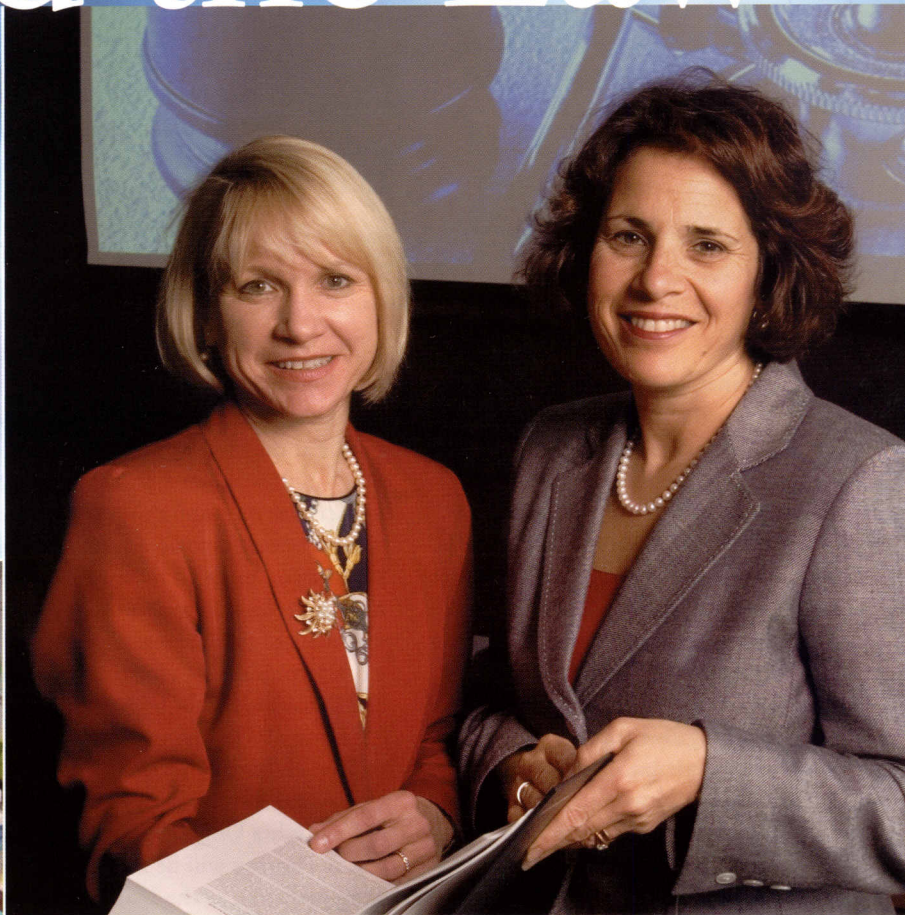


Health Care and the Law



Law & Health Care program director and Associate Dean Diane Hoffmann (left) and program founder Dean Karen Rothenberg have a dynamic group of faculty and students, including (counterclockwise from top) Professor Robin Wilson, Professor Tom Pérez, and Professor Ellen Weber.

A Strong Prescription for the Future

BY VERONICA L. NAISMITH

The health care scene is changing at a dizzying rate. But the Law & Health Care Program is keeping pace with its own bold ideas and real-world solutions to a host of legal, ethical, and policy quandaries.

On a contentious but hopeful fall day, doctors and lawyers, health insurers and legislators, nurses and hospital administrators gathered in a conference room at the School of Law. Medical malpractice insurance rates were increasing at a troubling rate. The players held strong, divergent opinions about the causes for, consequences of, and remedies to the problem. But on this day, these professionals, more often adversaries than colleagues, were there to begin a dialogue and to search for answers. It was the law school—specifically its Law & Health Care Program and Center for Dispute Resolution—that brought the sides together.

It was not the first time the Law & Health Care Program had brought together stakeholders on a controversial health law topic. Major research and innovation have surrounded the work on issues as diverse as the right-to-die controversy (influencing legislation years before Shiao hit the headlines) to the increasing use of genetic information in the courts. Its faculty and students have led policy changes in drug treatment policy and HIV/AIDS discrimination in Baltimore City, challenged racial and ethnic disparities in access to health care, and influenced tobacco control policy. The breadth and depth of the program's contribution to research and public policy in Maryland, across the country, and increasingly, in international settings, are two of its hallmarks, and a large part of what has made it one of the top three such programs in the country.



Professor Robin Wilson, debating a point with program director, Diane Hoffmann, is a leading expert in biomedical ethics.

“As a public law school, we serve a distinctive mission,” says Karen Rothenberg, dean and founder of the program. “Turning students into exceptional lawyers is our primary goal. But we believe that goal is best achieved when students live and work in an institution that is actively and concretely involved in changing society for the better. The Law & Health Care Program makes this mission real.”

COLLABORATION AT ITS BEST

In the early 1980s, many of the headline-grabbing issues of today—DNA evidence, new medical technology, the right to die—were just heating up. Dean Karen Rothenberg, a health policy expert outside of academia at the time, recognized that the next generation of lawyers would need to bridge the divide between professions and solve problems through interdisciplinary collaboration.

“When I first came to Maryland in 1983, I was struck by the potential of UM’s Baltimore campus, with all the professional schools together,” Rothenberg relates. “I envisioned a health law program that would take advantage of the wealth of expertise that existed in these schools.”

Diane Hoffmann joined the law school in 1987, and when Rothenberg became dean of the law school in 1999, having Hoffmann follow in her footsteps as program director was a natural progression. The two shared a clear vision for the program based on several key principles: cutting-edge scholarship by an engaged faculty, an interdisciplinary curriculum reaching across the health care and human services professions, opportunities for real world learning through externships and clinical experiences, and service to the larger community by contributing to public policy.

Cooperation and interaction among the six professional schools on the UM Baltimore campus permeates the program, and makes it unique in the country. Students from law, medicine, nursing, dentistry, pharmacy, and social work can at times be found at the same table tackling real-world issues in health law courses such as Critical Issues in Health Care, Conflict Resolution in Health Care, Interdisciplinary Practice with Grandparent Families Clinic, and Homeland Security: The Interdisciplinary Study of Crisis and Health Consequence Management Policy. Cooperation with other schools in the UM system allows students to combine disciplines such as public health, pharmacy, and health policy in dual degrees.

“Interdisciplinary teaching and scholarship are absolutely necessary in order to analyze and solve today’s complex health law problems,” according to Hoffmann. “Our interdisciplinary courses are

just one facet of what has become one of the most extensive health law curriculums in the country.”

Faculty research has a distinct interdisciplinary flavor, as well. “I take a great deal of pride in the role the Law & Health Care Program has had in addressing complex ethical, legal, and social issues,” Rothenberg says. The program’s faculty have published on thought-provoking and widely diverse issues, including whether or not to allow human cloning, health care financing, regulation of *in vitro* fertilization, the regulation of managed care, genetic testing, access to health insurance, enforcement of fraud and abuse rules, the role of ethics committees in health care, international public health, the legal and financial obstacles to pain management, and racial and ethnic disparities in health care. The program’s academic journal, *The Journal of Health Care Law and Policy*, has become a forum for disseminating such groundbreaking research by scholars across the country.

According to Hoffmann, “We have stuck to our vision of being excellent in teaching, scholarship, and service. We had to be outstanding in all three to build the kind of reputation we enjoy today.”

That reputation attracts some of the best and brightest students to Maryland. Many of its health law students have had successful careers in areas other than the law, and significant accomplishments in public service prior to enrolling in law school; many have advanced degrees. Each year, about twenty-five health law students choose to earn a formal certificate in the specialty. They come to UM Law because they know they will not be just discussing the issues: they will be affecting real-world policy as they learn.

IN FRONT OF THE ISSUES

Faculty are currently at work on a constellation of issues that represent some of the most vexing problems facing health care today. Their work and the work of their students is helping to put these issues on the map, and to find solutions to their root causes.

The Ethics of Medical Practice and Emerging Technologies

The work of Robin Wilson is one example. The ethics of medical teaching practices came under intense scrutiny two years ago when a media frenzy erupted over a study of four Philadelphia-area medical schools. The study described the routine practice of medical students performing pelvic exams on anesthetized women, most often without the patient’s permission. Wilson, an associate professor and a nationally recognized expert in health care law, biomedical ethics, insurance, and

family law, discovered that this was not an isolated incident. And, as she continued to study the practice, more unsettling information came to light.

"We convened a panel discussion to focus on whether African-Americans and other minorities underwent a disproportionate amount of these exams. Were these groups made examples of more often than whites?" Wilson asks. This panel explored the ethical implications of the pelvic exam practice last January at the annual meeting of the American Association of Law Schools.

Wilson's work has helped change policy and practice. It will appear in print later this year when Maryland's own *Journal of Health Care Law and Policy* (see sidebar) publishes a set of papers authored by Wilson and her collaborators: a bioethicist whose work has focused on the use of deceased patients to teach resuscitation techniques without family consent, and a doctor who is developing a policy for implementation by medical schools on the practice of performing medical procedures on women under anesthesia.

Wilson's interest in bioethics includes examining the ethical implications of emerging technology. Four years ago, she began blazing a trail in the study of ethical issues in nanotechnology, a relatively new scientific field involving the design and production of extremely small electronic devices and circuits built from individual atoms and molecules.

"This is the new wave of bioethics," says Wilson. A true innovator, Wilson got her start working on bioethics issues with a team of philosophers and ethicists, rather than the traditional cadre of doctors and lawyers. As part of a \$1.35 million National Science Foundation grant, Wilson is organizing a symposium to discuss the legal and technical implications of nanotechnology. "How much of a regulatory damper do we put on new technology?" she asks. "We don't want to clamp down the regulatory hammer to dissuade good science, but we don't want a Chernobyl either." Wilson is out in front of the issue, leading policymakers and legal scholars in framing the important ethical questions associated with this new technology.

Genetic Information in the Courts

In recent years, from the scripts of "CSI" to real-life courtrooms, the use of DNA evidence by courts to identify criminal perpetrators or establish paternity has become commonplace. Less common—at least for now—is the use of genetic information for what it reveals about the health of the parties to a lawsuit. Should a court allow evidence of a plaintiff's genetic predisposition for breast cancer to determine whether it was toxins in the drinking water or her genetic predisposition that caused her disease? For Rothenberg and Hoffmann, it is only a matter of time before a judge is asked for an answer.

"There are so many new tests that can tell us about genetic conditions and predispositions for certain diseases, like breast cancer and Huntington's disease," says Diane Hoffmann. "The question is whether this information should be compelled by or admitted in court."

Staying one step ahead of the issue, Hoffmann and Rothenberg recently completed a survey of trial court judges that questioned their perspectives on the use of this information. "We surveyed Maryland state and federal court judges and had a fantastic response rate," Rothenberg says. Of the 140 circuit court judges in

Maryland, 72 percent responded to the survey; of the 25 federal judges, 64 percent responded. After survey responses were received, Hoffmann and Rothenberg held meetings with six groups of judges to share their results and conclusions, and to further probe the judges' perspective on the questions and rationale for their answers.

Survey questions were based on hypothetical cases that, in the criminal context, used genetic tests to determine guilt or innocence, future dangerousness for sentencing determinations and, in the civil context, used genetic tests to refute causation, counter damage claims, and determine custody. The judges were asked to explain why they would or would not admit or compel a particular test, by considering factors such as whether the test was sufficient-

Publishing on Health Law's Cutting Edge

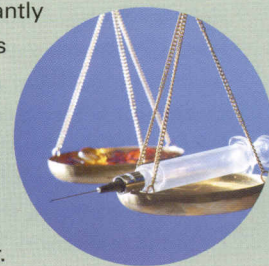
Just a cursory look at the daily news makes it obvious that health care policy is a cutting-edge area of the law these days. Breaking headlines create a constantly moving target—and the School of Law is continuing to lead the way in publishing emerging legal discussions and research.

The law school's *Journal of Health Care Law and Policy*, one of the four student-run journals, is in its eighth year.

This semiannual journal takes a multi-faceted approach to health and the law, while providing an excellent educational opportunity for students who wish to combine their academic work with developing substantial legal research and writing skills.

The *Journal* is a vital element of the school's top-ranked Law & Health Care Program. Key content includes the publication of the annual Stuart Rome Lecture, an endowed health-law lecture series with presentations by individuals with national reputations in health law, bioethics, and other current legal areas in the field. Contributors include not only legal professionals, but physicians, philosophers, sociologists, leaders in health policy, bioethicists, and more.

"The *Journal* is distinctive in that its content is based on symposia organized by faculty. This makes it topical and cutting edge," notes Diane Hoffmann, associate dean and director of the Law & Health Care Program and the *Journal's* former faculty advisor. "The symposia address current issues in health policy: the most recent dealt with vaccine development (spring 2004) and racial and ethnic disparities in health care (spring 2005). We've featured the crisis in long-term care; research on children; resolving health care issues through mediation; guns as a public-health issue; access to genetic information, including privacy issues; and state coverage of health insurance."—Ruth E. Thaler-Carter



ly conclusive, whether the jury would weigh the test result inappropriately, or whether it was an invasion of the defendant's privacy that would stigmatize the defendant, or deprive the defendant of informed consent.

Hoffmann and Rothenberg plan to present this research in several academic forums and hope to publish their work on this highly charged issue within the year. They hope their work will spur a dialogue on how courts may confront these issues in the future.

End of Life Decisions

Long before Terri Schiavo, Marylanders watched a right-to-die drama unfold in their own backyard. The case of Ronald Mack played to much smaller headlines, but still had an extraordinary effect on end-of-life decisions. Mack was in a persistent vegetative state. Although his wife claimed that he would not want to be kept alive artificially, a judge ruled against her and named Mack's father as guardian, thus ensuring that Mack's feeding tube would remain in place. (That same Judge Fader is now on the law school faculty as a senior judicial fellow.)

"We needed a legislative response to the case," says Hoffmann, "and at the time, few states had enacted comprehensive right-to-die legislation." After consulting with elder law attorneys, physicians, senior citizens groups, religious groups, and representatives from the state's hospitals and nursing homes, Hoffmann helped draft a bill that eventually formed the basis for Maryland's Health Care Decisions Act.

In addition to Hoffmann's work in connection with the Health Care Decisions Act, she founded the Maryland Healthcare Ethics Committee Network (MHECN), an educational resource for nursing home and hospital ethics committees.

"Ethics committees are multidisciplinary groups of community members, doctors, nurses, and administrators who help patients, family members, and health care providers understand the legal and bioethical concepts related to patient care," Hoffmann explains. "Maryland was the first state and is now one of only a handful of states that require hospitals and nursing homes to have ethics committees to address end-of-life disputes."

After serving on a number of ethics committees herself, Hoffmann realized that many committee members lacked formal training in the areas necessary to help them make appropriate patient care recommendations. MHECN provides continuing education for ethics committee members, publishes a newsletter, sponsors conferences, hosts an online discussion group and a bioethics Listserv, and provides a number of other resources for its members. Its recent conferences have focused on "do not resuscitate" (DNR) orders and issues of diminished capacity and informed consent.

The Med Mal Quagmire

In the span of two short years, Maryland moved from a state with few malpractice insurance concerns to a state whose physicians were facing substantial increases in medical malpractice insurance rates. The state's leading malpractice insurer had been granted a 28 percent rate increase in 2003, and an even greater increase was expected for 2004. Doctors and other health care providers threatened that access to services would decrease. Insurers alleged increasing medical malpractice jury awards were to blame. Lawyers cited insurers seeking to maximize profits. In the fall of 2003, the School of Law stepped in as a neutral party and hosted a roundtable discussion among the stakeholders.

Doctor, Lawyer, Dad

Jeremy Coylewright knew from an early age that he wanted to be a doctor. With both parents in the medical field—his father was a Navy physician and his mother a nurse—it's not surprising that Coylewright would follow a familiar path.

But while working as an EMT, he discovered his true calling. A stay-at-home dad during the week, Coylewright spent weekends transporting patients to and from penitentiaries in upstate New York. An encounter with an HIV-positive woman with end-stage renal disease gave his career goals new focus.

"I was bearing witness to someone on death's door," Coylewright says, "and the way the guards treated her, her tiny cell, the inhumanity of it was unbelievable. It's a situation that needs to change, and I knew I could be an effective advocate."

So Coylewright postponed medical school for law school. For the last four

years, he attended the University of Maryland at night while still tending his two small children during the day. He earned his JD and health law certificate this past May, at the same time his wife was getting her medical degree at Johns Hopkins.

"It's been a great four years," Coylewright says. "It's been a good balance between school and being a husband and father. I could get away and do something for myself at night but still support my wife and be with my kids."

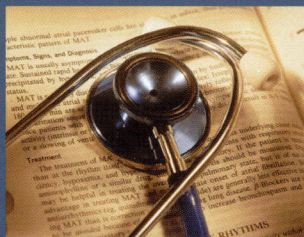
When researching law schools in the area, Coylewright was attracted to Maryland's Law & Health Care program. He described it as a way to achieve his desire to work as a physician in the penitentiary setting and serve as a resource for the maintenance of prisoner health, rehabilitation, and human rights. He cites the breadth of courses and vast array of clinical opportunities as particu-

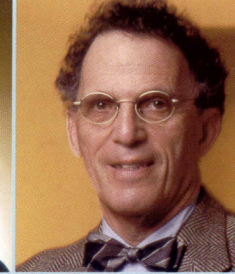
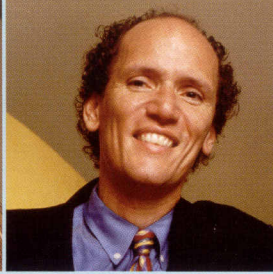
lar reasons for choosing Maryland. (Many students with advanced degrees are attracted to the law school for this and similar reasons.)

"It was the feeling of being able to do absolutely anything and having the full support of the law school," he adds. During his third year of school, Coylewright served as a legislative intern in the office of U.S. Representative Elijah E. Cummings (D-Md.). His research and advocacy efforts focused on health care disparities, the Global Fund for HIV and AIDS, issues of bioterrorism, and universal health care.

Now, with his law school degree in hand, Coylewright is a first-year medical student at Johns Hopkins. He anticipates specializing in either internal medicine or psychiatry, or perhaps both.

"I hope to incorporate the advocacy skills I learned in law school in my medical studies," Coylewright says. "I look forward to maintaining ties to Maryland and becoming a leader in the field of prisoner advocacy."





KATHLEEN DACHILLE

TOM PÉREZ

ELLEN WEBER

DEBORAH WEIMER

ROBIN WILSON

ROGER WOLF

These law school faculty contribute to the diversity of the program through their teaching and scholarship. Also working in law and health care issues and not pictured are Richard Boldt, JD; Irving Breitowitz, JD; I. Michael Greenberger, JD; Deborah S. Hellman, JD, MA; Lawrence Sung, JD, PhD; Allyn Taylor, JSD, LLM; and more than a dozen adjuncts.

“We hoped to have a conversation, to get the parties to look at the issues without being concerned that what they said would be reported,” says Roger Wolf, a professor, expert in mediation, and director of the school’s Center for Dispute Resolution at the University of Maryland (C-DRUM). “We wanted to be able to look at reasonable changes in a less adversarial and less confrontational way.” The event highlighted ways in which the law school plays a pivotal role in public policy debates by serving as a resource for both substance and process on a very controversial subject.

The conversation begun that fine fall day will continue this year as the law school hosts a two-part conference planned for September and October 2005, bringing together many of the same players. “We will explore the recently passed medical malpractice legislation on the first day,” Wolf says, “and on the second day we will go beyond the legislation and look at some creative solutions and best practices for patient safety, tort reform, and patient compensation.”

CHANGING LIVES OF CLIENTS IN THE HEALTH LAW CLINICS

Just as the Law & Health Care Program is at the forefront of policy debates, it is serving individual clients, working to improve their access to and experience of health care. As one of the country’s largest “teaching law firms,” the law school’s clinical program offers health law students a wealth of opportunities to represent clients in real-world lawyering. In drug treatment, HIV/AIDS support, access to Medicaid, and tobacco control, students and faculty are changing the lives of individuals, families, and communities.

Professor Ellen Weber created the school’s drug policy clinic to address discrimination against people with drug and alcohol problems. “The drug policy clinic is making progress,” Weber says, “in its efforts to have Maryland’s public safety and correctional officials implement more humane and effective drug treatment for persons involved in the criminal justice system.” Students working in this clinic uncovered the state’s failure to follow statutory requirements for providing appropriate withdrawal treatment for incarcerated persons with opiate dependence at the Baltimore City Detention Center. They also brought to light the failure of the corrections system to maintain methadone treatment for those already in treatment at the point of incarceration. Weber reports, “As a result of our students’ efforts, the state’s new prison health care contract *requires* the provision of methadone detoxification for persons in drug withdrawal and methadone maintenance for persons participating in a methadone program at the time of detention.”

Improved medications make living a full life with HIV possible. But even as treatment improves, the epidemic is spreading to new sectors of Baltimore’s population. Today, many HIV/AIDS controversies surround children affected by the disease. Students in one of Professor Deborah Weimer’s clinics help

at-risk adolescents with issues involving social security benefits eligibility, unemployment benefits appeals, and custody issues.

“We have also worked with several HIV-positive kids in foster care,” Weimer says. In one case, a client ran away from a foster home where her HIV status was disclosed to the other kids living in the home. “Our goals are to make sure they are in a placement where they are comfortable and their confidentiality is respected,” she adds.

Professor Tom Pérez describes the pain of immigrants and their children who are unable to pick up the phone and get a doctor’s appointment, like most of us can. Along the way, they had lost rights to Medicaid—and with it, health insurance for their kids—because of a web of state bureaucracy.

“The state was changing the rules to make people ineligible,” Pérez says. “They were discriminating against immigrants and against the citizen children of immigrants by creating a host of barriers.” The state was trying to document the status of the parents before granting benefits, a practice Pérez describes as irrelevant. “We filed a complaint against the Department of Health and Mental Hygiene and we’re now in the process of settling.” As a direct result of these efforts, the department is revising its policy on eligibility, removing barriers for immigrants and their children. “A public service lawyer needs many arrows in the quiver, and we’re using all we have,” Pérez says. “We’re working hard to get access for people regardless of their race, color, or immigration status.”

Students in the Tobacco Control Clinic, led by Professor Kathleen Dachille, have a similar satisfaction in seeing the impact of policy work on outcomes for clients. Representing local governments in civil prosecution of retailers accused of selling tobacco to minors or advising them in passing tobacco control ordinances, clinic students experience the challenges of turning classroom study into practical action, first-hand.

MAKING LAWYERS THAT MAKE A DIFFERENCE

It’s been almost twenty years since Karen Rothenberg first recognized the vast potential to be found at the University of Maryland Baltimore campus of the professions. She and Diane Hoffmann have envisioned a program where law students could learn to be problem solvers, knowing when to bring a lawsuit, when to mediate, when to change a law. And by exposing them to other health professionals working on the same social problems, they hoped to instill a new degree of professional cooperation and trust.

“Our goal has been to create a program with a far more ambitious agenda than just educating health care lawyers,” Rothenberg says. “We want to instill a sense of responsibility and commitment in those lawyers to do many things—to interact with their communities, to engage in advocacy and public service, to be skilled and responsive policymakers.”

Veronica L. Naismith is a legal reporter.