

LAW & HEALTH CARE

N E W S L E T T E R

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Maryland's Law & Health Care Program Flourishes

The Law & Health Care Program at the University of Maryland School of Law was established in the late 1980s in response to a growing demand for health law expertise by lawyers and health professionals. Located on the "campus of the professions" along with the Schools of Medicine, Nursing, Dentistry, Pharmacy and Social Work, the Law School has worked with each of these schools, as well as the health policy graduate program at the University of Maryland, Baltimore County, and faculty at the Johns Hopkins Medical School to develop a strong interdisciplinary program which combines education and research on emerging medical, health policy and law related issues.

The Program's courses are in high demand and professional interest in law and health care continues to expand, fueled, in part, by recent concern with health care reform.

As one of the most comprehensive law and health care programs in the country, the curriculum includes two core courses--*Law and Medicine* and *Health Care Law*. Other courses include: *Alternate Methods of Dispute Resolution in Health Care*, *Antitrust and Health Care Law Seminar*, *Civil Rights of Persons with Disabilities*, *Health Law Placement Workshop*, *Law and Mental Health Clinical Seminar*, *Legal Problems of the Elderly*, *Law and Biomedical Sciences Seminar*, *Food and Drug Law Seminar*, *Spe-*

From the Director

The Law & Health Care Program at the University of Maryland School of Law has been growing and evolving for over six years, and this newsletter is part of an ongoing effort to improve Program communications. The newsletter was created to share information with students, faculty, staff, and alumni at law and health professional schools across the country. Initially, the newsletter will be published at least twice annually.

In this issue we've provided some background information about our Program--its curriculum, clinic, fellowship and externship programs, research projects, speaker series, conferences, honors, awards and grants and our Student Health Law Organization--and also let our readers know about our current and future projects.

We hope you enjoy the issue and welcome your comments and suggestions.

Karen Rothenberg, JD, MPA

cial Topics Seminar on Health Care, Ethics Committees, and a Special Topics Seminar on Medical Malpractice. An interdisciplinary course, *Critical Issues in Health Care*, provides law students with an opportunity to interact and share information and perspectives with students from the dental, medical, nursing, pharmacy and social work schools on campus.

Additionally, students interested in health law may participate in a dual degree program with the Department of Policy Sciences at UMBC, earning a master's or PhD in health policy along

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Introducing L&HCP Faculty . . .

Professor Karen H. Rothenberg, BA magna cum laude, MPA Princeton University; JD University of Virginia; Jacqueline McCurdy Scholar. Professor Rothenberg founded and directs the Law & Health Care Program. She came to the University of Maryland in 1983 from the Washington, D.C. firm of Covington and Burling. In addition to the School of Law, Professor Rothenberg holds faculty appointments at The University of Maryland and the Johns Hopkins University Schools of Medicine. She is president of the American Society of Law, Medicine & Ethics; a member of the board of editors for *Biolaw*; a member of the NIH Task Force on the Recruitment and Retention of Women in Clinical Trials; and a member of the Institute of Medicine's Committee on Legal and Ethical Issues Relating to the Inclusion of Women in Clinical Studies.

Associate Professor Diane E. Hoffmann, AB magna cum laude, Duke University; MS Harvard School of Public Health; JD cum laude, Harvard Law School. Before joining the law

school faculty, Professor Hoffmann was an Associate with the law firm of Dewey, Ballantine, Bushby, Palmer & Wood. She is a member of the ethics committees at University Hospital in Baltimore and at the National Institutes of Health in Bethesda; conducted a major empirical study of ethics committees in the Baltimore, Washington and Virginia areas; is editor of the Mid-Atlantic Ethics Committee Newsletter; and was instrumental in the passage of Maryland's Health Care Decisions Act.

Visiting Assistant Professor Joan L. O'Sullivan, BA magna cum laude, Butler University, JD University of Maryland. Served as staff attorney, acting chief attorney and is currently on leave as managing attorney for the Senior Citizens' Law Project of the Legal Aid Bureau, Inc. 1992 recipient of the Distinguished Service Award from the Maryland Legal Services Corporation.

Recent Faculty Publications . . .

Karen Rothenberg

"Partner Notification and the Threat of Domestic Violence Against Women with HIV Infection," (with R. North) 329 *New Eng. J. Med.* 1194 (1993).

"The Law's Response to Reproductive Genetic Testing: Questioning Assumptions About Choice, Causation, and Control," 8 *Fetal Diagnosis & Therapy* 157 (1993).

"Myth and Reality: The Threat of Medical Malpractice Claims by Low-Income Women," 20 *Law, Medicine and Health Care* 403 (1993).

Diane Hoffmann

"Assessing Institutional Ethics Committees — A View from the Outside," 71 *The Milbank Quarterly* 677 (1993).

"Financial Exploitation of the Elderly," (with R. Wolf) 26 *Maryland Bar Journal* 2 (1993).

Maryland's New Health Care Decisions Act

Shortly before the Maryland legislative session came to a close on April 12, 1993, "The Maryland Health Care Decisions Act" passed the legislature. Prompted by a conference sponsored by the Program and the Maryland Attorney General's Office in 1992, "The Right to Refuse Life-Sustaining Medical Treatment in Maryland," the legislation was drafted by a group spearheaded by Law & Health Care Program faculty member Diane Hoffmann. The legislation was signed into law by Maryland Governor William Donald Schaefer and took effect on October 1, 1993. Some of its provisions include:

Advance directives - allows a competent adult to deal with future health care issues by either **written instructions, written appointment of an**

agent, or an oral statement to a physician, and includes two optional forms, a *living will form*; and a broader *advance directive form*.

Using the *advance directive form*, individuals may specify whether they want life sustaining treatment if they are terminally ill, in a persistent vegetative state or have an end stage condition. End state condition is a unique concept in the law, defined in part as an advanced, progressive, irreversible condition caused by injury, disease or illness. Also, when using the *advance directive form*, a woman may specify whether she wants this form to apply when she is pregnant.

Surrogate decision-making - allows a surrogate to make health care decisions

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Law & Health Care Newsletter

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Adjunct Faculty

Part of the success of the Law & Health Care Program can be attributed to the excellence of its adjunct faculty and the legal experience they bring into the classroom.

Ellen A. Callegary is an attorney with the firm of Callegary and Callegary and President of the Maryland ACLU. She received her JD from the University of Maryland in 1978, and was formerly principal counsel for the Juvenile Services Agency, Office of the Maryland Attorney General. She teaches Law & Medicine during summer session.

Ellen J. Flannery has been a partner in the Washington, D.C. law firm of Covington & Burling since 1986. A graduate of the Boston University School of Law, she clerked for Judge David Bazelon, U.S. Court of Appeals for the District of Columbia, and worked as a Special Assistant to the Commissioner for the Massachusetts Department of Health. She teaches Food and Drug Law with Lars Noah.

Lars Noah has been an associate with Covington & Burling since 1991. He graduated magna cum laude from Harvard Law School and clerked for Judge Abner J. Mikva, U.S. Court of Appeals for the District of Columbia.

Lewis Noonberg is a partner in the Washington, D.C. office of the Baltimore law firm of Piper & Marbury. A 1962 LLB graduate of the University of Maryland Law School, Noonberg is also a former Assistant Attorney General for the state. He teaches an advanced seminar in Antitrust and Health Care Law.

Carol L. Rubin is a partner with the Baltimore firm of Fisher & Winner specializing in health law. She received her JD with honors from the University of Maryland Law School in 1985. She teaches Health Care Law.

Gary I. Strausberg is a principal in the firm of Janet & Strausberg and a former instructor of law at Boston University Law School. He has an LLM from Harvard Law and a JD with honors from George Washington National Law Center. He teaches an advanced seminar in Medical Malpractice.

Success Stories

Graduates of the Law & Health Care Program

Arthur Cohn came to the Law & Health Care Program in 1988 with an interest in health care law, and when he received his J.D. in 1991, he left with a wonderful job.

Art works for the National Institutes of Health in the Office of Technology Transfer (OTT) in Bethesda, Maryland. As new inventions are made in Public Health Service Laboratories, the OTT endeavors to transfer these inventions through licensing to the private sector for development that will benefit the public health. Where necessary, to ensure rapid and effective development of a particular invention, the OTT seeks intellectual property protection on inventions.

Art Cohn's daily work involves interaction with NIH scientists, evaluating the potential for patenting and licensing of their inventions. He assesses whether royalties will offset the cost of development, promotes the invention to private industry to gauge its acceptance, and negotiates license agreements.

Art's was introduced to the Program with the two core courses, *Law & Medicine* and *Health Care Law*. He went on to become a founding member of the fledgling Student Health Law Association and participate in the Program's Asper Fellowship placements.

At the time, the Program had established a health law fellowship with the

General Counsel's Office at NIH. Art, following his interests, initiated the fellowship with the Tech Transfer Office.

"I interviewed with Reid Adler [then Director of the Office of Technology Transfer], was accepted for the Asper Fellowship and then did some policy work directly under Reid's supervision. The following semester I did volunteer work for the licensing branch, and when I graduated was offered a position," Art says, adding that his supervisor was looking for a certain quality of work, and fortunately, he met those expectations. It was the Program, however, which gave Art a "foot in the door."

Art is enthusiastic when talking about the Law & Health Care Program, and in particular about its placement opportunities. "The Program is committed to giving a student the opportunity to explore . . . to find out about an area of the law in which you might want to work without making a permanent commitment. Classroom instruction provides students with the tools to practice law and fellowships and externships allow us to use those tools in a 'real world' setting. They provide great practical experience, something that can't be obtained by reading a law book." (See article, "Spotlight on . . . Asper Fellowships and Externships" on page 4.)

Spotlight on . . .

ASPER FELLOWSHIPS AND EXTERNSHIPS

The Law & Health Care Program's ASPER Fellowship Program (named after Louis D. Asper, a Maryland Law School professor who advocated practical training for students) provides an opportunity for students interested in health law to obtain credit by working for non-profit and government agencies dealing with health care issues. Students spend 10 hours per week at their placement and additional hours throughout the semester in the classroom participating in a health law workshop. Placements have included the American Nurses Association; FDA; Green Spring Mental Health Services, Inc.; Johns Hopkins Hospital, Office of the General Counsel; Med-Chi of Maryland; Medlantic Healthcare Group; National Health Law Program; NIH; U.S. Senate Special Committee on Aging; University of Maryland Medical System, Office of the General Counsel; and the

Office of the Attorney General, General Litigation Unit and Medicaid Fraud Unit.

The Program has also offered three full semester externships--The National Health Law Program externship in Washington, D.C. offers students the opportunity for in-depth experience in an agency which is involved in legislation, litigation, publication, and training in public interest health law; The University of Maryland externship, located in University Hospital's General Counsel's office involves research on patient care and general hospital legal issues; and Blue Cross/Blue Shield of Maryland (BCBSM), the state's largest health insurer enables students to learn about legal issues associated with managed care in the larger context of health insurance and the delivery of medical services, and the development and impact of legislation related to managed care.

Blue Cross/Blue Shield of Maryland

The BCBSM externship was added this year and filled by third year law school student Kevin Bell during the Summer 1993 semester. Kevin says that he came to appreciate the importance of the context within which managed care exists and as a result of his work at BCBSM, he shifted his focus to learning about managed care's environment and how the recent and anticipated changes will affect it.

"I have developed a humbling understanding of just how impenetrable legislation in this area can be . . . and how incredibly confusing. In the legislative analysis work I did, I often found myself virtually at a loss to define the meaning of recently enacted Annapolis [state] legislation. I learned however, I was not alone, and that asking four lawyers about a bill's meaning often yielded four different opinions. That insight was as valuable to me as the actual skill at legislative analysis I developed during the externship."

During the course of the externship, Kevin familiarized himself with *The Insiders Guide to Managed Care: A Legal and Operational Roadmap*, published by the National Health Lawyers Association, and researched, analyzed and wrote reports on a number of pieces of legislation enacted by the 1993 Maryland legislature, particularly HB 1389, a major piece of health care reform legislation.

Kevin gives field supervisor and BCBSM attorney, Livio Broccolino, much of the credit for the externship's success, saying he was "highly experienced in matters of health law and philosophically committed to providing a student with attention and supervision."

RESEARCH

Program faculty have engaged in research on a variety of topics in the health law area, including a multidisciplinary effort, funded by NIH's Human Genome Project, to examine how new information gained about the human genome will affect our concepts of health, disease, illness, normality and disability; and an empirical study to examine the views of elderly outpatients regarding advance directives and receipt of life-sustaining treatment.

The Program has received a grant from the National Health Lawyers Association to study the role of law in the deliberations of hospital ethics committees, and most recently, a grant from the American Foundation for AIDS Research (AmFAR) to survey providers who treat women with AIDS on the connection between partner notification and domestic violence.

Research has supported three special symposium issues of the *Maryland Law Review* on the topics--health care workers and AIDS, ethics committees, and an upcoming issue on health care decisions laws.

SPEAKER SERIES

In April of 1994, the Program is planning a workshop on *Partner Notification, Domestic Violence and Women With AIDS*, to discuss the results of its AmFAR survey and its implications for public policy.

Two recent events sponsored by the L&HCP included a presentation by Marian Secundy, co-chair of the Ethics Group of the Presidential Task Force on Health Care Reform on, *The Ethical Implications of Health Care Reform*, and *Implementation of the Maryland Health Care Decisions Act*, an all-day conference attended by nearly two hundred participants.

Previous speaker series have included such diverse topics as *Women, AIDS and Reproduction*, *The Right to Die After Cruzan*, and *Understanding The New Issues in Genetics: Mapping the Human Genome, Genetic Testing--Predictions and Precautions, Human Gene Therapy--Legal and Ethical Issues*, a three part series funded by a grant from the GTE Corporation.

IN THE HEALTH LAW CLINIC

by Joan O'Sullivan, JD

The law school offers, as part of its regular curriculum, a clinical law program in which faculty members who are practicing attorneys supervise law students in the representation of actual clients. The clinical program has been recognized by *U.S. News and World Report*, ranking third in their annual survey of law schools. For those students with a general interest in health law, the clinic represents clients in cases involving health care for children, legal issues of the handicapped, mental illness and AIDS.

Additionally, in 1991 the Clinic received a three-year Department of Education grant to fund a Health Law Clinic headed by Joan O'Sullivan, a visiting professor on leave as managing attorney for the Legal Aid Bureau's Senior Citizen Law Project in Annapolis, MD.

Following are some examples of the types of work being handled by students in the Health Law Clinic.

During the semester, Health Law Clinic students concentrated on health law as it applies to the poor elderly, especially regarding the right to choose medical treatment, the rights of nursing home residents, and the rights of

questionably competent clients in guardianship proceedings. Students are working on individual cases, as well as on larger problems in these areas.

The class is involved in two projects: one concerns the rewriting of a comprehensive guidebook to nursing homes. The booklet is a cooperative effort of the Maryland State Bar Association, the Attorney General's Office and the State Office on Aging. First published in 1988, the information in the booklet has become out of date due to significant legislative changes in the rights of nursing home patients and in Medical Assistance regulations. Students and members of the private bar are revising the information and putting this complex information into understandable language.

A student was able to apply the law he learned from this work when representing a frail elderly man who had been mugged outside of his Baltimore home. The man was sent to a nursing home after being treated in the hospital, and had been trying to return to his home ever since. The staff of the nursing home repeatedly told him he could not live alone and could not leave, even

though he was found by his doctors to be mentally competent. The student advised him about his right to leave the home, conferred with the nursing home administration and assisted the client in paying his overdue real estate tax bill. He enlisted the help of a student from the University of Maryland School of Social Work. These students are placed in the law clinic to work with law students on their cases. With the support of these two students, the client eventually left the nursing home on his own initiative.

Another group of clinic students is investigating serious systemic problems in the ways in which guardianship cases are handled by attorneys and the courts. There are widespread variations among jurisdictions with resulting abuses to the rights of alleged disabled persons.

One incident of such abuse handled in the clinic concerns a 65 year old, mildly retarded woman who was injured in an automobile accident. She had no relatives and for the last several years had lived in a private home with a caretaker. Her caretaker pursued a personal injury claim on her behalf and she was awarded a large sum of money. Her caretaker filed to be named guardian of her person and property so that the insurance company could pay her the

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Program Flourishes

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with their JD.

In addition to classroom instruction, the Program offers such opportunities as Asper fellowships and externships which enable students to work for health care institutions and agencies concerned with health law issues in the Baltimore and Washington, D.C. area under the supervision of faculty and practicing health law attorneys.

A significant component of the Program is clinical education. The law

school's Health Law Clinic, AIDS Clinic and other clinical placements allow students, under faculty supervision, to represent clients with real legal problems.

The Program supports an active Student Health Law Organization (SHLO) which sponsors a variety of events and is involved in Program development. SHLO members serve on an advisory board for *Biolaw*, a national bioethics reporter.

As part of its effort to reach out to the community, the Program sponsors a number of interdisciplinary speakers series, panel discussions and conferences

of interest to legal and health care groups on topics which have included ethical implications of health care reform, right-to-forego treatment, and AIDS.

Program faculty are involved in a number of research projects on such diverse issues as women's health, ethics committees, advance directives, and genetics.

In acknowledgment of its accomplishments, the Program received the 1989 Distinguished Program Award from the Maryland Association of Higher Education.

Maryland's Health Care Decisions Act

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in a situation where a patient has not picked a health care agent and is no longer able to make such decisions personally. Surrogates are listed in priority order, and the law recognizes a friend or relative who specifies in writing that he or she is a close friend of the patient and provides facts to demonstrate enough regular contact with the patient so as to make the surrogate familiar with the patient's activities, health and personal beliefs.

Patient safeguards - provides safeguards against instructions to withhold or withdraw life sustaining procedures from a patient which are believed to be inconsistent with generally accepted standards of patient care via petitions to a patient care advisory committee or the court.

Medically ineffective treatment - provides that a physician need not provide treatment the physician believes to be medically ineffective or ethically

inappropriate.

Outpatient DNRs - authorizes emergency medical personnel to follow "do not resuscitate" (DNR) orders in the outpatient setting based on established protocols.

Standards for guardians and courts - such decisions must be based on the substituted judgment and best interest tests. It also codifies a "clear and convincing evidence" standard for the application of these tests.

Passage of this legislation is part of a national trend to consolidate living will, durable power of attorney and surrogate decision-making into a single piece of legislation, and Maryland's comprehensive new law may well become a national model.

In The Health Law Clinic Cont. from page 5

settlement. The client told the attorney who was appointed to represent her that she wanted her caretaker to be her guardian because she loved her and took good care of her. However, when the case went to court, the attorney did not advocate for this position, and instead offered himself as guardian. He was appointed by the court and has since placed restrictions on the amount of money she can use. Clinic students have appealed the court's appointment to the Court of Special Appeals challenging the actions of the court-appointed attorney.

By representing individual clients and looking at larger, systemic issues, health law students are confronting the ethical issues and practical problems which arise in this challenging area of the law.

LAW & HEALTH CARE PROGRAM
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