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Greetings to all!

John Culhane Director, Health Law Institute

I hope all of you had a productive and fun summer. The past year was our most successful and exciting yet, and I'm confident that this coming year will be even better. Why?

Our medical-legal partnership clinic, the first in the greater Philadelphia area, has already helped more than 100 people with a host of different legal problems. Kudos and heartfelt thanks to my colleague Bob Hayman and to Dan Atkins, a long-time



Shannon Mace and John Culhane

Widener adjunct professor and committed public interest lawyer for their efforts in launching this project, and to Laura Handel—a Widener graduate who has devoted countless hours to the assistance of these needy clients.

A fond farewell to Tom Reed, a longtime colleague and founder and Director of the Veterans Law Clinic. Under Tom's leadership, the Clinic has engaged in tireless advocacy for veterans. The clinic now has offices in Delaware and Pennsylvania, and has gained well-deserved national prominence. Tom is officially retiring from the full-time faculty after thirty years, but will continue as Taishoff Professor of Law for the 2010–2011 academic year.

Stepping into Tom's role as Director of the Veterans Law Clinic will be Justin Holbrook. Professor Holbrook did his undergraduate work at Georgetown University, and received his JD from Harvard Law School, Most recently, Justin served six years as an active duty judge advocate in the United States Air Force (2004–2010), litigating criminal cases and advising commanders on operations law, fiscal law, military justice, foreign claims and civil law. He deployed twice in support of Operation Enduring Freedom and Operation Iraqi Freedom, and served overseas as Chief of Military Justice and Chief of International Law at Kadena Air Base, Okinawa, Japan. Professor Holbrook is admitted to practice in Virginia and Georgia. We at the Health Law Institute are delighted to welcome Justin to our ranks.

Among the many other highlights from this past year was the law review symposium entitled Health Law and the Elderly: Managing Risk at the End of Life, chaired by Thaddeus Pope. This cross-disciplinary effort drew a huge audience of legal practitioners and academics, as well as doctors, nurses, and health care administrators.

Last November, the annual Raynes McCarty lecture featured Princeton professor Paul Starr, a recognized national expert on health care reform

Widener Law
Health Law Institute

and delivery. Another exciting accomplishment was the establishment of our Global Health Law Externships program.

We now have nine graduate SJD candidates, as well as several LL.M. and D.L. students. Our M.J. program has evolved to be more responsive to the changing needs of the students: in addition to our traditional program that imparts health-law concentrated legal knowledge to those in the health care professions who would benefit from it, we have added tracks in compliance (with certification) and legal nurse consultant. We are also transitioning to a program that will offer on-line options for students preferring to do their work from a remote location.

Most recently, Michele Forzley was appointed Vice Chair of the Interna -

tional Health and Life Sciences
Committee of the American Bar
Association. She is also the primary
investigator of a grant-funded project from the U.S. Patent and Trade
Office, to study the problem of
counterfeit goods and to develop a
teaching curriculum Here are a few
more highlights from Michele's
work over the past year:

- Authored a book on Trade and Health to be published by Global Health Council
- Appointed as international intellectual legal counsel to the
 Partnership for Supply Chain
 Management under the President's
 Emergency Plan for AIDS Relief
 (PEPFAR) program
- Legal Advisor to World Health
 Organization on definition of
 counterfeit medicine definition—

- international comparative study
- Produced online training tool for World Bank—Business Skills for Health professionals engaged in Pharmaceuticals Procurement
- Presenter US Library of Congress Global Legal Information Network "Health Legal Information" September 2009

In addition, last December Michele and Thad (along with Dean Linda Ammons) traveled to Chongqing, China to lead a health law conference at Southwest University. Their presentations were very well received, and cemented our already-strong collaboration with Southwest; they're to come to Wilmington in the near future to present and learn from us. When that happens, we'll send word to the entire health law community.



(Left to right, standing) Dean Linda Ammons, Nick Markey, Susan Goldberg, Andy Fichter, Tom Reed, John Culhane (Seated) Eileen Grena, Thad Pope

Upcoming Events 2010–2011 Featuring Widener School of Law Faculty

10/10/10

Legal Update 1010: The Top Ten Legal Developments in Bioethics, AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES 12TH ANNUAL MEETING, San Diego, CA

10/21/10

Law & Bioethics Pre-Conference Workshop, AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES 12TH ANNUAL MEETING, San Diego, CA

10/22/10

Bioethics from the Bench, AMERICAN SOCIETY OF BIOETHICS AND HUMANITIES 12TH ANNUAL MEETING, San Diego, CA

11/5/10

Practical and Legal Obstacles to Implementing Non-Beneficial Treatment Policies, MERITER HOSPITAL, Madison WI

11/11-14/10

Allowing Death Can Be Love's Demand, 2010 FILM AND HISTORY CONFERENCE, Milwaukee WI

11/19/10

New York's 2010 Family Health Care Decisions Act and Its Impact at the Hospitalized Patient's Bedside, ALDEN MARCH BIOETHICS INSTITUTE, Albany NY

12/5/10

Advance Directives, ETHICS ROUNDS, CHRISTIANA CARE HEALTH SYSTEM, Newark DE

(Continued on next page)

Thad Pope, in addition to highlighting our conference in China and co-chairing our law review symposium, continues his breathless pace of writing, speaking, and generally serving as a leading voice on end-of-life legal and ethical issues. For a list of his publications, go to law.widener.edu/ Academics/Faculty/ProfilesDe/Pope ThaddeusMason.aspx. For presentations, go to www.thaddeuspope.com/ presentations.html.

Jean Eggen's long-term interest in toxic torts has just resulted in the publication of the fourth edition of *Toxic Torts in a Nutshell* (Thomson-West 4th ed. 2010). For a list of her recent publications, go to law.widener.edu/ Academics/Faculty/ProfilesDe/ EggenJeanMacchiaroli.aspx In addition, Jean and a law student, Eric Laury, have launched the first-of-its-kind blog on Nanotechnology and the Law:

http://blogs.law.widener.edu/nanolaw/

Nick Mirkay, who specializes in taxation issues relating to health care institutions and other non-profit entities, has also had a very busy year. Here I'll start with the hugely influential Nonprofit Law Prof Blog (http://lawprofessors.typepad.com/nonprofit/#tp), to which he's been a contributing editor since this past March. He's also anticipating publication of "It's All About Timing: Will Karns Impact the IRS Battles Over Advance Receipts?" 12 DEL. L. REV.

___ (2010), and is at work on a piece about philanthropy and the public policy doctrine which he expects to complete early next year.

Perhaps Nick's most enviable accomplishments are in the broad area of service. Indeed, for his work with the Delaware HIV Consortium he was recognized with the Red Ribbon Humanitarian Award. He also serves on the Planning Committee of the Delaware Tax Institute and as faculty advisor and co-coordinator of the

Wills for Heroes program (for which Widener Law serves as the Delaware affiliate). The organization was founded after 9/11 to provide basic estate planning documents (wills, durable powers of attorney, and health care directives) to first responders.

Finally, on August 2, Nick moderated a panel on wills and trusts pedagogy and integrating skills into such courses (entitled: The Changing Worlds of Trusts and Estates: Pedagogy) at the Southeastern Association of Law Schools annual meeting in Palm Beach, FL.

Roseann Termini, one of our "super adjuncts" who keeps up an active publication schedule in addition to her teaching in the area of Food and Drug Law, sent me an email noting that she's been taking advanced tap dancing, and competed in the Dragon Boat Races (finishing fourth).

When she was exercising her mind instead of her body, Roseann completed an article called "Legal Issues-Smart Labels." She also recently presented what she described as "an intensive food law program for a group from Latin America."

I'd also like to welcome the newest member of the Health Law Institute, Edward Osei; although he's been on the faculty for a few years, he's only now moving into the health law area, and we're lucky to have him. This semester, Edward is teaching a seminar on Pharmaceutical Regulation. His article, "Transfer Pricing in Comparative Perspective and the Need for Reforms In Ghana," is just out in the Journal of Transnational law and Contemporary Problems.

I'd like to welcome back valued colleague and friend Ann Britton. Ann teaches a variety of courses in the health law field, and has taken a special interest in our MJ and other graduate students.

Finally, thanks to the outgoing Executive Director of Institutes,

(Continued from previous page)

3/8-11/11

Regulatory Analysis and Compliance Program, WIDENER UNIVERSITY SCHOOL OF LAW, Wilmington DE

3/24/11

Masters of Jurisprudence Health Law Open House, WIDENER UNIVERSITY SCHOOL OF LAW, Wilmington DE

March/11

Law Review Symposium, WIDENER UNIVERSITY SCHOOL OF LAW, Wilmington DE

June/11

Widener University School of Law, Summer Health Law Institute, Lausanne, Switzerland Professor Andrew Fichter, who is officially retiring this year—like Tom Reed, though, Andy's not fully convinced that this whole retirement thing is for him. He continues to teach, and remains heavily involved in our compliance programs. Luckily for us, Professor Eileen Grena, the former Director of our LEI program, has stepped in as the new Executive Director. I don't expect to be able to keep up with all of her ideas to improve our many programs, but it will be fun trying.

I'm as busy as ever, too. I just spoke at a panel in Philadelphia on new technologies in reproductive rights, and will be at St. John's Law School next month to discuss current issues in the marriage equality movement. I'm also chairing our annual law review symposium next spring, focusing on how legal actors and professional societies might do a better job of protecting children against abuse by health care

professionals. Among my publications, I'm most excited about the book, Reconsidering Law and Policy Debates: A Public Health Perspective (Cambridge 2010). I was lucky enough to edit and contribute to this fine collection of pieces that examine such diverse issues as reproductive rights, death and dying, racism, marriage equality (my chapter), dimensions of violence (from dangerous gun owners and domestic abusers), and the public health dimension of tort liability. Now I'm finishing an article on informed consent and working on a book about civil unions, following my recent article on the subject, "The Short, Puzzling(?) Life of the Civil Union," 19 B.U. Pub. Int. L.J. 1 (2009). I also published a piece with Slate.com on the BP Compensation Fund, entitled "Feinberg's Wizardry" (July 22, 2010). I'm still not keeping up with my colleagues, but I'm trying.

Wishing a great 2010–2011 to all.

"Virtually all legal needs are directly or proximally connected to health status."

Dr. Barry Zuckerman.

Medical-Legal Partnerships: A New Paradigm for Delivery of Health Care and Legal Services for People who are Poor

Shannon Mace* and Daniel Atkins**

At a Federally Qualified Health Center (FQHC) in Chester, Pennsylvania attorneys and healthcare staff are coming together to provide much more than the standard of care to their clients. Health, Education and Legal assistance Project: A Medical-Legal Partnership (HELP: MLP) provides free legal services to clients of ChesPenn Health Services in an effort to improve the health and well-being of the Chester community, one of the poorest in the nation. Often healthcare staff and social workers lack the resources and knowledge to help guide their clients through difficult situations affecting their lives. Trained attorneys however, can help resolve these issues, leading to better health outcomes. For example, a mother of a fourteen-year old daughter with a congenital heart disease was referred to HELP: MLP to assist in obtaining disability benefits.

It was discovered in the initial client meeting that the daughter's school district refused to provide transportation for her so she was walking 2.5 miles each way to get to school every day. This exertion had recently lead to her collapsing at the foot of the school's stairway. HELP: MLP's staff attorney was not only able to assist in applying

for and obtaining disability benefits but was also able to force the school to provide transportation preventing any future harm.

In its inaugural year HELP: MLP: provided legal services benefiting one hundred and eighteen (118) children and adults; conducted sixteen training sessions for medical providers, and trained students from various academic disciplines. The types of legal issues addressed included special education, housing, public benefits, disability rights, family law and financial matters.

Among HELP: MLP's many successes include cases preserving electric service for a woman who owed over a thousand dollars to the utility company and faced shut-off; helping homeless families acquire housing; overturning the denial of Medicaid funding for the daycare of a medically fragile six-month-old child so that the mother could continue school; persuading the Chester Upland School District to allow a six year-old child, who is blind and cognitively delayed, to remain in a specialized school; obtaining the reversal of a Para-Transit decision that prevented a mother with physical disabilities from taking her young daughter to medical appointments; obtaining Supplemental Security Income benefits for two men who were unemployed, illiterate, and destitute; and forcing Medicaid to approve eligibility for a person who was homeless and was denied because of eighteen dollars in unpaid court fines.

History of the Medical-Legal Partnership

None of these important legal victories could have been achieved without substantial background work. In this regard, HELP: MLP stands on the shoulders of dedicated work, research, and experience of

other medical-legal partnerships that has been taking place for almost two decades now. In 1993, Dr. Barry Zuckerman, a pediatrician at Boston Medical Center (BMC), was treating a child with asthma who was not improving.

Once Dr. Zuckerman learned that the child's apartment was infested with roaches, he recognized that his ability to improve his patient's health was dependent upon alleviating his housing problem. Dr. Zuckerman hired an attorney to force the family's landlord to rid the apartment of roaches. Once the patient's housing situation improved, not surprisingly, so did his health. This led to the creation of the first medical-legal partnership at BMC, and ultimately the creation of the National Center for Medical-Legal Partnership (NCMLP). Medical-legal partnerships were founded on the premise that health is compromised not just by biological pathogens, but also by a variety of social and economic problems, many of which—perhaps most of which—might admit of a legal cure. Poverty and its various concomitants-homelessness or substandard housing; hunger and malnutrition; physical and emotional stress; and limited access to health care—can impact health both directly and indirectly. An effective resolution to a family's health problems would thus necessitate, in such situations, both a medical and legal response. Without a medical-legal collaboration, health providers could ensure the former, but are not always well positioned to initiate legal redress.

Establishing HELP: MLP

HELP: MLP was established in September 2009 as a collaboration between Widener's Health Law Institute, ChesPenn Health Services (an FQHC which serves children and adults with low incomes) and Crozer-Chester Medical Center (CCMC). HELP: MLP was made possible by one-year grants from the Barra Foundation and the Ethel Sargent Clark Smith Foundation and additional support from Widener's Law School. HELP: MLP's mission included four goals: 1) to assess the legal needs of the Chester community; 2) to provide free legal services to low-income patients in order to increase their health and well-being; 3) to train healthcare professionals to identify unmet legal needs; and 4) to introduce the benefits of a public interest career to students. We also wanted to measure the healthrelated outcomes of the legal interventions provided.

Assessing Need

In April 2009, students from the School of Law, as part of a Martin Luther King Day Semester of Service project, conducted a legal needs assessment at Crozer-Chester Medical Center's out-patient Pediatric Practice to quantify the needs of a portion of the center's low-income patients. One hundred forty-two interviews were conducted. The CCMC survey revealed that low-income pediatric patients and their families experienced serious problems with public benefits, housing, or other legal issues affecting their health and very few survey participants received legal counsel for the purpose of mitigating these issues.

These results correlate with a plethora of research illustrating that, nationwide, people who are poor experience legal and social problems that negatively impact their health and that their access to counsel is inadequate for purposes of pursuing redress. In September 2005, the Legal Services Corporation (LSC) published Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income

Americans. LSC updated the report in 2010 and concluded that: "... only a small fraction of the legal problems experienced by lowincome people (less than one in five) are addressed with the assistance of either a private attorney (pro bono or paid) or a legal aid lawyer... on the average, only one legal aid attorney is available for every 6,415 low-income people. By comparison, there is one private attorney providing personal legal services (those meeting the legal needs of private individuals.

Evaluation Results

HELP: MLP collaborated with public health experts at Thomas Jefferson University (TJU) School of Population Health to design, implement, collect and analyze data measuring its effects on patient health and well-being.

Although the sample is small, the results show a significant and promising decrease in clients' stress and improvement in health following HELP: MLP services. Of thirty-seven (37) clients who had closed cases at the time of data collection and were eligible to participate in the study, nineteen (19) clients participated in the interview. Sixteen (16) of the respondents reported a decrease in overall stress following HELP: MLP services. All nineteen (19) respondents reported that they were satisfied with the quality of representation from the clinic. Eleven (11) respondents (57%) reported an

improvement in overall health and four (4) respondents reported improvement in their child's health. The average reported stress level of clients seeking assistance with a special education case prior to receiving services was ten out of ten (10/10) (ten (10) being extreme stress) following services the average stress level reported was 6.4. For disability issues the average stress level of clients was an 8.25; following services it was a 1.75.

Future Planning

In September 2010, HELP: MLP received a \$166,000 grant from the United States Department of Health and Human Services Health Resources and Services Administration (HRSA) to continue serving the Chester community in collaboration with Keystone-Crozer Health System's Healthy Start program. The goal of this MLP initiative is to eliminate disparities in perinatal health. In addition to providing direct legal services to clients, HELP: MLP staff (including Law Professor Robert Hayman, Adjunct Professors Daniel Atkins and Laura Handel, and TJU Population Health Professor Marty Romney) is teaching an interdisciplinary course at the Law School-Poverty Law and Medical-Legal Partnerships. Students in the class come from law, nursing, public health, Spanish and social work disciplines. The course will provide students with the theoretical background as well as hands-on experience in serving vulnerable populations. HELP: MLP will continue its relationship with Thomas Jefferson's School of Population Health and conduct an extensive evaluation to measure the efficacy of its new partnership, specifically its impact on perinatal health.

On a national level the MLP movement continues to grow. Recently a bipartisan bill, the Medical-Legal Partnership for Health Act, was introduced in Congress recommending authorization of federal funds for a nationwide demonstration project for MLP. Both the medical and legal professions have embraced the new model. The American Medical Association (AMA) recently adopted Resolution 7 (I-09) supporting the efficacy of Medical-Legal Partnerships. The resolution supports the education of providers about unmet legal needs and their connection to health, resources to assist screening for unmet legal needs and assistance in establishing MLPs. The American Bar Association (ABA) passed a similar resolution in support of MLPs in 2007. The medical-legal partnership movement is proving to be an effective agent of change in the delivery of health care and legal services in low income communities. The Health Law Institute, through HELP: MLP, is playing an active role in the development of the intersection between law and public health.

^{*} Shannon Mace is a JD candidate at Widener University School of Law. She has a masters degree in Public Health(MPH) from Thomas Jefferson University, and has served as the Student Law Fellow at the Health, Education, and Legal assistance Project: A Medical-Legal Partnership at Widener University School of Law since its inception.

^{**}Daniel Atkins is Co-Director of the Health, Education, and Legal assistance Project: A Medical-Legal Partnership at Widener University School of Law, where he is an Adjunct Professor currently co-teaching Poverty Law and Medical Legal Collaboration with Professor Robert L. Hayman, Jr., Laura Handel, and Marty Romney. Dan is also Legal Advocacy Director of the Disabilities Law Program at Community Legal Aid Society, Inc. in Delaware

Psychotherapy Malpractice

Ann H. Britton, Professor

Cases of malpractice against mental health providers (MHPs) are relatively scarce. The few claims that are brought are overwhelmingly negligence claims. But claims have also been brought based on battery, violation of privacy, defamation, breach of confidentiality, breach of fiduciary duty (in jurisdictions where that is a separate tort), and breach of contract. Because negligence claims so predominate, the focus will be centered on this topic.

Who are the plaintiffs?

The client is rarely the plaintiff. Usually the client and the MHP have built up a rapport and the MHP that militates against bringing a suit. Clients also rarely want to have the fact of their mental health care publicly known.

That means the suits that do exist come from family members, who most often sue for wrongful death following a suicide, or, predominantly, from third parties who are injured or killed by the

client. The difficulty facing third parties is to show themselves or the harm sufficiently foreseeable to impose a duty to them on the MHP (the Palsgraf problem). This is difficult to do. For example, the officials wounded and killed in John Hinckley's shooting of President Reagan were unable to show that Hinckley's MHP had any way to foresee danger to them, and, consequently, the court held that the provider owed them no duty.

What is the nature of the lawsuits?

Major categories of claims are 1) hospitalization, 2) misdiagnosis, and 3) wrong treatment method.

Hospitalization usually arises in a context of potential suicide or harm to others. It is complicated by a rule frequently imposed by statute that patient care take place in the least restrictive setting. In the hospital, MHPs must ensure proper supervision so that the client does not escape or do harm to him/herself or others.

But misdiagnosis is not as straightforward a claim as many believe. Psychotherapy as a discipline has not come to agreement as to what causes mental illness or dysfunctional behavior. Examples of a few of the competing schools of thought are: a) intrapsychic (e.g., Freud and the forces of Eros and Thanatos); b) biochemical (e.g., proof that syphilis is degenerative to the nervous system); c) learned

the client needs skills beyond those

that the MHP can provide.

behavior (e.g., Pavlov's dogs, Skinner's training rats); and d) family dynamics (e.g., the identified client may not be the origin of the problem, but may be acting in a way that brings mother and father together so that they stop arguing).

These are hardly academic debates; in real-world cases, one or another approach might prove to be more efficacious. Below is a description of one well-known case. Although the case settled out of court, certain information

was public, so scholars have put together the most salient facts.

Dr. Osheroff was an M.D. with a specialty in kidney disorders. He suffered from both anxiety and depression for several years. He was treated as an outpatient with medication and psychotherapy. Dr. Osheroff did not maintain the recommended dose. His condition worsened enough that hospitalization was recommended.



If the MHP chooses not to hospitalize (or authorizes release too soon), the MHP must research the applicable state law to know how to balance obligations of confiden - tiality against a Tarasoff-type duty to warn, or a related duty to protect identifiable third parties in danger.

Misdiagnosis essentially forecloses proper treatment. It usually includes the failure to refer to a different specialist if the MHP perceives that He admitted himself to a hospital with a forty-year national reputation for its orientation toward Freudian psychoanalysis. He was diagnosed with narcissistic personality disorder. During his seven-month stay, he was not given medication in an attempt . .

[for a] more ambitious treatment goal . . . [of] . . . treating the underlying personality disorder." Not only did he not noticeably improve, he "lost 40 pounds, experienced severe insomnia, and had marked psychomotor agitation. His agitation, manifested by incessant pacing, was so extreme that his feet became swollen and blistered, requiring medical attention.

At the end of seven months, his family had him transferred to a different hospital that took a biological rather than Freudian view of mental illness. This hospital diagnosed him as having "psychotic depression." After three weeks on medication and supportive therapy (as apposed to analytical), he was markedly improved and was discharged after three months.

Even those who see these sources of psychological problems as related, rather than in competition, may yet vary in the weight attached to the factors. As shown above, MHPs are influenced in making a diagnosis by their position in this ongoing debate.

Even if a plaintiff can establish that, within the school of thought of the MHP (this will require expert testimony), the diagnosis was correct, plaintiff still must prove that a sub-standard treatment method was used.

The easiest way to understand issue of wrong treatment method is to take an example from MHPs who subscribe to a biochemical model. Their choice of treatment is almost certainly pharmacotherapy. Whether the MHP has met the standard of care will require expert testimony as to timing of pharmacologic intervention, choice among a host of medications, dosage, drug interactions, and reactions and side effects.

Each school of thought has its equivalent range of choices. Given the law's deference to professional judgment, plaintiffs face a nearly impossible task of proving the choices made fell below the standard of customary care; that is, the standard under which the actions of an MHP of a particular school of thought will be weighed.

Other impediments for the plaintiff

Even if plaintiff can meet the burden of proving each of those elements as "probable" or "more likely than not," plaintiff still has some major hurdles. The first is causation. That plaintiff's condition worsened does not demonstrate that the MHP's conduct led to this result. Plaintiff must show that the MHP's action (or failure to act) was at least a substantial factor in the client's deteriorated condition.

If, as is most common, the plaintiff is a third party victim of the client's actions, plaintiff must overcome the possibility that the client's illegal act superseded any negligence on the part of the MHP. This raises the problem of the foreseeability of client's dangerousness to the plaintiff.

There are other substantial obstacles to recovery. If the harm complained of is the worsened condition of the client or the stress on the client's family, then the plaintiff faces the law's general reluctance to compensate emotional injuries that are not accompanied by physical harm.

Clients and their families face problems of informed consent to treatment methods. This means they must show that they were not given information so critical that it would have changed their decision.

Because of the difficulty of judging what might have been done—the problem of hindsight—most jurisdictions have made the standard to be whether a reasonably prudent client would have decided differently if given the omitted information.

If the client did not comply with the treatment method chosen, then she

^{1.} Mental health provider is used as those who practice psychotherapy have a wide variety of background and training. The term is used inclusively to cover psychiatrists, psychologists, social workers, psychiatric nurses, and everyone else who sees clients individually or in groups for the purpose of mental health treatment.

^{2.} The term client is used rather than patient because the majority of MHPs use the term client.

^{3.} Palsgraf v. Long Island R. Co., 168 N.E. 99 (N.Y. 1928).

^{4.} Brady v. Hopper, 570 F. Supp. 189 (D. Colo.)

^{5.} PERLIN, LAW AND MENTAL DISABILITY (1994) at 117 and references cited there.

^{6.} Tarasoff v. Regents of University of California, 551 P.2d 334 (Cal. 1976).

^{7.} REISNER, SLOBOGIN & RAI, LAW & THE MENTAL HEALTH SYSTEM (4th ed. 1999), 138-42.

A WHO Externship

David Walker

Many law students believe that simply earning a law degree is their "golden ticket" to a fulfilling, rewarding and lucrative career. While this belief may not be entirely false, law students in today's struggling economy and ever globalizing market must engage in academic endeavors beyond the classroom to set themselves apart and achieve their goals. The Health Law Institute here at Widener Law School afforded me such an opportunity and without a doubt, I landed beyond the classroom.

During the summer of 2010 I participated in an eight-week externship at the World Health Organization in Geneva, Switzerland. While in Switzerland, I lived only yards from Lake Geneva on the hillside of the city of Lausanne. The train I used to commute from Lausanne to Geneva always provided stunning views of Lake Geneva, the Alps and the Swiss Riviera. I spent my weekends hiking, paragliding in Interlaken, watching World Cup matches and immersing myself in the culture.

Given the mission of WHO, I expected that the

was contributorily negligent or assumed the risk. This could substantially reduce or eliminate any financial award.

Plaintiff may not be able to sue certain MHPs at all, such as those employed by a government entity (because of immunity). Furthermore, plaintiff must file the suit within strict deadlines, usually three years from the time of the alleged negligent act. Without special permission extending this deadline (such as to the date the negligence was actually discovered or

should have been discovered, whichever is earlier), the suit is barred completely.

Conclusion

MHPs need not worry about lawsuits. The most likely event to precipitate a suit is rare: the client must foreseeably injure a third party because of treatment that falls below what is customary for an MHP of the same school of thought. The plaintiff has almost insurmountable obstacles in proving each part of his/her case.

Widener Health Law Institute On track to becoming a World Health Organization Collaborating Center

Michele D. Forzley Visiting Distinguished Professor of Law

This past July, Widener was invited to submit its dossier of completed and ongoing activities in collaboration with the World Health Organization. This is the first step—documenting collabora-

tions to date—towards being accredited as a WHO Collaborating Center. The invitation was the culmination of an exciting summer in which David Walker, (expected graduation 2011; see related article in sidebar) served as Widener's first global health law extern at the World Health Organization Department of



Visiting Distinguished Professor of Law Michele D. Forzley, students Nathan Trexler, Linda Zhang, Yuanyou Yang, David Walker and Celisse Williams.

Essential Medicines in Geneva, Switzerland.

I have been involved in the effort to become a WHO collaborating center since 2003 when I wrote the background paper proposing a framework convention to combat counterfeit drugs. (This paper was presented to the International Conference of Drug Regularity Authorities in Madrid, Spain.) With the anticipated acceptance of the dossier of activities Widener Health Law Institute is a giant step closer to full status as a collaborating center.

During the last three years, we have been working to position Widener Health Law Institute to have students work as externs at the WHO in the summer on research topics of interest to its various departments. Currently students are working on drug laws that support access to medicines and laws on narcotics. Next summer there may be as many as 12–15 students placed at the WHO in a variety of departments.

Since 2003, I have been involved in a number of activities with the WHO starting with her selection to participate in the Medicines Technical Briefing in November 2008, to be a reviewer on the upcoming World Medicines Report and on the WHO assessment instrument on corruption in the pharmaceutical sector. Most recently I evaluated the definition of counterfeit drug in 65 WHO Member countries for the WHO.

An institution must be in collaboration with WHO for at least three years before applying. By the end of next summer Widener will be in a position to apply. To be considered for designation an institution must demonstrate a long and solid history of contribution to WHO program activities. Once designated by the Director General on the request of a WHO department, Widener will be listed in the WHO Collaborating Center database among 800 other centers, of which fewer than five are law schools, and will continue its legal work with Member states, national institutions and the head quarters and regional offices of WHO.

(Who Externship continued from previous page)

work would be no less interesting, and I was not disappointed. As set out in Chapter I, Article 1 of the WHO Constitution, the organization exists to strive for "the attainment by all peoples of the highest possible level of health." This objective guides the WHO in all its endeavors and was also the foundational principle upon which the terms of reference of my externship and research were based.

I worked with the Essential Medicines and Pharmaceuticals Department ("EMP") of the WHO. The EMP is one of the largest departments of the WHO and engages in a variety of activities from registering every pharmaceutical available on the planet to improving access to essential medicines for individuals across the globe. It is the belief of the

EMP, as well as the WHO as a whole, that all people should have access to safe, effective medicines of good quality and that are essential to a healthy life. To ensure such access, the EMP engages in a number of activities to support improved access among WHO Member States, including publication of a model list of essential medicines as well as other literature designed for use by State Departments of Health and Public Officials.

In an additional effort to provide the necessary support to WHO Member States, the EMP realized that the laws and regulations implemented in a given country drastically affect the level of access that its citizens have to essential medicines. For the terms of reference of my research, therefore, the task was to identify what, if any,

national level laws and regulations allow for the realization of a high level of access to essential medicines.

The first step in completing this task was to identify those Member States that, based on data collected by the WHO, provide for a high level of access to essential medicines. Once these Member States were identified, a detailed methodology was created to ensure that a thorough and systematic process was implemented to identify any legislative provisions relating to access to essential medicines. Once identified, the laws and regulations were cataloged and compared in an attempt to identify similarities and differences. EMP hopes that the results of this study will yield model legislation which low- and middle-income countries can

implement to improve access to essential medicines for its citizens.

The short-term results of my work in Geneva have already identified similar legislative provisions among multiple countries. Multiple low- and middle-income countries, for example, have constitutional provisions that create a government obligation to provide pharmaceutical benefits as a part of overall health care; however, it has also been seen that these same countries have legislation that limits such an obligation to the available resources of the State, thereby lowering the level of access. As this study moves forward with future students from Widener Law School, particular attention will be devoted to ascertaining the exact correlation between a Member State's

income, the level of access in that country and the legislative language in use.

In the long-term, the methodology developed and report prepared will be disseminated to the WHO regional offices around the world for further collection and cataloging of laws.

Along with ever-increasing globalization of today's markets there is also a higher awareness of the struggles of all peoples for increased access to fundamental human rights, including the right to health and essential medicines. Through this externship at the WHO I have been exposed to an area of law that will surely expand for years to come. Without Widener Law School's nationally recognized Health Law Institute and its ability to collaborate with WHO, my experience

through this externship would not have been possible.

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