

# LAW & HEALTH CARE



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## IN THIS ISSUE:

Neuroscience and the Law:  
Law & Health Care Faculty Study  
the Application of New Science  
to Old Legal Questions ..... 1

## FACULTY PROJECTS

- Neuroscience and Adolescent  
Decision-Making ..... 4
- Professor Leslie Meltzer Henry  
Part of Hopkins Grant Team  
Studying Dignity ..... 5
- L&HCP Director Diane Hoffmann  
Part of UM Team Studying  
Board of Physicians ..... 6
- Professor Karen Rothenberg  
Speaks on Prenatal Genetic  
Testing ..... 7

## L&HCP NEWS

- Law Students Spend Summer in  
Malawi on Interdisciplinary  
Global Health Team and Work  
with Malawian Health Law  
Students ..... 8
- Health Law Student Wins  
ABA Health Law  
Writing Prize ..... 9
- L&HCP Welcomes Visiting  
Professor Michele B.  
Goodwin ..... 10
- Another Year, Another Record:  
Law & Health Care Program  
Graduates 40 in 2012 ..... 11

**Faculty Publications,  
Presentations, Interviews  
and Other Activities** ..... 12

## NEUROSCIENCE AND THE LAW: LAW & HEALTH CARE FACULTY STUDY THE APPLICATION OF NEW SCIENCE TO OLD LEGAL QUESTIONS

One benchmark of a hot topic is its appearance on the front covers of the *New York Times Magazine*,<sup>1</sup> *Scientific American*,<sup>2</sup> and the *Atlantic*.<sup>3</sup> In March 2007, the front of the NYT Magazine featured a surrealistic picture of the human brain under the title “The Trials of Neurolaw.” The subtitle, “[h]ow advances in brain science could transform our legal system” captured the potential and even excitement about the possibility of using neuroscience in the legal setting. Law & Health Care Program (L&HCP) faculty have been at the forefront of legal scholars studying the ways in which neuroscience is being used in legal contexts and providing historical and analytical frameworks to guide its sound adoption by the legal community.



*Professor Amanda Pustilnik*

At the cognitive level, neuroscience addresses the questions of how psychological phenomena are produced by neural circuitry. The emergence of powerful new measurement techniques, such as neuroimaging through functional magnetic resonance imaging (fMRI), positron emission tomography (PET), and single-photon emission computed tomography (SPECT) allows neuroscientists and psychologists to address questions about how certain human behaviors are linked to specific neural processes.

Neuroscientists seek to determine how brain function affects behavior. As the law is concerned with regulating behavior, it is reasonable to ask whether, and if so how, neuroscience could, or should, inform the law.<sup>4</sup> Legal cases in which neuroscientific evidence about a defendant’s or claimant’s brain state are cropping up with increasing frequency. More and more, courts are confronted with the reality that human behavior cannot be separated from human biology<sup>5</sup> but scholars like UM Carey Law Associate Professor Amanda Pustilnik are quick to warn that the connection between the two is not sufficiently precise to make facile legal determinations.

In the civil law context, neuroscience evidence is being adopted to document

*Cont. on page 2*

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the existence of pain. In many civil cases, litigants are interested in being able to prove whether a claimant's pain is real or exaggerated. This is particularly relevant in the assessment of pain and suffering damages in a personal injury case. Pain is very difficult to evaluate and is fundamentally subjective; while it sometimes results from and correlates with damage to body tissues, often pain persists after an injury has healed or arises in the absence of any original injury.<sup>6</sup> This kind of chronic pain, which is often independent of any peripheral input, is a direct result of processing mechanisms in the brain.<sup>7</sup> It is the difficulty of measuring this very subjective sensation that has made neuroscience attractive in legal settings where the question of pain is raised.

Professor Pustilnik discussed this novel use of neuroscience in her recent article, "Pain as Fact and Heuristic: How Pain Neuroimaging Illuminates Moral Dimensions of Law."<sup>8</sup> In recent years, new techniques, particularly the use of fMRI, have been developed to identify and document acute pain. According to Pustilnik's article, fMRI acute pain imaging studies show that a person's degree of brain activation correlates well (but not perfectly) with the person's self-reported degree of pain. People who report more sensitivity to pain show greater activity in areas of the brain associated with pain perception; people who report less sensitivity to pain show less. Pustilnik notes that this type of pain assessment is valuable in showing that people who report different sensitivity to pain appear to have different physiological responses to it, not just different ways of talking about their experience. Yet, she notes, these measurement techniques are subject to error – both false positives and false negatives. For instance, a person with a high degree of pain activation in the brain may actually not subjectively feel pain (only discomfort), and vice versa. These tools, Pustilnik asserts, have great power in modernizing legal doctrines to account for chronic pain as a real (non-imagined) neurological and even neurodegenerative condition; yet, at this point, individual brain scans generally should not be required to prove pain in disability cases nor admitted in civil trials as proof or disproof of pain.

But Pustilnik's article is more complex than an evaluation of the role of neuroscience to resolve questions of pain in a legal setting. Pustilnik argues that pain discourse is loaded and often a proxy for discussions of morality and empathy, especially given the use of pain in evaluating torture, abortion (fetal pain), and, as mentioned above, pain caused by a civil law violation. She argues in fact that discussions of the body in pain express an implicit morality of the body (or an "embodied morality") that cannot be reduced to non-normative physical facts such as measurements of pain. Her article argues that neuroscience technologies that measure pain should be used in part to question how "culture, as mediated through legal culture, engages in and produces embodied morality."

A further focus of Pustilnik's research has been to caution against overenthusiastic adoption of neuroscientific tools to answer difficult questions of responsibility and future risk in the criminal law context. As noted in Pustilnik's 2009 paper *Violence on the Brain: A Critique of Neuroscience in Criminal Law*, scholars in a number of fields have asserted that criminal violence arises as a result of dysregulation of the prefrontal cortex and the amygdale. Different neuroscience techniques can detect and measure frontal lobe dysfunction and other markers of abnormal brain activity. Moving one step further, some researchers have claimed that "neuroscience research . . . provides compelling explanatory evidence that frontal lobe dysfunction plays a 'causal role' in most types of

violent crime.”<sup>9</sup>

Pustilnik cautions that, while focal brain damage or dysfunction may predispose a subject to aggressive behavior, there is no evidence that most people who commit violent crimes have any brain damage whatsoever.<sup>10</sup> A great danger of such claims, she asserts, is that researchers working in this vein may misidentify socially deviant or undesirable behavior as brain disorder, confusing social pathologies with physical pathologies. Law-breaking behavior arises not just – and likely not even primarily – from disordered biology but from a web of cultural, familial, demographic, and individual factors, all of which come to be represented within an individual’s brain but are not themselves brain-based disorders. As she noted in the 2009 paper,

[t]he challenge in this time period, in this particular episode in the affair between criminal law and neuroscience, is to use neuroscience not to craft attractive simplifications but to shed a measure of light on complex and multifaceted realities.<sup>11</sup>

Although only a handful of brain disorders are known to predispose individuals to law-breaking behavior (like the well-known connection between fetal alcohol syndrome and conduct disorders), several important scholars and members of the legal community have argued that neuroscientific techniques that measure brain activity should be available to legal decision makers. The attractiveness of these technologies is evident in the growing use of neuroscientific evidence in the courtroom. In a dramatic expression of faith in such technology, the British Home Secretary stated in 2007 that convicted pedophiles would be required to undergo brain scans by MRI to aid in assessing the likelihood of reoffending.<sup>12</sup>

However, the growing use of neuroscientific evidence in criminal trials raises the question of where to draw the line in considering this type of evidence as a legal mitigation or excuse. Should courts be in the business of deciding when to mitigate someone’s criminal responsibility because his brain functions improperly, whether because of age, in-born defects or trauma?<sup>13</sup> L&HCP Professors Diane Hoffmann and Karen Rothenberg asked similar questions about a defendant’s DNA in their 2007 article “Judging Genes: Implications of the Second Generation of Genetic Tests in the Courtroom.”<sup>14</sup> In the article, they argue that the advent of genetic tests for health and behavioral traits may create substantial doctrinal and normative challenges for trial court judges as they are asked to make decisions about whether to compel or admit these tests in the courtroom.

The NYT Magazine article asked – “as we learn more about criminals’ brains, will we have to redefine our most basic ideas of justice?” At least one scholar has argued

### **Professor Amanda Pustilnik’s Work on Neuroscience and the Brain**

Pain as Fact and Heuristic: How Pain Neuroimaging Illuminates Moral Dimensions of Law, 97 *CORNELL LAW REVIEW* 801 (2012).

Violence on the Brain: A Critique of Neuroscience in Criminal Law, 44 *WAKE FOREST LAW REVIEW* 183 (2009).

Prisons of the Mind: Social Value and Economic Inefficiency in the Criminal Justice Response to Mental Illness, 96 *JOURNAL OF CRIMINAL LAW & CRIMINOLOGY* 217 (2006).

Book Review, Broad, Deep & Indirect: The Potential Influence of Neuroscience in Law, 2 *BIOSOCIETIES* 357 (2006) (reviewing Michael S. Gazzaniga, *The Ethical Brain* (2006)).

that, if we accept the concept that criminal behavior is the result of the biology of an individual’s brain, the criminal justice system should abandon the idea of punishment and focus on deterring future harms.<sup>15</sup> In questions of sentencing, probation, and parole, courts have long been bedeviled by the difficulty of calculating the risk that a criminal will reoffend. This question is particularly difficult in the case of violent criminals for whom a wrong decision could – and has – led to injury or death of innocent people. Although our legal system is designed to punish past acts and not future behavior, the aforementioned functions of the legal system do, in fact, require courts to engage in these kinds of predictions. Models of risk assessment can be grouped into two broad categories. A clinical assessment will rely on the judgment of skilled evaluators regarding a particular individual. By contrast, an actuarial or statistical assessment will assign an individual to a particular group, based on the characteristics he or she shares with members of that group, and will calculate the risk of reoffending by the rate of reoffending in that group.<sup>16</sup>

While most scholars now agree that the actuarial model is more accurate,<sup>17</sup> there is concern that no existing method is sufficiently conclusive to make critical decisions as to risk and therefore, many in the legal community are looking to neuroscience to bolster existing risk assessment techniques. However, given the lack of conclusive evidence regarding the causal connection between neuroscience markers and specific behaviors, Pustilnik and others have raised concerns about overreliance on these techniques to make legally binding decisions regarding future dangerousness.

*Cont. on page 5*

# NEUROSCIENCE AND ADOLESCENT DECISION-MAKING

In addition to concerns about the ability of neuroscience evidence to make valid legal conclusions, a further concern exists regarding whether brain studies should be used to modify laws regarding adolescent decision-making about medical care. This issue was the topic of the 2011 “Roundtable on Adolescent Decision-Making” sponsored by the L&HCP and the Johns Hopkins Berman Institute of Bioethics in which the adolescent brain and how it differs from the adult brain in terms of maturity was discussed. The Spring 2012 issue of the L&HCP’s *Journal of Health Care Law & Policy* was devoted to articles developed from presentations at the Roundtable.<sup>1</sup> In addition to Professor Pustilnik, L&HCP faculty members Leslie Meltzer Henry and Richard Boldt contributed to this issue of the *Journal*. In their introductory article “Adolescent Medical Decision Making and the Law of the Horse,”<sup>2</sup> Pustilnik and Henry framed the issues surrounding adolescent decision-making in multiple legal contexts including substance abuse treatment, chronic disease treatment, and body modification procedures. They note in their article that the policies governing adolescent decision-making are different across jurisdictions and across areas of the law. They argue that, while good reason might exist for this heterogeneity, neuroscience can shed light on measurable differences between adults and adolescents and “inform legal regimes . . . by substantiating and verifying, or negating the ideas of difference on which such policies currently rest.”<sup>3</sup>

The *Journal* delves into a number of areas in which neuroscience is implicated in adolescent decision-making. In his article “Adolescent Decision Making: Legal Issues with Respect to Treatment for Substance Misuse and Mental Illness,”<sup>4</sup> Professor Richard Boldt writes about the complex intersection of substance abuse and neurology in adolescents:

[T]he ‘plasticity’ of the developing brain, which remains physiologically immature until a person reaches his or her mid-twenties . . . fosters a remarkable capacity for learning in adolescents but it also means that alcohol and other drug misuse can change a teen’s neurophysiology in ways that interfere with his or her decision making and increase the risk for future dependence.<sup>5</sup>

Vassar College Professor of Psychology Abigail Baird spoke at the Roundtable and contributed an article to the *Journal* titled “Juvenile Neurolaw: When it’s Good it is Very Good Indeed, and When it’s Bad It’s Horrid.”<sup>6</sup> Baird discusses how neuroscience has been used in cases involving juveniles including the landmark death penalty case *Roper v. Simmons* (543 U.S. 551 (2005)) in which the Supreme Court struck down the death penalty for offenders

who committed crimes when they were under the age of 18. The leading neurolaw brief in the case, filed by the American Medical Association and other groups, argued that, based on neuroscience evidence that their prefrontal lobes are less developed, adolescents are less able to control their impulses and should not be held fully accountable for the “immaturity of their neural anatomy.”<sup>7</sup> In her article, Baird argues that neuroscience was useful and appropriate in the *Roper* case but is “virtually irrelevant to ascertaining a juvenile’s ability to make autonomous health care decisions” because “there is a clear distinction between committing a crime and making a health care choice.”<sup>8</sup>

In another article by Albany Law School Professor Alicia Ouellette “Body Modification and Adolescent Decision-Making: Proceed with Caution,”<sup>9</sup> Ouellette asserts that research on adolescent brains “supports the capacity of adolescents in medical decision making when the criteria for measuring decisional capacity in adults are applied”<sup>10</sup> but argues that parental involvement and consent plays an important protective role because “developmental science teaches that adolescents are not sufficiently mature to be vested with unchecked authority over body modification interventions.”<sup>11</sup>

Copies of this and prior volumes of the *Journal of Health Care Law & Policy* are available at <http://www.law.umaryland.edu/academics/journals/jhclp/>.

## References

1. 15 JOURNAL OF HEALTH CARE LAW & POLICY 1 (2012)
2. *Id.* at 1.
3. *Id.* at 6.
4. 15 JOURNAL OF HEALTH CARE LAW & POLICY 75 (2012).
5. *Id.* at 87.
6. 15 JOURNAL OF HEALTH CARE LAW & POLICY 15 (2012). Co-authored by Christy L. Barrow and Molly K. Richard.
7. Rosen, *supra* note 1.
8. Baird, *supra* note 23 at 22.
9. 15 JOURNAL OF HEALTH CARE LAW & POLICY 129 (2012).
10. *Id.* at 144.
11. *Id.* at 156.



Professor Richard Boldt

# PROFESSOR LESLIE MELTZER HENRY PART OF HOPKINS GRANT TEAM STUDYING DIGNITY

L&HCP Associate Professor Leslie Henry is part of a team at the Johns Hopkins Armstrong Institute for Patient Safety and Quality and the Johns Hopkins Institute of Bioethics that secured an \$8.9 million grant to find ways to improve the dignity of patients in intensive care units. The Gordon and Betty Moore Foundation, created by the Intel Corporation founder and his wife, awarded the grant to the JHU Armstrong Institute as the first grant of a total pledge of \$500 million to hospitals over the next decade with the aim of eliminating preventable harms done to patients in acute-care settings. The targets include the infections patients pick up inside the hospital and other complications that could have been avoided through more systematic monitoring of patients. The foundation has included in its list of preventable harms the loss and dignity that patients may experience in intensive care settings.

As part of the Gordon and Betty Moore Foundation grant, the JHU Armstrong Institute, directed by renowned safety specialist Dr. Peter Pronovost, will give every patient an iPad or another type of tablet that will help them log and follow how their caretakers are performing on 250 points of care aimed at reducing harm to the patient. The tablets will also allow patients and families to hold videoconferences with their physicians.

The concept of dignity has long been an interest of Professor Henry. In a recently published article “The Jurisprudence of Dignity,” (160 U. PENN. L. REV. 169 (2011)) Henry offered the first empirical study of Supreme Court opinions that invoke dignity, and then proposed a typology of dignity based on a Wittgensteinian analysis of those opinions. Her dataset was able to demonstrate that dignity



*Professor Leslie Meltzer Henry*

is not one concept, as other scholars have theorized, but rather that dignity admits of five related conceptions including institutional status, equality, liberty, personal integrity, and collective virtue. You can read Professor Henry’s article at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1928768](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1928768). Henry is delighted to be part of this innovative project – “I’m really looking forward to working to improve dignity ‘on the ground’” she said, “and not just in the law review literature.”

Professor Henry joined the law school community as an Assistant Professor in 2008 and is an associate faculty member at the Johns Hopkins Berman Institute of Bioethics. She teaches Constitutional Law II: Individual Rights; Advanced Bioethics and the Law; Bioethics Seminar; Public Health and the Law; and Reproductive Justice and the Law. Her scholarly interests include constitutional theory and interpretation, health policy and social justice, bioethics, military ethics, and clinical research ethics.

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## Neuroscience

Cont. from p. 3

Professor Pustilnik’s scholarship has focused on issues related to neuroscience of the brain since 2006 (see box, p. 3). As part of her continuing research in this area, Pustilnik is a frequent visitor in laboratories where researchers study brain activity and cognition. She recently visited Dr. Irene Tracey’s laboratory at Oxford. Dr. Tracey was one of the first researchers to use fMRI to explore subjective phenomena like pain. This fall she will visit the laboratories of prominent neuroscientists Dr. Sean Mackey at Stanford and Dr. Vania Apkarian at Northwestern.

## References

1. J. Rosen, “The Trial of Neurolaw,” *New York Times Magazine* (March 11, 2007).
2. M. Gazzaniga, “How ‘Inadmissible’ Brain Scans Can Still Influence the Courts,” *Scientific American* (April 13, 2011).
3. D. Eagleman, “The Brain on Trial,” *The Atlantic* (July/August 2011).
4. “Brain Waves Module 4: Neuroscience and the Law,” *Report of the Royal Society* (December 2011).

*Cont. on page 7*

# L&HCP DIRECTOR DIANE HOFFMANN PART OF UM TEAM STUDYING BOARD OF PHYSICIANS

In Spring 2012, the Maryland Board of Physicians asked the University of Maryland Baltimore (UMB) to help the Board streamline and more timely discharge its responsibilities to protect the public through licensing, regulation, and education while ensuring accountability, transparency, and fairness throughout the process. The review followed a separate 2011 Maryland Department of Legislative Services report that found numerous deficiencies in the Board's work, many of which focused on the Board's processes in carrying out complaint resolution.

UMB President Dr. Jay Perman assembled a small team to work with him to study the Board and work on the report that included Professor Diane Hoffmann, Director of the L&HCP, Barbara Klein, UMB Associate Vice President for Government and Community Affairs, and Dr. Donald Sweikert, a former member of the Kentucky Board of Physicians. Hoffmann had prior experience in the area of health professional boards having staffed the Maryland Task Force on Discipline of Health Care Professionals and Improved Patient Care that was created by Maryland Governor Martin O'Malley in 2008. The 2008 Task Force prepared a report that included findings and recommendations for all 18 of Maryland's health occupations boards, including the Board of Physicians.

Following interviews with key stakeholders in the Board's complaint resolution process as well as observations of Board meetings, in July of this year, Dr. Perman's team submitted a 57-page report to the Board that identified a number of concerns. They included the following:

1. The Board process is unduly complex and lengthy.
2. The Board process is too formal and does not allow sufficiently for informal resolution of cases prior to drafting of charges.
3. Board operations can make more effective use of Board members' time.
4. The layers of Board review cause unnecessary delay.
5. Board members appear to have unclear expectations of the role of legal counsel (both Board counsel and prosecutors).
6. The Board could make better use of advisory committees for allied health professionals when specific expertise may be useful.
7. Historically, the backlog of disciplinary cases was far too long and Board members were not informed of the backlog.



*Professor Diane Hoffmann*

The report recommended that the Board's duties and powers be more explicitly outlined by the General Assembly. It also recommended a novel approach to the disciplinary process that would help alleviate perceived or actual conflicts of interest between board members during the investigative and adjudicatory aspects of the disciplinary process. The report recommended that the board establish two separate panels to address disciplinary cases. Each disciplinary panel may deal with investigation and charging as well as adjudication and discipline, but not for the same case, i.e., if Disciplinary Panel A determines that charges are appropriate for a specific case, it may not participate in the adjudication and disciplinary determination of that case (after the case has been referred to the Office of Administrative Hearings). Dr. Joshua Sharfstein, Maryland's Secretary of the Department of Health and Mental Hygiene stated that this recommendation would make the board more responsive and fair by "eliminating bottlenecks and adding layered review at the same time." (K. Rector, Baltimore Sun, 7/25/12) Legislators will consider the changes recommended in the report during the 2013 legislative session.

The UMB report is available at the following link: [http://www.mbp.state.md.us/forms/Final\\_BOP\\_report.pdf](http://www.mbp.state.md.us/forms/Final_BOP_report.pdf)

# PROFESSOR KAREN ROTHENBERG SPEAKS ON PRENATAL GENETIC TESTING

L&HCP Professor Karen Rothenberg spoke at the New Technologies, New Challenges: Women and Prenatal Genetic Testing in the 21st Century conference held April 12-13, 2012, at Case Western Reserve School of Law. The conference was co-sponsored by the Cleveland Clinic Center for Ethics, Humanities and Spiritual Care and the Center for Genetic Research Ethics and Law and addressed the voluminous amount of potential information that new technologies in prenatal testing are able to provide to future parents and the unique medical, ethical, legal, and social questions these tests raise for patients and healthcare providers.



*Professor Karen Rothenberg*

Professor Rothenberg's talk, "Mixed Messages," discussed the conundrum of integrating an ever growing number of prenatal tests into reproductive care while, at the same time, moving toward marginalizing abortion. The inspiration for the conference evolved from reflections on how the landscape has changed in the twenty years since Rothenberg edited *Women and Prenatal Testing: Facing the Challenges of Genetic Technology* (with Elizabeth Thomson). Rothenberg also spoke on this topic at the 2011 Wiley A. Branton Symposium at Howard Law School. Her Branton Symposium talk was recently published in the

Howard Law Journal (55 Howard Law Journal, No. 3 (2012) (with Rachel Rebouche). The article provides a snapshot of how current law and practice generate mixed messages about prenatal genetic testing and abortion and concludes by suggesting how to understand the interplay of abortion and testing decisions in a more nuanced way.

Professor Rothenberg is Marjorie Cook Professor of Law, founding Director of the Law & Health Care Program, and served as Dean of the

University of Maryland School of Law from 1999-2009. Over the last two decades she has focused her research primarily on the ethical, legal and social implications of genetic testing and research, including the legislative approaches to genetic information in the health insurance and employment context, the impact of genetic research on racial and ethnic populations and women's health care, and the use of genetic information in the courtroom. This year Professor Karen Rothenberg is on leave from the law school and serving as a Senior Advisor to the NHGRI Director on Genomics and Society and as a visiting scholar at the National Institutes of Health Department of Bioethics.

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## Neuroscience

Cont. from p. 5

<sup>5</sup> Eagleman, *supra* note 3.

<sup>6</sup> Royal Society Report, *supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> 97 CORNELL LAW REVIEW 801 (2012).

<sup>9</sup> 44 WAKE FOREST LAW REVIEW 183 (2009).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> J.W. Looney, "Neuroscience's New Techniques for Evaluating Future Dangerousness: Are we Returning to Lombroso's Biological Criminality?" 32 U. ARK. LITTLE ROCK L. REV. 301

(Spring 2010).

<sup>13</sup> Rosen, *supra* note 1.

<sup>14</sup> 66 MARYLAND LAW REVIEW 858 (2007).

<sup>15</sup> *Id.*

<sup>16</sup> Royal Society Report, *supra* note 4.

<sup>17</sup> W. Grove, P. Meehl, "Comparative efficiency of informal (subjective, impressionistic) and formal (mechanical, algorithmic) prediction procedures: The clinical-statistical controversy," PSYCHOLOGY, PUBLIC POLICY AND LAW 2, 293-323 (as noted in Royal Society Report, *supra* note 4).

# LAW STUDENTS SPEND SUMMER IN MALAWI ON INTERDISCIPLINARY GLOBAL HEALTH TEAM AND WORK WITH MALAWIAN HEALTH LAW STUDENTS

Law students Jonathan Nagel 3L and Ashley LaRiccia 3L spent six weeks this summer in Malawi as part of a University of Maryland Global Health Interprofessional Council (GHIC) project that studied maternal morbidity and mortality in a rural district in the Southern region of Malawi. The students were joined for several weeks of their stay by UM Carey Law Professor Peter Danchin and Law & Health Care Program Managing Director Virginia Rowthorn who helped organize the project as part of an interprofessional faculty team.

Reducing maternal mortality is the fourth of eight Millennium Development Goals endorsed by the United Nations in the year 2000. The goals are designed to be met by 2015 and, to this end, Malawi's recently inaugurated President Joyce Banda has placed a strong emphasis on improving maternal health throughout Malawi.

Jonathan and Ashley were part of an interprofessional twelve-student team that included two students from each of the other professional schools on the UM Baltimore campus (which include the Schools of Medicine, Nursing, Social Work, Dentistry, and Pharmacy). The team was joined by two law students from Malawi's Chancellor College of Law who worked and lived with the students for part of the project.

This was the third GHIC summer project in Malawi. The annual project is designed to provide graduate school students with the opportunity to conduct research on pressing global health issues outside of the confines of their individual professional programs. The dual research and policy focus of the project allows students to move beyond the clinical skills of their professional training to work together to understand the interrelated factors that result in global and public health concerns such as high maternal mortality rates.

Danchin, who is new to the Malawi project, is the Director of the International and Comparative Law Program at UM Carey Law. From 2000-2006, he was lecturer and director of the human rights program at Columbia University's School of International and Public Affairs and from 1997-2000 taught in a research and training program conducted by the Center for the Study of Human Rights at Columbia University on Religion, Human Rights and Religious Freedom. He served as law clerk to Chief Justice Arthur Chaskalson of the Constitutional Court of South



*Professor Peter Danchin*

Africa. In addition to the Malawi project, Danchin is currently engaged in a joint research project on the "Politics of Religious Freedom: Contested Norms and Local Practices" funded by the Henry R. Luce Foundation of New York which examines the multiple histories and genealogies of religious freedom.

Danchin and Rowthorn, who traveled to Malawi with the first group in 2010, also collaborated with Chikosa Banda, a Lecturer at Chancellor College of Law, to plan the project. Professor Banda met with the student group early in the summer to discuss human rights law in Malawi and, later, Professor Danchin presented a talk entitled "New Directions in Economic, Social, and Cultural Rights" to the Dean and faculty members at the Malawian law school.

The students used the World Health Organization's Safe Motherhood Needs Assessment to evaluate interventions relating to safe motherhood which include: family planning; prevention of sexually transmitted infections and HIV; comprehensive abortion care; and antenatal and postpartum care. The survey was conducted in Chikhwawa – a primarily rural district in which health care is provided through 11 health centers and two hospitals. At this time, health care in Chikhwawa is provided by mid-level health care providers as there are no physicians practicing in the district. The students surveyed health care providers in both hospitals and 10 of the 11 health centers. The students' final report will be sent to key stakeholders in maternal



health in Malawi.

As a concluding component of this project, the student members of the research team reflected on the interprofessional nature of the research project from four different perspectives: the value of an interprofessional approach to a complex global health problem; the value of the project to illuminate both the micro (profession-based) and macro (interprofessional) responses necessary to address a complex global health problem; the role of the project in promoting understanding and respect for other disciplines; and the impact of the project on the students' individual growth in their own profession. Jonathan's concluding comment reflected what most students learned from the project - "[f]orming bonds among professions expands everyone's views and understandings, and supports future work among disciplines. This is important because in large scale problems like maternal morbidity and mortality, there is never one simple answer."



*Community Health Provider Mzonda and Ashley LaRiccia 3L in Chikhwawa, Malawi*

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## HEALTH LAW STUDENT WINS ABA HEALTH LAW WRITING PRIZE

Health Law Certificate awardee and 2012 graduate Jennifer Siegel was awarded the 2011 American Bar Association Health Law Section Student Writing Competition for her paper "Advancing Ethical Research Practices in the Military." The award includes publication of the article in *The Health Lawyer*, attendance at the Health Law Section's Emerging Issues Conference in San Diego, California, and an honorarium. "I am so proud of Jennifer," said Associate Professor Leslie Meltzer Henry. "She originally wrote this paper for my bioethics seminar and had the fortitude to continue working on it after the semester ended. A terrific result."

A University of Michigan alum who majored in neuroscience, Siegel is now pursuing a joint degree in law and public health at UM Carey Law and the Johns Hopkins Bloomberg School of Public Health. Siegel became interested in the ethics of human subjects research as an undergrad, during summer jobs at the National Institutes of Health. Later, in Professor Henry's class, she focused on the ethical issues of research using vulnerable populations: children, the developmentally disabled, prisoners, and, surprisingly,

members of the military. Professor Henry helped her parse through the research, and Siegel discovered several military experiments in which participants had not been informed of the risks.

Many people may find it hard to imagine that highly trained warriors are a vulnerable population, but others argue that the hierarchical structure of the armed forces, with its emphasis on patriotism and self-sacrifice for the greater good, make true consent difficult, perhaps impossible, to achieve.

The challenge, Siegel explains, is "trying to keep up with other militaries in technological and medical developments, while balancing the U.S. emphasis on individual autonomy," as well as protecting military secrecy and respecting human dignity, which many ethicists believe relies on transparency. "The military has taken significant steps to try to improve this process," Siegel says, noting that there are now a host of regulations regarding research on military subjects.

# L&HCP WELCOMES VISITING PROFESSOR MICHELE B. GOODWIN

University of Minnesota Everett Fraser Professor of Law Michele B. Goodwin, JD, LL.M., will be visiting at University of Maryland Francis King Carey School of Law this year. Along with her appointment at the University of Minnesota School of Law, Goodwin holds appointments at the University of Minnesota Schools of Medicine and Public Health. She also serves as the Chair of the AALS Committee to Review Scholarly Papers for the AALS Annual Meeting (2011-2013) and as a member of the Editorial Advisory Board of the *Journal of Law and Social Inquiry*. Goodwin's research concerns the role of law in the promotion and regulation of medicine, science, and biotechnology. She researches and teaches in the areas of torts, property, biotechnology, bioethics, and identity. Professor Goodwin is the author/editor of several books, including *Black Markets: The Supply and Demand of Human Body Parts* (Cambridge University Press, 2006); *Baby Markets* (Cambridge University Press, 2009); *The Black Body: Reading, (Re)Writing, and (Re)Imagining* (University of South Africa Press, Goodwin et. al, 2009); and *Biotechnology and Bioethics* (Lexis/Nexis Goodwin & Paris, 2012).

As part of Professor Goodwin's visit, she will serve as the Law School's Stuart Rome Lecturer on November 1st with a talk entitled "Reproductive Justice: The New Constitutional Battlefield." The L&HCP regularly sponsors the Stuart Rome Lecture which was established in 1984 to honor the memory of Stuart Rome, who was a Baltimore native and an attorney, a community activist, a patron of the arts, and a humanitarian. Past Rome lecturers have included Daniel Levinson, Inspector General of the Department of Health and Human Services; Lawrence Gostin of Georgetown University; R. Alta Charo of the University of Wisconsin at Madison, who also served on the President's Commission for Bioethics; Robert Burt of Yale University;



*Professor Michele B. Goodwin*

and Nancy-Ann DeParle, Deputy Chief of Staff for Policy in the Obama Administration and the former director of the Centers for Medicare and Medicaid Services.

In the Spring, Professor Goodwin will teach two courses – Directed Readings in Health Law and Biotechnology and the Law. She will also spearhead two L&HCP roundtables. The first, "New Biopolitics: The Drafting of a Constitution," will look at high profile questions relating to DNA and law enforcement, patenting human cell lines, and new-born testing among others and begin the process of defining what biopolitics means, including evaluating what issues are the most deserving of a "constitutional" framing. The second roundtable, Family, Privacy, Secrets & The Law, will consider states' obligations to protect the vulnerable from abuse and neglect, of the ways in which the law promises/owes protection, of the success or failure it brings about when endeavoring to intervene and offer protection, and the obligation to honor family autonomy and privacy.

## 2012 STUART ROME LECTURE

### **Reproductive Justice: The New Constitutional Battlefield**

Presented by

**Michele B. Goodwin, JD, LL.M.**

Everett Fraser Professor of Law

University of Minnesota School of Law

**Thursday, November 1, 2012 | 5 p.m.**

University of Maryland Francis King Carey School of Law | 500 W. Baltimore Street | Baltimore, Maryland 21202

Open to the public. A reception will follow the Lecture. For more information, contact Virginia Rowthorn at [vrowthorn@law.umaryland.edu](mailto:vrowthorn@law.umaryland.edu).

*The Stuart Rome Lecture was established by his family and friends to celebrate Stuart Rome's life and work as an attorney, community activist, art patron and humanitarian, and is supported by the Stuart Rome Lecture Fund.*

# ANOTHER YEAR, ANOTHER RECORD LAW & HEALTH CARE PROGRAM GRADUATES 40 IN 2012

This Spring, the 15th year that the Law & Health Care Program (L&HCP) has been granting a certificate to those students who concentrated in health care law, a record 40 students qualified for the Health Law Certificate. This growing number of students focusing on health law is having a profound – and wonderful – effect on the L&HCP and the law school in many ways, including the number and variety of health law externships the students complete, the number of notes and articles students are writing and publishing, and the variety of student health law activities organized by the Student Health Law Organization.

To earn the Health Law Certificate, students are required to take a number of health law courses, write a scholarly health law paper, and complete the experiential learning component of the certificate by taking a clinic or externship.

On May 16, L&HCP faculty and administrators hosted a graduation breakfast for the 2012 health law graduates and their family members. At this breakfast, faculty members spoke about the individual accomplishments of this record-breaking group and their contributions to the Program. While it was hard to say goodbye to this group, we look forward to engaging them in future L&HCP programming as alums and to their serving as resources for our up-and-coming future health law practitioners.



*(from l to r:) Miri Listokin, Lindsey McCurdy, Jennifer Siegel and Michael Bacharach*



*(from l to r:) Peter Chin, Sage Graham, Bryna Shmerling and Michelle Brunner*

## 2012 HEALTH LAW CERTIFICATE RECIPIENTS

Michael D. Bacharach	Sage Catherine Graham	Lindsey May McCurdy	Bryna Rose Shmerling
Lindsay Elizabeth Bird	Alexander Walter	Anne Elizabeth	Jennifer Lauren Siegel
Kelly Ann Bowles	Greficz, III	Harper Mettam	Max Drew Siegel
Raquel Gisela Bracho	Nicole Elena Grimm	Bradford Allen Morse	Gregory Adam Sunshine
Michelle Anne Brunner	Ranjit S. Hatti	Arish Narayen	Shivani Tomar
Peter Wai Kwang Chin	Andrea Nicola Johnson	Boatema A. Ntiri-Reid	Jamie Michelle
Monica Ayoung Chu	Charles Edmund Julius	Kelly Umberger Owens	Wagenheim
Sanjay De	Younyoung Brian Lee	Eve Sarah Pachter	Hannah Minor Whitman
Aaron Blake	Christina Songeun Lim	Rosalinda Pascual	Katherina Maria Zotos
DeGraffenreidt	Michele Listokin	Archita Niranjana Patel	
Joshua Feldman	Lucy Gibson	Lauren Grace Perry	
Andrew Gibson	Mac Gabhann	Aarti Rama Puskoor	

# HEALTH LAW FACULTY PUBLICATIONS, PRESENTATIONS, INTERVIEWS AND OTHER ACTIVITIES

May 2011 – July 2012

## RICHARD BOLDT

### Publications

“Adolescent Decision Making: Legal Issues with Respect to Treatment for Substance Misuse and Mental Illness,” 15 JOURNAL OF HEALTH CARE LAW & POLICY 75-115 (2012).

### Presentations

“Mental Illness and the Criminal Justice System,” Greenwall Fellowship Program in Bioethics and Health Policy, Johns Hopkins University Berman Institute of Bioethics (Spring 2012).

## KATHLEEN DACHILLE

### Publications

“Waterpipe Smoking among US University Students,” *Nicotine & Tobacco Research* (May 2012) (with Primack, B., Shensa, A., Kim, K., Carroll, M., Hoban, M., Leino, E., Eissenberg, T., and Fine, J.).

“Mobilizing for Policy: Using Community-Based Participatory Research to Impose Minimum Packaging Requirements on Small Cigars,” *Progress in Community Health Partnerships: Research, Education, and Action* (Summer 2012) (with Milam, A, Bone, L., Stillman, F., Holden, D.).

“Using Law to Improve Public Health: The Tobacco Example,” NEW YORK STATE BAR ASSOCIATION HEALTH LAW JOURNAL SPECIAL ISSUE: PUBLIC HEALTH LAW AND ETHICS (Spring 2012).

### Presentations

“Policy, Environmental and Systems Change,” Maryland State Council on Cancer Control 18th Annual Conference, Baltimore, MD (November 2011).

“Hydraulic Fracturing: Potential Health Impacts and Public Health Response,” APHA Annual Meeting, Washington, DC (November 2011).

“Locals Taking Lead: Tobacco Control in Maryland,” UMB/DHMH Summit on Childhood Obesity, Baltimore, MD (November 2011).

“Epidemiologic and Public Health Considerations of Shale Gas Production: The Missing Link,” Physicians Scientists and Engineers for Healthy Energy (PSE) and the Mid-Atlantic Center for Children’s Health and the Environment (MACCHE) Conference, Washington, DC (January 2012).

“Sales Restrictions,” Tobacco Control Legal Consortium, Point of Sale Meeting, William Mitchell College of Law, St. Paul, Minnesota. (May 15, 2012).

“The Benefits of Public Health Law Clinics,” Health Law Teachers’ Annual Conference, Sandra Day O’Connor School of Law, Tempe, Arizona. (June 8, 2012).

“Policy Approaches to Reducing Toxic Exposures in the Home,” Network for Public Health Law Webinar Series, Online Webinar. (June 21, 2012).

“Powers of Local Legislatures and Boards of Health in Maryland,” Legal Resource Center/Institute for Healthiest Maryland--Community Transformation Grant Webinar Series, Online Webinar. (June 25, 2012).

“Hydraulic Fracturing: Potential Benefits and Risk,” Network for Public Health Law Regional Meeting, UM Carey Law School, Baltimore, Maryland. (June 26, 2012).

“Injury Legislation Review: Maryland General Assembly 2012,” Partnership for a Safer Maryland Annual Conference, Glenelg, Maryland. (June 29, 2012).

“Going Beyond the FDA Ban on Flavored Cigarettes,” National Conference on Tobacco or Health, Kansas City, Missouri. (August 15, 2012).

## SARA GOLD

### Presentations

Co-facilitator, Advocacy Breakout Session, University of Maryland’s Leadership in HIV Summit: Preparing the Future, Baltimore, MD (April 16, 2012).

“Child Welfare, Domestic Violence, and HIV: What are the Intersections?” Department of OB/Gyn Grand Rounds, University of MD School of Medicine, Baltimore, MD (March 2012).

## MICHAEL GREENBERGER

### Publications

“The Maryland Personal Information Protection Act: Strengthening Maryland’s Security Breach Notification Law,” 42 UNIVERSITY OF BALTIMORE LAW REVIEW 129 (2012) (with M. Swinburne).

### Presentations

Panel Moderator, “Are ‘Supergerms’ the Next Atomic Bomb? The Legal, Ethical, Public Health, and Biosecurity Considerations for Dual-Use Biological Experiments,” 35th Annual Health Law Professors Conference, Sandra Day O’Connor School of Law, Tempe, Arizona (June 8, 2012).

“Careers in Homeland Security & National Security – The Academic Path,” 7th Annual Homeland Security Law Institute (March 23, 2012).

Speaker, “Organizing and Managing Emergencies,” The Wednesday Club of Baltimore (February 15, 2012).

“National Security 2.0: Economic Markets and Technological Advancement,” Florida International University College of Law, FIU Law Review and the Federalist Society National

Security Symposium, What the Future Holds: Balancing Law, Liberty and National Security (November 4, 2011).

“Getting Down to Business: Exploring Job and Contracting Opportunities with the Department of Homeland Security,” 2011 Congressional Black Caucus Annual Legislative Conference Issue Forum, Washington, DC (September 22, 2011).

Moderator, “Ten Years After 9/11: Building a Prepared and Resilient Maryland,” The University of Maryland Center for Health and Homeland Security and the Governor’s Office of Homeland Security Event (September 9, 2011).

#### **Award**

Influential Marylander Award,” *The Daily Record* (January 26, 2012).

## LESLIE MELTZER HENRY

#### **Publications**

“Adolescent Medical Decision-Making and the Law of the Horse,” 15 *JOURNAL OF HEALTH CARE LAW & POLICY* 1 (2012) (with Amanda Pustilnik).

“Commerce Games and the Individual Mandate,” 100 *GEORGETOWN LAW JOURNAL* 1117 (2012) (with Maxwell Stearns).

“The Jurisprudence of Dignity,” 160 *UNIVERSITY OF PENNSYLVANIA LAW REVIEW* 169 (2011).

“Individual Mandate is Constitutional,” *The Baltimore Sun* (op-ed, with Maxwell Stearns), March 23, 2012.

#### **Presentations**

“The Constitutionality of the Individual Mandate”

- Johns Hopkins Berman Institute of Bioethics (March 26, 2012).
- Johns Hopkins Bloomberg School of Public Health (April 2, 2012).
- University of Maryland School of Nursing (April 10, 2012).

#### **Media**

Quoted, “Roberts’ Decision Highlights Role of the Court,” *The Daily Record* (July 1, 2012).

Quoted, “Marylanders Rush to Parse Court Health Care Ruling,” *The Daily Record* (June 28, 2012).

Quoted, “Supreme Court Begins Hearings on Health Care Law,” *The Baltimore Sun* (March 27, 2012).

Interview, “Local Bioethicist Weighs in on Health Care Battle,” WUSA-ABC Evening News (March 26, 2012).

Quoted, “Legal Experts See a Close Win for Health Reform Law,” ABC, Good Morning America Online (MARCH 22, 2012).

Quoted, “Sen. Orrin Hatch and Forbes.com Slam Obamacare,” *Deseret News* (March 22, 2012).

## DIANE E. HOFFMANN

#### **Publications**

“Health Claim Regulation in the EU and the US: Which is the Better Approach?” (forthcoming in *Beneficial Microbes*)

“Report to the Maryland Board of Physicians,” (July, 2012) (with Jay Perman, MD, Barbara Klein and Donald Sweikert, MD)

#### **Presentations**

“Recommendations to Improve Complaint Resolution Procedures,” Maryland Board of Physicians, Baltimore, MD (July 25, 2012) (with Dr. Jay Perman, Dr. Donald Sweikert, and Barbara Klein).

“Human Subjects Research Regulations: Proposals for Reform – Research on the Human Microbiome,” 35th Annual Health Law Professors Conference, Sandra Day O’Connor School of Law, Tempe, Arizona (June 8, 2012).

Co-organizer and Speaker, “Informed Consent Issues Related to Research on the Human Microbiome,” UM Carey Law & Health Care Program and Johns Hopkins Berman Institute of Bioethics Health Law & Bioethics Roundtable: Human Subjects Research Regulations: Proposals for Reform, Baltimore, MD (April 27, 2012).

Convener, Moderator and Speaker, “Should States Be Establishing Dispensaries to Distribute Medical Marijuana,” Balancing Science and Politics: The Challenges of Implementing Medical Marijuana Laws, UM Carey Law (April 13, 2012).

“The Ethics of Health Claims and a Comparison of Health Claim Regulation in the US and EU,” 3rd TNO Beneficial Microbes Conference: International Conference on the Health Impact and Future Potential of Beneficial Microbes, The Netherlands (March 27, 2012)

“Legal and Regulatory Implications of the Human Microbiome Project,” Human Microbiome Project ELSI (Ethical, Legal and Social Issues) Meeting, Houston, TX (March 2, 2012).

“Ethics and the Dental Profession,” University of Maryland School of Dentistry, lecture to third year dental students (Nov. 30, 2011).

“Federal Regulation of Probiotics: An Analysis of the Existing Regulatory Framework and Recommendations for Alternative Frameworks,” University of Maryland School of Pharmacy, Center for Drugs and Public Policy, Faculty Forum (Nov. 28, 2011).

“Medical Marijuana: Policy and Research Considerations,” National Institute of Drug Abuse, Rockville, MD (November 9, 2011) (with faculty from University of Maryland Center for Drugs and Public Policy).

“Are Federal Actions Regarding the Operation of Medical Marijuana Dispensaries at Odds with Public Health and Safety Goals?” Annual Meeting of the American Public Health Association, Washington, DC (Oct. 31, 2011).

*Cont. on page 14*

## Faculty Activities

Cont. from p. 13

“Clarifying Maryland Law on Medically Ineffective Treatment,” Roundtable for Maryland Hospital Legal Counsel and Risk Managers Sponsored by the Maryland Health Care Ethics Committee Network, Baltimore, MD (Sept. 28, 2011).

### AMANDA PUSTILNIK

#### Publications

“Adolescent Medical Decision-Making and the Law of the Horse,” 15 JOURNAL OF HEALTH CARE LAW & POLICY 1 (2012) (with Leslie Meltzer Henry).

“Calling Mental Illness ‘Myth’ Leads to State Coercion,” *Cato Unbound* (Cato Institute’s Online Journal), August 13, 2012.

#### Presentations

“Proving Pain: Can Brain Scans Transform Compensation & Care for the Disabled?” University of Miami School of Law (September 24, 2012).

“Brain Scan Evidence in Chronic Pain Adjudication: X-Ray or Mirage?” UCLA Law School (May 31, 2012).

“New Technologies and the Future of Health Law,” University of Indiana Robert H. McKinney School of Law Symposium: Imagining the Next Quarter Century of Health Care Law (April 12, 2012).

### KAREN ROTHENBERG

#### Publications

“Genes and Plays: Bringing ELSI Issues to Life,” 14 GENETICS IN MEDICINE 274 (2012) (with Lynn Bush).

“Teaching Law Students to be Policymakers: The Health and Science Workshop on Genomic Research,” 40 JOURNAL OF LAW, MEDICINE & ETHICS 147 (2012) (with Benjamin E. Berkman).

“Dialogues, Dilemmas, and Disclosures: Genomic Research and Incidental Findings,” 14 GENETICS IN MEDICINE 293 (2012) (with Lynn Bush).

“Mixed Messages: The Intersection of Prenatal Genetic Testing and Abortion,” 55 HOWARD LAW JOURNAL 983 (2012) (with Rachel Rebouché).

#### Awards

McDonald-Merrill-Ketcham Memorial Lectureship and Award for Excellence in Law and Medicine at IU-McKinney School of Law and IU School of Medicine.

### VIRGINIA ROTHORN

#### Publications

“Health Law Service-Learning Trip: A How-to Guide” 40 JOURNAL OF LAW, MEDICINE & ETHICS 401 (2012).

Co-Editor, *Guardianship And Its Alternatives: A Handbook on Maryland Law*, (with Ellen Callegary) Joint Publication of L&HCP and Maryland Bar Assoc. (2011)

### JACK SCHWARTZ

#### Publications

“A Legislatively Mandated Council: A Model for Palliative Care Policy Integration,” 14 JOURNAL OF PALLIATIVE MEDICINE 1240 (2011) (with Cynda Rushton).

“Informed Consent Process for Patient Participation in Rare Disease Registries Linked to Biorepositories,” 33 CONTEMPORARY CLINICAL TRIALS 5 (2012) (with Yaffa Rubinstein, Stephen Groft, Sara Hull Chandros, et al.).

“Law and Informed Consent: The ‘Reasonable Hospital Patient,’” 3 JOURNAL OF HOSPITAL ETHICS 6 (2012).

“Legal Issues for Caregivers of Individuals with Alzheimer’s Disease,” *Caregiving For Alzheimer’s Disease And Related Disorders: Challenges For Professionals And Families* (New York: Springer) (Zarit S.H. and R.C. Talley, eds.) (with Leslie B. Fried) (in press).

#### Presentations

“Legal Risk, Ethical Practice: Keeping Your Balance in an Overly Lawyered World,” Surgical Grand Rounds:

MedStar Washington Hospital Center, Washington, DC (October 11, 2011)

MedStar Union Memorial Hospital, Baltimore, MD (December 9, 2011).

“The Impact of the Law on Clinical Ethics Practice,” Clinical Ethics Immersion: MedStar Washington Hospital Center, Washington, DC (November 6, 2011 and June 11, 2012).

“MOLST Background and Implementation,” Ober|Kaler Webinar, Baltimore, MD (March 12, 2012).

“Law and Medical Decision Making,” Lunchtime Lecture Series: MedStar Washington Hospital Center, Washington, DC (March 29, 2012).

### ELLEN WEBER

#### Publications

“Failure of Physicians to Prescribe Pharmacotherapies for Addiction” excerpt reprinted in Alex Kreit, *Controlled Substances: Crime, Regulation, and Policy*, Carolina Academic Press (forthcoming 2012).

#### Presentations

“Health Care Reform Implementation in Maryland: Ensuring Access To Substance Use Disorder and Mental Health Care,” Baltimore Substance Abuse Systems, 2012 Legislative Breakfast (December 13, 2011).

“Health Care Reform: Will We Build a More Comprehensive Care System for Persons with Addiction Problems?” Johns Hopkins Bloomberg School of Public Health (March 9, 2012).

“Health Reform Moves to the States: Maryland and the ACA: How Far In Front?” ASLME Health Law Professors Conference, Sandra Day O’Connor School of Law, Tempe, AZ (June 9, 2012).

“Implementation and Enforcement of the Mental Health Parity and Addiction Equity Act,” Congressional Forum, Washington, DC (June 26, 2012).

## UPCOMING ROUNDTABLE HEALTH CARE REFORM: THE STATE OF THE STATES MARCH 1, 2013

On Friday, March 1, 2013, the Law & Health Care Program is sponsoring a roundtable that will focus on state efforts to implement the Affordable Care Act (ACA). Roundtable participants will include academics and policy-makers who will discuss key legal issues and potential solutions to problems confronting States as they implement the ACA. The Health Care Reform: The State of the States Roundtable will delve into the decisions that a handful of States will be in the process of making (or engaging with the federal government to make) as part implementing an insurance exchange such as affordability; benefits for reproductive health services, addiction diagnosis and treatment, and mental health services; and the flexibility that private insurers will have to meet the requirements of the essential health benefits package. The roundtable will also look at States’ plans for Medicaid expansion including providing care to undocumented aliens, EMTALA issues, and the impact on disproportionate share hospitals.

Participants will include:

- Professor Ellen Weber, University of Maryland Francis King Carey School of Law
- Professor Brietta Clark, Loyola Law School (California)
- Professor John Jacobi, Seton Hall School of Law (New Jersey)
- Professor Sallie Thieme Sanford, University of Washington School of Law
- Professor Sidney Watson, Saint Louis University School of Law
- Professor Elizabeth Weeks Leonard, University of Georgia School of Law

The conference is being organized by Professor Ellen Weber, Director of the law school’s Drug Policy Clinic, and Director of the Law & Health Care Program Diane Hoffmann. Professor Weber received a \$350,000 grant from the Open Society Institute in 2011 to help ensure expanded access to addiction treatment services in Maryland as the federal health care reform legislation is implemented. For more information about the roundtable, please contact Virginia Rowthorn, Managing Director of the Law & Health Care Program at [vrowthorn@law.umaryland.edu](mailto:vrowthorn@law.umaryland.edu).



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forwarded to the above address.*