

WASHINGTON COLLEGE OF LAW HEALTH LAW BULLETIN

A QUARTERLY PUBLICATION

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WELCOME ALL INCOMING 1LS AND RETURNING WCL STUDENTS!!

WHO WE ARE

WCL's **Student Health Lawyers Association** ("SHLA"), a student organization dedicated to creating a forum to discuss issues relevant to the health care industry especially as they relate to legal theory and practice, is committed to improving the understanding and development of the discipline of health law. SHLA intends to provide an informational and professional resource to students pursuing a career in health law, as it simultaneously promotes awareness on a variety of health care topics through events and discussion panels. Under the guidance of Professor Corrine Parver (WCL 1982), retired partner and former head of the Health Law Services Practice at Dickstein Shapiro Morin & Oshinsky LLP, SHLA is working both to expand the law school's health law curriculum and establish a health law project as part of the law school's LLM Program in Law and Government that would bring WCL to the forefront of emerging health law issues.

NEXT SHLA OPEN MEETING:

**Thursday, Sept. 2, 2004, 7:30pm
Room TBD; food will be provided.**

OFFICERS & COMMITTEE MEMBERS

Lisa Lockwood, *Co-Founder; President*

Christine Naglieri, *Co-Founder; Editor, Newsletter*

Eric Liang, *Treasurer*

Prof. Corrine Parver, *Faculty Advisor*

WHAT IS HEALTH LAW?

Health care, a heavily regulated, complex market that comprises a large segment of the United States economy (approximately 1/7 of GDP), consistently faces new challenges from private and public payers, drug and medical device manufacturers, health care providers and suppliers, and federal and state governments. Given these ongoing challenges, the discipline of health law has developed over the last 25 years as a significant and multi-faceted area of legal study and practice. From an academic viewpoint, the study of health law begins with a fundamental working knowledge of



basic contract, corporate, tort, criminal and administrative law, all of which serve as the underpinning for more advanced studies of special state and federal health law and regulations and industry practices.

The landscape of the health care industry is constantly changing. Given that, health lawyers must maintain a level of knowledge and expertise in a variety of fields, particularly in areas such as fraud and abuse; Medicare and Medicaid and other federal and state governmental coverage, coding and reimbursement issues; hospital-physician relations; medical research and biotechnology; access to health care; health care financial transactions; compliance; health litigation, both criminal and civil; and patient-privacy regulations. A health lawyer may represent a client in specialty areas of the law such as corporate, administrative, securities, contracts, intellectual property, tax, and litigation, and may have to deal with ethical and bioethical issues such as violation of professional ethics, human research protocols, and patients' rights.

Health care attorneys represent a wide spectrum of health care organizations, in various capacities from in-house general counsel, to special counsel on particular, complex matters. Health industry organizations include, among others, hospitals and hospital systems; physicians, dentists, and other individual practitioners; nursing homes; home care companies; pharmaceutical and medical device manufacturers; insurers such as HMOs; and medical research and teaching institutions. As such, health care lawyers' representation of these types of clients covers all aspects of the law that would affect these business entities.

MY SUMMER EXPERIENCE IN HEALTH LAW

Lisa Lockwood, 3L

This past Summer, I worked as a legal research intern for the **U.S. Department of Health and Human Services, Office for Civil Rights**. Overall, the internship provided a great work experience -- I learned a tremendous amount in the area of civil rights as it relates to the health industry. Primarily, the position required research and memoranda writing. I researched the rights of mentally ill parents when faced with termination of their parental rights in court proceedings; HIPAA privacy regulations, more specifically, the requirements of states when providing copies of medical records to patients; and the validity and necessity of flagged test scores of disabled students who were provided accommodations during MCAT testing. The position also required me going out in the field and perform compliance reviews on state welfare agencies. Additionally, I reviewed complaints and made necessary arrangements to resolve complainants' issues. If you would like more information about my internship, please email me at lisalockwood@mac.com.

Eric Liang, 3L

My Summer work experience was in the **Mental Hygiene Legal Service (MHLS)**, in the 2nd Judicial Department of New York. MHLS is a state agency that provides legal



services and advice to persons with mental disabilities who are receiving care or alleged to be in need of care at inpatient and community-based treatment facilities. MHLS provides attorneys to represent these people in judicial and administrative proceedings concerning admission and retention in psychiatric facilities, treatment plans, and guardianship issues. In addition, MHLS provides advice and representation regarding standards of care and other matters affecting the civil liberties of persons receiving care at facilities for the mentally disabled. A typical workday had me visiting new patients in hospitals throughout the New York area, and informing them of their legal rights under the state's Mental Hygiene Law. Additionally, I met with current patients to determine if the hospital staff violated their civil rights during the course of their stay. If a hospital staff appeared to violate a patient's rights, I then researched the particular issue and drafted the appropriate legal memoranda. My research and writing covered many areas of law, including attorney-client privilege, abortion rights, and arbitrary and capricious rulemaking by a hospital. Assisting and defending the mentally disabled was a tremendously fulfilling and rewarding experience. If you would like more information about my internship, please email me at ericliang8@hotmail.com.

HEALTH LAW HEADLINES

U.S. SUPREME COURT RULES ON PATIENT'S ABILITY TO SUE HIS HEALTH PLAN

On June 21, 2004, the U.S. Supreme Court issued its decision in *Aetna Health Inc. v. Davila*, a case in which Juan Davila sued his HMO in Texas state court because it had refused to provide certain procedures and the refusal led to subsequent injuries. The question presented was whether the Employee Retirement Income Security Act of 1974 (ERISA) preempts the remedies available under the Texas Health Care Liability Act (THCLA) and prohibits individuals from suing their HMOs in state court when the HMOs refuse to provide a physician-recommended treatment. The THCLA was passed in 1997 by the Texas legislature to protect patients from HMOs that fail to exercise a duty of ordinary care in making decisions about health care benefits by giving patients the opportunity to sue and collect damages in state court.

In a unanimous opinion written by Justice Clarence Thomas, the Court held that Congress intended ERISA to provide a uniform system for regulating retirement schemes and benefits. Thus, if a state law conflicts with provisions in ERISA, ERISA must be used in its place. As a result, consumers in employer-sponsored health insurance plans must go to federal court and exercise their rights under ERISA since the right to sue under state law are not allowed. However, the ruling does not entirely strike down all state laws in this area. The decision only applies to employer-sponsored health plans that are subject to ERISA – as such, patients with coverage under an individual policy which is purchased directly from an insurance company and is not offered through an employer/employee benefit plan can still use state laws. Notably, ERISA generally does not apply to government (federal, state, or local) or church plans and people with Medicare or Medicaid plans. To read the Supreme Court's opinion, go to



<http://www.supremecourtus.gov/opinions/03slip/opinion.html> and select: *Aetna Health Inc. v Davila*.

CHECK OUT THESE HEALTH-RELATED WEBSITES!!

Government Resources

Department of Health and Human Services	www.hhs.gov
HHS Office of Inspector General	www.oig.hhs.gov
Food and Drug Administration	www.fda.gov
Centers for Medicare and Medicaid Services	www.cms.gov
Department of Justice	www.doj.gov

Health Law Resources

American Bar Association, Health Section	www.abanet.org/health/home.html
American Health Lawyers Association	www.healthlawyers.org

Human Rights/International Resources

Physicians for Human Rights	www.phrusa.org
Global Lawyers and Physicians	www.glphr.org
Pan American Health Organization	www.paho.org
World Health Organization	www.who.int/en/

Need health statistics?

Check out the Census Bureau, www.census.gov; the Center for Disease Control, www.cdc.gov/scientific.htm; the National Center for Health Statistics, www.cdc.gov/nchswww.

Tracking a health care bill in Congress?

Research federal legislation, www.thomas.loc.gov; and federal law, www.legal.gsa.gov.

BE ON THE LOOKOUT FOR FUTURE SHLA ACTIVITIES:

Legislative, regulatory, case law updates; Alumni-student-professor networking events; externships; scholarships; employment possibilities; volunteer placements.

INTERESTED IN HEALTH LAW? QUESTIONS ABOUT SHLA?

Contact: Lisa Lockwood at lisa_lockwood@hotmail.com or 727-692-4946; and Christine Naglieri at christine_naglieri@yahoo.com or 631-664-4416.