

LAW & HEALTH CARE

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Caring for the Dying: Reexamining Our Approach

"In past years, critics and reformers have argued that medical technology has obscured humanistic compassion for dying people and those close to them. These voices have urged more humility about the reach of medicine and more compassion, empathy, and caring for people approaching death," says Christine Cassell in a recent report by the prestigious Institute of Medicine (IOM) entitled *Approaching Death*. Cassell also states that this is not the first time in this century that we have tried to rethink attitudes and practices as they relate to care at the end of life.

In the aftermath of the Supreme Court's decision on physician assisted suicide, various groups in our society have called for a reexamination of the way we care for the dying. Studies have shown that we don't do a good job of caring for dying patients—advance directives are sometimes ignored, patients die in pain, often in "cold", "high tech" environments, hooked up to machines, and, in some cases, alone without someone to ease their suffering and isolation.

The "humanistic compassion" for dying persons referred to in the IOM report seems to not yet be a reality, and on December 11, 1998 the Law &

From the Director

Upon my return from sabbatical, I thought it would be a good opportunity to reflect on the status of one highly important facet of our Program—our connection with NIH.

Beginning on page 4, we explore the evolution and expansion of our relationship with NIH and how our experiences have benefited both organizations. Our connection to NIH provides an opportunity to integrate what is taught in the classroom with "hands on" experience, and our students are often exposed to cutting-edge issues in medical research to which there are not always clear legal and ethical answers. The alliance has produced an atmosphere rich with teaching, service and research opportunities. Both our Program and NIH can be proud of what we have accomplished.

As always, our Newsletter includes information on our latest symposium, our Journal, and news from our Clinic.

Enjoy the issue and have a happy holiday season!

Karen Rothenberg

Health Care Program, Maryland Office of the Attorney General and the Maryland Healthcare Ethics Committee Network will co-sponsor an interdisciplinary symposium to address these issues.

The symposium, *Caring for the Dying: Reexamining Our Approach*, will explore the history of dying in America—how far we've come in reaching the goals described above and the obstacles to their implementation,

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Karen Rothenberg, JD, MPA

Associate Director:
Diane E. Hoffmann, JD, MS

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

Faculty Notes:

Taunya Lovell Banks, JD
Richard Boldt, JD
Deborah S. Hellman, MA, JD
Stanley S. Herr, JD, DPhil
David A. Hyman, MD, JD
Susan Leviton, JD
Max Stul Oppenheimer, JD
Joan O'Sullivan, JD
Rena I. Steinzor, JD
Deborah J. Weimer, JD, LLM
Roger C. Wolf, JD

Adjunct Faculty (1998-1999)

Ellen Callegary, JD,
Callegary & Steedman
James Doherty, Jr., JD,
New American Health LLC
Lewis Noonberg, JD,
Piper and Marbury
Frank Palumbo, PhD, JD, University of
Maryland School of Pharmacy
Carol Rubin, JD, Fisher & Winner

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Victoria Ndiaye

Comments and letters should be
forwarded to the above address.

Caring for the Dying
Cont. from page 1

and how we might eventually over-
come the obstacles and achieve a better
death for all Americans in the years to
come.

As part of the conference, Professor
Robert A. Burt, JD of Yale Law School
will deliver the Stuart Rome Lecture,
"The Administration of Death in
American Medicine, Law & Culture."
Other speakers include DeWitt C.
Baldwin, Jr., MD, of the American
Medical Association, Patricia Grady,
PhD, director of the National Institute
of Nursing Research, National Insti-
tutes of Health, Alan Meisel, JD,

University of Pittsburgh Law School,
David A. Simpson, MA, executive
director of the Hospice of the Western
Reserve and Anne Wilkinson, PhD, of
the Center to Improve Care of the
Dying at George Washington Univer-
sity Medical Center.

Papers from the conference will be
published in the Spring/Summer 1999
issue of the *Journal of Health Care
Law & Policy*. This will be the fourth
issue of our *Journal*. Subscriptions and
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LAW & HEALTH CARE PROGRAM ADJUNCTS

Carol L. Rubin
BA, 1963, Goucher College
JD, 1985, University of Maryland

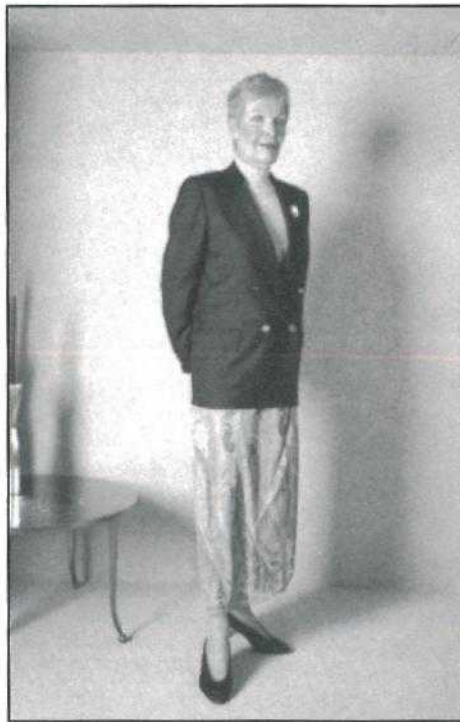
Carol Rubin has a sincere respect for her students—she continues to be more and more impressed with their level of sophistication and the quality of work they are doing. Rubin has been teaching Health Care Law for the L&HCP for the past five years.

"The classes are much larger than when I began. My first class had about 30 students in it. This semester I am teaching 68 students," she adds. Rubin says that her recent classes have also had a large number of students with either a professed interest or working experience in the health care field—evidence that students are taking advantage of what she calls a "transfer of training."

After graduation from law school, Rubin spent a number of years at both Washington, D.C. and Baltimore firms acquiring her extensive knowledge of health law. Her first stop was a 160-attorney firm in D.C. where she spent two years learning the intricacies of Medicare-Medicaid law.

"After that I became an associate at Frank, Bernstein, Conaway & Goldman in Baltimore. Frank Bernstein hired me for my knowledge of federal health law, and while there I gained an in-depth knowledge of state health law." Rubin says that since she was part of the firm's corporate/business department, she also gained some top-notch transactional training.

Rubin became an adjunct professor at the law school during the Fall 1993 semester when L&HCP director, Karen Rothenberg offered her the opportunity



Carol Rubin (Reprinted with permission from Baltimore Magazine.)

to teach Health Care Law. Rubin, who had herself graduated with honors from the University of Maryland law school in 1985, readily accepted.

Becoming an attorney was a second career for Rubin—she previously worked in the field of government regulation and financing of health care.

Rothenberg says, "When Carol came to law school she had a wealth of practical experience and she easily integrated that experience with what was to become an extensive knowledge of health care law."

Now a partner in charge of health law for Fisher and Winner—a respected Baltimore firm—Rubin says her practice is both far-reaching and varied.

"My work is focused on health care law transactions—the "deals" that health care providers are a party to—and Medicare/Medicaid issues, such as compliance, representation in overpayment issues, fraud and abuse, and others."

Rubin thoroughly enjoys teaching in the L&HCP and continues to find it challenging to teach a survey course. She says that the issues have grown so complex that she has to pick and choose which topics are most important to include.

"I tell my students to think of the course as a kind of 'wine tasting' of health care law issues," says Rubin.

The "tasting" can be further explored in the many other health law courses offered as part of the L&HCP curriculum.

MHECN Holds Conference

On October 30, 1998, the Maryland Healthcare Ethics Committee Network and the St. Agnes Bioethics Committee co-sponsored a conference, "Sustaining the Life of Your Ethics Committee," at the Bon Secours Spiritual Center.

Professor Diane Hoffmann, a member of the Executive Board of the Network, played a key role in organizing the conference and presented her research on the competency—skills and knowledge base—of ethics committee members.

Look for a more detailed article on her ethics committee research in our next issue.

Our NIH Connection

Should we regulate the partnership between industry and government-sponsored medical research? What limits should we place on the use of stored tissue samples? How can we improve the informed consent process for medical research on diverse populations? These are just a few of the cutting-edge questions being researched by our faculty, our students and our graduates as part of a working relationship that has evolved between the L&HCP and the National Institutes of Health (NIH).

This relationship manifests itself in several areas—through practicums and externships, fellowships, employment, research, service and teaching.

Below are some of the highlights of our ongoing relationship with NIH—updates on our past graduates, a description of several placement experiences, and a synopsis of the research, service and teaching being undertaken by L&HCP faculty.

Past Graduates

One of the roads to employment at this exciting government research center seems to come directly from our law school's Law & Health Care Program. In recent years, a number of L&HCP graduates have become NIH employees. In some cases, they are supervising students in placements that they themselves completed while in law school, so the connection between the L&HCP and NIH has come full circle.

The National Human Genome Research Institute (NHGRI)

Barbara Fuller, a 1996 graduate, works in the office of the director of

the Human Genome Institute at NIH as a Senior Policy Analyst. Fuller is involved in policy issues in three areas: health insurance discrimination, employment discrimination, and privacy of genetic information. She



Rita Khanna

monitors state legislation as it pertains to these three areas and educates physicians, legislators, the public and other groups on the issues. She has made presentations across the United States.

Before law school, Fuller was involved in the area of confidentiality and privacy of medical records. This background led Fuller to a position with the National Action Plan on Breast Cancer (NAPBC). The NAPBC had partnered with The Genome Institute to address privacy issues as related to genetic information. Fuller also worked with Professor Karen Rothenberg on a policy analysis of state legislative approaches addressing genetic discrimination by health insurers and employers. Her work for NAPBC and The

Genome Institute led to a full-time position after graduation, which eventually resulted in her becoming an employee of NIH.

In addition to staying on top of changes in the genetic information landscape, Fuller has become a leader in her commitment to helping people who have been subjected to genetic discrimination. (See article on page 11 about Fuller receiving an award for her work.)

The National Cancer Institute (NCI)

Elizabeth Lovoy and Dr. Rita Khanna are two recent graduates who found their way to employment at the NIH National Cancer Institute via the L&HCP.

When Liz Lovoy graduated from law school in 1994, she added a JD degree to a masters in public health from the Johns Hopkins University School of Hygiene and Public Health and several years experience as a project manager for a company that managed health care studies for NIH.

Those credentials combined with the experience she gained through her involvement in the L&HCP led her to her position as a Senior Technology Development and Patent Specialist in the Office of Technology Development at NCI.

Rita Khanna's first practical experience in the area of medical biotechnology law and policy occurred while she was still in law school, when she completed a practicum in the Office of the General Counsel at NIH. Through that experience she

Our NIH Connection

learned about other opportunities in this area of law at NIH which eventually led to her employment as a Technology Development Specialist with the Technology Development and Commercialization Branch (TDCB) of the National Cancer Institute (NCI).

Lovoy advises commercial organizations such as pharmaceutical companies, universities, and other non-profit institutions about the suitability of their proposed projects to the research and development goals of NCI, and also matches these companies with NCI scientists whose research interests are pertinent to the projects. Khanna is responsible for coordinating the management of the intellectual property portfolio of the Developmental Therapeutics Program (DTP) of the Division of Cancer Treatment and Diagnosis (DCTD) which is committed to the discovery and rapid development of new agents for the treatment of cancer.

Lovoy has also been a mentor to several L&HCP students and a practicum supervisor for student Malka Scher (see "Spotlight on . . ." in the Fall-Winter 1997 issue of the newsletter). Both Barbara Fuller and Liz Lovoy also participate in the Health Law Practice Workshop, a two-credit course required by students doing L&HCP practicums and externships.

Fellowships

The National Cancer Institute (NCI) at NIH sponsors training fellowships through the Summer Internship Program in Biomedical Research (SIPBR—formerly known as the Student Research Training Program—SRTP.) This Internship Program offers students an opportunity to develop research skills, and provides training experience within the Institute's various research programs, including laboratory and clinical research, etiological investigation, cancer prevention and control research, and research in the areas of epidemiology and biostatistics.

Several NCI Divisions participate in the Internship Program. During the summer of 1997, L&HCP students Bridget C. Atwell and Marilyn Levitt completed fellowships at NCI.

Marilyn Levitt worked under the supervision of Dr. Daniela Seminara doing legal research on proposed federal and state legislation in the areas of genetic discrimination, the storage of tissue samples, and other general confidentiality issues.

Levitt stated that the fellowship was an exceptional "growth experience for students," offering opportunities unavailable in the classroom. During her time at NCI she had the opportunity to attend National Breast Cancer Advisory Commission meetings and monthly Internal Review Board (IRB) meetings, all of which provided "real world" learning experiences.

Bridget Atwell also worked in the Division of Epidemiology and Genetics under the supervision of Dr. Susan Nayfield, who has direct oversight for the fellowship program in the Division of Cancer Control and Population

Sciences (DCCPS). Both Dr. Nayfield and Dr. Barbara Rimer, the director of DCCPS, are extremely supportive of the Program's goals and purpose.

Atwell researched confidentiality issues—she worked primarily on Certificates of Confidentiality (which protect research subjects, even if they are under subpoena). Like Levitt, Atwell praised the opportunities the placement offered her. She, too, attended IRB meetings, and as part of her work, tracked privacy legislation on the Hill, attending a number of congressional hearings on the issue.

Atwell said the fellowship was a terrific opportunity for her—she learned a great deal, found the subject matter extremely interesting, and the time spent at NCI gave her a good picture of how a government health agency operates. Her interest in health policy as a possible career choice made the fellowship an even more valuable experience.

Because there were no other lawyers in the Division during her tenure there, Atwell jokingly remarked that often she was "the expert" when a legal question arose.

Dr. Nayfield adds that, "As a result of the valuable contributions Marilyn and Bridget made to DCCPS during their tenure as interns, the Division has created a staff position for a lawyer in its Epidemiology and Genetics Program. This should create additional opportunities for L&HCP students throughout the year."

Irma Robins, a May 1997 Maryland law graduate completed a different type of NCI fellowship in its Technology Development and Commercialization Branch.

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Our NIH Connection

Prior to law school, Robins was a manager of a hi-tech software development and consulting firm. After six successful years, the company was acquired by another owner. Robins, who was a company shareholder, decided to reinvest in herself by pursuing a law degree at the University of Maryland.

During her final year in law school, Robins took the class *Biotechnology and the Law* taught by Professors Rothenberg and Oppenheimer. A guest lecturer from the National Cancer Institute (NCI) Office of Technology Transfer peaked her interest and Robins applied for a fellowship in the NCI Office of Technology Development and Commercialization.

Robins describes the fellowship as a "dream job" for a new graduate. She became a technology development specialist focusing on software and computer related inventions. In addition, Robins dealt with biotech inventions, negotiating agreements between the NIH scientists who had developed new technologies and the outside entities that would proceed with further development and commercialization.

Working with some of the top scientists, researchers and policy makers of the nation was only one of the positive aspects of her job. The high volume of work, the challenging nature of intellectual property law and



Irma Robins

the diversity of the issues all appealed to Robins. Furthermore, she enjoyed the collegial environment where everyone exchanged ideas and consulted one another on new issues.

Robins says, "I took the fellowship as an opportunity to immerse myself in an intense area of medical research. It was a wonderful learning experience."

Eventually, Robins wanted to move closer to home (Baltimore) and pursue new challenges. Following her fellowship at NCI she took a position as Assistant University Counsel at the University of Maryland in Baltimore. Robins is again dealing with top-notch scientific researchers and continuing her work on technology and research development.

The Law & Health Care Program's Health Law Practicum Program 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 The Health Law Practice 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 seven 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), The Federal Trade Commission, The Health Care Access and Cost Commission; the NIH General Counsel's Office; and the Women's Legal Defense Fund in Washington, D.C.

Our NIH Connection

Practicums and Externships

The L&HCP currently has both practicum and externship opportunities in several different divisions at the National Institutes of Health.

Recently students have completed placements at NIH's Office of the General Counsel and at NCI, working on issues which have included animal rights petitions, research grant fraud, international human fetal tissue research agreements and informed consent issues.

Most recently, Eugenia Liu completed an externship in the NIH General Counsel's Office during the summer 1998 semester. Liu decided to work at NIH because she specifically wanted to gain hands-on experience at a large medical research organization. Her interest in the policy and ethical issues surrounding research was stimulated by discussions with her friends—a group of medical students, who were involved in research.

Liu worked on a variety of subjects including medical malpractice on the internet, technology transfer, shrink-wrap licensing, ownership interests in blood donated to NIH, and others. She adds that her summer was a wonderful experience and one that she hopes to some day build upon.

Teaching, Service and Research

It is impossible to accurately portray the breadth and diversity of our connection to NIH without some mention of our faculty's teaching, service and research connections with the organization.

Professor Karen Rothenberg, director of the L&HCP, began her relationship with NIH almost a decade ago during her first sabbatical in 1991 as a Health Law and Policy Consultant for the National Institute for Child Health and Human Development, Office of Science Policy and Analysis. During the 1995 and 1996 school year, NIH invited her to serve as Special Assistant to the Director of the Office of Women's Health. She was responsible for advising the Director on a variety of health policy issues, including implementation of the guidelines on the inclusion of women and minorities in clinical research.

She has also held a number of appointments at NIH—from 1995 though 1998 she served on the Recombinant DNA Advisory Committee. In 1997 she was appointed to a four-year term on the National Advisory Child Health and Human Development Council. As part of the Child Health and Human Development Council, Rothenberg reviews and makes recommendations regarding grant applications to support biomedical research and research training activities to the director of NIH. It is the Council's responsibility, also, to survey the total research effort in the subject field and

recommend actions to stimulate additional work.

Rothenberg has also served as a policy consultant on a number of NIH projects including NCI's Working Group on Informed Consent, the Research on Informed Consent Initiative, and the Consortium on Studies of Genetic Testing and Counseling for Heritable Breast, Ovarian and Colon Cancer Risk at the National Center for Human Genome Research and NCI.

The latter resulted in Rothenberg co-authoring "Cancer Genetics Susceptibility Testing: Ethical and Policy Implications for Future Research in Clinical Practice," published in the *Journal of Law, Medicine and Ethics* in 1997.

She has made a number of presentations to NIH bioethicists, including, "Gaps and Paradoxes: Challenges for Research Ethics," and "Misattributed Paternity Genetics Research." Over the last few years, she has co-chaired workshops on genetic discrimination in both health insurance and in the workplace. Her contribution to these workshops resulted in co-authorship of two *Science* articles that have contributed to the legislative debate in this area.

Other faculty have also strengthened the ties between our Program and NIH—as part of her leadership and expertise in hospital ethics committees, Professor Diane Hoffmann served as a member of the NIH Clinical Center Ethics Committees from 1990-1993; and this year, Professor Deborah Hellman was appointed to the NIH Human Genome Initial Review Group of the ELSI Subcommittee which evaluates grant appropriations on genetic research.

L&HCP Faculty Notes . . .

PROFESSOR KAREN ROTHENBERG

Selected Presentations:

"ELSI Plenary: Where is Our New Genetic Knowledge Taking Our Society," Mid-Atlantic Judicial Conference, Ocean City, MD (1998)

"Genetics: Uses and Abuses," Presidential Showcase Program, American Bar Association, Toronto, Canada (1998)

"Genetics Research & The Jewish Community: Promise or Peril?" Ethical, Legal, and Social Implications of the Human Genome Project: A Model College Course, Faculty Symposium, Dartmouth College, Hanover, NH (1998)

"Legislative Plenary: Applicable Federal and State Law and Genetic Information," Genetics in the Courtroom 1998, Cape Cod Judicial Conference, Orleans, MA (1998)

"Genetics and the Jewish Community: Social Implications," New York State Task Force on Life and the Law, NY, NY (1998)

"Ethical Legal and Social Challenges in Genetics: Prediction, Precaution, and Public Health," First Annual Conference on Genetics and Public Health, Centers for Disease Control and Prevention, Atlanta, GA (1998)

PROFESSOR

DIANE HOFFMANN

Selected Presentations:

"Are Ethics Committee Members Competent?" University Center for Biomedical Ethics Conference: Ethics in Healthcare Institutes: New Issues, Controversies and Practical Considerations, Charlottesville, VA (1998)

"Consumer Behavior and Health Insurance: Do Consumers Vote With Their Feet and Other Related Questions," 19th Annual Health Law Teachers Conference, Houston, TX (1998)

"Resolving Conflicts in Patient Care: Getting to Yes," Maryland Healthcare

Ethics Committee Network Conference on *Life & Death: Whose Decision Is It Anyway*, Annapolis, MD (1998)

"Pain Management and Palliative Care in the Era of Managed Care," Mayday Scholar's Workshop, St. Louis, MO (1998)

Appointments:

Attorney General's Task Force on Project to Improve End of Life Care (1998)

ASSOCIATE PROFESSOR

DEBORAH S. HELLMAN

Appointments:

The Human Genome Initial Review Group, ELSI Subcommittee, NIH (four year standing committee of the Human Genome Project) (1998)

PROFESSOR

STANLEY S. HERR

Publications:

"Aging and Ethics of Caring for Persons with Developmental Disabilities," reprinted in *American Bar Association, In Pursuit . . . A Blueprint for Disability Law and Policy* 73-86 (1998)

In Pursuit of Life, Liberty and Happiness, Part I: Tackling Waiting Lists," *11 American Association on Mental Retardation News and Notes* 2, 8 (1998)

Selected Presentations:

"Continuity and Change," opening remarks as program chair of the 122nd Annual Meeting of the American Association on Mental Retardation, San Diego, CA (1998)

"Treatment and Habilitation," ABA National Conference on Disability, Law and Policy, Washington, DC (1998)

"Aging and Advocacy for People with Disabilities," keynote presentation for 2nd International Conference on Developmental Disabilities, Jerusalem (1998)

Appointments:

Chairman, Board of Directors for Center for Rehabilitation Research & Human Development, Faculty of Social Welfare & Health Studies, University of Haifa (1998)

ASSOCIATE PROFESSOR

DAVID A. HYMAN

Publications:

"Hospital Conversions: Fact, Fantasy, and Regulatory Follies," *23 J. Corp. L.* 741-778 (1998)

"Consumer Protection and Managed Care: With Friends Like These . . .," *1998 Health L. Handbook* 283-305 (1998)

"Consumer Protection in a Managed Care World: Should Consumers Call 911?," *43 Vill. L. Rev.* 409-466 (1998)

Selected Presentations:

"Drive-Through Deliveries: Is Consumer Protection Just What the Doctor Ordered," Univ. of North Carolina School of Law, Chapel Hill, NC and Harvard Law School, Boston, MA (1998)

"Regulating Managed Care: Should Congress Play Doctor?," University of Michigan Schools of Law, Medicine, Graduate Studies, and Public Health, Ann Arbor, MI (1998)

"The Ethics of Quality: Is Regulation a Solution?," Annual Meeting, American Society of Law, Medicine & Ethics, Boston, MA (1998)

VISITING ASSISTANT

PROFESSOR JOAN O'SULLIVAN

Publication:

"Alzheimer Testing at Silver Years," (with Thomas AM, Cohen G, Cook-Degan R, Post S, Roses AD, Schaffner K, Green R) *7 Cambridge Quarterly of Healthcare Ethics* 294 (1998)

Cont. on page 12

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, AIDS and the elderly.

by Joan O'Sullivan, JD

Cases of a certain type come to the Health Law Clinic in spurts. This semester, we have had an unusually high number of cases involving elderly nursing home residents who are threatened with involuntary discharge from their nursing homes for failing to qualify for Medicaid payments. If the residents have no funds to pay privately, the state and federally funded Medicaid program is their only source of payment. If they fail to qualify for Medicaid, they are unable to pay the \$4,000 to \$5,000 monthly cost of care, and they can accumulate a substantial bill in a very short time.

However, qualifying for Medicaid is not a simple matter. The complexity of the system, the intricacy of the regulations and the numerous opportunities for things to go wrong in the application process result in many people being rejected for benefits. Our student attorneys this semester have learned just how difficult it is for those who need publicly funded medical care the most to get it. Even when the resident had an interested, energetic and intelligent student advocate working on the case, the process was anything but easy. Indeed, it often seems harder for a poor person to qualify for Medicaid than for the proverbial camel to pass through the eye of a needle.

Nursing home involuntary discharge cases make me uneasy, for the stakes are very high for our client, the resident. If we lose the case, the nursing home is entitled to discharge the patient for failure to pay their bill. While there are state and federal guidelines in place which govern the way this discharge will happen, the result is often catastrophic for the resident. To those who are summarily ejected from a place where they are dependent on their care givers and where they may have formed personal relationships with the staff, "transfer trauma" is a grave risk. Studies have shown that such transfers, over which the resident has very little control, often result in a worsening of the person's condition or even death.

Our student attorneys have been very successful in negotiating settlements with local Medicaid agencies and with nursing home administrators to forestall the threat of discharge. Their persistence, creative advocacy and diligence have made these results possible. Here are some of their observations about the process.

Frustration With the System-

The difficulty in getting a Medicaid eligibility technician to answer the telephone has been a major stumbling block for student attorneys. Numerous calls and endless voice mail messages have produced few return phone calls from the worker in charge of the case. Some students try to work their way up the ladder, asking to speak to supervisors and in one case even writing to the director of the agency to

protest the lack of response on the part of the worker. We have brain-stormed about this in class, trying to devise the most effective way to accomplish the goal of getting the worker to listen to our argument. One student had great success with the honey versus vinegar approach: he explained his client's situation, credited the worker with having much wisdom and experience working with the regulations, and asked for help in defending his client from his impending discharge. The worker responded by reopening the case, taking more evidence, and certifying the man for Medicaid eligibility back to the date of his original application.

This approach does not always work, however, and in one case it was not until we appeared at a fair hearing and a knowledgeable worker looked at the case that the agency admitted it had bungled the application and agreed to rework it.

Complexity of the Regulations-

Medicaid regulations, the rules of the game which one must learn to qualify for care, are fraught with difficulty. Whether one reads the federal regulations, the state interpretations of the federal regulations, or the eligibility worker's desk manual, the rules are complex, illogical, and full of detours and exceptions. One must know the difference between income, for which there is "spend down," and resources, for which there is no "spend down." In Maryland, we have the "first of the month rule," under which one must dispose of assets before the first of the month or the resident will be ineligible for the entire month. Financial allowances for spouses left in the community are meager, and while we may

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In The Clinic

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succeed in making the spouse in the nursing home eligible for Medicaid, the spouse in the community may be left with too little income to meet her needs. Students struggle to understand these rules and the logic behind them, often to no avail. Their encounter with Medicaid law is a rude awakening, especially after they have spent their first year in law school reading appellate cases in which there is always a rational and reasoned explanation for the result in a case.

Things That Can Go Wrong, Do Go Wrong-

People entering a nursing home seldom have the luxury of arranging their finances in advance. While some elder law attorneys make a good living helping wealthier people plan for Medicaid eligibility should they need a nursing home, our clients are seldom in that position.

In our cases this semester, clients have been denied eligibility because a nursing home, instead of depositing a check for payment of a bill immedi-

ately, put the check in a file and left it there for two months. To Medicaid, it appeared that the resident had too much money in her bank account for those two months, and she was found ineligible. In another case, a nephew who was helping his elderly aunt apply for Medicaid said the wrong thing—that the resident had been living in his home before she entered the nursing home. In fact, the resident had been living in her own mobile home. Medicaid counted the resident's mobile home as an asset and said that she must sell it to pay for her care, since she had another home with her nephew. In a third case, an eligibility worker took the application the resident's spouse filed, along with the substantial documentation he provided to the agency, and put the case in the closed files. The worker then quit working for the agency. When the husband called ten months later to ask why his spouse had not been found eligible, the agency resurrected the file and denied eligibility, based on old information.

In each of these cases, students were able to untangle the facts and apply the correct law to the case so

that the resident was ultimately found eligible for Medicaid benefits. None of our clients was involuntarily discharged from their nursing home, and all were able to rest easier knowing that the threat of eviction had passed.

Law students, especially those in their first clinical semester, work very hard to achieve their client's goals. They study the law, research the facts diligently and produce creative and effective arguments. But in their encounters with this one small piece of our public health system for the poor, they learned how difficult Medicaid law and its application are. They know how hard it would be for their clients to successfully negotiate the system without their advocacy. The question arises: why, in a program designed for poor people, can't poor people qualify? One unavoidable answer is that the complexity of the system is one way to ration health care, one way to keep people from using up scarce Medicaid resources for expensive care in nursing homes. It is a sobering lesson for these students of health care law.

Student Health Law Organization News (SHLO)

From June 13-19, 1998, two members of SHLO (Brian Sklar and Dawn Lanzaletti) represented the law school at the University of Utah's Annual School on Alcoholism and Other Drug Dependencies. UMB students from the medical, dental, social work, nursing and pharmacy schools also attended. The program featured different sessions focused on differences in treatment and therapy programs for men and women. The conference provided an opportunity to interact

with other students, professors, medical practitioners and counselors from around the country to discuss the multidisciplinary nature and methods of treatment used in drug and alcohol related projects.

As a result of the conference, SHLO is bringing a bit of the University of Utah program to the law school—Harold Crossley, DDS, PhD, a professor at the dental school will speak on what legal practitioners should know about street drugs and the signs of use and abuse.

Another upcoming event is SHLO's annual career fair planned for February 1999 in Westminster Hall. This event provides a great opportunity for networking and general education about the types of employment opportunities available to students interested in health law.

Current SHLO officers are:
President: Tracy Silverman
Vice-President: Dawn Lanzaletti
Treasurer: Julia Langston

LAW & HEALTH CARE PROGRAM AWARDS

Our faculty, our graduates and our students continue to excel in the work they do in the health law field. The following are three instances where these individuals have been recognized for their accomplishments.

Professor Joan L. O'Sullivan

Joan L. O'Sullivan was recently awarded the Sixth Annual Maryland Bar Foundation Award for Legal Excellence in The Advancement of Public Understanding of the Law. Professor O'Sullivan's commitment to increasing the public's awareness and understanding of the law is evidenced by the number of lectures and presentations she gives to seniors, families, students, and associates in the field who work with elderly clients. Her desire to "spread the word to people who will use the law in their own lives" is reflected in her resume which lists over seventy public speaking engagements dedicated to educating others about the law.

Before joining the law school in 1993, O'Sullivan managed the Senior Citizen's Law Project of the Legal Aid Bureau in Annapolis. During these years, she developed an expertise in the variety of issues facing the elderly—specifically, health care issues (Medicare, Medicaid, advance directives), Social Security, Supplemental Security Income, guardianship, nursing home care, and competency. Her interest in the issues affecting the elderly was ahead of

recent recognition given to "elder law" within many Bar Associations and is an area destined to become more important as the elderly population continues to grow and to live longer.

Professor O'Sullivan's philosophy that "the law should be accessible to all" is reflected in the activities to which she chooses to devote her time and attention. In addition to public speaking, she publishes articles and serves on numerous committees dedicated to educating the public about the law.

She wrote "The Guardianship Handbook," a publication for lay persons and service providers which



Joan O'Sullivan receives the Legal Excellence award from The Honorable Arthur M. Ahalt, president of the Maryland Bar Foundation, Inc.

describes adult guardianship laws in Maryland. In addition, she chaired a Maryland State Bar Association committee which revised "Nursing Homes—What You Need To Know," another handbook for lay persons. The nursing home handbook project resulted in an award to The Elder Law Section—The Bar Association's 1996 Presidential Best Section Project to Benefit the Public Award.

Professor O'Sullivan firmly believes that educating the public about the law is one of the ways to achieve equal justice for all. She continues her work through her students in the Health and

Elder Law Clinic. One student commented that "Joan O'Sullivan's willingness to help 'just one more client' never ends."

Graduate Barbara Fuller

Barbara Fuller, a 1996 law school graduate, received the National Human Genome Research Institute's NIH Award for Advancing the Principles of Genetic Justice on Behalf of Others. Fuller came to the aid of a Marine gunnery sergeant who, upon retiring, was discriminated against because he suffered from Von Hippel Lindau (VHL), a genetic disorder.

Three years after he entered the military the sergeant was diagnosed with VHL, a disorder that produces both malignant and benign tumors in the body. He remained in the Marines for eleven years before applying for a medical discharge. The military denied the medical discharge and thereby denied the sergeant access to medical benefits. Fuller was instrumental in helping the sergeant and a team of NIH scientists, lawyers and others appeal the denied medical discharge. Her efforts toward preventing discrimination on the basis of genetics were rewarded, and the sergeant is now able to access medical benefits.

Fuller is a Senior Policy Analyst in the office of the director of the National Human Genome Institute at NIH (see article on page 4). This award is well-deserved recognition of her ability to successfully combine an expertise in genetics and the law with a commitment to protecting the rights of others.

Student Kelly Reeves

Kelly Reeves, a 3D student won second prize and \$2000 in the H. Thomas Austern Memorial Writing Competition, sponsored by the Food and Drug Law Institute. Reeves' paper, "Direct-to-Consumer Broadcast Advertising: Empowering the

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Awards

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Consumer or Manipulating a Vulnerable Population?" was inspired by the tremendous increase in drug advertisements that began appearing on television and in print during the past year.

While an undergraduate, Reeves interned at Glaxo-Wellcome, an international pharmaceutical company, working in their Federal Government Relations Office. Before law school, she worked at Kaiser Permanente, a health care provider and insurer.

As a law student, Reeves' interest in the health care industry and specifically the pharmaceutical industry continued to grow, leading her to take the Food and Drug Law Seminar taught by Professor Frank Palumbo, PhD, JD.

Reeves' award-winning paper was written for the Food and Drug Law class, and Palumbo commented that "Kelly has an excellent command of many of the issues related to drugs and public policy."

Reeves also completed a practicum at the FDA's Office of Health Affairs, and last summer Reeves attended a seminar as part of the Food and Drug Law Institute's Internship Program for law and pharmacy students, something she encourages other students to do.

She hopes to build upon her classroom and writing success by practicing food and drug law upon graduation.

Faculty Notes

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Selected Presentations:

"*Grijalva v. Shalala* and Medicare Appeals," AARP Medicare Managed Care Appeals Training, Baltimore, MD (1998)

"Incompetency and Adult Guardianship," Veteran's Administration Medical Center, Geriatric Evaluation Medical Unit, Baltimore, MD (1998)

"Guardianship and Alternatives," Departments of Social Service and Aging for St. Mary's, Calvert, and Charles Counties, Leonardtown, MD (1998)

"Less Restrictive Medical Decision Making," and "Pursuit of Happiness—Who Decides?," American Association on Mental Retardation Annual Meeting, San Diego, CA (1998)

"Issues of Adult Guardianship," Western Maryland Area Health Education Center, Cumberland, MD (1998)

Elder Law Small Group Leader, AALS 1998 Conference on Clinical Legal Education, Portland, OR (1998)

LAW & HEALTH CARE PROGRAM

SCHOOL OF LAW

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