

LAW & HEALTH CARE

N E W S L E T T E R

Volume II

Number 2

IN THE HEALTH LAW CLINIC

by Joan O'Sullivan, JD

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We can always count on our clinic clients to dramatically demonstrate to law students the principles that they learn in the health law classroom. That, after all, is the point of the health law clinic, to allow students to apply firsthand the theories, statutes, regulations and cases that they have only read about.

Recently, our cases have illuminated the principles at the heart of the political debate over paying for health care for the poor: should the taxpayer pay for such care? If so, how much? Who should get free care? And what do people do if there is no free care?

One of our student attorneys has been representing a 40 year old disabled

man, Mr. Q. This client came to the clinic with large medical, credit card and mortgage debts which he could not pay. He was intelligent, and for a time after college had worked and supported himself. However, he suffered from mental illness, which grew in severity over time. He was fired from his job because of his inability to get along with his supervisor and other workers. He was unable to find another position, and because of his worsening condition, eventually he could not work at all.

When Mr. Q. came to the clinic, he asked for help getting out from under his debts. He was worried about being sued by his creditors. His only income

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From the Director

This is the third publication year for the Law & Health Care Program Newsletter, and it is an exciting time for our Program. As you will read on page 3, the L&HCP has again placed in the top five health law programs across the country in *U.S. News and World Report's* annual survey of specialty programs. In other articles, we bring you news about our curriculum, the stimulating projects being undertaken by our faculty, and the successful work that both our graduates and current students are doing.

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

Diane Hoffmann, JD, MS
Acting Director

L&HCP Co-Sponsors Spring Forum on Medicaid/Medicare and Managed Care

The Law & Health Care Program, along with the American Society of Law, Medicine & Ethics and the Hastings Center joined together this spring to sponsor a conference on the movement of the Medicaid and Medicare programs into managed care. "Medicare, Medicaid, and Managed Care: A Forum on Corporate Responsibility, Law, Ethics, and Public Policy," was held on April 19-20, 1996 at The Inn and Conference Center, University of Maryland at College Park, Maryland.

A distinguished faculty participated in the forum, including Bruce C. Vladeck, Administrator of the Health Care Financing Administration, Marilyn Moon, Senior Fellow at the Urban Institute, and Donald E. Wilson, Dean of the University of Maryland School of Medicine. UM Law Professors Diane Hoffmann and David Hyman served as co-chairs of the spring conference.

In addition to providing updates on current initiatives in Medicare and Medicaid, the conference examined quality, access and cost issues in public sector managed care programs. The move of the public sector into managed care and its impact on traditional health care institutions was explored on day two of the conference. Dennis P. Andrulis of the National Public Health and Hospitals Institute spoke on the impact on traditional "safety net" providers, and Dean Wilson



Bruce C. Vladeck, PhD

spoke on the implications for teaching hospitals, and the effect on medical education and research. The final conference segment examined the potential impact of public sector managed care systems on vulnerable populations—the elderly, persons with mental illness, and children.

A goal of the conference was to promote dialogue among policy makers, providers, and third-party payers.



Donald E. Wilson, MD

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Student Health Law Organization (SHLO) News

by Karen Russell Gally and Andrea Imredy Saah, Co-chairs

The SHLO has had a busy agenda this spring, sponsoring several programs on current issues in health law.

In March, Robert E. Mazer, Esq., presented a "Primer on Physician Contracting." He discussed what types of contracting occur in the health care field, how fraud and abuse laws apply only to those contracts, and what issues to bear in mind when representing either the employer or the employee.

Students learned what it takes to be a discerning customer of health care services at a program entitled, "How to Be an Informed Medical Consumer," also held in March. Laura McHenry, patient representative at Potomac Hospital, described the Patients' Bill of Rights and providers' ever-increasing awareness of these rights. Shirley Scheibla, founder of Partners for Patients, discussed tactical measures consumers can take to ensure proper

and humane medical treatment. Kevin Simpson, the director of the Health and Education Advocacy Unit of the Attorney General's Consumer Protection Division, gave the audience guidance about how to handle grievances with providers and insurers.

In April, Edward Houff, Esq., a defense attorney, and Stephen Nolan, Esq., a plaintiff's attorney, presented a point-counterpoint exchange on how to represent a client in a product liability case. The attorneys focused on developing the basics of both sides of a case.

As its last event of the semester, the Student Health Law Organization held its third "Control Your Own Destiny" Day as part of the Annual Spring Health Fair at the University of Maryland at Baltimore. Students staffed a table in the Student Union and handed out health care advance directive forms and provided guidance on completing the forms.

Success Stories

Graduates of the Law & Health Care Program

"It's about balance," says Diann Churchill responding to a question about how she manages the demands of her career as an elder law attorney and her role as a wife and a new mother. That she has achieved a certain harmony between the two is attributable to the same industriousness that she exhibited while pursuing her education.

Prior to graduating from law school in 1993, Churchill earned a masters in public health at The University of Rochester. As part of her MPH degree, she completed an internship in the area of long term care at Monroe Community Hospital in Rochester, New York. Churchill then worked for the Alzheimer's Association and the Association for Retarded Citizens. It was these experiences that fostered her interest in elder law.

Churchill says she picked the University of Maryland School of Law because of the reputation of its health law program. While in law school, she was determined to structure both her courses and out-of-classroom experiences to lay the groundwork for a career in elder law.

Churchill's course work included the Law & Health Care Program core



Diann Churchill with son, Ian

courses, *Law & Medicine and Health Care Law*, as well as *Antitrust and Health Care Law*, and *Legal and Social Problems of the Elderly*, an elective taught by Professor Diane Hoffmann. The former head of the Student Health Law Organization also spent a semester in the health law clinic as a student attorney working to resolve legal problems of the elderly and disabled, and worked for the Maryland Disability Law Center's nursing home program under a Maryland Public Interest Law Project (MPILP) grant.

During her second year in law school, Churchill assisted Professor Hoffmann

in her research on elder law. It was through Professor Hoffmann that she heard that a local firm specializing in elder law was looking for a clerk.

Following a path that almost seemed to be predestined, Churchill began clerking for the Law Office of Jason A. Frank, finished her J.D., and was hired as an associate as soon as she graduated.

"I now work with both the elderly and disabled, providing individuals and their families with assistance on advance directives, powers of attorney, and wills; setting up guardianships; advocating on Medicaid and Medicare matters; providing advice on where to find an ombudsman, or retirement planning; basically whatever services they need," Churchill says.

In August of 1995, Churchill and her husband, David became the parents of a son, Ian. Although it has taken some juggling and some careful planning, Churchill says working for Jason Frank has allowed her enough flexibility to make time for both her career and her family.

She has only good things to say about the role of the Law & Health Care Program in achieving her career goals. Her advice to current students is "Take advantage of the many out-of-classroom experiences the Program offers—health law practicums and externships—enroll in the health law clinic, and become involved as a student member of the bar. Both the Health Law, Elder Law, and Young Lawyer's Sections of the Maryland State Bar Association offer a lot of opportunities to meet attorneys in the field in which you would like to practice."

L&HCP Ranked Third in U.S. News & World Report Survey

The University of Maryland Law School's Law & Health Care Program is ranked third in health law specialty programs in the most recent *U.S. News & World Report* survey of the nation's top graduate schools. Rankings are compiled from reputational surveys sent to law school faculty, practicing lawyers, hiring partners and judges across the country. The University of Maryland School of Law has three specialty programs ranked in the top ten in this year's survey, and the L&HCP has placed in the top five health law programs for the third survey year in a row.

L&HCP Faculty Notes . . .

PROFESSOR KAREN ROTHENBERG

Publications:

"Gender Matters: Implications for Clinical Research and Women's Health Care," *32 Houston L. Rev.* 1201 (1996)

"Women of Childbearing Potential in Clinical Research: Perspectives on NIH Policy and Liability Issues," (with E. Hayunga and V. Pinn), *13 Food, Drug, Cosmetic and Medical Device Law Digest* 7 (1996)

"Genetic Information and Health Insurance: State Legislative Approaches," *23 J. of Law, Medicine and Ethics* 312 (1995)

Selected Presentations:

"Gender Bias in Clinical Research and Medical Decisionmaking," 5th Annual Feminist Symposium, Northwestern University School of Law, Chicago, IL (1996)

"Advances in Genetic Science: A Double Edged Sword?" Women's Bar Association Health Law Forum, Washington, D.C. (1996)

"Ethical and Legal Implications of Prenatal Diagnosis," 9th International Fetal Cardiology Symposium, Orlando, FL (1996)

Genetic Privacy: State Legislative Approaches," Workshop on Genetics Research on Human Tissues, NIH, Bethesda, MD (1996)

"Genetics and Public Policy: Ethical, Legal and Social Challenges," MIT Seminar for Senior Congressional Staff, Boston, MA (1996)

"BRCA1 Testing: Ethical and Legal Issues," Educational Workshop of the National Action Plan on Breast Cancer and American Society of Clinical Oncologists, NIH, Bethesda, MD (1996)

"Societal Implications of Genetic Testing: Health Insurance and Privacy Issues," American Cancer Society Conference, Washington, D.C. (1996)

ASSISTANT PROFESSOR

DIANE HOFFMANN

Publications:

"The Dangers of Directives or the False Security of Forms," (with S. I. Zimmerman and C. Tompkins), *24 J. of Law, Medicine & Ethics* 5 (1996)

"The Guardianship Puzzle: Whatever Happened to Due Process?" (with J. O'Sullivan), *7 Md. J. of Contemporary Legal Issues* (Issue 2)

"Testing Children for Genetic Predispositions: Is it in their best interest?" (with E.A. Wulfsberg), *23 J. of Law, Medicine & Ethics* 309 (1995)

Selected Presentations:

"Surrogate Consent to Participation of Cognitively Impaired in Medical

Research," Project on Informed Consent, University of Pennsylvania Medical Center, Philadelphia, PA (1996)

"Ethics Committee Consultation: Paying Attention to Process," George Washington University Hospital, Ethics Committee Retreat, Washington, D.C. (1996)

"The Use and Abuse of Genetic Information and Technology: The Legal Issues," BIO (Biotechnology Industry Organization) Annual CEOs and Senior Managers Conference, Baltimore (1996)

"Regulating Physician Assisted Suicide," Symposium sponsored by the Washington Area Bioethics Network, Bethesda, MD (1996)

"Ethical and Legal Issues in Gene Diagnosis," Greater Baltimore Committee Conference for Newly Elected State Legislators, Baltimore (1995)

ASSOCIATE PROFESSOR

DAVID A. HYMAN

Publications:

Case commentary on the role of ethics committees in resolving disputes between treating physicians and family members, Mid-Atlantic Ethics Committee Newsletter, Fall (1995)

Selected Presentations:

"Ethics in the Evolving Health Care

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Program news . . .

Welcome Back . . .

Program Director Karen Rothenberg returns to the L&HCP at the end of this semester, after being on leave to the NIH Office of Research on Women's Health since September 1995. As Special Assistant to Dr. Vivian Pinn, Rothenberg worked on a number of exciting projects at NIH, particularly in the area of the ethical, legal and social implications of predictive genetic testing for breast cancer and the inclusion of women in clinical trials. She also continues to serve as co-editor-in-chief of the *Journal of Law, Medicine and Ethics*. Look for an in-depth article in our fall issue.

Dean Gifford presents the National Health Law Moot Court Team with the Best Brief award won in the competition held at Southern Illinois University School of Law on November 3-4, 1995.



From left to right: Andrea Imredy Saah, 3D, Karen Gally, 3D, David Clissold, 4E, and Dean Donald Gifford. Not pictured are Professors David Hyman and Joan O'Sullivan, who coached the team.

CURRICULUM HIGHLIGHTS

Critical Issues in Health Care

It may seem unusual for a group of physicians, nurses, policy science majors, aspiring pharmacists and attorneys to meet to discuss topics as diverse as the right of a patient to refuse medical treatment or the latest Medicare/Medicaid fireworks on capitol hill, but it is happening every week in Professor Diane Hoffmann's *Critical Issues in Health Care* course.

The course allows a multidisciplinary group of students to examine the policy, legal and ethical components of a number of critical issues in health care delivery. Professor Hoffmann uses case studies, simulations and panel discussions to explore such topics as medical malpractice, the right to refuse medical treatment, informed consent and substituted consent, confidentiality vs. duty to disclose, regulation of experimental drugs and health care reform.

The popular interdisciplinary offering is open to students in the JD program,

and also to UM students in the medical, nursing, pharmacy, dentistry, philosophy, social work, economics and policy sciences graduate programs. The diversity of the students almost always encourages riveting discussions on the issues, and this semester is no exception.

Dr. Sam Matz has been an orthopedic surgeon for nine years. He is on staff at University Hospital and is director of the Sports Medicine Center in Carroll County, Maryland. He will complete his JD degree at the end of this semester.

Matz says, "My interest in the legal aspects of medicine was generated by the type of injuries I treat as a physician—many patients requiring orthopedic care have been in accidents." Matz also serves on an FDA panel and as an expert trial witness.

He finds the different ways that his classmates approach problems to be a

novel learning experience, and he says that being made aware of other disciplines' perspectives on particular issues is definitely of benefit.

"The value of this course is obvious to law students, but I think it is of more value to students of other disciplines in the class," Matz says. He adds that medical and nursing students eventually will have to work with lawyers, policy makers, ethicists and philosophers, and *Critical Issues* provides a good opportunity to pave the way toward better understanding.

Laura Callahan is an RN, BSN working toward a Policy Sciences graduate degree. She has experience in health care management and has clinical experience in the End Stage Renal Disease and Critical Care Programs. After she graduates in 1997, she hopes to go to law school.

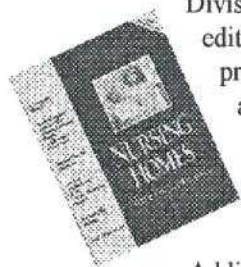
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O'Sullivan Heads Committee to Revise Nursing Home Guide

Visiting Assistant Professor and Health Law Clinic Director, Joan O'Sullivan headed a committee which recently updated and published the popular book, "Nursing Homes: What You Need To Know."

Originally published in 1990, changes in state and federal laws had made the valuable consumer guide obsolete. The Elder Law Section of the Maryland State Bar Association (then a subcommittee of the Delivery of Legal Services section) of which O'Sullivan is a member, took on the task of updating the guide and finding the funds to publish it. The project is a result of the contributions of many organizations: The Maryland State Bar Association, the Marie Walsh Sharpe Endowment for Legal Awareness of the Older Ameri-

cans Program of the ABA, and the Maryland Office on Aging provided funding. The Maryland Office of the Attorney General, Consumer Protection Division provided editorial, graphics and production assistance, and the UM Law School contributed staff support and fact checking by law students.



Additionally, approximately twenty experts in aging matters from across the state provided comments on the draft copy of the guide, and a volunteer editorial staff of Elder Law Section members and staff from the Attorney General's Office assimilated those comments into the

final version.

The publication is oriented to consumers and covers such topics as planning for the possibility of a nursing home stay, what services nursing homes offer, how to judge the quality and how to pay for a home, consumers' rights under the law and alternatives to nursing home care. The last section of the book, "Where to Get Help" is a compilation of resources including where to find the answers to questions about nursing homes themselves, about eligibility for medical assistance and medicare, where to file complaints and obtain assistance, and how to locate ombudsman, and social and legal services programs in twenty three

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In The Health Law Clinic Cont. from page 1

was \$478 per month from the Supplemental Security Income (SSI) program, the federal welfare program for individuals with disabilities who are not eligible for Social Security disability payments. Because he was entitled to SSI, he automatically received a Medicaid card which paid for all of his extensive medical care. Mr. Q. had many health problems in addition to his mental illness, including severe skin and endocrine conditions, which necessitated treatment.

The student attorney began exploring ways to get his past medical bills paid, asking about Hill-Burton or other charity funds at local hospitals and clinics, and negotiating with Mr. Q.'s creditors. He was able to find a program to temporarily defer payments on Mr. Q.'s mortgage, and he was even successful in arranging a payment plan with the Internal Revenue Service.

During the course of this case work, Mr. Q. mentioned that the Social Security Administration had just notified him that he was eligible for Social Security disability payments (SSDI). His income would be going up to \$600 a month. After consulting, the student and I agreed that this was an unfortunate event for Mr. Q. because although he would be receiving \$122 more a month, he would lose his Medicaid card. There is no automatic eligibility for Medicaid under the SSDI program. A person who receives SSDI will eventually be eligible for Medicare benefits, but must wait for two years for Medicare coverage to start. We reluctantly advised Mr. Q. that he had an obligation to report this increased income to the local Department of Social Services, even though it meant he would have no medical insurance coverage. We offered to do so for him.

As I have said, Mr. Q. is an intelligent man. He already knew the implications of his new status. He told his student attorney he would take care of the matter himself. Several weeks later, when the student asked him about it, he said he had sent a letter to DSS, but that no one had responded. We learned that

he had sent a cryptic, one sentence letter, probably to the wrong office, and that he felt that satisfied his obligation. Further, since no one had told him he no longer had coverage, he was continuing to use his Medicaid card for all his medical treatment.

This information threw the student into a quandary. He researched the law and discovered the serious consequences of welfare fraud. He worried about being implicated in our client's misuse of his Medicaid card. We discussed at length the ethical and moral implications of our involvement with this client. And finally, we pondered what we would do if we were in Mr. Q.'s shoes.

Mr. Q. faced a dilemma which brightly illuminated our existing public policy on paying for health care for the poor. For those who are very poor, and thus eligible for federal welfare benefits, Medicaid covers their health care costs. As long as Mr. Q. was that poor, he could get health care. But the fact that he had worked, and for a time had contributed to the Social Security system, worked against him. Once he received his Social Security disability benefits, he lost his Medicaid coverage, and there was nothing to replace it for the next two years. The paltry increase in income to \$600 was not enough to cover his medical bills; indeed his income did not cover his monthly living expenses.

We struggled to understand the reasoning behind the two year waiting period for Medicare coverage. If a person is disabled, they must have medical bills. They have been found to be unable to work, so how are they to pay for those medical costs during the two years that they must wait for Medicare coverage? Is this a cold blooded attempt on the part of policy makers to weed out the weakest of the disabled before covering their medical expenses? Is it a silent message to health care providers that they must accept some responsibility for the cost of two years worth of unpaid medical charges? What rationale went into the two year limit, other than an effort to cut the cost of a very expensive public benefit program? And what would

happen to all the Mr. Q.'s to come when Congress cuts benefits even more, as seems inevitable?

These questions did bother Mr. Q. Perhaps because of his mental illness, perhaps because he was desperate, perhaps because he could only live one day at a time trying to get by as best he could, he had done all that he intended to do. If Medicaid found out about his increased income and continued use of his Medicaid card, he would assert that he informed the agency as he was required to do. He would say that it was their fault for not cancelling his card earlier. We advised Mr. Q. as thoroughly as possible, and then limited our involvement with him to the extent required by the rules of professional conduct and our own consciences.

But the policy questions Mr. Q. raised remain unanswered in the minds of our student attorneys and faculty alike: What is the correct balance? Is health care a right that we should deliver to the poor and the nearly poor? Is it something that everyone should pay for themselves or do without? How much free care is enough? As our health law students graduate and become policy makers themselves, the Mr. Q.'s in their law school experience will remind of them of the very real effects of their decisions.

Nursing Home Guide Cont. from page 5

Maryland counties and the city of Baltimore.

The publication of "Nursing Homes: What You Need to Know" provides a much-needed service to the public, making the law as it applies to nursing homes easily accessible to those who use these facilities. It is an invaluable resource for individuals and families who are facing the emotionally difficult task of placing a loved one in a nursing home for the first time. It was recently nominated for the 1996 Best Section Project Award given by the Maryland State Bar Association.

Spotlight on . . .

HEALTH LAW PRACTICUMS AND EXTERNSHIPS: University of Maryland Hospital—General Counsel's Office

by Nancy Love Williams, 3D

After spending my summers clerking at the Montgomery County Attorney's Office and at a general practice law firm, I wanted to gain a different perspective on the practice of law. I spent the larger part of my final semester of law school in the health law externship program working for the general counsel to the University of Maryland Medical System (UMMS), putting all those hours of study to practical use.

I did not know what to expect when I began my work at the hospital, as I was unfamiliar with the scope of a corporate counsel's role. I was surprised to find that nearly every type of legal issue had, at some point, crossed the general counsel's path. From the expected risk management issues to antitrust and labor law, from intellectual property to corporate law, I was privileged to have a taste of it all—including being able to observe the preparation for a visit of the JCAHO survey team.

While my projects included research on a vast array of legal issues, they also included many opportunities to draft contracts and other corporate documents. My prior experience had largely revolved around those famous student research memoranda, and I was delighted to have the new opportunity to draft documents that would have immediate impact. I must admit that I

was apprehensive at leaving the safe and familiar world of the memo. But the general counsel was supportive and provided me with excellent guidance and feedback. I learned more about the



Nancy Love Williams

substantive issues in health care law and developed important skills that I know I will hone in the years ahead—without the "billable hours" pressure looming above me.

Although some of my friends opted to participate in practica and externships during their second year, I am glad that I waited until my third year. By waiting, I had a greater foundation of general legal knowledge, and had already completed three of the health care law course offerings.

As an extern, I spent approximately 25 hours a week at UMMS, as opposed to the lesser quantity of time involved in a practicum. This schedule allowed the general counsel to include me in many of her meetings and presentations. I thus had a vivid picture of the role of corporate counsel in this type of setting

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 organizations 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 include the American Nurses Association; Dimensions Healthcare System; FDA; Johns Hopkins Health System Corporation Legal Office; Med-Chi of Maryland; Medlantic Healthcare Group; National Health Law Program; NIH; U.S. Senate Subcommittee on Aging; University of Maryland Medical System, Office of the General Counsel; and the Office of the Attorney General, Department of Health and Mental Hygiene and Medicaid Fraud Unit.

The Program has also offered four 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.

by the end of my externship and received an invaluable education.

In addition to exploring yet another career option and learning more about the law, I also gained a broader insight into the world of the corporate client, which I had not been able to achieve while clerking in a law firm.

Curriculum Highlights

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Maryland's progressive position on health care legislation helped shape Callahan's career path, and the *Critical Issues* course played a role in her decision to get a JD degree.

Callahan says, "I found the similarities [rather than the differences] between the many disciplines in the course fascinating. For instance, Professor Hoffmann asked us each to draw a chart representing the health care equation, and there were a lot of us who showed the consumer at the bottom, money at the top and the government somewhere in the middle."

David M. Yoder is a PharmD student who will earn his degree in 1998. He has spent ten years in the pharmacy field—working for the Navy, in the community, for a hospital and in the home health field. One of his goals for taking the course is to get a different perspective on health care issues.

Yoder adds, "After all of the years I spent in the pharmacy field, I realized that it was becoming too easy to get

wrapped up in my own point of view. In this course, I not only learn the different perspectives of my classmates, but I get to see the evolution of the health care field from many different viewpoints."

Yoder, as well as Matz and Callahan felt that *Critical Issues in Health Care* worked as well as it did because of Hoffmann's enthusiasm and innovative course structure, and because of the type of students it attracted—students who had worked in the health care field and, therefore, could provide more sophisticated insights.

Faculty Notes

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Market," Johns Hopkins School of Public Health, Baltimore (1996)

VISITING ASSISTANT

PROFESSOR JOAN O'SULLIVAN

Publications:
"The Guardianship Puzzle: Whatever Happened to Due Process?" (with D. Hoffmann), *7 Md. J. of Contemporary Legal Issues* (Issue 2)

Selected Presentations:

"Guardianship and Alternatives," Baltimore VA Medical Center, Geriatrics Clinic Staff, Baltimore (1995)

"Legal Perspectives on Competency," Baltimore VA Medical Center, Geriatrics Clinic Staff, Baltimore (1995)

"Health Care Decision Making," Geriatric Imperative Minimester, University of Maryland at Baltimore (1996)

Comments on the Revision of the Maryland Rules Governing Minors and Persons Under a Disability, Court of Appeals of Maryland, Annapolis, MD (1996)

"Guardianship and Mental Illness," Harford-Bel Air Community Mental Health Center, Geriatric Services Staff, Baltimore (1996)

"The Politics of Aging," WBAL-TV segment on the unfairness of judging a person's abilities based solely on his or her age, referring to the media's treatment of Republican candidate Bob Dole, Baltimore (1996)

LAW & HEALTH CARE PROGRAM

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