

LAW & HEALTH CARE

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L&HCP Plans Interdisciplinary Symposium on Breast Cancer

“Doctor, I did everything a lady is supposed to do to protect herself. I’m not a drinker, I’m not a smoker. I had my children early. I don’t buy any products with chemicals or preservatives. I went for mammograms when I was supposed to. What did I do to get breast cancer? What do I tell my daughters to do not to get it?”

Lorraine Pace, as quoted in
Outrageous Practices (1994)

Breast Cancer affects an estimated 1.6 million women in the United States. Approximately 182,000 women will get breast cancer this year and 46,000 women will die from the disease. Responding to these statistics and to the individual experiences of women with breast cancer, HHH Secretary Donna Shalala convened a conference which established the National Action Plan on Breast Cancer in late 1993.

The plan proposes actions in the areas of health care delivery, research and policy, including improving access to health services, expanding the scope and breadth of biomedical and behavioral research activities, and increasing the participation of advocacy groups in policy decision making. The plan also established a national task force to

From the Director

The Law & Health Care Program has a strong commitment to providing an interdisciplinary educational experience. This commitment is evident in everything we do, from our curriculum, to our lectures and symposiums, to our research. This issue includes a number of examples—our Breast Cancer Symposium and Health Care Financing Lectures both rely on interdisciplinary components; *Curriculum Highlights* discusses two seminars: *Alternatives to Dispute Resolution* and *Civil Rights of Persons with Disabilities* both of which require students to understand other disciplines; *In The Clinic*, provides information on interdisciplinary geriatric assessment training and treatment teams in which our students participated.

We hope you enjoy the issue and that you have a wonderful summer.

Karen Rothenberg, JD, MPA

evaluate progress and identify new opportunities.

Karen Rothenberg, director of the L&HCP and member of the National Action Plan's Breast Cancer Susceptibility Gene Working Group stated, "An interdisciplinary viewpoint is essential

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Capitol Hill Update

Professor Diane Hoffman is now in the home stretch of her year-long sabbatical on Capitol Hill. She has been working for Senator Barbara A. Mikulski (D.Md), first as a Senior Congressional Fellow on health care reform and now as Acting Staff Director of the Subcommittee on Aging (for the minority).

As the Senator's lead staff person for health, aging and women's issues, Hoffmann has been handling a wide range of issues, including FDA reform, malpractice reform, reauthorization of the Health Professions Education and Training Act, the Ryan White Care Act, the Older Americans Act, and other legislation coming before the Labor and Human Resources Committee. Additionally, she met with Democratic health staff on Medicaid and Medicare reform, welfare reform, and health care insurance reform.

Impressed and overwhelmed at the number of issues Congressional staff must deal with every day, she is looking forward to sharing some of her experiences with her students and colleagues.

Law & Health Care Newsletter

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Lectures, Panel Discussions and Symposiums

Sylvia A. Law is Rome Lecture Speaker

New York University Law professor Sylvia A. Law presented the Stuart Rome Lecture, co-sponsored by the L&HCP and held at the law school on April 5, 1995. Law, a former MacArthur fellow and a leading figure in the field of health law, spoke on the topic, "The Constitutional Right to Privacy: Similarities and Differences Between Abortion and Assisted Suicide."

Law lectured on what she termed "a tentative conclusion"—that the ban on assisted suicide, like the restriction on abortion and the right to receive necessary medical treatment, imposes serious burdens on individual liberty and deserves constitutional protection.

The Rome lectureship program, which was endowed by the family and friends of Baltimore attorney, activist and humanitarian, Stuart Rome, allows the L&HCP to bring a leading legal scholar to the school to discuss complex issues in law and medicine. Past speakers have included Professors Martha L. Minow, Larry Gostin, Martha Field and Alex Capron.

L&HCP Sponsors Two-Part Series on Health Care Financing

The growing cost of health care has become a matter of widespread concern

for individual citizens, state and federal government, and the business community. On February 28, 1995 and March 28, 1995, the L&HCP sponsored a two-part series on Shaping Maryland's Health Care Environment: Public and Private Approaches to Cost Control. The discussions, "State Regulatory Approaches: What's Ahead for Maryland Health Policy in 1995" and "Provider and Insurer Approaches: Private Sector Perspectives on Maryland Health Policy" brought together representatives of the state and federal executive and legislative branches, insurers, business people, lawyers, and health care providers to discuss the ways in which the United States, individual states, and employers have handled the financing of health care. Panelists discussed cost, quality and access issues, various reform alternatives, and the impact of the cost of health care on the economy. Both Programs were moderated by L&HCP faculty member David Hyman, MD, JD.

Upcoming: "Breast Cancer Controversies and Challenges: Understanding the Medical, Legal, Ethical and Policy Issues." to be held at the law school on May 24, 1995 (see article on page 1.)

Law & Health Care Program Ranked in Top Five

For the second year, the University of Maryland's Law & Health Care Program was ranked among the top five in the nation by *U.S. News and World Report*. The magazine's annual rankings of top specialty programs are the result of a reputational survey completed by law school faculty, practicing lawyers, hiring partners and judges across the country.

The University of Maryland School of Law is the only public law school that has three specialty programs ranked in the top ten: The Law & Health Care Program ranked fifth; the Clinical Law Program ranked sixth; and the Environmental Law Program ranked seventh in their respective fields.



Abby Brandel on graduation day

Success Stories

Graduates of The Law & Health Care Program

Health care reform is not dead; it's just being legislated at the state level.

Law & Health Care Program graduate, Abby Brandel, knows this firsthand. In November 1994, a few months after graduating and taking the Maryland bar exam, she went to work for the Maryland General Assembly in the Legislative Reference Department. She is now a legislative analyst, and with her background, Brandel was involved in drafting legislation and amendments in the area of health law for possible introduction to the last general assembly session.

The sheer numbers are staggering—during the 1995 session 3,000 bills were drafted by Brandel and the other contractual drafters. When she first went to work for the Department, there were ten contractual drafters (a position that Brandel held until she became a legislative analyst in April of 1995) as well as forty permanent attorneys. In addition to their bill drafting responsibilities, the permanent staff performed other duties, such as acting as committee counsel.

Brandel worked both in the areas of health and education. Some of the health legislation and amendments on which she worked included local health

services funding, a bill involving a minor's capacity to consent to medical treatment when there are special circumstances such as abuse or incest, the section of Maryland's Health Care Reform bill which involved the regulation of ambulatory surgical centers, and Maryland's notorious "eyedrops" legislation. The "eyedrops" bill involved the regulation of certain types of optometrists with regard to prescribing medication and other issues. The controversy existed because of a "turf battle" between optometrists and ophthalmologists, and various versions of some type of regulatory legislation were presented at numerous past sessions. This year the legislation passed.

Although it did not pass the 1995 session, Brandel also worked on drafting genetic privacy legislation. With the advent of human genome mapping, there has been concern that information on a person's genetic makeup will not be confidential. The bill was an attempt to regulate disclosure and protect genetic privacy. There is a nationwide movement to enact some type of genetic privacy legislation in every state, so this bill will most likely be introduced at future sessions.

Brandel says that she thinks her

interest in health law may have come from being very ill as a child. That experience led her to want to become a physician, and the realization that she was much better at verbal and written communication than at chemistry steered her toward a law degree. She first had contact with the L&HCP when she took one of the Program's core courses, *Health Care Law*. She went on to take *Law and Medicine*, *The Role of Gender in Health Care*, and *Critical Issues in Health Care*. She also completed a health law fellowship in the General Counsel's office at the University of Maryland Hospital.

When asked what she found most beneficial about the Program, Brandel says, "I felt that the Program gave me a good basic knowledge of health law issues and some good experience in the field. But going back further than that, I found the faculty to be invaluable in helping me to figure out what area of health law I wanted to work in, and then in helping me to actually find work in that area. My whole experience with the Program has been very positive."

L&HCP Faculty Notes . . .

PROFESSOR KAREN ROTHENBERG

Publications:

"New Perspectives for Teaching & Scholarship: The Role of Gender in Health Care," *54 Md. L. Rev.* 473 (1995)

"Should Dr. Foster Be Confirmed?" *Perspective, Baltimore Sun* (op. ed. March, 1995)

"Something Old, Something New: The Challenge of Tuberculosis Control in the Age of AIDS," (with L. Lovoy) *42 Buffalo L. Rev.* 715 (1994).

Selected Presentations:

"Feminism and the Law" Advanced Course No. VI, Feminist Perspectives on Bioethics Kennedy Institute of Ethics, Georgetown University, Washington, D.C. (1995)

"Domestic Violence, Partner Notification and Women with HIV," HIV Infection in Women Conference, Washington, D.C. (1995)

"Gender Discrimination and Health Care," Conference on Non-Financial Barriers to Health Care, Health Law & Policy Institute, University of Houston, Houston, Texas (1995)

"Briefing on Human Genetic Research," British House of Commons' Science and Technology Committee, American Association for the Advancement of Science, Washington, D.C. (1995)

"Genetic Testing and Women," NIH's Office of Research on Women's Health, Women & Health Speaker's Series, Washington, D.C. (1995).

"The Good News and The Bad News: Legal and Ethical Implications of the 076 Trials," Sixth Annual Conference on AIDS, Baltimore, MD (1994)

Selected Appointments:

Co-editor-in-Chief, *Journal of Law, Medicine and Ethics* (1995)

Member, NIH Recombinant DNA Advisory Committee (1995-)

Member, Breast Cancer Susceptibility Gene Working Group, National Action Plan on Breast Cancer (NAPBC) (1995-)

Public Policy Consultant, Consortium on Studies of Genetic Testing and Counseling for Heritable Breast, Ovarian and Colon Cancer Risk, NIH's National Center for Human Genome Research and National Cancer Institute (1995-)

ASSISTANT PROFESSOR DIANE HOFFMANN

Selected Presentations:

"The Implementation of Advance Directives in Nursing Homes," Health Facilities Association of Maryland Meeting, Forestville, MD (1995)

"Health Care Decision Laws," American Association of Retired Persons and American Bar Association Workshop, Washington, D.C. (1995)

"Mediating Ethical Disputes," at Collaborative Approaches: Disability, Aging, and Dispute Resolution Conference, American Association of Retired Persons, National Institute for Dispute Resolution and American Bar Association, Washington, D.C. (1995)

ASSOCIATE PROFESSOR DAVID A. HYMAN

Selected Presentations:

"Shaping Maryland's Health Care Environment: Public and Private Approaches to Cost Control

"State Regulatory Approaches: What's Ahead for Maryland Health Policy in 1995," UMAB, Baltimore, MD (1995)

"Provider and Insurer Approaches: Private Sector Perspectives on Maryland Health Policy," UMAB, Baltimore, MD (1995)

"Looking For The Borderline—Issues at the Intersection of Law and Medicine" Meeting on Crucial Issues in Pain Management, Easton, MD (1995)

VISITING ASSISTANT PROFESSOR JOAN O'SULLIVAN

Selected Presentations:

"Health Care Decision Making, Legal-Ethical Issues," Geriatric Imperative Minimester, UMAB, Baltimore, MD (1995)

"Guardianship: the Role of the Attorney for the Alleged Disabled Person," Copresenter, Seminar on Guardianship, Maryland Volunteer Lawyers Service, Baltimore, MD (1995)

"Legal and Ethical Issues in End of Life Decision Making," Salisbury State University, Salisbury, MD (1995)

"Planning Ahead: Living Wills and Durable Powers of Attorney," Health Talk Series, UMAB, Baltimore, MD (1995)

"Legal Issues and the Aged," Knight Center for Specialized Journalism, UMCP, College Park, MD (1994)

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. 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, AIDS and the elderly.

Clinic Students Join Interdisciplinary Teams

Students from the Health Law Clinic at the University of Maryland School of Law recently joined two geriatric interdisciplinary teams at Maryland health care facilities. Law students collaborated with a variety of health care providers to assess patients and to design comprehensive treatment plans which address a wide spectrum of problems.

Interdisciplinary teams approach health care holistically. The team, composed of experts from a number of fields, considers the total situation of the patient when diagnosing and treating the patient. This approach is especially appropriate for the elderly. An older person's failing health may precipitate serious difficulties with housing, finances, credit, and the law. A team approach to care can maximize the elderly individual's health, independence and autonomy.

Geriatric interdisciplinary treatment teams usually consist of health care workers, such as physicians, physician assistants, nurse practitioners, nurses, psychiatrists and psychologists, pharmacists, social workers, and physical and occupational therapists. Lawyers are a recent addition to such teams, but as the Clinic's experience has proven, their contributions are valuable ones.

Legal questions often arise in the course of assessing an older person's health problems, such as the patient's mental capacity to make health care decisions, eligibility for Medicare, Medicaid and in home health care, financial arrangements in case of loss of competency, marital rights when a spouse either cannot or will not care for the other, the need for a guardianship, and the right to maintain a driver's license in the face of diminished physical or mental capacity. A legal advisor on the interdisciplinary team can answer these questions quickly and help develop a broad plan of care.

Health law students benefit greatly from the opportunity to participate in an interdisciplinary team. They observe first hand health care decision making from the medical professional's point of view, learn the roles various professionals play in treating the elderly, and experience the workings of various medical treatment settings.

The University of Maryland School of Law, through the Law and Health Care Program and the Clinical Law Program, is experimenting with two interdisciplinary models.

The first involves an interdisciplinary geriatric assessment training program at the Western Maryland Area Health Education Center (AHEC) in Cumberland, MD, a mountainous, rural area with a large elderly population. Over the course of three days, students from University of Maryland schools of law, medicine, dentistry, physical and occupational therapy, nursing, and social work receive training in geriatrics and group dynamics. Then, in groups or individually, the students assess two local geriatric patients. Finally, they

meet as a group to discuss the patients and their needs, and arrive at a comprehensive recommended treatment plan for the participants. A local elder law attorney and myself (as the Clinic's supervising attorney) serve as the preceptors for the law students.

At a session in February, 1995, second year law students Karen Gally and Andrea Imredy evaluated the legal situations of a 95 year old woman living alone at home, and a couple in which an elderly and ailing wife cared for her terminally ill husband. The students recommended updates to the couple's wills and advance directives and suggested that local Office on Aging staff help the wife explore what income she would receive after her husband's death. The wife was worried about how she would maintain her home after her husband died and his pension benefits ended, and this anxiety affected her health and her ability to care for her husband.

Both students were enthusiastic about the program. One benefit they gained was an increased appreciation and respect for other professional disciplines. Health care provider students were puzzled in the beginning by the addition of law students to the team, but were convinced of their value by the end. Andrea Imredy said, "I felt that our participation made a large contribution to the results of the assessment and to the subsequent treatment recommendations, for we clearly brought a broader perspective to the assessment of the client's needs."

The training at the Western Maryland AHEC is conducted three times a year, and is supported by the University's Geriatrics and Gerontology Education and Research Program.

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CURRICULUM HIGHLIGHTS

The L&HCP recognizes that health law is not practiced in a vacuum and that legal issues must be viewed in a broad context. Health lawyers need to depart from strict legal rules and be creative in their approach to complex social problems. Below are two examples of how our curriculum helps them to do this.

Students Work in the "Real World" to Mediate Health Care Disputes

There is a bumper sticker hanging on the bulletin board at the Attorney General's Office that says, "Mediate, Don't Litigate." Kelly Conklin feels that the statement is a partial reflection of her role as a Health Advocacy Specialist in the Health Advocacy Unit (HEAU) of the Consumer Protection Division, Maryland Office of the Attorney General. Conklin, who was enrolled in the *Alternative Methods of Dispute Resolution (ADR) in Health Care* course during the spring semester, was in the one-third of the class who took an additional one-credit field placement allowing them to apply what they had learned to some "real world" mediations.

The ADR course explores the application of dispute resolution to a variety of health care contexts such as medical malpractice, credentialing, bioethical issues, insurance disputes, etc. In the course, students were given hands-on experience with various dispute resolution processes through simulation.

In the field placement, HEAU "real

world" cases cover a wide variety of issues grouped under the broad categories of quality of care, financial disputes, overbilling, and insurance coverage disputes. Some specific cases that Maryland law students handled included a patient's dispute with a dentist who refused to release dental records, a dispute with an HMO over emergency care, negotiating a refund for eyeglasses that were prepared using the wrong prescription, and disputes over eligibility for Medical Assistance.

In the most successful mediations, students were able to translate the alternative dispute resolution techniques they were taught in the course to their work in the Unit and avoid a formal legal complaint.

Conklin says, "When a complaint is filed, the "party lines" are drawn . . . parties tend to split further apart. My goal is to bring the disputants together . . ."

Kevin Simpson, Director of the HEAU says that he thinks it's a good idea for law students to be involved in a program where mediation is the end result, not a precursor to litigation.

Seminar on Civil Rights of Persons with Disabilities

There are close to 40 million Americans, one in five, who are disabled and discrimination against people who are disabled is pervasive in America. The Seminar on *Civil Rights of Persons with Disabilities* explores selected legal issues affecting people with physical and mental impairments, including equality issues involving personal autonomy and independence, access to education, employment, transportation, public accommodations, health services and basic necessities of life. An attempt is made to address race, gender, and/or class issues that arise in each topic area covered. Particular attention is paid to federal antidiscrimination laws such as the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, that protect persons with disabilities and the Individuals with Disabilities Education Act that mandates free appropriate education for children with disabilities.

Professors Taunya Banks and Stanley Herr alternate in conducting the seminar. Professor Herr offers an additional clinical component in which students learn to appreciate the practical and theoretical aspects of representing persons with disabilities, some of whom are homeless.

Student Health Law Organization (SHLO) News

The Student Health Law Organization had a busy Spring 1995 semester. Organization officers met with Dean Donald Gifford and Associate Dean Mark Sargent to discuss curriculum choices for L&HCP students and evaluate options as the growing popularity of the Program

make it more difficult for L&HCP students to get into selected courses. They sponsored a luncheon meeting on medical malpractice, attended a luncheon sponsored by the Maryland Office of the Attorney General, during

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Spotlight on . . .

HEALTH LAW PRACTICUMS AND EXTERNSHIPS: The Johns Hopkins Health System

by Andrea Imredy, 2D

During the spring semester, I worked ten to fifteen hours a week in the Legal Department of the Johns Hopkins Health Systems, the parent corporation of the Johns Hopkins Hospital, Bayview Hospital and a number of other nonprofit health care corporations. Since this was a new Health Law Practicum placement, the attorneys and I weren't quite sure what to expect of each other, but from my perspective, the trial run was a successful one.

From the start I was deluged with requests to research and analyze health-related issues, corporate governance matters, and employment and copyright matters, as well as draft contracts. My research projects ran the gamut from the duty of a physician to protest a third-party payor's adverse utilization review decision to the obligations of a nonprofit institution to pay royalty fees to a music licensing corporation.

I also analyzed the ability of a state

court to assert personal jurisdiction over an out-of-state medical laboratory, researched copyright issues, and the ERISA law that governs employee benefit plans.

While drafting contracts, I was exposed to issues which included health care fraud and abuse regulations, confidentiality of patient and corporate records, IRS regulations pertaining to nonprofit institutions, and general contract matters. My first attempts at contract drafting were shaky, but by the time I was asked to draft an agreement between a hospital and a P.E.T. therapy program, only a few rounds of revisions were needed.

I feel that a Health Law Practicum is one of the most valuable experiences a student can obtain while in law school. I gained more insight into the daily practice of health law in a large health care institution than I ever expected and would highly recommend the experience to others.

The Law & Health Care Program's Health Law Practicum Program (dedicated to 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 to 20 hours 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; 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.; The University of Maryland externship, located in University Hospital's General Counsel's office; Blue Cross/Blue Shield of Maryland (BCBSM), and the Health Care Access and Cost Commission.

Breast Cancer Cont. from page 1

when considering changes in public policy. Many breast cancer issues have their basis in science and medicine, and it would be impossible to address legal and ethical concerns without input from physicians, nurses, epidemiologists, advocates and others."

Toward this goal, the L&HCP will sponsor a symposium, "Breast Cancer Controversies and Challenges: Understanding the Medical, Legal, Ethical and Policy Issues." on May 24, 1995.

The symposium will explore the current status of the disease, including the causes, treatment controversies, status of research, and the legal ramifications and ethical concerns related to the diagnosis, treatment and prevention of breast cancer. A series of breakout sessions will consider specific topics such as factors affecting the cancer screening process, breast cancer's psychological aspects, bone marrow transplants and the breast implant litigation.

An interdisciplinary faculty of distinguished experts from the fields of

law, medicine, public policy, social work, and consumer advocacy will include Frances M. Visco, JD and Vivian W. Pinn, MD. Visco, president of the National Breast Cancer Coalition and a member of the President's Cancer Panel will give the keynote speech on breast cancer controversies and challenges, and Pinn, director of the Office of Research on Women's Health, will speak on meeting the challenges in breast cancer research.

In The Health Law Clinic

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The second interdisciplinary program involves clinic students who join sessions of a geriatric treatment team at a local hospital. Rather than simply assessing patients, this team treats outpatients on a continuing basis. The focus of this project is different from the first program; in this setting, law students act as advisors to the treatment team about legal issues. They research and report on legal problems which arise with individual patients. Students are supervised by the clinical law professor, and their legal work is reviewed and approved by the hospital counsel before the students report on it to the interdisciplinary team. This semester, students have investigated questions raised in team meetings concerning the right to treat an incompetent patient whose wife withholds information about his past medical history, emergency procedures for a lay

person who encounters a patient or client threatening suicide, and the legal route for obtaining an involuntary emergency psychiatric evaluation.

In addition to exposing law students to such real life health law questions, the interdisciplinary programs raise rich ethical questions concerning conflicts of interest, confidentiality, client identification and retainer agreements, which in turn prompt lively debate in the clinic's weekly seminar classes.

The Law and Health Care Program's interdisciplinary team experience has been a positive one for law school clinic students, and has prompted us to explore expanding to a new Alzheimer's Clinic and a local geriatric assessment program.

SHLO News

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which AAG Elizabeth Kameen and approximately ten members of the Office's legal staff described their roles in the organization and answered student's questions, and sponsored a joint meeting with the Health Law Section of the Maryland Bar.

The group also sponsored a "Control Your Own Destiny Day," during which SHLO members informed other law school students, faculty and staff about advance directives under the new Maryland Health Care Decision Act, a brown bag luncheon with Senator Paula Hollinger of the Maryland General Assembly and worked with the L&HCP faculty and staff to establish a health law mentoring program.

LAW & HEALTH CARE PROGRAM

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