UBHLA
UNIVERSITY OF BALTIMORE HEALTH LAW ASSOCIATION

UBHLA HOLDS CAREER PANEL

On Monday, March 30th, the UBHLA held its second annual career panel. Health care law casts a wide net and covers a multitude of practice areas. Our career panels provide UB students who are interested in exploring health law a few snapshots of particular practice areas at a time.

In our fall career panel, students heard from a regulatory attorney with the Centers for Medicare and Medicaid Services; a prosecutor with the Maryland Medicaid Fraud Control Unit; an in-house risk management attorney for a large academic medical center; and a solo-practitioner who represents physician practices.

At our recent spring career panel, students had the opportunity to hear from a health care public interest attorney, an attorney for a long-term care company, and an administrative prosecutor for the Maryland Board of Physicians.

Laurie Norris, a health care public interest attorney, discussed her work with the Public Justice Center in Baltimore, MD. Ms. Norris received her J.D. from NYU School of Law and has worked in numerous public interest settings focusing on quality and access to health care.

She explained how the bulk of her work takes place at the legislative level where she advocates for access to health care for low-income residents to the Maryland Legislature and the State Medicaid Program. Although she largely works behind the scenes with health care policy, she also works face-to-face with families who struggle to find health care. Most notably, Ms. Norris worked with the family of 12 year-old Baltimore resident, Deamonte Driver, after he died of brain infection stemming from an untreated tooth abscess. He had been unable to obtain dental care because his Medicaid policy had lapsed. Recognizing that the problem of access to dental care for low-income residents was systematic and not isolated, Ms. Norris ardently advocated the Maryland legislature to address failures in the Medicaid program. As a result of her work, the story drew national attention and prompted a Congressional investigation into the Maryland Medicaid program. Since then the State has made great strides to make dental care more accessible to low-income residents.

John Lessner, an attorney for Erickson Retirement Communities, discussed his work in the long-term care setting. Erickson Retirement Communities is a developer and manager of continuing care communities. He encounters end-of-life issues and instruments, such as advanced directives and living wills; Medicaid fraud & abuse issues, since the majority of residents are covered by Medicaid; employment issues; and general contract issues.

He recounted his career path, how he "fell into health care law." Although he did not study health care law in school, after graduating, he worked as an Assistant Attorney General for the Maryland Medicaid Program. He then moved to private practice and worked in the health care practice of Ober/Kaler where he counseled Erickson Retirement Communities. As Erickson grew, becoming in need of their own in-house counsel, he exclusively began to represent them.

Finally, students also had the opportunity to hear from a state government attorney, Janet Brown. Ms. Brown is presently an Assistant Attorney General and administrative prosecutor for the Maryland Board of Physicians. She prosecutes physicians in license revocation proceedings, where she argues before the Office of Administrative Hearings and the Board of Physicians that the physician licensee has fallen below the standard of care. The goal of the Board, is to uphold quality of care, to protect patients, and to serve as the gatekeeper to the profession.

Prior to becoming a prosecutor, Ms. Brown served as Board Counsel for the Maryland Board of Dental Examiners, the Chiropractic Board, the Board of Morticians, and the Board of Nursing Home Administrators. She also served as counsel to Perkins Hospital Center, a forensic mental hospital operated by the Maryland Department of Health and Mental Hygiene, where those who have been found "not criminally responsible by reason of insanity" reside. She also discussed her work as chair of an Institutional Review Board (IRB); an independent ethics committee who reviews medical research proposals that involve human subjects. Such proposals must be approved by an IRB in order to proceed and qualify for federal, state, or private funding. Finally, she noted that her interest in health care law developed from her work experience prior to attending law school, as a psychiatric social worker.

-Anna Jacobs

Medical Ethics: Surgeon-Family Conflict

Some decisions that arise in medical settings are value judgments on such matters as the desirability of alternative outcomes. Among the most difficult of these judgments, are those that conflict with the views of the patient or the patient's agent (appointed in advance by the patient) or surrogate (agent appointed by law) decision-maker

In such decisions, the attention is focused on what the patient would have wanted. The most difficult of such conflicts occurs when the surgeon wants to continue treatment (because the patient will be better off and have a better quality of life) and the proxy or surrogate choose to stop treatment, presumably because the patient would have chosen to stop. This conflict especially arises in the absence of an advanced directive that clearly specifies what the patient wants done in a life-threatening situation. Acceptability of the decision of the proxy or surrogate turns on weight of evidence that the decision of the surrogate or proxy accurately reflects the patient's wishes.

In an ethics article published by The Society of Thoracic Surgeons, the authors discuss "heroic measures" and debate the two options of the physician in dealing with the patient. The patient in the article is a 40-year-old man who has a wife and two children. He is a 45 pack per year smoker and complains of chest pain, located in his right chest wall. He finds out that he has a mass in the right upper lung field and diagnostic work shows that he has squamous cell carcinoma of the lung, stage 2B, invading the chest wall. His surgeon performs a difficult right upper lobectomy. Initially the patient does well, but on postoperative day 2, spikes a fever and has pneumonia. As the days go on, it is clear that the patient has adult respiratory distress syndrome and the surgeon informs the patient's family of the worsening prognosis. The lung problem is worsening and the doctor mentions that hemodialysis will soon be required. For the first time, the patient's wife informs the doctor that she and her husband have talked about "heroic measures" and that he did not want such measures. The patient's wife determines that dialysis should not be used.

The doctor explains that the patient's chance of recovery is not high, and dialysis might successfully manage his renal failure, allowing his lungs time to recover. The patient's wife is unconvinced. Both parties decide to wait over the weekend and see what happens with the patient and then make a decision. After the weekend, the patient is in need of dialysis and the doctor explains the success that can come of this, but the wife still insists on withholding dialysis. At this point, the doctor sees two conflicting options, which were debated among the authors of the article. He can follow the decision of the patient's wife and allow his patient, with a potentially treatable organ failure, to die soon from progressive renal failure. Alternatively, the other option being based on the doing what is in the patient's best interest, he can obtain a hospital attorney to seek a court order and continue treatment.

The article's affirmative stance presents the physician's option to honor the decision of the patient's wife and not provide dialysis. This situation is complicated by the absence of a living will or advanced directive, and the issue of a surrogate's right to decision-making is an element of the conflict. The law prohibits active killing, and clear advance directives must be followed if they have been properly executed. Within these bounds, end-of-life questions are almost always resolved privately: by patients, their physicians, and family members, working with social workers, nurses, and members of the clergy. The affirmative stance would not be amenable to the doctor's asking the hospital attorney to seek a court order to continue treatment. To fulfill the decision-making process, the doctor should look to other issues that define this case: in the absence of a written advanced directive, how can the patient's wishes best be expressed? What are the chances of the patient's surviving with a reasonable quality of life outside the hospital? What measures must be taken to accomplish recovery?

The article's negative stance presents the physician's option to seek a court order to provide dialysis for this patient. The rationale is that unless treatment causes needless pain or suffering to no avail, it is incumbent on the physician to act in the patient's best interest to provide care and treatment with every resource available. The patient's wife has limited medical knowledge at best. The ethics committee in a perfect world would understand the postoperative care available

the surgeon's recommendation is appropriate and is in the patient's best interest. There is a need for specifics of the patient's preferences in advanced directives and the need for detailed surgical consent that includes postoperative contingencies and putting the advanced directive on hold. Persistent disagreement by surrogate and physician may have to be addressed by the ethics committee and as a last resort by judicial review.

Most states and most commentators on medical ethics prioritize substituted judgment over best judgment. The priority of the substituted judgment standard is stated in Maryland law: "Any person authorized to make health care decisions for another under this section shall base those decisions on the wishes of the patient, and if the wishes of the patient, are unknown or unclear, on the patient's best interest."

The authority vested in proxies and surrogates according to both ethics and law, to make decisions on behalf of patients is stated clearly in the American Medical Association Code: "Physicians should recognize the proxy as an extension of the patient, entitled to the same respect as the competent patient." The critical question in this case is the validity of the patient's wife decision and belief that her husband's oral directive included the withholding of dialysis. When the patient is incapable of choosing at the time of decision, the proxy or surrogate's choice is decisive if it accurately reflects what the patient would have wanted.

-Vered Krasna

What does President Obama's health care plan mean for America?

As the country transitions into a new administration, a vast majority of Americans are anticipating what changes are awaiting and how those changes will affect their lives. Every four years a candidate emerges with promises of a health care plan that they pledge will insure the vast majority of Americans. Yet, often these promises go unfulfilled. As President Obama ushers in a new administration amidst a global financial crisis, it leaves many contemplating what effect this administration will have on their health care and what is the likelihood that campaign promises will be fulfilled? With an unprecedented unemployment rate, the number of Americans without insurance has increased exponentially. With over 46 million uninsured Americans, health care is one of the nation's greatest challenges.

The Proposed Plan

The Obama-Biden health care plan promises to provide affordable, accessible health care for all Americans. President Obama proposes making it a requirement for insurance companies to cover pre-existing conditions; so that all Americans, regardless of their health history, are afforded the opportunity to obtain comprehensive health care at an affordable cost. To assure that employees have affordable health care available to them, the new administration recommends creating a tax credit for small businesses thereby guaranteeing these businesses continuity in spite of them increasing benefits to their employees. The new plan also recommends covering a portion of the catastrophic health costs that businesses pay in return for lower premiums for employees.

With the astronomical expense of malpractice insurance, physicians are often forced to pass a portion of that expense over to their patients by way of increased medical fees. The new plan's strategy is to prevent insurers from overcharging doctors for malpractice insurance and to invest in proven strategies to reduce preventable medical errors. The new plan also proposes to make employer contributions more equitable by requiring large employers that do not offer coverage or those that make minimal contributions to their employees' insurance coverage, to contribute a percentage of payroll towards the cost of their employees health care. Further, the plan also includes establishing a National Health Insurance Exchange that would provide a range of private insurance options; as well as a new public plan based on benefits available to members of Congress, that will allow individuals and small businesses to buy affordable health coverage.

Under the new plan, the administration expects that families will save up to $2,500 per year on health care. The new administration proposes lowering the cost of drugs by allowing the importation of safe medicine from other developed countries, increasing the use of generic drugs in public programs and taking on drug companies that block cheaper generic medicine from the market. Additionally, the new administration wants to require hospitals to collect and report health care cost and quality data, reduce the costs of catastrophic illnesses for employers and their employees, and reform the insurance market to increase competition by taking on anticompetitive activity that drives up prices without improving quality of care.

The Obama-Biden plan will strive to promote public health. The new administration's proposed health care reform will cost $50 to $60 billion dollars. President Obama plans to pay for the health care reform by allowing the tax cuts that President Bush had established for Americans earning more than $250,000 per year, to expire, and retaining the estate tax at its 2009 level.

In response to the growing number of Americans losing health care coverage due in large part to a failing economy, which resulted in layoffs, the new administrators and lawmakers devised a plan that includes providing temporary Medicaid to the unemployed and affordable coverage under COBRA for workers that have been laid-off. The cost of this benefit would total $39 billion and is proposed to last through 2010. The financial obligation of Medicaid has always been a cost that was shared between the federal government and the states. The proposed Medicaid plan for unemployed workers would be the sole responsibility of the federal government. Opponents of the plan argue that this plan will open a Pandora's box, thereby making it difficult to repeal the benefit.

Opponents of the health care reform assert that President Obama's plan would give the federal government sovereign control over the United States health care plan. They propose transferring the control of health care dollars over to individuals that purchase the policies for themselves and their families. Additionally, critics argue that the increased documentation requirement, as proposed by the President Obama's plan, will increase the healthcare provider's workload, and decrease the amount of time that they can spend with patients. Opponents, overwhelmingly conservatives, argue that the plan has too much government involvement and mimics socialized medicine.

-Tedra Scott, Pharm.D

ABOUT UBHLA

UBHLA is a student-run organization dedicated to the advancement of health care law at UB and the professional development of students in all areas of health care law.

UBHLA was established in 2008 by a small group of law students who saw an unexplored opportunity to enrich the University of Baltimore law school with a health law organization. The ultimate goal of UBHLA is to serve as a health care law resource for students, the university, and the legal community. We seek to develop a dynamic bank of health law resources for students; to promote the development of a health law curriculum at the university; and to provide the legal community with a generation of committed health law practitioners. The organization is dedicated to keeping members aware of current issues and opportunities related to health law.

With the enthusiastic support of the UB faculty, administration, and student body, we hope to cultivate interest in health care law through engaging lectures, career panels, community events, and an electronic newsletter. We invite you to become involved today to become a part of an exciting organization and connect with a career in health law. Feel free to explore our website for more information about the group at ubalt.edu/healthlaw.

Calendar

June 22, 2009

Maryland State Bar Health Law Section; 5:30 PM UB Student Center, Multipuprose Room

June 29-July 1, 2009

Annual Meeting, American Health Lawyers Association, Washington, DC

Notes

Katie Haggerty will serve as editor/coordinator of the UBHLA E-Zine for Fall 2009. If you are interested in submitting an article or information about an upcoming meeting for publication in the newsletter, please e-mail your information to Kathleen.Haggerty@ubalt.edu