



Section on Aging and the Law

Winter 2016 Newsletter

Program(s) at the AALS Conference

This year, we have two programs at the 2017 Annual AALS conference. The first program, co-sponsored by the Section on Professional Responsibility, is entitled: "Ethical and Moral Dimensions of Lawyering for Clients with Limited Capacity." It is scheduled for Friday, January 6th, from 9:00 am-10:30 am.

The following are scheduled to speak:

- Robert D. Dinerstein, American University, Washington College of Law
- Nina A. Kohn, Syracuse University College of Law
- Mary Helen McNeal, Syracuse University College of Law
- Russell G. Pearce, Fordham University School of Law

The panel will be moderated by John P. Sahl, University of Akron School of Law

Panel discussants will explore the ethical and moral dimensions of lawyering for clients with cognitive impairments. While the challenges associated with counseling and advocating for such clients are not new, two developments make the panel especially timely. First, the aging of the

baby boom generation and increased longevity mean that the population of persons with dementia and other age-related cognitive impairments is growing. Second, by embracing legal capacity as a right, the Convention on the Rights of Persons with Disabilities problematizes past approaches to addressing the needs of persons with cognitive disabilities. This panel will move beyond a mere recitation of the Model Rules of Professional Responsibility to think deeply about how lawyers engage with this client population.

The second program, co-sponsored by co-sponsored by the Section on Law, Medicine, and Healthcare, is entitled: "Old Age In the Digital Age: How New Ideas and Technology Are Disrupting Aging." It is scheduled for Friday, January 6th, from 10:30 am-12:15 pm.

The following are scheduled to speak:

- Jill Bronfman, University of California, Hastings College of the Law
- Nathan Cortez, Southern Methodist University, Dedman School of Law
- Donna S. Harkness, The University of Memphis, Cecil C. Humphreys School of Law

- Kelsey Mellard, Head of Partnerships and Bay Area GM, Honor

The panel will be moderated by Fazal R. Khan, University of Georgia School of Law.

This panel will examine how digital technology might transform how we age as a society, including how we provide eldercare. Emerging technologies—such as those that track vital signs, medication usage, activity levels, and falls; drive cars autonomously; and arrange on-demand home health care—have the potential to let older adults lead more independent lives while still meeting their medical and social needs. However, emergent technologies also raise new ethical, practical, and legal concerns, including those related to privacy, safety, quality of care, and reimbursement. Panelists from the fields of health law, elder law, privacy law, as well as industry, will analyze these issues from a variety of perspectives.

Business Meeting at the AALS Conference

The Section's business meeting will be held immediately following the "Ethical and Moral Dimensions of Lawyering for Clients with Limited Capacity" panel on January 6th. At the close of the business meeting, all interested members are invited to join for a discussion to plan the Section's 2017 work over refreshments.

Upcoming Conference(s) of Interest

Canadian Elder Law Conference

The 2017 Canadian Elder Law Conference will be held on November 2-3 in Vancouver, BC.

Building on the success of the 2015 conference, we are again hosting the event in collaboration

with the Community Legal Education Society of BC (CLEBC). Please contact CLEBC to register.

If you have any questions of agenda topics or sponsorship, please contact CCEL National Director Krista James at kjames@bcli.org.

MECOP'S SIXTH ANNUAL HEALTH LAW CONFERENCE (Florida)

MECOP's Sixth Annual Health Law Conference, entitled "Patients as Consumers: The Impact of Healthcare Financing and Delivery Developments on Roles, Rights, Relationships, and Risks" and co-sponsored with FSU Center for Innovative Collaboration in Medicine and Law and the Florida Bioethics Network, will be held on February 13, 2017 in Tallahassee, Florida.

This program seeks to identify, describe, and critically analyze the most significant legal and ethical issues that may arise as Florida physicians and other health care professionals endeavor to manage the challenges associated with the changing roles, rights, and responsibilities of patients within a dynamic health care financing and delivery system/marketplace.

This conference is designed for physicians, attorneys, nurses, pharmacists, social workers, psychologists, and others with an interest in continuing education in health policy, legal medicine, health care ethics, and public health in Florida. Members of the public are welcome to register and attend also.

For more information, contact: Nicholas Breeding, Center Program Associate, at nicholas.breeding@med.fsu.edu or 850-645-9473.

Leadership & Leadership Opportunities

The Section's current Leadership and Executive Committee consist of:

Chair: Nina Kohn (Syracuse)
(nakohn@law.syr.edu)

Vice-Chair: Roberta ("Bobbi") Flowers
(Stetson) (flowers@law.stetson.edu)

Secretary: Martina Cartwright (Texas
Southern) (mcartwright@tmslaw.tsu.edu)

Treasurer: Susan Cancelosi (Wayne
State) (scancelosi@wayne.edu)

Executive Committee:

- Marianne Artusio (Touro)
(marianne@tourolaw.edu)
- Rabia Belt (Stanford)
(belt@law.stanford.edu)
- Alex Bono-Saenz (Chicago Kent)
(abonisa@kentlaw.iit.edu)
- Joan Foley (Touro)
(jfoley@tourolaw.edu)
- Fazal Khan (Georgia)
(fkhan@uga.edu)
- Jack Sahl (Akron) (jps@uakron.edu)

If you are interested in working with this Section in a leadership capacity, the Section would welcome your participation. Please contact Nina Kohn (nakohn@law.syr.edu) at your earliest convenience.

Member News

Gerry W. Beyer (Governor Preston E. Smith Regents Professor of Law, Texas Tech University) authored or co-authored the following books/texts: Beyer's Texas Property Code Annotated (2016 ed.) (Thomson Reuters); Texas Estate Planning Statutes with Commentary – 2015-2017

Edition (2015) (AuthorHouse); Wills, Trusts, and Estates for Legal Assistants (5th ed. 2015) (co-authored with John C. Hanft) (Wolters Kluwer); Wills, Trusts, and Estates: Examples & Explanations (6th ed. 2015) (Wolters Kluwer); and Texas Wills and Estates: Cases and Materials (7th ed. 2015) (AuthorHouse)

Professor Beyer also published the following law review articles: Wills & Trusts, 2 SMU Ann. Tex. Sur. 517 (2016); Puff, the Magic Dragon, and the Estate Planner, Tex. A&M J. Prop. L. 1 (2016) (co-authored with Brooke Dacus); Professor Aloysius A. Leopold: An Extraordinary Man, 47 St. Mary's L.J. xi (2015)

Finally, Professor Beyer was the recipient of the following awards or honors: Inducted into the Estate Planning Hall of Fame, National Association of Estate Planning Councils (November 2015); 1L Professor of the Year for 2015-2016 (Texas Tech University School of Law) (awarded on April 20, 2016); and My Wills, Trusts, and Estates Prof Blog inducted into ABA Blawg 100 Hall of Fame.

Kenney Hegland (James E. Rogers Professor Emeritus of Law) has produced a number of 20 short videos for the general public, providing giving general advice on issues often faced by seniors and their families. The videos are VERY informative (and funny), providing discussion on a wide variety of legal and non-legal concerns. In addition to the practical aspects of the video, the information contained are quite illuminating for law students enrolled in courses dealing with estate planning, probate, and elder law. The videos are free and available on Professor Hegland's website: www.heglandlaw.com

Richard Kaplan (Peer and Sarah Pedersen Professor of Law, University of Illinois College of Law) has a number of new publications including: Intergenerational Conflicts in the Recent Health Care Reform Law: Allocating Health Care Resources in an Aging Society, in *Rights of Older Persons -- An International Comparative Law Perspective* 111-119 (Ralph Ruebner et al., eds. 2015); What's the Matter with Retirement Savers? (with Kate S. Poorbaugh), 47 *Conn L. Rev.* 1281-1315 (2015); What Now? A Boomer's Baedeker to the Distribution Phase of Defined Contribution Retirement Plans, 2015 *NYU Rev. of Employee Benefits & Executive Compensation*, ch. 4, available at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2724817; Religion and Advance Medical Directives: Formulation and Enforcement Implications, 2016 *U. ILL. L. REV.* 1737-1748, available at: <https://illinoislawreview.org/print/volume-2016-issue-4/religion-and-advance-medical-directives/>; and The Cadillac Tax and Its Potential to Transform How Americans Purchase Health Care Services, 2016 *NYU Rev. of Employee Benefits & Executive Compensation*, ch. 3. This article is available at: <http://ssrn.com/abstract=2865794>

Joan Krause (Dan K. Moore Distinguished Professor of Law, University of North Carolina School of Law) has a number of new publications including:

Joan H. Krause, *PRACTICING BIOETHICS LAW* (Foundation Press 2015) (with Leslie C. Griffin); Joan H. Krause, "Integration, Fragmentation, and Human Nature: The Role of the Fraud and Abuse Laws in a Changing Health Care System," *THE OXFORD HANDBOOK OF U.S. HEALTHCARE*

LAW (2016); and Joan H. Krause, "Truth, Falsity, and Fraud: Off-Label Drug Settlements and the Future of the Civil False Claims Act," 71 *FOOD & DRUG L.J.* 401 (2016).

Thaddeus Pope (Director of the Health Law Institute and Professor of Law, Mitchell Hamline School of Law) has a number of new publications including:

THE RIGHT TO DIE: THE LAW OF END-OF-LIFE DECISIONMAKING (3d ed. Wolters Kluwer Law & Business) (with Alan Meisel & Kathy L. Cerminara) (2017 supplement); Controlling the Misuse of CPR with Certified Patient Decision Aids and POLST, 17 *AMERICAN JOURNAL OF BIOETHICS* (forthcoming 2017); Unbefriended and Unrepresented: Medical Decision Making for Incapacitated Patients without Healthcare Surrogates, 33 *GEORGIA STATE UNIVERSITY LAW REVIEW* (forthcoming 2017); Brain Death Rejected: Expanding Legal Duties to Accommodate Religious Objections, in *LAW, RELIGION, AND AMERICAN HEALTH CARE* (Cambridge University Press forthcoming 2017); Procedural Due Process and Intramural Hospital Dispute Resolution Mechanisms: The Texas Advance Directives Act, 10 *SAINT LOUIS UNIVERSITY JOURNAL OF HEALTH LAW AND POLICY* (forthcoming 2017); Certified Patient Decision Aids: Solving Persistent Problems with Informed Consent Law, 44 *JOURNAL OF LAW, MEDICINE & ETHICS* (forthcoming 2017); Brain Death: Legal Status and Growing Conflict, and Court Challenges, 37 *JOURNAL OF LEGAL MEDICINE* (forthcoming 2017); Legal Briefing: Clinicians and Capital Punishment, 27(4) *JOURNAL OF CLINICAL ETHICS* (forthcoming 2017); Legal Briefing: Involuntary Holds, 28(1) *JOURNAL OF CLINICAL ETHICS* (forthcoming 2017); Re

Physicians' Opinions About Accommodating Religiously Based Requests for Continued Life-Sustaining Treatment, 52(5) JOURNAL OF PAIN AND SYMPTOM MANAGEMENT e5 (2016); Response: Reason-giving and medical futility: contrasting legal and social discourse in the United States with the United Kingdom and Ontario, 150(6) CHEST 1426 (2016) (with Bosslet and Baker); Reason-Giving and Medical Futility: Contrasting Legal and Social Discourse in the United States with the United Kingdom and Ontario, Canada, 150(3) CHEST 714-721 (2016) (with Gabriel Bosslet and Mary Baker); Voluntarily Stopping Eating and Drinking, 6(2) NARRATIVE INQUIRY IN BIOETHICS 75-126 (2016) (symposium editor); Legal Briefing: Stopping Non-Beneficial Life-Sustaining Treatment without Consent, 27(3) JOURNAL OF CLINICAL ETHICS 254-264 (2016) (with Kristin Kemmerling); Texas Advance Directives Act: Nearly a Model Dispute Resolution Mechanism for Intractable Medical Futility Conflicts, 16(1) QUT LAW REVIEW 22-53 (2016); Oregon Shows that Assisted Suicide Can Work Sensibly and Fairly, 15(2) FINAL EXIT NETWORK NEWSLETTER 7 (May 2016); Clinical Criteria for Physician Aid-in-Dying, 19(3) JOURNAL OF PALLIATIVE MEDICINE 259-262 (2016) (with David Orentlicher & Ben Rich); Legal Standards for Brain Death, 13 JOURNAL OF BIOETHICAL INQUIRY 173-178 (2016); Mandated Reporters and Compulsory Reporting Duties, 27(1) JOURNAL OF CLINICAL ETHICS 76-83 (2016); and Emerging Legal Issues for Providers in the US, in SHARED DECISION MAKING IN HEALTHCARE: ACHIEVING EVIDENCE-BASED PATIENT CHOICE (Oxford University Press 2016) (with Benjamin Moulton).