family and intimate partner violence, sexual assault, and suicide prevention.

This public health lens can extend into issues that would seem at first quite removed from health law. The role of the child welfare system in dealing with drug dependent pregnant women and whether foster care placements should restrict parental smoking are just two examples of this. These issues and others at the intersection of family and health law have been the subject of study, teaching and scholarship of several faculty members at the University of Maryland School of Law. This issue of the L&HCP Newsletter includes a series of articles about these faculty initiatives, including the work of Professor Deborah Weimer in the Grandparent Families Clinic (page 4), Ellen Weber on whether substance abuse by pregnant women should be treated as an issue of child abuse (page 6), Professor Kathleen Dachille on parental smoking as a child custody issue (page 5), and Professor Robin Wilson on child violence as a public health issue (page 3).

Note

¹See "Reproduction and Responsibility: The Regulation of New Biotechnologies," at http://www.bioethics.gov/topics/biotech_index.html.

FACULTY WORKING AT THE INTERSECTION OF HEALTH LAW AND FAMILY LAW

PROFESSOR ROBIN WILSON PUBLISHES BOOK ON CHILD VIOLENCE

Professor Robin Fretwell Wilson recently published her first book, a volume entitled *HANDBOOK OF CHILDREN, CULTURE, AND VIOLENCE* (Sage Publications 2006) co-edited with Nancy Dowd, a law professor at the University of Florida College of Law, and Dorothy Singer, a senior research scientist at Yale University.¹

Violence, and its effect on children, is a growing public health issue with unimaginable future consequences for our society. The statistics speak for themselves. In a single day, nine children will be victims of homicide; 4,000 children will be arrested; 8,000 children will be abused or neglected; and over 17,000 children will be suspended from school. Children are twice as likely as adults to suffer violent crimes, an elevated risk that has remained consistent even as overall crime rates have dropped. Children and adolescents comprise 75% of the victims of sex offenses reported to the police. Perpetrators of violent crimes against children include family members, neighbors, friends, and, increasingly, other children.

The effects on children of violence and what to do about it have been at the center of public and political discourse in recent years. This is evident in debates over censoring pornography on the Internet—which the U.S. Senate considered earlier this year²—and in debates over placing V-chips in every television, and how best to avert the next Columbine before it happens.

The politically charged interchange about these important policy decisions, however, often occurs in the absence of interdisciplinary dialogue or hard empirical evidence. Professor Wilson sees

this book as a vehicle for moving the policy discussion and dialogue forward by bringing together scholars whose work is united by a common concern for



Professor Robin Wilson

the impact of violence on children's lives. In the volume, scholars from the social sciences, humanities, and law examine current research on violence in a child's life. The volume provides solid, empirical evidence from which to make informed policy decisions.

Although most books on the subject focus only on children as victims, this volume considers children as both consumers of violence and perpetrators of it. It thus examines the main research on the impact on children of violence in television, motion pictures, videogames, literature, hip hop and rap music, Internet chat rooms, and other popular media. It critically evaluates whether a child's exposure to media violence engenders fear, increases a child's

propensity for aggression, and/or desensitizes a child to the victims of real-world violence. Difficult multi-cultural issues are raised by media violence—whether in rap music, chat rooms or video games—issues that are made more pronounced given how much time children spend alone and unmonitored in some communities.

The volume also focuses on critical issues of violence by children, including bullying and school violence. It takes a discerning look at prosecutors' efforts to label children as juvenile psychopaths and to try children as adults. The latter couldn't be more pressing or timely given the Supreme Court's recent decision in *Roper v. Simmons*,³ which found unconstitutional the execution of individuals who commit capital crimes while under the age of 18.

In January, based on data from the book, Professor Wilson met with members of the Virginia House of Representatives and the Attorney General of Virginia to discuss more appropriate responses to sexual predators. In March, Professor Wilson presented her work from the volume, "Remove the Threat, Not the Child: A Test Case for Using Social Science to Guide Child and Family Policy" at Yale University School of Medicine's Edward Zigler Center for Child Development and Social Policy.

References

¹For more information about the book, go to <http://www.sagepub.com/book.aspx?pid=11482>.

²See http://www.infoworld.com/article/06/01/19/74621_HNsenateporn_1.html.

³543 U.S. 551 (2005).

FACULTY WORKING AT THE INTERSECTION OF HEALTH LAW AND FAMILY LAW

LAW, NURSING AND SOCIAL WORK STUDENTS COLLABORATE IN THE GRANDPARENT FAMILIES CLINIC

In anticipation of a major grant from the Children's Bureau of the U.S. Department of Health and Human Services, Professor Deborah Weimer created the Interdisciplinary Practice with Grandparent Families Clinic two years ago to address the needs of "grandparent families." These are families in which grandparents have assumed custody for their grandchildren because the parents are unable to care for them due to a variety of circumstances such as death, illness, drug or alcohol abuse, or incarceration. In 2004, the grant was awarded to the clinic at the School of Law, the School of Nursing Open Gates Community Nursing Center in West Baltimore, and the Family Connections program of the School of Social Work. The grant is for a five-year project to provide services to at-risk grandparent families and help avoid the unnecessary placement of children in foster care. Previously, the three schools had collaborated on a one-year pilot project serving grandparent families and learned much about the issues facing these families and how to work together to address them most effectively.

The Grandparent Families Clinic gives law students the opportunity to work as part of an interdisciplinary team (social work, nursing and law) in delivering services to these at-risk families. Grandparents who step in to care for grandchildren are often in danger of being overwhelmed by the multiple demands on their time and energy. They frequently neglect their health care needs while attending to other family members. Moreover, they are unlikely to have access to the legal services they may need to stabilize their new family structure or obtain needed financial support.

The clinic's work with families in this project has ranged from representing grandparents and their grandchildren at school meetings to designing an appropriate Individual Education Plan

(IEP), to filing papers in Circuit Court to prevent the loss of the family home in a tax sale, to counseling a grandparent about the availability of the Family Medical Leave Act when a child has a serious medical condition that requires intermittent care. Students are available to assist with a wide range of civil legal



Professor Deborah Weimer

cases and decide how best to use limited resources through discussion with their grandparent client and their social work and nursing partners.

Each family is informed up front of the interdisciplinary nature of the practice and asked to sign a consent form giving the different schools the ability to share information with each other. Students prepare and review an assessment of strengths, goals and needs with each family and determine a plan of action. The overall goal is generally to address those issues most likely to affect family well-being and stability and prevent unnecessary placement of children in foster care.

In addition to providing much needed services to grandparent families, and eventually providing some data on what services most effectively serve the needs of families, this project provides a

wonderful experience for students to work with other professionals in serving families. Students who participated in the clinic last year particularly valued the opportunity to work closely with social work students and their supervisors and came away with a new appreciation and respect for the work they do with clients. For example, in more than one situation, it was necessary for the student social worker to work with the grandparent on clarifying her goals before the law student could step in and provide useful assistance. Student social workers and student attorneys share the goal of client empowerment, at least in theory, but it has been interesting to see how it works in practice. Clinic students leave with a new recognition of how valuable it can be for lawyers to work with other professionals in serving the needs of families.

The Clinic's joint work with the Family Connections Program should yield useful data about the efficacy of providing a variety of services to at-risk families. The Schools of Law, Social Work, and Nursing have developed a very detailed system of data collection that will provide a wealth of information about the impact of providing services to at-risk families. The added value of health and legal services to social work services will be a particular focus of evaluation.

In addition to this data collection and evaluation effort, the partners are also exploring other issues, e.g., how professionals can best work together and what structures best facilitate this collaboration. Apparent conflicts in ethical rules and professional responsibility expectations can pose challenges in working together that must be addressed so that they do not become an unnecessary barrier to joint work. There are a variety of issues that have come up to date that have implications for the interdisciplinary practice. For example, how is "client"

PROFESSOR KATHLEEN DACHILLE AND RESEARCH FELLOW KRIS CALLAHAN WRITE ABOUT PROTECTING CHILDREN FROM SECONDHAND SMOKE

defined? Social workers tend to define the client in a situation like this one as the family. Lawyers and medical providers, on the other hand, usually define client or patient as one individual. There are obvious ethical issues that may arise from these choices that must be addressed.

Another area of anticipated possible conflict is reporting concerns about potential neglect or abuse of children in the home. Social workers' obligations in this area are quite broad, whereas attorneys (though this varies somewhat depending on the state) have no obligation to report and must in fact maintain a client's confidence unless the lawyer believes a client's action may result in death or substantial bodily harm.

The partners anticipated these issues in advance and outlined how they proposed to address them, but this is a work in progress that is subject to modification as the participants learn from their experience. At the same time, Weimer and her students are considering what modifications to lawyers' ethical rules may be necessary and appropriate to facilitate truly collaborative practice in the future. Up to now, in those instances where there is collaboration among medical providers, social workers and/or lawyers, one professional is perceived to be more or less in charge, and that profession's ethical code tends to govern how work is performed and how difficult ethical issues are decided. While this may be appropriate in some settings, it is often not the best way for professionals to work together.

Overall, two hundred families will receive services during three years of the five-year project. Sixty of those families will receive law and nursing services as well as social work services. During the fifth year, research data will be reviewed to determine the impact the addition of legal and nursing services has on family stability and well being. This project will contribute a wealth of information about what works in intervening with at-risk families and will hopefully provide a model that can be replicated by other entities in the future.

Professor Kathleen Dachille, Director of the Legal Resource Center for Tobacco Regulation, Litigation and Advocacy, recently published an article about when and why family courts should address the issue of a child's exposure to secondhand smoke. The paper, entitled "Secondhand Smoke and the Family Courts: The Role of Smoke Exposure in Custody and Visitation Decisions," was written jointly by Dachille and Research Fellow Kris Callahan, and published by the Tobacco Control Legal Consortium.¹ The Consortium publishes Law Synopsis papers on various tobacco control issues. The publications are designed to assist attorneys, public health advocates and lay people in understanding legal issues in tobacco control and in applying the law to a case or circumstance.

Family courts address a multitude of issues when determining the rules of a child's life after his parents divorce or otherwise seek court intervention on custody and visitation arrangements. Most states have enacted statutes setting parameters for custody and visitation determinations. However, the nature of these cases requires that trial courts retain significant discretion in weighing the various factors and crafting orders reflecting the best interests of the children before them.

With the abundance of scientific evidence describing the dangers of exposure to secondhand smoke, particularly for children, and the increasing public awareness and understanding of these dangers, the issue of a child's exposure to secondhand smoke is being raised more frequently in custody and visitation cases. Although there is nothing novel about a family court considering factors that affect a



Professor Kathleen Dachille

child's health, the impact that secondhand smoke has on children generally and on a particular child in a custody proceeding are relatively new issues for most trial courts and family law attorneys. The Center's Synopsis is designed to assist courts, practitioners and lay people who are faced with a custody or visitation proceeding in which a child's exposure to secondhand smoke has been or may be raised.

The Synopsis contains a concise summary of the adverse health effects suffered by children who are exposed to secondhand smoke and a general overview of the process by which family courts draft custody and visitation orders. Dachille and Callahan explain how and why consideration of secondhand smoke exposure is appropriate in these cases and collect and analyze cases that involve the use of secondhand smoke exposure as a factor in custody or visitation decisions. This discussion synthesizes cases involving children who are particularly susceptible

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Protecting Children from Second Hand Smoke
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to secondhand smoke exposure, such as children with asthma or other respiratory ailments, as well as those concerning healthy children. Dachille and Callahan suggest the use of judicial notice to introduce scientific data regarding the adverse health effects of secondhand smoke exposure in appropriate cases. Recognizing legal concerns about restricting a parent's lawful behavior in the home, the Synopsis explains why the consideration of parental smoking in custody and visitation disputes does not infringe upon the right to parental autonomy or a parent's right to privacy, concluding: "Although parents have a broad right of privacy, especially in the home, and a significant right of autonomy in raising children free of governmental intrusion, these rights do not outweigh the best interests of the child."

In response to publication of the Synopsis, the Center has received requests for assistance from family law attorneys in Maryland and other states as well as from parents involved in a custody or visitation case in which secondhand smoke exposure has been raised. The Center has prepared a model *Motion to Take Judicial Notice* to assist attorneys and parents in these cases and addressed the issue at the 2005 National Conference on Tobacco or Health.

Note

¹The Synopsis is available at www.tclconline.org under Tobacco Control Legal Consortium, Resources and Publications.

PROFESSOR ELLEN WEBER AT FOREFRONT OF POLICIES AFFECTING DRUG DEPENDENT PREGNANT WOMEN

Professor Ellen Weber's research focuses on one of the more controversial areas in which health law intersects with family law: alcohol and drug dependence among pregnant women. In her recent article, "Drug Dependence Among Pregnant Women: Federal Mandates, Physician Responsibility and Child Welfare Limitations," Professor Weber explores which institution — the primary health care system or the child welfare system — is best situated to improve the health of pregnant, drug dependent women and their children and prevent child abuse or neglect related to maternal drug dependence.

According to Weber's research, which used the 2003 amendment to the Child Abuse Prevention and Treatment Act (CAPTA) as a starting point, States responded to the widely-publicized "crack-cocaine epidemic" of the mid-1980's by adopting a wide range of identification, rehabilitation and child protection policies to address maternal drug use. As of 2003, nearly half the States required health care professionals to report incidents of newborn alcohol or drug exposure to child protective services. Tragically, the child welfare system has played a more prominent role in the lives of families struggling with drug dependence than the health care system because physicians fail to diagnose alcohol and drug problems among their patients.

In 2003, Congress established a uniform child protective services reporting rule under CAPTA. The law mandates all states to require health care providers involved in the delivery of infants to notify child protective services of infants who are born affected by illicit drug use. Congress conditioned the states' receipt of federal child abuse prevention funds on their adoption of this policy. While the goal of the federal mandate is to prevent

child abuse by ensuring that children are reported to child protective services and receive necessary services, Weber's article



Professor Ellen Weber

questions whether the policy will achieve its goals.

In evaluating the efficacy of the CAPTA policy, Weber critiques Congress's failure to translate the science on maternal drug use into policy and practice. CAPTA's standard focuses exclusively on illicit drug use instead of addressing prenatal alcohol and tobacco use: drugs that, albeit legal, pose a far greater risk to the health of the unborn child than illicit drug use. In addition, the policy mandates post-partum interventions, which come too late to prevent harm to the fetus. Weber faults Congress for ignoring research that demonstrates that drug-dependent women and their children benefit most from early intervention services during prenatal care.

ROTHENBERG SERVES ON NIH CONFERENCE PANEL

Weber also draws on social science research that suggests the child welfare system is not well-suited to help either the children who are removed from their mother's custody based on prenatal drug use or the mother who seeks to change her drug use behavior. Research reveals that children of drug dependent women tend to be placed in foster care more frequently and remain out of their homes longer than children from families without drug problems. And the child welfare system is ill-equipped to provide the health and social services that are essential to family reunification. In addition, widely-accepted theories of behavior change suggest that the child welfare system, with its institutional focus on child rescue and expedited permanency planning, is not capable of motivating behavior change among drug dependent women.

Weber's article concludes that women and their children would benefit far more from a national policy that encourages physicians to fulfill their therapeutic obligation to diagnose and treat patients with alcohol and drug problems. Ensuring that physicians fill their role as health care providers will improve the likelihood that women address their drug condition early in their pregnancy and prevent neglect.

Weber has brought her research into the law school's clinical practice. Students enrolled in Weber's Drug Policy Clinic and the Health Care Delivery and Child Welfare Legal Issues Clinic are investigating how state officials are implementing CAPTA's physician reporting policy in Maryland. The State's plan raises concerns about compliance with child abuse and neglect reporting standards and health privacy standards. The clinic students expect to present their findings to state officials and propose corrective actions.

Dean Karen Rothenberg recently served as a panel member for the National Institutes of Health State-of-the-Science Conference on Cesarean Delivery on Maternal Request (CDMR). The panel, composed of 18 individuals, mostly health professionals, met from March 27th – 29th at NIH in Bethesda, MD.

Despite the national goal of reducing rates of cesarean delivery (CD) to 15% of births established as part of *Healthy People 2010*, CD rates have continued to increase. In 2003, 1.1 million or 27.5% of births in the U.S. were by CD. An estimated 2.5% of births that year were cesarean deliveries performed on request, in the absence of medical necessity, and the rate of cesareans on request appears to be growing rapidly. The issue is controversial. British tabloids have characterized the trend, led by upper-class mothers, with the headline "Too Posh to Push."¹ Nurse midwives are especially alarmed by the numbers.

Given the risks associated with CDMR, such as adverse reactions to anesthesia, breathing problems, bleeding, infection, urinary tract injury, and injury to the baby, any decision to deliver by cesarean delivery when vaginal delivery is also available should be informed by the best possible information regarding potential health outcomes, good and bad, for both mother and baby. Toward that end, panelists at the conference were charged with assessing the available scientific evidence relevant to four major issues related to CDMR. These included: (1) the trend and incidence of cesarean delivery over time in the United States and other countries; (2) the short-term and long-term benefits and harms to mother and baby associated with cesarean by request versus attempted vaginal delivery; (3) the factors that influence these benefits and harms; and, (4) future research directions that need to be considered to obtain evidence for making appropriate decisions regarding cesarean on request or attempted vaginal delivery.

Rothenberg was the only non-health professional on the panel and brought to



Dean Karen Rothenberg

the discussion her considerable expertise in health law, women's health, and bioethics. The issue of c-section on demand raises several fascinating cultural and ethical issues. In its report, the panel acknowledged that a number of cultures "have developed rituals and customs associated with vaginal birth" but others "may attribute less importance to the specifics of delivery and value the control of the process afforded by cesarean as a benefit." Rothenberg finds the current situation somewhat surprising given the strong women's movement in the 1970s and 80s favoring "natural childbirth" and questions what has motivated this change. One reason may be the increasing use of technology in pregnancy and childbirth, including genetic testing. Rothenberg also questions how much women are driving this decision and wonders what role their health care providers play in the process. Health care providers, especially ob-gyns, are very sensitive to lawsuits which appear less likely when a c-section is performed.² Moreover, obstetricians may prefer being able to schedule their deliveries rather than be on call for deliveries at all hours of the day and night.

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NEW HEALTH LAW COURSES

The Law & Health Care Program offered two new courses this semester: Children's Health, Violence and the Law, taught by full-time Professor Robin Wilson, and a seminar on Long Term Care, taught by adjunct faculty members John Lessner, a principal at Ober | Kaler, and Lisa Ohrin, a health insurance specialist at CMS.

Children's Health, Violence and the Law

In the new Children's Health, Violence and the Law seminar, students are examining contemporary issues in children's health and violence from a legal and public health perspective. In addition, students are exploring issues in pediatric research; surrogacy and new reproductive technologies; conceiving a child for tissue donation; cultural issues affecting the well-being of children, including handgun violence, child abuse and neglect; the impact of media on children's aggression; and risk factors for children becoming violent predators. Taking a page from the National Institute of Child Health & Human Development (NICHD), an institute within the NIH, students are also reviewing emerging research on the effects of family change on children's health and development and the impact of parental work/family conflict on children's health and well-being.

One reason the course focuses in part on child maltreatment is that maltreated children are at increased risk for adverse health effects and behaviors as adults, including smoking, alcoholism, drug abuse, eating disorders, severe obesity, depression, suicide, sexual promiscuity, and certain chronic diseases.¹ Victims of child maltreatment are between four and twelve times more likely to experience a number of these effects, including alcoholism, drug abuse, depression, and suicide attempts.² Maltreatment during infancy or early childhood may lead to physical, mental, and emotional problems such as sleep disturbances, panic disorders, and attention deficit/hyperactivity disorders.³ In fact, recent studies indicate that there is a dose-response relationship⁴ between exposure

to child maltreatment and the presence of disease and injury.

It is no surprise, then, that the Centers for Disease Control and Prevention (CDC) has

The basis for governmental intervention in child maltreatment is grounded in the concept of *parens patriae*, the idea that the government has



Professor Robin Wilson (center) with students in the Children's Health, Violence and the Law Seminar

labeled child maltreatment as a serious and preventable public health problem which may be attacked through evidence-based prevention and intervention strategies.⁵ In this course, Professor Wilson and her students are exploring such strategies, including the CDC's efforts, using mortality and morbidity reporting systems, to encourage states to develop surveillance systems that can collect data regarding child maltreatment injuries.⁶ Students are also studying causes of violence, including risk factors and protective factors that can be modified with prevention programs and public policies, drawing on chapters from Wilson's recently published book, *HANDBOOK OF CHILDREN, CULTURE & VIOLENCE* (Nancy Dowd, Dorothy G. Singer & Robin Fretwell Wilson, eds., Sage Press 2006).

Class discussions have also focused on intimate partner violence and its association with an increased risk for child maltreatment,⁷ as well as new settings in which children are the victims of violence, consumers of violence (through hip hop and rap music, video games, television, movies, and internet chat rooms), and perpetrators of violence. In particular, the class has examined the links between being victims and consumers of violence, and becoming perpetrators of violence.

a role in protecting the interests of children and in intervening when parents fail to provide proper care.⁸ A final focus of the course is the impact and value of early childhood programs. Without the benefits of informed, evidence-based, and coordinated comprehensive early childhood programs, many children, particularly from impoverished backgrounds, are likely to experience difficulties in school, as well as the emotional, social, and occupational deprivation that follows on the heels of school failure.⁹

Third year law student Mikaela Rossman is thrilled with the content of the course: "I think the class is very eye-opening because it really makes you think about how laws meant to protect children do not always hit the mark. We have taken a look at the real impact of these laws, and considered other solutions to problems like child sexual abuse and exposure to violence—that might truly protect children. The class is particularly interesting because of the individual experiences of class members—we have a school psychologist, a former group home staff member, student attorneys

practicing in the Child Welfare clinic, and parents. The multiple perspectives, combined with the hard data, have really increased my awareness of how violence really affects children's health."

Health Law Seminar: Long Term Care

Twenty years ago, long term care did not stand as a separate specialty within the practice of health care law. Nursing homes provided mostly room and board services for the elderly who could no longer manage on their own. Assisted living facilities were not generally recognized as care settings for the elderly or infirm. Long term care insurance did not exist. Changes, if not complete overhauls, in the way hospitals are reimbursed over the past two decades have led to shifts in the manner and type of care provided in the hospital setting and have had a trickle-down effect on the operations of long term care providers. As traditional hospitals focus more on procedures, and as lengths of stay for acute conditions get shorter and shorter, a greater percentage of individuals will at some point receive care or services from a long term care provider, such as post-acute facilities, skilled nursing facilities or home health care providers. Skilled nursing facilities today commonly are sources of care for the types of individuals who ten years ago would only have been cared for in an acute hospital. This paradigm shift has necessarily focused scrutiny on the licensing, regulation, reimbursement and oversight of long term care providers and settings. Through readings, the review and study of federal and state statutes and regulations, class discussion, and case studies, students in this seminar are learning about the following topics related to the regulation and provision of long term care services:

- The major federal and state laws impacting long term care providers, including Medicare, Medicaid, the Anti-kickback Statute, Stark, the False Claims Act, and HIPAA

- The settings in which long term care services are provided, including skilled nursing facilities, assisted living facilities, and home health settings
- The payment/reimbursement structure for providers of long term care services
- The survey and certification process for skilled nursing facilities, assisted living facilities, and home health agencies
- The federal appeal process for survey-related deficiencies
- The legal ramifications of providing substandard or poor long term care services
- The *Olmstead* decision and its impact on the provision of long term care services
- Employment and labor issues in long term care
- The impact of the Medicare Modernization Act on long term care
- Patient rights, including patient safety, end-of-life decision making, and special considerations for the non-elderly patient
- Enforcement trends in abuse and neglect and quality of care cases
- Technology issues affecting the provision and regulation of long term care services

Leading experts in the field, including Rich Bardos, Deputy Director of the Maryland Medicaid Fraud Control Unit; Bruce Greenstein, former Associate Regional Administrator for Medicaid and Children's Health in the Boston Regional Office of CMS; and Leon Rodriguez, principal in Ober |Kaler's White Collar Criminal Defense Group and former federal prosecutor, are speaking to the class this semester. Professor Ohrin says that she and Professor Lessner like to teach the class in "the most participatory way possible." Students are enjoying the subjects for discussion and the interaction. Second-year student Melissa Sviatko is glad she took the course: "As Professors Ohrin and Lessner guide us through federal and state laws and regulations, I am learning how areas of health law I have studied in other classes such as the provision and payment of services, licensure, institutional

Adjuncts John Lessner and Lisa Ohrin teach the Long Term Care Seminar

Professor John Lessner is a former Assistant Attorney General, Counsel to the Office of Health Care Quality (OHCQ) and the Medical Assistance Program at the Maryland Department of Health and Mental Hygiene. He is now a principal in Ober|Kaler's Health Law Department and focuses his practice on regulatory matters involving Medicare/Medicaid issues and state licensure of hospitals, nursing homes, assisted living facilities, group homes, home health agencies, laboratories and other health facilities. He advises and represents clients on Medicare and Medicaid cost reimbursement issues, conditions of participation, certification, privacy, e-health, advance directive and freedom of choice issues in institutional settings. Professor Lisa Ohrin graduated from the University of Maryland School of Law in 1994. She has worked in the past as in-house counsel for Dimensions Healthcare System and ManorCare Health Services, a national long term care provider with facilities across the country. She also spent three years at Ober|Kaler before joining the Law School as the Coordinator of the Law & Health Care Program for three years. After working in-house at Beth Israel Deaconess Medical Center in Boston for a year and a half, Ohrin has now settled at the Centers for Medicare and Medicaid Services (CMS) where she specializes in fraud and abuse issues, specifically agency enforcement of "Stark," the physician self-referral law.

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THREE LAW SCHOOL ALUMS FIND THEIR WAY TO TENNESSEE

Community Health Systems (CHS) based in Brentwood, Tennessee, is the leading operator of general acute care hospitals in non-urban markets throughout the United States. CHS owns 71 hospitals located in 21 states across the country. These hospitals offer a broad range of inpatient medical and surgical services, outpatient treatment and skilled nursing care. Coincidentally, three University of Maryland School of Law alumni work in the in-house corporate legal department of this for-profit healthcare system.

Rachel Seifert received her JD from Maryland in 1985. Following graduation, she joined the firm of Johnson & Swanson in Dallas, Texas, focusing on real estate transactions. In 1992, Rachel became Vice President of Legal Operations and Associate General Counsel of Columbia/HCA Healthcare Corporation in Nashville, Tennessee. She supervised the provision of legal services for approximately 450 operational and business development units of Columbia. A significant component of this representation was fraud and abuse and Stark legislation analysis and compliance.

Rachel joined CHS in 1998 to establish an in-house legal department and a comprehensive voluntary compliance program. During her tenure at CHS, she provided legal direction for the Company's initial public offering (NYSE listed) and four subsequent registered offerings, the acquisition of over forty new facilities, numerous syndications and joint ventures, the voluntary disclosure to the OIG of inpatient coding errors, and numerous investigations, both internal and external. Rachel also serves as the Secretary of the public parent corporation and to its Board of Directors and is responsible for corporate governance and compliance under the NYSE and SEC rules. Rachel directly oversees a staff of nine attorneys, including the other two Maryland alumni, and an equal number of support team members.

In 2001, Rachel hired Jennifer Peters, a 2000 Maryland grad, to join her staff. Jennifer came to Maryland Law with a Masters in Health Science in Health Care Finance and Management from Johns

they shared the same alma mater as well as a love of horseback riding. When Rachel hired her, there were only three attorneys in the office, so the work was "incredibly overwhelming at first." Over the last five years, the office has grown to nine attorneys,



*(Left to Right) Patricia Dougall ('02),
Rachel Seifert ('85), Jennifer Peters ('00)*

Hopkins. She worked at Memorial Health Systems, Inc. in York, Pennsylvania during the day and attended law school classes in the evening. During her four years of law school, Jennifer held several positions with Memorial Health Systems. She started in 1995 as the Director of Planning, in which she was responsible for, among other things, the development and implementation of a multi-disciplinary hospital-based strategic and business planning process. In 1999, she became Vice President of Corporate Affairs and the hospital's Corporate Compliance Officer. She was responsible for all risk management, compliance, contracting, infection control and employee health functions.

Following graduation in 2000 with the certificate of health law, Jennifer worked one more year in York before looking for jobs with for-profit healthcare companies in Nashville, the "healthcare mecca." She applied to CHS and had "an instant connection" with Rachel. They discovered

and Jennifer finds her job as Senior Group Counsel "a lot of fun."

The office divides its work by geographical region, and Jennifer is the senior attorney for the southeast. She provides legal counsel for hospitals in seven states. Her many areas of responsibility include hospital and physician practice acquisitions; syndications; joint ventures; federal and state regulatory matters, including fraud and abuse, Stark, HIPAA and EMTALA; contract development, review and approval; medical staff and peer review matters; medical staff and hospital bylaw development and review; and policy review and assistance.

The third Maryland addition to the CHS legal office was Patricia Dougall, a 2002 graduate and health law certificate recipient. Before law school, Patricia worked in a variety of health care settings and positions, including project management and clinical trial coordinating, sales and business

ELLEN CALLEGARY, '78

development, pharmaceutical sales, and as a registered nurse. She transferred to Maryland from a New Hampshire law school during her second year specifically for the Law & Health Care Program.

Following graduation, Patricia went to work as an associate at Troutman Sanders, LLP, a law firm in Atlanta, Georgia. There she provided health law advice to a wide variety of healthcare providers and suppliers of goods and services in the healthcare industry, including hospitals, physicians, physician group practices, nursing homes, home health agencies, rehabilitation agencies, and mental disability facilities.

In 2005, she moved back to her hometown of Nashville and joined the legal office at CHS. She is a junior attorney in the same southeast group as Jennifer, providing advice and assistance to the corporate office as well as to hospitals in seven states. Although Patricia will soon be leaving CHS to join her husband in Spain for a couple of years, she has enjoyed her time there and hopes to rejoin CHS when she returns.

It may have been a common interest in working for such a successful health system that brought these three alumni together in Tennessee, but Rachel says about the applications she reviews, "If I see a turtle on their resume, I definitely want to talk to them!"



Ellen A. Callegary, Class of 1978, has practiced law for the past twenty-seven years and is a founding partner of the law firm Callegary & Steedman, P.A., which focuses on special education, disability and family law issues. Her firm is a perfect example of how health law and family law intersect in practice.

Callegary has a long history of involvement in disability issues. She believes, "It is an honor and a challenge to represent individuals with disabilities." Her goal is to help her clients gain the skills and get the support they need to live as independent lives as possible. "I want them to be part of our communities as our friends, colleagues and loved ones," she says. During her ten years as an Assistant Attorney General for the State of Maryland, she worked directly with two Attorneys General advising state agencies on matters related to the rights of persons with disabilities and serving as principal counsel for the Department of Juvenile Services. She has also lectured extensively on special education and health law, and taught an AIDS Legal Clinic and a Mental Health Law Clinic as a clinical law professor at Maryland where she is currently a member of the adjunct faculty.

Callegary recently authored a chapter entitled "Consent & Competency" which was published as part of an interdisciplinary book entitled *Best Practices in Developmental Disabilities: A Maryland Resource*. This book was a result of a conference held in 2004, in Columbia, MD, that was attended by experienced clinicians, administrators, and advocates. The conference provided a forum for attendees to share their opinions concerning best practices for service provision to individuals with developmental disabilities who also have behavioral or mental health needs. Hopefully, the conference and book are the first steps toward improving service delivery for this vulnerable population. Callegary will serve on the Board of Directors of a newly created nonprofit corporation, which will continue the



Ellen Callegary

work of promoting "Best Practices" in the region through training, resource provision, research, awarding grants and mentoring.

In addition to her practice, Callegary is very active in the community. She is involved with the Juvenile Law Committee of the Bar Association of Baltimore City and the American Civil Liberties Union of Maryland, and is actively involved with CHADD (Children and Adults with Attention-Deficit/Hyperactivity Disorder), serving on their Board of Directors. Her work on the Board includes providing pro bono services to families in Baltimore City who have children with ADHD (attention deficit/hyperactivity disorder.)

Callegary's outstanding achievements have not gone unnoticed. *The Daily Record* named her one of Maryland's Top 100 Women in both 2000 and 2004. Maryland's Top 100 Women was created to recognize outstanding achievements of professional women who reside or work in Maryland.

Most importantly, Callegary enjoys spending time with her husband and son. Her husband, Michael Karasik, is an artist and financial consultant, and her son Henry is in the 8th Grade at the Friends School of Baltimore. She is especially thankful that they are both incredibly supportive of her work with individuals with disabilities.

By Monika Ras, '06

CONFERENCE ILLUMINATES NEW MALPRACTICE LEGISLATION

In January 2005, the Maryland General Assembly overrode Governor Erlich's veto to pass HB 2, legislation intended to change dramatically the face of medical malpractice litigation in the state. In Fall 2005, the law school hosted a two-part conference, co-sponsored by the law school's Center for Dispute Resolution (C-DRUM) and the Law & Health Care Program (L&HCP). Attorneys, physicians, hospital administrators, academics, and legislators participated in these all-day events.

Part 1, "The New Medical Malpractice Legislation: Issues, Implementation & Impact" took place on Friday, September 23, aiming to educate professionals spanning Maryland's legal and health care communities about the legislation (HB2) and how it has been received since its enactment. On October 28, the law school hosted Part 2, entitled "Beyond the New Medical Legislation: New Opportunities, Creative Solutions, and Best Practices for Patient Safety, Tort Reform and Patient Compensation." A special highlight of Part 2 was the annual Stuart Rome Lecture (see story, p. 13).

Noting the "incredible expertise" on the panels and in the audience, Dean Karen Rothenberg kicked off Part 1 of the conference, emphasizing the importance of addressing such a complex social issue and the timeliness of engaging in dialogues aimed at improving public policy surrounding the new legislation. Part 1 featured a series of panel discussions covering the history of the legislation, policy tensions and political compromises, challenges for health care providers, and the impact of the new legislation in the health care marketplace.

The Maryland General Assembly crafted the new legislation with an eye toward stabilizing the malpractice insurance market, improving patient safety, and preserving the ability that many specialty providers were losing to practice in their specialty fields. HB 2, among its provisions, established the Maryland Medical Professional Liability Insurance Rate Stabilization Fund. The fund exists to retain providers in the state and aims to do so by lowering malpractice premiums and by increasing fee-for-service rates of specialty physicians and capitation payments to managed care organizations

participating in the Maryland Medical Assistance Program.

The new legislation addresses the costs of malpractice on several levels. One noteworthy provision freezes non-economic damages awarded to plaintiffs in malpractice actions. The state capped these damages at \$650,000 for four years beginning on January 1, 2005, and limited the amount by which these damages may increase thereafter to \$15,000 annually. In wrongful death actions, the cap is slightly higher, \$812,500 for the next four years based on an adjustment from 150% down to 125% of the allowable damages, and is potentially a savings in perpetuity for the state. The new legislation also limits calculations of compensable "past medical expenses" from the full charge of each visit to the total amount paid plus the total amount incurred but not paid.

Another significant change stemming from Maryland's new legislation is the use of Alternative Dispute Resolution (ADR) and the requirement that courts order parties to engage in ADR at the earliest possible date unless the court finds that it would not be productive and all parties have agreed not to use it. Several panels devoted considerable discussion to ADR and whether it is an effective alternative to mandatory arbitration in malpractice litigation.

Part 2 of the conference focused on ways to reduce malpractice litigation, looking both within and beyond Maryland. Speakers examined a variety of viewpoints, ideas, and efforts. Rosemary Gibson, author of *THE WALL OF SILENCE*, devoted her keynote address to the issue of improving patient safety. Gibson emphasized the need for greater disclosure of errors as a way to build patient trust in physicians and urged the audience to push for change to make safety the norm in practice. Gibson was followed by a diverse set of panel discussions, focusing on topics such as patient safety initiatives in various states, early intervention through mediation, the value of medical dialogue in patient-physician relationships, and the use and benefits of health courts.

A significant focus of the second day was "early intervention" mechanisms that

might prevent malpractice claims. Those interventions included early apology and mediation. The Sorry Works! Coalition has attracted considerable attention from trial lawyers, healthcare providers and insurers. Advocating apologies and upfront compensation for medical errors, Doug Wojcieszak, Director of Sorry Works!, promoted full disclosure of medical errors as an important step in reducing lawsuits and malpractice liability costs, as well as providing swifter justice to victims of medical errors and taking steps to prevent them from occurring. Similarly, Carole Houk, a principal with Resolve Advisors, LLC, spoke about medical ombudsmen (MEDIC+OM), hybrids between ombudsmen and mediators, who have started to intervene at the point of care to ensure early resolution and identification of errors through informal investigation.

Patient-centered communication can also reduce medical malpractice claims. Dr. Debra Roter, a professor at the Johns Hopkins Bloomberg School of Public Health, shared an overview of her research which found that communication between physicians and patients is related to the malpractice experiences of the providers.

As a step toward changing the traditional litigation and compensation process, health courts have emerged as an alternative approach to medical justice. Common Good, a bipartisan legal and health care reform coalition, encourages the use of health courts. According to presenter Paul Barringer, General Counsel for Common Good, the tort system currently in place fails both patients and providers because compensation is slow and often unavailable, there are high administrative costs, patients very often miss having their "day in court," and there are few incentives for improved quality and open communication. Alternately, he remarked, health courts place greater reliance on independent experts, administrative processes, and consistent compensation.

Barringer's presentation was followed by the Rome Lecture (see story, p. 13).

By Amy Siegel, '07

ROME LECTURE EXAMINES THE ROLE OF MEDICARE IN MEDICAL MALPRACTICE REFORM

Medical liability within the current framework affects cost, quality, and access to health care for many Americans. The real crisis, according to Rome Lecturer Professor William Sage, is that there is little connection between the current malpractice system and the health care system. During Part 2 of the law school's Medical Malpractice Conference (see story, p. 12), Sage spoke about this "mismatch" between negligence and litigation in the current malpractice framework, calling attention to the prevalence of unjustified lawsuits, uncompensated injuries, and high rates of avoidable error. Professor Sage also discussed the failures of the current malpractice process, including restrictions on information, limited non-monetary remedies, extremely long delays, and a lack of quality feedback for health care providers that would enable them to improve upon individual as well as systemic mistakes which make the practice of medicine prone to liability. Professor Sage criticized the focus of the current medical liability system on individual physicians rather than on the system itself, attributing this misdirected focus to fear of reputational harm, financial stress over insurability, and a proliferation of "defensive medicine" practices.

So why involve Medicare policy in an already complex debate? Professor Sage cited four reasons for shifting the medical malpractice debate in this direction.

First, conventional malpractice litigation serves Medicare beneficiaries poorly. Elderly plaintiffs are poorly compensated by the medical malpractice system compared to younger plaintiffs, due to factors such as lower awareness of negligent injuries, lower damage awards based on shorter life expectancy and wages, the complexity of proving causation in cases involving elderly plaintiffs, elderly plaintiffs' inability to withstand delays that are inherent in the current malpractice system, and reluctance on the part of many elderly

patients to alienate the physicians and institutions that provide care for them.

Over time, however, claims involving elderly plaintiffs have become a greater burden on the medical malpractice system. Professor Sage explained that there is a trend toward convergence with non-elderly patients, in terms of evolving



(left to right) Associate Dean Diane Hoffmann, Director of the L&HCP, Professor Roger Wolf, Professor Bill Sage, and Dean Karen Rothenberg at the Rome Lecture Reception

expectations about life expectancy and the quality of life for elderly persons, rising non-Medicare health costs after injury, increased knowledge of the legal landscape based on medical liability cases

involving nursing homes, and efforts on the part of insurance adjusters to regularize settlement amounts for elderly plaintiffs. Professor Sage stressed the importance of giving the elderly access to malpractice compensation, particularly for avoidable injuries, but argued that the tort system is inefficient for this purpose because the costs of such compensation within the current system have the potential to spiral dangerously out of control.

Second, Sage suggested that first-party Medicare coverage addresses many malpractice problems better than third-party liability insurance. Medicare policy often sets the standard for the entire health care system, and the Medicare program has the necessary foundation to connect malpractice claims to consumer information, quality improvement, and patient safety. Furthermore, Medicare's primary sponsor, the federal government, is uniquely able to supply low-cost reinsurance in downturns of the insurance cycle. Most importantly, Medicare has been prolific in drafting standards to improve quality in health

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Professor William Sage Gives Rome Lecture

The Rome Lecture was established by Stuart Rome's family and friends to celebrate his life and work. The annual lecture features health law scholars, bioethicists, and health policy experts, and has been designed to reflect Rome's extraordinarily widespread interests and commitments.

Professor William Sage was uniquely suited to serve as this year's Rome Lecturer. Holding dual degrees from Stanford University in medicine and law, Professor Sage has focused his academic interests in health law, regulatory theory, antitrust, and professional responsibility. Prior to his academic career, Professor Sage practiced corporate law at the Los Angeles firm of O'Melveny & Myers, and worked in the White House on the Clinton Administration's Health Security Act. Professor Sage has published extensively on health law and policy issues, as well as on medical malpractice policy and reform. In 2002, he helped to design the liability demonstration proposal for the Institute of Medicine's Committee on Rapid Advances in Health Care, and from 2002 to 2005 he served as the Principal Investigator for the Project on Medical Liability in Pennsylvania, funded by The Pew Charitable Trusts.

Rome Lecture
Cont. from p. 13

care. The current medical malpractice environment does little, if anything, to encourage quality care and enhance safety. Furthermore, tort reform in its current framework only adjusts award payments, and does little to change the inherent misguided incentives in the system. Only through real reform, including the establishment of incentives that encourage high-quality, safe care, will the medical malpractice crisis truly be addressed.

Third, Medicare provides an administrative mechanism for dispute resolution, which Professor Sage suggested would better serve the medical malpractice litigation landscape than the system currently in place, where many plaintiffs cannot find legal representation because their claims are too small or too uncertain for attorneys to handle.

Finally, Medicare politics, in contrast to tort politics, are more oriented to health care and health policy goals. Professor Sage characterized the current, generic court system in which medical malpractice claims are heard as reactive and dependent on finding problems rather than being able to affirmatively correct them; and unconnected to anything related to improving quality. Professor Sage argued that involving Medicare in the medical malpractice debate would enable policymakers to examine and make improvements to the system against a more relevant political backdrop and would also allow congressional committees to have relevant constituencies weigh in on issues that have otherwise been marginalized.

Professor Sage's presentation was followed by a series of comments by Medicare and medical malpractice experts, including Randall B. Bovbjerg, Principal Research Associate at the Health Policy Center of the Urban Institute; Professor Timothy S. Jost from Washington & Lee University School of Law; and Toby Edelman from the Center for Medicare Advocacy. The Rome Lecture and articles based on the experts' commentaries will be published in a forthcoming issue of the *Journal of Health Care Law & Policy*.

By Amy Siegel, '07

AVIAN FLU SYMPOSIUM DRAWS SCORES TO UM LAW



An overflow crowd filled Westminster Hall on the campus of the University of Maryland School of Law on January 13, 2006, for a symposium entitled, "Avian Flu: What Can We Do?" Lead sponsors of the symposium were the University of Maryland Center for Health and Homeland Security (CHHS) and the University of Maryland Law & Health Care Program. Grants from The Horizon Foundation, The Baltimore City Health Department, and The Middle Atlantic Regional Center for Excellence in Biodefense and Emerging Infectious Diseases Research made the symposium possible.

Over 275 attendees, including academics, scientists, local, state and federal government officials, medical professionals, and representatives from private industry, were present at the symposium, led by Professor Michael Greenberger, CHHS Director. The sponsors brought together the diverse group of symposium participants, recognizing that an effective response to an outbreak of a pandemic influenza will

require a coordinated interdisciplinary and inter-governmental response. The goal of the symposium was to discuss realistic and practical strategies to deal with the threat.

During the all-day symposium, 23 panelists addressed such topics as the science underlying avian flu, the use of antiviral drugs and vaccines to address the threat, ethical and legal issues regarding quarantine and isolation, and the role of health care institutions, medical practitioners, and federal, state, and local governments in dealing with this threatened public health crisis.

A video of speaker presentations along with their accompanying slides can be found at: www.umaryland.edu/healthsecurity. CHHS is preparing both a post-symposium report, summarizing the information provided and the recommendations made, as well as a white paper on the possible influenza pandemic. Those materials will also be posted on this web site.

By Jeremy Rachlin, '06

PATIENT'S PLAN OF CARE FORM—A TROUBLESHOOTING CONFERENCE

On November 29, the Maryland Health Care Ethics Committee Network (MHECN), an initiative of the Law & Health Care Program, co-sponsored a conference on “Troubleshooting the Patient’s Plan of Care Form.” The conference aimed to educate health care professionals about how to implement Maryland’s new Patient’s Plan of Care (PPOC) form. The PPOC form was created by the Maryland Attorney General’s office pursuant to House Bill 556, which amended the Health Care Decisions Act in 2004 to authorize creation of the new form. The PPOC form went into effect on October 1, 2005.

The PPOC form is unique to Maryland. It is not a Physician Orders for Life-Sustaining Treatment (POLST) form, which is currently in use in Washington and in a handful of other states. The POLST form translates end-of-life treatment decisions into a portable physician’s order that can be honored in all health care settings and a person’s home. Nor is the PPOC form an advance directive. Unlike an advance directive, rather than referring to end-of-life medical interventions that may or may not be implemented at some point in the future, the PPOC form focuses on current preferences regarding therapies such as cardiopulmonary resuscitation attempts, hospital transfer, artificial ventilation, and artificial nutrition and hydration. Also, the PPOC form can be filled out by surrogates on behalf of patients who do not have decisional

capacity—a significant difference from advance directives.

Use of the PPOC form is voluntary. However, nursing home residents in Maryland (or their surrogate decision-makers) must be offered the opportunity to complete a PPOC form. If one is completed, it must be signed by the health care provider who helped complete the form, the patient or surrogate, and the attending physician. If a nursing home resident has a completed PPOC form and is transferred to another health care facility, the form must accompany him or her. Physicians writing medical orders at the facility to which the patient is transferred based on the PPOC form have legal immunity as long as they “follow proper procedures and act in good faith.”

At the November 29th conference, Jack Schwartz, JD, Health Policy Director at the Maryland Attorney General’s office, reviewed the basics of the new form and addressed questions from attendees. How is it different from an advance directive? Can it function as an advance directive? What happens if a person’s choices on the form are contradictory (for example, the patient or surrogate chooses “No artificially administered fluid or nutrition,” as well as “artificial ventilation acceptable, even indefinitely”)? Mr. Schwartz reiterated that the form is really meant to document what should already be happening: that patients discuss end-of-life preferences with their health care provider. In the course of such a conversation, conflicting preferences should be discussed and the

conflict resolved before the form is completed.

A panel of experts shared their impressions of the PPOC form with conference attendees. Robert Roby, MD, Coordinator of Geriatric Physician Services at Maryland General Hospital and Medical Director of TransHealth Care, Inc., brought assisted living resident Edith Dobbs to the conference to discuss her opinions of the form, which she filled out with him. Rebecca Elon, MD, MPH, Medical Director at North Arundel Senior Care and Associate Professor at the Johns Hopkins and University of Maryland Schools of Medicine, described her reluctance to rely on yet another form to ensure that patients’ deaths are not mismanaged. She admitted, however, that this may be a necessary burden to improve the quality of end-of-life care in Maryland. Rev. Dr. Robert E. Steinke, Director of Pastoral Care at Frederick Memorial Healthcare System, spoke of ways in which the PPOC form may trigger ethics consults in health care facilities. Rene P. Laje, PhD, Director of Social Services at the Hebrew Home of Greater Washington, described how the Hebrew Home has implemented the PPOC form at its facility.

More information about Maryland’s PPOC form can be found at: http://www.oag.state.md.us/Healthpol/PPOC_explanatory_professionals_final.pdf.

L&HCP FACULTY NOTES...

PROFESSOR KATHLEEN DACHILLE

Publication:

“Mandate Fire-Safe Cigarettes in Maryland,” Commentary, *Baltimore Sun* (January 11, 2006)

Presentations:

“Public Policies and Laws on Tobacco: Impact on Children with Asthma,” given at the interdisciplinary course, “Plan of No Attack: An Interdisciplinary Approach to Managing Childhood Asthma,” University of Maryland School of Social Work, Baltimore, Maryland (January 21, 2006)

Guest, “Fire Safe Cigarettes,” Ron Smith Show, WBAL 1090 AM (Baltimore) (January 11, 2006)

“Flavored Tobacco Products: The Tobacco Industry’s Tactics and the Public Health Community’s Options in Response,” New York State Department of Health, Tobacco Control Program Annual Meeting, Albany, New York (September 16, 2005)

“Vermont v. RJR, Concerning Eclipse Brand Cigarettes,” Centers for Disease Control Media Network Conference Call and Webcast Nationwide (August 18, 2005)

“California v. US Smokeless Tobacco,” Centers for Disease Control Media Network Conference Call and Webcast Nationwide (August 18, 2005)

PROFESSOR DAN GILMAN

Publications:

“Oy Canada! Trade’s Non-solution to ‘the Problem’ of U.S. Drug Prices, Across the 49th Parallel (and Across the Pond)” (forthcoming in *AM. J. L. & MED.*)

Presentations:

“Levels of Explanation, Again, in the Regulatory Arena,” 8th Annual SEAL Scholarship Roundtable, Vanderbilt University Law School (March 31–April 1, 2006)

“Trade’s Non-solution to ‘the Problem’ of U.S. Drug Prices” at *The Globalization of Pharmaceuticals: International Regulatory Issues*, Boston Univ. School of Law (February 2006)

PROFESSOR MICHAEL GREENBERGER

Publication:

“The Role of the Federal Government in Response to Catastrophic Health Emergencies: Lessons Learned from Hurricane Katrina,” (October 2005), University of Maryland Legal Studies Research Paper No. 2005-52, available at <http://ssrn.com/abstract=824184>

Presentations:

“Avian Flu: What Can We Do?,” Symposium Co-Organizer, Moderator and Presenter, University of Maryland School of Law, Baltimore, Maryland (January 13, 2006)

“APHA Past Presidents Session: The Legal Framework for Responding to Catastrophic Public Health Emergencies,” American Public Health Association’s 133rd

Annual Meeting, Philadelphia, Pennsylvania (December 12, 2005)

“Legal Issues Concerning Emergency Response to Katrina,” Attorney General’s In-House Education & Training Session, Baltimore, Maryland (November 18, 2005)

“HarborBase 3,” Invited Participant, Baltimore Metropolitan Bioterrorism Field Exercise, Baltimore, Maryland (November 14, 2005)

“BioShield,” Middle Atlantic Regional Center for Excellence for Biodefense and Emerging Infectious Diseases Research (MARCE), Fall Meeting, Ellicott City, Maryland (October 27, 2005)

“Hurricane Katrina: What Went Wrong?,” Facilitator and Presenter at 3rd Annual Law School Teach-In, University of Maryland School of Law, Baltimore, Maryland (September 7, 2005)

ASSOCIATE DEAN DIANE HOFFMANN

Publications:

“Judging Genes: When Should Judges Admit or Compel Genetic Tests?,” (with Karen Rothenberg) 310 SCIENCE 241 (October 14, 2005)

“Barriers to Managing Pain in the Nursing Home,” Findings from a statewide survey. *JOURNAL OF THE AMERICAN MEDICAL DIRECTORS ASSOCIATION*, (2005) 6 (3 Supp), S13-9 (with Anita Tarzian)

L&HCP FACULTY NOTES...

Presentations:

“Questioning the Autonomy Model in End of Life Care,” (keynote speaker) 29th Annual Bioethics Conference sponsored by the Mendel Society of Boston College and the Bioethics Society of Boston University, Boston College (February 25, 2006)

“Rethinking the Role of Autonomy in End of Life Care,” Sister Margaret James Ethics Lecture, St. Agnes Hospital, Baltimore, Maryland (January 25, 2006)

“Where Are We in End of Life Care Policies? A Re-examination of the Principle of Autonomy,” Ethics Grand Rounds, Shady Grove Hospital, Shady Grove, Maryland (October 27, 2005)

Interview, “Genes in the Court Room,” NPR, Science Friday, (October 14, 2005)

Interview, “Judging Genes,” BBC, Leading Edge, (October 13, 2005)

DEAN KAREN ROTHENBERG

Publications:

“The Scarlet Gene: Behavioral Genetics, Criminal Law, and Racial and Ethnic Stigma,” 69 *LAW & CONTEMPORARY PROBLEMS* ____ (2006)

“Judging Genes: When Should Judges Admit or Compel Genetic Tests?” (with Diane Hoffmann), 310 *SCIENCE* 241 (October 14, 2005)

Appointments:

Academic Advisor, Business Women’s Initiative Against HIV/AIDS (Winter 2006)

Panel Member, NIH State-of-the-Science Conference: Cesarean Delivery on Maternal Request, National Institutes of Health (NIH) (March 2006)

PROFESSOR LAWRENCE SUNG

Presentation:

“Toward a Comprehensive Genomic Analysis of Cancer, Intellectual Property and Data Release,” National Cancer Institute/National Human Genome Research Institute Meeting, Washington, DC (July 22, 2005)

PROFESSOR ALLYN TAYLOR

Publication:

“Trade, Human Rights and the WHO Framework Convention on Tobacco Control: Just What the Doctor Ordered?” In *HUMAN RIGHTS AND INTERNATIONAL TRADE*, T. Cottier, J. Pauwelyn & E. Burgi, eds. (Oxford University Press, 2006).

Presentation:

“Taking Global Public Health Seriously,” invited lecture presented at the Brooklyn Law School Health Law, International Law, and Business Law Conference Series. Brooklyn, New York, October 2005

PROFESSOR ELLEN WEBER

Presentations:

“Risks and Realities: Legal Issues for the Employer of Impaired Professionals,” Sixth Annual Pharmacy Education and Assistance Committee (PEAC) Conference: Working Without a Net: The Impaired Professional in the Workplace, Linthicum, Maryland (September 23, 2005)

“Confidentiality,” A Family Disease: The Impact of Addiction and Substance Abuse on Children, Families, Family Courts and Communities Conference, University of Baltimore School of Law, Center for Families, Children and the Courts, Baltimore, Maryland (September 23, 2005)

PROFESSOR ROBIN WILSON

Book:

Handbook of Children, Culture & Violence, with Nancy Dowd and Dorothy G. Singer, eds. (Sage Press 2006)

Publications:

“Comment: Removing Violent Parents from the Home: A Test Case for the Public Health Approach,” 12 *VIRGINIA JOURNAL OF SOCIAL POLICY & LAW* 638 to 672 (2005)

“Autonomy Suspended: Using Female Patients to Teach Intimate Exams Without Their Knowledge or Consent,” 8(2) *JOURNAL OF HEALTH CARE LAW & POLICY* 240 (2005)

Presentation:

“Remove the Threat, Not the Child: A Test Case for Using Social Science to Guide Child and Family Policy,” Yale University School of Medicine, Edward Zigler Center for Child Development and Social Policy, New Haven, Connecticut (March 31, 2006)

“Matters of Conscience: Lessons for Same Sex Marriage From the Health Care Context,” Conference on Same Sex Marriage and Religious Freedom, The Becket Fund for Religious Liberty, Washington, DC (December 15, 2005)

SHLO HAPPENINGS...

The Student Health Law Organization (SHLO) is comprised of members who share a common interest in the area of health law, and works closely with the Law & Health Care Program to increase the interest of students in the rapidly changing field of health law. This year, SHLO has worked harder than ever to broaden the interaction between students interested in health law with each other, with the *Journal of Health Care Law & Policy*, with other law school organizations, and with the Baltimore community. In addition to career panels, networking, and brown bag events at the law school, SHLO has co-sponsored events with other University of Maryland professional schools, reached out to the Baltimore community through community service events, and encouraged students to get involved at the state and national levels by volunteering to work at health law conferences.

In September, SHLO hosted the Maryland State Bar Association Health Law Section's fall meeting, entitled "80 Years of Health Law Practice." Attorneys S. Allan Adelman, current President of the American Health Lawyers Association; Ellen Callegary, an attorney in private practice representing children with disabilities (see story, p. 11); and Mary N. Humphries, former in-house counsel for the University of Maryland Medical System, reflected on the challenges and changes they have encountered in more than a combined eighty years of practicing health law. Students, faculty, and health law attorneys from all over Maryland attended.

In October, SHLO organized its first ever community service event. Several students visited the Ronald McDonald House, a "home away from home" for families of seriously ill children receiving



Third year law student Linda Gousis carves pumpkins with a Ronald McDonald House resident

treatment at nearby hospitals, and spent a Sunday evening decorating Halloween cupcakes and carving pumpkins with the children and their families.

SHLO also held its annual "What Is Health Law?" panel event in October. At the event, attorneys representing different sectors of health law spoke to students about what it is like to work on health care issues at private law firms, the federal government, and non-profit organizations. A standing room only event, this year's panelists included Carl S. Jean-Baptiste, Jr., a Maryland graduate who works in the general counsel's office at MedStar Health, Inc.; Daniel J. O'Brien from the Office of the Attorney General, Department of Health and Mental Hygiene; Larry Russell, another Maryland graduate who is a partner at Ober | Kaler; Marc Steinberg, a Senior Health Policy Analyst at Families USA; and Jo An Rochez Leonce, also a Maryland grad from the Office of the General Counsel, Public Health Division at the Department of Health and Human Services. The panelists answered students' questions on the substantive areas of law with which

they deal, their lifestyles, and their personal career paths.

SHLO recently joined with the student Alternative Dispute Resolution Group to host a panel discussion titled, "ADR in Resolving Health Care Disputes." Barbara Moidel, a National Ombudsman and Mediator, and Commander Michael Jacksonis, of the Judge Advocate Corps, from Bethesda Naval Medical Center spoke about the success of the mediation program the Center has had in place for the past six years.

By Mona Shah, '06



First year law student Rebecca Caldwell and a Ronald McDonald House resident enjoy the Halloween festivities

Over all, the panel concluded that the available information on risks and benefits of CDMR versus planned vaginal delivery (PVD) do not provide clear guidance as to how physicians should respond to these requests.³ However, as an ethical matter, if a woman requests information on CD in the absence of medical indication, the panel concluded that the provider “should engage in nondirective counseling that incorporates the woman’s values and cultural context with sensitivity to the patient’s concerns. For example, if the woman has a fear of the pain during labor, pain management strategies should be addressed.” In addition, the panel stated that the “[r]isks and benefits of CDMR versus PVD must be individualized and based on a shared decision-making process” and that after thorough discussion with the patient “CDMR may be a reasonable alternative to PVD.” When a provider cannot honor a patient’s request for CD, however, the panel concluded that “it is appropriate to refer the woman to another provider.”

After serving an intensive three days looking at the data and discussing it with experts from across the country, Rothenberg believes there is much we don’t know about what is motivating women to request c-sections without a medical indication and that more research is needed to uncover the answers.

Footnotes

¹ Gene Declercq and Judy Norsigian, “Mothers aren’t behind a vogue for cesareans,” *The Boston Globe* (April 3, 2006).

² *Id.*

³ A complete copy of the panel’s report is available at <http://consensus.nih.gov>.

UPCOMING MHECN CONFERENCE: *Should Conscience Be Your Guide? Exploring Conscience- Based Refusals in Health Care*

The L&HCP’s Maryland Healthcare Ethics Committee Network (MHECN) is planning a conference for June 20, 2006 at the School of Law on conscientious objection in health care. The growing legislative trend in many states to broaden the scope of conscience clauses is prompting the conference. Such clauses allow health care providers (HCPs) to refuse to participate in certain professional activities that conflict with their personal beliefs. Too little attention has been placed on how individual HCPs balance the right to their personal beliefs with their professional obligations, and the degree to which personal beliefs should be allowed to impact patient care. The upcoming conference will focus on defining and exploring HCPs’ conscience-based refusals, including discerning valid from invalid claims of conscience, reviewing related legal trends and employment laws, identifying best institutional practices for protecting both health care providers’ and patients’ rights, and trouble-shooting difficult cases.

Preeminent bioethicist James Childress, PhD, Hollingsworth Professor in the Department of Religious Studies at the University of Virginia, has agreed to give the keynote conference address. Please contact MHECN@law.umaryland.edu, or call (410) 706-4457 for more information about the conference.

New Health Law Courses
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liability, fraud and abuse, and end-of-life decision-making often present very different and challenging legal issues when applied to long term care.”

References

¹*Child Maltreatment: Fact Sheet*, at <http://www.cdc.gov/ncipc/factsheets/cmfacts.htm>.

²W. Rodney Hammond, *Public Health and Child Maltreatment Prevention: The Role of the Centers for Disease Control and Prevention*, 8(2) CHILD MALTREATMENT 81, 82 (2003).

³*Child Maltreatment: Fact Sheet*, at <http://www.cdc.gov/ncipc/factsheets/cmfacts.htm>.

⁴Leon Gordis, EPIDEMIOLOGY 193-94 (Second Edition 2000). As the dose of exposure increases, the risk of disease also increases. If a dose-response relationship is present, it is strong evidence of a causal relationship.

⁵Hammond, *supra* note 2, at 81.

⁶*Id.* at 82. The National Electronic Injury Surveillance System has helped the CDC

estimate nonfatal injuries nationwide. The CDC has also developed a National Violent Death Reporting System (NVDRS) which integrates information from medical examiners, police, crime labs, health departments, and child protective services, to provide states and communities with information that can be used to guide prevention efforts. Currently, seventeen states, including Maryland, utilize NVDRS grants to collect this information. See <http://www.cdc.gov/ncipc/profiles/nvdrs/default.htm>.
⁷*Id.*; see also *Child Maltreatment: Fact Sheet*, at <http://www.cdc.gov/ncipc/factsheets/cmfacts.htm>.

⁸*Child Abuse Prevention and Treatment Act*, at <http://www.acf.hhs.gov/programs/cb/laws/capta03/intro.htm>.

⁹*Testimony Before the House Subcommittee on Labor-HHS-Education Appropriations* by Dr. Duane Alexander, March 9, 2005, at <http://olpa.od.nih.gov/hearings/109/session1/testimonies/budgetacf.asp>.

SAVE THE DATE

for the
**30th Annual
Health Law Teachers
Conference**
June 1-3, 2006

at the
**University of Maryland
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For more information about the conference, visit http://www.aslme.org/aslmesecure/info/description.php?conf_id=53.

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