

INSIDE THIS ISSUE:

Living Wills	2
Guardianship Trial	2
Clinical Sabbatical	2
Waste-Coal	3
Longwall Mining	3
Alumni News	4
CLEA Award	4
News	4
Administrators	4

Grateful appreciation and kudos to Laura Haushalter who conducted interviews and authored most of the articles in this edition of *Clinic Matters*

Clinic Faculty and Staff

- Martha Mannix
Elder Law Clinic
- Stella Smetanka
Health Law Clinic
- Thomas Buchele
Environmental Law Clinic
- Harry Gruener
Family Law Clinic
- Daniel Friedman
Community Economic
Development Clinic
- Jane LeHew
Clinic Administrator
- Nadine Hamlett
Clinic Administrator

Solitary Pancreas Transplants — Will They be Covered by Medicare?

An interesting development at the Centers for Medicare and Medicaid Services (CMS) has happened because of a case that the **Health Law Clinic** students have been working on for nearly three years. Our client was a patient at UPMC. She needed a pancreas transplant because of a very severe case of diabetes. She suffered from the condition of hypoglycemic unawareness, which meant that she could fall into a

diabetic coma without warning, and if it happened when she was sleeping, she could die. She also had other complications, but the one organ that continued to function well was her kidney. And here is where the problems arose.

In 1995, Medicare published a National Coverage Decision (NCD) that said pancreas transplants would be covered only if the patient also needed a kidney. There was no provi-

sion for solitary pancreas transplant coverage, as CMS was not convinced that the process had been proven to be effective and successful.

When we spoke with our client and her physicians, we decided that the battle was worth fighting. We agreed with our client that the complications that she suffered from diabetes were every bit as

(Continued on page 2)

Too Many to Count

If you were to ask Professor Gruener to choose just one case from the past year to showcase, he would tell you that all the cases that cross his desk are important and significant in their own right. There are numerous stories of fathers who have no custody rights of their children or those that want primary custody. Then there are cases of parents who require Confirmation of Custody. Through Pitt's **Family Law Clinic**, all research and petitions are com-

pleted. The Supreme Court of Pennsylvania ruled in 2003 that while a person is in custody of the prison system, he/she must still pay child support; jail is no reason to suspend or modify child support. Students in the Family Law Clinic advocate for these people to attempt to resolve their issues.

The clients must be indigent to be eligible for clinic legal services.

The cases that enter the Family Law Clinic have three points of entry: voluntary custody me-

diation, pro se court, and referrals for representation. This past year, students under Professor Gruener's supervision completed 7 mediations with a 100% success rate. Mediation can be difficult, but because both parties agree to work through an arrangement, "the people are more likely to abide," as Prof. Gruener pointed out.

Mediation is rewarding for students in many ways. People

(Continued on page 3)

Family Law Professor Receives Award

Professor Harry Gruener received the University of Pittsburgh School of Law "Excellence in Teaching" award on May 28, 2005. This award is bestowed upon a professor chosen by the graduating class

whom they feel is the most deserving. Professor Gruener's award was presented to him during the School of Law's Commencement ceremony.



Students Assist with Living Wills

Law students in the **Elder Law Clinic** presented information on power of attorney and living wills to residents at a senior high rise apartment complex in Pittsburgh this past April. Joy Gray, Service Coordinator of the three buildings, contacted the law clinic requesting information for her residents.

The students, Kelly Cwiklinski, Brooke Anderson, Carolyn Schweitzer, Zach

Bloch, and Kelly Gardner organized a power point presentation and brought with them printed information for the residents. Broken into groups of two, these students each presented to one of three apartment buildings. The students, after the power point presentation, held a question and answer session.

This fall, Joy Gray plans to follow-up with the efforts of the law students by having the new legal interns come back and give one-on-one help to her residents. She says that residents continuously approach her for the paper information packets and deeply appreciate the students taking the time to explain the process and necessity of living wills and power of attorney.

Solitary Pancreas Transplants (cont.)

(Continued from page 1)

serious as needing a kidney and should be recognized as such. Congress made it possible for individuals to mount challenges to NCD in the Fall of 2003. We filed the challenge and on July 1, 2005, the Departmental Hearings Board of CMS handed down our client's decision finding that the current NCD's records is incomplete. Thus, it has opened the door for us to prove that the solitary pancreas transplant procedure has indeed progressed to

such a point that CMS should pay for it.

Simultaneously, from July 29 - August 29, 2005, CMS announced a move to reconsider the limited NCD regarding pancreas transplants. It is in the process of gathering information from scientists, medical people, and patients to decide whether, indeed, solitary pancreas transplants should be covered. The website for Medicare coverage contains comments from our client, Sharon Reigh, who is a resident of State Col-

lege, Professor Smetanka, the transplant team at UPMC, and many other patients, doctors, nurses, and people needing solitary pancreases. (The comments can be read at http://www.cms.hhs.gov/mcd/viewpubliccomments.asp?nca_id=166.)

Past students who worked diligently on this case in their respective semesters and summers are: Matt McMullen, Chrissy Cianflone, Dan Lok, Jayme Murray, Philip Sheward, Stanley Booker, Nnenna Ezekoye, Tony Choe and Jeff Cadle.

Guardianship Trial

Third-year students Laura Vash and Matt Bayard in the **Elder Law Clinic** have just finished working on a guardianship case. Although these two students have worked on numerous cases that had already been opened prior to their arrival at the clinic, this is the first case that the pair has worked on from beginning to end, of which they are both proud.

The case on which they are working is for guardianship of a man who sustained a brain injury and remains in a vegetative state in a nursing home. His mother, their client, is petitioning for guardianship. The students have written the petition and filed with orphans court. A hearing date of August 30, 2005 in front of Judge Lucchino was set. The students presented doctors'

testimony and had their client testify. Matt and Laura were confident that the case would go fairly well because all of the children of the client were in agreement with the petition, and there appeared to be no objecting party. The two won their hearing and have entered their third year of law school victorious.

A Clinical Sabbatical

Sabbaticals tend to be rare in the clinical teaching domain for understandable reasons. What happens to the clinic and the clients while the professor is focusing on research on a chosen legal issue? Optimally, the timing is right and the sabbatical actually enhances the clinic and the clients. This was Professor Smetanka's sense and aspiration in taking a semester off from teaching the **Health Law Clinic** in the Spring Semester of 2005.

For two years, clinic students had represented one particular client in various legal venues in challenging the dialysis care system's denial of access to him of life-saving dialysis treatments. He was perceived by them to be dangerous,

and they continued to deny him care from 2000 through January 2005, when he received a kidney transplant, which rendered dialysis unnecessary. So, his transplant came at the beginning of the sabbatical and Professor Smetanka regarded the fact as a blessing on her work. She had already decided to devote her sabbatical to studying how a health care system could consign a person to a death sentence on the basis of, at the most, verbal threats.

The Centers for Medicare and Medicaid Services published proposed comprehensive Conditions for Coverage for dialysis facilities, something it had not done since 1976, another fortuitous event. These conditions confronted the problem of the disruptive dialysis pa-

tient and stated that a dialysis facility has the resources and responsibility to make a good faith effort to work with every patient, including the one who is perceived to be disruptive. So, Professor Smetanka grappled with the issue of what constitutes a dangerous patient, the application of the problem to the new proposed regulations, and legal approaches to the problem.

Now, the clinic will hopefully benefit from Professor Smetanka's semester of research. She is submitting her larger article for publication, hoping that the wider community can also learn from it. One smaller article appeared in the *Matthew Bender Health Care Law Monthly* specifically discussing the proposed conditions.

Robinson Township Waste-Coal

A 37 million ton pile of waste-coal was abandoned by the Pittsburgh Coal Company on a 350-acre site along Beech Hollow Road in Robinson Township. Waste-coal is a by-product of the process of cleaning coal. On April 4, 2005, Robinson Power, LLC, applied and was approved for a state permit to build a \$400 million power plant that would be fueled by the waste-coal pile. New environmental standards were required of any plant that was approved on or after April 5, 2005. Facilitating the approval on the day prior circumvented the new regulations. After investigation by local resident Cathy Lodge, the necessary documentation for the permits was found to be inadequate.

Despite the advantage of having this eyesore removed, "Beech Hollow Power Project" would bring noise and pollution to an otherwise quiet loca-

tion. Mercury would be released into the air by the burning of waste coal. Additionally, metals from the fly ash created by this burning would leach into nearby Raccoon Creek. The **Environmental Law Clinic** has chosen to represent Cathy Lodge, a mother of six, who is concerned about the potential effects of air pollution on her children. Her family lives a just one mile away from a proposed power plant site. She approached Pitt Environmental Law Clinic to challenge the legality of the permits. Her case was filed on May 3, 2005. Currently, the case is in the discovery process with depositions to be conducted in the fall by third-year law student Candace Stockey under the supervision of Tom Buchele.

This problem with pollution is not just local. In Virginia at the Shenandoah National Park, breathtaking views are disappearing in polluted air. Emissions

from western power plants have traveled and polluted the region. This problem is significant enough that *National Geographic* has deemed it important to publish an article in one of its magazines. The Department of Environmental Protection (DEP) actively complains about and brings attention to air pollution from western states such as Illinois, Indiana, and Ohio as well; however, within Pennsylvania, they approve Pennsylvanian sites for construction of power plants. Prof. Buchele points out the inconsistencies by the DEP here because these Pennsylvania sites will then pollute their neighboring states of West Virginia and Virginia. Cathy Lodge has presented a case that will be no easy matter for the clinic and will provide a daunting challenge for the students involved.

Morris Township Longwall Mining

Underground mining companies have used wooden pillars to support the vacated areas to prevent cave-ins or collapses of the ceilings with the continuous mining method. These pillars, however, are not used with longwall mining that uses a shearing machine developed and used about 30 years ago. This method is an efficient method of mining where there are large coal seams. Once a large coal seam is mined by the longwall method, the area subsides potentially causing a large above

ground area to sink. Additionally, water tables are also frequently impacted. Longwall mining has been known to cause wells and streams to dry up in rural areas and/or become polluted. With no pillars in place, surface features such as land and homes cannot be supported.

Currently, CONSOL Energy has filed to longwall mine in Washington and Greene Counties including Morris Township. CONSOL plans to invest \$400 million into this expansion pro-

ject. This township of 1280 people retained Pitt's **Environmental Law Clinic** to help Morris Township comment and raise their concerns before the DEP. Second-year law student Mark Bryson is working on the project, the first of its kind to enter the Environmental Clinic. Mr. Bryson will face the challenge of balancing the community's need for economic growth against the potential for damage to homes and the surrounding community.

Too Many to Count (cont.)

(Continued from page 1)

can enter the room argumentative and leave with a positive arrangement at the end. For cases where a child is involved, only the parents participate. As Professor Gruener says, "When elephants fight, the grass gets hurt." The law students do not advise the parents. They only serve to facilitate communication between feuding partners. Through mediation, court and the stresses and costs associated with court are avoided.

The second point of entry is the pro se court program. In Allegheny County, motions on pending litigation are held everyday. Allegheny County

courts set up a pro se motions court two days a week to meet the needs of people who cannot afford legal representation. The atmosphere is somewhat chaotic and has been referred to as "similar to Jerry Springer" at times. People go to court with incorrect documents and no knowledge of procedure.

In the Allegheny County Courthouse, the law students interview the clients, prepare the appropriate pleadings, and often argue motions in court for indigent people. The program is symbiotic because the students are dealing with real clients in real cases as opposed to simulations, and the clients receive

proper representation by enthusiastic supervised students. The reputation of Pitt's Family Law Clinic is enhanced and the law students graduate better prepared. Last year alone, students assisted over 100 pro se litigants. Success stories are innumerable.

People referred for representation are at the last point of entry. Students in the Family Law Clinic have a two semester commitment. This means that there will always be returning veteran students for mentoring and case continuity. Students are rewarded with a sense of accomplishment and learn that as future members of the Bar Association they are expected to give back to the community.



Civil Practice Clinic
University of Pittsburgh
School of Law
Sennott Square
210 South Bouquet Street
Pittsburgh, PA 15260

Phone: 412-648-1300
Fax: 412-648-1947
Email: cpc@law.pitt.edu

**UNIVERSITY OF
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News

- Welcome to Michael Parker, '03, who is staff attorney in the Environmental Law Clinic this semester.
- Welcome to David Herring, our former dean, and Martha Mannix, in their new positions as co-directors of the Clinical Program.

Meet Our Clinic Administrators



Nadine Hamlett and Jane LeHew are always



willing to assist clinic students.

Alumni News

• Laura Cohen, '96, is a candidate for District Justice in Monroeville, and is a member of the Board of Directors of Neighborhood Legal Services Association • Jessica Ellel, '01, is a new associate at the Pittsburgh law firm, Houston Harbaugh • Douglas Grimsley, '04, is an associate at Dickie, McCamey & Chilcote • Stephanie Carfley, '95, was named partner, and Julie S. Lee, '04, was hired as an associate at the Lancaster firm of Barley Snyder • Brian Rosinski, '04, is an associate at McCarthy McDonald Schulberg & Joy • Amanda Nuzum, '04, is a member of the Vandergrift firm of Geary and Loperfido • Tony Choe, '05, was married on September 10, 2005, in New York City, and is an associate at the DC law firm, Arent Fox • Jeff Cadle, '05, is an associate at the Pittsburgh firm of Thomas Will & Associates • Jennifer Rose, '05, is working at the Pittsburgh firm of Friedman & Friedman • Lisa Fabian, '01, was married to Scott Fitzgerald and she gave birth to little Finian in the summer of '05; they live in Delaware where Lisa works for the Department of Rural Development of the federal government • Rupa Sikdar Lloyd, '00, and her husband, Will, had a little boy, Nicholas, in 2004 • Karen Wells Jackson '00 and her husband, Troy, welcomed little Turner Wells in February 2005, and all are now living in Charlotte, NC • Michael Rizza, '94, is a pro se legal clerk in the United States District Court for the Western District of PA

Outstanding Clinical Student



The clinical faculty awarded Dana Adapietro, '05, the CLEA (Clinical Legal Education Association) Outstanding Clinical Student Award. This recognition is made annually to a graduating law student in most of the law schools in the United States. Dana excelled in her work in the Environmental Law Clinic during law school over the course of several semesters, and has even returned to work with Professor Buchele on an extra project. Congratulations, Dana!

WRITE AND TELL US ABOUT YOU!

We would love to know how you are doing — significant and not-so-significant events, job changes, pro bono activities, etc.

Email us at cpc@law.pitt.edu