Since it was established in the late 1980s, the Law & Health Care Program has molded its curriculum to mirror the rapidly changing practice of health law. Despite its complex nature, much of the work being done by health lawyers today can be traced directly to a handful of societal events and legislative initiatives occurring within the last 35 years. These events, described below, have shaped both the American health care system and the practice of health law, as well as provided the impetus for a number of our Program’s curricular offerings.

Health Insurance and Governmental Health Programs
In the early 1940s, as a result of new provisions in the tax laws and a desire to attract talented workers, employers increasingly began to offer health insurance to their employees and their dependents. With this insurance, employees were able to see the physician of their choice with little or no out of pocket payment.

The availability of commercial insurance for the employed population was followed by the establishment in 1965 of Medicare, the public health insurance program for the elderly and disabled, and Medicaid, the medical assistance program for the poor. The advent of these new public programs created numerous opportunities for health lawyers—complex regulatory schemes at both the state and federal levels required...
Hoffmann Named Director of L&HCP

L&HCP faculty and Associate Dean, Diane Hoffmann, has been appointed the new Director of the Law & Health Care Program. In appointing Hoffmann, former Director and now Dean of the Law School, Karen Rothenberg said, "Diane brings a wealth of experience and talent to this position. She has worked beside me as Associate Director for over ten years, and I believe that the Program will continue to grow in stature under her outstanding leadership."

Hoffmann came to the law school in 1989 from the Washington, D.C. law firm of Dewey, Ballantine, Bushby, Palmer & Wood where she worked in the areas of health, environmental and food and drug law. Her research interests include issues at the intersection of law, ethics and medicine, such as advance directives and termination of life support, ethics committees, human subjects research, genetic testing, the regulation of managed care, and, most recently, pain management.

She has served as a member of the ethics committees at the University of Maryland Medical Center in Baltimore and the National Institutes of Health in Bethesda, MD, and is chair of the Executive Board of Maryland's Health Care Ethics Committee Network. Hoffmann was a primary author of and was instrumental in the passage of Maryland's Health Care Decisions Act.

During the 1994-95 academic year, Hoffmann served as a Senior Fellow and Acting Staff Director of the Senate Subcommittee on Aging, working for Senator Barbara Mikulski.

More recently, Hoffmann has been researching the barriers to pain relief in a study funded by the Connecticut-based Donaghue Medical Research Foundation. As co-investigator, Hoffmann worked with Ben Moulton, Executive Director of the American Society of Law, Medicine and Ethics to identify baseline data about pain management and obstacles to pain treatment in Connecticut. Additional funding from the Mayday Scholars Program and the Marjorie Cook Foundation extended her research to include the institutional barriers to pain management and gender bias in pain treatment.

Hoffmann is a graduate of Harvard Law School and the Harvard School of Public Health where she received an M.S. in Health Policy and Management.

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

The Law & Health Care Program moved up to fourth place in U.S. News & World Report's 2001 annual survey of law school specialty programs. Since 1995, the L&HCP has been consistently named among the top five health law programs nationwide. In addition to its health law ranking, Maryland Law has two other specialty programs in the top five—the Environmental Law Program and Clinical Law Program both placed fifth in their category.

The school itself placed among the top fifty law schools in the country, moving from the 2nd quartile to the top tier.
Keeping Pace... Cont. from page 1

health care providers to seek legal help to understand and operate within the regulatory structure created by the government. This regulatory structure, covering areas from participation and reimbursement of individual health care providers in the Medicare and Medicaid programs to the licensure and certification of hospitals, nursing homes and other providers, created an enormous industry for health care lawyers.

As a result of the fee-for-service payment system established by these early employer-sponsored insurance plans and government programs, health care costs began to escalate. This was followed by an outcry from employers and pressure from the federal government to contain costs. Out of this came the cost containment measures associated with managed care and a government focus on detecting and preventing health care fraud and abuse. New opportunities for health lawyers again arose.

The L&HCP has developed a number of curricular offerings to prepare students for the regulatory and organizational changes in the delivery of health care created by these new health care initiatives. These include a course on Insurance Law and seminars in Health Care Financing, Legal Issues in Managed Care and, more recently, Health Care Fraud and Abuse (see articles pages 4 and 5).

The AIDS Epidemic

In July 1981, the New York Times reported an outbreak of a rare form of cancer among gay men in New York and California known as Kaposi Sarcoma. About the same time, Emergency Rooms in New York City began to see a rash of seemingly healthy young men presenting with fevers, flu like symptoms, and a pneumonia called Pneumocystis. About a year later, the Centers for Disease Control linked the illness to blood and coined the term AIDS (Acquired Immune Deficiency Syndrome). In that first year, over 1600 cases were diagnosed and there were close to 700 deaths.

Even before the disease was given a name, the legal and ethical questions inherent in treating and living with AIDS began to surface: What is the physician’s responsibility in informing a patient with HIV illness about the dangers of sexual activity or needle sharing? When does a parent’s failure or refusal to adhere to a particular medical regimen for her child’s care rise to the level of medical neglect? Can an adolescent consent to (or refuse) testing and treatment for HIV without the involvement of his/her parents? What are the reproductive rights of women who are HIV positive? Can a physician lawfully refuse to reverse a tubal ligation for an HIV positive woman?

The Program’s AIDS Litigation and Counseling Clinic: Practice for Persons and Families Impacted by HIV was developed to better enable our students to deal with the legal and ethical issues arising in connection with patients and health care providers who must, themselves, deal with the disease (see article page 13).

New Drug Development and Human Subjects Research

The drug regulatory system in this country developed in large part in response to a highly publicized medical disaster. The distribution in 1937 by the Massengil company of a sulfa drug product that used diethylene glycol as a solubilizing agent resulted in the deaths of over 100 children.

As a result, Congress passed the federal Food, Drug and Cosmetic Act...
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Health Care Fraud and Abuse Seminar

This spring, the L&HCP added a new seminar, Health Care Fraud and Abuse, to its list of health law offerings. Twenty-one students signed up for the seminar, which is taught by nationally known fraud and abuse experts, Sandy Teplitzky and Kevin McAnaney.

Teplitzky is chair of the Health Law Department at Ober, Kaler, Grimes & Shriver, a well-respected Baltimore firm with a national health law practice. He was formerly with the Office of the General Counsel of the Department of Health, Education and Welfare, and is past President and a member of the Board of Directors of the National Health Lawyers Association.


Students in the seminar were given intense instruction on state and federal laws and regulations defining and addressing fraud and abuse in health care, with a focus on federal law.

By the end of the semester, these students could speak with varying degrees of fluency about the Medicare/Medicaid Anti-kickback Statute, Physician Self-Referral Laws such as "Stark I and II," and the False Claims Act and qui tam litigation. They learned how states are regulating fraud and abuse, and how private payers, the federal government, and internal compliance programs work to detect and combat health care insurance fraud.

On a broader level, students were taught about the impact various efforts to combat fraud and abuse have on the delivery and organization of health care, and fraud and abuse in managed care, where the financial arrangements reverse from promoting overutilization to encouraging underutilization or "holding back" diagnostic tests and treatments.

Both Teplitzky and McAnaney see an increasing need for legal instruction on fraud and abuse issues.

Teplitzky says, "The federal government, as the country's largest health insurance provider, is devoting an incredible amount of resources—both people and money—to detecting and punishing fraud. The Department of Justice recently made health care fraud its number two priority. In many cases, the laws are counter-intuitive: what seems like good business practice, can in fact, violate federal law. Health law students need to know how to analyze the fraud and abuse laws and how to implement them."

McAnaney reiterates and counters, "Federal dollars and reimbursement methodologies account for a substantial portion of the health care industry's revenues and that portion will only increase as the boomers age. The federal laws governing health care fraud and abuse effectively regulate how providers can compete in the marketplace for those federal dollars. Accordingly, anyone who will work in the field should have a working knowledge of the basic fraud and abuse laws."

Both McAnaney and Teplitzky enjoyed teaching the Thursday evening class. McAnaney comments that the give and take with students, especially given the number of students who have substantial experience in the health care field, provided refreshing real world feedback on these laws.

"Besides," he added, smiling, "it is always fun to spar with Professor Teplitzky."

Teplitzky was equally enthusiastic about the seminar students, describing them as very "focused."

He noted, "For about half of the class, health care law will be a second career. These students are professionals—doctors, nurses, administrators, physical therapists—who have a great deal of experience in the industry. This first group, as well as those students with less experience but who have a fresh perspective, make the small group discussions fascinating—the class participation was outstanding."
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of 1938. Under the Act, a manufacturer was required to evaluate a new drug for safety and the FDA was given pre-clearance approval authority over all new drugs to ensure that they were safe. However, the FDA could not require proof of efficacy through pre-market clinical trials.

It was not until 1962, when amendments were passed requiring FDA clearance based on both safety and efficacy, that clinical trials to ascertain the efficacy of new drugs became mandatory. In the wake of the tragedy involving the drug thalidomide, which led to severe birth defects among children in Europe, the Act was amended to require the FDA’s affirmative approval of all drugs before they can be marketed.

At about the time the new FDA amendments were passed, the use of human subjects in research was undergoing significant public scrutiny. Between 1953 and 1972, a series of abuses of research subjects came to public attention, including the infamous Tuskegee Study conducted by Public Health Service employees on the natural evolution of syphilis.

In the 1950s and 1960s, as federal funding for biomedical research increased dramatically, ethical safeguards and legal requirements were imposed on research activities involving human subjects. In 1981, federal regulations regarding research on all federally conducted or funded research were promulgated. Both the FDA regulatory system and the rules regarding research with human subjects have generated employment opportunities for health lawyers.

To better equip students who wish to practice in the medical research or food and drug regulation areas, the

Legal Issues in Managed Care Seminar

One of Professor Jaime Doherty's main goals in teaching this seminar is to build a framework for analyzing the health care system so that students can use their own deductive reasoning to bring the "big picture" into focus. The Seminar deals with a lot of substantive law, including an overview of legal and regulatory issues involved in representation of managed care organizations (MCOs) and relevant background such as definitions of "managed care" and the history of the managed care industry, types of MCOs (HMO/ PPO/PHO, etc.) state and federal regulatory concerns including antitrust, fraud and abuse, provider risk assumption, Medicare/Medicaid, MCO liability for utilization management, contracting issues, transac-

Food and Drug Act Seminar

The Food and Drug Act Seminar considers the Food and Drug Administration (FDA) as a case study of an administrative agency that must combine law and science to regulate activities affecting public health and safety. The seminar is designed both for students who expect to become involved in food and drug law and for those who are interested in the interplay of law and science. The seminar is taught by Frank Palumbo, JD, PhD, who serves as the Director of the Center on Drugs and Public Policy at the University of Maryland and is a professor in both the Law and Pharmacy Schools on the Baltimore campus.

According to Palumbo, "The Federal Food Drug and Cosmetic Act touches the lives of all consumers virtually every day. Through this course we are able to sort through the complex laws, regulations and policies governing foods, drugs, cosmetics and medical devices."
Aging of the U.S. Population

The U.S. Census Bureau reported in March 1999 that there were 55.3 million people in the United States who were 55 and older. As the U.S. population continues to age, the need for attorneys skilled in elder law issues continues to grow.

Students in the L&HCP Health and Elder Law Clinic represent clients in a variety of civil cases involving health care and elder law. The Clinic is similar to a civil law practice where, under the supervision of Professor Joan O’Sullivan, students may handle both litigation and transactional cases.

The cases cover a broad spectrum of health care law, including insurance coverage, public health benefits, such as Medicare and Medicaid, end of life decision making, nursing home discharge and resident rights, health care debt collection, adult financial and physical abuse, adult guardianship and alternatives to guardianship, and mental competency issues. In addition to case handling, students participate in weekly seminars to discuss ethical issues which arise in their cases, train in practice skills, and learn substantive health and elder law.

The Americans With Disabilities Act

Enacted in 1990, the Americans with Disabilities Act (ADA), is the most comprehensive federal civil-rights statute protecting the rights of people with disabilities. It affects access to employment, state and local government programs and services, access to places of public accommodation such as businesses, transportation, and non-profit service providers, and telecommunications.

The legal and political roots of the ADA originate in the civil rights era of the 1960s. In terms of formal legal precedent, the ADA has been described as, "...an amalgam of two great civil rights statutes, the Civil Rights Act of 1964 and Title V of the Rehabilitation Act of 1973..."
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Critical Issues (cont.)

"This class revealed that our knowledge base about the interaction of disciplines is rather narrow. Our competency pertains to the areas we specialize in. If we walk out of our 'box' there is not much that we know about other fields. Having a variety of students with different backgrounds helped to get out of that 'box' and see what is out there. What I found is that the perceptions of my area of practice by others varies by what backgrounds they have. Law students were [focused] on the legal aspects of the matter maybe too much, sometimes seeming to forget that the medical profession is not just about rules and regulations. Dealing with sick, miserable people requires bending those rules..."

The students also have an opportunity to learn about how other disciplines perceive them. A law student from the class noted: "My perceptions about what other people think about the medical profession is that it is not just about laws and regulations. We're really a service profession...crazy ambulance chasers...and there's not much differentiation...just lawyers as a group, but doctors can be plastic surgeons, brain surgeons or family practitioners and they each get a different reputation. Lawyers are all divorce lawyers."

While the health professional students may come in with this perception, often they come to appreciate lawyers and the law and why it is important to have them. As one medical student shared, after a class on malpractice: "Malpractice is the monster under my bed. As first year medical students, we have profound doubt of our own abilities (rightly so), so malpractice is scarier to us than it should be. The readings helped me understand this demon a little better and also helped me to comprehend the need for such litigation in the protection of patient's interests."

A goal of the course, according to Hoffmann, is that students will learn from and come to respect and appreciate what the other disciplines have to offer and that they will get more from the class because of its multidisciplinary nature. The comments below, from a medical and a law student, indicate that, at least for some students, this goal is achieved: "...this class has been a wonderful experience. I have learned about and gotten an opportunity to discuss a lot of the things that I've been disappointed to find lacking within my medical school education so far. The chance to interact with and learn about my fellow professional students has also been invaluable and given me better insight into what to expect when working as a member of teams of nurses and doctors and social workers, and maybe even lawyers, to provide health care."

"I think the different life experiences of the students in this class offer an enormously broad scope of opinion and knowledge. This depth is not available in the average law school course, nor is the emphasis on discussion and interaction. I was an interdisciplinary studies student way back as an undergrad and this class has reminded me why. It takes all types to bring out all the issues surrounding problems to be solved and ideas to solve them."

During the past 30 years, activism among people with disabilities has become increasingly visible, both nationally and internationally. The emergence of the Disability Rights and Independent Living Movements have been critical to the development of state and federal disability policy. Since the ADA was signed into law, many states enacted or strengthened state nondiscrimination statutes, accessibility codes and other progressive disability policies.

The ADA has been amended several times since it was enacted and is undergoing continuous interpretation in the court systems. There are always new issues to be considered: Is morbid obesity covered under antidiscrimination laws? Is HIV infection covered? And there are always new challenges: How can homelessness be prevented for the disabled poor? How can we provide protection from physical abuse? How can we offer access to advocates for all persons with disabilities?

These and other legal questions relating to disability law are explored in the Civil Rights of Persons With Disabilities: Seminar/Workshop and the Mental Disability and Criminal Law Seminar.

Other L&HCP Offerings

There are other offerings in the L&HCP curriculum that were not developed as the result of any one event in the legal and/or health care fields. These courses, seminars and practicums were established with the purpose of producing a well-educated attorney who recognizes that health law is not practiced in a vacuum.

Interdisciplinary Learning

There is an increasing emphasis on collaborative work in the health law field—successful health lawyers must be able to view problems and their eventual resolution from many different perspectives. It is crucial that the health law attorney who works as a general counsel in a hospital, or as a legislative aide on Capitol Hill be able to consider issues from more than just one legal perspective.

Critical Issues in Health Care (see article at left) brings together a multidisciplinary group of students to

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examine the policy, legal and ethical components of a number of critical issues in health care delivery.

**Alternative Dispute Resolution**

In August 1997, leaders of the American Arbitration Association (AAA), American Bar Association (ABA), and American Medical Association (AMA) met in Chicago with the purpose of forming a commission to study and make recommendations on the appropriate use of alternative dispute resolution in the privately managed health care environment.

The effort was a logical move in view of a growing trend in the legal industry—a trend away from court battles and toward more amicable third-party arbitration. The evolving health care environment is an area laden with controversy, and there is an increasingly vocal public need for a fast, just, and efficient system of resolving disputes without resorting to costly and time-consuming court litigation.

**Alternative Methods of Dispute Resolution/Health Care Workshop** was developed for students who wish to practice in the area of ADR in a health care setting.

"Real World" Experience

The theory of experiential learning—combining classroom-based instruction with field-based activities—is nearly 20 years old and it is an educational theory that has been embraced by higher education. Early proponents of the theory stressed that the heart of all learning lies not just in coupling instruction with work, but in the way we process experience. In particular, it lies in our critical reflection of experience.

The L&HCP's experiential learning program—Health Law Practicums and Externships and the accompanying classroom component, the Health Law Practice Workshop—allow students to share their workplace experiences and to explore the ethical, legal and practical challenges raised by health lawyering in a variety of settings including hospitals, insurance and managed care organizations, government and law firms. Students are required to complete reflective papers that focus not just on legal issues, but on their working environment, the role of politics in the work setting, the changing nature of the health care industry, and other "real world" issues.

**Autonomy and People with Developmental Disabilities**

by Joan O'Sullivan, J.D.

American society places a great emphasis on autonomy. We are a diverse society, with many ethnic groups, religions and political beliefs. The foundation of our country is built on democracy, allowing divergent opinions to live side-by-side.

People with disabilities are as interested in autonomy as anyone else. All people want to be independent, to live their lives without restraint, and to exercise their own judgment about the things they value the most.

Thirty or forty years ago, we would hide away people with disabilities in large institutions and give them no choice about what happened to them. Now we have laws that require that we integrate those with disabilities into our culture. As that happens, we see those with developmental disabilities, those who have mental retardation and other cognitive impairments, able to live their lives with some assistance. People with disabilities are able to hold down jobs, live in apartments, and take public transportation as they live their lives. The Americans with Disabilities Act has taught us all how much those with disabilities can do.

Those who work with people with disabilities have long had the difficult task of determining when a person with disabilities is making an informed choice. There are three elements of informed consent: capacity, information, and voluntariness. Of these, the hardest one to evaluate is capacity.

In some cases, the choices are simple: what do I wear today? what do I eat today? In other cases, the choices are more complex: which job should I choose? which group home should I live in? which of three
At times, people with disabilities ask for help in making a decision, just as we all do. Sometimes the question to ask is, "Who do you trust to handle your money for you?" or "Who do you trust to make health care decisions for you?" The question of trust is a core question, one that most people could answer readily. If the person is able to answer the question, it may be possible for them to write a financial power of attorney, or a health care advance directive.

It is important for the person asking the questions to talk to the person alone, asking direct examination type questions, such as "Do you know what a lawyer does?" "Who do you trust to handle your finances for you," so that the person asking the questions does not put words into the mouth of the person answering.

Sometimes parents of children with developmental disability think that when the child turns 18, they must seek guardianship over the child, so that they will always have control over their son or daughter. They fear, as most parents do, that their child will not make good decisions, that they will make mistakes and that they will be injured or will be taken advantage of.

Making mistakes is the way we all learn, and sometimes that is the best lesson for a person with disabilities.

There is a serious element of paternalism present in taking care of those with disabilities. We must not make the mistake of protecting a person too much, when they have the ability to make their own decisions and their own mistakes. At times parents are adamant that their child will never have a sexual experience, but sexual experiences are part of life, and those with disabilities may be able to handle the consequences of such an action. At all times, those working with people with developmental disabilities must be sure that the person is making an informed judgement, and is not just trying to please someone they admire. At times, paternalism is necessary to prevent abuse and neglect of a person with disabilities. At other times, it removes that feeling of autonomy from the person, and makes them feel the stigma of their disability.

Joan O'Sullivan is the co-author and co-editor of A Guide to Consent with Robert D. Dinerstein and Stanley S. Herr, published by the American Association of Mental Retardation. The book is one of its publisher's best selling volumes and is widely used by professionals from multiple disciplines, including law.
ASSOCIATE DEAN DIANE HOFFMANN
Publication:

Selected Presentations:

Awards:
Received grant from the Maryland Citizens' Health Initiative Education Fund to participate on the Coordinating Committee to draft a preliminary concept paper stating and evaluating options for a health plan in Maryland that will provide health insurance coverage for all Marylanders (2001)

Professor Stanley S. Herr
Publication:
"Self-Determination, Autonomy, and Alternatives to Guardianship," monograph, University of New Hampshire, Durham, NH (March 2001)

Appointment:
V.P., The Rosemary F. Dybwad International Fellowship Trust, Inc. (provides study fellowships to help create and develop an international disabilities movement) (2001)

Professor David A. Hyman
Publications:

"Medical Decision Making: Advance Directives, Surrogates and Guardianship," Maryland Aging Network, Ocean City, MD (2001)

"Role of the Attorney for the Alleged Disabled Person," Determining Capacity, MICPEL, University of Baltimore, Baltimore, MD (2001)

"Informed Consent, Surrogacy and Guardianship," Southern Maryland Region of the Developmental Disabilities Administration, Bowie, MD, and The ARC of Anne Arundel County, Arnold, MD and Prince Georges County, Largo, MD (2001)

Dean Karen Rothenberg
Publication:

Selected Presentations:
"Genetic Discrimination," at "The Cancer Family: At the Intersection of Science and Society" conference, University of Virginia, Charlottesville, VA (2001)

Panel moderator, "Genetic Privacy and Discrimination," at A Decade of ELSI Research, A Celebration of the First 10 Years of Ethical, Legal and Social Implications Program sponsored by the National Human Genome Research Institute and the Department of Energy, Bethesda, MD (2001)

Guest on the Marc Steiner Show, WJHU 88.1 FM with Dr. Joann Boughman to discuss the latest developments in the Human Genome Project (2001)

Appointment:
Member, Ethics and Security Advisory Board of the Marshfield Medical Research and Education Foundation's new Personalized Medicine Program, Marshfield, WI (2001)
"It is estimated that at least 12 percent of our nation's children have special health care needs. Anecdotal reports from families across the country suggest that they face frustrating problems with health care for their children with special health care needs, such as obtaining specialized care, having access to appropriately skilled providers across a range of specialties, and coordinating care received from multiple providers and agencies." Krauss, M.W. & Wells, N. (2000). The Family Partners Project: Summary of Findings and Conclusions.

It has been twenty-five years since the federal law was passed that mandated children with disabilities to a free, appropriate education and several decades since the advent of managed health care. Yet, both the education and health care systems continue to struggle in their effort to serve children with complex medical and educational needs.

On May 17, 2001, the Law & Health Care Program sponsored a symposium which brought together the families who are struggling to find a way through these health care and educational bureaucracies, the professionals who are seeking ways to help them, and the state policymakers who have created the rules. The symposium was convened with the goal of developing a public policy framework for supporting children with special needs and their families. Over 150 individuals attended.

Parents of children with special needs often must deal with multiple burdens. They attend to the daily requirements of their child with special needs, to their spouse and other children, and sometimes to a job outside the home. Most importantly, they have the responsibility and the need to obtain the services and support their child is mandated by law to receive from the health and educational systems. Often, this is a formidable task.

The problems are far-reaching, affecting not only children and parents, but also professionals within the fields of education, health, and law. These professionals spend countless hours advocating for services, finding resources, and seeking reimbursement. Unfortunately many children with special needs still fall through the systems' cracks.

The symposium examined the sometimes combative relationship between the disciplines in treating and educating children with special needs and attempted to answer some of the basic questions plaguing families and professionals involved in their care: Which services are educational and which are medical? What is the role of insurance companies and Medicaid in financing the treatment of children with special needs so that they may participate in the educational system? How can health care professionals, educators, advocates, and families work together to treat and educate children with special needs?

These children are involved in multiple systems, and as a result, solutions for this population must be developed across disciplines. The symposium featured keynote speeches by Teresa K. LaMaster and John O'Brien, parents of a child with special needs, and by University of Maryland School of Law Professor, Susan Leviton. Leviton founded Advocates for Children and Youth, a Maryland child advocacy group. The keynotes were followed by plenary sessions on healthcare and education, and a luncheon presentation: New Perspectives on Educating Children With ADHD: What the Front of Their Brains Tells Us, by Gerard Gioia, Director of Pediatric Psychology and Neuropsychology at Mt. Washington Pediatric Hospital.

In the afternoon, a panel of state policymakers presented their perspectives on how to address this issue. Following that, the audience was given the option to attend one of four workshops: I. Children With Complex Medical Needs, II. Children With ADHD: Executive Dysfunction and Related Learning Disorders, III. Children With Emotional Disabilities or Challenging Behaviors, and IV. Children With Autism Spectrum Disorders and/or Developmental Disabilities.

The participants in each workshop came up with a list of ideas for overcoming the obstacles to care facing the children in each of the respective categories. These ideas were then reported to the symposium participants.

The symposium ended with the Stuart Rome Lecture: Knocking Against the Rocks: Evaluating Institutional Practices and the African-American Boy presented by Theresa Glennon, Associate Professor of Law, Temple University School of Law. Glennon's presentation drew upon a growing body of literature that evaluates the processes of institutionalized and unconscious racism at work in educational, mental health, and juvenile justice program settings that create or enlarge racial and gender differences and place African American boys at risk.

Glennon's presentation, along with the other speakers' papers, will be published in an upcoming symposium issue of the Journal of Health Care Law & Policy in Spring 2002.
SHLO Forges New Ties With AHLA

The University of Maryland Law School's Student Health Law Organization (SHLO) has been asked by the American Health Lawyers' Association (AHLA) to draft a model affiliation agreement which will be used to formalize partnerships between AHLA and law school student health organizations across the country. When completed, SHLO will be the first student health law organization to enter into such an agreement. The affiliation will provide benefits for both organizations, including:

• cross-links to the organizations' websites (AHLA and SHLO),
• free admission and conference materials for SHLO members who volunteer at AHLA conferences,
• student access to AHLA publications and listserv participation.

Students Alison Beyer, Lucy Shum, Vanessa Tanev and Valerie Webb began drafting the agreement in mid-March and completed the draft agreement by early May.

This past academic year, over 30 SHLO members volunteered at two AHLA conferences.

Anne Hoover Hoffman, AHLA's Director of Programs notes: "We have had students work at several of our recent programs and I think the arrangement has been mutually beneficial. The Association appreciates their willingness and the students seem to find attendance at the programs a valuable experience. We look forward to continuing our relationship with the members [of SHLO]."

AHLA Executive Vice-President, Peter Leibold has been instrumental in fostering the relationship between AHLA and SHLO.

Leibold says, "The American Health Lawyers Association values its relationship with health law programs at our nation's law schools. We are lucky that we have established a strong, close relationship with the health law program at the University of Maryland...Health law programs benefit by bringing their students into contact with leading lawyers in the health law field. AHLA benefits by capturing the loyalty of those individuals who will make names for themselves in the health law field in the years to come.

The Writing Life...

The legal profession proclaims the lofty appearance of the gods of truth and wisdom and justice. In point of fact, many feel that it is for sale to the unjust, the untruthful, and in short—to the highest bidder. Medicine, the other leg of society, has been able to retain its stature to a greater extent, but is now threatened by corporatization."

This is the beginning of law student and medical doctor Arthur Schwartz' paper, "Medical Director Liability In Managed Care," written for Professor Jaime Doherty's class, Legal Issues in Managed Care. The paper will be published next year in Medical Trial Technique Quarterly.

Talking about the experience, the third-year evening student says, "What I really enjoyed most about writing the paper was that it allowed me to use two areas of my brain—one medical, and the other legal—to produce a piece of work that fuses two of the mainstreams in society today. I had over 120 footnotes, and they were equally divided between medicine and law."

Schwartz came to law school after writing his first book—a medical technothriller focused on the dissolution and salvation of society when antibiotics cease to work. His second novel is the story of modern day success—a middle class individual makes good and becomes the CEO of an HMO.

When he receives his juris doctor next year, Schwartz says he hopes to have enough courage to stop practicing medicine and divide his time between writing and medical/legal consulting.
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. This issue's article is written by the Director of the AIDS Litigation and Counseling Clinic.

Advances in treatment for HIV illness raise a host of new and challenging legal issues. Though people are still dying from AIDS, many others are contemplating returning to work because of the great improvement in their health due to Highly Active Antiretroviral Therapy (HAART). Parents, who in the past came to the Clinic to execute stand-by guardianships, are now resuming an active role in their children's lives.

Student attorneys in the AIDS Litigation and Counseling Clinic achieved a major victory last semester when they persuaded a Baltimore County judge that their client, a recovering drug user who had been very ill with AIDS, was ready and able to resume care of her 6 year old son. The students did an excellent job, qualifying the client's nurse practitioner as an expert on AIDS care, despite the opposing counsel's strenuous objection. In addition, they introduced compelling testimony from the client's drug treatment counselor, who described the client's success and commitment to recovery from drug use.

However, the demands of HAART therapy pose great challenges to many patients. Over the past two years several parents accused of medical neglect of HIV positive children have sought our assistance.

Is it "neglect" when a parent refuses to give her child the new HIV medical regimen known as HAART? The Supreme Court of Maine, in an opinion upholding a lower court's finding, found that such refusal is not neglect because of the still experimental nature of the treatments.

The parent in that case clearly articulated her objection to the new treatments. Her older child had taken AZT and suffered numerous side effects up until her death at the age of four. However, in most cases involving alleged medical neglect of HIV positive children, the failure to comply is not so clearly articulated. Sometimes parents or caretakers engage in passive resistance, indicating to a physician that they intend to follow the medical regimen, but then fail to do so effectively. This failure to comply may stem from a lack of conviction in the usefulness of the drug, a denial of the child's condition, a lack of trust in the medical professionals treating the child, etc. Other barriers to compliance include the parent's own depression or drug or alcohol use, and the child's resistance to taking awful tasting drugs with side effects, including diarrhea and nausea.

Doctors are sometimes tempted to use "neglect" charges as a club to force parents into compliance with treatment that the physician perceives as critical to the child's survival. Certainly there are cases where a parent, perhaps because of drug use, neglects the needs of her HIV positive child and fails to medicate the child as directed by her physician. In such a case, intervention by Protective Services and even removal of a child may be necessary to protect the child's welfare. However, in many other cases, there are barriers to 100% compliance that are not entirely within the parent's control.

In one of our cases, the one and one-half year old daughter of a client was sick every day for two weeks (vomiting and diarrhea) after she was placed on a three-drug regimen including AZT. Thereafter, she frequently resisted attempts by her mother to administer her medication. The mother described the difficulty she was having and the clinic offered suggestions to help, but the child's unwillingness to participate continued. She refused to eat foods that she believed contained the medication, would spit up the medication, etc. Within a year, the child began to develop resistance, and the health care clinic at which she received services reported the parent for alleged medical neglect. The Department of Social Services found the report "indicated," but did not remove the child because they recognized the parent was a very good caretaker. Medication compliance was the only issue, though a critical one.

Ultimately, the mother found support and assistance from a day care center for HIV positive children, where her daughter observed other kids taking their medication and finally became a willing participant in her own health care.

In the meantime, however, our client, who loved and voluntarily cared for this child who was not her birth child, is now about to be listed on a statewide registry of parents guilty of child abuse/neglect. Such a listing would prevent her from adopting this...
In May, 2001, 23 students graduated with the Law & Health Care Program Concentration in Health Law Certificate. The Health Law Concentration was recently approved by the Maryland Commission of Higher Education as a formal certificate program.

The students who earn the Health Law Concentration Certificate continue to amaze us with the diversity of their backgrounds and the wide variety of career paths they choose on graduation.

**Floyd Blair**, an ordained minister and was Director of Economic and Community Development for a faith based organization in New York City. He is currently working at HCFA in the Attorney Advisor’s Office and is a Presidential Management Intern finalist for 2001. Prior to law school, **Melinda DeAtley** completed a Master’s Degree in Legal and Ethical Studies and after taking the bar exam this summer will begin a clerkship for the DC Court of Appeals.

Several graduates have been hired by area health law firms—**Susan A. Healy**, who at one time inspected clinical laboratories for regulatory compliance with the Clinical Laboratory Improvement Amendments of 1988, has joined the firm of Whitney & Bogris LLP. **Kevin P. LaTulip, Jr.**, who spent one year teaching eighth grade English, will join the Baltimore firm of Ober, Kaler, Grimes & Shriver. **Linda Joseph** is another former English teacher. Daughter of an English teacher and an attorney, she plans to work in the insurance industry.

**Sarah Orwell** worked for the American Physical Therapy Association’s Private Practice Section and next year will clerk for Judge Deborah Eyler on the Court of Special Appeals. **Maro Constantinou** translated health care documents (including consent forms) for a hospital while in undergraduate school, and she translated for patients who spoke Spanish in the Obstetrics Clinic. While in law school, she worked at the Whitman Walker Clinic in Washington, DC representing people with HIV/AIDS, and she hopes to continue working with AIDS issues as an attorney.

JHCL&P Chooses 2001-2002 Executive Board

The Journal of Health Care Law & Policy has selected its 2001-2002 Executive Board.

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From Left top row: Jennifer Matthews, Anita Heda, Laura Fulton, Sarah Otwell, and Jalene Kolb. Bottom row: Jayson Slotnick, John Greenleaf and Mindy Caplan.
I came to the University of Maryland wanting to participate in the Law & Health Care Program. So, when registration time came along in the spring of my first year I signed up for the Health Law Practice Workshop. I went through a long list of practicum possibilities and sent resumes to several that interested me. By the end of June, I had been to three or four interviews, but nothing really excited me. Then, I went to the Board of Physicians' Quality Assurance.

The Maryland Board of Physicians' Quality Assurance (BPQA) is the agency responsible for licensing physicians, investigating complaints, disciplining physicians, and promulgating regulations in order to carry out these and other mandates. A special aspect of the BPQA is that the Secretary of Health and Mental Hygiene shares power with the Board to make decisions affecting the practice of medicine.

During the interview, I was asked about my specific interests. This surprised me, because during other interviews, I was only asked, "How can you help us," not "How can we help you?" I was delighted to hear that I could work with Marie Savage, Administrative Officer for Legislation, since I was very interested in the legislative and regulatory responsibilities at the BPQA. At the end of the interview, I was offered the opportunity to do my practicum at the BPQA. I immediately accepted.

I was able to observe numerous aspects of the BPQA during my placement. I attended meetings and hearings on general Board matters and observed case resolution conferences, investigation meetings and hearings on disciplinary matters. These proceedings are not normally open to the public, but as an intern, I was able to attend and gain valuable insight into what goes on behind the scenes at this very busy agency.

During the practicum, I had many different types of assignments almost every week. One of my favorite duties was surveying the other state medical boards for their regulations or statutes. By the middle of my placement, I was on a first name basis with several people in the offices of other state boards and even knew about one person's children and hobbies.

One of the aspects of this placement that I enjoyed most was the diversity of assignments. In a given month, I did everything from legal research to drafting proposed legislation. I helped write response letters to other state agencies, performed legal research for the Board on several issues they were reviewing, and even acted in an agency training film for new physicians. I was also able to help shape state policy on several issues including what name a physician must use for licensing and practice. Finally, as a long-term project, I helped to draft the board's declaratory ruling on the "use of lasers by non-physicians for hair removal." The Board accepted the ruling as proposed and it was published in the Maryland Register.

The people at the BPQA were great to work with as well. They all knew my name after a very short time and immediately treated me as one of their own. At the end of the placement, I reflected on my experience at the BPQA and I was very impressed. I was able to do some easy and some very complex legal work, as well as work which was not directly legal at all, but nonetheless very important. I was able to see a large agency at work from the inside. Finally, I made several new professional friends and had a great time doing so!
child, despite the fact that all parties now agree that it is undoubtedly in the child’s best interest to be adopted by our client.

Part of the difficulty in many alleged “medical neglect” situations is a failure of genuine communication between the physician and the child and her family. This is particularly difficult in the context of AIDS care, where there are often significant barriers of race, class, and age between physicians and their patients. Interestingly, literature on medication compliance points to the quality of the physician-patient relationship as one of the most important factors in whether the patient will achieve the desirable level of compliance.

These cases pose many interesting questions that challenge the students involved. How much responsibility can/should be placed on the physician for ensuring that effective communication with a patient’s family takes place? When is intervention by Protective Services necessary to protect the child’s welfare? Why isn’t there an alternative system to support these children and their families? Could this happen? What would it look like?

We often work collaboratively with health care providers in delivering legal services to people with AIDS. In this connection we are often asked for a legal perspective on issues that arise. For example, the Clinic was asked to address a group of health care providers, social workers and adherence counselors on issues of informed consent in the context of HAART. Their questions included the following: what is the provider’s responsibility to ensure that patients truly understand the consequences of less than 100% compliance with medication, i.e., that resistance to a whole class of medications will likely develop, limiting the patient’s future treatment options. When counseling a patient about treatment options, how much information must they give about potentially serious side effects?

We also continue to work on barriers to employment for people with HIV illness. For example, we were asked for assistance by a client who quit her day care center job when her medical provider told her he had no choice but to inform her employer of her HIV status. Current regulations appear to require day care centers to request and report this information about prospective employees to the state despite the fact that an HIV positive employee poses no risk to children in day care.

We brought this issue to the attention of the Department of Human Resources and the AIDS Administration (Department of Health & Mental Hygiene) and requested a change in regulation. The parties agreed to change their requirements to reflect the current state of knowledge regarding transmission of HIV.

This will remove a major barrier to employment for thousands of HIV positive women in Maryland.