



World Association for Medical Law

Issue 1 March/May 2009

www.thewaml.com

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Professor Amnon Carmi

I am delighted to offer a message to the readers of the first issue of the WAML Newsletter.

Forty-two years passed since we established the World Association for Medical Law. The main purpose was to gather experts from all over the world and to build a platform for the study of medical law. Twenty seven years ago we started to publish our quarterly *Medicine and Law*. The main purpose was to build a platform for the exchange of thoughts in the field of health, law and ethics.

The main purpose of the production of the new bulletin is to build a tool that will enable close contacts among the members of the WAML, between them and the officials of the Association, and between us and the public at large.

The members of the WAML hail from scores of countries; our cultures vary; we worship different Gods;

our medical law rules are far from uniform; our medical ethic norms are separately distinctive; but as supporters and developers of medical law, we are all of one mind. We realize and are convinced that the rule of law, in general and inclusive of medical law, is an essential component of social harmony, whenever people live side by side.

Moreover, bioethics, in general and inclusive of medical ethics, supplies the very foundation stone on which every individual's behavior within his society must be firmly cemented. Our world, international, national and local conferences present members of the medical, legal and ethic professions with golden opportunities to strengthen the ideas which we share in common, to evaluate contradictory points of view, and to exercise toleration, open-mindedness and scholastic acumen.

Our Newsletter will present its readers with the golden opportunity to strengthen the ties among them and to provide them with ongoing information and knowledge that are so important for their minds and so dear for their hearts.

Prof. Amnon Carmi, President

Secretary General's Report

Prof. Roy G. Beran



Professor Roy G. Beran

We are now into the last month of the first-quarter of 2009 and it has been a highly productive first-quarter for the World Association for Medical Law (WAML). It is amazing what can be achieved if people are willing to make a contribution.

Jonathan Davies, the Chair of the Council of Presidents, devised an initiative to be presented at the American College of Legal Medicine in Las Vegas. He suggested the preparation of a poster to be displayed at the US ACLM meeting and a number of people collaborated to prepare the text and design of the poster and planned to exhibit this at the ACLM meeting and to be present to answer questions and encourage people to join the WAML. While, unfortunately, I was not able to be there personally, I am advised that this was a highly successful meeting and very productive for spreading the word about the WAML. As Secretary General, I want to thank all those who contributed to the informative posters and to the running of the

successful stand. In particular, I compliment Jonathan Davies for the idea and Thomas Noguchi, for his unbounded energy to make this happen.

It was through the dynamism of Thomas Noguchi that we have also devised a wallet-sized membership card for all WAML members. It will be mandatory to show this when attending the General Assembly and to quote the identification thereof, and produce it on request, when seeking membership discounts for such activities as Congress attendance and purchasing College products, such as the College tie.

There has been a steady stream of people applying for membership of the WAML and the streamlined credentialing procedure has proven very successful. Having seen the calibre of those applying, I can assure you that you, our members, are in very good company and the strength of the WAML is ever growing based on the standard of new members applying.

This newsletter is also your vehicle, as members, to spread the word and any messages that you feel are important to be shared amongst like-minded individuals, to improve the standards of health law, legal medicine and ethics around the world. If you have anything that

you would like to contribute, please feel free to email it to me at the WAML web site (secretary@thewaml.com) and we will try to include it in future newsletters.

I always maintain that any organization is only as strong as its membership and as active as its members. It is up to you to determine how active you would like the WAML to be and we encourage you to make it a very energetic and very fruitful organization that benefits humanity at large.

Roy G Beran
Secretary-General

World Association
for Medical Law

Upcoming Issues 2009

The editor encourages members to submit news articles and commentary regarding legal medicine, health law or ethics as they pertain to your country
Forthcoming issues:

June 15, 2009

by Prof. Roy Beran, Editor second issue

September 15, 2009

by Dr. David Collins, Editor third issue

December 15, 2009

by Dr. Richard S. Wilbur, Editor fourth issue

This is the membership communication, encourage to sign in for the membership, see the web site: www.thewaml.com

ACLM News

Richard S. Wilbur, M.D., J.D., FCLM, editor of this issue

American College of Legal Medicine (ACLM) to join World Association of Medical Law (WAML). WAML is moving from the role of being the sponsor of biennial World Congresses with a membership consisting of the attendees at the last previous Congress, to a constantly active organization with a permanent membership of individuals and a prestigious journal. Also, as the original global leader in Medical Law and as the best venue in which to present the various national efforts to grapple with the ever growing and more complex issues in bio-ethics and other medical law issues, WAML will also serve as the premier place for the different national entities to meet, exchange views, and to learn from each other how better to deal with their own individual problems.

WAML leaders, therefore, are encouraging these national medical law organizations to form official ties with it and to inform their own members of the values of WAML Membership. Since WAML began, it has had individual Americans as members. Some have been speakers and moderators. Recently, there have been Americans among the leadership, notably Thomas Noguchi, MD, WAML Treasurer and Executive Committee Member. In addition, at the October, 2008 17th World Congress of Medical Law, Dale



Richard S. Wilbur, M.D., J.D.

Cowan, MD, JD, FCLM, the ACLM 2009 President-elect, became Chairman of the WAML Audit Committee, and Richard Wilbur MD, JD, FCLM, 2007 ACLM President, joined the WAML Council of Presidents (CoP). However, all of this was done as individuals, not as representatives of ACLM. As a response to the initiative of the new WAML CoP Chair Person, Jonathan Davies, LLB, IBAM, FACLM, FRSM, the ACLM



Active discussion followed.

Board of Governors at its Feb. 26, 2009 meeting voted unanimously to begin a formal organizational affiliation with WAML. This official recognition of WAML by individual national associations and the reciprocal recognition of them by WAML as the leading medical law organizations for

their countries is a goal of the current WAML officers. At this February meeting, ACLM



members were shown posters telling them of WAML history, its accomplishments, and future plans. In the picture below, WAML and ACLM members, from left to right, Jonathan Davies, Tom Noguchi, Richard Wilbur and Dale Cowan, stand with the WAML posters which they and Jack Conomy MD JD FCLM discussed with other ACLM members. ACLM celebrated its 49th Annual Meeting with a program devoted to “Government and Legal Medicine”, a timely topic in view of the proposed major changes in the delivery of American health care under President Obama.

ACLM Next Annual Meeting 2010 50th Annual Conference

March 4-7, 2010
Caribe Royale
8101 World Center Drive
Orlando, FL 32821

Registration Information will be Available
in Fall 2009!

ACLM www.aclm.org

Call to Join the Council Of Presidents (CoP) of WAML

Jonathan Davies

I have returned recently from Las Vegas where we presented at the Annual meeting of the American College of Legal Medicine (ACLM) a poster that calls for joining the World Association for Medical Law (WAML) and describes Membership benefits. We found great interest by ACLM Fellows and Members in WAML activities, especially in the potential collaboration and communication with WAML members all over the world in Global and common issues of Medical Law.

This was my first main activity since I was chosen to Chair the Council of Presidents (CoP) for WAML, and I intend to continue these efforts to bring together like minded people on an international scale so they can meet the needs of the Societies which they represent and share their experience and wisdom to assist each other. The CoP was created to strengthen international communication and to provide collaborative support and foster affiliation with existing national societies and their members in medical law/legal medicine and related disciplines. Membership benefits are presented in the poster uploaded to WAML's new web site at <http://www.thewaml.com>

As part of the CoP activities I suggest collaboration between

WAML organs. Members are invited to make use of the new WAML web site to create a Forum, where they can exchange views, information and ideas on some selected global issues of biomedical law and medical law.

We should create a database of members of CoP as a functional organ of WAML that will be affiliated with National Associations and other institutions. We should notify members of Meetings and Conferences that share mutual interests, and meet together at the Croatia WCML in August 2010 to further exchange views.

These ideas and others could be implemented with your help and interest. I therefore call upon Organizations and Associations interested to join the CoP and contribute to the Global exchange of views. I look forward to meeting you soon and working together.

Yours Sincerely ,

Jonathan Davies, Adv. LLB,
FCLM. FRSM
Chairman of Council of Presidents for WAML

18th World Congress on Medical Law

August 8-12, 2010, Zagreb, Croatia

Important dates and deadlines
Abstract before December 31, 2009

Contact: Dula Rusinovic-Sunara, MD
email dula.sunara@st.t-com.hr
www.2010wcml.com

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Editing and Design

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Raul Vergara, Designer (USA)



World Association for Medical Law

Volume 1 Issue 2

June/August 2009

www.thewaml.com

Tribute to the F o u n d e r

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Professor Rafael Dierkens



Founder's Medallion

Tribute to the Founder of the World Association for Medical Law

Former Secretary General (2004 to 2008) Prof. Rafael, Aguiar-Guevara (Caracas-Venezuela) offers his tribute to him. Prof. Raphaël Dierkens was the visionary founder of the World Association for Medical Law and its Secretary General for 35 consecutive years. Sadness seizes us deep in our hearts not only for the loss of a valuable and pioneering leader of Medical Law at the global level, but also the loss of a friend. The Medallion, which was created in his honor and proudly carries his image, and constitutes the highest WAML Award, was bestowed on him in 2002 as its first recipient and will forever memorialize his accomplishments.

A long time friend, Prof. Thomas T. Noguchi, gives his tribute: When I heard of the death of my close friend, I was stunned. I missed him at the most recent meetings of the WAML, which he founded in 1967. We first met in 1963, when he visited the Los Angeles County Department of Chief Medical Examiner-Coroner. At that time he shared his interest in bringing the world scholars, in the then very little known specialty of medical law, to one place to form the World Association for Medical Law. We kept in touch regularly ever since and became good friends. When I next saw him in 1966 at the Institute of Legal Medicine, Ghent University, with his mentor, Prof. Frederic Thomas, Raf Dierkens

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A Message from the Secretary General

Prof. Roy G. Beran



Professor Roy G. Beran

A Message from the Secretary General

As the current Secretary General, I wish to add my condolences, to those already expressed, on the sad passing of our founding Secretary General, Prof. Raf Dierkens.

This is the second issue of the World Association of Medical Law (WAML) newsletter which is designed to bring those people, with a particular interest in legal medicine, health law and ethics, closer together. The production of the newsletter offers a service to the WAML members, to maintain close links, be informative and ensure that the membership is abreast of developments that occurred, both within the Association and more broadly within our community, which has a common interest. Since the production of the first newsletter, a great number of things have occurred of which we should be truly proud. In what follows, I will touch on just a few of the highlights of what has occurred.

Amongst the achievements of the last three months, the WAML has been invited to have a direct representation at the World Health Organisation (WHO) meeting in Geneva. As I was unable to attend in my capacity as Secretary General, I asked the Deputy

Secretary General to represent the WAML in his official capacity. Advocate Oren Asman agreed to represent the WAML at WHO and the WHO offered generous sponsorship for the Deputy Secretary General to attend. I will leave it to Advocate Asman to elaborate on his experiences at the WHO meeting in a subsequent volume of the newsletter. Suffice to say that I am most grateful that he was willing to step into the breach left by my inability to attend, as a result of a very hectic schedule of prior commitments.

Closer to home, I was invited as a guest speaker and was given the honor of participating in the opening ceremony of the first Indonesia Congress on Health Law, held in Jakarta in May. The meeting was a great success with invited speakers from the USA, Canada, Italy, Malaysia and Australia, some of them being chosen from the Board of Governors of the WAML, in addition to my own involvement. There were over 600 delegates who attended the conference and more than 200 presentations in what was an education packed conference for which Doctor Nasser and his team, who coordinated and organized the conference, deserve nothing but praise. It was indeed exciting to see the enthusiasm and energy exuded throughout the meeting, which bodes well for the development of health law and legal medicine within the south-east Asian region.

Our President, Prof. Amnon Carmi, wore dual hats when he visited Croatia in his capacity as the UNESCO Chair in Bioethics and used the opportunity to meet with the local organising committee of the

next World Congress being hosted on behalf of the WAML in Zagreb. Following his trip, he provided the Executive Committee with a detailed summary of his many activities and it is clear that planning for the next World Congress is well in hand. The WAML is most fortunate to have a President with such a wealth of experience to ensure the future of the Association and the success of its World Congresses.

Throughout all these activities, Prof. Thomas Noguchi has been a tower of strength, working tirelessly behind the scenes. The finances of the WAML are in great shape, with the first certificates of membership and unique membership identification cards being sent to new members. The Membership Committee/Credentialing Committee, currently composed of the Executive Committee, has approved a significant number of new candidates for membership. Those within the Association can rest assured that those applying to join the WAML present with most impressive resumes which allow us all to feel confident about our future.

There is no need to make comment about our journal because one of the inclusions, within this issue of the newsletter, is a commentary provided by the editor of the journal, acknowledging that Prof. Carmi remains its editor in chief. Having recently submitted articles for consideration for publication within the journal, I can assure those who wish to submit articles to the journal that there is a rigorous and forthright process of referee evaluation before an article is accepted. I encourage our membership to consider submitting

A Message from the Treasurer

Prof. Thomas T. Noguchi

scholarly articles, covering our areas of legal medicine, health law and ethics, for consideration for publication within the Journal, "Medicine and Law" which is the official Journal of the WAML.

It would be remiss of me if I did not also acknowledge the contribution of Doctor David Collins, some would say a real doctor with an LLD, our Executive Vice President who is always there to offer helpful advice for which I, for one, am most grateful, particularly when I was given the task of presenting at an international meeting where my topic was extremely demanding that I sought advice from the Executive and David was the first to respond.

One of the purposes of this newsletter is to enhance the transparency of the activities of the WAML and from the above it should be apparent that the Association which Raf Dierkens founded, has been far from idle within the last three months and will continue to be an active advocate of those within our disciplines. Should you, as our members, wish to bring issues of concern to the Executive, we can assure you that they will not be ignored and they will receive due consideration. It is my pleasure, as the Secretary General, to welcome you to this, the second issue, of the newsletter of the WAML. I hope that you find its content of interest and I invite each of you who believe that you have something to say to feel free to write to the Executive to have your voice within your Association.

Roy G. Beran, Secretary General



Prof. Thomas T. Noguchi

WAML Membership and its Benefits

WAML must be a membership organization in order to be a stable influence on the advancement of medical law and legal medicine and a continuing source of information and contact with fellow professionals throughout the year.

In 2004 the Board of Governors changed the membership from one based on attendance at the previous Congress to one based on annual dues which are now \$100 USD. Any person, who wishes to participate in WAML committee work, business decision making, giving reports or advice to the Association, must be a paid up WAML member. You must have paid your annual membership dues in January every year.

Starting this year, each new member will receive a certificate of membership and a membership ID card. At each annual renewal of membership in January, a new current membership card will be issued. Only members holding current ID cards will be eligible to participate in Association activities, such as appointments to the WAML committees, voting on issues and entering the General Assembly during the World Congresses. Among the other benefits of membership

are a free subscription to the journal *Medicine and Law*, access to the Membership Only section of the WAML web site and a discount on the registration fee for the coming Congress in 2010, and discounts on the purchases of all logo items.

Application for Membership Procedure

In order to apply for the WAML membership, visit the WAML web site, www.thewaml.com and go to application, complete the application form, and then submit it together with the application fee of \$100USD. Use your credit card and your payment will be directly deposited to the WAML account and you will receive the receipt automatically, electronically. The Web Master will contact the Treasurer who will submit the application to the Credentialing Committee. Upon receiving notice of approval by the Committee, the applicant will be contacted by the Treasurer who will prepare the Certificate of Membership. Should your application be deemed inappropriate then the unsuccessful candidate will be duly notified by the Treasurer and a \$25USD refund will be credited to the credit card used for depositing the application fee into the WAML account. Successful candidates will receive annual Membership Renewal Notices for the continuation of the membership. For more information, contact Secretary General Prof. Roy Beran, or Prof. Thomas T. Noguchi, Treasurer, NoguchiTT@aol.com or the Office of Treasurer waml.membership@pacbell.net

Thomas T. Noguchi, Treasurer

Report From the International Quarterly Journal on Medicine and Law

Dr. Mohammed Saif-Alden Wattad



Dr. Mohammed Saif-Alden Wattad

Report From the International Quarterly Journal on Medicine and Law

The idea of establishing an international professional journal dealing specifically with “medicine and law” was born in 1978 as the brain child of Prof. Amnon Carmi – a retired Judge of the District Court of Haifa and emeritus professor, who currently serves as the Dean of Zefat Law School and President of the World Association for Medical Law (WAML).

Until 1978, there had been no single international professional journal examining “medicine and law”. At that stage, only domestically oriented journals dealt with this particular field. For two years, Prof. Carmi collected papers in the field, thus arranging them in four volumes.

Having these materials collected, the Journal was first published in four volumes in 1980 under the auspices of Haifa University, which also funded this project. A decision was made to publish the Journal four times a year (Quarterly Journal). Immediately after having the first four volumes published, the Haifa University stopped its funding, and Prof. Carmi had to look for a new umbrella under which the Journal could be published.

The Springer International Company in Germany agreed to fund the Journal on the condition that the first four were published again under its auspices; a condition to which Prof. Carmi agreed. It is notable that this was probably the only incident in history where the same volumes of a journal has been published twice, each time by different publishers.

Around 1988, Prof. Carmi moved to South Africa for academic work, where he established the International Centre of Medicine and Law in the city of Mmabatho. There, the Journal was published for seven years. The publication proceedings were generously funded in South Africa.

In 1996 Prof. Carmi established the International Center for Health, Law and Ethics (ICHLE) at Haifa University – under which the Journal was published and by which it was funded.

Since 1996, up until the present, the Journal has remained a quarterly publication produced by the ICHLE. Moreover, the Journal has become the official journal of the WAML, thus published also under its auspices. Nowadays, the Journal remains the only international peer-reviewed professional journal that deals specifically with the field of “medicine and law”, recognising that there exist local national journals that devote their attention to the same field of endeavour.

Prof. Carmi continues to serve as the Editor-in-Chief of the Journal, while Dr. Wattad serves as its Editor. The Editorial Board includes leading experts in various medico-legal and legal medicine disciplines

with a special focus on the Board of Governors of the WAML. During its 29 years of existence, the Journal has published more than 2,000 articles, written by hundreds of worldwide leading experts, on tens of important topics, such as: medical law; forensic medicine; sexology and law; psychiatry and law; psychology and law; dentistry and law; nursing law; pharmaceutical law; medical ethics; clinical criminology; drugs; alcohol; child abuse; medical experimentation; genetic engineering; organ transplantation; abortion; contraception; sterilization; euthanasia; religion; AIDS; genetics; reproduction; nanotechnology; alternative medicine; health law; patients’ rights; bioethics; penology; and end-of-life, to cover but the over view of its sphere of endeavour but not aiming to be exhaustive.

The Journal has been pronounced by the renowned Kennedy Institute of Ethics as a “Priority Journal” and remains the ‘flag ship’ of the WAML. It is an integral component of the benefits of membership of the WAML and remains its official journal.

Dr. Wattad is Lecturer in Law, Zefat Academic College, School of Law; Editor of the international journal on “Medicine and Law”; Member of the World Association of Medical Law and Member of the Management Board of the International Center for Health, Law and Ethics.

■

Health Services in Finland

Dr. Terhi Hermanson, WAML Governor



Dr. Terhi Hermanson

Main Aspects of the System

The health care system in Finland is based on preventive health care and well-run, comprehensive health services.

Public health services are divided into primary health care and specialised medical and hospital care, arranged respectively by municipal health centres and hospital districts. Each municipality belongs to a particular hospital district. Municipal health centre services include physical examinations, oral health, medical care, ambulance services, maternity and child health clinics, school and student health care and other basic services. Specialised outpatient and institutional treatment is provided by hospital districts. Diseases requiring highly demanding treatment are handled by regional arrangements or centrally, according to a specific decree. Each hospital district contains a central hospital and other specialised units. There are five university hospitals. Employers are responsible for providing employees with preventive health care and, as far as possible, medical care. Private health care is used to supplement public health services. Private doctors' and dentists' fees and examinations are partially reimbursed.

Legislation In Finland

The state's responsibility to promote welfare, health and security is rooted in the Constitution. This enshrines the right of everyone to income and to care, if they are unable to manage adequately. The duties of municipal authorities throughout Finland, to arrange social and health care, are stipulated by laws on social and health care planning and the central government transfers to local government. People are guaranteed statutory timeframes within which non-emergency assistance or treatment has to be made available. Emergency cases are to be given immediate attention. Special legislation covers the treatment of substance abusers, special care for people with intellectual disabilities, disability services and rehabilitation. Laws on primary health care and specialised medical care cover health services. There are separate laws on occupational health care, mental health services and the prevention and treatment of infectious diseases. Legislation also covers the professional standards of social and health care personnel.



Finland

The Act on the Status and Rights of Patients defines the legal principles according to which clients and patients must be treated when using health and social services. This law is supplemented by a range of quality recommendations covering different aspects of health care provision.

According to the Act, patients are entitled to timely and good quality attention and treatment. Patients are entitled to be treated with dignity, their privacy respected and their individual and language requirements and culture taken into account. Treatment must be provided on the basis of mutual consent between health care providers and patients. This applies to child patients too, whose opinions are sought when they are old enough to express them. Parents or guardians may not refuse the treatment of children with conditions that threaten life and health. Patients are guaranteed transparency of information concerning their health, patient records and waiting periods for treatment.

Health care reform and development

The Ministry of Social Affairs and Health defines the course of social and health policy in Finland in its strategy. It implements these policy lines by legislation, quality recommendations, programmes and projects. Every four years, the Ministry compiles a development programme for social and health care (Kaste), which sets out the main points of emphasis of policy aims, activity and oversight, as well as the

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Health Services in Finland (Continued)

reforms and legislative programmes, guidelines and recommendations needed to implement them. The present Kaste programme defines the aims and focal development and supervision areas of social welfare and healthcare policy in Finland in 2008-2011. The programme seeks to reduce social exclusion and to enhance the inclusion, wellbeing and health of municipal residents, and also to narrow regional and demographic disparities in health and wellbeing.

The following measures will be undertaken to increase health and wellbeing and to reduce health inequalities:

- Total alcohol consumption is reduced to the level seen in 2003
- The share of the obese among persons of working age is restored to the level seen in 1998-2001
- The share of 16-18-year-olds who smoke falls by five percentage units
- Less than ten percent of families with children count as low-income households
- Age-adjusted functional capacity among older people improves
- The number of serious and fatal home and leisure accident injuries is reduced by ten percent

Improvements in the quality, effectiveness and availability of services and a narrowing of regional disparities will be sought with the following measures:



Finland

- Satisfaction with services as observed from client feedback improves
- The deadlines imposed for access to care in healthcare are observed
- The deadlines imposed for assessing the need for home help services for older persons are observed
- Regular home care according to needs is available to 14 percent of the population over the age of 75
- No more than three percent of the population over the age of 75 are in long-term institutional care
- The shortage of doctors and dentists in primary healthcare is alleviated
- Regional disparities in the effectiveness of specialised medical care are reduced

Dr. Terhi Hermanson,

Finish Representative on the Board of Governors and was the Previous Chair of the Audit Committee of the WAML.

WAML Administrative Support Network

Adv. Oren Asman (Israel)
Deputy Secretary General,
Web Master
asman.oren@gmail.com

Cathie Bagwell, E.A. (USA)
Assistant to the Treasurer
waml.membership@pacbell.net

Raul Vergara, Designer (USA)
rrvergara4@aol.com

Council of Presidents

Adv. Jonathan Davies (Israel)
Chairman

(Continued from page 1) Tribute to the Founder of the World Association for Medical Law

informed me that he was in the process of organising the First Congress on Medical Law in Ghent. He asked me to attend The First Congress of Medical Law to be held in August 1967. I attended the Congress and seldom missed a Congress since then. We have the World Association today because of his pioneering vision and hard work organizing and motivating others to join him in expanding his ideals throughout the world. The WAML will continue as a monument to his vision and life long devotion to his profession.

Thomas T. Noguchi, M.D. Treasurer,
World Association for Medical Law
NoguchiTT@aol.com

The 18th World Congress on Medical Law

Zagreb Croatia

Important Dates and Deadlines

Abstract submission
before December 31, 2009

Notification of abstract
acceptance
by February 28, 2010

Full papers
before April 20 2010

The 18th World Congress on Medical Law

Zagreb Croatia



Dear friends, members of the World Association of Medical Law, it is our honor to invite you to attend the 18th World Congress for Medical Law that is taking place in Zagreb, Croatia from 8-12 August, 2010. As you well know, the congress offers an excellent opportunity to discuss new developments in medical law, legal medicine and ethics and to exchange ideas with experts and colleagues from all around the world.

Emphasis of the 18th World Congress is on the human rights based approach in health, law and ethics since health law and human rights are an inseparable synergy. Also, the Congress will discuss current issues in medical malpractice, responsibility and insurance, legal and ethical aspects of reproductive technology and genetics, medical research, e-health, legal issues in public health, mental care, nursing practice, as well as alternative and complementary therapies. You can find proposed topics on our web page (www.2010wcml.com).

We invite you, dear friends and

members of the WAML, to attend the congress and submit your abstracts or posters.

It is a great pleasure to welcome you all to Zagreb, the capital of Croatia, and to invite you to explore and enjoy our beautiful country, its seacoast, islands, lakes, mountains, cities and small towns. We hope that you will find the proposed pre or post Congress tours interesting, or you can choose to explore the country by



Magic Croatia

yourself. The whole organizing team of the Congress is at your disposal. We hope that you will enjoy the Conference and stay in Croatia.

Sincerely yours,

The organizing committee,

Josip Kregar
Dula Rušinovic Sunara
Ksenija Turkovic
Suncana Roksandic Vidlicka ■

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Dr. Herman Nys (Belgium)

Prof. Y. Sergejev (Russia)

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Prof. Thomas T. Noguchi (USA)

Raul Vergara, Designer (USA)

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Audit Committee

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World Association for Medical Law

Volume 1 Issue 3

September-November 2009

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Dr. David Collins. QC
Executive Vice-President

Editorial

This, the third issue of the WAML newsletter, illustrates the multi-national character of medical law.

We are fortunate to have received contributions from five continents explaining regional and international developments in medical law.

Our colleague, Professor Wu has taken the time to explain how the study of medical law is being progressed in China, with new developments taking place to ensure that medical law advances in China in a systematic and transparent manner.

Professor Dickens, a vice-president of WAML and international authority on medical law has kindly explained the key features of the Canadian Supreme Court case of *AC vs Manitoba* (Director of Child and Family Services). This is a significant case in medical law jurisprudence and illustrates the challenges faced in many countries in balancing the religious and self-determination rights of a young patient against the wider interests of society in ensuring that an avoidable death does not occur.

Professor Dantas, a WAML vice-president from Brazil and his colleague Natalia Lojko from Poland have provided a fascinating insight into issues associated with the unlawful distribution of pharmaceutical items by way of internet sales – a problem that has plagued the safe delivery of pharmaceutical services and products since the advent of the internet age.

Professor Nys of Belgium, a member of the WAML Board of Governors has kindly explained proposed directives on the application of patient rights and cross-border health care of patients in the European Union countries.

Finally, our severely overworked Secretary-General, Professor Beran from Australia has provided a report on the latest online Board of Governors meeting.

This newsletter demonstrates that medical law continues to address challenges on behalf of societies throughout the world. Whilst the development of medical law, principles and laws primarily remains the province of parliaments and courts, the organisation of specialists who play a major role in the study of medical law remains with societies and organisations associated to WAML. Through learning of the developments in medical law and medical law organisations, WAML will continue to be a catalyst to the development and advancement of medical law on a global scale.

Dr David Collins QC
Executive Vice-President

China Health Law Society after the 17th World Congress



Prof. Wu Chongqi, Vice President and Secretary General China Health Law Society

Firstly, emphasis has been placed on the systematic and planned education of talented individuals and teams as well as the development of general knowledge of health law and services to the public.

We in China have chosen to implement educational development at regional levels and to expand the education programs gradually when experience is gained. At the end of last year and the first quarter of this year we established health law training centers for a short term of three months and a three-year post-graduate education in cooperation with a university at two middle sized cities and a county level city in one of the provinces. The first short term training has recruited students in May 2009 and the second one plans to open classes in the middle of the year.

The post-graduate education will be placed under the authority of the government or, in some instances, a policy of continuing education will be adopted for certain regions. The plan for the post-graduate education is being implemented. Text books will be used for the programs formulated by the government. There will be seven sets of text books on health law with The Science of Health Law being the main text book. Prof Wu Chongqi,

Vice President and Secretary General of the Society, will be chief editor of the text books on health law. The seven sets of text books on health law will become a relatively systematic set of text books. The editors of the text books on health law will be the country's celebrated and influential experts and professors. We have begun compiling and editing the text books. We will finish the editing one-by-one according to the educational plan beginning from the first quarter of this year and we hope to finish them by the first half of next year. This project is expected to be a contribution to the 18th World Congress on Medical Law.

The second focus of the work of the Society is to encourage members to successfully edit "Medicine and Jurisprudence", a quarterly publication endorsed by the State Administration of Information and Publication and edited jointly by the China Health Law Society, Luzhou Medical College and the Time Publishing House in Chengdu. The initial issue of the quarterly will be published late in June. Contributions from members of the World Association for Medical Law are welcome.

Thirdly, we will train some young researchers who know English and gain better scientific attainment and encourage them to participate in international scientific exchanges on health law. We will send one young researcher to participate in the European Summer University session. We will provide more opportunities to young researchers who will broaden their vision by adopting world advanced scientific achievements. We have more routine work which I will not discuss here. We would be honoured to communicate with you.

Prof. Wu Chongqi

Supreme Court of Canada on Adolescents' Medical Care



Professor Bernard M. Dickens, WAML Vice President

On June 26, 2009, the Supreme Court of Canada (SCC) handed down an important decision on adolescents' capacity for medical self-determination, in the case of A.C. v. Manitoba (Director of Child and Family Services). Aged fourteen years and ten months old, A.C. was hospitalized with gastrointestinal bleeding caused by Crohn's disease. As a committed Jehovah's Witness, she had signed an advance medical directive some months earlier, instructing that she not be given blood under any circumstances. Her doctor believed that the internal bleeding created an imminent, serious risk to her health and possibly to her life. When, with her parents' approval, she refused transfusion, she received a brief psychiatric assessment, which found her intelligent and comprehending. However, the provincial Director of Child and Family Services apprehended her as a child in need of protection, and sought a judicial treatment order, under s.25(8) of the Manitoba Child and Family Services Act. The Act allows judicial authorization of treatment considered to be in the child's "best interests."

The judge hearing the emergency application considered A.C.'s capacity for medical choice irrelevant to his decision, on the ground that, when a

child is under 16 years old, “there are no legislated restrictions of the authority” of the court to order medical treatment in the child’s best interests. Being satisfied on medical testimony that A.C. was in immediate danger if not of death then of serious damage, the judge ordered transfusion. Six hours later, A.C. was successfully given three units of blood, and recovered.

On appeal by A.C. and her parents against the transfusion order, the Manitoba Court of Appeal unanimously agreed with the trial judge that the mental capacity of A.C. was irrelevant, and rejected the appellants’ claim that the Manitoba legislation unconstitutionally violated A.C.’s freedom of conscience and religion, right to liberty and security of the person, and right to non-discrimination on grounds of age. The Court of Appeal held that the legislation replaces the general rule relating to the capacity of “mature minors” to participate in decisions regarding their own medical care, by creating “a complete and exclusive code” that empowers a judge to rule on a child’s best interests independently, without being bound by knowledge of the child’s wishes or preferences.

On further appeal, the seven judges sitting as the SCC unanimously held that the trial and appellate judges had misinterpreted the provincial legislation. In a dissenting judgment, one held that, because the lower courts had accepted that A.C. was a mature minor, the legislation that denied her the power to determine her own medical care was indeed unconstitutional, and the lower courts therefore had no authority to order or approve transfusion. The six majority justices ruled, however, that the lower judges had made a permissible decision, but on incorrect grounds. That is, the majority held that the provincial legislation was constitutional, when correctly understood.

The SCC majority ruled that the legislation was to be interpreted in the legal setting conditioned by such judgments as that of the highest UK court, the House of Lords, in the 1985 English case of *Gillick v. West Norfolk and Wisbech Area Health Authority*, and the UN Convention on the Rights of the Child. The *Gillick* case held that if minors, being below a legislated “age of consent” to medical care, are nevertheless of sufficient maturity to reach reasonable decisions, that is, that they are mature minors, they generally have a comparable power of medical self-determination to that of adults. The legislation is to be interpreted as distinguishing not between capacity and incapacity, but on the basis of an initial age-linked presumption. Those above a legislated age are presumed to have intellectual capacity for medical choice, but evidence may show, on particular individuals’ characteristics, that those individuals do not. Similarly, those below the legislated age are presumed not to have intellectual capacity, but evidence may show, on the basis of their individual characteristics, that they do. Legislation therefore sets only rebuttable presumptions respectively of capacity and incapacity.

Articles 5 and 14 of the Convention on the Rights of the Child embody the same principle, requiring decisions affecting children be reached “in a manner consistent with the evolving capacities of the child.” This human rights provision guided the SCC majority to interpret the Manitoba legislation to create: a sliding scale of scrutiny, with the adolescent’s views becoming increasingly determinative depending on his or her ability to exercise mature, independent judgment. The more serious the nature of the decision, and the more severe its potential impact on the life or health of the child, the greater the degree of scrutiny that will be required (para. 22).

The majority added that: This interpretation of the “best interests” standard in s.25(8) of the [Manitoba] Act is not only more consistent with the actual developmental reality of young people; it is also conceptually consistent with the evolutionary development of the common law “mature minor” doctrine in both the Canadian and international jurisprudence. (para. 23)

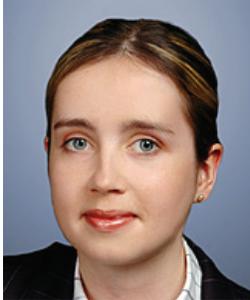
This approach was considered respectful of adolescents’ human right of medical choice, but also consistent with courts’ overarching responsibility to protect them from harm. For instance, Canadian courts have a history of finding adolescents capable of deciding for themselves, as did the *Gillick* judgment, on controversial matters of contraception and abortion. On the facts of the A.C. case, however, where the adolescent’s life itself might be lost by severe health impairments due to blood loss, the SCC majority did not disagree with the outcome of the lower courts’ decisions, which the SCC accordingly upheld.

The legal significance of the SCC decision, however, is its ruling that A.C. and her parents were correct in their argument that medical decisions and preferences of mature minors warrant respect. The Court found that in all but life-or-death cases, such decisions should be decisive. For this reason, although A.C. failed on the merits of her particular case, the SCC notably held that, like a successful litigant, she was entitled to recover her legal costs from the government of Manitoba incurred throughout the proceedings, in the trial court, Court of Appeal, and the SCC itself.

Prof. Bernard Dickens

Internet Sales of Medicinal Products

Globalization of Trade vs Patchwork of Legal Rules



Prof. Natalia Lojko ¹



Prof. Eduardo Dantas ²

Internet sales of medicinal products are on the rise – accompanied by an immense spread of the internet. Undoubtedly, there are numerous advantages associated with this phenomenon. Medicinal products sold on the internet are often more accessible and cheaper than those sold in conventional pharmacies. A patient ordering medicinal products on the internet has a sense of anonymity – a sense which is quite misleading, considering that it is easier to trace medicinal products sold on the internet than the ones sold in “conventional” pharmacies (which adds another benefit to internet sales – in case of product recalls).

However, trade on the internet also entails certain risks, resulting in particular, from the difficulty of verifying whether the entity offering products for sale is an authorized pharmacy and whether a medicinal

product is a genuine one.

Not surprisingly, the phenomenon of counterfeited products is often associated with trade on the internet. The numbers are concerning. It is estimated that up to 10% of traded medicinal products are fake (reaching up to 30% in developing countries). The rise of trade in counterfeited products is alarming – estimated at twice the rate of legitimate drug sales. As the European Commission puts it:

*“The internet clearly offers possibilities for criminals to sell illegal medicines. The World Health Organization estimates that 50% of medicines purchased from internet sites concealing their address (in particular, those which are not connected with a licensed pharmacy) are fake”.*³

The problem is addressed at many international fora – at WHO (International Medical Products Anti-Counterfeiting Task Force – IMPACT), at the European Union (proposed directive on protection of the legal supply chain against counterfeited medicines dated December 2008) and at the Council of Europe (Group of Specialists on Counterfeit Pharmaceutical Products). However, no effective solution has so far been adopted.

Another problem concerning internet sales (acutely felt by any companies wishing to conduct legitimate trade in medicinal products on the internet) is the patchwork of incoherent national regulations compounded by the globalized nature of the internet.

There are many ways in which internet sales of medicinal products may be (and are) regulated and controlled. The basic choice is between having detailed rules on who can sell products on the internet and based on which license, and leaving this issue to be governed by general, default rules of civil and public law. Poland and Brazil are examples of two opposite approaches to this issue. While

Poland has a quite detailed regulation as to which products may be traded on the internet (OTC), under what conditions (storage, transport etc. – including the way the product is packed and labeled, etc.) and by which entities (licensed pharmacies),⁴ Brazilian law does not provide any specific rules (except the general ones governing for example, inspections of medicinal products, and the liability for selling these products as inserted in the Consumer’s Defense Code). The first attempt in the effort to regulate this new electronic market materialized with the enacting of the Federal Law 11.093, which was passed on 14 January 2009, regarding the tracking of medicines through electronic data retrieval systems.⁵

Even the European Union – an organization with an impressive record of harmonization of legal rules – did not adopt a common standard among its Member States as regards internet sales of medicinal products. A basic principle stemming from the judgment of the European Court of Justice in the DocMorris case (dated 2003)⁶ held that the Member States cannot prohibit internet sales of OTC (non-prescription) medicinal products, but they can prohibit internet sales of prescription only products. This has still not been adopted in many EU Member States, in breach of EU law (e.g. Slovenia, Portugal, Malta, Luxembourg, Italy, Greece, France, Finland, Estonia, Austria, Cyprus).⁷

The patchwork of legal regulations leads to great uncertainty and does not simplify trade in medicinal products on the internet. Introduction of certain international standards would certainly make internet trade in medicinal products safer and would contribute to the fight against fake medicinal products, dumping practices, and also tax fraud. One of the possible solutions – or even a temporary way of mitigating the problem

– is to enhance the responsibility of the internet service providers, in the task of watching closely the contents of their clients' web sites. This effort should lead to the development of adequate control tools (along with more efficient evidence preservation systems) and more reliable user identification techniques.

Proper and extensive information to consumers about unlawful use of the internet (not only medicinal products sale and distribution has been reported in Brazil, but also the selling of forbidden substances, or even fake prescriptions, offered in relationship web sites like Orkut or Facebook, for instance) is one of the measures that must accompany this effort. That would allow the taking of specific (and effective) action against illegal selling of medicinal products. In this context, where governments still deal with more legal issues than solutions, transnational cooperation seems to be the key, since e-commerce knows no physical or political frontiers.

Prof. Natalia Lojko
Prof. Eduardo Dantas

1 Lawyer at the Bar of Warsaw (Poland)

2 Lawyer at the Bar of Recife (Brazil); Vice-President of WAML.

3 From a background information on a new legislative proposal of the European Commission concerning "Protecting the legal supply chain against counterfeit medicines", dated December 2008: http://ec.europa.eu/enterprise/pharmaceuticals/pharmacos/pharm-pack_12_2008/memo_counterfeit_december_2008.pdf

4 Detailed rules are laid down in particular in the Regulation of the Minister of Health of 14 March 2008 concerning conditions for mail order sales of OTC medicinal products (Journal of Laws No 60 item 374)

5 Article 1 – This law creates the National System of Medicine's Control, involving production, selling, and dispensing of medical, dental and veterinary prescription, as well as all other kinds of trades foreseeable by sanitary control authorities.

Article 2 – Every pharmaceutical product manufactured, dispensed or sold on national territory will be controlled by the NSMC.

Article 3 – Control will be enforced by an exclusive system of products, suppliers and users identification, employing data retrieving technologies, and electronic data transmission.

6 Case C-322/01, Deutscher Apothekerverband eV v 0800 DocMorris NV and Jacques Waterval, ruling dated 11 December 2003

7 Information based on "Study of regulatory restrictions in the field of pharmacies", prepared for the European Commission, available at: http://ec.europa.eu/internal_market/services/docs/pharmacy/report_en.pdf

Patients' Rights in Cross-Border Health Care in the European Union



Prof. Herman Nys,
WAML Governor

On 2 July 2008, the European Commission of the European Union (EU) presented a proposal for a Directive on the application of patients' rights in cross-border health care in the member states of the EU. The proposal, which is still under discussion in the European Parliament is based upon the case law of the EU Court of Justice concerning the right of patients to benefit from medical treatment in another Member State. The Court's rulings on the individual cases are clear in themselves, however, it is necessary to improve clarity to ensure a more general and effective application of freedoms to receive and provide health services. The Commission's proposal for a Directive on services in the internal market at the start of 2004 therefore included provisions codifying the rulings of the Court of Justice in applying free movement principles to health services. This approach, however, was not accepted by the European Parliament and Council. It was felt that specificities of health services were not sufficiently taken into account, in particular their technical complexities,

sensitivity for public opinion and major support from public funds. The Commission therefore developed a policy initiative specifically targeting health care services as a separate issue.

Legal basis of the proposal

The proposal is based on Article 95 of the EU Treaty. This legal base is justified by both the objective and the content of the proposal. Measures adopted under Article 95 of the Treaty should have as their object the establishment and functioning of the internal market. The aim of this proposal is to establish a general framework for provision of safe, high quality and efficient cross-border health care in the European Union and to ensure free movement of health services and a high level of health protection, whilst fully respecting the responsibilities of the Member States for the organisation and delivery of health services and medical care.

Scope of the proposal

The proposed Directive applies to all health care provision, regardless of how it is organised, delivered or financed. As it is impossible to know in advance whether a given health care provider will supply health care to a patient coming from other member states or to patients from its own member state, it appears necessary that the requirements to ensure that health care is provided according to clear quality and safety standards are applicable to all health services, without discrimination between different types of organisation, delivery or financing of the provision of that health care.

This implies two elements. The first is clarity over which Member States should be responsible in any

given case of cross-border health care for ensuring compliance with common principles for health care. There was clear consensus from the consultation that preceded these proposals that greater clarity was needed on this point, and that the most appropriate choice would be to make clear that it is the authorities of the Member State in which the treatment is provided that should be responsible for ensuring that common principles are met also in the case of cross-border health care. However, this is not sufficient in itself. The second element is therefore a minimum degree of certainty about what the authorities of the responsible member state will ensure for all health care in their territory. Whilst respecting the wide variety of different systems, structures and mechanisms put in place by the member states in this area, this will ensure a minimum core set of common principles on which patients and professionals from other member states know they can rely.

Common principles

The common principles set out in the proposal are as follows:

- (a) Mechanisms, are in place for ensuring that health care providers are able to meet clear quality and safety standards, taking into account international medical science and generally recognized good medical practices;
- (b) the application of such standards by health care providers in practice is regularly monitored and corrective action is taken when appropriate standards are not met, taking into account progress in medical science and health technology;

- (c) health care providers provide all relevant information to enable patients to make an informed choice, in particular on availability, prices and outcomes of the health care provided and details of their insurance cover or other means of personal or collective protection with regard to professional liability;
- (d) patients have a means of making complaints and are guaranteed remedies and compensation when they suffer harm arising from the health care they receive;
- (e) systems of professional liability insurance or a guarantee or similar arrangement, which are equivalent or essentially comparable as regards their purpose and which are appropriate to the nature and the extent of the risk are in place for treatment provided on their territory;
- (f) the fundamental right to privacy with respect to the processing of personal data is protected in conformity with national measures implementing Community provisions on the protection of personal data, in particular Directives 95/46/EC and 2002/58/EC;
- (g) patients from other member states shall enjoy equal treatment with the nationals of the member state of treatment, including the protection against discrimination provided for according to Community law and national legislation in force in the member state of treatment.

Reimbursement of cross-border care

The proposal addresses also issues related to reimbursement of the cost of health care provided in another member state. Insured persons traveling to another member state for the purpose of receiving health care there, or seeking to receive health care in another member state, will be reimbursed the costs which would have been paid for by its statutory social security system had the same or similar health care been provided in its territory. Non-hospital care in another member state may not be subject to prior authorisation while hospital care may be subject to prior authorisation under certain conditions.

Cooperation on health care

The proposal also contains provisions to promote the cooperation among member states such as the mutual recognition of prescriptions, the establishment of European reference networks, the interoperability of ICT systems and so on.

Professor Herman Nys
Director, Center Biomedical Ethics and Law,
University of Leuven (Belgium)
WAML Governor

EUROPEAN
UNION



World Association for Medical Law



Prof. Roy Beran,
WAML Secretary General

This is the third Secretary General's message for 2009. It is slightly premature to relate the findings of the Board of Governors' (BoG) meeting, which has been the focus of the World Association for Medical Law (WAML) activities throughout August. There is in place a strict timeline for the production of this, the third newsletter, and to comply with the timeline I am reporting on the BoG meeting before its conclusion.

There has been a quorum of Governors attending the meeting at the time of preparing this message. Ten reports, including those of the President, Secretary-General (SG), Treasurer, Deputy SG/Webmaster, Director of the Chairs of Committees, Chair of the Council of Presidents and others were posted on a secure area of the WAML website. Each of the Governors was invited to read and respond to the reports.

Obviously I cannot provide minutes of the BoG meeting as it is still in progress and minutes demand approval by the BoG. What I can do is share some of the material that has emanated from that meeting, accepting that such dissemination has not been formally approved by the Governors. There has been a recurring theme of the meeting – the need to involve all those within the membership who wish to become more active. As a consequence, I have asked Adv. Oren Asman, our Deputy SG/Web-

master, to add a section to the WAML website to which we invite members to identify themselves by giving their name, area of expertise and how they feel they can better contribute to the WAML. Much of the work of the WAML has been undertaken by the Executive Committee and it would be a great advance to have interested people, who are financial members of the WAML, nominate their expertise and allow allocation of various committee positions to self-motivated members. We need you, our members, to add value to WAML. Governors are not excluded from self-nominating in this 'to be constructed' section of our website and are strongly encouraged to be involved in this new initiative.

A sad point of the BoG meeting was the resignation of Professor Rafael Aguiar-Guevara as Director of the Chairs of Committees. One of our first tasks will be to find his replacement. If you feel you have the administrative skills and commitment to activate, motivate and supervise Committee activities for the WAML – please let us know your qualifications, experience and capacity to do the job. As with all WAML officials, the applicant must be a financial member of the WAML and should provide reasons for seeking this important role within the organisation. Again, Governors are definitely not excluded from nominating for this post and all applicants will be vetted by the Executive Committee, who will assume the role of a Selection Committee.

A new feature to be added to membership benefits has resulted from negotiations with Yotzmot, the publishers of our journal, *Medicine and Law*. We have an agreement to have abstracts of papers added to our website. Being an Association with educative goals, it follows that the more we can encourage people to read about the interface of *Medicine and Law*, the better we can satisfy our objectives. Past abstracts are planned to be posted on the website for open access but full texts will

be restricted to financial members at a secure password-controlled access site on our web page.

While the 2010 World Congress on Medical Law (WCML) is still a year away, the clock is ticking and we want all of you to start planning for that Congress in Zagreb. Prepare your abstracts and submit them on the website for the Congress. Planning is already underway for the 2012 WCML in Brazil and nominations are invited from interested parties wishing to host the 2014 WCML and will be accepted up until the Zagreb meeting when the BoG will vote on the successful applicant. Nominations should be directed to the SG.

As you can see, the WAML remains an active and dynamic Association and we need you, our members, to become more involved. Please advise us as to how you feel you can better contribute to the success of WAML and we will contact you to take advantage of your offer.

Roy G Beran, Secretary-General,
World Association for Medical Law

The 18th World Congress on Medical Law

Zagreb Croatia

Important Dates and Deadlines

Abstract submission
before February 28, 2010

Notification of abstract
acceptance
by March 15, 2010

www.2010wcml.com

Early Registration April 15,
2010



World Association for Medical Law

Volume 1 Issue 4 October-December 2009

www.thewaml.com

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Prof. Thomas T. Noguchi
WAML Treasurer

Editorial

I, as this Issue editor, specifically featured our members who reside all over the World to share current issues facing the countries. The WAML newsletter is to provide a forum to freely exchange our ideas and to share our own opinions among members. I am very pleased to note that many articles were submitted from our members. As a result, we will have varying opinions, thus the views expressed in the articles, included within this Newsletter or future newsletters, should not be read as being endorsed by the WAML.

The issue has WAML message from our Secretary General Prof. Roy Beran, who has continuously contributed his articles and messages. Other articles included in this issue are: 1) the article from Dean Harris, JD, University of North Carolina about his view on current health care reform in the United States, followed by 2) an article on the current crisis stemming from acute care physicians switching from litigation prone medical specialty to less risky practice, causing

critical shortage of acute care service, by Dr. Shigeki Takahashi, MD, JD, PhD., a WAML long time member who contributes on the subject of malpractice investigation problems in Japan, 3) the WAML historical event which occurred in 2006 in the ceremony for the presentation of the WAML Medallion to Professor Koich Bai, by our Governor, Prof. Katsumasa Hirabayashi, who describes his accomplishment and impact on medical law in Japan. 4) Announcement of the coming World Congress, specific information to the 2010 paid members to advise that they will receive a discount for registration for the 18th World Congress on Medical Law in Zagreb, Croatia, August 8-12, 2010. We would like to attend the Croatia Congress. Planned for 2010, continued publications of the newsletter quarterly.

World Congress on Medical Law in Zagreb Croatia

August 8-12, 2010



Secretary-General's Report



Prof. Roy Beran,
WAML Secretary General

It is hard to believe that this is the final Newsletter for 2009 and that in less than two months we will be in 2010, the year of the next World Congress on Medical Law.

Since last writing the Secretary-General's report, I have had the opportunity to meet with our President, Professor Carmi, during his brief visit to Sydney, while wearing one of his many other hats. It is always a pleasure to appreciate that the World Association for Medical Law has such an experienced person at the helm. After many years as President of the WAML, Professor Carmi has made it clear that he does not wish to continue in his current role for the WAML, after the next World Congress in Zagreb, but he has also made it abundantly clear that he will not be abandoning us and will be available to offer his expertise whenever needed. Professor Carmi has been an inspiration for many of us but so have Professor Noguchi and Dr Collins, my colleagues on the Executive Committee, together with Oren Asman, the Deputy Secretary-General who brings me into the 21st century with his capacity for the new technologies.

The lines of communication with the organisers of the next World Con-

gress, in Zagreb, Croatia, have been maintained with greater activity and it now behoves all of the members of the WAML to submit their abstracts, register for the conference on line and demonstrate real commitment to the ideals of health law, legal medicine and bioethics.

Reporting from my part of the world, Australasia, I can advise that The Australian College of Legal Medicine has elected to have a name change to be the "Australasian College of Legal Medicine" which will help to better reflect its wider sphere of influence, with greater numbers of offshore members and fellows, especially from New Zealand. This should result in greater ties between our current Executive Vice President, Dr David Collins, and myself, but like ships in the night, David had to attend a meeting in Adelaide the week after I had to be there for a College function and thus we are still most indebted to the communication links provided by the Internet. We have already heard that there will be a major conference within our discipline in South East Asia, in Indonesia, in May 2010, which demonstrates the success of the meeting held in Indonesia in May this year. Only today I received notification of the 13th Greek/Australian International Legal and Medical Conference to be held in Kos, Greece, at the end of May 2011 and it is clear that our discipline is growing in strength and stature and for that I thank all of you for your contributions.

Our Journal, *Medicine and Law*, is celebrating its 30th anniversary in 2010, and if you have a significant contribution to make to the Journal please do, so as soon as is possible, to make this anniversary edition a truly memorable publication.

I take this opportunity to wish all of you Seasons Greetings, be it for what-

ever celebrations you hold at the end of the year, acknowledging Christmas and Hanukkah but not limiting it to those festivals. I hope that 2010 becomes a year of harmony and peace around the world and I look forward to meeting and greeting you all in Zagreb next August.

Roy G Beran

The Continuing Struggle for Health Reform in the United States



Dean M. Harris, J.D.

On November 7, 2009, the U.S. House of Representatives passed a health reform bill by a very close vote. After the U.S. Senate passes its own bill, the two houses of Congress must reach an agreement. Some provisions in the House bill are encountering resistance in the Senate, and there are serious disagreements about several issues.

Some Senators want to create a "public plan" (a government health insurance plan) but other Senators are strongly opposed. Senators disagree about how to pay the cost of expanding insurance coverage, whether individuals should be required to buy insurance or whether all employers, including small businesses, should be required to provide insurance for their employees. In addition, there is disagreement about using government funds to help people buy health

insurance that would cover abortion. Even if Congress succeeds in passing legislation, it will probably not make the type of fundamental change that most experts recognize is badly needed.

After years of complaining about insurance companies, many people in the US now insist that they like their health insurance. Angry citizens appeared at “town hall” meetings to demand that the government keep its hands off their insurance. In response, President Obama has attempted to reassure citizens that, if they like their health insurance, they can keep it.

Fear tactics have been used to encourage opposition to reform. The most outrageous fear tactic was the ridiculous allegation that health reform would lead to creation of government “death panels,” which could decide whether patients would receive treatment. To citizens of countries with universal health insurance, the fears of people in the US must seem incredibly bizarre.

As an article of faith, many people in the US persist in the unfounded belief that the US health care system is the best in the world. Experts in the US know that their health system is not the best in the world and President Obama knows that as well. On June 24, 2009, in a town hall meeting on health care at the White House, President Obama stated, “We spend at least 50 percent more than any other advanced country and we don’t have better outcomes in terms of infant mortality, longevity ~ all those various measures of wellness.” Other industrialized countries provide universal coverage for their people while the US leaves about 15 percent of its people without the protection of basic health insurance. One might jump to the conclusion

that the majority of people in the US are ignorant and selfish but the situation is more complex than that. In any democratic country there are plenty of people who are poorly informed and tend to act—or can be manipulated to act—in ways that are inconsistent with their long-term best interests. The real difference between the US and other countries is a difference in values of the society and the health system. While some countries place a high priority on values of social solidarity and universality, the US places a high priority on values of individual choice, self-reliance and autonomy for physicians. Rather than viewing government as a potential solution, many people in the US tend to see government as a problem and fear government intervention in the economy.

What is going to happen in the US? No one knows for sure but I think there are three possible scenarios. One scenario is that Congress might enact a scaled-down bill for partial expansion of coverage and incremental reform. President Obama wants to sign some kind of bill with the words “health reform” in the title. If the bill creates an insurance exchange, through which some individuals could choose a health plan, this could be a first step toward eventually disconnecting health insurance from employment in the US. A weak “public plan” could be improved later. The danger in this scenario is that enacting a bill might require so many compromises and concessions that the resulting legislation would be very expensive and would not be effective.

A second possible scenario is that Congress might be unable to pass any bill. In that event, the focus might shift to governments of the 50 states, which could experiment with local systems of health reform. State and

local governments in the US are currently experiencing severe budgetary problems which could inhibit their own efforts toward reform.

The third and final scenario is that health care costs might continue to escalate and health care might continue to take increasingly larger shares of GDP. Without fundamental reform, the unsustainable US health system could eventually collapse, when employers can no longer afford to pay for health benefits and stop providing insurance for their employees. Then, the federal government would have no alternative but to take over the system. The need for immediate action in time of crisis would overcome abstract philosophical objections about expanding the role of government. In the automobile and financial industries, the US government was unwilling, or unable, to act until those industries essentially collapsed. Hopefully, it will not take that long in the health care sector.

None of these three scenarios is optimal. It is also possible that there will be some combination of these alternatives or other alternatives that are not currently apparent. There is an old saying in the US, which is attributed to baseball star, Yogi Berra: “It’s tough to make predictions, especially about the future.”

Dean M. Harris, J.D.
Department of Health Policy and Management, University of North Carolina.

Is Japan Confronted with Medical Collapse?



Shigeki TAKAHASHI, MD, JD, PhD

The Background of Medical Collapse in Japan

Medical Collapse is the phrase frequently used in the news media as well as in political discussions in Japan, though the level of health among the Japanese is very high. This phrase implies a remarkable rate switch of physicians, who were previously engaged in taking care of acute care cases, now limiting themselves to only less risky general practice of taking care of chronic medical patients. As acute and chronic medical services are not legally distinguished in Japan, many medical doctors simply ceased to handle the types of cases, which are malpractice litigation prone.

The background to this phenomenon is that a private practitioner can obtain far higher income with less work and less risk, compared to a salaried hospital based doctor. As a result, there are fewer such doctors and patients, who become suddenly ill, requiring emergency care in hospital, may have no place to go. Acute care physicians are no longer readily available. The news service carries astonishing cases of hospitals unwilling to accept emergency patients where previously such cases were freely accepted by the hospital. This is because of a lack of doctors. As a result, in the worst cases, the patient may die in the ambulance due to the lack of medical care. The government takes this situation seriously and is trying to financially support hospitals that provide acute medical services.

In order to solve this situation an additional remedy is necessary, namely the reduction of the risk of medical malpractice litigation. Currently, it is evident that the numbers of gynecologists, pediatricians and surgeons are decreasing and the hypothesis is that it relates to the risk of suit.

Civil Suits

In Japan, the number of civil suits for damages is not excessive for a population of 120 millions. Over the last several years, this number of civil suits appears to be diminishing. Most doctors and hospitals have indemnity insurance, as the insurance fee is not too expensive. Thus, on the basis of population, we suggest that the risk of civil suits is not so high in Japan. Nevertheless, the malpractice claims by patients, so called "Monster Patients," that assail the hospitals or doctors, on the basis of incredible and unrealistic accusations are increasing, thereby creating an unnecessary burden on hospitals and doctors.

Death or Bodily Injury through negligent conduct in breach of duty of care

If the alleged malpractice case is considered to be due to negligence that allegedly caused bodily injury or death and it merits being prosecuted, as a breach of duty case, the police will investigate the incident and they have the authority to arrest the doctor. Formerly, such investigations were very rare and were conducted only in cases of an obvious gross negligence, such as negligent misuse of drugs or wrong side surgery. Currently the police investigate all presumed cases of medical errors or serious iatrogenic complications, as well as deaths following surgery. In these cases, the causal relationship between the operation and the death might be evident; however, the existence of negligence is another matter. The police have arrested the doctors in several such cases.

In these cases, the civil strife between the patients and the doctors antedate. The medical records have already been preserved, so there is no possibility for

the doctor to suppress information since evidence of negligence is never dissipated. It means that there is no necessity to arrest the doctor. These case reports cause anxiety in the doctors fear that he or she might be arrested if the result of the medical treatment had been unhappy for the patients. Furthermore, the risk of arrest cannot be covered by the indemnity insurance.

In 2004 an obstetrician was arrested on the suspicion of the death due to negligent conduct (Ohno Hospital case). According to the indictment, the doctor tried to remove an adherent placenta from the uterus at delivery; the pregnant patient suffered hemorrhage and died from loss of blood. The prosecutor insisted that he should have extirpated the uterus instead of removing the placenta. This arrest and the indictment caused terror among obstetricians because hemorrhage at delivery is usual and there is no standard medical practice, accepted by peers, that suggests extirpation of the uterus in cases of adherent placenta.

After this event, a number of obstetricians ceased obstetrics and practiced only as a gynecologist. Pregnant patients were thus confronted with the difficulty of finding a hospital to deliver their babies. While the district court judge gave a verdict of not guilty in this case, in 2008, the lack of obstetricians continues. After the verdict, the prosecutors issued a statement admitting that it should be required that clinical specialists be consulted before investigating any given case but even this does not necessarily provide absolute protection as a single opinion, sought by police, may not provided the only answer. The police and the prosecutors should learn that the excessive exercise of the police power could cause "Medical Collapse". They should choose prudently the cases that are worthy of punishment or needing of rehabilitation.

Historical Event



Professor Koichi Bai

The 16th World Congress on Medical Law was held in Toulouse, France in August 2006. On August 10, 2006, during the Gala Dinner, Prof. Koichi Bai, Emeritus Professor, Tokyo Metropolitan University was awarded the World Association for Medical Law's highest Award. This Medallion is commonly known as the Dierkens' Medal. The Medal has the profile of Prof. R. Dierkens, Founder and the long time Secretary General. This Medal was bestowed on Prof. Bai for his pioneering effort in the development of medical law and contribution to the formative years of the World Association for Medical Law (WAML). Along with the founder Prof. Rafael Dierkens, Prof. Bai continuously supported and contributed to establish the foundation of the present day World Association. Unfortunately, Prof. Bai was not able to travel and to receive the WAML Medallion personally. Since I am one of his disciples, I was requested to represent him to receive it.



Founder's Medallion

Prof. Bai was born in Osaka in 1924, and graduated from the University of Tokyo in 1947. He began teaching at the Tokyo Metropolitan University and became Professor of Law in 1960. He attended the first Congress of the WAML in Ghent, Belgium in 1967. In 1969, he played a major role in establishing the Japanese Association of Medical Law (JAML) and was elected to serve as Secretary General of the Association. The following year, he was elected as Vice-President of the WAML and continuously served in that role until 1994. Further, he was elected member of the JAML Board of Governors and served on the Executive Committee and continued in this role until 1997. In 1992, he received an Award from the Japanese Academy for his life work on the study of Medical Law and received the highest medal, the Person of Cultural Merit from the Japanese Government.

Prof. Bai has long supported the first WAML medallion recipient Prof. Raf Dierkens' devotion to the Association with its aim that the WAML was organized not just for the sake of organizing medical law gathering, but for learning from each other and exchanging ideas on medical law among international colleagues.

Prof. Bai is the pioneer of medical law in Japan, and led the academic study of medical law. For many years, a numbers of students studied directly under him. Among these students are Prof. Shin Utsugi and Prof. Ichido Ishii. There are numerous scholars, who have been influenced by him through the JAML meetings, his seminars, publications and research papers,

I would say without exaggeration that without mentioning Professor Koichi Bai, it is impossible to talk about the Medical Law in Japan. Without Prof. Bai, the Japanese Association of Medical Law would not exist.

Professor Katsumasa Hirabayashi, Kokugakuin University Law School, Tokyo Japan

World Congress on Medical Law in Zagreb Croatia

August 8-12, 2010



ON-LINE REGISTRATION FORM AND ABSTRACT SUBMISSION FORM AVAILABLE NOW

Dear Madam, Dear Sir,

Let us kindly inform you that the registration form and abstract submission form for 18th World Congress on Medical Law are available at the official congress website www.2010wcml.com

Using the same on-line registration form you will also be able to book accommodation in different Zagreb hotels, ranging from budget to luxury 5 star hotels, at special rates for Congress participants.

We would like to remind you about important dates and deadlines:

**Abstract submission deadline is
February 28, 2010**

**Early registration deadline is
April 15, 2010**

Wide choice of Pre Congress and Post Congress tours as well as Accompanying person programme will be available SOON, we are already in December, at the official Congress web site.

For more information please visit our website www.2010wcml.com or contact us at info@2010wcml.com

We are looking forward to meet you in Zagreb!

Kind regards,

Congress team of 18th World Congress on Medical Law



Finland



From the Newsletter Production Team

Suitable Article for the Newsletter
The editors seek suitable articles from all members, which would be of wide range interest to our readers. Since the Newsletter is designed to provide rapid information to all our members, the articles should be short,

interesting and on current topics. The text should be 800 words to no more than 1,000 words. Scientific research articles should be forwarded to the Editor of the Journal, Medicine and Law. Newsletter articles should be accompanied by the author's portrait photograph, and two or three photographs related to the author's environment, office, university or surrounding scene, with one line explanation per photo. These photographs may assist effective layout.

Historical Documentation

We wish to invite our members to contribute articles detailing historical development of medical law and ethics in your country. We would be interested in reading about it. You may focus on an individual pioneer or the first institution on medical law in your area or country or other relevant topic.

New Book by the members

Book reviews should be referred to the editor of the journal, for standard book review.

New Feature of sharing the experience by the Past Congress Presidents

Starting from the next issue, we will have an article from our past congress presidents sharing with us, how they did organized the World Congress, what was problem areas, how they resolved the problem and then recommendations for future planning.

The Role of Issue Editor:

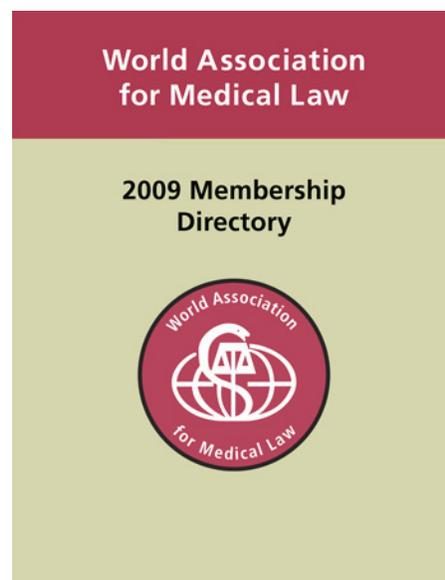
The role of the Issue Editor is to be responsible for planning of the coming Newsletter and to feature articles from our diverse membership from around the world. We would like to learn about, and from, each other. For each issue, one member is designated to gather articles from our members and to edit, prepare, and submit to the Production Team.

Team contact is Tom Noguchi, e mail address: noguchitt@aol.com and copy to Denise McNally email address is mcnally@cvalley.net. The submitted articles will go through the editorial review and proof reading.

Designated Issue Editors for 2010 and Deadline for Submission

Four Issue Editors have been designated: For March 2010 issue by Richard S. Wilbur, MD, JD (USA), the deadline for final submission will be February 15. For the June 2010 issue by Adv. Oren Asman (Israel), the deadline for final submission will be on May 15. For the September 2010 issue by Prof. Anne Marie Dugout (France), the deadline is August 15, and the December issue by Dr. M. Wetted (Israel) the deadline for final submission is November 15.

Membership Directory for the 2010



The membership Directory team would like to express our appreciation to those of you who made effort to support in the creation of the first WAML membership directory. In 2010, there is an important consideration. The WAML mem-

bership will receive a discount registration for themselves and their accompanied person for the WCML.. The WAML Membership Directory for 2010 must to be forwarded to the Croatia Organizing Committee for members' discount for the Congress registration fee. The Congress requires this information by February 15, 2010. Early renewal is essential. For 2010 Directory, we intend to include the current WAML Bylaws and Statutes, the lists of the Board of Governors, the Honorary Governors, WAML Founder's Medal recipients, the previous Congresses, the WAML Committees and their Chairpersons and information on the functions of the Membership and Credential Committee and the membership renewal procedure.

If you have any corrections to make on your membership information, please contact Denise McNally mcnally@cvalley.net and for updating or replacing photos, please contact Raul Vergara rrvergara4@aol.com Please and send a copy to Tom Noguchi NoguchiTT@aol.com

Errata

My apology for the mismatch in one of the author's photographs in the 2009 September issue. Attached is the corrected Newsletter for September.

I would like to express my appreciation to Prof. Roy Beran and Dr. Richard S. Wilbur for proof reading and editing. Also my appreciation to Raul Vergara for layout and graphic design.