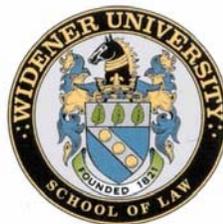


HEALTH LAW COLLOQUIUM

WIDENER SCHOOL OF LAW

HEALTH LAW SOCIETY



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HEALTH LAW SOCIETY

The Health Law Society (HLS) is an interdisciplinary organization of students, faculty and alumni dedicated to exploring the career opportunities and current issues in health law. The Society strives to explore the range of possibilities in health law from beyond the traditional practice area of medical malpractice to managed and long-term care, bioethics, corporate issues, and health care reform. We also participate in health-related public service activities benefiting the community throughout the tri-state area. HLS draws on the diverse resources available at Widener - students, faculty, and alumni - to build a greater understanding of health law practice.

MESSAGE FROM THE EDITOR-IN-CHIEF

Health law's unyielding expansion and evolution has made academics, medical professionals, and legal advocates collaborate together on multiple fronts. 2012 marks a historic year for the United States. The Supreme Court's decision to uphold the Affordable Care Act's individual mandate as a congressional taxing power will have major implications in the years to come. President Obama's subsequent reelection guarantees that this healthcare regulating Act will remain as the law of the land.

While healthcare and law coexist together, they evolve in separate ways. Law evolves in the retrospect—*stare decisis* becomes the foundation we solve our future legal problems with. Healthcare evolves in a future prospective—past theories on medicine and science become outdated and replaced with more accurate and rewarding approaches.

The Health Law Society's goal is to educate and update students and other members of the legal community on how the law is evolving and perhaps, where the law should move forward. The Colloquium gives interested writers a chance to inform interested readers and to promote an area of the law (which I believe) is not only fascinating, but important and necessary to the lives of all people. My hope is that in reading our fall issue, you perhaps become a little more educated and informed in this field.

-Dan Baum
Editor-in-Chief

CAREER GUIDE FOR THE FUTURE HEALTHCARE ATTORNEY

BY THADDEUS MASON POPE, JD, PHD.¹



INTRODUCTION

Law students are well aware that the 2013 market for law school graduates is scary. While the supply of new lawyers has been growing, the demand for those lawyers has remained flat.² Consequently, many have seriously questioned whether law school is still a good investment.³

Fortunately, even in the face of this dismal legal employment landscape, there is some good news. Legal Jobs are expanding in the healthcare sector. Here are just two reasons. First, healthcare spending already consumes 17% of the GDP and is expected to rise to 20% by 2019.⁴ While only one contributing factor, in its first ten years, the Patient Protection and Affordable Care Act (PPACA) will spend 938 billion dollars on healthcare.⁵ Moreover, since healthcare is comparatively more extensively regulated than other industries, this increase in spending correlates to a disproportionate surge in health care jobs.⁶

A second reason for the increase in health law jobs is the dramatic growth of the elderly population. In 2009, there were 40 million persons aged 65 years or older (13% of the U.S population, about 1 in 8 Americans). By 2030, there will be about 72 million older persons (19% of the population).⁷ This is significant, because the elder population is responsible for 40% (soon 50%) of healthcare spending. In short, health lawyers appear to have a safe and bright future.⁸

I have two objectives in this Article. First, I will outline the wide range of career paths available to you as a health lawyer. Second, I will describe the experience and credentials that you should acquire to make yourself a competitive candidate for these jobs.

CAREER PATHS IN HEALTH LAW

The plethora of health law career opportunities can be roughly grouped into twelve categories.⁹ As an entry-level lawyer, you could (1) clerk for a judge or (2) complete a health policy fellowship. As an attorney, you could do either (3) litigation or (4) transactional work for healthcare clients. Or you could practice in the particularly fast-growing areas of (5) public health law or (6) elder law.

But I hasten to add that not all health law jobs involve working as an attorney or lawyer. Law school is excellent training for legal non-attorney careers in: (7) compliance, (8) regulatory affairs, (9) risk management, (10) clinical ethics consultation, (11) legal nurse consulting, and (12) dispute resolution.

The Judicial Law Clerk

Working as a law clerk to a judge is a valuable and respected credential no matter where your professional path takes you.¹⁰ Moreover, many specialty courts focus on health law issues. At the federal level, consider clerking for either an administrative law judge or appeals board within the Department of Health and Human Services.¹¹ At the state level, consider clerking for a mental health court, a probate court, or an administrative tribunal within your state Department of Health or Department of Social Services.¹²

Fellowships & Internships

The Kaiser Family Foundation maintains a large database that summarizes and links to a wide range of fellowships and internships in health policy and related fields. These programs emphasize training, professional development, and mentoring. The Kaiser database includes fellowships located across the United States that are available both to law students and to recent law graduates.¹³

Litigation

As a health law litigator, you may represent parties in medical malpractice actions or in product liability lawsuits against drug and device manufacturers. Or you might advocate in administrative hearings involving reimbursement rates or the medical necessity of clinical interventions. Your clients can include: insurers, providers, consumers, or the state and federal governments.

Transactional

As a transactional health lawyer, you might advise and assist clients in structuring hospital-physician relationships, joint ventures, merger and acquisition transactions, physician employment, and health information technology. Some of the most explosive growth over the next five years is expected in life sciences and FDA law.¹⁴

Public Health Law

Most of health law involves legal concerns related to the medical treatment of individuals. In contrast, public health law involves law and policies intended to prevent health problems and promote health across the population. Public health law is often described as "what we do as a society to create the conditions in which people can be healthy."¹⁵

Many public health law jobs are in the government, at the federal, state and local levels. Other jobs are in public interest law firms and organizations. There are also international opportunities, for example, at the World Health Organization and USAID.¹⁶ Students who want to work in this area should join both the Student Network for Public Health Law¹⁷ and the Law Section of the American Public Health Association.¹⁸ They should also seriously consider enrolling in a J.D.-M.P.H joint degree program.

Elder Law

Elder law has traditionally focused on drafting wills and handling estate and probate matters. But elder law now overlaps significantly with health law. Today, elder law attorneys deal with everything from Medicaid eligibility changes and long-term care planning, to guardianship arrangements and elder abuse. Students who want to work in this area should join the National Academy of Elder Law Attorneys (NAELA).¹⁹

Compliance

Compliance officers work for hospitals, manufacturers, and insurers to assure compliance with federal and state regulations and standards. Key areas include fraud and abuse laws and patient privacy. While compliance had already been a rapidly growing field, the PPACA assures continued growth by making compliance programs mandatory as a condition of enrollment in federal healthcare programs.²⁰ Notably, some law schools have become CCB-accredited.²¹ This can facilitate your personal certification in Healthcare Compliance, enhancing your credibility and marketability. One recent survey shows that 80% of healthcare employers require or prefer CHC certification prior to hire.

Regulatory Affairs

Regulatory affairs specialists (RA) facilitate the development of drug and device products. First, they prepare, submit and monitor submissions to administrative agencies like the FDA. Second, they address

issues raised in the review process, manage reports, and track post-market functions. Third, RA professionals are involved with products during their research and development phases, for example, in the design and monitoring of clinical studies. Fourth, RA professionals are involved in the manufacturing, packaging and distribution, and in business strategy, particularly as related to international regulatory submission strategies and policies.²²

Risk Management

Risk managers work in a wide variety of organizations such as hospitals, insurance carriers, long-term care, hospice, physician practices, manufacturers, and government agencies.²³ Risk managers investigate any incident (e.g. a medical treatment error) that might result in financial liability or loss. They resolve disputes and act as liaison to attorneys, insurance companies, and individuals. But risk managers also play a proactive, preventative role. They create policies to comply with safety legislation, and coordinate and develop programs for quality and risk-free care.

Clinical Ethics Consultant

Ethics consultants work for hospitals and health systems. They address uncertainty and conflict involving value-laden treatment issues such as: informed consent, decision-making capacity, confidentiality, and end of life decisions. Depending on the needs of the requesting clinician or family, the ethics consultant serves as moral analyst, information clearing house, dispute mediator, and/or educator. In addition to working on specific patient cases, ethics consultants also typically develop and review institutional policies and procedures involving patient rights. To develop or hone their bedside skills, most law school graduates now working as ethics consultants have completed either a clinical fellowship or a Masters or Certificate in bioethics.²⁴

Legal Nurse Consultant

Many law students interested in health law come from a prior career in nursing. Some of these students might consider a career as a Legal Nurse Consultant (LNC). LNCs assist attorneys in litigation matters such as medical malpractice, products liability, and worker's compensation. They screen cases for merit, locate and interview medical experts, analyze medical records, research medical literature, and coordinate independent medical examinations. Some LNCs work in law firms and insurance companies. Others work as independent consultants.²⁵

Dispute Resolution

As in other areas of law, dispute resolution in healthcare is "hot." You can work as: an ombudsman, a mediator, an arbitrator, or a peer review hearing officer. There are a variety of applications for ADR in health care, ranging from disputes caused by a stressful work environment to medical malpractice lawsuits.

LAW SCHOOL STRATEGIES FOR SUCCESS

Most of the strategies for success for aspiring health lawyers are the same as those for any other law student. I have taken the liberty to customize these strategies for the future healthcare attorney. I have grouped my law school strategies for success into five categories: (1) work experience, (2) moot courts, (3) writing, (4) networking, and (5) coursework.

Work Experience

Employers care not only about what you "know" but also about what you can "do." What you can "do" is best demonstrated by what you have already done. After all, there is no better indication of the quality of your future legal work than your past legal work. The traditional time for law students to seek employment is

during their two summers. But you should do far more than just this. There are four other ways for law students to build experience and demonstrate commitment to health law.

First, most law schools have externships through which you can earn credit by working in the "field" (e.g. hospital, device manufacturer, government agency). Unless you already have lots of other work experience, do two or three different externships. Second, your law school may also have a clinic (e.g. Veterans benefits, Medical-Legal Partnership, HIV-AIDS) in which you can represent clients under the supervision of faculty. Third, many students have part-time jobs throughout the academic year, often developed from an externship or summer job. Fourth, even if you cannot get a paying job, you can get relevant health law experience either through an unpaid internship or through satisfying your school's pro bono requirement. In short, get legal work experience. Add new entries to your resume while building a network of references and contacts.

Moot Court Competitions

While "real life" work experience is best, you can engage in valuable experiential learning in other ways too. For example, moot courts simulate certain skills that lawyers employ in practices.²⁶ There are three moot court competitions focused on health law. First, the National Health Law Moot Court Competition at Southern Illinois University, in November, offers great training in appellate litigation.²⁷ Second, the L. Edward Bryant Jr. National Health Law Transactional Competition at Loyola University Chicago, in March, helps you develop corporate and transactional lawyering skills.²⁸ Third, the Health Law Regulatory & Compliance Competition at the University of Maryland, in February, provides the opportunity to take the perspective of a corporate compliance officer. The competitors use federal health regulations, rules, and agency documents, to present a legal and policy solution and/or recommendations.²⁹

Writing

Perhaps the most widely respected credential from law school is membership on law review. But even if you are not on law review, there are several ways in which you can demonstrate your writing competence. First, be strategic about the seminars you take. Write about topics that matter to the future employers you want to impress. Or write about topics you already know or need to master. Second, develop your seminar papers for health law writing competitions. Winning such competitions will earn you cash prizes and valuable credentials. Third, get your manuscript published.³⁰

Networking

If you follow the advice above, then you will already be engaged in a good bit of networking. For example, you will get to know more lawyers at your externships and at your part-time jobs. And, perhaps more importantly, they will get to know you. But you should also be engaged in networking more broadly.

Most professional bar associations welcome law students at zero or nominal cost. Your state and county bar associations probably have both a Health Law section and an Elder Law section. They might even have a Food and Drug Law section. At the national level, both the American Health Lawyers Association³¹ and the American Bar Association Health Law Section³² invite student participation. Attend their live CLE programs. Arrive early and introduce yourself. I have lost count of the number of law students who have secured coveted jobs in this fashion.

Coursework

Students interested in pursuing a career in health law should take at least one basic course in healthcare law. They should also take at least three, but ideally six or more, credits of experiential learning in health law externships or clinics. And they should complete a major health law writing project through: a seminar or independent study paper, a moot court competition, a journal note, or a health law writing competition. Many law schools offer a "certificate" in health law. One recent survey indicates that employers value this credential.³³

CONCLUSION

Health law is a broad and exciting field and its demand curve is shifting to the right. Private firms and government agencies are eager to hire new lawyers with a focus on healthcare law. I wish you luck in your years at law school and in furthering your career.

-Thaddeus Mason Pope

¹Thaddeus Mason Pope, J.D., Ph.D. is Director of the Health Law Institute at Hamline University. He taught at Widener University School of Law from 2007 to 2011. His research focuses on medical futility, internal dispute resolution, tort law, public health law, bioethics and end-of-life decisions. Professor Pope also clerked for the U.S. Court of Appeals for the Seventh Circuit and practiced for seven years as a corporate litigator with Arnold & Porter LLP in Los Angeles and Washington, DC. The Widener Health Law Society is proud to dedicate our fall article in recognition to his service as a professor, as a faculty advisor, and for his contributions to academia. On behalf of the Society, we wish him the best in his future endeavors and we thank him for his contributions to our school.

² Joe Palazzolo, *Law School Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012.

³ Herwig J. Schlunk, Mamas 2011: *Is a Law Degree a Good Investment Today?* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1957139.

⁴ Christopher J. Truffer et al., *Health Spending Projections Through 2019: The Recession's Impact Continues*, 29(3) HEALTH AFFAIRS 522-29 (2010).

⁵ Letter from Congressional Budget Office to Speaker Nancy Pelosi, *available at* <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11379/amendreconprop.pdf>.

⁶ *Health Law Jobs Expected to Get Red Hot*, NATIONAL JURIST (July 17, 2012); Robert Denney Associates, *Legal Communiqué: What's Hot and What's Not in the Legal Profession* (Dec. 2011), http://www.robertdenney.com/pdf/comm-legal-hot_not_2011.pdf; Lisa Stansky, *Hot Practice: Health Law*, STUDENT LAWYER, Mar. 2009, at 8-9; Rachel Breitman, *Drug Supplement*, AMERICAN LAWYER (July 1, 2009).

⁷ Administration on Aging, *Aging Statistics*, http://www.aoa.gov/aoaroot/aging_statistics/index.aspx.

⁸ Peter M. Leibold, *The Enduring Strength of Health Law*, AHILA CONNECTIONS, Dec. 2009, at 60 ("Surmising future trends and examining current survey data, one can legitimately forecast that health law will retain its economic strengths into the future... An investment of time and energy in developing health law expertise will be worth it."); Robert L. Schwartz, *Where is Health Law Going?* *Follow the Money*, 14 HEALTH MATRIX 219-23 (2004).

⁹ Others have organized potential job paths differently. See, e.g., Jennifer S. Bard, *I'm Interested in Health Law - Now Where Can I Get a Job?* 14(1) NYSBA HEALTH L. J. 73-85, *available at* <http://repository.law.ttu.edu/handle/10601/288>; CATHERINE PATTANAYAK ET AL., *HEALTH LAW: A CAREER GUIDE* (2012), *available at* <http://www.law.harvard.edu/current/careers/opia/toolkit/guides/career-and-specialty-guides.html>.

¹⁰ See generally ALIZA MILNER, *JUDICIAL CLERKSHIPS: LEGAL METHODS IN MOTION* (2011); MARY L. DUNNEWOLD, BETH HONETSCHLAGER, & BRENDA L. TOFTE, *JUDICIAL CLERKSHIPS: A PRACTICAL GUIDE* (2010); <http://nalp.org/judicialclerkships>; <http://www.judicialclerkships.com>

¹¹ These are typically announced on USAJobs.gov. <http://www.nalp.org/judicialclerkshipsection>. See also <http://www.hhs.gov/ogc/careers/openings.html>. DHHS also runs an "Emerging Leaders Program", <http://hhsu.learning.hhs.gov/elp/>.

¹² Unfortunately, these types of clerkships are not discussed in some popular materials like the University of Vermont, *The Guide to State Judicial Clerkships*.

¹³ <http://www.kaiseredu.org/Fellowships-and-Internships.aspx>.

¹⁴ Peter M. Leibold, *A Career in Health Law*, Presentation at Loyola University Chicago (Nov. 9, 2010); Lisa Stansky, *Hot Practice: The Drug Industry Creates a Significant Demand for Lawyers*, 33(4) STUDENT LAWYER (Dec. 2004).

¹⁵ INSTITUTE OF MEDICINE, *FOR THE PUBLIC'S HEALTH: REVITALIZING LAW AND POLICY TO MEET NEW CHALLENGES* (2011).

¹⁶ Network for Public Health Law, *Career Paths in Public Health Law*, http://www.networkforphl.org/_asset/zjk2ng/Public-Health-Law-Career-Paths-FINAL.pdf.

¹⁷ http://networkforphl.org/about_the_network/student_network/.

¹⁸ <http://apha.org/>.

¹⁹ <http://www.naela.org/public/>. The ABA Commission on Law and Aging is also a great resource. http://www.americanbar.org/groups/law_aging.html.

²⁰ Patient Protection and Affordable Care Act of 2010, Pub. L. 111-148, §§ 6102 & 6401 (Mar. 23, 2010).

²¹ <http://www.hcca-info.org>.

²² REGULATORY AFFAIRS PROFESSIONALS SOCIETY, *REGULATORY AFFAIRS PROFESSIONAL DEVELOPMENT FRAMEWORK: AN OVERVIEW* (2007), *available at* http://www.raps.org/Portals/0/Documents/PDF_Framwork_Whitepaper.pdf. See also David G. Jensen, *Tooling Up: The Regulatory Affairs Career Track*, SCIENCE CAREERS (Sept. 18, 2009); Robin Arnette, *Scientists in Regulatory Affairs*, SCIENCE CAREERS (Nov. 7, 2003).

²³ The American Society for Healthcare Risk Management invites student membership. <http://www.ashrm.org/>.

²⁴ See AMERICAN SOCIETY FOR BIOETHICS AND HUMANITIES, *IMPROVING COMPETENCIES IN CLINICAL ETHICS CONSULTATION: AN EDUCATION GUIDE* (2009).

²⁵ ANN M. PETERSON & LYNDA KOPISHKE EDS., *LEGAL NURSE CONSULTING: PRINCIPLES AND PRACTICES* (3d ed. 2010); The Association of Nurse Attorneys, <http://www.taana.org>.

²⁶ Gerald Lebovits, Drew Gewuerz & Christopher Hunker, *Winning the Moot Court Oral Argument: A Guide for Intra- and Intermural Moot Court Competitors*, 41 CAPITAL U. L. REV. (forthcoming 2013), available at http://papers.ssrn.com/sol3papers.cfm?abstract_id=2160641.

²⁷ <http://www.law.siu.edu/healthlaw/healthlawmootcourt%20.php>.

²⁸ http://www.luc.edu/law/centers/healthlaw//events/transactional_comp.html.

²⁹ http://www.law.umaryland.edu/programs/health/events/hlrc_competition.html.

³⁰ Two good guidebooks are EUGENE VOLOKH, *ACADEMIC LEGAL WRITING: LAW REVIEW ARTICLES, STUDENT NOTES, SEMINAR PAPERS, AND GETTING ON LAW REVIEW*, (4th ed. 2010); ELIZABETH FAJANS & MARY R. FALK, *SCHOLARLY WRITING FOR LAW STUDENTS, SEMINAR PAPERS, LAW REVIEW NOTES AND LAW REVIEW COMPETITION PAPERS* (4th ed. 2011).

³¹ <http://www.healthlawyers.org/hlresources/Academics/Pages/Students.aspx>.

³² http://www.americanbar.org/groups/health_law/resources/resources_for_law_students.html.

³³ *AHLA/BU Health Law Survey*, AHLA CONNECTIONS (Sept. 2011).