



# HEALTH LAW INSTITUTE NEWSLETTER

*Monitoring the pulse of health law*

## New Year Report: The Association of American Law Schools Section on Law, Medicine and Health Care

Dear Reader,

During the summer of 2006, I served as a member of the Senior Faculty for the Law and Society Summer Research Institute held at the University of Witwatersrand Law School in Johannesburg, South Africa. The summer research institute brought together senior law and social science scholars to mentor, critique, and advise junior scholars on their dissertations and current research. It was a brilliant idea and carried out quite successfully by Professor Jeannine Bell (University of Indiana), the coordinator of the program.

The strength of the summer institute was its emphasis on the works of junior scholars, helping them to hone their voices, methodologies, and writing styles. In other words, they—the junior faculty—were the focus of our attention. That the junior faculty were eager to learn from us and quite accommodating of our critiques demonstrated not only great maturity on their part, but highlighted the value of the program. It reminded me about our varied roles in helping to guide and build the careers of rising stars and how we inspire our peers when we least realize it.

As we look to the new year, it is worth considering the reach of our scholarship, making it meaningful beyond our peers, and extending ourselves to those fresh into their careers. There is an old saying, “each one teach one.” Our roles in teaching and mentoring extend beyond our students and can help to positively impact the lives of our junior colleagues. Viewed in that way, mentoring is not a responsibility, but a great privilege.

Happy New Year,

Michele

Professor Michele Goodwin, JD, LL.M.,  
Wicklander Fellow  
Director, Health Law Institute  
Director, Center for the Study of Race and Bioethics

### EVENTS: SPRING 2007

Please join us for the Health Law Institute's Spring Colloquium! Each month, scholars, judges, practitioners, and community leaders from around the country share their research and answer questions.

Lectures take place during the lunch hour, providing law students with the opportunity to participate. For more information, please contact Rhea Banks at (312) 362-7271 or [rbanks2@depaul.edu](mailto:rbanks2@depaul.edu)

**Colloquium Theme:** Practiced Based Law and Medicine: Defining the Boundaries of Healthcare Law  
**Dates and Location:** TBA

On March 1, 2007, the DePaul Health Law Institute will host an alumni reception at the University Club of Chicago

## Blagojevich Increases Health Services in Underserved Communities

*By Patrice Perkins*

Illinois Governor Rod Blagojevich has increased funding and has targeted programming in hopes of increasing access to health care amongst individuals marginalized by poverty. In October 2006, Blagojevich announced the disbursement of \$3.2 million dollars in grants for ten community health centers. This funding, from the Community Health Center Expansion Program and Illinois Department of Public Health, Center for Rural Health, is expected to increase health care access in impoverished communities. For instance, a study determined that health care was of greatest need in the city of Elgin. Here, it is expected that the funding will allow access to medical care for 20,000 additional residents. Community health

centers in Des Plaines, South Chicago, Macon and Decatur counties, Humboldt Park, Harvey, Peoria, Carterville and Joliet are also key grant recipients.

“Health care is a fundamental right and we want to make sure people have the health care they need,” said Blagojevich. Community health centers can potentially alleviate health care disparities by providing core health services to communities in need. Through these grants, Blagojevich will implement new community health centers or expand services at existing community health centers. Grant recipients must meet stringent criteria: they must be a not-for-profit, they must be located in a targeted medically underserved population or area,

*Continued on page eight*

# NEWS OF INTEREST

## Smoking Ban to Alter the Public Landscape in France

By Elese Hanson

In the eyes of an American, a French café scene usually includes a small crowd sitting at tables with each person reading a newspaper, eating a croissant, drinking a small cup of strong coffee, and of course, smoking a cigarette. This scene will likely change because a French parliamentary committee has recently approved a proposal for a smoking ban in public areas. Cafés, hotels, restaurants, discos and casinos will only be able to allow smoking in areas that are “hermetically sealed” and “furnished with air-extraction systems and subject to extremely rigorous health norms.”

Although smoking has fallen out of favor in France, the proposed ban is seen as an intrusion on the rights of the individual and is hotly debated. In fact, the prospect of a smoking ban was so controversial that Prime Minister Dominique de Villepin requested that his health minister, Xavier Bertrand, thoroughly evaluate different solutions before making a decision. Mr. Bertrand, however, only reaffirmed his position that the public needs to be protected from secondhand smoke.

Contrary to popular belief, France has been a leader of the anti-smoking movement in Europe. The country passed legislation in 1991 banning smoking in public places except where designated, and requiring health warnings on all tobacco products. In 1993, the country banned cigarette advertising. Loopholes in the prior legislation, however, rendered past laws uneven in application. The

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HEALTH LAW INSTITUTE NEWSLETTER

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# NEWS OF INTEREST

## The Implementation of Electronic Medical Records—Promoting Even More Comprehensive Health Care

By Ameer Lakhani

The latest data from the National Ambulatory Medical Care Survey indicates that 25% of office-based physicians reported using full or partial electronic medical record systems in 2005, an increase from the 18.2% reported in the 2001 survey. The goal of the electronic medical record system is to allow patients' medical records to be more easily accessible to health care providers, patients, and insurance companies throughout the country. The National Health Information Network is striving to bring the US health care industry into the Internet age by implementing universally accessible electronic medical records (EMR).

With access to EMR, health care providers can instantaneously access the records of any patient, allowing them to see previous and current treatments, avoid unnecessary tests, take note of any patient allergies or medication errors, receive diagnostic suggestions, and remind patients about any upcoming appointments or tests. EMR also allow for a standardization of care among providers within an organization, and the ability to electronically transmit information to other providers such as pharmacists and insurance providers. With EMR, health care providers can provide more comprehensive treatment to their patients

and can improve patient safety. EMR also enable patients to be more involved in their own health care due to the ability to access a detailed history of their health records and test results.

There are numerous benefits to EMR, but there are hurdles to its implementation. The most difficult barrier to overcome is the lack of a clear return on investment. Many critics find it difficult to justify the time and money necessary to launch comprehensive EMR while health care costs continue to increase. Despite the costs of implementation, the national health care industry does not appear ready to give up the vision of EMR. The health care industry hopes to meet the federal government's goal of an interoperable medical record system by 2014. □

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Reed Abelson, *Goal is Electronic Health Records. Path is State by State*, N.Y. TIMES, Sept. 27, 2006, available at <http://www.nytimes.com/2006/09/27/technology/circuits/27health.html?ref=circuits>

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## National Labor Relations Board Issues Decisions Clarifying who is a "Supervisor"

By Erin Cullen

The rights that the National Labor Relations Act (NLRA) provides have never extended to supervisors. In recent years, employees were considered supervisors if 1) they held the authority to engage in any one of the twelve listed functions; 2) their "exercise of such authority was not of a merely routine or clerical nature, but required the use of independent judgment;" and 3) their authority was held "in the interest of the employer." *N.L.R.B. v. Kentucky River Comm. Care, Inc.*, 532 U.S. 706, 713 (2001), citing 29 U.S.C.A 152(11). In *Kentucky River*, the Supreme Court criticized the National Labor Relation Board's (NLRB) interpretation of "independent judgment," and thus the definition of "supervisor" remained unclear. *Id.*

In September 2006, the NLRB issued a long-awaited opinion to clarify who is a supervisor, addressing the meaning of the terms "assign," "responsibly to direct" and "use of independent judgment." *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, 2006 WL 2842124, \*4-11 (Sept. 29, 2006). "Assign" was explained as the act of "designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee." *Id.* at \*4. Next, the NLRB ruled that "responsibly to direct" meant "to be answerable for the discharge of a duty or obligation," and it must be shown that the employer delegated to the putative supervisor the authority to direct the work, and that there is a prospect of adverse consequences for the putative supervisor if he or she does not take these steps. *Id.* at \*8. Finally, the "use of independent judgment" was described

to mean when an individual must act or recommend action, free of control of others, and form an opinion by discerning data, but a judgment is not independent if it is dictated or controlled by detailed instructions, whether in policies or rules, verbal instructions, or in the provisions of a collective-bargaining agreement. *Id.* at \*10.

The NLRB also ruled that permanent charge nurses with the authority to assign other nursing personnel to specific patients for treatment were supervisors because this required the exercise of independent judgment. *Id.* at \*16. However, emergency charge nurses were not supervisors because they did not use the same independent judgment. *Id.* at \*17.

The NLRB applied its new rationale in two companion cases. The charge nurses in Beverly *Enterprises-Minn., Inc. d/b/a Golden Crest Healthcare* were not supervisors because they could not require other employees to perform tasks and therefore did not "assign," nor did they exercise independent judgment or direct. 348 NLRB No. 39 (Sept. 29, 2006). In *Croft Metals, Inc.*, the NLRB held the employer's lead persons were not supervisors because the exercise of their judgment was largely based on the employer's directives and guidelines. 48 NLRB No. 38 (Sept. 29, 2006).

These decisions do provide unions and employers with greater guidance in determining who is a supervisor under the NLRA, and thus which employees must be afforded rights which the NLRA provides. Still, each situation is different, and supervisory status depends on the facts of each case. □

# NEWS OF INTEREST

## New Medicare Initiatives to Fight Fraud

By Judy-Ann Smith

According to a press release from the Centers for Medicare and Medicaid Services (CMS), CMS has increased its efforts to combat fraud and abuse in the Medicare system. New project initiatives that place greater emphasis on local oversight have so far saved over \$2 billion in Medicare claims. Medical records review, site visits, data analysis and complaint investigations are some of the techniques being utilized. Special focus has been placed on infusion therapy and Independent Diagnostic Testing Facilities (IDTFs) resulting in over 980 Medicare fee-for-service programs being reported to law enforcement authorities since October 2004.

CMS administrator Mark McClellan M.D., Ph.D. said "CMS is using every tool available to find and fight waste, fraud and abuse. Our fraud and abuse prevention programs are already working to save money and today's actions will provide even more protections for beneficiaries and taxpayers." As part of the new initiatives, local CMS satellite offices in Miami and Los Angeles have been expanded. In Los Angeles, over \$822 million has been saved by: (1) revoking the billing numbers of 117 providers who submitted false claims, (2) revoking the billing privileges of 83 IDTFs, (3) implementing processing edits to prevent payment of claims that use deceased providers' identification numbers, and (4) denying the enrollment of highly suspicious providers.

The CMS office in Miami in conjunction with the Governor's office, state and local authorities has saved over \$1 billion with the increased oversight efforts. The result of this collaborative effort has yielded 400 new investigations and the licenses of 11 clinics and 5 practitioners have been revoked. The provider numbers of over 500 medical equipment suppliers were revoked leading to a

drastic decline in Medicare billings and payments over a one-year period (2004-2005). An identity theft initiative uncovered 2,500 beneficiaries whose Medicare numbers were compromised or were participating in fraud.

MEDICs (Medicare Drug Integrity Contractors) aid in fighting fraud in the new Medicare prescription drug program by utilizing innovative techniques to monitor and analyze data. CMS introduced three new regional MEDICs and a fourth MEDIC contract has been awarded. The fourth MEDIC will assist CMS by providing data analysis tools to detect potential fraud nationwide. The new MEDIC will complement the fraud and abuse prevention initiatives already in place by proactively evaluating data for suspicious activity. MEDICs helped uncover a Medicare drug scam, in which beneficiaries were solicited to pay up to \$379 for enrollment in a Medicare sponsored prescription drug plan. CMS and local authorities are working to increase awareness of these scams. "Vigilance in protecting beneficiaries and taxpayers from waste, fraud and abuse is one of our top priorities in Medicare," said Dr. McClellan. □

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CMS, *Medicare Finds Billions in Savings to Taxpayers, New Contractors to Help Identify Fraud, Waste and Abuse* (Oct. 11, 2006), available at <http://www.cms.hhs.gov/apps/media/press/release.asp?Counter=2030>.

## Calling the Shots

By Danielle A. Horstman

In a world with many types of flu viruses and a limited availability of flu vaccinations, it is important to ask who should be vaccinated first. There are arguments for almost every category of individuals- the young, the elderly, and the middle aged. Some scientists argue that the elderly should be first in line for vaccination because the flu can be fatal for them and we should protect those most vulnerable to the disease.

Conversely, the National Institute of Health recently published a paper arguing that people aged 13-40 should have access to the vaccination first based on the value of life theory. The proponents of this more controversial plan argue that a 20-year-old individual has maximized his investment but has received minimal return (on life), so he should receive the vaccination. Those younger than 20 have neither maximized their investment nor return, and those older than 40 have maximized both their investment and return.

Finally, there are scientists that argue that the very young should receive the vaccination. School-age children have a lower immunity and plenty of opportunity to spread the disease to others by sneezing on each other, using playground equipment, and at-

tending sports practice. Proponents of vaccinating the young also argue that the elderly are less often in social environments, so they are less likely to spread the flu to others. A recent study has also shown that in communities where school children were vaccinated, the rate of individuals with the flu was lower for the entire community. Ira Longini of the Fred Hutchinson Cancer Research Center in Seattle has noted that, "It's not necessarily true that the best way to protect someone is to vaccinate that person. In the case of the elderly, flu vaccine doesn't protect them very well, so breaking the chain of transmission provides greater protection."

No matter which group receives the vaccination, all experts agree that using every available flu shot will help everyone fight the flu all season long. □

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Sharon Begley, *If We Must Ration Vaccines For A Flu, Who Calls the Shots?*, WALL ST. J., Oct. 6, 2006, at B1, available at <http://online.wsj.com/article/SB116008629662084219-search.html?KEYWORDS=ration+vaccines&COLLECTIONfiltered=wsjie/6month>

## New Legislation Would Break the Monopoly on Certain Prescription Drug Prices

By Malcolm Harsch

On September 29, 2006, Representative Henry A. Waxman (D-CA) and Senators Charles E. Schumer (D-NY) and Hillary Rodham Clinton (D-NY) introduced the "Access to Life-Saving Medicine Act." This important legislation is intended to clear a regulatory pathway for approving generic versions of biotech drugs.

Biotech drugs are a relatively new form of drug manufacturing. Instead of a drug being synthesized chemically, biotech drugs are produced from living cell cultures. Mass culture cell lines are fundamental to the manufacture of viral vaccines and biotechnology products. Vaccines for polio, measles, mumps, rubella, and chickenpox are made in cell cultures. Due to the H5N1 pandemic threat, research into using cell cultures for flu vaccines is being funded by the United States government. This technology is now being used to produce drugs to treat cancer, diabetes, and AIDS. Biotech drugs are growing at an astonishing rate, almost twice the rate of traditional pharmaceuticals, accounting for approximately \$30 billion in U.S. sales.

This act will establish a process through which the Food and Drug Administration (FDA) will be able to approve lower cost copies of biotech drugs. The FDA has recently been under pressure to clarify how biotech drugs are approved. In August 2006, governors of four states petitioned the FDA in an attempt to force the agency to quickly clarify how generic versions of two drugs made from living organisms could be brought to market.

There is currently no statutory method of approval for generic biotech drugs. As such, the "Big Pharma" manufacturers have had a monopoly on the prices of brand name drugs. Creating generic versions of brand name drugs is an essential way to lower drug price and provide patients with an affordable alternative. The new legislation will create competition in the marketplace by providing a pathway for the approval of generic versions of biotech drugs. The Act will authorize the FDA to approve abbreviated applications for biological products that are similar to brand name products that are on the market. It is also thought that this will eliminate the need for repeating expensive clinical trials.

On September 29, 2006, Senator Clinton stated, "The bill... establishes a rigorous, case-by-case scientific process for approving these products to make sure they are as safe and as effective as their brand name counterparts. Recent approvals by FDA of similar products, like Omnitrope (a human growth hormone drug), show that this approach is scientifically feasible." □

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Senator Hillary Rodham Clinton, *Waxman, Schumer, Clinton Introduce "Access to Life-Saving Medicines Act"*, Statements and Releases (Sept. 29, 2006), available at <http://clinton.senate.gov/news/statements/details.cfm?id=264152&&>;  
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## Washington State Cracks Down on Health Care Professionals' Sexual Misconduct

By Garrett Kerr

The contact between a health care professional and a patient is often intimate and requires trust. While in this vulnerable state, some health care professionals put their patients in a compromised position, forcing their patients to wonder if their doctor's sexual feelings towards them affects the standard of care they are receiving. The Washington State Legislature confronted this problem and adopted not only a comprehensive set of patient's rights, but also strict guidelines for health care professionals.

In April 2006, the *Seattle Times* published an investigative series revealing a near epidemic of sexual misconduct among health care professionals. The series "License to Harm" reported that not only had the level of misconduct risen to an alarming level, but that the actions of state officials and licensing boards fell below an acceptable standard. The investigation showed that the Washington Department of Health was dismissing a shocking number of sexual misconduct claims without any meaningful investigation.

At the time of the series' publication, patient victims had filed sixty sexual misconduct cases in 2006 alone. This, up fifty percent from 2005, sparked the ordering of tight regulations by Washington Governor Christine Gregoire. Effective September 30, 2006, the Standards of Professional Conduct (Chapter 246-16 WAC) sets forth comprehensive guidelines stringently limiting the behavior of health care professionals. The rules regulate behavior from the obvious, such as affording patients privacy while they undress for exams, and soliciting dates from patients, to the grotesque, like masturbating in the presence of a patient and not wearing gloves during genital exams. The Standards of Professional Conduct ("Standards") also extend to "key parties." A "key party" is any immediate family member or other individual reasonably expected to play a role in health care decisions or patient care.

Is there a solution if true love blooms in the exam room? Yes, but one must subscribe to the maxim of "good things come to those who wait," those who wait for two years to be exact. As the rules dictate, hugging, kissing, and soliciting a date from a patient or a key party are forbidden activities. In addition, the health care provider may not terminate a patient's treatment for the purpose of engaging in any of the activities set forth in the Standards. After care has been terminated in course, a health care provider may have a relationship with a patient two years after the date of the last patient visit.

Washington's new Standards are a brave step in securing a safe, healthy environment for patients of all kinds. The direct result will be a standard of care that all states should emulate, and decorum clean enough to match the white of a starched lab coat. □

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## CASE NOTES

### *C.W. v. Association of Amer. Phys. and Surgeons, Inc. v. Dep't of Health and Human Servs.*, No. 06-0319 (D.D.C. Oct. 6, 2006)

By Jim Gay

The Association of American Physicians and Surgeons (Association) brought suit against the U.S. Department of Health and Human Services (HHS) over the establishment of the American Health Information Community (AHIC). According to the Association's multi-count complaint, they alleged that the AHIC was not "fairly balanced" and that it was not "sufficiently independent" of the HHS in violation of the Federal Advisory Committee Act (FACA). HHS moved for judgment on the pleadings, asserting that the association did not have standing to bring suit.

The Association argued that it had standing based on four categories of injuries. The Court rejected each one, ultimately holding that the Association did not have standing to bring suit. First, the Court discarded the Association's assertion that HHS deprived the association of procedural rights by not operating AHIC in line with FACA requirements. The Court stated that in order to prevail on this claim, the Association needed to assert that FACA offered a "promise of purposeful protection of the concrete interests." See *Center for Law and Educ. v. Department*

*of Educ.*, 396 F.3d 1152, 1157 (D.C. Cir. 2005). The Court found that FACA did not provide such a promise.

Second, the Court rejected the Association's claim that it sustained economic injury because HHS intended to use the government's market power to impose Health Information Technology (IT) on the medical profession. The Court held that the claim was speculative and insufficient to demonstrate injury in fact.

Third, the Court found no merit in the Association's argument that they suffered programmatic damage because HHS impaired its advocacy on behalf of its members. The Court stated that the Association failed to assert any concrete evidence of imminent injury in this regard and therefore rejected this contention.

Finally, the Court found that the Association failed to show that HHS had refused to provide it with information and thus rejected the Association's claim of informational injury. In rejecting all four of the Association's claims to injury, the Court found that the Association lacked standing and granted HHS's motion for judgment on the pleadings. □

### *Pope v. Winter Park Healthcare Group, Ltd.*, No. 5D04-3284 (Fla. Dist. Ct. App. Oct. 6, 2006).

By Sarah Flotte

The Florida District Court of Appeals reversed a state trial court's decision which precluded a couple from receiving damages from a hospital when the hospital's independent contractor negligently caused brain damage to the couple's newborn child. The appeals court found that where a hospital owes a duty of care to a patient, it cannot escape liability for the negligent mistakes caused by its independently contracted doctors hired to carry out the hospital's duty.

Preston and Ginger Pope's newborn son allegedly suffered permanent brain damage after a neonatologist failed to timely order tests and resuscitative measures after the child's birth at Winter Park Hospital (Winter Park). The alleged negligence caused the newborn to suffer from fetal hemorrhage.

At the trial level, the Popes unsuccessfully alleged medical malpractice against Winter Park based on claims of negligence.

The couple argued that Winter Park was liable for the negligent acts of the independent contractor neonatologist because the Hospital had a nondelegable duty to treat the couple's newborn child with due care. The court found that the express contract between the Popes and Winter Park contained ambiguous language and held that questions of fact regarding the delegation of tasks versus the delegation of duties should be addressed on remand.

The appeals court noted that generally one who hires an independent contractor is insulated from liability for injuries caused by the independent contractor. However, an exception to the rule precluding liability arises when the independent contractor is an either an actual or apparent agent of the hiring party, in this case the hospital. The court also observed that hospitals can be liable in tort for failing to exercise due care in the selection of its independent contractors. □

### *Arrington v. ER Physicians Group*, No. 04-1235, 2006 WL 2773657 (La. App. 3rd Cir. Sept. 27, 2006)

By Courtney Quilter

The Third Circuit Court of Appeal of Louisiana held the \$500,000 cap on damages under the Louisiana Medical Malpractice Act unconstitutional because it violated the state constitution's "adequate remedy" provision.

In 1994, William Arrington died at Lake Area Medical Center. In 1997, plaintiff filed suit against Dr. Samudia, ER Physicians Group, Galen-Med, Inc. dba Lake Area Medical Center, and related entities alleging they were all liable for Arrington's death. In 1999, plaintiff settled with Dr. Samudia for \$100,000

and in 2000, settled with the Louisiana Patient's Compensation Fund for \$500,000 pursuant to the Louisiana Medical Malpractice Act. Plaintiff reserved all rights and causes of action against defendants Galen-Med, Inc. and ER Physicians Group. In the instant action, plaintiff sought to have the medical malpractice cap declared unconstitutional and be permitted to recover damages without limitation from Galen-Med, Inc.

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*Citizens for Health v. Leavitt*, No. 05-1311 (U.S. Oct. 2, 2006), 428 F.3d 167 (3rd Cir., Oct. 31, 2005)

By Valerie S. Smith

On October 2, 2006, the Supreme Court declined to review the decision by the Third Circuit rejecting challenges to the Health Insurance Portability and Accountability Act (HIPAA) privacy rule provision allowing private entities to disclose patient health information for "routine uses" without patient consent.

Plaintiff Citizens for Health, along with nine other national and state associations and nine individuals (collectively "Citizens"), brought this action against the Secretary of the Department of Health and Human Services alleging the following: the Secretary unlawfully infringed Citizens' fundamental rights to privacy in personal health information under the Due Process Clause of the Fifth Amendment; unlawfully infringed Citizens' rights to communicate privately with their medical practitioners under the First Amendment; contravened Congress's intent in enacting HIPAA by eliminating Citizens' reasonable expectations of medical privacy; and, violated the APA by arbitrarily and capriciously reversing a settled course of behavior.

The Court of Appeals rejected each allegation argued by the Citizens. The Court rejected the constitutional challenges as not attributable to the Secretary because any violations were at the hands of private entities and the rule did not enhance the power of covered entities, therefore, there was insufficient state involvement. The Amended Rule did not contravene Congress's intent in enacting HIPAA because the Secretary must balance privacy protection with the stated goal of "simplifying the administration of health insurance and improving the efficiency and effectiveness of the health care system." Finally, the Secretary did not act arbitrarily and capriciously in the rulemaking process because a reasonable analysis for the change was given by the Secretary based upon relevant data, examination of public comment, other alternatives, and considering Congress' dual goals in devising the privacy standards. □

*Vesom v. Atchison Hosp. Ass'n*, 2006 U.S. Dist. LEXIS 68576

By Camille Gourdet

Physician Pitt Vesom (Vesom) filed suit against Atchison Hospital Association (AHA) and three physicians who served on the Medical Executive Committee (MEC) for refusing to reappoint his medical and staff privileges on the basis of his Asian heritage, and the fact that he had previously documented "incidents of professional incompetence." Vesom argued that the denial of his reappointment restricted or precluded his ability to perform his professional medical duties in the local community. AHA and MEC maintained that they based their decision on the Vesom's unprofessional and disruptive behavior towards other medical staff and patients, as well as his failure to abide by the hospital's Bylaws. After unsuccessfully challenging his termination of membership privileges at a Fair Hearing panel pursuant to the hospital's administrative process, Vesom filed suit.

The court addressed, and then rejected, each of Vesom's claims. Noting that Vesom's legal status was that of an "independent contractor," and not that of an employee of the

AHA, the court first found that Vesom failed to adequately meet the elements of a Section 1981 race discrimination charge under two different tests. The court went on to reject Vesom's Title VI and Section 1981 claims because AHA demonstrated that Vesom's membership privileges were terminated for nondiscriminatory reasons. Vesom's inability to prove a racially-motivated animus prompted the court to reject his conspiracy claim. In rejecting the plaintiff's antitrust claim, the court reasoned that as the final decision maker, AHA is entitled to deny Vesom's reappointment under its Bylaws. The court dismissed Vesom's whistleblower retaliation claim, holding that Kansas law did not apply to him as an independent contractor. Finally, the court rejected Vesom's intentional interference with business relations claim, stating that Vesom did not hold "exclusive arrangement[s]" with any patients, and that he still had privileges at two other area hospitals. □

*Arrington v. ER Physicians Group* continued from page six

The Court of Appeal held that the plaintiff proved that the cap contained in the Louisiana Medical Malpractice Act violated the Louisiana state constitution which guarantees citizens an adequate remedy of law for injury to their persons. The decedent died in 1994 at the age of 43, leaving a wife and two minor children. The Court found the family's household income decreased from \$29,137 in the year preceding the decedent's death to \$9344 in the year after decedent's death. Without considering potential increases in income, the Court found that decedent's death represented an economic loss of over \$470,000. The Louisiana Medical Malpractice Act, however, includes all damages in the cap, includ-

ing economic losses. The Court found that the 1975 cap amount of \$500,000 is worth \$160,000 today. Therefore, in order to grant the same relief the legislature intended to grant in 1975, the cap would have to be increased to \$1,562,500.

Based on the present value of the \$500,000 cap, the Court held that the cap fails to provide an adequate remedy to plaintiffs today and therefore, unconstitutional under the Louisiana state constitution. □

# NEWS OF INTEREST

## Blagojevich Increases Health Services *continued from page one*

they must provide a full range of health care services, they must be open a minimum of 32 hours per week, they must be governed by a board of directors, they must use a fee scale based upon the patient's ability to pay, and they must provide services to patients who are unable to pay.

During Blagojevich's tenure, he has implemented other noteworthy programs to reduce health disparities and ensure fair access to health care. The *Health Care Justice Act* focuses on health care plans by providing access to a range of preventive and long-term health services. An *Adequate Health Care Task Force* was appointed to oversee state health care initiatives. *All Kids* provides affordable health insurance for every uninsured child, and is the first program of its kind. *Stand Against Cancer* is a collaborative community outreach and screening program, which targets minority women. In 2006 alone, the program executed

almost 20,000 breast and cervical cancer screenings and provided educational support to nearly 160,000 women. *Hispanic Breast and Cervical Cancer Initiative* provides referral services to women in need of diagnostic tests.

Blagojevich believes that these initiatives have allowed Illinois to progress towards its policy goal of ensuring equitable access to health services. The allocation of community health center grants is necessary to further guarantee that low income and working class citizens are not stripped of their human right to good health. □

### References

Illinois Government News Network, *Gov. Blagojevich announces more than \$3.2 million in grants for health care in underserved communities* (Oct. 6, 2006), available at <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=36&RecNum=5396>

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## Smoking Ban *continued from page two*

current measure would not only make it more difficult to create separate smoking areas, but also significantly more expensive. Mr. de Villepin's final decision will likely result in some sort of government-ordered amendment to the current legislation in an effort to stop the Parliament or another group from blocking the smoking ban.

Despite France's aggressive approach to anti-smoking reform,

the country is still home to about 12 million smokers and has particular difficulty with smoking among its young people. □

### References

Elaine Sciolino, *Smoking no longer très chic in France*, N.Y. Times, Oct. 6, 2006, available at <http://www.nytimes.com/2006/10/06/world/europe/06france.html?em&ex=1160366400&en=5ff02bc7a7a860b6&ei=5087%0A>

# AALS ANNOUNCEMENTS

## Lori Andrews, Professor of Law, Chicago-Kent College of Law

- Her first novel, *Sequence*, a genetics thriller was published in June 2006; translated versions will appear in Holland and Germany in 2007. The second book in the series, *The Silent Assassin*, will be published in May 2007.
- Her casebook, *Genetics: Ethics, Law and Policy, 2nd ed.*, (with co-authors Maxwell Mehlman and Mark Rothstein) was released in June 2006.
- Her other non-fiction writings have appeared in diverse publications this year - the *DePaul Law Review*, *The Chronicle of Higher Education*, *Playboy*, *Trial*, [www.pbs.org](http://www.pbs.org), and, most recently, *Science* ("When Patents Threaten Science," December 1, 2006).
- This past year Andrews received grants from the National Science Foundation and the U.S. Department of Energy to investigate social and legal issues raised by nanotechnology. She also received funding from the Greenwall Foundation to bring together novelists (including Michael Crichton and Richard Powers), artists, geneticists, and health law professors to think creatively about genetics policy. The group met at the Los Angeles Museum of Contemporary Art and the Salk Institute and has already contributed to the literature in the field. Their discussions helped shape public policy recommendations, which Andrews presented to Congress in June 2006 and, with Michael Crichton, in September 2006.
- Andrews spoke at a variety of conferences in the U.S. and abroad and was interviewed by newspaper and television reporters on issues of infertility, liability for faulty paternity testing, children of sperm donors seeking their fathers, normal height children using human growth hormone, and the problems gene patents raise for diagnostics and treatment

## Boston University, Schools of Public Health, Law, and Medicine

- Professors George Annas and Wendy Mariner spoke at a Boston University conference on "Extraordinary Powers in Ordinary Times," in September 2006. The papers will be published in *B.U. L. REV.* in Spring 2007.
- On February 3, 2007, Boston University will sponsor a working conference for scholars contributing articles to the *American Journal of Law and Medicine* annual symposium issue. The topic is "Brain Imaging and the Law."
- On March 30, 2007, the Health Law Program at Boston University School of Law and School of Public Health will present its third annual Health Law Conference, to examine "The Nuremberg Doctors' Trial: 60 Years Later." The conference will explore how torture could be practiced in the guise of human experimentation and the implications of the Nuremberg Code for research today. For more information, contact Program Chair, Professor George Annas.
- Boston University will host an international seminar on "Law and Ethics in Rationing Access to Care in a High Cost Global Economy" on May 30 and 31, 2007. This is a joint project of the Department of Health Law, Bioethics and Human Rights of Boston University School of Public Health and the National School of Public Health, New University of Lisbon, in Lisbon, Portugal. The Seminar, chaired by Professor Wendy Mariner, brings together faculty from the United States and the European Union to share perspectives on health law, bioethics and human rights.
- Boston University will also host the 2007 Health Law Professors Conference on June 1 and 2, 2007. The Conference program is currently being put together by Professors George Annas, Wendy Mariner and Fran Miller, so all those interested in presenting a paper who have not yet submitted an abstract to Prof. Miller are encouraged to do so by December 31.
- Professors Ken Wing, Wendy Mariner, George Annas, and Dan Strouse have completed a new casebook, *Public Health Law*, to be published by LEXIS/NEXIS in early 2007. Anyone interested in using the book for the spring 2007 semester should contact Prof. Wing for a pre-publication copy.
- Professor Wendy Mariner's article, *Medicine and Public Health: Crossing Legal Boundaries*, will be published in the Spring 2007 issue of the *J. HEALTH CARE L. & POL'Y*, together with papers by other speakers at the Public Health in Law panel at the 2006 AALS meeting.
- Professor Wendy Mariner has been appointed to the Advisory Committee to the Health Care Quality and Cost Council, which will assist in implementing Massachusetts' health insurance reform legislation.

Professor Fran Miller, Neal M. Pike Scholar, Boston University School of Law

- *Consolidating Pharmaceutical Regulation Down Under*, 26 *U. of Queensland Law J.*, No. 2, 111 (2006),
- *Globehopping Pharmaceuticals*, 32 *Am. J. of Law & Med.* Nos 153 (2006), and
- *Medical Error, Adverse Drug Reactions & Patient Safety: The 'Precautionary Principle' in the US & the EU*, (in *The reality of Precaution*, (Jonathan Weiner and Michael Rogers, eds.) (Cambridge University Press, 2006).
- *The Politics of Health Care: Any Tipping Points in View?* will be the Foreword to Western New England's Spring 2007 Symposium Issue (Vol. 29, No. 3.) on *The Politics of Health Care*.

## Brooklyn Law School

- Professor Nan D. Hunter, Director, Center for Health, Science, and Public Policy published *Justice Blackmun, Abortion and the Myth of Medical Independence*, 72 *BROOK. L. REV.* (2006); *Public-Private Health Law: Multiple Directions in Public Health*, 10 *J. HEALTH CARE L. & POL'Y* (forthcoming 2007). She continues to serve as a consultant to the New York Academy of Medicine Division of Public Health on its "Redefining Readiness" Project, a study of how to incorporate community planning in emergency preparedness. (See poster session display at AALS conference.)
- Karen Porter - Responsibilities as Executive Director of the Center for Health, Science and Public Policy include planning the October 2006 Theory-Practice Seminar on "Advancing Vaccines: Innovations in Intellectual Property Practice" and the following events in Spring Semester 2007:  
February 8 - "End-of-Life Care: Bioethical Perspectives and Conflict Resolution";  
March 2 - "A Cross-Disciplinary Look at Scientific Truth" (with the Center for Law, Language and Cognition);  
April 13 - "Keeping the Courts Open in an Emergency," and  
April 13-14 - "Science for Judges."

*Continued on page 10*

# AALS ANNOUNCEMENTS

## **Scott Burris, James E. Beasley Professor of Law, Temple University School of Law**

- He published two papers from his Robert Wood Johnson Foundation-funded project on IRB regulations: *Regulatory Paradox in the Protection of Human Research Subjects: A Review of OHRP Enforcement Letters*, 101 Northwestern U. L. Rev. \_\_ (forthcoming 2006) (with Jennifer Welsh), and *U.S. Health Researchers Review Their Ethics Review Boards: A Qualitative Study*, 1 Journal of Empirical Research on Human Research Ethics 39 (2006) (with Kathryn Moss).
- In the HIV/AIDS area, he completed an empirical study of the effects of HIV-related criminal laws on sexual behavior, which will be appearing in the Arizona State Law Journal next Spring, and two medical journal papers from a survey of physicians on their willingness to provide preventive services to active drug users. He also took part in a number of legislative battles and training exercises, including a workshop on drug treatment and AIDS prevention for Russian narcologists in St. Petersburg.
- With his colleague Kathryn Moss, he wrote a background paper reviewing the effects of ADA Title I on employment conditions for people with disabilities for the Institute of Medicine's current committee on disabilities, and completed a paper, *Justice Disparities: Does the ADA Enforcement System Treat People with Psychiatric Disabilities Fairly?* 66 Maryland L. Rev. \_\_ (forthcoming 2006) (with Jeffrey Swanson *et al.*).
- He has been part of the "knowledge network on urban settings" of the WHO Commission on the Social Determinants of Health, for which he wrote a background paper on "Healthy urban Governance."
- He spent several weeks in China last Summer on two training projects. With Professor Shen Weixing of Tsinghua University, he organized a ten-day workshop on health law research and teaching for Chinese law professors.

## **Steve Calandrillo, Professor of Law, U. of Washington School of Law**

- Worked on an article with Chryssa Deliganis titled *Syringes in the Sea: Why Federal Regulation of Medical Waste is Long Overdue* forthcoming in GA. L. REV.
- Named a Washington Law School Foundation Scholar for 2006-07

## **Sandra Carnahan, Associate Professor of Law, South Texas College of Law, Houston, Texas**

- Medicare's Coverage with Study Participation Policy: Clinical Trials or Tribulations?* 7 YALE J. HEALTH POL'Y, LAW & ETHICS (forthcoming Summer 2007).

## **Case Western Reserve University School of Law, Law-Medicine Center**

- In September, the Center presented its annual Oliver C. Schroeder, Jr. Scholar-in-Residence lecture by former FDA Assistant Commissioner for Women's Health, Susan Wood, Ph.D. Her talk, *"The Role of Science in Health Policy Decisionmaking: The Case of Emergency Contraception,"* will be published by student editors of *Health Matrix: Journal of Law-Medicine*.
- Students learned about the best methods to use in medical malpractice cases from expert attorney Lee J. Dunn, Jr. Dunn spoke to students about his specialty in his talk, "How to Lose a Medical Malpractice Trial."
- In October, the Center sponsored a unique two-day symposium; "Designing a National Health Insurance Alternative." A group of nationally-recognized health law and health policy expert gathered at Case School of Law to come up with a way to make the Medicare system accessible to the uninsured and underinsured. Students and the public were invited to observe the discussion and contribute questions. The goal of the conference was to create a proposal that would play an important role in the debate over the future of the U.S. health care system during the 2008 presidential election. Using the information gathered, Professor Maxwell J. Mehlman, Director of the Law-Medicine Center and symposium chair, is drafting the proposal to submit to legislators.
- Case School of Law named Professor Sharona Hoffman Associate Dean for Academic Affairs and Co-Director of the Law-Medicine Center
- Case School of Law named Professor Jessica Wilen Berg Associate Director of the Law-Medicine Center.

Jessica Berg, Professor of Law and Bioethics, Case Western Reserve University, Schools of Law and Medicine

- Berg J and King N, "Strange Bedfellows: Reflections on Bioethics' Role in Disaster Response Planning," 6(5) American Journal of Bioethics 3 (2006).
- Berg J, "Legal Issues in End-of-Life Decision making" in Aspen Health Care and Compliance Update 2007 (in press).
- Berg J, "Smokescreen," 36 Hastings Center Report (2006).
- Marshall P, Berg J, "Protecting Communities in Biomedical Research," 6(3) American Journal of Bioethics 28 (2006).
- Berg J, "A Qualified Defense of Legal Disclosure Requirements" 6(2) American Journal of Bioethics 25 (2006).
- Hoffman S, Berg J, "The Suitability of IRB Liability," 67 University of Pittsburgh Law Review 365 (2005).
- Presentations: "Bioethics and Disaster Response," Bioethics Summer Retreat, Tahoe 6/22/06, "Legal Persons," Health Law Professors Conference, University of Maryland 6/2/06, "End of Life Decision Making" Keynote Address, Ohio Guardianship Conference, 5/10/06 "Scientific Integrity" Case School of Medicine, 4/26/06, "Bioterrorism and Katrina: Lessons Learned?" DePaul University, 4/1/06, "Medical Confidentiality and Its Limits" Continuing Education Conference, 3/2/06, "Terri Schiavo: Lessons Learned," University of Louisville Medical School 12/05

## **Kathy L. Cerminara, Professor of Law, Nova Southeastern University**

- Book Review, 6 AM. J. BIOETHICS 57 (2006) (reviewing Michael Schiavo & Michael Hirsh, *Terri: The Truth* (2006) and Mary Schindler *et al.*, *A Life That Matters: The Legacy of Terri Schiavo - A Lesson For Us All* (2006))
- Collateral Damage: The Aftermath of the Political Culture Wars in Schiavo*, \_\_\_ W. N. ENG. L. REV. \_\_\_ (forthcoming 2006)
- PRESENTATION: *Collateral Damage: The Aftermath of Schiavo*, Old Dominion University Institute for Ethics and Public Affairs, October 25, 2006.

# AALS ANNOUNCEMENTS

## **Peter J. Cohen, MD, JD, Adjunct Professor of Law, Georgetown University Law Center**

- Peter J. Cohen, *Comment—Fentanyl Abuse and Dependence: Further Evidence for Second Hand Exposure Hypothesis*, 25 J. ADDICT. DIS. 135 (2006, forthcoming).
- Peter J. Cohen, *The Many Faces of Drugs—A Personal Perspective (Foreword)*, in DRUGS AND JUSTICE, (Margaret P. Battin, et al. Editors, Oxford University Press, New York, NY 2007, forthcoming).
- Peter J. Cohen, *Addiction, Molecules, and Morality: Disease Does Not Obviate Responsibility*, AMER. J. BIOETHICS (2006, forthcoming).
- At this year's meeting of the American Society of Bioethics and Humanities, he discussed "Medical Marijuana—How Shall It Be Judged?"

## **Richard Cole, Professor of Law, Western New England College School of Law**

- Authentic Democracy: Endowing Citizens with a Human Right in Their Genetic Information*, 33 HOFSTRA L.REV. 1241

## **Rebecca Cook, Chair in International Human Rights Law, University of Toronto-Faculty of Law**

- Rebecca J. Cook, Bernard M. Dickens & Mahmoud F. Fathalla, *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law*. This book has come out in Spanish, Portuguese, French and Chinese, and is forthcoming in Arabic.

## **Judith Daar, Professor of Law, Whittier Law School**

- In the fall she taught at UCLA School of Law and in the spring she will visit the University of Houston Law Center.
- She published the casebook REPRODUCTIVE TECHNOLOGIES AND THE LAW (LexisNexis 2006), as well as a Teachers Manual for the book.
- Her articles published in 2006 include *Dreaming in Chromosomes* (Book Review), 48 Technology and Culture 20 (2006); *The Case for a Genetic Bill of Rights* (Book Review), American Journal of Bioethics (2006); *HIV and Fertility Care: Embarking on a Path of Knowledge and Access* (with Eric Daar), 85 Fertility & Sterility 298 (2006); and *Current Controversies in Reproductive Medicine*, Commissioned Paper by the Institute on Biotechnology & the Human Future (2006).
- She authored the following editorials: *Selling Eggs Isn't Selling Our Souls* (with Russell Korobkin), L.A. Times, Aug. 30, 2006; *Church's Civil Disobedience Is Not Aimed at Justice for All*, L.A. Daily Journal, March 28, 2006; *Court Rightly Limit Executive's Medical Powers*, L.A. Daily Journal, Jan. 20, 2006.
- She gave several presentations, including: American Medical Students Association, UCLA Campus, "Politics and Policies of Embryonic Stem Cell Research"; Whittier College, Philosophy Department, "Human Embryonic Stem Cell Research"; American Society for Reproductive Medicine, Annual Meeting, New Orleans, LA, "Informed Consent Dilemmas n ART"; Edward & Rita Schmidt Lectureship in Ethics, Susquehanna University, Selinsgrove, PA "Current Controversies in Reproductive Medicine"; Cedars Sinai Medical Center, Symposium on HIV/AIDS, "Legal and Ethical Issues in HIV/AIDS"; American Society of Law, Medicine & Ethics, National Health Law Teachers Conference, "Legal Scholarship in Health Law"; AIDS on the Frontline, UCI Medical Center, "Legal and Ethics Aspects of HIV/AIDS"; DePaul University College of Law, "A Century of Liberty? The Politics of Birth, Reproduction and Death"; USC Keck School of Medicine, "End of Life Dilemmas: Lessons from Terri Schiavo"; and UCLA School of Law and Center for the Study of Women, "Roe and the Life Cycle: Birth, Reproduction & Death in the Modern Age".
- She was appointed to serve on the Board of Directors for the American Society of Law, Medicine & Ethics, and has enjoyed her tenure as Chair of this AALS Section.

## **Lawrence O. Gostin, Associate Dean and Linda D. and Timothy J. O'Neill Professor of Global Health Law, Georgetown University Law Center**

- Georgetown University Law Center received a gift of \$10 million to establish the O'Neill Institute of National and Global Health Law. Dean Gostin will hold the chair and become faculty director of the Institute. The O'Neill Institute will be launched at Georgetown on April 20<sup>th</sup>, 2007 with a scholarly event covering each of the four areas of concentration for the Institute: global health, health care finance, governance, and outcomes research. Health law professors across the country are invited to attend, and the proceedings will be published in the *Georgetown Law Journal*.
- LAWRENCE O. GOSTIN, POWER, DUTY, RESTRAINT (UNIVERSITY OF CALIFORNIA PRESS, 2<sup>nd</sup> ED. FORTHCOMING 2007)
- LAWRENCE O. GOSTIN (WITH RONALD BAYER, BRUCE JENNINGS, BONNIE STEINBOCK), EDs., PUBLIC HEALTH ETHICS: THEORY, POLICY AND PRACTICE (Oxford University Press, 2007).
- LAWRENCE O. GOSTIN, JUDITH AREEN, PATRICIA A. KING, STEVEN GOLDBERG, PETER JACOBSON, LAW, SCIENCE AND MEDICINE (University Casebook Series, The Foundation Press, 2005, 3<sup>rd</sup> ed.)
- Lawrence O. Gostin, *Medical Countermeasures for Pandemic Influenza: Ethics and the Law (Part I)*, 295 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 554-557 (2006).
- Lawrence O. Gostin, *Public Health Strategies for Pandemic Influenza: Ethics and the Law (Part II)*, 295 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1700-1704 (2006).
- Lawrence O. Gostin, *HIV Screening in Health Care Settings: Public Health and Civil Liberties in Conflict?*, 296 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 2023-2025 (2006).
- Lawrence O. Gostin & Madison Powers, *What Does Social Justice Require for the Public's Health? Public Health Ethics and Policy Imperatives*, 25 (4) HEALTH AFFAIRS 1053-1060 (July/August 2006).
- Lawrence O. Gostin, Property Rights and the Common Good, 36(5) HASTINGS CENTER REPORT 10-11 (2006).
- Lawrence O. Gostin, *Legal Foundations of Public Health Law and its Role in Meeting Future Challenges*, 120 JOURNAL OF THE ROYAL INSTITUTE OF PUBLIC HEALTH 8-15 (2006).

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# AALS ANNOUNCEMENTS

- Lawrence O. Gostin, *Physician-Assisted Suicide: A Legitimate Medical Practice?* 295(16) JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1941-43 (2006).
- Lawrence O. Gostin, *Federal Executive Power and Communicable Disease Control: CDC Quarantine Regulations*, 36(2) HASTINGS CENTER REPORT 10-11 (2006).
- David P. Fidler & Lawrence O. Gostin, *The New International Health Regulations: An Historic Development for International Law and Public Health*, 33(4) J. LAW, MED & ETHICS 85-94 (2006).

## **Mark A. Hall, Wake Forest University School of Law**

- Mark Hall will publish an article in the Autumn 2006 issue of LAW & CONTEMP. PROBS. entitled "Paying for What you Get, and Getting What you Pay for: Legal Responses to Consumer-Driven Health Care."
- Mark Hall, with Carl Schneider (Univ. of Michigan) and Lois Shepherd (Florida State), organized a symposium on "Rethinking Health Law," which was published in the summer 2006 issue of the WAKE FOREST L. REV., available at <http://www.law.wfu.edu/x6192.xml>.

## **Diane E. Hoffmann, Professor of Law, University of Maryland School of Law, Law & Health Care Program**

- D. Hoffmann & Anita Tarzian, "The Role and Legal Status of Health Care Ethics Committees in the U.S.", in *Legal Perspectives in Bioethics: Annals of Bioethics Series*, ed. Sandra Johnson, Pub. Rutledge (forthcoming 2007)
- D. Hoffmann, "Legal and Regulatory Issues Surrounding the Use of Opioid Analgesics", in *Complications in Regional Anesthesia and Pain Medicine*, eds. Joseph Neal & James Rathmell, Pub. Elsevier, (forthcoming 2007)
- D.Hoffmann (with K. Rothenberg) "Judging Genes: Judicial Response to the Second Generation of Genetic Tests," (forthcoming University of Maryland Law Review)
- Hoffmann, Diane E. (with Anita J. Tarzian) , "A Statewide Survey Identifying Perceived Barriers to Hospice Use in Nursing Homes," *Journal of Hospice and Palliative Nursing* Volume 8, Number 6, pages 1-10 (November/December 2006).
- Diane E. Hoffmann and Jack Schwartz, "Who decides whether a patient lives or dies?," *Trial* Vol. 42, No. 10, pp. 30-37, (October 2006).
- Alternatives to QIOs in Responding to Medicare Beneficiary Complaints (paper commissioned by the Center for Medicare Advocacy, funded by the Commonwealth Foundation) (will be the subject of a symposium at AARP in Washington, D.C. on January 19, 2007)
- University of Maryland Health Care Program Conferences and Symposia: "Money and Medicine: Bedside Ethics of the Medical Marketplace" January 30, 2007 (sponsored by the Maryland Healthcare Ethics Committee Network, an initiative of the University of Maryland Law & Health Care Program)., *New Issues in the Regulation of Tobacco Products*, April 20, 2007 (in conjunction with the 5th anniversary of the University of Maryland's Center for Tobacco Regulation)

## **Sharona Hoffman, Professor of Law, Professor of Bioethics, and Associate Director of the Law-Medicine Center, Case Western Reserve University School of Law**

- Named Associate Dean for Academic Affairs, July 2006
- Named Co-Director of the Law-Medicine Center, July 2006
- In Sickness, Health, and Cyberspace: Protecting the Security of Electronic Private Health Information*, \_\_ B.C. L. REV. \_\_ (2007) (with Andy Podgurski)
- Securing the HIPAA Security Rule*, \_\_J. Internet L.\_\_ (2007) (With Andy Podgurski).
- Unmanaged Care: Should there be a Right to Health Care in the United States?* 15 LEGAL MED. PERSP. 35, May/June 2006.

### Presentations:

- "Racially-Tailored' Medicine Unraveled," Mather Spotlight Series on Women's Scholarship Presentation, February 23, 2006, Cleveland, Ohio
- "Essential Health Care Services As A Constitutional Right," annual conference of the American College of Legal Medicine, March 4, 2006, Las Vegas, Nevada
- "Racially-Tailored' Medicine Unraveled," ASLME Health Law Teachers Conference, June 3, 2006, Baltimore, Maryland.
- "Privacy Rights and the Electronic Storage of Personal Health Information," VI World Computer Law Conference, Edinburgh, Scotland, September 7, 2006.
- "Racially-Tailored' Medicine Unraveled," American Society for Bioethics and Humanities Annual Meeting, October 28, 2006, Denver Colorado.
- "Racially-Tailored' Medicine Unraveled," Cleveland Clinic monthly Bioethics Seminar, November 7, 2006, Cleveland, Ohio.

## **Indiana University School of Law-Indianapolis, William S. and Christine S. Hall Center for Law and Health**

Eleanor DeArman Kinney, Hall Render Professor of Law, Co-director, Hall Center for Law and Health, Director, Latin American Law Summer Program

- Eleanor Kinney served this past year as Chair of the Section on Administrative Law and Regulatory Practice of the American Bar Association. Professor Kinney, along with Professors Frank Emmert and Kenneth Crews, continues work on developing the Jean Monnet Module of Courses on Comparative EU and US Law with a grant from the European Union. In June, she taught the first course to result from the grant, "Comparative EU and US Regulation of Pharmaceuticals and Medical Technology." In addition, she spoke at a symposium on "Cracks in the System: The Adequacy of the U.S. Healthcare Regulation in a Global Age" at the Washington College of Law at American University in March 2006. Professor Kinney, in collaboration with Prof. William M. Sage of the University of Texas School of Law and with funding from The Commonwealth Fund, completed publications in a project on Medicare-led medical malpractice reform (Kinney & Sage, "Resolving Medical Malpractice Claims in the Medicare Program: Can it be Done?" in the *University of Connecticut Journal of Insurance Law* (vol. 12, 77-136: 2006) and Sage and Kinney, "A Malpractice System for Medicare," in a book published by Cambridge University Press, *Medical Malpractice Reform in the United States: New Century, Different Issues* (William M. Sage & Rogan Kersh, editors, 2005). She has also recently published "Can the Medicare, Medicaid and SCHIP Programs

# AALS ANNOUNCEMENTS

Meet the Challenges of Public Health Emergencies," 58 *Administrative Law Review* 559 (2006). In August, Professor Kinney was a panelist for the "Citizens' Congressional Hearing on HealthCare," for the Indianapolis Citizens' Congressional Hearings in Indianapolis. Additionally, Professor Kinney served on the Search Committee for the Chancellor of Indiana University - Bloomington, 2004-2006.

David Orentlicher, Samuel R. Rosen Professor of Law, Co-director, Hall Center for Law and Health

- David Orentlicher, recently re-elected to his 3<sup>rd</sup> term in the Indiana General Assembly by a 56-44 margin, will chair the Indiana House's Small Business and Economic Development Committee. His most recent publications include "Making Research a Requirement of Treatment: Why We Should Sometimes Let Doctors Pressure to Participate in Research" in 35(5) *Hastings Center Report* 20 (2005) and "Diversity: A Fundamental American Principle," in 70 *Missouri Law Review* 777 (2005). He currently chairs a working group of IU faculty, health care providers and health care payers on health care access from which he will be introducing legislation in the 2007 of the Indiana legislature. On December 8, he discussed privatization of public highways on CNN's "Lou Dobbs Tonight."

Jennifer A. Drobac, Associate Professor of Law, Dean's Fellow

- Jennifer Drobac taught a new HIV/AIDS Law course in spring 2006 and served as a Dean's Fellow in recognition of scholarly excellence. Her article, "Developing Capacity: Adolescent 'Consent' at the Workplace, at Law, and in the Sciences of the Mind," 10 *U.C. Davis J. Juvenile L. & Poly* 1 (2006) (lead article), addressed the relevance of neuroscience and adolescent psychosocial development to sexual harassment law. Prof. Drobac was a panelist on the topic, "Sexual Harassment: Twenty Years After *Meritor v. Vinson*" at the *Wolfson Center for National Affairs Conference*, sponsored by The New School, New York, New York, in June. In December, Prof. Drobac was a presenter on the topic, "I Can't to I Kant: The Sexual Harassment of Working Adolescents, Competing Theories, and Ethical Dilemmas," at Emory Law School in Atlanta, Georgia, at the *Feminism and Legal Theory Project Conference: An Uncomfortable Conversation on Sociobiology, Evolutionary Psychology, and Feminist Legal Theory*. Prof. Drobac continues to serve on the board of trustees of the Kaiser Family Foundation.

Barbara Evans, Director of the Pharmacogenomics, Ethics, and Public Policy Program, Indiana University Center for Bioethics

- Barbara Evans is a visiting professor at the law school this year. She came to Indiana University in 2004 as a Research Professor of Medicine and Core Faculty Member at the Bioethics Center. Her publications this year include Evans, B.J. & Flockhart, D.A., *The Unfinished Business of U.S. Drug Safety Regulation*, 61 *FOOD AND DRUG LAW JOURNAL* 45 - 63 (March, 2006); Evans, B.J. & Meslin, E.M., *Encouraging Translational Research Through Harmonization of FDA and Common Rule Informed Consent Requirements for Research with Banked Specimens*, 27 *JOURNAL OF LEGAL MEDICINE* 119-166 (June, 2006); Evans B.J., *What Will it Take to Reap the Clinical Benefits of Pharmacogenomics?* 61 *FOOD AND DRUG LAW JOURNAL* 753-794 (December, 2006) and Evans, B.J., *Distinguishing Product and Practice Regulation in Personalized Medicine*, *CLINICAL PHARMACOLOGY & THERAPEUTICS* (forthcoming, February 2007). She recently was a presenter on "Regulatory Barriers to Clinical Introduction of Genetically Targeted Drug Therapies," at the GenomeCanada International Conference, *2020 Vision: Variation and Function of the Genome*, and on "Barriers to Genetically Targeted Cancer Therapies" at the National Institution of General Medical Sciences *Pharmacogenetics Research Network—Consortium on Breast Cancer Pharmacogenomics* Biannual Meeting. Dr. Evans is also currently serves on an American College of Medical Genetics committee to develop clinical practice guidelines for pharmacogenetic testing in patients taking Warfarin/Coumadin; as a member of the Legal Working Group of the Indiana State Department of Health's *Health Information and Privacy Collaboration* project; as U.S. regulatory advisor for the Canada Advanced Foods and Materials Network project, *Social Issues in Nutritional Genomics*; as a Corresponding Member of the Medical Technology Policy Committee of the Institute of Electrical and Electronics Engineers; and as a member of the ABA Special Committee on Bioethics and the Law.

Robert A. Katz, Associate Professor of Law, Dean's Fellow

- Rob Katz published an article entitled "The Re-Gift of Life: Can Charity Law Prevent For-Profit Firms from Exploiting Nonprofit Tissue Banks and Donated Tissue?" in the *DePaul Law Review* (vol. 53, 943-1015: 2006), as part of a symposium issue on "Precious Commodities - The Supply and Demand of Body Parts." Prof. Katz also published "Who Should Capture the Value of Donated Human Tissue?" in the ABA Health Law Section's *The Health Lawyer* (vol. 18, No. 4: 2006). He is currently researching legislative proposals to improve oversight of the tissue transplantation system. On June 2, 2006, Katz moderated a panel on "New Issues in Medicare: Part D," at the 30th Annual Health Law Teachers Conference, which was held at the University of Maryland School of Law. In July, Katz made a presentation entitled "Tissue Donation and the Mandatory Disclosure of For-profit Involvement in the Tissue Industry" at the annual meeting of the Southeastern Association of Law Schools (SEALS) in Palm Beach, Florida. In November, 2006, Katz made a presentation entitled "Gimme Some Skin: Defining and Enforcing the Tissue Donor's Intent in the Absence of 'Informed Consent'," as a part of a panel on panel on "Charitable Donors and the Legal Construction and Enforcement of Donor Intent," at the annual conference of the Association for Research Nonprofit Organizations and Voluntary Action (ARNOVA), held in Chicago, Illinois.

Heather McCabe, Director of the Hall Center for Law and Health's Public Health Law Program

- Heather McCabe received the MCH Early Career Leadership Recognition Award from the Riley Child Development Center at the Riley Hospital for Children for demonstrated leadership ability in the provision of services to children and their families. She was a fellow in the Mid-America Regional Public Health Leadership Institute, a CDC funded initiative. Last year, she presented on firearm violence and suicide at the American Public Health Association annual meeting. She also co-authored (Xun Shen et al.), "Characteristics of Suicide from 1998-2001 in a Metropolitan Area," 30 *Death Studies* 859-871 (2006).

**Timothy Stoltzfus Jost, Robert L. Willett Family Professor, Washington and Lee University School of Law**

- Tim Jost spent much of the year working on a book on consumer-driven health care that will be published by Duke University Press early next year.
- *Our Broken Health Care System and How to Fix It*, 41 *WAKE FOREST L. REV.* 537-618 (2006).

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# AALS ANNOUNCEMENTS

- *Racial and Ethnic Disparities in Medicare: What the Department of Health and Human Services and the Centers for Medicare and Medicaid Services Can, and Should, Do*, 9 DEPAUL J. HEALTH CARE L. 667-718 (2006).
- *The New Governance, The Open Method of Coordination, and European Social Health Insurance*, 7 MED. L. INT'L. 249-263 (2006).
- *The Role of Competition in Health Care: A European Perspective* (with Diane Dawson and Andre den Exter), 31 J. HEALTH POL., POL'Y & L. 687 (2006)
- Suffolk University, March 2006, presentation on racial disparities in Medicare
- Osaka University, presentation on quality assurance in health care in the United States, March 2006
- Saint Louis University Law Review Symposium, presentation on tax policy and health care, March 2006
- Case Western University Law School, presentation on comparative health policy, Oct. 2006
- University of Toronto College of Law, presentation on social health insurance, Nov 2006
- University of Kansas College of Law, presentation on the Massachusetts Health Plan, November 2006
- McGill University, presentation on comparative health law research and teaching to Canadian Health Law Association, November 2006
- Consumer-Driven Health Care Summit, Washington, Sept, 2006, presentation on state regulation of consumer-driven health care
- International Federation of Employee Benefit Plans, Law Vegas, October 2006, presentation on German health care reforms

## Joan Krause, Professor of Law, University of Houston Law Center

- She was promoted to Full Professor as of September 2006.
- Her recent articles include *A Patient-Centered Approach to Health Care Fraud Recovery*, 96 J. Crim. L. & Criminology 579 (2006) and *Ethical Lawyering in the Gray Areas: Health Care Fraud and Abuse*, 34 J. L. Med. & Ethics 121 (2006)."

## Art LaFrance, Professor of Law, Louis and Clark Law School

- He will be teaching his bioethics course at the University of Canterbury in Christchurch, New Zealand, second semester.
- The second edition of his book with Lexis came out in December; the first edition was inflicted on his students in Perth, Australia while in early form. Perhaps a pattern is developing...Where will he be for the third edition?
- He will also be addressing judges and other interested groups in New Zealand, and spending three weeks at the University of Newcastle in the Sydney area of Australia.

## Rob Leflar, Professor of Law, University of Arkansas School of Law

- He spent the 2005-06 academic year as a visiting professor and research scholar at the University of Tokyo Faculty of Law.
- He published *Iry\_ Anzen to H\_ no Nichibeiki Hikaku* [Law and Patient Safety in the United States and Japan], 1323 JURIST 8 (2006) (in Japanese) (Tomoko Mise, trans.); *Medical Error as Reportable Event, as Tort, as Crime: A Transpacific Comparison*, 12 WIDENER L. REV. 189 (2006) (with Futoshi Iwata); *Amerika ni okeru Iry\_ Rinri Kitei no Kin\_teki Bunseki* [A Functional Analysis of Medical Ethics Codes] (Chiaki Sato trans.), in *SEIMEI RINRI TO H\_* [Bioethics and the Law] 99-116 (Norio Higuchi & Y\_ko Tsuchiya eds., Tokyo: K\_bund\_ 2005) (in Japanese); and a book review of LUKE NOTTAGE, *PRODUCT SAFETY AND LIABILITY LAW IN JAPAN: FROM MINAMATA TO MAD COWS*, 25 JAP. STUD. 307 (2005).
- His conference presentations in 2006 included "Law, Medical Errors, and Politics: An International Comparative Analysis," International Symposium on Urbanization, Gender, and Public Health, Shanghai, China, Dec. 14, 2006; "Disclosure of and Apology for Medical Error: Changes in Law and Practice in the United States and Japan," Japan Ass'n of Law and Society, Waseda U., Tokyo, July 15, 2006; "Law and Patient Safety in the United States and Japan," Workshop on Medical Safety and the Law, U. of Tokyo, July 8, 2006 (keynote speaker); "*Nihon to Amerika ni okeru iry\_ anzen mondai (iry\_ kago) ni tsuite*" [Issues in Patient Safety and Medical Malpractice in Japan and the United States], Dokky\_ U. School of Law, S\_ka, Saitama, June 14, 2006 (in Japanese); "*Nichibeiki hikaku no shiten kara mita iry\_ jiko o meguru h\_ to seiji*" [The Law and Politics of Medical Error from a Comparative Perspective], Kyoto U. Hospital, June 2, 2006 (in Japanese); "Medical Error as Crime in Japan," Freeman Symposium on Health, Law, and Justice in Asia, Dickinson College, Carlisle, Pa., April 28, 2006; "*Nichibeiki hikaku no shiten kara mita iry\_ jiko o meguru h\_ to seiji*" [The Law and Politics of Medical Error from a Comparative Perspective], Handai Forum, Osaka U. Hospital, March 14, 2006 (in Japanese); "Crimes, Torts, Accident Reports: Factual Investigations in the Medical Context," Int'l Workshop on Safety Law Systems, U. of Tokyo, Feb. 14, 2006; and "Patient Safety and Medical Ethics: The Dilemmas of Medical Error Disclosure," Yokohama City U. Faculty of Medicine, Jan. 16, 2006.

## Kristin Madison, Assistant Professor, University of Pennsylvania Law School

- *Regulating Health Care Quality in an Information Age*, U.C. DAVIS L. REV. 40 (forthcoming 2007).
- *ERISA and Liability for Provision of Medical Information*, N.C. L. REV., 84: 471-546 (2006).

## Michelle M. Mello, C. Boyden Gray Associate Professor of Health Policy and Law, Harvard School of Public Health

- Michelle M. Mello et al., *The Role of Law in Public Health : The Case of Family Planning in the Philippines*. 63 SOC. SCI. & MED. 384 (2006).
- David M. Studdert et al., *Claims, Errors, and Compensation Payments in Medical Malpractice Litigation*, 354 NEW ENGL. J. MED. 2024 (2006).
- Michelle M. Mello et al., *Obesity—The New Frontier of Public Health Law*, 354 NEW ENGL. J. MED. 2601 (2006).
- David M. Studdert et al., *Disclosure of Medical Injury: An Improbable Risk Management Strategy*, HEALTH AFFAIRS 2006 (forthcoming).
- Michelle M. Mello et al., "*Health Courts*" and Accountability For Patient Safety, 84 MILBANK QUARTERLY 459 (2006)
- Aaron S. Kesselheim & Michelle M. Mello, *Medical Process Patents—Monopolizing the Delivery of Health Care*, 355 NEW ENGL. J. MED. 2036 (2006).

# AALS ANNOUNCEMENTS

- David M. Studdert et al., *Legal Oversight of Nonprofit Hospitals*, NEW ENGL. J. MED. 2006 (forthcoming).
- Aaron S. Kesselheim & Michelle M. Mello, *Confidentiality Laws and Secrecy in Medical Research: Improving Access to Drug Safety Data*, HEALTH AFFAIRS 2006 (forthcoming).
- Michelle M. Mello, *Understanding Malpractice Insurance: A Primer*, Research Synthesis Report No. 8 (The Robert Wood Johnson Foundation, 2006), [http://www.rwjf.org/publications/synthesis/reports\\_and\\_briefs/pdf/no10\\_primer.pdf](http://www.rwjf.org/publications/synthesis/reports_and_briefs/pdf/no10_primer.pdf).
- Michelle M. Mello, *Medical Malpractice: Impact of the Crisis and Effect of State Tort Reforms*, Research Synthesis Report No. 10 (The Robert Wood Johnson Foundation, 2006), [http://www.rwjf.org/publications/synthesis/reports\\_and\\_briefs/pdf/no10\\_researchreport.pdf](http://www.rwjf.org/publications/synthesis/reports_and_briefs/pdf/no10_researchreport.pdf).

## **Camille Nelson, Assistant Professor, St. Louis University School of Law**

- Considering Tortious Racism*, 9 DEPAUL J. HEALTH CARE L. 905.
- Of Egg-shells and Thin Skulls: A Consideration of Racism-Related Mental Illness Impacting Black Women*, 29 INT'L J. LAW & PSYCHIATRY 112.
- Multicultural Feminism: Assessing Systemic Fault in a Provocative Context*, 17 U. FLA. J. LAW & PUB. POL'Y. 263 (2006)
- The Conflicting And Contradictory Dance: The Essential Management Of Identity For Women Of Colour In The Legal Academy*. This is a chapter in a refereed Canadian book (hence spelling), *Calling For Change: Women, Law And The Legal Profession Ten Years After Touchstones*, Elizabeth Sheehy and Sheila McIntyre, eds. (Ottawa: University of Ottawa Press, 2006).

## **Michelle Oberman, Professor of Law, Santa Clara University School of Law**

- Symposium: Precious Commodities: The Supply & Demand of Body Parts: When the Truth is Not Enough: Tissue Donation, Altruism, and the Market, 55 DEPAUL L. REV. 903 (2006)
- "When the Truth is not Enough: Tissue Donation, Altruism and the Market," Stanford University, Center for Law and the Biosciences (December, 2005)
- Moderator, "Who Oversees Pharma International?," The Globalization of Pharmaceutical Development: Race, Market and Ethics (Santa Clara School of Law, March, 2006)
- "Mothers Who Kill: An Inquiry into Contemporary U.S. Filicide," Stanford Center for Bioethics (May, 2006)
- Bioethics Update, 2006 Health Law Teachers Conference (Baltimore, June, 2006)
- Symposium: Storytelling and the Law: A Retrospective on Narrative, Ethics and Legal Change, "Life Before Death: Incarcerated Filicidal Mothers' Stories About the Safety Net and its Holes" (Emory University, October, 2006)
- Symposium: Mental Health Disorders of the New Millenium, "Mothers who Kill Their Children," (Santa Clara University, November, 2006)
- Roundtable participant, "Baby Markets: Money, Morality and the Neopolitics of Choice," (Chicago, November, 2006)
- "Where Stem Cell Research Meets Abortion Politics: Limits on Buying and Selling Human Oocytes," Hebrew University Faculty Workshop, (Jerusalem, December, 2006)

## **Kevin Outterson, Professor of Law, West Virginia University**

- He accepted an associate professor position at Boston University starting next fall.
- Counterfeit Drugs: The Good, The Bad, and the Ugly*, 16 ALBANY L. J. OF SCIENCE & TECHNOLOGY (2006, pending) (invited symposium article).
- Patent Buy-Outs For Global Disease Innovations For Low- and Middle-Income Countries*, 32 AM. J. L. & MED. 159-73 (2006) (invited symposium article).
- Tragedy & Remedy: Reparations for Disparities in Black Health*, 9 DEPAUL J. HEALTH CARE LAW 735-792 (2005) (invited symposium article)
- The Vanishing Public Domain: Antibiotic Resistance, Pharmaceutical Innovation and Global Public Health*, 67 UNIV. OF PITTSBURGH LAW REV. 67-123 (2005).
- Fair Followers: Expanding Access To Generic Pharmaceuticals For Low- and Medium-Income Populations*, in THE POWER OF PILLS: SOCIAL, ETHICAL AND LEGAL ISSUES IN DRUG DEVELOPMENT, MARKETING AND PRICING (Jillian Clare Cohen, Patricia Illingworth, and Udo Schuklenk, eds.) (University of Michigan/Pluto Press, 2006)
- New Legislative Trends Threaten the Way Health Information Companies Operate*, 11 PHARMA PRICING AND REIMBURSEMENT 324-25 (IMS Health, Cambridge, Nov. 2006) (with Ilona Volker).

## **Philip G. Peters, Jr, Professor of Law University of Missouri-Columbia School of Law**

- He is working on a series of articles that reexamine what we know about medical malpractice litigation and the implication of those data for future malpractice reform. The first, *Doctors and Juries*, will appear in the MICHIGAN LAW REVIEW next summer and the second, *Doctors and Settlement*, will be published about the same time in the IOWA LAW REVIEW. The third, *Doctors and Frivolous Claims*, is still percolating.
- He has also co-authored an empirical study with Kevin Hart of the University of Rochester School of Medicine and Dentistry, called *Cultures of Claiming: Local Variation in Malpractice Claim Frequency*, which is under submission.
- Other malpractice works-in-progress include *Patients Who Sue Their Doctors* and *Health Courts? The Unforgivable Omission of Enterprise Liability*.

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- He also continues to work on reproductive technology, publishing *The Ambiguous Meaning of Human Conception* in the U.C. DAVIS LAW REVIEW and giving a presentation on that topic as last June's Health Law Teachers Conference.
- During the run-up to Missouri's recent vote on a constitutional amendment to authorize embryonic stem cell research, he kept busy talking to student and community groups.
- In connection with the MU Life Sciences and Society Program, he also participated in a conference on the labeling of genetically modified food, writing a paper on the *Legal Barriers to Consumer Information Regarding Genetically Modified Foods* that will be published in the conference anthology, *THE ETHICS AND POLICY OF LABELING GENETICALLY MODIFIED FOOD* (Paul Weirich ed., Oxford University Press forthcoming).

## **Thaddeus Mason Pope, Assistant Professor of Law, Cecil C. Humphreys School of Law, University of Memphis**

- *Monstrous Impersonation: A Critique of Consent-Based Justifications for Hard Paternalism*, 73 UMKC L. Rev. 681-713 (2005).
- *Is Public Health Paternalism Really Never Justified? A Response to Joel Feinberg*, 30 Okla. City U. L. Rev. 121-207 (2005).
- Upcoming conferences: Dispute Resolution in Health Care, Symposium on Alternative Dispute Resolution Strategies in End-of-Life Decisions, Sponsored by the Ohio State Journal on Dispute Resolution and the ABA Section of Dispute Resolution, Columbus, Ohio (January 18, 2007).
- Conferences this past year: Medical Futility is a Healthcare Rationing Issue, National Association of Elder Law Attorneys (NAELA), 2006 Advanced Elder Law Institute, Health Care SIG Panel, Salt Lake City, Utah (November 4, 2006)., Medical Futility Policies: Legal Obstacles, Annual Health Law Scholars Workshop, Saint Louis University School of Law, St. Louis, Missouri (September 15-17, 2006)., Pulling the Plug without Consent: The Unilateral Decision Statutes, Annual Meeting of the Southeastern Association of Law Schools (SEALS), Palm Beach, Florida (July 18, 2006)., The Legitimacy and Prevalence of Medical Futility Policies Authorizing Involuntary Passive Euthanasia, American Society of Law, Medicine & Ethics (ASLME), 30th Annual Health Law Teachers Conference, Baltimore, Maryland (June 3, 2006)., It's Your Right to Live or Die - Or Is It? Public Forum Interdisciplinary Panel, University of Memphis, Memphis, Tennessee (April 17, 2006).

## **The University of Pittsburgh School of Law**

- The University of Pittsburgh Center for Bioethics and Health Law was the first recipient of the Greenwall Foundation funded Oscar M. Ruebhausen Visiting Professor in Bioethics. Michael Sandel, the Bass Professor of Government at Harvard was in residence for three-days in November and gave a public lecture on "The Commodification of Health Care." Pitt's Health Law Certificate Program celebrates it's 10th Anniversary this year, which will be commemorated by a program in February on The Law of Tax-Exempt Healthcare Organizations. This will be followed later in February by Ruth Colker (Ohio State) giving the Thornburgh Family Lecture in Disabilities Law.
- Alan Meisel, the Director of the Health Law Program at Pitt, has been appointed to the Pennsylvania Pandemic Planning Ethics Workgroup and to the Obstetrical Pharmacological Research Unit of the National Institute of Child Health and Human Development.
- Professor Larry Frolik has published two books, *The Law of Later-Life Health Care and Decision Making* (ABA), and the 4th edition of *Elder Law in a Nutshell* (with Kaplan; West), and an article, "Sufficient' Capacity: The Contrasting Capacity Requirements for Different Documents (co-author Professor Mary Radford; NAELA Journal).
- Professor Stella L. Smetanka, Clinical Associate Professor of Law, as supervising attorney of the Health Law Clinic at the University of Pittsburgh School of Law, successfully represented with her students, a client who challenged the Centers for Medicare and Medicaid National Coverage Decision that denied coverage for a solitary pancreas transplant for persons suffering from brittle Type 1 diabetes with hypoglycemic unawareness because they did not require a simultaneous or prior kidney transplant. As a result of their case, CMS promulgated a revised NCD in April 2006 that permits solitary pancreas transplants in certain narrow circumstances. Smetanka also published "Who Will Protect the 'Disruptive' Dialysis Patient?" in 32 *American Journal of Law & Medicine* 53 (2006).

## **John A. Robertson, Vinson and Elkins Chair, University of Texas School of Law at Austin**

- *Embryo Culture and the 'Culture of Life: Constitutional Issues in the Embryonic Stem Cell Debate*, 2006 University of Chicago Legal Forum 1-38, <http://www.utexas.edu/law/faculty/jrobertson/embryocultureandthecultureoflife.pdf>
- *Controversial Medical Treatment and the Right to Health Care*, Hastings Center Report, Nov./Dec. (2006)

## **Ani B. Satz, Associate Professor, Emory University School of Law, Rollins School of Public Health**

- *A Jurisprudence of Dysfunction: On the Role of "Normal Species Functioning" in Disability Analysis*, 6 YALE J. HEALTH POL'Y, L. & ETHICS 221 (2006).
- *Would Rosa Parks Wear Fur? Toward a Nondiscrimination Approach to Animal Welfare*, 1 J. ANIMAL L. & ETHICS 101 (2006).
- Colloquium Speaker, *Universal Access to High Technology Health Care: An Argument from Basic Capability Equality*, University of Georgia School of Law, Athens, Georgia (Oct. 23, 2006).
- Colloquium Speaker, *Universal Access to High Technology Health Care: An Argument from Basic Capability Equality*, Young Scholars Series, Washington and Lee University School of Law, Lexington, Virginia (Oct. 9, 2006).
- Participant, *Torts: Proximate Causation, Family and Friends Day*, Emory University School of Law, Atlanta, Georgia (Oct. 6, 2006).
- Guest Lecturer, *An Introduction to the ADA and Its Application to the Practice of Medicine, Occupational Health Practice*, Rollins School of Public Health, Emory University, Atlanta, Georgia (Sept. 28, 2006).
- Participant, *Pooky, the Steer, and the Laboratory Rat: Exploring Differential Treatment of Domestic Animals Under Federal Law*, Perspectives on Animal Law Writing Workshop, University of California-Los Angeles School of Law, Los Angeles, California (Aug. 10-12, 2006).
- Commencement Speaker, Nova Southeastern School of Law, Master of Health Law Program, Fort Lauderdale, Florida (July 15, 2006).

# AALS ANNOUNCEMENTS

- Panelist, A Nondiscrimination Approach to Animal Welfare, Law and Society Annual Conference, Baltimore, Maryland (July 6-9, 2006).
- Panelist, Pharmaceutical Incentives and the Global Poor, American Society of Law, Medicine and Ethics Health Law Teachers Conference, Baltimore, Maryland (June 1-3, 2006).
- Commentator, Thomas Pogge's Incentives for Pharmaceutical Research, Conference on Equality and the New Global Order, Kennedy School of Government, Harvard University, Cambridge, Massachusetts (May 11-13, 2006).
- Moderator, From Institutions to Community Settings: How to Effectively Implement the Olmstead Decision at State Levels, Working in the Public Interest Law Conference: Challenging Poverty Through Law, University of Georgia School of Law, Athens, Georgia (April 7-8, 2006).

## Seton Hall University School of Law

- On February 6, 2007, the Health Law and Policy Program of Seton Hall University School of Law will welcome Michael B. McCulley, Assistant General Counsel, Johnson & Johnson. Mr. McCulley will speak as part of our Distinguished Guest Practitioner Series, created in 2002 to provide advanced health law students an opportunity to discuss current health law issues with leading area practitioners. Interested parties may register for Mr. McCulley's presentation at HELPP@shu.edu or by calling (973) 642-8871.
- The Seton Hall Law Review, the Health Law and Policy Program and the Institute of Law, Science and Technology at Seton Hall, will host a Law Review Symposium, entitled, *A Delicate Balance: The FDA's Drug and Device Regulations, Public Health, Intellectual Property and the Economy*, on February 16, 2007, at the Law School. For further information, or to register, visit: [law.shu.edu/lawreviewsymposium](http://law.shu.edu/lawreviewsymposium) or call (973) 642-8871.
- Seton Hall University School of Law will conduct its next Health Care Compliance Certification Program (HCCCP) March 5-8, 2007. The HCCCP is a multi-day educational program held at Seton Hall for compliance professionals and lawyers in the pharmaceutical and medical device industries to address the issues they face in complying with such standards as the OIG's Compliance Program Guidance for Pharmaceutical Manufacturers, the PhRMA Code, and the AdvaMed Revised Code of Ethics. For additional information, contact Michele Nance at [nancemic@shu.edu](mailto:nancemic@shu.edu) or Denise Pinney at (973) 642-8758, or [pinneyde@shu.edu](mailto:pinneyde@shu.edu).
- Paul S. Appelbaum, M.D., Director, Division of Psychiatry, Law and Ethics, Columbia University College of Physicians and Surgeons, will be the Merck Visiting Scholar in residence at Seton Hall March 12-16, 2007.

On April 10, 2007, The Health Law and Policy Program of Seton Hall will host a discussion with Fred M. Jacobs, M.D., J.D., Commissioner, State of New Jersey, Department of Health and Senior Services.

## Kathleen M. Boozang, Associate Dean and Professor of Law

- She is currently on sabbatical, but will return to the classroom and associate deaning in January. She has spent much of the past couple of months working on an article that addresses director independence in the nonprofit setting. Hopefully, the Temple Civil Rights Journal will soon produce an issue on end-of-life care, for which she wrote a piece on the legal relevance of Ms. Schiavo's Catholicism to the question of treatment termination. Since the Schiavo case, she has written for popular distribution pieces trying to clarify what the Church has said about nutrition and hydration for the patient in PVS. She has also been working hard with the dean to create a center for health and pharmaceutical law at Seton Hall. Since the inception of Medicare Part D, the landscape of "healthlaw" has changed dramatically, more clearly bringing the pharma and medical device industries within our ambit, well beyond FDA regulation.

## Margaret Gilhooley, Professor of Law

- She wrote an article on Drug Safety Reform After Vioxx, which is available on [ssrn.com](http://ssrn.com) and which will be published in the Seton Hall Law Review. She will also be speaking about Drug Safety Reform at a symposium at Seton Hall on Feb. 16, 2007.

## Louise G. Trubek, Clinical Professor of law, University of Wisconsin Law School

- New Governance and Soft law in Health Care Reform*, IND. HEALTH L. REV., 2006
- New Governance Practices in US Health Care* in Law and New Approaches to Governance in the European Union and the United States edited by de Burca and Scott, Hart Publishing 2006
- Forthcoming publication: co-editing special issue in *Regulation and Governance of Healthcare: Alternative Practices, Theories and Visions* in the new journal Regulation and Governance, forthcoming 2008.

## Elizabeth A. Weeks, Associate Professor, University of Kansas School of Law

- University of Kansas School of Law is happy to welcome Gail Agrawal, as Dean of the University of Kansas School of Law.
- In November 2006, University of Kansas School of Law hosted its annual Kansas Law Review, focusing on *The Massachusetts Plan and the Future of Universal Coverage*, featuring over a dozen insightful presentations by Tim Jost, David Hyman, Sidney Watson, Joan Krause, Peter Jacobson, Bill Sage, and Christie Hager, among others. The papers will be published in the Kansas Law Review this spring.
- Elizabeth Weeks has two articles just out in December 2006: *After the Catastrophe: Disaster Relief for Hospitals*, in the North Carolina Law Review, and *Lessons from Katrina: Response, Recovery, and the Public Health Infrastructure*, in the DePaul Journal of Health Care Law, from last spring's Symposium on "Shaping a New Direction for Law and Medicine: An International Debate on Culture, Disaster, Biotechnology & Public Health."
- This spring, Elizabeth Weeks will have two other pieces published: *Beyond Compensation: Using Torts to Promote Public Health*, her paper from last year's AALS annual meeting, which will appear in the Journal of Health Care Law & Policy, and *Gap-Filling, Risk-Pooling, and the "Connector": Private Market Solutions to Universal Coverage*, her contribution to the Kansas Law Review Massachusetts plan symposium.

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DePaul University College of Law  
Health Law Institute  
25 East Jackson Boulevard  
Chicago, IL 60604  
[www.law.depaul.edu/health](http://www.law.depaul.edu/health)

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The Ethical, Legal and Social Implications (ELSI) Program at the National Human Genome Research Institute (NHGRI) at the National Institutes of Health (NIH) supports research on the ethical, legal and social implications of genetic and genomic research. The ELSI Program encourages applications for research grants from health law professors and legal academicians in other relevant fields. For more information about the ELSI Program and current funding opportunities, see <http://www.genome.gov/10001618> or contact Jean E. McEwen, J.D., Ph.D. at [jm522n@nih.gov](mailto:jm522n@nih.gov), (301) 402-4997.

**AALS ANNOUNCEMENTS**

- Elizabeth Weeks has given several talks, including: AHLA Institute on Medicare and Medicaid Payment Issues in Baltimore in March 2006; AMA Organized Medical Staff Section, in Chicago in June 2006; "The Lawyer as First Responder: Legal Preparedness for Public Health Emergencies," at Washington University in Saint Louis, in June 2006; Midwestern Law & Economics Conference, which we hosted at University of Kansas, in October 2006, APHA Annual Meeting in Boston, in November 2006. This spring, she will speak at University of Kentucky, University of Iowa, and Saint Louis University's Health Law Symposium.
- Elizabeth Weeks is actively involved in the University of Kansas Ethics Club, an interdisciplinary, monthly discussion group, bringing together law, medicine, philosophy, and other disciplines for monthly discussions on bioethics. Growing out of those conversations, her current research involves the *Abigail Alliance* decision and the "right" to experimental medical treatment, and the decision's implications for public health, coverage and payment issues, and risk regulation.

**Mark E. Wojcik, Professor of Law, The John Marshall Law School**

- Mark Wojcik was reappointed to the American Bar Association's AIDS Coordinating Committee as a representative of the ABA Criminal Justice Section. The Committee's projects in the coming year will include a new emphasis on prison harm reduction programs relating to public health. Those interested in the ABA's work on AIDS can visit the Coordinating Committee's webpage at [www.abanet.org/AIDS/](http://www.abanet.org/AIDS/). He was also named as the Publications Officer for the ABA Section of International Law, and welcomes book proposals on international health law topics from members of the AALS Health Law Section.