Poverty, Health and Law

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Readings and Cases for Medical-Legal Partnership

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Foreword: Medical-Legal Partnerships Raise the Bar for Health[1] and Justice

Martha L. Minow, JD, EdM
Dean and Jeremiah Smith, Jr. Professor, Harvard Law School

A good idea deserves attention, especially when the idea offers promise for seriously improving human welfare. Medical-legal partnerships — involving legal advocacy in healthcare to secure access to benefits and protections — can measurably improve health status of individuals and improve institutions affecting health while also advancing justice. Yet, as Admiral Hyman Rickover once noted, "Good ideas are not adopted automatically. They must be driven into practice with courageous patience."[2]

The essays in this book document and exhibit the vigorous practices and courageous patience of those pursuing medical-legal partnerships. The chapters, at the same time, offer serious analysis of the motivation, design and strategy of the initiative. This book is the first to document and analyze the development of now over 240 examples of medical-legal partnerships in the United States that promote health for vulnerable individuals through integrated healthcare and legal advocacy.

The chapters offer crucial insights into how better to deploy the resources spent on healthcare in this country, where we spend more money on healthcare per person than any other nation and yet fall behind comparable nations in life expectancy and infant mortality and in effectiveness of healthcare.[3] Doing more of the same is not improving the health status of Americans. Medical-legal partnerships recognize that people's health can be keenly affected not only by access to medical care but also by access to affordable food, safe housing, heat and electricity, and workplace adjustments for parents and caretakers of individuals with illness and chronic conditions. Individuals with these kinds of needs require advocates and also better practices and systems so that red-tape, indifference and short-sightedness does not get in the way of needed services.

Lawyers have the tools to provide individual advocacy and to reform systems and policies. Participation in medical-legal partnerships benefits the legal community as well by orienting lawyers to attend to prevention and problem-solving, to analyze data and promote best practices, and to redress the deficit in justice in the crucial domains of health and quality of life. Critics urge lawyers to do more to prevent and solve problems rather than simply spot them or grow conflicts around them.[4] The persistent justice gap for low-income Americans requires tough choices about what priorities should guide limited legal resources.[5] The Legal Services Corporation, the national non-profit organization allocating scarce federal funds, supports medical-legal partnerships because they "make meaningful differences in the lives of low-income Americans across the nation."[6] Drawing from the

practice of evidence-based service-delivery in medical care, medical-legal partnerships can calculate the value of legal and policy interventions in containing and reducing the costs of healthcare while improving the quality of health outcomes and the public and private systems meant to serve low-income communities.

The joint efforts of medical and legal professionals to advance the health of vulnerable individuals thus offer opportunities to tackle chronic national shortfalls in health and justice. Here is where the partnership element is pivotal. A partnership allows individuals or groups to cooperate to advance each of their interests. When physician Barry Zuckerman and attorney Ellen Lawton developed the medical-legal partnership model at Boston Medical Center, they laid the ground for the initiatives that they and others are developing across the country.

This book is itself proof of the power of medical-legal partnerships in drawing together people with contrasting backgrounds and training to advance real problem-solving. This interdisciplinary book offers a tool for new generations of lawyers and healthcare providers in learning how to collaborate in tackling persistent and complex problems and enhancing the quality of life for vulnerable individuals. May this book bring attention and further assessment of the powerful idea of medical-legal partnerships, now developed and put into action!

Notes

1. This is the phrase used by the National Center for Medical-Legal Partnerships. See *www.medical-legalpartnership.org/*.

2. Admiral Hyman Rickover, "Doing a Job," Speech delivered at Columbia University, 1982, available at: http://govleaders.org/rickover.htm.

3. "World Health Statistics 2009," World Health Organization (May 2009). available at: http://www.who.int/whosis/whostat/2009/en/index.html.

4. William M. Sullivan, et al., "Educating Lawyers: Preparation for the Profession of Law," Carnegie Foundation for the Advancement of Teaching (2007); Lisa A. Kloppenberg, "Engaging Students to Educate Problem-Solving Lawyers for Clients and Communities," available at: www.aals.org/documents/curriculum/documents/Dayton; Todd D. Rakoff and Martha L. Minow, "A Case for Another Case Method," Vanderbilt Law Review 60 (2007): 597.

5. See "Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans," Legal Services Corporation (2007), available at: www.lsc.gov/justicegap.pdf.

6. LSC Updates, LSC Leaders on Panel at Medical-Legal Partnership Summit, April 1, 2010 (quoting President Victor Fortuno), available at: www.lsc.gov/press/updates_2010_detail_T259_R6.php.

Foreword: Making the Case for Health

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> "The physician, whether he chooses it or not … is placed by his job, by his patients, and by society right where the demands of the individual and of society clash."[1]

At every income and education level there is a tremendous gap in health between those individuals at the upper and lower ends of the distribution. Further differences in overall health among communities are more closely correlated with social factors, like education and employment, than with access to quality medical care. It is apparent that many people live and work in places where healthy living is nearly impossible. This means that where and how people live, learn, work and play are central to whether they are likely to become ill or injured. How can medical care providers respond to this reality? They are ill trained to deal with the social factors affecting health, must respond to the acute event that brings the patient to them, and often have little time to connect patients and their families to the solutions that may lie outside the clinical setting. This book is about the societal factors that negatively or positively affect people's health and an effective response being implemented through medical-legal partnerships around the country.

Law and public policy frame how a society indicates what it wishes to become. If our institutions were effectively meeting the standards set by laws or public policies, new laws and advocacy to ensure that existing laws are being adequately enforced would be unnecessary. But laws and public policies are, in a sense, always aspirational. This is as true for laws affecting health as it is for laws governing education or business: whether legal protections will be applied to those most in need or only to those with more means; whether workers and patrons are exposed to the cigarette smoke of others; whether cars have seat belts and air bags, or whether housing has heat or clean running water and functioning toilets. These are all about both the framing of the law and its implementation or enforcement.

The chapters in this book are about moving from aspiration to execution: how to ensure that existing laws and policies are being fully applied to those in great need and determining where legal and policy changes need to occur to better protect the health of vulnerable populations. What is most surprising and inspiring is that the method by which this is taking place is within the medical care system through partnership between lawyers and healthcare providers. Often solutions to health problems come from outside the healthcare system, such as through improving housing, education or income supports. These are areas in which legal expertise and patient advocacy can be important tools for ensuring that necessary services are applied to help an individual patient or family. This

book provides discussion of the medical-legal partnership model and multiple illustrations of its implementation. Lawyers and social workers are key allies in helping individuals who are unable to advocate effectively on their own behalf, and medical care providers are crucial to identifying the link between social circumstances and health. Ultimately, the solutions will come from healthcare providers and lawyers partnering to ensure that legal protections are enforced and services are administered to improve the health of vulnerable populations, those who are otherwise left without protection.

This book also explores the role of public policy advocacy when laws and systems are found to be inadequate and solutions need to be multi-faceted. This type of advocacy is explored in the context of a current health crisis: obesity. This discussion further solidifies a central point of the book that the important health problems of our time will not be solved by medical care, public health agencies or by research alone. They will be solved by assessing what our society and its organizations foster or inhibit. Which policies reduce disease or injury and which make their likelihood more common — even if these health outcomes were not the initial or principal purpose of the policies or laws in question? Medical-legal partnership is often where larger policies and laws are connected "on-the-ground" to those whose need is both acute and sustained.

At a time when our country's financial future is critically linked to escalating costs for medical care, when the prevalence of conditions like obesity, smoking, asthma and many others are all integrally linked to social policy decisions, it has become even more crucial that we look outside the medical system for solutions. This book highlights this understanding of what we need as a nation and offers a structure for how law and legal remedies can be used to improve the health of vulnerable populations. It also offers a way forward in addressing our nation's crisis in medical care costs by showing that the changes we consider do not have to be only about how much we pay per visit or procedure or about how many we insure. We can do much more to reduce disease and injury than we do now by ensuring that our communities, schools, worksites and homes are healthier places for all of us to live.

Our health begins, is nurtured, protected and preserved in our homes and communities by our laws, policies and actions. This book is about how to harness those forces and structures on behalf of us all, but especially for our most vulnerable.

Note

1. D. Rennie, R.A. Rettig, and A.J. Wing, "Limited Resources and the Treatment of End-Stage Renal Failure in Britain and the United States, *Quarterly Journal of Medicine* 56 (1985): 334.

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Editorial Advisors

Preface

To our knowledge, this book is the first of its kind to comprehensively discuss the ways in which legal remedies may be used to address the social determinants of health. In the past ten years, the number of medical-legal partnerships in the United States has gone from fewer than ten to more than ninety, existing now in over 240 healthcare institutions. In addition, medical-legal partnership (MLP) continues to take hold in law school, medical school and public health curricula through interdisciplinary courses and clinical and internship opportunities. It is out of this burgeoning field of medical-legal teaching and practice that this book developed.

This book is intended as a teaching tool for courses in medicine, law, public health, nursing and social work to explore the connections among poverty, health and law and to prepare future practitioners to effectively address the medical-legal needs of their patients and clients. It will be especially useful in teaching across disciplines. It is also meant to serve as a useful resource for legal and healthcare practitioners already engaged in MLP, or those interested in better understanding the convergence of health and law in their patients or clients' lives.

If we have learned anything from MLP practice and teaching, it is that members of all professions who touch the lives of vulnerable populations must become better skilled at communicating across disciplines, doing our best to leave our particular narrow professional perspectives and jargon at the door. This book represents our effort to bring disciplines together for a common purpose: to offer a better understanding of our roles in improving the health of our patients and clients. Authors from multiple disciplines collaborated on the chapters in this book. To make the concepts accessible to readers from different disciplines, they strove to present complex medical or legal information in generally accessible language. In addition, to educate readers about concepts from the different disciplines, we have included a *glossary of terms,* divided by topics addressed in the book: poverty and health, public health, medicine, health and the healthcare system, law and the legal system, and medical/healthcare partnership. We hope that this glossary will provide readers with the background knowledge needed to engage with the substantive material in the book.

Because this book is intended as both a teaching tool and a resource for those engaged or interested in MLP, we include several features throughout the book to support those goals:

Discussion Questions: Questions to help guide and expand the discussion of the material in educational settings or in medical-legal trainings for MLP practitioners.

Cases for Medical-Legal Partnership: Cases that help students to identify the connections among poverty, health and law and to apply what they have learned in the preceding sections. The cases include discussion questions that ask readers to think about how healthcare and legal professionals should respond to the complex problems faced by their patients and clients.

Best Practices and Advocacy Strategies for Medical-Legal Partnership: Examples of approaches used by MLPs to address a particular medical-legal issue or problem. These may include highlighted strategies or a specific description of particularly effective practices currently being used by MLPs around the country.

Practice to Policy: Examples of how MLP practitioners may identify areas in which systemic or policy changes can benefit a wider population of vulnerable patients and communities. These may include policy advocacy strategies or specific examples of successful policy change initiatives undertaken by MLPs.

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Introduction

Elizabeth Tobin Tyler, JD, MA

"There is more to health than health care."

In this era of healthcare reform, discussion among policy makers, the press, and the general public has focused primarily on how to expand health insurance coverage, cut costs in the system, and preserve or improve the quality of care. Lawyers continue to play a large role in shaping healthcare reform, particularly in the wake of passage of the Patient Protection and Affordable Care Act — interpreting legislative language, drafting regulations and crafting arguments to bring or respond to legal challenges to reform laws. Healthcare providers are on the front lines of reform efforts, some advocating for change, some bracing for a major transformation of the system in which they care for patients.

As the national debate continues about how to achieve reform of the healthcare system, researchers, foundations, public health officials, healthcare providers and lawyers are beginning to raise a point often left out of the discussion: "There is more to health than healthcare."[1] If the goal is to improve health, not just reform the system, different questions and different answers need to be part of the national conversation.

In recent years, researchers have documented the significant disparities in *health* in the United States (not just in *healthcare access*) that exist across racial, ethnic and socioeconomic lines.[2] They have concluded that the answer to improving health, particularly among vulnerable populations, reaches far beyond expanding and improving access to the healthcare system. They have pointed to a much more complex problem — that "where we live, learn, work and play can have a greater impact on how long and how well we live than medical care."[3] The social determinants of health — social environment and social history — may have a more significant impact on health than does access to quality healthcare.

Since Sir Michael Marmot published his groundbreaking Whitehall studies in the 1960s, which exposed differences in disease prevalence and mortality rates of British civil servants according to their grade levels,[4] social epidemiologists have explored how the social environment (e.g. food availability, housing and neighborhood conditions, access to educational opportunities and the experience of social isolation and racism) contributes to poor health outcomes and health disparities across the population.

More recently, health reform advocates are taking notice of the high healthcare costs associated with vulnerable populations who suffer a disproportionate share of chronic illness, do not receive adequate primary care and experience multiple social conditions that complicate the delivery of high-quality healthcare.[5] Researchers and policy makers are also beginning to recognize that failure to address health disparities may have broad consequences for society. A recent study notes that "the aggregate economic gains from interventions that improve the health of disadvantaged Americans are potentially large."[6] But failure to address the adverse effects of poverty and poor social conditions on health is most stark when viewed in terms of the human costs. The human impact of health is

clear: "Good health is essential to well-being and full participation in society, and ill health can mean suffering, disability, and loss of life."[7] Healthcare providers see the human costs of ill health among their most vulnerable patients on a daily basis, yet often do not have the tools to address the complex social needs impacting their health. Lawyers who serve vulnerable clients and communities also witness the cyclical consequences of poverty and poor health. Poor health leads to economic and social instability; economic and social instability in turn leads to or exacerbates poor health.

Researchers and practitioners point to the role of social conditions in health disparities, but identifying solutions has been much more difficult. As one scholar notes, "Reducing social disparities in health (i.e., health differences by racial or ethnic group or by socioeconomic factors like income and education) will require solutions that address their root causes."[8] Hence, there is increasing recognition that the healthcare system as it currently exists cannot alone address the "root causes" underlying health disparities.

What, then, is the role of law and public policy in understanding and addressing the social determinants of health? Public health policy makers have long sought "upstream" policy interventions that seek to prevent health problems before they impact the population. The role of law as a social determinant itself is also being explored. As Wendy Parmet notes, "By establishing the social framework in which populations live, face disease and injury and die, law forms an important social determinant of population health."[9] Thus, lawyers concerned with improving health for vulnerable populations have a role to play in challenging the social framework underlying health disparities.

With this understanding of the role of law in the social determinants of health, healthcare providers and lawyers are joining forces to explore preventive interventions in the healthcare setting. This role for lawyers diverges from their traditional approach to health law. Rather than helping design and regulate the healthcare system, they use the law as a tool to address the social conditions of low-income and vulnerable patients—such as ensuring safer housing, overcoming access barriers to public benefits and income supports, enforcing employment protections and seeking safety for their clients from violence.

Since the early 1990s, lawyers have been partnering with healthcare providers to form medical-legal partnerships (MLPs) designed to use law as a tool to combat systemic and social barriers and conditions that disproportionately impact the health of low-income and vulnerable patients. Started in 1993 at Boston Medical Center, the MLP model has expanded to over ninety programs in more than 240 healthcare settings. Initially focused on preventive advocacy to address legal issues impacting child health (such as poor housing conditions causing asthma or lead poisoning), the MLP model is now used to address the legal needs affecting the health of vulnerable populations, including the elderly and patients with cancer or HIV/AIDS. Partnering healthcare providers and lawyers has not only brought new resources for patients and their families into the healthcare setting, it has also challenged healthcare and legal services providers to transform their practice to focus on preventive approaches to medicine and law and advocate for their patients and clients within and outside the healthcare system.

This book investigates the role of law in the social determinants of health and the potential for legal advocacy, both at the individual and policy levels, to improve the health of vulnerable individuals and populations. It explores how MLP creates the potential for preventive interventions by leveraging the resources of interdisciplinary partners and systems. Because MLPs have the potential to transform practice as well as policy, they also offer a unique training ground for medical, public health, nursing, social work and

law students interested in improving care to vulnerable populations. This book, therefore, is intended as both a resource for practitioners and as a learning tool for students — the next generation of health and legal professionals. (See Preface for discussion of the types of settings and ways in which the book may be useful.)

Each chapter is written by an interdisciplinary team drawn from the fields of medicine, nursing, public health, law and social work. The authors draw on their collective wisdom derived from medical, healthcare, public health, and legal research, practice and policy. The book exemplifies the value of bringing together a talented group of health and legal professionals devoted to exploring the connections between poverty, health and law and the potential remedies that are possible when these professions partner to serve vulnerable patients and populations.

Part I lays the groundwork for understanding the social determinants of health and the role of law in contributing to and addressing those determinants (Chapter 1), the traditional approaches of the healthcare and legal systems to the needs of the poor (Chapter 2) and the more preventive approach to the care of vulnerable populations offered by MLP (Chapter 3).

Part II explores MLP in practice and the unique challenges and opportunities brought by partnering the healthcare and legal professions — how students and practitioners understand and respond to the cultural context of their patients and clients (Chapter 4), the benefits and challenges of medical-legal education and training (Chapter 5) and how MLP practitioners can provide ethically responsible care to patients and clients within the bounds of professional ethical rules (Chapter 6).

Part III (Chapters 7–11) describes the substantive role that law and legal advocacy plays in improving health outcomes by exploring five areas in which poverty, health and law converge: income and employment, housing, education, legal status and personal safety.[10]

Part IV (Chapters 12–15) offers ways legal remedies in the healthcare context can benefit the health and well-being of special populations, including cancer patients, survivors, and their families; people living with HIV/AIDS; elders and their caregivers; and adolescents and young adults.

As noted earlier, MLP also offers a unique opportunity to advance population health by leveraging the resources of the healthcare and legal professions to promote system and policy changes. Part V (Chapters 16–19) offers insight into the ways MLP has and may in the future affect policy change to benefit vulnerable populations. Chapter 17 explores the role MLP can play in promoting policy changes to address the obesity epidemic. Chapter 18 outlines how researchers are evaluating the potential benefits of MLP for patients, practitioners and systems. Finally, Chapter 19 concludes the book with a view toward the future by offering perspective on the role MLP may play in the future of healthcare in the era of healthcare reform.

Despite the many challenges ahead, this is an exciting time for those focused on improving the health of vulnerable populations. Healthcare reform efforts are opening the door to innovative service delivery models like MLP that seek more preventive, comprehensive and interdisciplinary approaches to improving health. This book captures the importance of partnering professionals across disciplines to explore, discuss and teach the connections between poverty, health and law to change the way we care for our most vulnerable patients, clients and communities.

Notes

1. Risa Lavizzo-Mourey, David R. Williams, "Strong Medicine for a Healthier America (Introduction)," *American Journal of Preventive Medicine,* 40 (2011): S1.

2. Paula A. Braveman, et al., "Broadening the Focus: The Need to Address the Social Determinants of Health," *American Journal of Preventive Medicine*, 40, no. 1S1 (2011): S4–18.

3. Robert Wood Johnson Foundation, Commission to Build a Healthier America, "Issue Brief 7: Message Translation" (2009).

4. See M. G. Marmot, et al., "Employment Grade and Coronary Heart Disease in British Civil Servants," *Journal of Epidemiology and Community Health,* 32, no. 4 (1978): 244–49. M. G. Marmot, et al., "Health Inequalities among British Civil Servants: The Whitehall II Study," *Lancet,* 337 (1991): 1387–93. The following websites describe Marmot's ongoing work in this area in the United Kingdom and Europe: http://www.marmotreview.org/ and http://www.ucl.ac.uk/silva/epidemiology/people/marmotmg.htm.

5. See Atul Gawande, "Can We Lower Medical Costs by Giving the Neediest Patients Better Care?" *New Yorker* (January 24, 2011), http://www.newyorker.com/reporting/2011/01/24/110124fa_fact_gawande.

6. Robert F. Schoeni, et al., "The Economic Value of Improving the Health of Disadvantaged Americans," *American Journal of Preventive Medicine,* 40 (2011): S67.

7. Braveman, et al., "Broadening the Focus," S1.

8. Ibid., S5.

9. Wendy E. Parmet, *Populations, Public Health, and the Law* (Washington, DC: Georgetown University Press, 2009), 31. Also see Scott Burris, Ichiro Kawachi, Austin Sarat, "Integrating Law and Social Epidemiology," *Journal of Law, Medicine and Ethics*, 30 (2003).

10. These five areas represent those most commonly used by MLPs to screen for unmet legal needs. The mnemonic I-HELP (developed by Megan Sandel, MD) addresses issues that have been shown to directly impact patient health and well-being, including Income supports; Housing and utilities; Education and employment; Legal (immigration) status; and Personal and family stability and safety. For further discussion of healthcare provider screening for these issues, see Chén Kenyon, Megan Sandel, Michael Silverstein, et al., "Revisiting the Social History for Child Health," *Pediatrics*, 120 (2007): e734–38.