

# LAW & HEALTH CARE

N E W S L E T T E R

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## L&HCP Study on HIV Disclosure and Domestic Violence Highlighted at AmFAR Workshop

A mother of two was beaten, then abandoned, when she told her boyfriend that she had tested positive for the HIV virus. She and her two children became homeless. Another woman was told by her boyfriend that he would kill her--she was pregnant at the time.

These and other stories were shared at an all day workshop, "HIV Disclosure, Domestic Violence and Women with HIV/AIDS: Implications for Public Policy," held at the law school on April 11, 1994. Nearly two hundred participants attended the workshop, including health care providers, counselors, public health officials, women with HIV/AIDS, and public policy makers from the Centers for Disease Control, Congress and state agencies. The workshop was part of a two part project, conducted by the L&HCP and funded by the American Foundation for AIDS Research (AmFAR), which examined the link between domestic violence and the disclosure of HIV status. The first part surveyed health practitioners and counselors to discover their current practices, attitudes and perceptions on the connection between violence and disclosure of HIV status.

The preliminary survey data suggests

### From the Director

This is the second issue of our Law & Health Care Program newsletter and we would like to express our appreciation for the many favorable comments we have received from our readers. The newsletter has exceeded our expectations as a way to share information with students, faculty, staff and alumni at law and health professional schools, as well as health care lawyers and judges across the country. We hope to continue publication at least once each semester.

As always, we welcome your comments and suggestions on the newsletter content. Enjoy the issue and have a wonderful summer.

Karen Rothenberg, JD, MPA

that violence, abuse and abandonment are realities for HIV infected women, and that this reality influences the cooperation of female patients regarding disclosure to their partners, at least as perceived by providers. More than half of the respondent providers reported that they have female patients who resist disclosure (26 percent of their patients) and rank abandonment, emotional abuse and violence as top factors influencing their resistance.

The following preliminary data was compiled from the survey findings: 45 percent of respondents have been told by female patients that they fear

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# L&HCP Faculty Expands

The L&HCP has recently expanded its faculty. Although Professor Diane Hoffmann has been with the Program since 1987, she recently accepted a tenure track position. Hoffmann received her undergraduate degree magna cum laude from Duke University, her master's from the Harvard School of Public Health, and her JD from Harvard Law School. She previously worked in the Washington Office of Dewey, Ballantine, Bushby, Palmer and Wood in the areas of health, environment and food and drug law. She was principal drafter and lobbyist for Maryland's new Health Care Decisions Act legislation which was enacted in 1993. She has written extensively in the area of health care ethics committees.

## Law & Health Care Newsletter

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Comments and letters should be forwarded to the above address.

Joining the Law & Health Care Program faculty on July 1, 1994, Dr. David Hyman will teach courses in health care law, health care policy and finance and civil procedure. Dr. Hyman received his MD from the University of Chicago and his JD with honors from the University of Chicago Law School. Prior to joining the law school, Dr. Hyman was an associate with Mayer, Brown & Platt in Chicago, working in the areas of tax and health care law. He was formerly a lecturer for the University of Chicago, a Fellow in the Pew Program in Medicine, Arts and the Social Sciences and a past recipient of the Hedwig H. Loeb Research Fellowship.

In addition to Program Director, Karen H. Rothenberg, the Program faculty include Visiting Assistant Professor Joan O'Sullivan, who runs the Health Law Clinic and a number of adjunct faculty who specialize in the practice of health care law.

## Marjorie Cook Professorship Awarded

Karen Rothenberg, Director of the Law & Health Care Program, was awarded the first Marjorie Cook Professorship on April 20, 1994. Funded by a gift and pledge from the Marjorie Cook Foundation, the purpose of the professorship is "to further the cause of equality for women in civil and economic rights or to aid women who are in distress or suffering injury because of inequalities in the laws of Maryland or any of the United States."

Law school Dean Donald Gifford stated that, "Rothenberg was awarded the professorship, in part, because of her national reputation as a specialist in health care issues, particularly in women's health."

Rothenberg's major areas of interest include Women and AIDS, Prenatal Testing and Genetic Technology, Women and Clinical Research, New Reproductive Technologies, and The Role of Gender in Health Care.

## Program Is Rated Among Nation's Best

The Law & Health Care Program at the University of Maryland School of Law was rated among the best in the nation according to *U.S. News and World Report's* 1994 survey of the top law schools and specialty programs. The magazine annually ranks the top fifty law schools across the country and the top five specialty programs in a variety of categories such as health care law. This year, Maryland's Law & Health Care Program tied for second place.

Rankings are determined by an analysis of programs based on student selectivity, placement success and faculty resources, as well as two reputational surveys sent to academics, lawyers and judges. In addition to the Law & Health Care Program's top

ranking, Maryland's Clinical Law Program placed third in their clinic specialty group and the law school itself placed 45th, which places it among the top 26 percent of accredited schools.

Professor Karen Rothenberg, Director of the Program, was quoted in a recent interview, "We're very pleased with the results of the survey. To the best of my knowledge, we're the only Law & Health Care Program with a health law clinic, and one of the few that places an emphasis on interdisciplinary education. Also, research, scholarship, and public service in such areas as AIDS, women's health, the right to forego treatment and ethics committees have enabled us to gain a national reputation over the last few years."



# Success Stories

## Students in the Law & Health Care Program

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### *Hands On Experience with Health Care Reform*

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When Law & Health Care Program student Liz Lovoy was looking for a summer job in 1993 the current administration's health care reform push was gaining momentum. That summer, she was fortunate to be awarded an internship with Families U.S.A., an advocacy group for low income and elderly people. When she began looking for an externship placement this spring, Congressional hearings on reform proposals were in full swing, and Liz's work with the National Health Law Program (NHelp) once again put her in the midst of this very visible issue. NHelp is a non-profit organization that represents the poor, minorities, the disabled, and the aged in obtaining equity in government and private health care programs.

At Families U.S.A., Liz worked under the direction of Judith Waxman, someone she met in conjunction with her activities in the Law & Health Care Program. While Congress was preparing to hold hearings on the administration's Health Security Act and other health care reform proposals, a variety of health care coalitions were being formed, and Liz's work with Families U.S.A. involved identifying those coalitions, determining their

position on reform, and learning if they planned to submit counter-proposals. She gained a specialized knowledge of the issue before hearings on the actual proposals began.

When Liz began working at NHelp, as part of a 13-credit full semester externship program established by the Law & Health Care Program, she was again heavily involved with the reform issue and gained additional perspective since the issue was now rapidly developing on a daily basis in Congress.

Liz says, "I feel very fortunate to have been involved in this issue at two very different stages of its evolution. I learned a great deal from my work with the health care coalitions at Families U.S.A., and at NHelp I've been involved further with these coalitions in developing strategies for amending the various reform proposals. I've also attended Congressional "mark-up" sessions where I've heard debate on reform proposals by both Republicans and Democrats, and had extensive contact with legislative aides and others who influence their Congressional member's position on health care reform."

NHelp serves as a resource for legal services nationwide. Currently Liz is

acting as liaison with these organizations in bringing them up to date on the latest Congressional proposal for health care reform. She also works with legislative advocates in mobilizing their grassroots network for contacting their representatives and senators to urge support for protecting health care benefits for low-income individuals. This week the focus was on the Rostenkowski proposal and how best to preserve access to individual health services.

Prior to entering law school, Liz obtained a Masters in Public Health from the Johns Hopkins School of Hygiene and Public Health and worked for a consulting firm that managed health care studies for the National Institutes of Health. She will obtain her JD this semester and says that she is grateful for the diverse educational experience she received as part of the L&HCP.

Concerned with the methods of instituting change within the health care system, Liz says that now that she has seen first-hand how effective advocates are for public health issues, she hopes to continue her work in this area after she graduates.



# The Siegel Moot Court Competition Experience

by Abigail Brandel

On February 24, 1994, fellow third-year law student Stacey Moffett and I journeyed to Duke University School of Law to represent the University of Maryland in the Rabbi Seymour Siegel Moot Court Competition in Health Care Law and Ethics. Sixteen teams participated in the competition from schools which included the University of Maine, Chicago-Kent College of Law and the College of William and Mary. The subject of the competition was a timely one--physician-assisted suicide.

The problem involved a mythical Mr. Harold Newton, a thirty-nine year old man with quadriplegia, who had been diagnosed with an incurable, degenerative brain disease. Mr. Newton wishes to end his life when his mental faculties

begin to wane, rather than suffer through an agonizing death prolonged by a respirator and feeding tube. His family doctor is willing to help him carry out his wishes but fears liability under the fictional, recently-enacted North Carolina statute which criminalizes assisted suicide.

Participants were required to argue two issues: whether the law violates Mr. Newton's personal autonomy rights of liberty and privacy, and whether it violates his right to Equal Protection by depriving people with disabilities of the right to commit suicide. Suicide itself is not illegal and that right is consequently available to able-bodied people.

Participants were required to brief both issues on behalf of either the state or Mr. Newton and submit them to the

other teams approximately four weeks prior to the competition. At the competition, teams argued for thirty minutes each in three preliminary rounds and two elimination rounds, and two teams argued in the final round. Judges for the final round included a judge from the Georgia Supreme Court and the Chief Justice for the Court of Appeals for the Eleventh Circuit.

Our team prepared for the competition by participating in numerous practice arguments under the direction of L&HCP Professors Karen Rothenberg and Diane Hoffmann. Judges in the practice arguments included students, faculty, and practicing attorneys, all of whom had an interest in appellate advocacy and health law.

## Recent Faculty Activities

During the past semester, Professor Karen Rothenberg has been appointed Senior Research Fellow, Joseph & Rose Kennedy Institute of Ethics at Georgetown University. In January 1994 she served as Visiting Professor, University of Houston, Health Law and Policy Institute. Rothenberg has also given a number of lectures: "The Good Mother": The Limits of Reproductive Accountability & Genetic Choice," The Richard H. Heller Memorial Lectureship; "Genethics: The Use and Misuse of Genetic Information," American Medical Students Association, Standing Committee on Bioethics; and "Women & Clinical Trials: Legal & Ethical Issues," Grand Rounds, M.D. Anderson Cancer Center. Professor Rothenberg

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## L&HCP Sponsors Conference on Physician-Assisted Dying

The Law & Health Care Program recently co-sponsored with the Geriatrics and Gerontology Education and Research Program at The University of Maryland at Baltimore, a half-day conference, "Physician Assisted Dying," on February 17, 1994. This topic has captured increasing public attention since Dr. Jack Kevorkian caused considerable controversy in Michigan and nationwide by assisting in the death of approximately 20 individuals. At least thirty-five states have enacted statutes banning assisted suicide and at least five states have done so through case law.

Maryland is among the states that does not have legislation or case law on this topic. In September 1993, the Maryland Attorney General issued an Opinion stating that because there is no

legislation in Maryland directly addressing assisted suicide, it is not clear whether someone such as Dr. Kevorkian could be successfully prosecuted here for a crime.

The conference provided an overview of the history of physician assisted suicide in this country and internationally; background on legislation in other states on this topic; a description of the Maryland Attorney General's proposed legislation to criminalize physician-assisted suicide in Maryland and a multidisciplinary discussion of the issue and the proposed legislation being considered in the 1994 Maryland Legislative Session. (N.B. No action was taken on the "physician assisted suicide" bill that went before the Maryland General Assembly during the 1994 legislative session.)



# IN THE HEALTH LAW CLINIC

*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. 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.*

*Professors Diane Hoffmann and Joan O'Sullivan are teaching a legal theory and practice course called Legal and Social Problems of the Elderly, which is one segment of a three year Department of Education grant funding the Health Law Clinic.*

Students enrolled in the Legal and Social Problems of the Elderly course have studied the law relating to health issues of the elderly, and have also undertaken direct representation of a number of senior citizens. This hands-on approach gives students invaluable experience in applying the law they are learning, as well as teaching them the practical skills of lawyering.

This semester, student attorneys have represented senior citizens, both able

*by Joan O'Sullivan, JD*

bodied and home bound, and residents of an chronic acute care facility, in writing advance health care directives. They have learned the direct application of Maryland's new Health Care Decisions Act which they studied in theory in the class.

Teams of students have also represented clients in termination of guardianship cases. The present law requires that a guardian file additional paperwork with the Circuit Court to close the guardianship case even though the ward has died. This is often beyond the ability of elderly guardians, and they do not have funds to hire a lawyer to do it for them. Students attorneys have worked with the staff of the trust office of the Baltimore City Circuit Court to help these clients.

Clinic students are learning about problems in the adult guardianship system in a variety of ways. The Maryland State Office on Aging has organized a statewide task force to consider reform of the guardianship statute. While there are many anecdotal stories of problems in the system, record keeping about guardianship cases

varies widely from county to county, and consistent statistics do not exist to verify these problems.

In an effort to analyze the way cases are handled, the Legal and Social Problems of the Elderly class is conducting a survey of guardianship cases filed in 1992 in four different Maryland counties. Teams of students from the class are looking at individual files and answering questions from a sixty question survey instrument developed by Professors Hoffmann and O'Sullivan. The survey will yield information about who files for guardianship, who is appointed, and whether the alleged disabled person is afforded his or her rights to due process, among other things. Students will analyze the data collected and will report to the class about what is working in the system, and what is not and will make recommendations for reform. This is a valuable educational experience for students, but it is also part of a larger picture. The information they gather will be used by the task force on guardianship to analyze the system, to

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## **HIV Disclosure/Domestic Violence Workshop**

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violence following disclosure; 56 percent have been told by female patients that they fear emotional abuse following disclosure; and 66 percent have been told by female patients that they fear abandonment following disclosure.

Additionally, after disclosure to a partner, 24 percent of respondents had female patients experience violence, 38 percent had female patients suffer

emotional abuse, and 37 percent had female patients who were abandoned.

The April workshop represented phase two of the project, the purpose of which was to bring together experts in counseling women living in abusive situations with health care providers who care, counsel and treat women with HIV infection; provide an overview of the status of HIV and domestic violence; discuss the findings of the survey conducted in phase one, as well as other studies concerning violence encountered by women with HIV infection; allow

participants to generate approaches for screening and implementing protocols, discuss liability implications and consider further research and policy strategies. The Law & Health Care Program will use the information generated by the survey and workshop in future projects on HIV disclosure, domestic violence and women with HIV/AIDS.

## Recent Faculty Activities

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served on the Planning Committee and was Moderator of the AALS Workshop on Health Law, and published "Women in Clinical Research: Legal and Ethical Considerations," 7 *UVA Lawyer* 5, (1993).

Associate Professor Diane Hoffmann spoke at the following: The Twelfth Annual Virginia Lee Franklin Distinguished Lecture in Medical-Surgical Nursing, "Elder Mistreatment: Financial Exploitation"; American Association of Law School (AALS) Annual Health Law Conference, "The Limits of Advance Directives" (workshop); United Seniors of Maryland Rally, "Proposed Legislation to Criminalize Physician Assisted Suicide,"; and a Conference, "Physician Assisted Dying," co-sponsored by the Geriatrics and Gerontology Education & Research Program and the L&HCP, "Limits of the Law: Physicians on

Trial." She also recently published the following articles: Fletcher, J. & Hoffmann, D.E., "Ethics Committees: Time to Experiment with Standards," 120 *Annals of Internal Medicine* 335 (1994); Hoffmann, "Case Consultation: Paying Attention to Process," 6 *Healthcare Ethics Committee Forum* (1994); and Wulfsberg, E.A., Hoffmann, D.E. & Cohen, M.M., "Alpha<sub>1</sub>-Antitrypsin Deficiency: Impact of Genetic Discovery on Medicine and Society" 271 *JAMA* 217 (1994).

Visiting Assistant Professor Joan O'Sullivan moderated a debate at the University of Maryland School of Medicine on the subject of physician assisted suicide between two medical school faculty members, and made a presentation on, "Family Decision Making under the Maryland Health Care Decisions Act" at the Maryland Institute for Continuing Education for the Lawyers Program on Life Care Decisions.

## In The Health Law Clinic

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write legislation to correct problems and to support the need for reform before the legislature.

The clinic component of the Law and Health Care Program gives students interested in this area important practical lessons in how our health care system is and is not working, as well as hands on experience which will serve them well after graduation.

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## LAW & HEALTH CARE PROGRAM

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