SECTION ON AGING & THE LAW NEWSLETTER WINTER 2022-23



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MESSAGE FROM THE CHAIR – KATHRYN C. LISS

Dear Section Members,

Thank you for the opportunity to serve as Chair of this wonderful and dedicated Section. As I reflect on our Section and this past year, I am proud of the growth and resilience we have all shown as we transitioned into our new "normal" after over two years of COVID and the uncertainty it brought into our lives.

Thank you to our presenters and contributors throughout the year. I especially enjoyed our Speed Idea Sharing Session this summer in which several of our members shared effective methods used to teach elder law and related subjects. This was a great way to learn from and with each other so that we can continue to improve and grow courses for the benefit of our students.

Additionally, our Section's Officers Joan Foley, Tara Sklar, and Kendall Kerew have been instrumental in keeping this Section active and on track this year – thank you for all of your hard work and commitment to our Section.

Have a wonderful and safe holiday season. I look forward to seeing a lot of you in person at our Annual Meeting in sunny San Diego!

Sincerely,

Section on Aging & the Law Officers

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ANNUAL MEETING INFORMATION

Aging and the Law Section Program:

Access to Justice in Aging & the Law: How Law Schools Can Make a Difference

Co-Sponsored by Clinical Legal Education, Employment Discrimination Law, and Law, Medicine & Health Care

Wednesday, January 4, 2022 (1:00pm-2:40pm MT)

This session will examine the variety of issues that touch upon how access to justice impacts the aging adult population.

Moderator: Kathryn C. Liss (DePaul University College of Law)

Presentations:

Prof. Victoria Haneman (Creighton University School of Law) – "Tax-Sheltering Final Expense Saving"

Prof. Anna-Marie Tahor (University of Massachusetts Boston) – "The Role of Aging Services in Preventing Technology-Based Scams"

Prof. Sharona Hoffman (Case Western Reserve University School of Law) – "Cognitive Decline and the Workplace"

INAUGURAL LIFETIME ACHIEVEMENT AWARD RECIPIENT

Professor Rebecca C. Morgan Stetson University College of Law

Congratulations! Thank you for your continued dedicated service to the profession, to your students, and to the community.

Join us at our annual meeting as we honor Prof. Morgan and highlight all of her outstanding work within the elder law community.

SECTION LEADERSHIP

The Section on Aging and the Law held its elections for leadership positions for the 2022-23 year via email. We are delighted to announce the following slate has been elected by acclamation:

Chair- Joan Foley (Jacob D. Fuschberg Law Center, Touro College)

Chair-Elect – Tara Sklar (University of Arizona James E. Rogers College of Law)

Secretary – Kendall Kerew (Georgia State College of Law)

Treasurer – Ann Marie Marciarille (University of Missouri Kansas City School of Law)

Executive Committee: Alexander Boni-Saenz, Naomi Cahn, Richard Kaplan, Alicia Kelly, Nina Kohn, Browne C. Lewis, Rachel E. Lopez, Mary Helen McNeal, Rebecca C. Morgan, and Jessica Dixon Weaver.

NEWS AND NEWSWORTHY

Susan Bisom-Rapp

Publications:

- Older Women Workers, the Pandemic, Employment Discrimination, and Lifetime Disadvantage, in RESEARCH HANDBOOK OF LAW, SOCIETY AND AGEING (Westwood & Knauer eds.) (Edward Elgar, forthcoming 2023)
- Regulatory Choices and Disputes in the Fight Against COVID-19 Infections in the Workplace: A Comparison between U.S. and Italian Contexts, in WORK BEYOND THE PANDEMIC: TOWARDS A HUMAN CENTERED APPROACH (Ales & Senatori eds.) (Palgrave MacMillan, forthcoming 2023) (with M. Peruzzi)
- The Role of Law and Myth in Creating a Workplace that "Looks Like America," 43 BERKELEY J. EMP. & LAB. L. 251 (2022)

Presentations:

Older Women Workers, the Pandemic, Employment Discrimination, and Lifetime Disadvantage. Malcolm Sargeant Memorial Lecture at Middlesex University, London, UK (forthcoming March 14, 2023).

Alexander Boni-Saenz

Publications:

- The Age of Racism, 100 Washington University Law Review ___ (2023).
- o Legal Age, 63 BOSTON COLLEGE LAW REVIEW. 521 (2022).

Joan C. Foley

Publication:

o Aging, Health, Equity, and the Law: Foreword, 38 TOURO L. REV. 1 (2022).

Presentations:

- Elder Law Mentoring, Association of American Law Schools Section on Aging and the Law, Speed Share Series, June 2022.
- Professional Identify Formation Through Interdisciplinary Learning, Association of American Law Schools Section on Balance and Well-Being in Legal Education, Speed Share Series: Incorporating New ABA Standards for Legal Education, June 2022.
- o Health Law: An Integral Component of Interprofessional Education, 45th Annual Health Law Professors Conference, June 2022 (with Julie Agris, Kathy Cerminara, Marilyn Uzdavines).

Sharona Hoffman

Publications:

- O AGING WITH A PLAN: HOW A LITTLE THOUGHT TODAY CAN VASTLY IMPROVE YOUR TOMORROW, Second Edition (First Hill Books 2022)
- o Privacy and Security Protecting Patients' Health Information, 387 NEW ENGL. J. MED. 1913 (2022)
- o Physicians and Cognitive Decline: A Challenge for State Medical Boards, 108 J. MED. REG. 19 (2022)
- O Sharing Clinical Notes: Potential Medical-Legal Benefits and Risks, 327 JAMA 717 (2022) (third author with Charlotte Blease and I. Glenn Cohen)
- o Cognitive Decline and the Workplace, 57 WAKE FOREST L. REV. 115 (2022).
- o Professional Speech at Scale, 55 UC Davis L. Rev. 2063-2132 (2022) (with Cassandra Burke Robertson).

Presentations:

- Privacy and Security Protecting Patients' Health Information, New England Journal of Medicine Podcast, November 19, 2022
- Artificial Intelligence and Discrimination in Health Care, State Attorney General Project's Health Equity Working Group, September 14, 2022; Digital Health & Technology Symposium, Cleveland-Marshall College of Law, April 8, 2022
- o Physicians and Cognitive Decline: A Challenge for State Medical Boards, Journal of Medical Regulation Podcast, September 7, 2022
- Aging with a Plan: How a Little Thought Today Can Vastly Improve Your Tomorrow, Wilf Campus for Senior Living, Somerset New Jersey, December 6, 2022; Jewish Community Center of Greater Dayton, Dayton, Ohio, October 30, 2022; Cleveland Heights Library, September 21, 2022; Cleveland Metropolitan Bar Association, September 16, 2022; Judson Manor, Cleveland, OH, August 10, 2022; InMotion: Parkinson's Awareness, Exercise & Support Groups, Cleveland, OH, July 28, 2022.
- o Panelist, Untruth and Consequences: How to Respond to Doctors Spreading Misinformation, Medical-Legal Summit, Cleveland Metropolitan Bar Association, April 30, 2022.
- Cognitive Decline and the Workplace, Health Law Professors Conference, Phoenix AZ, June 3, 2022; National Institutes of Health Bioethics Dept., Feb. 8, 2022; Public Affairs Discussion Group, Case Western Reserve University, Feb. 4, 2022; Seton Hall Law Faculty Colloquium, Jan. 26, 2022.

Richard Kaplan

Publications:

- When the Stepped-Up Basis of Inherited Property Is No More, 47 ACTEC L.J. 77 (2021).
- o Preferencing Nonmarriage in Later Years, 99 WASH. UNIV. L. REV. 1957 (2022).

Presentations:

- o The New Distribution Rules for Inherited Retirement Accounts, East Central Illinois Estate Planning Council, Decatur.
- o Teaching Elder Law: Speed Idea-Sharing, AALS Section on Aging & the Law, virtual.
- o *The Declining Appeal of Inherited Retirement Accounts*, 12th Annual Employee Benefits and Social Insurance Conference, Boston University.
- o What Every Healthcare Provider Should Know About Elder Law, Carle Foundation Hospital Bioethics Seminar, Urbana.

Joan H. Krause

Publications:

- o *Commentary on <u>State v. Norman</u>*, in FEMINIST JUDGMENTS: CRIMINAL LAW (Bennett Capers, Sarah Deer & Corey Rayburn Yung, eds.) (Cambridge University Press, forthcoming),
- OPINIONS (Seema Mohapatra & Lindsay F. Wiley, eds., 2022).
- o *Introduction:* Fraud and Abuse Law (with Tracey A. Elliott), THE OXFORD HANDBOOK OF COMPARATIVE HEALTH LAW 365 (Tamara Hervey & David Orentlicher, eds., 2022).
- o Fraud and Abuse Law in the United States, THE OXFORD HANDBOOK OF COMPARATIVE HEALTH LAW 375 (Tamara Hervey & David Orentlicher, eds., 2022).
- o Pregnancy Advance Directives, 44 CARDOZO L. REV. (forthcoming 2023).
- o Revisiting Health Care Fraud in the Biden Administration, 15 St. Louis U. J. Health L. & Pol'y 361 (2022).

Genevieve Mann

Publication:

o It's Not Ok, Boomer: Preventing Financial Power-of-Attorney Abuse of Elders, 82 MD. L. REV. __ (forthcoming 2023).

Thaddeus Mason Pope

Publications:

Traveling Across States for Prohibited Treatments: Medical Aid in Dying and Looming Battles Over Abortion, 37 Journal of General Internal Medicine (Nov. 2022) (With I. Glenn Cohen & Eli Y. Adashi)

- Use Certified Patient Decision Aids to Facilitate Shared Decision Making at The Margins of Viability, 22(11) American Journal of Bioethics 49-51 (Nov. 2022) Withdrawing Life-Sustaining Treatment Over Family Objections, Kevinmd (August 24, 2022)
- Neurologic Diseases and Medical Aid in Dying: Aid-In-Dying Laws Create an Underclass of Patients Based on Disability,
 22 American Journal of Bioethics (2022) (With Lonny Shavelson, Margaret Battin, Alicia Ouellette, And Benzi Kluger).
- Counterpoint: Whether Informed Consent Should Be Obtained for Apnea Testing in The Determination of Death by Neurological Criteria: No, 161(5) Chest 1145-1147 (2022)
- O Rebuttal From Dr. Pope: Whether Informed Consent Should Be Obtained for Apnea Testing in The Determination of Death by Neurological Criteria, 161(5) Chest 1148-1149 (2022)
- Patient Decision Aids Improve Patient Safety and Reduce Medical Liability Risk, 74(1) Maine Law Review 73-100 (2022)
- Voluntarily Stopping Eating and Drinking: A Lesser Known, Widely Available Palliative Option of Last Resort, 63(5)
 Journal of Pain & Symptom Management 798 (May 2022) (With Others)
- The Right to Die: The Law of End-Of-Life Decisionmaking (Wolters Kluwer Law & Business 2022) (With Alan Meisel & Kathy L. Cerminara)
- Medical Futility, In Guidance for Healthcare Ethics Committees (2d Ed. Cambridge University Press 2022) (Micah Hester and Toby Schonfeld Eds.)
- Revise The Udda to Align the Law with Practice Through Neuro-Respiratory Criteria, 98(13) Neurology 532-536
 (2022) (With Adam Omelianchuk, James Bernat, Art Caplan, David Greer, Christos Lazaridis, Ariane Lewis, Lainie Friedman Ross, And David Magnus)
- o [Over 300 Blog Posts], Medical Futility Blog (August 2022)
- Navigating Ethical Conflict Between Professional Nursing Commitments and Hospice "Leave the Room" Policies, 122
 American Journal of Nursing (Forthcoming 2022) (With Jean Abbott, Jeanne Kerwin, Constance Holden, Margaret Pabst Battin, Charles Miller)
- A Brain-Based Definition of Death and Criteria for Its Determination After Arrest of Circulation or Neurologic Function in Canada: A Clinical Practice Guideline, Canadian Journal of Anesthesia (Forthcoming 2022) (With Others)
- Legal Considerations for The Brain-Based Definition of Death, Canadian Journal of Anesthesia (Forthcoming 2022) (With Others) Accommodation for Objections to Death Determination by Neurologic Criteria -Recommendations of The Definition and Determination Of Death Project, Canadian Journal Of Anesthesia (Forthcoming 2022) (With Others)
- Is Consent Required for Clinicians to Make a Determination of Death by Neurologic Criteria? In Death Determination by Neurological Criteria: Areas of Controversy and Consensus (Ariane Lewis and James L. Bernat Eds., Springer Forthcoming 2022)
- O Recommendations Of the International Donation and Transplantation Legislative and Policy Forum, Transplantation Direct (Forthcoming 2022) (With Others).

Presentations:

- Linking Payment to Patient Preference: Medicare Coverage Mandates for Shared Decision Making, Loyola University Chicago School of Law 16th Annual Symposium (Evolution and Innovation in The Health Care Payment Landscape), Chicago, Illinois (November 11, 2022)
- Navigating Newly Expanded End-Of-Life Options: Medical Aid in Dying and V sed, Ohio Health (November 9, 2022)
- Voluntarily Stopping Eating and Drinking: Lesser Known but Widely Available End-Of-Life Option, World Federation
 of Right to Die Societies Biannual Conference, Toronto, Canada (November 4, 2022)
- Can Death Determined by Neurologic Criteria Be Salvaged? Alternatives And Implications, American Society for Bioethics & Humanities (Asbh) 23rd Annual Meeting, Portland, Oregon (October 28, 2022)
- Top 10 Legal Developments in Bioethics, American Society for Bioethics & Humanities (Asbh) 23rd Annual Meeting, Portland, Oregon (October 27, 2022)

- o Voluntarily Stopping Eating and Drinking (Vsed): A Lesser Known but Widely Available End-Of-Life Option in Maine, Maine Health (October 18, 2022)
- Right To Die and Right to Try: Similarities and Differences in How the Us and Canada Empower Terminally Ill Patients,
 Completed Life Initative (October 18, 2022)
- O Vsed Update, Death with Dignity Dignity 50 (October 12, 2022)
- Reader/Reviewer for Health Law Scholars Workshop, Saint Louis University School of Law, Saint Louis, Missouri (September 29 - October 1, 2022)
- Accommodating Objections to Brain Death, Canadian Society for Transplantation, Banff, Alberta (September 21, 2022)
- Café Scientifique: The Legal & Ethical Status of Pre-Transplant Vaccine Requirements: A Look at The Recent Legal Case of Lewis V. Alberta Health Services, Canadian Society for Transplantation, Banff, Alberta (September 21, 2022)
- o Brain Death Controversies, Pediatrix National Medical Group Medical Directors Meeting (September 20, 2022)
- Key Strategies for Responding to Requests for Ineffective and Non-Beneficial Treatment, Huntington Hospital, Los Angeles, California (September 7, 2022)
- o Legal Barriers to Vsed, End of Life Doula Training (August 14, 2022) ●
- o Controversies in Brain Death, Broward Health, Fort Lauderdale, Florida (June 22, 2022)
- o Implementing Sdm into Clinical Practice: Law and Policy Update, 11th International Shared Decision-Making Conference, Kolding, Denmark (June 21, 2022)
- Patient Decision Aids Improve Patient Safety and Reduce Medical Liability Risk, 11th International Shared Decision-Making Conference, Kolding, Denmark (June 21, 2022)
- O Best Interests and Beyond: Standards of Medical Decision-Making in Pediatrics Conference, Saint Louis University, St. Louis, Missouri (June 8-10, 2022)
- Brain Death: Must Clinicians Obtain Consent to Perform Testing for Determination of Death by Neurological Criteria? 45th Annual Health Law Professors Conference, Arizona State University, Phoenix, Arizona (June 1-3, 2022)
- Brain Death Controversies, Institute for Critical Care Medicine, Mount Sinai Hospital, New York, New York (May 12, 2022)
- o Brain Death Is Integral to The Udda, Uniform Law Commission Drafting Committee on The Uniform Determination of Death Act (April 21, 2022)
- O Shared Decision Making and Patient Decision Aids: Time to Revolutionize Informed Consent, So Patients Can Understand Their Treatment Options, Brocher Foundation, Hermance, Switzerland (March 3, 2022)
- O Consent For Death Determination Testing, Definition and Determination of Death Project Canadian Blood Services, Canadian Medical Association, Canadian Critical Care Society (March 1, 2022)
- O Patient Decision Aids & Shared Decision Making: Growing Legal and Policy Support, Dartmouth University (February 16, 2022)
- Voluntarily Stopping Eating and Drinking: A Lesser Known, Widely Available Palliative Option of Last Resort, Annual Assembly of Hospice & Palliative Care, Nashville, Tennessee (February 11, 2022)
- Who Is Alive and Who Is Dead? Growing Uncertainty and Reasons for Amending the Uniform Determination of Death Act, Mitchell Hamline Fellows Series (February 1, 2022)
- o Medical Aid in Dying in Minnesota, University of Minnesota Center for Bioethics (January 28, 2022)
- Assisted Dying in The United States, Dying with Dignity Canada (January 27, 2022)
- Why And How Your Living Will & Health Care Directive May Fail You, American Bar Association Senior Lawyers Division (January 13, 2022).

Tara Sklar

Publications:

- O Digitally Enabled Medicaid Home and Community-Based Services, in DIAGNOSING IN THE HOME (I. Glenn Cohen, Carmel Shachar, Julia Adler-Milstein, and Daniel Kramer, eds.) (Cambridge University Press, forthcoming) (with Kathryn Huber).
- o Equity is Inextricably Linked to Healthcare, in THE JURISPRUDENTIAL LEGACY OF JUSTICE RUTH BADER GINSBURG (Ann Bartow and Ryan Vacca, eds.) (New York University Press, 2022) (with Kirin Goff).
- o A Promising Extension of Telehealth Flexibilities and One Step Closer to Permanent Authorization, Health and Human Services, Health Resources and Services Administration, Southwest Telehealth Resource Center (2022).

Presentations:

- o Master of Ceremonies: Arizona Telemedicine Law & Policy 2022 Summit, November 15, 2022.
- o Achieving Digital Health Equity: Is it a "One-Size-Fits-All" Approach or Personalized Patient Experience? Mass General Brigham 2022 Virtual Care Symposium, Nov. 8, 2022.
- o Information as Medicine and the Regulation of Automated Care, Arizona Law TechLaw, November 4, 2022.
- o Racial Justice in Long-Term Care, 2022 American Public Health Association Annual Conference, Nov. 6, 2022.
- o What Does HIPAA Actually Do? National Public Radio Science Friday, June 24, 2022.
- Ethical Modernization of Home and Community-Based Services with Digital Home Health, Harvard Law School, 2022
 Petrie-Flom Conference Diagnosing in the Home, June 15, 2022.
- o Looking at the Research: Is Telehealth Substitutive or Additive? U.S. Senate with the Center for Telehealth and e-Health Law Summit in Washington, June 9, 2022.
- o Master of Ceremonies: *Innovations in Healthy Aging 2022 Summit: Bridging Academia and Industry*, UA Washington D.C. Center for Outreach & Collaboration, June 8, 2022.
- o Racial Justice in Long-Term Care, 2022 ASLME Annual Health Law Professors Conference, June 2, 2022.
- o Racial Justice in Long-Term Care, American Society on Aging 2022 Annual Meeting, April 12, 2022.
- o Legal Barriers & Opportunities for Older Adults to Access Telehealth, University of Richmond School of Law, Journal of Law & Technology Symposium on Lawyering in the Digital Age, February 4, 2022.
- O Genetic Testing: Access, Rights, Privacy, & Consent, 2022 Pharmacogenomics & Precision Medicine Symposium, January 14, 2022.
- o Racial Justice in Long-Term Care: Amplifying the Voices of Immigrant Workers, Association of American Law Schools 2022 Annual Meeting, January 8, 2022.

Jessica Dixon Weaver

Publications:

- Essay response to the law review article, Family Law for the One-Hundred-Year Life, authored by Naomi Cahn, Clare Huntington & Elizabeth Scott. YALE LAW JOURNAL FORUM (forthcoming, April 2023).
- O Book chapter, *The Elder Catch: Engineering the Future of Caregiving in RE-CONCEIVING EQUALITY AND FREEDOM: VULNERABILITY, DEPENDENCY, AND THE RESPONSIVE STATE (Martha Fineman and Laura Spitz, eds., forthcoming 2023).*

Megan S. Wright

Publications:

- Healthcare Organization Policies and the Paper Victory of the Medical Aid in Dying Movement, in HEALTH LAW AS PRIVATE LAW (I. Glenn Cohen et al. eds., forthcoming) (with Cindy L. Cain).
- O Using Disability Law to Expand Access to Medical Aid in Dying for Persons with Cognitive and Other Impairments, in LAW AND ASSISTED DYING (Ben White ed., forthcoming).
- Legal Issues in Dementia, in THE BEHAVIORAL NEUROLOGY OF DEMENTIA (Bruce Miller & Brad Bouve eds., forthcoming) (with Jalayne Arias & Ana Tyler).
- o Resuscitating Consent, 63 B.C. L. REV. 889 (2022).
- O Supported Decision Making, Treatment Refusal, and Decisional Capacity, 22 AM. J. BIOETHICS 89 (2022).

Presentations:

- o Reconsidering Capacity Assessments, Mental Disability and Law Section's "Mental Healthcare Decision-Making: Innovations and Comparative Perspectives," AALS Annual Meeting, Jan. 2022.
- o Mediating Autonomy: Healthcare Organizations' Response to the California End of Life Option Act, ComplianceNet Conference, University of Amsterdam, Netherlands, July 2022 (with Cindy L. Cain).
- o Mediating Autonomy: Healthcare Organizations' Response to the California End of Life Option Act, 117th Annual Meeting of the American Sociological Association, Los Angeles, CA, Aug. 2022 (with Cindy L. Cain).

Ruqaiijah Yearby

Publications:

- o The Social Determinants of Health, Health Disparities, and Health Justice, 50(4) J. of L. Med. & Ethics (lead article) (forthcoming 2022)
- O Structural Racism in Historical and Modern U.S. Health Care Policy, 41(2) Health Affairs 187-194 (2022) (with Brietta Clark and Jose F. Figueroa)
- o *Commentary on Linton v. Tennessee* in Seema Mohapatra and Lindsay F. Wiley, eds., Feminist Judgments: Rewritten Health Law Opinions (Cambridge University Press, 2022)
- Commentary on: Whitner v State, in Sarah Deer, Corey Rayburn Tung and Bennett Capers, eds., Feminist Judgments: Rewritten Health Law Opinions (Cambridge University Press, 2022) Chapter 10: Asian Black, Indigenous and Latino People, in Elizabeth Tobin-Tyler and Joel B. Teitelbaum, eds., Essentials of Health Justice: Law, Policy, and Structural Change (Jones & Bartlett Learning, 2022)
- Just to Get By: Poverty, Racism, and Smoking Through the Lens of Talib Kweli and Nina Simone's Music, in Frank Ruddy Cooper and Gregory Parks, eds., Fight the Power: Law & Policy Through Hip Hop Songs (Cambridge University Press, 2022)
- United States: Legal Response to Covid-19, in Jeff King and Octávio LM Ferraz et al (eds), The Oxford Compendium of National Legal Responses to Covid-19 (updated in 2022) (with Lindsay F. Wiley, and Andrew Hammond)
- o Racism is a Public Health Crisis: How Local Governments are Responding (second online report, https://ihje.org/racism-is-a-public-health-crisis-report-2/)(2022) (with Crystal Lewis, Charysse Gibson, Abby R. Jaeger, and Maya Lawson)

Presentations:

- o A Toxic Legacy: How the History of Systemic Anti-Black Racism Shapes Health, Harvard T.H. Chan School of Public Health and FXB Center for Health & Human Rights at Harvard University
- O Structural Racism and Health Disparities: Reconfiguring the Social Determinants of Health Framework to Include the Root Cause, University of Michigan School of Public Health
- O Health Equity and Research in Practices "Racism is a Public Health Crisis, Public Health Law Practitioners Convening, Centers for Disease Control and Prevention and National Association of County & City Health Officials,
- o *The Fallacy of Biological Race: Systemic Racism in Genomics,* Keynote, 5th Annual Conference: Innovating for a Just and Equitable Future, Research on ethical, legal, and social implications (ELSI) Congress
- Justice and the Equitable Allocation of Covid-19 Vaccines, Association of American Law Schools Systemic Racism, Covid-19, and Racial Capitalism, Association of American Law Schools

Thank you! We hope to see you in January at the Annual Meeting!