WIDENER UNIVERSITY LAW CENTER

FORUM

Health Law Institute: news, insights, and discussion

September 2009

Letter from Director Culhane

(Full text available at http://blogs.law.widener.edu/healthlaw)

Inside this issue:

Newman: Bloodless

Surgery

0 7	
Fichter: Healthcare Reform	2
Starr to deliver Raynes McCarty Lecture	4
Summer Institute in Lausanne	4

Health Law Moot Court 8 Goes to Nationals

Debate on Reform 9

End of Life Symposium

nce again, I have the great pleasure of bringing the community of health law scholars and practitioners up to date on what's been going on during the past year at the Widener University School of Law's Health Law Institute, and on our plans for the 2009-2010 academic year. This past year has been path-breaking for us, and the initiatives we've put into place are positioned to take flight during the next year and beyond. We've been around for twenty years now (!), and look forward to bigger and better things for the next twenty and beyond.

From a personal perspective, I'm happiest about our new Medical-Legal Partnership clinic, which we're just ramping up. As some readers doubtless know, medical-legal partnerships have been around for several years now, but, somehow, there wasn't yet one in the Philadelphia metropolitan area until now. Supported by two generous grants (one to fund two student fellows!), Widener is currently working with the Crozer-Chester Medical Center in Chester, Pennsylvania, to put into place a clinic that will direct medical patients to legal services they need, but are likely to be unaware of. We are very fortunate to have the services of two of our best adjunct health law professors, Dan Atkins and MaryBeth Musumeci, in setting up the clinic and for assisting us in putting together the successful grant applications. We are of course grateful to both of our grantors, the Barra Foundation, and the Ethel Sergeant Clark Smith Foundation.

We have also reached agreement

(Continued on page 3)

NEW PROGRAMS AND INITIATIVES

- PHARMACEUTICAL COMPLIANCE PROGRAM
 - MEDICAL-LEGAL PARTNERSHIP
 - LEGISLATIVE INTERNSHIP
 - GLOBAL OUTREACH

Pharmaceutical Compliance Program Planned

The first of what Executive Director Andrew Fichter hopes to be a continuing series of regulatory compliance training programs took place in March of 2008. The 4-day program focused on issues confronting hospitals and featured presentations by experts including U.S. Attor-

(Continued on page 9)

20th Anniversary

WIDENER HEALTH LAW INSTITUTE

1989—2009

Widener proudly celebrates the 20th anniversary of the founding of the Health Law Institute, and the 10th anniversary of its Master of Laws and Doctor of Laws degree programs in health law. MJ and DL alumni are invited to a reunion reception on Nov. 12, 2009. See calendar.

Will There Be Blood?



21st Century Medical, Legal and Bioethical Issues in Blood Usage and Management

By Andrew Newman, M.D., J.D., LL.M.

Let me introduce my subject with two episodes involving surgery and Jehovah's Witnesses (JWs). The first involved a young adolescent with chronic brain damage as well as significant liver dysfunction. This patient required a liver transplant, but given his severe brain damage, there was no way he could appropriately consent to such a procedure. The matter was further complicated by the fact that the parents were JWs who as such objected to the blood transfusions that would likely be needed during the

procedure. The resulting impasse between the parents and the medical staff was finally circumvented when the parents discovered another hospital that practiced "bloodless surgery" and the child was transferred to that institution.

The second episode concerns a recent Irish case involving a pregnant woman carrying twins. The twins themselves had significant blood abnormalities and required transfusion. The physicians favored actual blood transfusion in utero, but the parents refused. Both of the foregoing episodes involve parental decision-making that is arguably in conflict with the interest of the child, and the latter episode further involves the health of the mother as well.

Jehovah's Witnesses

Starting as a Bible study group in 1876, the Jehovah's Witnesses took that name in the middle 1930's. However, it was not until 1945 that JWs adopted a ban on the incorporation of blood and blood products as a tenet of faith. JWs believe that taking blood into the body, knowingly or not, compromises the individual's relationship with God, puts the prospect of eternal life in jeopardy, and warrants dismembership, a form of shunning. The relator of a case reported in The Oncologist in 2002 notes with regard to a dedicated JW willing to accept death rather than violate this tenet, "How she lived was more important than whether she lived."

(Continued on page 5)

Discussing Healthcare Reform: The Socratic Method

Andrew Fichter, Executive Director

GORAS: Is it true, Socrates, that a good person must support the right of all to healthcare?

SOCRATES: Agoras, thou art without doubt a good man, so tell me how thou would answer thy question?

AGORAS: With uncertainty and concern. For if all are to have health-care without increasing or degrading the existing supply of medical resources, will not then I and my family receive less care than we now do?

SOCRATES: Then must you ask yourself, how comfortable are you receiving care if it means others will not?

AGORAS: Uncomfortable, to be sure, Esteemed Teacher. But are there not rationales that would let me continue to think myself good, even if others must do without?

SOCRATES: Good to yourself and your family, you mean?

AGORAS: I was hoping to lay

claim on a somewhat more expansive virtue. Look, I don't mind running the second mile for Widows and Orpheus, but it is quite another thing to do so for Shiftlus and Indolentus. The latter has done nothing to provide for himself and his family; the former has undoubtedly found some way to game the system and take a ride on my tax drachma. And worse yet, there is Illegal Alienus. Why should I pick up the check for him and his family?

SOCRATES: So you're saying moral-(Continued on page 7)

Letter from the Director (continued)

(Continued from page 1)

with leaders of the Delaware House of Representatives to create an internship with that body, and are busy finalizing the details for this important partnership. Beginning immediately, we will be seeking a highly qualified student to work with the Delaware House of Representative, principally on issues of health care policy and legislation. We expect that this will be the start of a broadly fruitful collaboration.

On a related note, we're excited about the collaboration between several institutional actors here in Delaware and our own LL.M. student Christopher Richins. Widener alumna and former Delaware Superior Court Judge Susan DelPesco, who now directs the Division of Long Term Care Residents Protection of the Delaware Department of Health and Social Services, approached the law school seeking a student collaborator on a project that will study the Model Power of Attorney promulgated in 2006 by the Uniform Laws Commission. The plan is to revise that law as needed to adapt to Delaware, research statutes in other states, and put together a legislative package by the end of the year. Richins, who already has an impressive track record of publications, is the ideal student candidate for this collaboration.

Our Health Law Research Fellowship enters its second year, with a decision on this year's fellow likely to have been

made before you even read this. Last year's fellow, Oluyomi Farapusi, who held a Ph.D. in Public Health and an M.D., did substantial research and thinking about ways to expand the reach and influence of our Health Law Institute, and contributed valuable insights to a paper on the comparative law of informed consent soon to be submitted for publication.

As the calendar published elsewhere in this *Forum* indicates, we already have a big helping of events on tap for the justcommenced academic year; more are always being added, so please check in with us from time to time. I just want to highlight three of these events here. First, there's one of our signature events: the annual Raynes McCarty Distinguished Lecture in Health Law will this year be delivered by Paul E. Starr, Professor of Sociology and Public Affairs at Princeton University, whose groundbreaking, Pulitzer Prizewinning book, The Social Transformation of American Medicine has influenced health care law, policy, and reform efforts for more than twentyfive years. If you're in the Philadelphia area on November 19, let us know and we'll save a seat for you at the Union League for the noon lunch and lecture. As always, we're indebted to Raynes McCarty for their continued generosity in sponsoring the event, the speaker, and the lunch.

In December, several health law faculty and Dean Linda Ammons will travel to Chongqing, China, to participate in a conference on a variety of health law topics with faculty from Southwest University. We have an on-going, collaborative relationship with the university, and are looking forward to sharing insights on topics ranging from global public health to bioethics.

Then there's this year's health law symposium, Health Law and the Elderly: Managing Risk at the End of Life. Professor Thad Pope, whose manifold achievements are chronicled in greater detail below, will be chairing the event, scheduled for Friday, March 26, 2010. This year's conference is also the annual Widener Law Review symposium, with results to be published in an upcoming volume.

With our graduate health law programs having by now grown to accommodate more than fifty full and parttime students, with our student-run Health Law Society planning two career days and writing their own, twice-yearly Colloquium on health law issues, and with our constantly evolving plate of health-law related courses, we remind ourselves of the centrality of teaching and mentoring, both in and out of the classroom. Our students inspire us, and so does...our faculty.

Now to the health law faculty's daunting accomplishments over the past year.

(Continued on page 10)



Professor John
Culhane blogs
regularly at
wordinedgwise.org.



Paul E. Starr, Professor of Sociology and Stuart Professor of Communications and Public Affairs, Princeton University

Paul Starr to Give Annual Raynes McCarty Lecture

the 2009 Raynes McCarty Distin- reform looms once again, with interguished Lecture in Health Law on views on National Public Radio's November 19 at locations in Phila- "On the Media" and WNYC's "The delphia and Wilmington. The title of Takeaway", among others. Together his lecture is Health Care Reform: with Robert Kuttner and Robert The Long View.

landmark contributions to our understanding of the American healthcare system since the publication of Pulitzer Prize-winning The Social tive liberal politics". Transformation of American Medicine in 1983. In 1992 he published sents the Raynes McCarty Lecture critical assessment of our continuing Raynes McCarty, the Philadelphiahealthcare reform crisis, followed by based trial and appellate law firm. numerous articles, concurrent and Lectures will be delivered twice on retrospective, dealing with Clinton- November 19, once at the Union era healthcare reform efforts.

Professor Starr has been a fre- mington campus. quent contributor to the media re-

Professor Paul Starr will deliver cently as the prospect of healthcare Reich, in 1990 he co-founded The Professor Starr has made many American Prospect, self-described as "an authoritative magazine of liberal ideas, committed to a just society, an enriched democracy, and effec-

The Health Law Institute pre-The Logic of Health-Care Reform, a annually through the sponsorship of League and once at Widener's Wil-

Summer Institute in Lausanne, Switzerland, Features Comparative Health Law

Institute Program in Lausanne in 2009, the Red Cross, and the World Trade to complement Widener's existing programs in Venice, Sydney and Nairobi. The Law School of the University of Lausanne hosted summer students drawn from both of Widener's campuses as well as from other US law schools. The Program featured courses in comparative health law, human rights and international trade law, with class visits to the World Health Organiza-

Widener initiated a new Summer tion, the International Committee of Organization.

> Program Director Andrew Fichter anticipates that WHO and other NGO internships will soon be available to interested law students. "The Lausanne Program will continue to focus on health law and human rights as we build on our relationships with Geneva-based organizations," according to Fichter.

Program Director Fichter anticipates that the WHO and other NGO internships will soon be available to interested law students.

Will There Be Blood?

(Continued from page 2)

Exceptions and Qualifications

heart/lung machine and dialysis, are treated similarly. Erythropoietin (EPO), a material used to stimulate the body to form more red cells, as well as certain types of "artificial blood products" including hemoglobin derived from humans, animals or artificially via the recombinant technology, as well as perfluorocarbons, chemical compound which can carry and release oxygen would generally not be deemed to violate the tenets of JWs. However, except for EPO, the so called artificial blood products are problematic with respect to FDA approval. Significant research continues in this area.

The No Blood Option

As of this writing there are approximately 150 programs throughout the country offering The incorporation of blood may options for non-blood managebe forbidden, but what is blood? ment and techniques. The author Advances in medical practice have recently spent a day visiting with complicated matters of faith. It and discussing these matters with seems clear that whole human the staff members of the Pennsylblood, plasma, platelets, red cells vania Hospital's bloodless surgery and white cells are universally unit. It has been in existence for proscribed, but there are re- some 21 years. Perhaps surpris- Techniques such as hypotensive corded instances of faithful JWs ingly, there are many people be- anesthesia used to decrease the accepting cow's blood in substitu- sides JWs who for non-religious amount of bleeding, meticulous tion for human blood. Another reasons prefer not to receive surgical planning and possible forbidden substance is preopera- blood, particularly the blood of embolization of bleeding vessels, tive donated autologous blood others. Some reasons for not as well as cell saver techniques, (blood that the individual patient wanting to use human blood retransfusing the patient's own has predonated for use at a later would include the possibility of blood (a matter of individual contime); but with respect to certain contracting HIV. This is not a science for JWs) are all available. other substances - intraoperative major problem in this country at It should also be noted that preopblood salvage, certain fractions of this time, but certainly in sub eratively, use of mini tubes of red and white blood cells, plate- Saharan Africa, it is a significant drawn blood for lab tests as well lets and plasma - the JW patient problem. There is also the fear of as preoperative iron and erythromay be free to make a personal transmitting diseases in donated poietin mentioned above to maxidecision of conscience. Generally blood such as Mad Cow and mize the patients own red cell use of hemoglobin, albumen, Creutzfeldt-Jacob disease. Also, count are also widely used. globulin and clotting factors is left the shelf life (refrigerated) of doto the JW patient to decide. Cer- nated blood is only 42 days. And tain technology, such as the allergic problems are always a possibility, even though rare.

> lead some to the conclusion that the best solution would be not to use human blood with its potenand complications and to rely on rather than the rarity". special anesthesia and surgical techniques which may significantly diminish blood loss during surgical procedures. A typical In a frequently cited Florida Sucase of what is sometimes re- preme Court case from 1989, ferred to as "bloodless surgery" is Public Health Trust of Dade discussed in a publication from County v. Norma Wons, the hosthe winter of 2008 from the Penn- pital sought a court order to give sylvania Hospital Center for

Bloodless Medicine and Surgery. Here the various techniques that were used to avoid any blood loss in a patient who was having a kidney removed are discussed. As the surgeons indicated, this can be the most benign of procedures where there is absolutely no blood loss, or in some cases it may be necessary to remediate a significant blood loss.

Dr. Edwin Deitch, in 2002, medical director of the University Center for Bloodless Surgery and Medicine and chairman of the The problems with blood have Department of Surgery at New Jersey Medical School, noting that bloodless procedures and techniques are being taught at medical tial problems and to try to stay schools today, observed, "in the away from the artificial blood next 10 to 20 years, I see bloodproducts with their many failures less practices becoming the norm,

Withholding Consent for Self and Others

(Continued on page 6)

"Bloodless surgery" can involve techniques such as hypotensive anesthesia used to decrease the amount of bleeding, meticulous surgical planning and embolization of bleeding vessels, as well as retransfusing the patient's own blood

Will There Be Blood?

(Continued from page 5)



Dr. Newman teaches Religion, Law and Medicine and Children's Health Law, among other courses, at Widener Law School. He received an M.D. from Temple University School of Medicine, a J.D. and LL.M in Health Law from Widener. He holds Masters Degrees in Humanities and Education (History) from Arcadia University and is a Fellow of the American Academy of Orthopedic Surgeons among other distinguished professional societies.

lifesaving blood transfusions to Ms. Wons, a deeply religious and practicing Jehovah's Witness. The court noted that Ms. Wons was the mother of two minor children and her refusal to accept the blood transfusions might well mean that the patient would die leaving the two minor children without a mother. The hospital asserted that the children's right to be raised by two parents was sufficient to trigger a compelling state interest protection of third parties and therefore Ms. Wons could be forced to take the blood transfusions. The court indicated that this was not sufficient to override the mother's constitutional privacy right to act in accordance with her own beliefs.

The Wons case by no means settled all the legal and ethical issues surrounding decisions affecting third parties. For one thing, the law continues to develop in the area of independent fetal rights, and there is legal precedent for overriding parental objection to blood products to save a fetus. Such circumstances are often complicated, however, by legal and ethical questions such as, how long to wait before seeking a court order, and how long to suspend the preferred medical treatment in deference to parental convictions.

In a case involving a neonate

with a significant infection and difficulty breathing, the next appropriate clinical steps were transfusion and the use of a technique known as extracorporeal membrane oxygenation, which is a short term substitute for failed lung function in cases where the baby has not responded to ventilatory assistance. In this technique, exogenous blood is required to prime the ECMO pump. Both the blood transfusion and the priming of the pump with blood were refused by the neonate's parents, both IWs. The assessment of the neonatologist was that within the next few hours, if the child deteriorated, the refused procedures would be necessary to save the life of the child, whereas the child had a 95% chance of survival with the use of the transfusion and the ECMO technique.

The author of an article on the case in Ethics and Medicine (2002) noted the following conclusions: 1) it is ethically permissible to continue current measures and to postpone a transfusion of ECMO, while an attempt to honor the parents objections. However, seeking a court order should not be postponed beyond a period of irretrievability; 2) before that critical point is reached, the appropriate judge should be approached, and he or she should be fully informed of the risks and benefits of both transfusion and ECMO.

The author of the article further notes that if the rescue therapy in question has only a 5% chance of success, it might be ethically preferable to honor the religious views of the parents. This introduces the problem of assessing and balancing risk into the calculation, as in the well known Delaware Supreme Court case, Newmark (Here, the court ruled for objecting parents where chances of survival were less than 40%). To the extent that legal analysis may be informed by ethics, the prospect of any bright line appears to be fading, and it can only be hoped that medical technologies such as bloodless surgery will resolve more of these cases.

Dr. Newman is currently working on a dissertation on the subject of this article as a candidate for the Doctor of Juridical Science degree at Widener Law.

(Continued from page 2)

ity permits us to provide health care to those with merit and deny it to those without? But before you respond, good Agoras, let us look to thy premise. Dost thou really think that Shiftlus, Indoltenus and Illegal Alienus are not all receiving health care as it is, with or without merit? And perhaps at more cost to you than if they had been as prudent and worthy as you? Or that if they are not receiving care, that they nonetheless burden you with the consequences — their contagions, the cost of their infirmities made more acute and chronic through neglect?

AGORAS: I see where you are going, Sensi. You are implying that it is in my self-interest to pay for their care.

SOCRATES: Verily, self-interest hath no bounds.

AGORAS: I gotta tell you, O Wise Latina, I am rapidly losing interest in being a good person.

SOCRATES: Will you choose to be a bad one then?

AGORAS: Wait. I'm not sure we're there yet. I think I can still reconcile morality with my aversion to carrying water for the likes of Shiftlus, Indolentus and Illegal Alienus. There's more than one way to skin a Snuffleupagus, as the saying goes.

SOCRATES: I'm all ears.

AGORAS: I was just going to say, Yoda. Let's "big picture" this thing, shall we? Maybe the problem is not access but cost. Maybe you're right that we need to cover everyone, but why give everyone the same level of coverage? Why should I make payments on Cadillacus' chariot and drive a mere Snuffleupagus myself, as the saying goes?

SOCRATES: What manner of care would you withhold from others?

AGORAS: Oh oh. I don't like the direction this seems to be taking. I don't suppose you would settle for just enough to keep them alive.

SOCRATES: Would you deny them diagnostic technology because of the expense? Would you provide liver and kidney transplants to the highest bidder? Would it not demoralize our medical professional colleagues to....

AGORAS: Stop. I get it. Hell, it's probably more expensive in the long run to short-change them with health care anyway.

SOCRATES: Verily, self-interest hath no....

AGORAS: Wait, I'm not through yet. All we really need to do to fix this problem is free up the marketplace to do its thing, and I can hold onto my claim on morality...sort of. If we control the cost of healthcare, we can provide it to more people, right? Let the market control the cost. Let the market be the arbiter of value. The problem is that the healthcare economy as we know it is not consumerdriven. Consumers don't care what their doctors order up if insurance pays for it. The Snuffleupagus who has no skin in the game cares not for cost, as the saying goes. Remove tax subsidies, raise deductibles and co-pays, kill regulation, unleash competition and healthcare will come within the reach of all. Listen, Sportacus, markets are efficient. Greed, for lack of a better word, is good!

SOCRATES: Trust me, we're a long way from the good now, Gordo.

AGORAS: What, that doesn't work for you? What... don't you believe in free markets?

SOCRATES: I'm thinking about the patient as a consumer. When was the last time you, for instance, exercised any meaningful choice regarding your health care? Do you question your doctor's diagnosis? Her treatment plan? Will you even know if the treatment was successful, when she says medicine can do no more? Does your employer offer you more than one or two insurance plans? Has your employer negotiated any of them? In whose interest?

AGORAS: I'm just spit-balling here, but I'm guessing you don't think patients are the kind of consumers that make markets efficient.

SOCRATES: Do you think, dear Agoras, that the costs that constitute the greatest portion of the national healthcare budget are those that consumers could impact?

AGORAS: What do you mean?

SOCRATES: Do co-pays and deductibles continue to influence a patient's choice after they have been satisfied and hospital and specialist mega-bills kick in, and is it not the latter with which we must be concerned if we wish to control costs?

AGORAS: So, bottom line, how would you answer my question: To be a good person, do I need to support the idea that access to healthcare is a universal right?

SOCRATES: I might ask the question a different way.

AGORAS: But not *answer* it. Why am I not surprised? So how would you ask it?

SOCRATES: How about, "Is it good that all be well-cared for?"

AGORAS: That's easy.

SOCRATES: And, "Should everyone strive to advance the good?"

AGORAS: I hear there's a hemlock latte with your name on it down at Astrobucks, by the way. Don't miss it.



Widener's Moot Court Team To Compete at Nationals

This November 6th and 7th, Widener will be returning to compete in the 18th Annual National Health Law Moot Court Competition. The competition, co-sponsored by the American College of Legal Medicine and Southern Illinois University, draws around thirty teams, each year (including from most law schools, like Widener, with nationally-ranked health law programs), to brief and argue a cutting-edge health law issue before the hypothetical U.S. Supreme Court. Previous issues have included FDA preemption of state tort claims, ADA constrains on Medicaid coverage, and the constitutionality of conscientious objection and mandatory HIV testing statutes.



Kateri Conahey

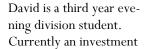
This year's team is especially wellqualified. It is comprised of Kateri Conahey, Nathalie C. Hackett, and David is a third year law student. She graduated from California State University at Northridge with a Bachelor of Arts in History. Prior to law school she enjoyed a career at a large nonprofit healthcare cor-

poration. She spent the 2009 summer interning at the Dela-

ware Medicaid Fraud Control Unit and plans to pursue a career in health law.

Nathalie is a third year extended division law student. She completed her undergraduate studies in three years at Monmouth University where she earned a B.S. in Businesses Administration in 2003. At that time, Nathalie began her career in insurance as a personal injury claims adjuster for Prudential Property and Casualty Insurance Company, (now High Point Insurance). From 2005 to 2007, Nathalie worked as an Associate Business Analyst with Liberty Mutual. At Widener, Nathalie was selected

as Executive of External Affairs for the Black Law Students Association, and was appointed to the Executive Board of the Moot Court Honor Society. She plans to practice in the area of corporate law, specializing in civil litigation.





Nathalie C. Hackett

professional with Vanguard, he decided to go to law school to work in the health law field. With rising costs of malpractice insurance across the country, especially in Pennsylvania, good doctors are leaving the state or not practicing in their specialty. These doctors need independent representation outside that of their insurance companies, E. Wenger III. Kateri who would rather settle than spend litigation costs. Doctors should have access to affordable independent counsel aligned with the doctors' interest, not the bottom line of the insurance companies. David hopes to help these doctors and in turn help the rest of us, the patients, to lower our overall health care costs.



David E. Wenger III

Professor Thaddeus Pope, who teaches the foundational courses Health Law I and II as well as End-of Life Decisions, will coach the team with the assistance of Professor Leslie Johnson. Professor Pope authored last year's problem and bench brief, and. judged the final round of

the competition with two federal judges. His problem will be published in the December 2009 issue of the Journal of Legal Medicine.

Programs and Initiatives

(Continued from page 1)

neys, hospital counsel, compliance officers, physicians and law professors. Topics ranged from fraud and abuse regulation to compliance program design and management.

The 2010 program will focus on pharmaceutical industry issues including those in clinical research, product development, sales and marketing, as well as compliance program design and management. The program is tentatively scheduled for January 22 - 23 and March 1-2.

Medical Legal Partnership

Widener is working with the Crozer-Chester Medical Center to put into place a clinic that will direct medical patients to needed legal services . Grant support was provided by the Barra Foundation, and the Ethel Sergeant Clark Smith Foundation. The clinic will be staffed by Adjunct Professors Dan Atkins and Mary Beth Musumeci.

Legislative Internship

We are proceeding under an arrangement with the Delaware House of Representatives to offer our students a legislative internship opportunity. See the description of this initiative in the Director's Letter (page 1). Widener law students already serve as interns in the law departments of area hospitals, pharmaceutical companies, law enforcement agencies and non-profit research organizations.

Global Outreach

In addition to the health law component of our Summer Institute in Lausanne (see p. 4), we are developing global internships in cooperation with the World Health Organization and other NGOs. Watch our website for further news in this area.

In December, several health law faculty will travel to Chongqing, China, to participate in a conference with faculty from Southwest University.

Healthcare Reform Debate

On Tuesday, October 6, Widener Law will host a debate on the proposed health law reforms being discussed in Congress. The debate will be moderated by Professor Leslie Johnson. On the left will be two students and Distinguished Professor, Dr. Robert Justin Lipkin, Esq. Ph.D., and on the right will be two students and Associate Professor, Dr. Thaddeus M. Pope, Esq. Ph.D. The event will not be public.

This debate is co-sponsored by the Student Bar Association, the Democratic Law Caucus, the Republican Law Caucus, and the Health Law Society, all student-run organizations. The event will be video recorded and covered by the Law School's web master for posting on its website.

Damiano Presley del Pino President, Military Law Society President, American Association for Justice (Widener Chapter)

Widener Law Review's Annual Symposium to Focus on End of Life Planning

Each year, the Law School, in cooperation with the Widener Law Review, sponsors symposia bringing together experts to speak on various facets of timely legal issues. The symposium planned for March 26, 2010, will focus on end of life legal planning. Local and national experts will address topics such as: advance care planning, drug laws with regard to palliative care, determining capacity, guardianships, hospice coverage under Medicare, and assistance in dying.

Among the experts scheduled to present are Charles Sabatino, J.D., Assistant Director of the ABA Commission on Legal Problems of the Elderly; Timothy Quill, M.D., author of *Caring for Patients at the End of Life* (Oxford 2001) and Dr. Patricia Bomba, Excellus V.P. and Medical Director, Geriat-

rics, representing New York's Medical Orders for Life-Sustaining Treatments (MOLST) Program.

The expert presentations are intended to inspire articles for publication in a subsequent Law Review volume. Continuing Legal Education (CLE) credits are available for attorneys attending the symposium.

The symposium will be of interest and value to elder law attorneys, health law attorneys, physicians, hospital administrators, hospital ethics committee members, nurses, social workers, other health professionals, health policy organizations and individuals, and academics involved in these disciplines.

Letter from the Director

(Continued from page 3)

Professor Jean Eggen's most recent publications are detailed in the full-text version of this letter, to be found on our new blog at http://blogs.law.widener.edu/healthlaw. Last fall, Jean lectured on "Mass Tort Litigation: Procedural Mechanisms in the American Judicial System" to the Taiwanese judicial delegation visiting Widener University School of Law. Jean was recently named Vice President of Artistic Development and a member of the Board of Directors at the Wilmington Drama League, an all-volunteer community theater in Wilmington. In March, 2009, she directed Noel Coward's "Private Lives," also at the Drama League.

Professor Tom Reed continues to direct our Veterans Law Clinic, which has grown to three offices in Delaware and Pennsylvania. In recognition of his many years of service to our nation's veterans and for his many other scholarly and teaching accomplishments, Tom was named the

first Taishoff Professor of Law in

December of 2008. This honor was part of the creation of the new Taishoff Advocacy, Technology, and Public Service Institute.

Distinguished Visiting Professor of Law Michele Forzley continues her tireless work. In April, she represented the American Bar Association World Justice Project at the triannual meeting of the World Federation of Public Health Associations in Istanbul, and made two presentations on the rule of law and public health.

Michele is now completing an online training on rule of law for public health practitioners to be aired soon for members of

In August, Michele delivered a lecture to

Law. She also recently made a standingroom-only presentation to the World Health Organization Staff in Geneva on Health Governance and the Law.

If that's not enough, Michele has just finished the draft of her book, WHAT PUBLIC HEALTH PRACTITIONERS NEED TO KNOW ABOUT TRADE." The book, intended as a primer with an on-line component for the Global Health Council, is slated for release later this fall.

As for the ever-busy Thad Pope: In addition to his central role in the upcoming symposium, he is also coaching a threestudent team that will complete at the 18th Annual National Health Law Moot Court Competition. This year's problem concerns EMTALA and the 11th Amendment. Thad wrote last year's problem and served as a judge in the final round.

the USAID staff on Health Systems and the 003849-08T2 (N.J. Super. A.D. Sept. 10, 2009). He peer-reviewed articles for AHLA's Journal of Health & Life Sciences Law, the Journal of Law, Medicine, and Ethics, the South Carolina Law Review, and the Wellcome Trust. This past year, in addition to regularly posting to his Medical Futility Blog, Thad has published a number of articles this past year on end-oflife law issues and on healthcare ethics committees. See our new blog for details.

> Nick Mirkay, who specializes in taxation of non-profits, is at work on two articles, one of which deals with California's Proposition 8 and tax-exempt organizations. Nick also serves on the Planning Committee of the Delaware Tax Institute which held its event in January 2009, and will be held in November this year. He spoke at the January event on the tax treatment of debt

> > In addition, Nick has continued his substantial pro bono and community service work. Over the summer, he assisted the Hospice & Palliative Care Network of Delaware with

their federal income tax exemption application. He also advised the Delaware HIV Consortium on tax-exempt compliance and restructuring issues relevant. Nick also continues to serve as Chair of the Food Bank of Delaware's Board of Directors. The Food Bank provides a multitude of child and adult feeding programs and food distribution programs to the hungry and impoverished of Delaware.

Andy Fichter, Director of Institutes, continues to work on revamping our M.J. program and curriculum to serve the needs of our students more effectively. This past year saw the publication of his article, The Law of Doctoring, in HEALTH

(Continued on page 11)

Andy Fichter spearheads our new compliance program, which will focus on pharmaceutical industry issues next spring.

> Thad remains active both on the Christiana Care Health System ethics committee, on the New Jersey Regional Long Term Care ethics committee, and on the Delaware MOLST task force. In September 2008, he was invited to testify before the President's Commission on Bioethics. This past year, he has presented ethics rounds at the University of New Mexico, the University of Manitoba, and the Medical College of Wisconsin. And he has made other presentations at: ASLME, ASBH, AARP, Campbell Law School, and the Maryland Healthcare Ethics Committee Network, among other places.

Thad recently filed an amicus curiae brief in the high-profile medical futility case, Betancourt v. Trinitas Hospital, No. A-

Letter From the Director

(Continued from page 10)

MATRIX. Andy also spearheads our compliance program, which kicked off last year with a session on hospital law issues. In Spring, 2010, the program will focus on the complex area of pharmaceuticals.

Andy, who also serves as an AHLA reporter on health reform, directed our study abroad program in Lausanne, Switzerland this past summer. He taught a course on comparative health law, and is currently working with Michele Forzley on a student internship with the WHO.

Finally, Andy is working on kicking off the Health Law Institute's blog, Health Law Pulse, which will range across the broad landscape of health law and policy. Andy will doubtless be looking for guest bloggers from among the legal and practice community, so consider yourselves invited.

Our resident food and drug law specialist, Adjunct Professor Roseann B. Termini, has a slate of accomplishments that need celebrating. Roseann teaches seminars on I just returned from presenting at Life Science Law, and the FDA Law, and is a pioneer among all of our faculty in offering substantial portions of her courses on-line. Roseann is a prolific author and a much-sought-after expert in her area of expertise. Some recent publications are listed on our blog.

Among Roseann's notable speaking engagements was a presentation at the 52nd Annual Food and Drug Law Institute's Educational Conference in Washington DC. American Beauty-Current Effectiveness of Cosmetic Safety and Future Direc-

tions focused on safety issues pertaining to cosmetic regulation by the United States federal Food and Drug Administration. At the 15th Annual Health Law Institute for the Pennsylvania Bar Institute, Roseann presented: We PREEMPT this Regularly Scheduled Program.... Duty to Warn and Preemption: Wyeth v. Levine and Riegel v. Medtronic- A Comparative Analysis under the Federal Food, Drug and Cosmetic Act, in addition to other topical presentations listed on the blog.

appointed to serve as Vice Chair of the Food and Drug Law Institute Writing Awards committee.

I've been busy, too, although I can hardly keep up with my colleagues. My article, Marriage Equality? First, Justify Marriage (If You Can), recently appeared in the first issue of the Drexel Law Review; it grew out of a presentation I gave to the ASLME Health Law Teachers conference last June. Other pieces are listed in the full-text version of this letter on the blog.

the annual Lavender Law conference in Brooklyn, NY, where my panel discussed Tort Law and its effects on Same-Sex Couples (my topic was wrongful death and loss of consortium). Upcoming presentations include the October conference at Boston University mentioned above; a local conference on start up grants in late October; a November 5 panel discussion on domestic violence sponsored by anti-violence groups and coalitions from Delaware and California; and the January AALS Annual Meeting, where I'll be on the panel entitled

Money, Intimacy, Law and the Contours of Inequality.

I'm close to finishing my years-long project with the National Library of Medicine on the Public Health Law Information Project, which used Delaware law as a pilot state to investigate the feasibility of creating a public health law-related database for use by public health professionals and the general public. Representing Widener and the Health Law Institute as Project Director from our end, I'm currently at work on a "white paper" On a final note, Roseann was just that discusses the many lessons we learned during the project, and that I hope will be valuable to those considering such a project in the future.

> I've also been on NPR several times (including the hour-long programs Radio Times (Philadelphia) and Midday (Baltimore), and interviewed and/ or quoted by the Weekly Observer (UK) and the Philadelphia Inquirer. But most exciting to me has been my blog, wordinedgewise.org, which is a black hole that I fill almost every day. I've been thrilled by the immediacy of the responses, and by the chance to participate in discussions on a broad range of topics, including health care and reform, abortion rights and ethics, LGBT rights, racism....I could go on, but this letter is way too long already. Thanks for reading, and a great 2009-2010 to all!

Culhane has been on NPR several times (including the hour-long programs Radio Times (Philadelphia) and Midday (Baltimore), and he has been interviewed and/or quoted by the Weekly Observer (UK) and the Philadelphia Inquirer.

John Culhane, Director



Widener University School of Law



Upcoming Events

10/6	Healthcare Reform Debate (Vale, 4:30)	1/22- 1/23 3/1-2	Regulatory Compliance Program: Pharma	6/7 -	Summer Institute, Lausanne, Switzerland
11/12	MJ/DL alumni reception (Barristers, 6:00 – 8:00)	3/18	Open House for MJ in Health Law applicants (6:00)		
11/19	Raynes McCarty Lecture: Professor Paul Starr, Health Care Reform: The Long View	3/26	Symposium: Health Law for the Elderly		

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Page 12

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