

v. 23 no. 1 2019

# Case Law-Med

The Law-Medicine Center at Case Western Reserve

Health Law at Case Western Reserve University:

**Our students explore,  
experience and excel**



SCHOOL OF LAW  
CASE WESTERN RESERVE  
UNIVERSITY

Ranked **9th** in the nation by  
*U.S. News & World Report*



## About the Center



The original logo for the Law-Medicine Center, the nation's first health law program.

Case Western Reserve University School of Law was the first in the country to create a health law program. The field of health law effectively began with the creation of the Law-Medicine Center in 1953. Our 9th-ranked health law program offers students a unique opportunity to play a pivotal role in emerging areas of law. Students engage with faculty in researching legal, ethical and policy issues raised by advances in human genetics, electronic medical records, biomedical research, novel threats to public health, new reproductive technologies and historic changes in the regulation of government and private health care programs.

Outstanding campus resources support the health law program. Case Western Reserve University is a leading research university, with a top-25 medical school, and renowned health policy and bioethics programs. Collaborations with peers from our graduate schools of medicine, social sciences and management include shared courses, lectures, symposia and research teams.

The law school is close to four major hospital systems — the Cleveland Clinic, University Hospitals, MetroHealth, and Summa Health — which provide opportunities to work and learn in hospital legal environments.

### Health Law Principal Faculty:

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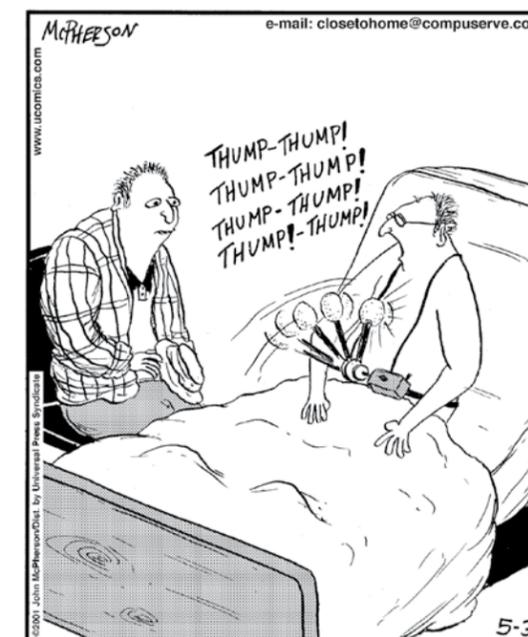
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## Inside this Issue

- 4** Allison Smith's passion for helping vulnerable populations to access healthcare drove her to Case Western Reserve University's health law program
- 6** Case Western Reserve University's Law-Medicine Center Director awarded federal NIH grant and presented at Harvard University conference
- 7** Law Professor Jonathan Adler elected to prestigious American Law Institute
- 7** Katharine Van Tassel joins CWRU Law as Visiting Professor
- 8** Health law students excel in writing
- 10** Opioid Epidemic: Case Western Reserve law grads play central roles in unprecedented opioid litigation
- 12** Health law faculty publications
- 13** The Law-Medicine Center's 2018-19 events
- 16** Faculty in the news: What we're saying about Obamacare, abortion, opioids and genetically engineered babies
- 18** Gerber Fellows explore housing court and the intersection of housing law and health law
- 20** Where are they now?
- 21** Emotional support animals, medical aid in dying — critical health law topics explored in student research projects
- 22** Health law elective course now offered to first-year students
- 28** Health Law Faculty Bios



"They tell me it's the latest breakthrough—the nonsurgical pacemaker."

Professor Jessie Hill and Allison Smith discuss their reproductive rights research project.

# ALLISON SMITH'S PASSION

for helping vulnerable populations to access healthcare drove her to Case Western Reserve University's health law program

Allison Smith was a pre-med/engineering major in undergrad at Vanderbilt University, her heart set on being an ophthalmologist. She was fascinated by the potential of artificial organs for eye surgeries.

"I went into college with an interest in health, but more in a scientific realm," Smith said.

She declared a major in Medicine Helping Society, with concentrations in health policy and economics. "That is when the shift began," she said.

Originally from Montgomery, Ala., Smith graduated in May from Case Western

Reserve University School of Law and is now an associate in the health law practice group at Taft Stettinius & Hollister LLP.

A study abroad experience in Switzerland and France while at Vanderbilt assured her that the "shift" was the right move for her studies and future career.

Visits to the United Nations offices and World Health Organization opened her eyes to international diplomacy and service.

"Learning more about how the largest organizations were working together to solve problems took me back to my high school roots when I did model U.N., and I thought my

natural talents could be best served in the legal field," she said.

Smith's journey took a swerve away from medicine and into health law—and to Case Western Reserve University, specifically for its health law program.

"You can help people improve their quality of life by ensuring they have access to proper health care and they understand what rights they are supposed to have," she said.

#### Paving Her Own Path

Smith has built a substantial health law resume as a student who's not afraid to seek opportunities. Her second year, she worked

as a volunteer for University Hospital's (UH) legal department after reaching out to an associate general counsel during a speaker panel at Case Western Reserve University.

"I had to do an informational interview of an attorney for a legal writing class, so I asked if she would be the subject of my interview and kept in contact with her," Smith said.

Eventually, she applied for a summer internship at UH and was accepted. "It was exciting because I got to see different projects that span between business partnership with other health institutions and larger legal regulatory questions regarding care across state lines," she says. "There was lots of variety."

For her third-year capstone project, Smith worked in Cleveland Clinic's Institutional Review Board (IRB) department.

"I had learned about institutional review boards in my undergrad work in clinical ethics, so I searched for the number to Cleveland Clinic's IRB department and called," she explains. "I reached the receptionist and told her about the capstone program, and she got me in contact with the executive director, Bridget Howard, who is a Case Western Reserve law alum."

At the department, Smith's work ranged from drafting and updating policies to creating guidelines and presentations related to best practices.

Smith has pursued opportunities within the law school as well. She served as senator of the Student Bar Association and is a Wurzburger Scholar in Health Law. Also, Smith was president of CWRU's Graduate School Council.

#### Exploring Reproductive Rights

"The first word that comes to mind when thinking of Allison is professional," said Jessie Hill, Judge Ben C. Green professor of law. "She is responsive, conscientious and careful—those are qualities you want in a lawyer."

These characteristics are what prompted Hill to select Smith as a research assistant exploring judicial bypass, a program for minors seeking abortion without parental consent. Hill received a grant from Brush Foundation, which helps fund work in the



Allison Smith, a 2019 health law graduate, is an associate in the health law practice group at Taft Stettinius & Hollister LLP.

field of reproductive health and rights. The project involved calling Ohio's 88 juvenile courthouses to ask whether there's a program if a teen wants to get an abortion without a parent's permission.

Smith says, "Part of the big push to do a project like this is that it's questionable how much information is available and shared with the population that might want to take advantage of [judicial bypass]. We're trying to figure out what information is shared, and how readily."

Hill's interest in pursuing a project like this was inspired by similar studies in other states and discussions she had with other attorneys at a national reproductive rights conference last year.

"Our laws in Ohio on this subject have changed a lot, and there is a lot of confusion," Hill said.

Ultimately, Hill would like to see a centralized network to provide information and help connect minors seeking judicial bypass with lawyers who can assist with the process. "This is something that could make a difference in Ohio and would be a really valuable thing," she said.

Carrying out this initial research is the first step in finding out how much information

courthouses can provide to someone inquiring about judicial bypass.

For Smith, this project fell in line with her health law studies and interest in reproductive rights. She wrote her student note on fertility preservation as a blueprint for lawmakers. "Preserving the Possibility of a Future Biological Family: The Call for State-Mandated Insurance Coverage of Fertility Preservation in Youth Patients Where Primary Treatment Causes Sterility" won the Dukeminier Award from UCLA and the Williams Institute. Her note argued that transgender youth patients, who may face infertility due to medical treatment, should not be denied insurance coverage for fertility preservation.

Smith says Jessica Berg, the law school's co-dean, was the main editor and "guiding force in drafting the paper."

Now Smith is anticipating an exciting career doing what she's passionate about—helping people get the care they need and deserve.

"It's compelling to be part of the health field where you can have such a positive impact on people's lives and combining that with law, where you are protecting people and making sure vulnerable populations aren't overlooked or mistreated."

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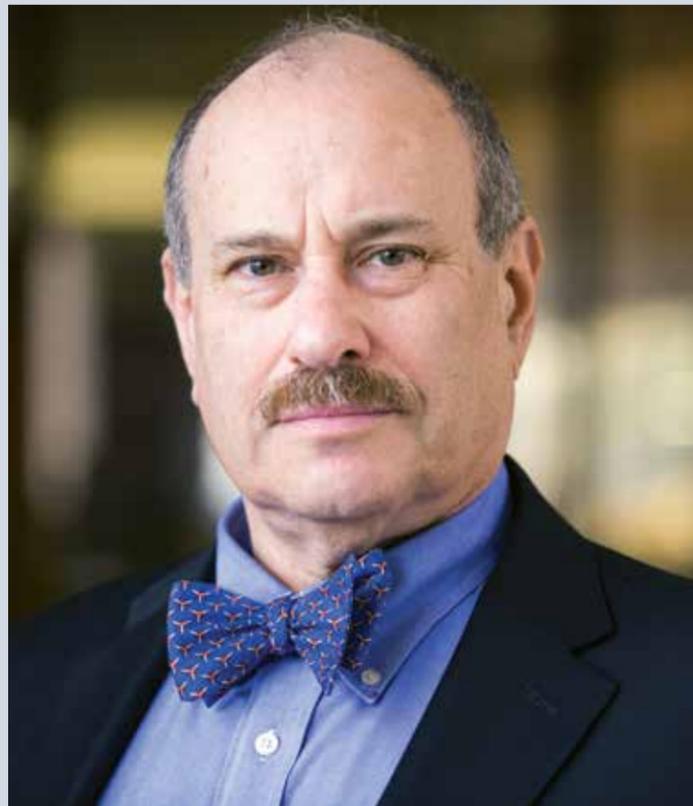
# Case Western Reserve University's Law-Medicine Center Director awarded NIH GRANT AND PRESENTED AT HARVARD UNIVERSITY CONFERENCE

Law-Medicine Center Director Maxwell J. Mehlman spoke at Harvard University's 2019 Petrie-Flom Center Annual Conference with Ronald A. Conlon, Associate Professor of Genetics and Genome Sciences at the Case Western Reserve University School of Medicine, about Governing Non-Traditional Biology.

Mehlman, a principal investigator, and Conlon, co-investigator, were recently awarded a \$160,000 two-year grant from the National Human Genome Research Institute at the National Institutes of Health. The funding will be used to explore whether alternate governance approaches are needed to ensure that non-traditional genetic experiments, that is, those conducted outside of university and corporate laboratories, are conducted safely and ethically.

A large and highly heterogeneous group of individuals conducts genetic and genomic research outside of traditional corporate and academic settings. They can be an important source of innovation, but their activities largely take place beyond the purview of existing regulatory systems for promoting safe and ethical practices. Historically, the gene-targeting technology available for non-traditional biology (NTB) experiments has been limited, and therefore they have attracted little regulatory attention. New techniques such as CRISPR-cas9, however, may create a need for alternate governance approaches.

Using their grant funding, Mehlman and Conlon will explore whether alternate governance approaches might be needed and, if so, what governance approaches would be most likely to enable non-traditional experiments to be conducted safely and ethically. To accomplish this overall objective, the project will identify current types of NTB activities and those likely in the near future; consider the risks and benefits of current and near-term NTB; and conduct a policy analysis of the current governance approach and potential alternate approaches. They will distribute a preliminary report of their findings to stakeholders for comments. They will then incorporate feedback into a final report that they will disseminate through peer-reviewed publications, formal presentations to scientific, legal, bioethics, and policy conferences, policy briefs and presentations to NTB community labs, meetings and conferences.



Law-Medicine Center Director Maxwell J. Mehlman, Arthur E. Petersilge Professor of Law and Professor of Bioethics at the School of Medicine, is the principal investigator of the grant.



Ronald A. Conlon, Associate Professor of Genetics and Genome Sciences at the Case Western Reserve University School of Medicine is co-investigator of the grant.

# LAW PROFESSOR JONATHAN ADLER elected to prestigious American Law Institute



Jonathan H. Adler, the Johan Verheij Memorial Professor of Law at Case Western Reserve University School of Law, was elected to the prestigious American Law Institute (ALI) in July 2018.

In 2007, the Case Western Reserve Law Alumni Association awarded Adler with its annual "Distinguished Teacher Award."

Adler received his bachelor's degree from Yale University and his JD from George Mason University.

Before becoming an academic, Adler clerked for the Honorable David B. Sentelle on the U.S. Court of Appeals for the District of Columbia Circuit. From 1991 to 2000, he worked at the Competitive Enterprise Institute, a free-market research and advocacy group in Washington, D.C.

Adler is the author or editor of seven books, including *Business and the Roberts Court* (Oxford University Press, 2016) and *Rebuilding the Ark: New Perspectives on Endangered Species Act Reform* (AEI Press, 2011), and over a dozen book chapters. His articles have appeared in publications ranging from the *Harvard Environmental Law Review* and *Yale Journal on Regulation* to *The Wall Street Journal* and *The New York Times*.

He has testified before Congress a dozen times, and his work has been cited in the U.S. Supreme Court. A 2016 study identified Adler as the most cited legal academic in administrative and environmental law under age 50.

In addition, Adler has been appointed director of the law school's new Coleman P. Burke Center for Environmental Law, established in 2019 through a \$10 million gift by an alumnus. The new center is collaborating with the Law-Med Center on its spring conference.

The 90-year-old institute comprises exceptional judges, lawyers and legal academics internationally.

"It's truly an honor to be elected to the American Law Institute," Adler said. "The ALI's membership includes many of the finest legal professionals in the country. I'm proud to be a part of an organization that plays such a crucial role in the development of the law."

Adler became the 10th law faculty from Case Western Reserve among ALI's elite membership—including Law-Med Center Co-Director Sharona Hoffman.

Adler, who is a health law scholar, joined the Case Western Reserve faculty in 2001. He is also known for his expertise in administrative, business and environmental law.

In 2004, Adler received the Paul M. Bator Award, given annually by the Federalist Society for Law and Policy Studies to an academic younger than 40 for excellence in teaching, scholarship and commitment to students.



## Katharine Van Tassel joins CWRU Law as Visiting Professor

Katharine Van Tassel has joined Case Western Reserve University School of Law as a Visiting Professor, starting this fall. Van Tassel has a BSN and JD from Case Western Reserve University, an MPH in Law and Public Health Policy from Harvard University and will complete an MS in Food Safety from Johns Hopkins University in 2020. Most recently she served as Dean and Professor of Law at San Francisco Law School. Previously, she was a Professor of Law and Director of Health Law Programs at Creighton University School of Law and was Associate Dean and Professor of Law at Concordia University School of Law. Van Tassel's areas of expertise include health law, food and drug law, and public health law.



Talia Sukol



Andrew Condiles



Nicolette Cregan

# HEALTH LAW STUDENTS *excel in writing*

## Hannah Tuschman presents published comment at national conference

Tuschman, a 2019 graduate, presented her comment "Birth Directives: A Model to Address Forced and Coerced Cesareans" at the Birth Rights Bar Association Conference on March 22.

She explains in her paper that since the rise of fetal rights activism in the 1980s, doctors, hospitals, and judges have compelled pregnant women to undergo C-sections when the procedure is believed to be beneficial to the fetus. Courts have split on whether these procedures violate pregnant patients' constitutional rights. Some courts have validated unwanted C-sections by balancing the state's interest in potential life, as recognized in *Roe v. Wade*, against the patient's right to refuse unwanted medical treatment.

Her comment first examines these constitutional issues and argues that the use of this balancing test is unconstitutional, as it misapplies *Roe* and fails to consider the importance of pregnant women's constitutional right to refuse medical treatment. Additionally, decisions finding that forced C-sections do not violate the rights of pregnant patients are explicitly or implicitly based on the premise that pregnant women are a special class of persons with diminished constitutional rights, leaving pregnant women vulnerable to potentially unlimited state surveillance and intervention.

Her comment then proposes a model, based on advance directives, to safeguard pregnant patients' right to refuse unwanted cesareans. The "Birth Directives" model is based on states' advance directive statutes, which are designed to protect patients' rights during

end-of-life decision-making. These statutes often contain fill-in-the-blank forms, leaving space for the individual to signify their end-of-life wishes. Though most states have advance directive statutes, nonstatutory advance directives are enforceable through the constitutional right to refuse medical treatment. The proposed "Birth Directive" model is a similar form, in which pregnant patients may fill in the blanks to signify under which circumstances, if any, they consent to a C-section. This form would be most effective as legislation. Absent legislation, courts would have discretion to recognize or invalidate the forms. However, even without legislation, this form may be useful as a way for pregnant patients to assert autonomy over their medical decisions.

## Notes written by Talia Sukol and Andrew Condiles, 2019 grads, published in journals last spring

Sukol's paper, "A Bitter Pill: The Unconstitutionality of Contraceptive Coverage Exemptions," is about exceptions to the Affordable Care Act's mandate that insurance plans pay for all FDA-approved contraceptive methods for women. Previous Supreme Court cases have established that religious employers, like houses of worship, are exempt from this mandate.

Under the direction of the current administration, however, all employers with a religious or moral objection would be exempt from providing coverage for contraceptive services. Her paper analyzes the ways in which these exemptions are unconstitutional under the Fourteenth Amendment Equal Protection Clause and the First Amendment Establishment Clause.

Sukol's paper was published in the *William and Mary Public Policy Review*. She is now an associate with Flannery Georgalis, LLC. Condiles' note focuses on wellness programs and is titled "How Voluntary Is Voluntary? Designing Wellness Programs To Fit The Participant." Wellness programs are employer-funded plans that offer financial rewards to participants who engage in healthy behavior. Federal law requires that participation in such programs be voluntary.

As wellness programs offer incentives for participation, debate exists about two questions: 1) Is it possible for wellness program participation to be "voluntary" - if you are being paid to do something are you really doing it voluntarily? 2) Even if the first question is answered in the affirmative, what incentive structure would make enrollment voluntary? His note addresses the first question by examining how administrative agencies and the court view the term "voluntary" both broadly and in the context of the relevant laws. Condiles examined the fields of behavioral economics and bioethics to develop guidelines that would allow a wellness program to comport with the federal statutes.

Condiles' paper was published in the *Appalachian Journal of Law*. He is now clerking for New Jersey Superior Court Judge Colleen Maier.

## Two health law graduates win national writing awards in 2019

Nicolette Cregan and Allison Smith, both 2019 graduates, recently won prestigious national writing awards and \$1,000 each for their notes.

Smith's note, "Preserving the Possibility of a Future Biological Family: The Call for State-Mandated Insurance Coverage of Fertility Preservation in Youth Patients Where Primary Treatment Causes Sterility," won the Dukeminier Award given each year by UCLA and the Williams Institute. Her submission will be published later this year in *The Dukeminier Awards Journal of Sexual Orientation and Gender Identity Law*.

Cregan's note, "Grasping Gainsharing: A Business Approach to American Healthcare?" took third place in Division I of the American Bar Association's *Public Contract Law Journal* writing competition.

Smith's piece provides guidance for lawmakers to address young patients' reproductive rights. Transgender youth patients, who may face infertility due to the medical treatment of their condition, should not be denied insurance coverage for fertility preservation, the note argues.

Cregan's paper is about the business model of gainsharing used in hospitals to combat inefficient spending. Her note addresses concerns about the model and proposes legislation to implement mandatory safeguards that would protect patients, doctors and hospitals.

"I'm incredibly proud of Allison and Nicolette, both of whom were diligent throughout the writing process. From crafting their topics to researching, writing and revising, both students displayed their dedication to quality, and, as we can see, their hard work paid off," said Professor Sharona Hoffman, Co-Director of the Law-Medicine Center and *Health Matrix: Journal of Law-Medicine* advisor.

Cregan was managing editor of *Health Matrix* and works at EY (formerly Ernst & Young) in downtown Cleveland. Smith joined Taff Stettinius & Hollister LLP as an associate in their health law practice group.

## Health Matrix editors sweep national writing awards

Cregan's award marks the fourth national writing award a *Health Matrix* editor won in recent years.



Elizabeth Burnett won second place in the American University Washington College of Law National Health Law Writing Competition last year. Her winning entry was

entitled "Solving the Uncertainty: Why the HIPAA Privacy Rule Fails to Appropriately Address Disclosures of Psychotherapy Notes of Deceased Patients." In fall 2018, she worked as a law clerk at the U.S. Department of Health & Human Services in Washington, D.C. and in the summer of 2018, she externed at the Centers for Disease Control and Prevention in Atlanta.



Michael Hattery won the top award in the 2017 National Sports Law Student Writing Competition for his article, "Major League Baseball Players, Big Data, and the Right to

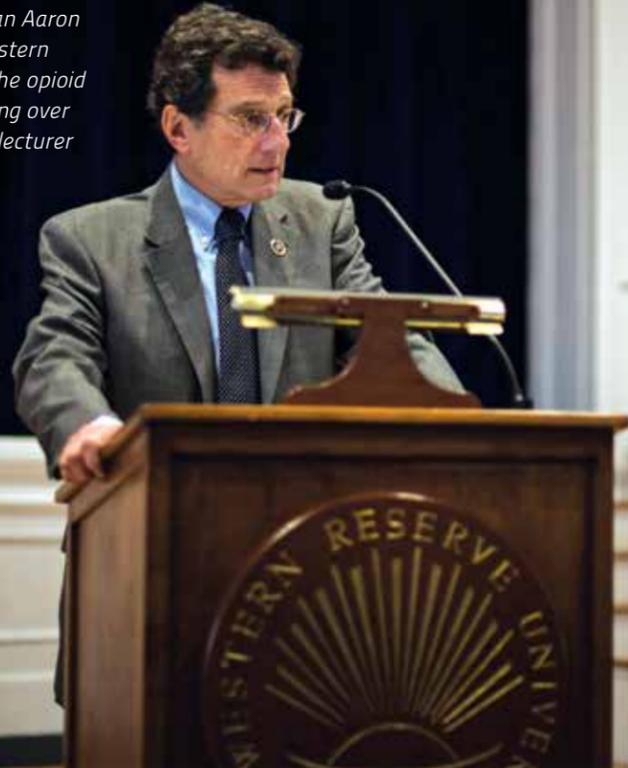
Know: The Duty of Major League Baseball Teams to Disclose Health Modeling Analysis to Their Players."



Lauren Tonti won first place in the American University Washington College of Law National Health Law Writing Competition in 2017 for her article, "Food

for Thought: Flexible Farm to School Procurement Policies Can Surmount Access Barriers to Fresh, Healthy School Meals." During the summer of 2016, she interned at the Centers for Disease Control and Prevention in Atlanta. After graduation, she earned a master's degree in public health from the Harvard School of Public Health. She is now pursuing a doctorate degree at the prestigious Max Planck Institute for Social Law & Social Policy in Germany.

U.S. District Court Judge Dan Aaron Polster speaks at Case Western Reserve University about the opioid litigation. Polster is presiding over the case and is a frequent lecturer at the law school.



# OPIOID Epidemic

## Case Western Reserve law grads play central roles in unprecedented opioid litigation

A terrible opioid epidemic, only about 20 years old, continues to ravage our country and society. The cost in ruined and ended lives is heartbreaking, and without measure.

Other costs incurred by governmental entities in dealing with the epidemic can, perhaps, be measured, though they are said to amount, nationwide, to a total figure in the many billions. Those costs are the subject of more than 1,600 separate lawsuits from around the United States, consolidated and transferred as multi-district litigation to the federal district court in Cleveland. *In re National Prescription Opiate Litigation* (the “Opioid MDL”) may be the largest, most complex litigation in American history. It dwarfs the tobacco litigation, the asbestos litigation, the 9/11 terrorism litigation, and even the great oil spill cases of the past. Among the hundreds of lawyers involved in the case, CWRU law graduates are playing an outsized role.

During the time he was interviewed for this article, a little over an hour, attorney David R. Cohen ’91 received 20 emails asking for his guidance or rulings on significant issues in the Opioid MDL. Each of them required his considered response; none of them was a no-brainer. Those kinds

of demands on his time are typical, he says. Cohen is a Special Master in the Opioid MDL, one of three appointed by presiding Judge Dan Aaron Polster, who is a frequent guest lecturer at the law school. Cohen says that his primary area of responsibility is umpiring discovery. He was polite enough to put off attending to the messages until the interview was over, but Cohen was clearly anxious to get back to work on a job that he compares to “drinking from a fire hose every day.”

Cohen is an attorney who seems to be doing exactly what he was meant to do. After what he cheerfully characterizes as a failed business career, he got into law school at age 29 pretty much by the luck of the Irish – the Irish, in this case, being the beloved former Dean of Students, Dan Clancy, who encouraged Cohen to take the LSAT. Cohen began his studies thinking that he didn’t really want to be an attorney – “in some ways, I still don’t want to be an attorney,” he says, and he’s serious. But in law school, “it felt great to be good at something again.”

After a couple of years of private practice, he “fell into a job” as law clerk to “the best boss ever,” Kate O’Malley ’82, who had just been appointed U.S. District Court Judge. (She’s now on the U.S. Court of Appeals for the

Federal Circuit, in Washington, D.C.) Ten years later, he was still her law clerk when she “kicked me out of the nest,” he says, and appointed him special master in a case. He rented an office, bought a desk, and never looked back: he has made an impressive career since then, serving as special master in dozens of cases around the country. It’s all he does.

In less than two years, hundreds of depositions have been taken in the Opioid MDL, hundreds of millions of pages produced, and Cohen has called balls and strikes on all of the parties’ discovery disputes. But, as he points out, sheer mass is only part of the story. The allegations in the case include some plain vanilla tort claims, but also a number of novel claims and legal theories that are stretching the law, he says. And all of this, too, is occurring on a fast litigation track.

Peter Weinberger ’75 is one of the lawyers pressing those claims, both novel and vanilla. He is nationally renowned as a trial lawyer, and nationally esteemed. That much is evident from his selection as Plaintiffs’ Liaison Counsel by hundreds of plaintiffs’ lawyers, from around the country, who convened in Cleveland as soon as the multi-district litigation transfer order was issued, in December 2017. His responsibilities include communicating with all plaintiffs’ counsel on matters relevant to the Opioid MDL, coordinating discovery efforts, and planning for trial. The first “bellwether” trial is scheduled for this coming October. Given the complexity of the litigation, and the stakes, Weinberger says that being liaison counsel is “a 24/7 job.”

The opioid epidemic had its origins in the 1990s, Weinberger says, when a massive marketing campaign convinced doctors that a new approach to treating pain in their patients was needed, and available. As he explains, pharmaceutical companies claimed that newly-developed synthetic opioids, with their timed-release feature, were a safe substitute for morphine or other addictive painkillers. They were, in Weinberger’s view, anything but.

In the Opioid MDL, Weinberger and his plaintiffs’ counsel colleagues represent municipalities and other governmental organizations seeking to recoup the \$50–60 billion per year that, they allege, the epidemic costs them for such things as health care, law enforcement, emergency and first responders, addiction treatment, child care, and other social services. Plaintiffs also seek various forms of injunctive relief designed to change the behavior of the industry, educate the public, and control pharmaceutical marketing and lobbying. Weinberger foresees a long-term court-supervised program for solving the scourge of opioid addiction.

Weinberger has spent his career in Cleveland. In 1988, he joined Spangenberg, Shibley, and Liber. He served as that firm’s managing partner for 17 years, stepping down from that post at the end of 2017.

Weinberger’s was the first class to study in the new law school building at CWRU. His favorite professors: Arthur Austin and Ron Coffey – though one of those two (many readers of a certain vintage will be able to guess which one) “scared the living daylights out of me,” he laughingly recalls.

Another familiar face from law school is one that Weinberger now sees at the United States Courthouse with some regularity. Tim Johnson ’74, and his law firm Cavitch, Familo and Durkin, represent one of the defendants in the MDL’s “Pharmacy Group.” Johnson’s



David R. Cohen ’91 is a Special Master of the opioid multi-district litigation.



“Plaintiffs are, in effect, all of us.” – Professor Andrew S. Pollis, *New York Times*. Pollis is a national expert on the litigation and frequently called upon by the media.

client was brought in to the case relatively late, he says – in June 2018. So he, and the client, “had a lot of catching up to do.”

Johnson is former president of the Cleveland Metropolitan Bar Association and has had an unusual career, he says, one that mixes litigation and transactional work in about equal parts.

During law school, Johnson and Weinberger shared afternoon rides to downtown Cleveland, where they both worked, part-time, at law firms. Now, they are the only lead lawyers in the upcoming bellwether case who are local Clevelanders. There will be so many other lawyers for that trial, Johnson predicts that it will be difficult to fit them all into the courtroom.

CWRU Professor Andrew Pollis, whose research focuses on the Opioid MDL and who is frequently quoted in the national media about it, points out that plaintiffs face significant problems of proof as to causation, and are pressing “rather attenuated” damage claims in this difficult and complex litigation.

“At the same time, if it gets to the jury, the evidence is going to be so persuasive about the conduct of the opioid industry,” he says, that jurors may be of a mind to award damages. And, since the governmental entities pressing the claims are comprised of their citizens, “plaintiffs are, in effect, all of us” (as the *New York Times* quoted him saying).

Opioids do have a legitimate, useful purpose, Pollis says, that differentiates this particular public health crisis, and the Opioid MDL, from the nationwide tobacco litigation of some years ago. Doctors legally prescribe opioids, he points out, because “for some patients it is the only way to get meaningful relief from pain.”

Even Peter Weinberger concedes that there is a place for the use of opioids for health problems such as intractable cancers or acute pain – “limited use,” he says, “under rigorous scrutiny.”



# The Law-Medicine Center's 2018-19 EVENTS

▶ Missed one of our lectures? Webcasts are available online. Here's a look at the topics we discussed this past academic year.

## HEALTH LAW FACULTY PUBLICATIONS 2018-2019

### Maxwell J. Mehlman, Director

*Bioethics of Military Performance Enhancement*, J. ROYAL ARMY MED. CORPS (Online First: April 29, 2019).

*Ethical Issues in the Use of Nudges to Obtain Informed Consent for Biomedical Research*, 40 IRB 1-5 (2018) (feature article) (with Jessica Berg and Eric Kodish).

*The Fragmenting of Humankind?* in POSTHUMANISM: THE FUTURE OF HOMO SAPIENS 384 (Michael Bess and Diana Walsh Pasulka, eds., 2018).

### Sharona Hoffman, Co-Director

*Healing the Healers: Legal Remedies for Physician Burnout*, 18 YALE J. HEALTH POL'Y L. ETHICS 56 (2019).

*What Genetic Testing Teaches About Long-Term Predictive Health Analytics Regulation*, N.C. L. REV. (Forthcoming 2019).

"Portable Medical Order Sets (POLST): Ethical and Legal Landscape," 15 NATIONAL ACADEMY OF ELDER LAW ATTORNEYS JOURNAL (2019).

*Personal Health Records as a Tool for Transparency in Health Care* in TRANSPARENCY IN HEALTH AND HEALTH CARE IN THE UNITED STATES: LAW AND

ETHICS (Holly Fernandez Lynch, I. Glenn Cohen, Carmel Shachar, and Barbara J. Evans eds., forthcoming 2019).

*Big Data Analytics: What Can Go Wrong*, 15 INDIANA HEALTH LAW REVIEW 227 (2018).

*Access to Health Records: New Rules Another Step in the Right Direction*, JURIST, Feb. 20, 2019.

*Health Insurers Want You to Try Cheaper Drugs First, but That Can Hurt You*, THE CONVERSATION, January 3, 2019.

*Artificial Intelligence and Predictive Data: The Need for A New Anti-Discrimination Mandate*, BALKANIZATION (A Yale Law School blog), November 1, 2018.

### Jonathan Adler

*Environmental Protection: Final Frontier or Achilles Heel?* in THE CAMBRIDGE HANDBOOK OF CLASSICAL LIBERAL THOUGHT, 56 (Todd Henderson ed., 2018).

*Introduction: Property In Ecology*, 59 NAT. RESOURCES J. x (2019).

*Justice Kavanaugh's Wheelhouse: Administrative Law*, 44 ADMIN. & REG. L. NEWS 7 (Fall 2018).

MARIJUANA FEDERALISM (Forthcoming 2019). (An edited volume, has been accepted for publication by the Brookings Institution Press).

### Dean Jessica W. Berg

*Informed Consent for Registries*, in REGISTRIES FOR EVALUATING PATIENT OUTCOMES (AHRQ, 4th Edition, Forthcoming 2019).

*Patient Autonomy, Consent and Capacity: Children* in OXFORD HANDBOOK OF COMPARATIVE LAW (Forthcoming 2019) (with Emma Cave).

*Autonomy, Consent and Capacity: Adults* in OXFORD HANDBOOK OF COMPARATIVE LAW (Forthcoming 2019) (with Mary Donnelly).

*Ethical Issues in the Use of Nudges to Obtain Informed Consent for Biomedical Research*, 40 IRB 1-5 (2018) (feature article) (with Maxwell Mehlman and Eric Kodish).

### Jessie Hill, Associate Dean for Research and Faculty Development

*Could Abortion Become Illegal in America? All Signs Point to Yes*, THE GUARDIAN, May 14, 2019 (op-ed), <https://www.theguardian.com/commentisfree/2019/may/14/abortion-illegal-america-roe-v-wade>.

*Sex, Lies, and Ultrasound*, 89 U. COLO. L. REV. 421 (2018).



### ▲ LEGAL AND ETHICAL DUTIES TO REPORT, WARN, AND PROTECT Elena and Miles Zaremski Law-Medicine Forum

This presentation on March 7 enhanced attendees' ability to recognize situations that may trigger legal or ethical duties to report behaviors that create risks to others in the healthcare context. It explained when a legal or ethical obligation exists to report to authorities and to warn or otherwise protect potential victims. The presentation also discussed the gray zones in which healthcare and mental health providers may find themselves and strategies for navigating these challenging situations.

**Speaker:** Hilary Mabel, JD, is an Assistant Staff Ethicist and Regional Bioethicist (South) in the Center for Bioethics at the Cleveland Clinic.

### ▼ MOMMY DEAREST: MYTHS AND REALITIES OF WOMEN IN PRISON Elena and Miles Zaremski Law-Medicine Forum

Rates of female incarceration are rising around the world. This talk on February 25 analyzed how women prisoners differ significantly from male prisoners. Female inmates often have histories of trauma and mental health problems. Women are also commonly the primary caregiver for a child prior to their incarceration. What challenges do they face in prison and how can the system address their needs?

**Speaker:** Dr. Susan Hatters-Friedman is Director of Forensic Psychiatry at UH Cleveland Medical Center and an Associate Professor of Pediatrics and Professor of Psychiatry at CWRU School of Medicine. She is also an adjunct professor teaching Law & Psychiatry at the CWRU School of Law.





## ▲ ELECTRONIC HEALTH RECORDS AND PATIENT SAFETY: LEGAL CHALLENGES AND SOLUTIONS Law-Medicine Center's Annual Conference

Electronic health record (EHR) systems are now omnipresent in medical facilities. But have they meaningfully advanced patient safety? This conference on April 5 featured legal and medical experts from around the country who analyzed EHR technology and the regulations that govern it. It emphasized solutions to contemporary EHR challenges, and developed detailed recommendations for regulatory, policy and technological improvements.

### Speakers:

Dean Sittig, PhD, Professor, Center for Healthcare Quality & Safety, School of Biomedical Informatics, University of Texas Health Science Center, Houston

Nicolas Terry, LLM, Hall Render Professor of Law, Executive Director of the William S. and Christine S. Hall Center for Law and Health, Indiana University, Indianapolis

Darrell Ranum, JD, CPHRM Vice President, Patient Safety, NE Region, The Doctors Company

Scott Lucas, PhD, PE, Director, Accident and Forensic Investigation at ECRI Institute

Rachel Nelson, JD, MHA, Branch Chief, Policy Analysis and Implementation, Regulatory Affairs Division, Office of the National Coordinator for Health Information Technology

Ross Koppel, PhD, Adjunct Professor of Sociology, University of Pennsylvania; Professor of Biomedical Informatics, the State University of New York (SUNY) at Buffalo

Reed Gelzer, MD, MPH, EHR Data Quality Improvement and Records Risk Analyst for Trustworthy EHR, LLC

Chad Brouillard, MA, JD, Attorney at Foster & Eldridge, LLP

Thomas P. Wolski Jr., DO, FAAP, Pediatrician, Emergency Department, Akron Children's Hospital, Clinical Assistant Professor of Pediatrics, Northeast Ohio Medical University

Sharona Hoffman, JD, LLM, SJD, Professor of Law & Bioethics, Co-Director of Law-Medicine Center, Case Western Reserve University School of Law

James Willig, MD, Associate Professor of Medicine, Assistant Dean for Clinical Education, Director, Research and Informatics Services Center, University of Alabama at Birmingham School of Medicine

Leah Binder, MA, MGA, President & CEO, The Leapfrog Group

Steve Steffensen, MD, Chief of Learning Health System, Clinical Affairs, The University of Texas at Austin Dell Medical School

## HEALTH LAW AND THE NEW SUPREME COURT Elena and Miles Zaremski Law-Medicine Forum

The appointment of Brett Kavanaugh established a firm conservative majority in the Supreme Court. How might this new Supreme Court decide a variety of health law issues that are likely to come before

it? Our experts in health law and constitutional law, Case Western Reserve University Law Professors Jessie Hill and Jonathan Adler, shared their thoughts and predictions during a forum on October 30.

## LAW OF HEALTH INFORMATION PRIVACY

Data is everywhere today, and is being used by a broader range of entities for a broader range of purposes every day. Lawyers must understand the key principles surrounding the use and disclosure of personal data when providing legal advice to companies. Data privacy is relevant to compliance, mergers and acquisitions, litigation and many other areas of the law. This event on September 22 explored the primary legal and policy principles surrounding the use and disclosure of personal data in connection with the healthcare industry.

**Speaker:** Kirk Nahra is a partner with Wiley Rein LLP in Washington, D.C., where he specializes in privacy and information security litigation and counseling, along with a variety of health care and compliance issues. He is chair of the firm's Privacy Practice and co-chair of its Health Care Practice.



## ◀ THE (ALMOST) GREAT UNRAVELING: CAN THE QUEST FOR SOLIDARITY SURVIVE? Oliver C. Schroeder Scholar-In-Residence Lecture

This lecture in September 2018 focused on the struggle to maintain the Affordable Care Act and the essential principle of solidarity on which the law necessarily rests. It also discussed the limited options, given the unique circumstances of the American psyche, for alternative pathways to a national policy of health care inclusiveness.

**Speaker:** Sara Rosenbaum is the Harold and Jane Hirsh Professor of Health Law and Policy and Founding Chair of the Department of Health Policy at the Milken Institute School of Public Health, George Washington University.

## ▶ ALL NONPROFITS ARE NOT CREATED EQUAL: THE ROLE OF THE COMMERCIAL NONPROFIT Maxwell J. Mehlman Lecture

The Mehlman lecture on October 25th focused on Commercial nonprofits, which are widely misunderstood. Even key stakeholders, such as governmental authorities, trading partners, consumers, and the media, fail to distinguish commercial nonprofits from charities, tax exempt organizations and for-profit entities. However, commercial nonprofits play a critical role in the overall economy, and in the healthcare sector, in particular. With a clearer understanding of the unique nature of commercial nonprofits, unnecessary and inappropriate barriers to their operations could be minimized or removed, enabling them to make an even greater contribution to the health care market.

**Speaker:** Seth Jacobs is senior vice president and general counsel at Blue Shield of California, a 4 million member nonprofit health plan that serves the state's commercial, individual and government markets.



# SAVE THE DATES UPCOMING EVENTS 2019-20

### SEPTEMBER 12, 2019

Elena and Miles Zaremski Law-Medicine Forum  
12:00 - 1:00 p.m.  
CWRU Law Moot Courtroom (A59)  
Speaker: Jessie Hill

### SEPTEMBER 26, 2019

Oliver C. Schroeder, Jr. Scholar-in-Residence Lecture  
4:30 - 5:30 p.m.  
CWRU Law Moot Courtroom (A59)  
Speaker: Dr. Reed Tuckson  
"Unusual Life Forms Emerging in Healthcare Delivery"  
1 CLE credit

### OCTOBER 8, 2019

Elena and Miles Zaremski Law-Medicine Forum  
12:00 - 1:00 p.m.  
CWRU Law Moot Courtroom (A59)  
Speaker: Anthea Daniels

### MARCH 27, 2020

Law-Medicine Center Annual Conference with CWRU's new Coleman P. Burke Center for Environmental Law  
8:30 a.m. - 4:00 p.m.  
CWRU Law Moot Courtroom (A59)  
6 CLE credits

**FACULTY IN THE NEWS** WHAT WE'RE SAYING ABOUT OBAMACARE, ABORTION, OPIOIDS AND GENETICALLY ENGINEERED BABIES



◀ “As experts in the field of statutory law, we agree that this decision makes a mockery of the rule of law and basic principles of democracy — especially Congress’s constitutional power to amend its own statutes and do so in accord with its own internal rules.”

Professor Jonathan H. Adler in an op-ed he co-authored with Abbe R. Gluck in *The New York Times* in December about a Texas federal judge’s decision declaring the Affordable Care Act unconstitutional.



▶ Algorithms predicting health risk are likely “the way of the future,” said Professor Sharona Hoffman. “I’m afraid we need to learn to live with them,” but she believes we need to think about ways the law can offer further protection to patients.

Hoffman in a February *POLITICO* article about companies that sell information about patients’ risk of opioid addiction to health care professionals and hospitals.



▼ “I hope we will be more cautious in the next thing we try to do, and think more carefully about when you should use technology versus when you could use technology.”

Law School Dean Jessica Berg, a bioethicist, in a November article in *Axios* about a Chinese scientist who claims to have made the world’s first genetically engineered child.

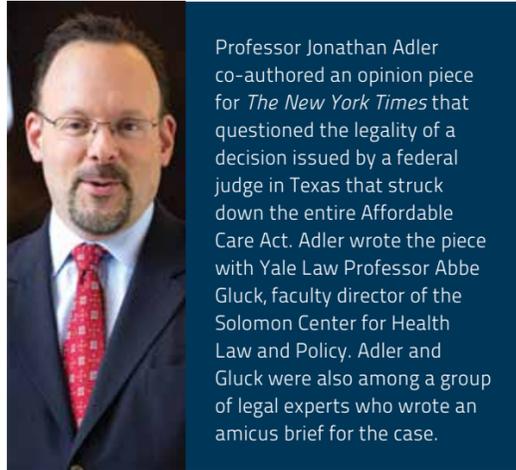


◀ “He had never really been vocally anti-abortion either - if anything, had been pro-choice, actually, throughout his political career just until about the time that he ran as Ronald Reagan's running mate.”

Professor Jessie Hill during an *NPR* interview in December about Former President George H.W. Bush’s legacy on abortion. He once supported Planned Parenthood and began as a moderate, then shifted after pressure from religious conservatives.



# FACULTY NOTABLES



Professor Jonathan Adler co-authored an opinion piece for *The New York Times* that questioned the legality of a decision issued by a federal judge in Texas that struck down the entire Affordable Care Act. Adler wrote the piece with Yale Law Professor Abbe Gluck, faculty director of the Solomon Center for Health Law and Policy. Adler and Gluck were also among a group of legal experts who wrote an amicus brief for the case.



Professor Sharona Hoffman's article, "Healing the Healers: Legal Remedies for Physician Burnout," was published in the *Yale Journal of Health Policy, Law, and Ethics*. It is the first law journal article to focus on the burnout problem.



Law-Medicine Center Director Maxwell J. Mehlman spoke at Harvard University's 2019 Petrie-Flom Center Annual Conference about Governing Non-Traditional Biology and was recently awarded a \$160,000 two-year grant from the National Human Genome Research Institute at NIH.

## MORE INSIDE

Read about our faculty's achievements in the health law field this year

# Gerber Fellows explore housing court and the intersection of housing law and health law



Allison Meyer, a 3L, served as a law clerk for the health law clinic and helped draft and edit the housing guide.

There's no place like home. Safe, affordable, quality housing can have a significant impact on overall wellness and reduce exposure to unhealthy environments.

"Housing is where everything starts—and without a home, you feel insecure and unsafe," said Allison Meyer, a 3L who clerked at the law school's clinic in its human trafficking and medical-legal partnership programs.

Meyer is among a group of six students who engaged in a housing law experience in fall 2018 as part of CWRU's Gerber fellows program, working with clinical Professor Benjamin D. Fallor. They observed eviction hearings, met and talked with magistrates, and connected with Housing Court Judge Ronald J. H. O'Leary in his chambers. Judge O'Leary is a 1997 graduate of the law school and a member of the Law Alumni Association Board.

The students then created a housing law handbook for attorneys to reference so they can quickly and simply familiarize themselves with housing laws before representing clients in court.

"We spent the year distilling information we researched for the document," Meyer said.

Natalie Lesnick, a second-year law student and former Gerber fellow involved in the project, explained how eviction claims, in particular, are riddled with complexities that involve family law and criminal law and sometimes require mediation.

"There are so many issues that come up, and many lawyers do not have a firm grasp of what the law truly says and what remedies might be available for tenants," she said.

As a result of the project, Lesnick was hired to work in Cleveland's Housing Court last year, where she assisted with legal research, policy and legislation tracking, drafted magistrate orders and helped with pre-trials.



Natalie Lesnick, a second-year law student, worked in Cleveland's Housing Court last year and assisted in legal research, legislation tracking, drafting magistrate orders and helping with pre-trials.

"It reminded me that I want to be in a position to help people and ensure the system is fair for everyone," said Natalie Lesnick, a second-year law student hired by Cleveland's Housing Court after a health law fellowship program.

Many tenants, she said, are dealing with life-changing stress. "People are coming to court at a time in their lives when they are the most emotional," Lesnick said. "Losing your home is an extremely difficult situation, so it's about being able to take that into account and realize there are two sides to every story."

The students worked hard to develop a housing law guide that is useful and accessible. "We referenced the Cleveland Housing website and Cleveland ordinances dealing with landlord/tenant issues, and we used Peter M. Iskin's practitioner's manual,

*Ohio Eviction and Landlord-Tenant Law*, to point us in the right direction," Lesnick says.

Meyer adds, "A lot of landlords have counsel—many are businesses or housing corporations—and tenants often do not have representation, so it's about giving people support where they need support."

In addition to Meyer and Lesnick, the fellows who worked on the project during their first year of law school were Mukta Chilakamarri, Melanie King, Christine Scherer and Sarah Schneider.

The yearlong experience was an eye-opening affirmation for Lesnick, who says it solidified her desire to focus on public service.

"It reminded me that I want to be in a position to help people and ensure the system is fair for everyone," she said.

# Where are they now?

As our health law alumni excel in their careers, they reflect on their decisions to study health law at Case Western Reserve University



**SCOTT SCHWEIKART '03**

*Senior Research Associate and Legal Editor, American Medical Association's Journal of Ethics*

"I was interested in both medicine and law -- and I ended up applying to law schools. I wanted to go somewhere with a good health law program, so that drew me to Case Western Reserve."



**HILARY LEEDS '03**

*Program Analyst, National Institutes of Health Office of Science Policy*

"CWRU gave me the tools to think through the complex real-world issues I see at work. I really enjoy working with colleagues from different backgrounds, and thinking through issues that might not have a single answer."



**CJ SANDLEY '14**

*Staff Attorney, Southern Poverty Law Center*

"I had originally thought I might get a degree in social work. But when I saw how attorneys could be empowered to bring about social change, I realized law could be a great fit for me."



**NATASHA PATTANSHETTI '12**

*Manager, Regulatory Policy at American Academy of Dermatology Association*

"In the Master of Public Health degree program, there were a lot of healthcare providers. I think it is really important to get that perspective."

Pattanshetti earned a JD-MPH dual-degree from Case Western Reserve University.

## Emotional support animals, medical aid in dying – critical health law topics explored in student research projects

During spring 2019, five students enrolled in the law school's Health Law & Policy Lab and worked on a wide range of cutting-edge health law issues. The course is taught each year by Professor Anne Lederman Flamm, a 1995 graduate and former director of e-Ethics Cleveland Clinic.

**Amy Kochert** worked with Ohio End of Life Options to develop a white paper examining the procedural steps and conditions that led to the passage of medical aid in dying (MAID) legislation in the United States. The inquiry tracks MAID legislation and policy through ballot initiatives, state legislatures, and courts in both states that passed MAID legislation and states in which MAID legislation failed to pass. It examined successful strategies for promoting the legislation and defending attacks against it. Ohio End of Life Options provided Kochert with a group of advisors including Ann Rowland, retired Assistant U.S. Attorney and '76 graduate, and includes Ruth Anna Carlson, Former Adjunct Law Professor and retired partner at Ulmer & Berne LLP, and Linda Mittleman, Adjunct Professor.

**Mariah Dick** completed a project for anesthesiologists at a local medical center that historically had required all female patients of childbearing age to undergo pregnancy testing prior to surgery. After the medical center adopted a selective preoperative pregnancy testing policy, the anesthesiologists asked for an overview of current professional standards,

practices, and recommendations to guide their implementation of the policy. Mariah found that a range of policy positions exists among professional organizations and health care entities. Summarizing first how medical malpractice cases are brought and defended, Mariah undertook analyses of both mandatory and selective testing approaches. Mariah examined case law as well as claims data arising from injuries to female patients who were and were not tested preoperatively for pregnancy to formulate her recommendations regarding how anesthesiologists can implement institutional policies while limiting their own liability and preserving their patients' autonomy.

**Samuel Ottinger** produced a memorandum for a local medical center clarifying existing legal standards and professional obligations applicable to the certification of emotional support animals. Physicians and social workers increasingly receive requests from patients seeking documentation of their need for emotional support animals. Health professionals' standards for certifying emotional support animals are less clear than the criteria for service animal certification. After reviewing existing guidance and evaluating policy goals, evidence-based efficacy studies, and existing approaches to meeting societal demand for emotional support animals, Sam developed recommendations for "best practices" clinical guidelines.

**Zachariah Robinson's** project responded to a family practice physician's request for legal guidance following her encounter with a male patient she had known for several years. During an outpatient clinic appointment scheduled to monitor the patient's HIV pre-exposure prophylaxis regimen, the patient disclosed that he was sexually attracted to children. He had consulted two therapists in the past about his pedophilia and both had declined to treat him, claiming they lacked expertise. The client physician sought a thorough assessment of the medico-legal and ethical obligations arising from the patient's disclosure. Zach's research and recommendations encompassed duties of care and confidentiality, scope of practice, duties to warn and protect third parties, and potential immunity under state statutory provisions.

**Allison Smith** pursued research on the possibility of routine clinical use of artificial intelligence and machine learning in interpreting mammograms. Allison's paper queried the fitness of the existing medical malpractice framework to address adverse patient outcomes when physicians rely on machine learning tools in the mammography context. She then examined legal concepts and proposals that aim to address the malpractice model's gaps and shortcomings as machine learning and artificial intelligence penetrate clinical mammography patient care.

# Health law elective course now offered to first-year students

First-year law students are now taking electives during their first year of law school. The program began in spring 2019 as a way to engage students in specialty areas before they get further into their academic careers.

Each 1L student takes at least one one-credit elective in the spring semester. Offerings include a Bioethics and Law course. The response from students has been very positive.



"I really enjoyed taking bioethics with Dean Berg; she is wonderful and super engaging and it was great to get to learn something outside of our standard curriculum."

— Alexandria McKenna

## Student Health Law Association

SHLA is our active health law student organization. It provides students with a wealth of intellectual, professional, and social opportunities. SHLA members pursue activities that promote professional development in all areas of health law. The organization sponsors lectures, organizes health law career development workshops and outreach programs, cosponsors service and charitable events with other student groups, and

represents the concerns of students interested in health law within the law school community. SHLA members also have the opportunity to network with professionals at bi-monthly Cleveland Metropolitan Bar Association Health Care Law Council luncheon meetings, where they hear health law experts discuss various aspects of their practice.

## Students receive stipends for their health law summer internships

3L Do Yeon Kim had the unique opportunity to engage in health law first-hand during her internship last summer at the Legal Department of University Hospitals Cleveland Medical Center. Founded in 1866, University Hospitals Cleveland Medical Center is a nationally ranked academic hospital affiliated with Case Western Reserve University.

During her summer internship, Kim got to experience the life of an in-house counsel, working on seven major projects including researching and drafting clinical trial contracts and updating the hospital's policy handbook. Kim is one of the dozens of students who have benefitted from the program.

During the second year of law school, students have the opportunity to apply for a summer stipend. The program gives students the opportunity to pursue an internship in health law and receive compensation for living and travel expenses.

In recent years, students have interned at the following organizations:

- St. Jude Children's Research Hospital; Memphis, Tennessee
- Akron Community Legal Aid's Health Education Advocacy and Law Project (HEAL); Akron, Ohio
- The Legal Aid Society of Cleveland: Health, Education, Work, Income, and Immigration Practice Group; Cleveland, Ohio
- Centers for Disease Control & Prevention (CDC) Public Health Law Program; Atlanta, Georgia
- Neuroethics Program, Cleveland Clinic; Cleveland, Ohio
- National Institute for Environmental Health Sciences; Triangle Park, North Carolina
- City of Cleveland, Department of Aging; Cleveland, Ohio
- Center for Medicare Advocacy; Washington, DC
- Office of Counsel to the Inspector General, in the Health Care Fraud and Abuse area, of the US Department of Health & Human Services; Washington, DC
- Medical Mutual of Ohio; Cleveland, Ohio
- University Hospitals; Cleveland, Ohio
- MetroHealth; Cleveland, Ohio
- Cleveland Clinic Innovations; Cleveland, Ohio
- Cleveland Clinic's Institutional Review Board; Cleveland, Ohio



# LABS

Students work on discrete legal issues presented to faculty by courts and practitioners who seek assistance on current cases. Our students research and discuss the issues presented and prepare memoranda or briefs for the referring lawyers, judges or organizations to use.

**Public Health Law Lab** – Students research legal issues for a variety of state/local health departments and the Network for Public Health Law, providing real-world experience in this expanding legal field. Research topics include: environmental health regulations, emergency preparedness, cross-border public health, food safety, health information data sharing, injury prevention, maternal/child health, public health statutes and regulations, vaccination requirements, obesity prevention and tobacco control.

**Reproductive Rights Lab** – In this lab, students complete research projects pertaining to cutting-edge issues in reproductive rights law. Working individually or in small groups, students have the opportunity to engage with both national and Ohio-based reproductive rights organizations to conduct fact examination, draft legal research memos and analyze proposed legislation.

# Health law students awarded scholarship funding and research fellowships

Case Western Reserve University School of Law offers scholarships and fellowships to incoming students who are interested in health law.

The Gerber Law-Medicine Fellowship is available to students with outstanding academic credentials. The award covers three-quarters of the law school tuition or more. In addition, Fellows can receive a small stipend for work on a health law project during the academic year.

The Gerber Fellowship is named for Samuel Gerber. He was a well-respected Cuyahoga County Coroner, who, along with law professor

Oliver Schroeder and Harvard forensic pathologist Dr. Alan Moritz, helped form the Law-Medicine Center at Case Western Reserve University, the first health law center in the United States.

Incoming students are eligible for Gerber Fellowships or Wurzburger Health Law Scholarships, which cover partial tuition and are awarded to students who plan to pursue health law studies. The Wurzburger Scholarships are named for Odette Wurzburger, a renowned law professor and philanthropist who helped establish the endowment for the Law-Medicine Center at Case Western.



## *Health Matrix*: Journal of Law-Medicine

Each annual issue of *Health Matrix* includes articles by national scholars, along with student notes, written under the supervision of a faculty member.

It also features articles that grow out of a symposium on a significant health law topic, such as corporate wellness programs, reproductive rights, health disparities and medical big data.

Students are selected for the journal based on their grades and a writing competition. Once chosen to be associate editors, students complete a major research paper, while providing support to the journal's executive board. Through the *Health Matrix* notes program, students work closely with the journal's faculty advisor to develop their papers, which may be submitted for publication. Approximately one-third of the students' notes are selected for publication by the journal's staff, and one note is designated "Note of the Year," an award that carries a cash prize. Student notes recently published in the journal cover a wide range of topics, including solitary confinement, human trafficking and prosecuting women for drug use during pregnancy.

Examples of recent *Health Matrix* symposia:

- Corporate Wellness Programs – Are They Hazardous to Well-Being?
- The Rhetoric of Reproduction
- Putting an End to Separate and Unequal Health Care 50 Years after the Civil Rights Act
- Patients' Rights in the Use of Electronic Medical Records for Non-Treatment Purposes
- New Technologies, New Challenges: Women and Prenatal Genetic Testing in the 21st Century



## Chicago health law journal publishes year-long HIPAA privacy research by alumnus Miles Zaremski

Prominent alumnus Miles Zaremski published an article in the Winter 2019 issue of Loyola of Chicago's Law School's *Annals of Health Law and Life Sciences*. The article is entitled "HIPAA's Privacy Rule and State Privacy Laws: Roadblocks to Medical Organizations' Self-Policing Medical Testimony." It is based on a year-long research project and is co-authored by Douglas M. Belofsky.

# The Health Law JD Curriculum

The health law curriculum is highly interdisciplinary and considers issues from ethical, legal, social and public policy perspectives. Our program can accommodate the interests of students who wish to focus on health law, or even a subspecialty within health law. Subspecialties include corporate health law, medical malpractice, health care regulation, health care law and policy and bioethics. However, students need not declare an area of specialization. Following foundational courses in the first year, students can choose from a variety of specialized health law courses.

## HEALTH LAW CONCENTRATION COURSES:

Administrative Law  
Psychiatry and Law  
Discrimination in Employment  
Elder Law  
Employment Retirement Income Security Act (ERISA)  
Food, Drug & Biotech Law  
Genetics and Law  
Health Care and Human Rights  
Health Care Controversies  
Health Care & Human Rights Topics Seminar  
Health Matrix Seminar  
Hospital Risk Management  
Law and Bioethics  
Nonprofit Organizations Law  
Pretrial Practice: Medical Malpractice  
Public Health Law  
Public Health Law Lab  
Reproductive Rights Lab  
Supervised Research (with approval of the Concentration Director only)  
Workers' Compensation

## THIRD-YEAR CAPSTONE OPTIONS:

Health Law Clinic  
American Health Lawyers Association (Washington, D.C.)  
Additional Health Law-related capstones with faculty approval

# Doctor of Juridical Science: SJD in Health Law

Case Western Reserve University School of Law invites applications for its Doctor of Juridical Science (SJD) in Health Law degree. This is the most advanced law degree in the health field.

The program enables students to work with CWRU's distinguished faculty members on writing a substantial piece of health law scholarship of publishable quality. Classes are available from among the law school's and the university's many offerings.

## Eligibility

The health law SJD program is designed for applicants with a JD degree from a law school in the United States or another English-speaking common law country (e.g. Canada or Australia). It may also be appropriate for other students with a foreign law degree plus an LLM from the United States or another English-speaking common law country. Such individuals must have strong English language skills and be able to produce a compelling health law thesis proposal at the application stage. In the alternative, foreign students may choose our SJD program for foreign students and specialize in the health law field. The health law faculty is happy to work with applicants to determine which program best fits their needs. The faculty will also work with individuals who do not have an LLM degree to determine whether they should enroll in an LLM program before commencing their SJD work.

Scholarship support is available.

## Degree Requirements

Each Health Law SJD student pursues a program of study that is tailored specifically to his or her background and academic interests. Candidates may be required by their advisors to take or audit courses and participate in seminars and discussions that will further their understanding of the health law field and their dissertation topic. Residency requirements are tailored to students' individual circumstances.

Ordinarily, completion of the SJD degree takes two to four years. Candidates must conduct rigorous research and produce an original dissertation that will contribute significantly to legal scholarship and further understanding of the law. The completed dissertation must be of publishable quality. This process begins at the application stage, when candidates submit a detailed thesis proposal of up to 5,000 words.

## Application Process

To be considered as an applicant for the SJD program in Health Law, a candidate must submit by April 1st:

- Completed, printed application form.
- \$50 application fee made out to "Case Western Reserve University."
- Personal statement.
- Two letters of recommendation. Recommendation letters may be enclosed with the application form in sealed and signed envelopes or mailed separately by the recommenders.
- Official copy of transcripts from all post-secondary educational institutions with notarized translations into English where applicable; the transcripts may be included in sealed envelopes or mailed directly from the institutions.

- Thesis proposal of up to 5000 words explaining why their topic merits the type and depth of research that will result in production of a monograph-length thesis. The proposal must focus on the existing unresolved legal issues. It must also include a review of the existing literature on their topic, a bibliography of the literature that they have consulted, and an explanation of how their thesis will contribute substantially to the existing literature. The proposal must present a convincing case that the topic presents a current, unresolved issue worthy of an SJD thesis in health law and that the applicant has the potential to produce a work of publishable quality.
- We expect applicants to engage in a thorough review of literature concerning their topic in preparation for their thesis, which will result in a complete bibliography of the literature in the applicable field.

## Additional Requirements for Foreign students

- An official TOEFL or IELTS score required of all applicants whose native language is not English. Our TOEFL institutional code is 1105, dept. 03. Copy of same may be included in initial application packet with indication that the original score has been requested by the applicant.
- Affidavit of financial support required for visa documents.
- Candidates must have at least a foreign university-level degree in law, and LLM degree and a TOEFL of 100 or IELTS of 6.5. In the case of multiple TOEFL scores, we will rely on the most recent score.

## Completed applications should be sent to:

Professor Sharona Hoffman  
Case Western Reserve University School of Law  
11075 East Boulevard, Room 227  
Cleveland, Ohio 44106-7148 U.S.A.  
e-mail: sharona.hoffman@case.edu  
phone: (216) 368-3860

## Admission

Admission decisions are made starting April 1. Admissions decisions will be made by a committee consisting of the Dean of the Law School and the faculty of the Law-Medicine Center. A member of the faculty will agree to serve as the candidate's thesis advisor. The Dean and the thesis advisor will appoint a thesis committee for the candidate.

Admitted students will be required to submit a nonrefundable deposit of \$500 by May 15th in order to secure their position in the class. The deposit is deductible from the first semester's tuition.

# Health Law Faculty Bios

## JONATHAN H. ADLER

*Johan Verheij Memorial Professor of Law and Director of the Center for Business Law & Regulation*

*Administrative Law & Constitutional Law*



Jonathan Adler joined the faculty in 2001; prior to that he worked at the Competitive Enterprise Institute and clerked for the Honorable David B. Sentelle on the U.S. Court of Appeals for the D.C.

Circuit. He is the author or editor of seven books, a contributing editor to National Review Online and a regular contributor to the popular legal blog, "The Volokh Conspiracy." He frequently writes on health law topics, including the Affordable Care Act and e-cigarette regulations. He has testified before Congress a dozen times, and his work has been cited in the U.S. Supreme Court.

## JESSICA BERG

*Dean; Tom J.E. and Bette Lou Walker Professor of Law; and Professor of Bioethics & Public Health*  
*Public Health Law; Bioethics and Law; Health Policy Lab*



Jessica Berg has been a member of the faculty since 1999 and has been the Dean since 2013. Berg previously served as the Director of Academic Affairs and Secretary of the Council

on Ethical and Judicial Affairs and Section Director of Professionalism at the American Medical Association. Her research spans a variety of areas including public health, medical decision-making, research with human subjects, confidentiality, reproductive law and ethics, genetic enhancement, end-of-life care, professionalism and e-medicine.

## BENJAMIN D. FALLER

*Lecturer in Law*  
*Community Development Clinic*



Professor Faller came to the law school after serving as staff attorney and chief housing specialist for the Cleveland Housing Court and as the executive director of a home repair

and housing counseling nonprofit. His area of focus is housing and community development. He serves on the executive committee and property tax working group of the Cleveland-area Vacant and Abandoned Property Action Council, a consortium of officials and experts focused on studying and developing solutions for vacant properties.

## JESSIE HILL

*Associate Dean for Faculty Development and Judge Ben C. Green Professor of Law*  
*Reproductive Rights Lab*



Jessie Hill joined the faculty in 2003 after practicing First Amendment and civil rights law with the firm of Berkman, Gordon, Murray & DeVan in Cleveland. Hill also

worked at the Reproductive Freedom Project of the national ACLU office in New York, litigating challenges to state-law restrictions on reproductive rights, and served as law clerk to the Honorable Karen Nelson Moore of the United States Court of Appeals for the Sixth Circuit. Her scholarship focuses on constitutional law, law and religion, and reproductive rights.

## SHARONA HOFFMAN

*Edgar A. Hahn Professor of Law, Co-Director of the Center for Law and Medicine*  
*Health Care and Human Rights*



Dr. Hoffman joined the faculty in 1999 and is currently the co-director of the Law-Medicine Center at Case Western Reserve University School of Law. Previously she was a Senior Trial

Attorney at the EEOC, a litigation associate at O'Melveny & Myers, and a clerk for U.S. District Judge Douglas W. Hillman. Hoffman has lectured nationally and internationally on civil rights and health law topics, and has published over 60 articles and two books: *Aging with a Plan: How a Little Thought Today Can Vastly Improve Your Tomorrow* (Praeger 2015) and *Electronic Health Records and Medical Big Data: Law and Policy* (Cambridge University Press 2016).

## LAURA MCNALLY-LEVINE

*Associate Dean for Experiential Education & Director, Milton A. Kramer Law Clinic Center*  
*Professor of Law*  
*Externships & Health Law Clinic*



Professor McNally-Levine joined the Law School's faculty in 2005. She has focused her practice and research in the areas of poverty law, disability rights, children's rights and

health law. Recently she established interdisciplinary collaborations with local hospitals, medical centers and community organizations to provide legal representation and engage in systemic advocacy regarding legal issues that impact community health. McNally-Levine is committed to experiential education and has held positions with the Clinical Legal Education Association and the AALS Section on Clinical Legal Education.

## MAXWELL J. MEHLMAN

*Arthur E. Petersilge Professor of Law and Professor of Bioethics, School of Medicine; Director of the Law-Medicine Center; Distinguished University Professor*  
*Health Law and Bioethics*



Professor Mehlman joined the faculty in 1984 and has been the Director of the Law-Medicine Center since 1986. Previously he practiced health law with Arnold & Porter in

Washington, D.C. He is the author or co-author of over 80 articles and book chapters and the author, co-author or co-editor of eight books, including *Access to the Genome: The Challenge to Equality*, *Encyclopedia of Ethical, Legal and Policy Issues in Biotechnology*, *Genetics: Ethics, Law and Policy*, the first casebook on genetics and law, now in its fourth edition; and *Transhumanist Dreams and Dystopian Nightmares: The Promise and Peril of Genetic Engineering*, published in 2012 by the Johns Hopkins University Press.

## MAYA SIMEK

*Director of the Health Law Clinic and Lecturer of Law*



Professor Simek brings her experience as a licensed social worker and attorney to her work, representing clients of the human trafficking program. She teaches the Health & Human

Trafficking Clinic and uses a trauma-informed approach in representing members of the LGBTQ+ community, human trafficking victims, refugees, and individuals with mental health and/or substance abuse problems. Simek also serves as the Managing Legal Director of Equality Ohio.

# ADJUNCT FACULTY

## Matt Albers, '00

Health Law I and II  
Vorvys Sater

## Harry Brown

Health Law I and II  
Benesch Attorneys at Law

## Dale Cowan, '81

Health Law I and II  
University Hospitals

## Paul Feinberg

NonProfit Law

## Anne Flamm

Public Health Law Lab

## Elizabeth Hammack, '04

Health Law I and II  
University Hospitals

## Ryan Hooper

Health Law I and II  
University Hospitals

## Paul Kostyack, '01

Health Law I and II  
University Hospitals

## Donald Lampert

Workers Compensation  
Calfee Halter & Griswold

## Linda Mittleman, '86

Hospital Risk Management

## Dr. Phillip J. Resnick

Civil Law & Psychiatry; Criminal Law & Psychiatry  
Case Western Reserve University School of Medicine  
University Hospitals

## Russell Shaw

ERISA  
Walter Haverfield

## Seth Wolf, '94

Health Law I and II  
University Hospitals

# New Hospital Risk Management class covers medical malpractice, risks and claims resolution

A new course added to Case Western Reserve University's health law program prepares future lawyers to understand the function of a hospital risk management program.

The course focuses on understanding and explaining claims, litigation management, and identifying current laws and policies that impact risk management, such as HIPAA and the National Patient Safety Act.

The class started in spring 2019. It is taught by Adjunct Professor Linda R. Mittleman, a senior risk management consultant with more than 25 years of experience in risk management in the healthcare sector.



# DUAL DEGREES in health-related fields

## **JD/MA (Bioethics)**

The Department of Bioethics at the School of Medicine offers an MA in Bioethics, which focuses on the ethical, cultural and policy dimensions of health care, technology and the life sciences. The three or three and 1/2 year program emphasizes the interdisciplinary and inter-professional nature of the field, and includes a significant clinical component. This program provides excellent preparation for students who wish to practice or have academic careers in health care law.

## **JD/MPH (Public Health)**

Offered by the Schools of Medicine and Graduate Studies, the MPH degree provides students with the broad base of knowledge and skills necessary for the field of public health. Students in the four-year dual degree program have opportunities to apply what they learn to community health problems.

## **JD/MD (Medicine)**

This six-year program allows students to study at Case Western Reserve University School of Medicine, one of the finest in the country. Participants may begin their studies at the law or medical school, and complete two years at the host school before continuing study at the other school.

## **JD/MS (Biochemistry)**

The School of Medicine offers an MS program in biochemistry, designed to provide students with knowledge of the latest advancements in biochemistry and related fields. This four-year program is generally used by students who have a scientific background and an interest in patent law as reflected in intellectual property.

## **JD/MSSA (Social Work)**

Consistently ranked at one of the top ten schools of social work in the country, the Mandel School of Applied Social Sciences offers a combination of extensive field education and academic study at a major university. Four-year dual degree students may choose from a variety of curricular concentrations, including a Health Concentration and Mental Health Concentration.

## **JD/MBA (Health Management)**

Students may pursue an MBA degree from Weatherhead School of Management in addition to their law degree. The program is designed for individuals who want to specialize in the legal, contractual and governmental aspects of management. Those interested in health law may complete a concentration in Health Systems Management by taking twelve credit hours from a list of eligible courses focused on the topic, of which nine hours may be counted toward the MBA.

## **JD/MNO (Nonprofit Organizations)**

Founded 32 years ago as one of the first nonprofit management programs in the nation, this dual degree is at the forefront of training future leaders in the nonprofit, health care and public sectors. It provides the essential tools to lead a nonprofit and carry out its mission ethically and effectively, featuring a curriculum that emphasizes leadership, strategic planning, revenue development, finance, organization management, ethics and use of data.

# Cleveland **A TOP CITY FOR HEALTH CARE**

Cleveland is both a major law center and a major center of health care and medical research. Downtown, home to MetroHealth Medical Center and most of the region's major law firms — including some of the largest firms in the nation — is a 15-minute drive from campus. Many medical facilities are even closer. University Hospitals is headquartered on our campus. The Cleveland Clinic Foundation and the Cleveland Veterans Affairs Medical Center are just minutes away. The proximity of these teaching hospitals is critical to the Law-Medicine Center, as both students and faculty are exposed to the real world of health care. Thus, the health law curriculum includes on-site experience and intensive contact with providers and patients.

## **University Circle**

Our law school resides in University Circle, a fast-growing modern community rich in arts and culture and one of the largest concentrations of educational, cultural and health care institutions in the world. We are a short walk away from the city's best attractions. The Cleveland Museum of Art, Cleveland Orchestra, Cleveland Botanical Gardens and the Museum of Contemporary Art are all steps away from our door. With all this and much more, it's no surprise that Cleveland was named among the top 15 destinations to see by *L.A. Times*, among the best 50 places to travel in the world by *Travel + Leisure*, and #21 of places to visit in the world by *The New York Times*. But living here? It's even better.

## **American Hospital Association**

Health care is in our roots, and it's woven into our city's history. The American Hospital Association (AHA), an organization that represents and serves health care institutions, patients and communities, was founded in Cleveland in 1898. The AHA is a national entity made up of nearly 5,000 hospitals, health care systems, networks, health care providers and 43,000 individuals. AHA advocates on a national scale for its members' perspectives and needs in national policy developments, legislation, regulations and judicial matters.

## **Beginning of Forensic Medicine**

The Law-Medicine Center first began with forensic medicine in mind. It was founded by Dr. Samuel Gerber, a coroner with a national reputation as a forensic professional; Dr. Alan Moritz, a forensic pathologist from Harvard University; and Oliver Schroeder, a young law professor just beginning his long and very distinguished career. Established within the law school with Professor Schroeder as director, the Center offered classes in forensic sciences to law and medical students, police officers, coroners, prosecutors, judges and practicing attorneys. Since then, we've shifted our focus from forensics to professional education and the intersection of law and medicine.





SCHOOL OF LAW

CASE WESTERN RESERVE  
UNIVERSITY

The Law Medicine Center  
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[law.case.edu](http://law.case.edu)

## WHAT MAKES US STAND OUT

**#9:** Ranking of our Health Law Program (*US News*)

**A+:** Ranking of our Health Law Program (*National Jurist*)

**1st** in the nation to establish a health law program (1953).



SCHOOL OF LAW