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BEYOND EXTERNSHIPS: HEALTH LAW CO-OPS

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I. INTRODUCTION

For health law students—and their professors—times are good yet worrisome. Times are good because of the proliferation of health law programs,¹ courses, and scholarship,² not to mention the widening interest in health law spurred by the passage of national health reform and the Supreme Court’s review of its constitutionality.³ In addition, health law is a growing field of practice, meaning that despite the recession, job opportunities remain. Students well skilled in the field have a reasonable expectation of being gainfully employed.⁴ But times are also troubling because academic health law cannot be isolated from the growing storms surrounding legal education. For many years, commentators have charged law schools with poorly preparing students for legal practice.⁵ That critique has recent-

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1. As of October 2011, there were at least twelve law schools offering an LLM degree in health law (or a closely related fields such as law and medicine), and many more law schools offering a certificate or concentration in health law. Research on file with author. In addition, the Public Health Law Network reports that as of January 2012, there are twenty-five accredited schools offering a JD/MPH program. *JD and MPH: Public Health Law and the Dual Degree*, THE NETWORK FOR PUBLIC HEALTH LAW (Aug. 22, 2011 9:46 AM), http://www.networkforphl.org/the_network_blog/2011/08/22/58/jd_and_mph_public_health_law_and_the_dual_degree.

2. In 2004 Mark A. Rothstein noted that the growth of “health law and bioethics has been nothing short of amazing.” Mark A. Rothstein, *The Growth of Health Law and Bioethics*, 14 HEALTH MATRIX 213, 213 (2004). All signs point to the continued growth of the field in subsequent years. In 2006 Henry T. Greely surveyed the field of academic health law and noted the increasing numbers of faculty specializing in the area, the wide range of courses, and the mushrooming of health law scholarship. Henry T. Greely, *Some Thoughts on Academic Health Law*, 41 WAKE FOREST L. REV. 391 (2006).

3. *Florida ex rel. Att’y Gen. v. U.S. Dep’t of Health & Human Servs.*, 648 F.3d 1235 (11th Cir. 2011), *cert. granted*, 132 S. Ct. 604 (Nov. 14, 2011) (No. 11-398); Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (to be codified as amended at scattered sections of the Internal Revenue Code and in 42 U.S.C.).

4. See Jennifer Bard, *I’m Interested In Health Law, Now Where Can I Get A Job?*, 14 N.Y. STATE BAR ASS’N J. 73 (2009).

5. See AM. BAR ASS’N, *NARROWING THE GAP—STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES* (1992) (“MACCRATE REPORT”); WILLIAM

ly gained popular traction as evidenced by *New York Times* reporter David Segal's article charging that law students do "not get, for all that time and money [spent on law school], . . . much practical training."⁶ At a time when students rightly worry about rising debt levels and limited employment prospects, Segal's rebuke has a resonance that health law faculty cannot ignore.

Health law programs have responded to such concerns in a variety of ways. The many innovative health law clinics, externship, and legal-medical partnerships, some of which are discussed in other contributions to this symposium,⁷ provide valuable opportunities for health law students to attain critical health law lawyering skills. At Northeastern University School of Law ("NUSL"), we embrace such programs,⁸ but also offer a unique program, co-operative legal education, that ensures that all J.D. students, in the words of this symposium, go "beyond the classroom."⁹ Although NUSL's co-op program is not limited to health law—indeed it is a requirement for every JD student—it seems especially well-suited for health law.

Below I outline some key features of the co-op program. I then turn to health law co-ops, describing what they are and the opportunities, experiences, and skills they offer students. I conclude with some brief personal reflections about some of the unexpected benefits that health law co-ops may provide to health law faculty.

II. CO-OP 101

"Co-op" is the term that NUSL uses to connote the four full-time, ten to twelve week legal placements that every JD student must complete. These four co-op placements occur during the students' second and third years of law school, and are required in addition to a full complement of academic credits. Thus in contrast to an externship program, students do not take co-ops in lieu of other academic electives.

In order to accommodate four co-ops, each NUSL class is divided into "rotations" at the end of the first year. Two weeks after their spring final

M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) ("CARNEGIE FOUNDATION REPORT").

6. David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, at A1.

7. See forthcoming 9 IND. HEALTH L. REV. (Aug. 2012).

8. For example, the law school has a public health law clinic as well as domestic violence and poverty law clinics, both of which expose students to health law problems. Students in the JD/MPH program also do a field placement working for a health provider, regulator, or advocacy organization.

9. Drexel University's Earle Mack School of Law also has a co-op program, but it is quite different than Northeastern's. In particular, it is not mandatory, lasts only one semester, and does not rely exclusively on full-time placements. For more information about Drexel's program, see *Hands on Learning: The Co-op Program*, DREXEL UNIV. EARLE MACK SCH. OF LAW, <http://earlemacklaw.drexel.edu/academics/co-op/> (last visited May 26, 2012).

exams, half of the class returns to school to commence their upper level studies. The other half goes “on co-op,” working full-time in a legal placement, under the supervision of an attorney. Students receive a written evaluation of their performance on their co-op which becomes part of their academic transcript. At the end of the summer, the rotations switch. The students who were on co-op return to school; those who were in school go on co-op. All told in 2010, NUSL students worked in 812 full-time co-op placements.¹⁰

One of the hallmarks of the co-op program is the diversity of placements. In 2010, students worked in twenty-eight states and fourteen countries.¹¹ There were 226 placements in legal services offices, nonprofit advocacy groups, and public defenders offices; 171 placements in government agencies; 163 placements with judges, 178 with law firms large and small, and 74 with for-profit or not-for profit organizations.¹² Some students are fortunate to be paid by their employers for the work they do; many others receive subsidies and grants from the law school to support co-ops with non-profit organizations and government agencies.

Critically students receive substantial counseling and guidance in order to prepare for their placements. The school’s co-op office runs a series of programs throughout the first year that introduce students to different types of legal careers, how to interview for jobs, and how to work on the job. In addition, students receive individual counseling as they apply for and select positions (the school has relationships with over 700 co-op employers, but students can also “make their own co-op”).¹³ Prior to going on their first co-op, students take a short but intensive “Pathways to Practice” course introducing them to issues of professional ethics and professionalism.

III. HEALTH LAW CO-OPS

Co-ops are an integral part of the law school’s health law program.¹⁴ As health law scholars have noted, the field encompasses an extremely wide range of complex and seemingly disparate issues.¹⁵ Although course offer-

10. Caitlin Palm & Jeffrey A. Smith, *The Cooperative Learning Model*, in GUIDE TO PUBLIC SERVICE EXPERIENTIAL LEARNING PROGRAMS IN LEGAL EDUCATION 20–21 (2011), https://pslawnet.org/uploads/Temporary_Links/CAPSILS-NALP_Public_Service_Experiential_Learning_Guide_-_November,_2011.pdf (last visited Feb. 10, 2012).

11. *Id.*

12. *Id.*

13. *Id.* at 23.

14. Much of the discussion below is based on my over twenty-five years of teaching health law courses at NUSL. No studies exist as to the impact of health law co-ops. NUSL, however, is currently in the process of undertaking a rigorous assessment of its overall program, focusing in particular on co-op.

15. Greeley, *supra* note 2, at 399. Scholars have sometimes bemoaned the particularity of health law, asking whether it should even rightly be considered to be a true field of law.

ings have mushroomed, no law school, and especially no small law school, can offer courses on every aspect of the field, from the law pertaining to assisted reproductive technology to the legal implications of electronic medical records; from global health to the regulation of nursing homes. Nor can any law school's clinical program provide students with professional experiences in all of the different settings in which health law lawyers practice. Externship programs can provide a broader range of opportunities, but traditionally students are limited to a single externship. With co-op, in contrast, all students have the opportunity to experience four vastly different practice settings.

The health law co-ops that our students have taken in the past several years reflect the field's breadth.¹⁶ For example, students have worked with low-income patients at Boston Medical Center's Medical-Legal Partnership for Children, Health Law Advocates, and numerous legal services offices around the nation. Students have also worked for many hospitals and health-care provider systems, such as Partners Health Care, the largest provider network in Massachusetts, and Winchester Hospital, a small community hospital. Students have also completed co-ops for the health law departments of large law firms, which represent hospitals and insurers, as well as for small and mid-size firms that specialize in medical malpractice or toxic tort cases. Co-op students also work for biotechnology companies and the law firms that specialize in biotech and pharmaceutical law. In addition, students work for public health and healthcare regulatory agencies, at the municipal, state, and federal levels. Given NUSL's commitment to public interest law, it is not surprising that many of our students chose to work for non-governmental organizations ("NGOs") that advocate on a variety of social justice issues, including HIV/AIDS, reproductive rights, environmental justice, and health and human rights. In all of these different settings students may and usually do encounter health law issues that are not generally covered in the law school's curriculum.

The design of the co-op program promotes a self-directed, iterative approach to education that allows health law students to select a path reflecting their own interests and securing their own professional development. Although many students only do one health law co-op, others opt to do several.¹⁷ By working for very different co-op employers, students have

See, e.g., Mark A. Hall & Carl Schneider, *Where is the "There" in Health Law? Can it Become a Coherent Field?*, 14 HEALTH MATRIX 101 (2004).

16. Reflecting the reality of practice, the law school's co-op office does not formally designate or count co-ops by area of practice. After all, students working in a legal services office may find that they spend either a great deal or very little of their time on a health law issue. Likewise students who work for a hospital may find that they end up working primarily on issues that do not require much knowledge of health law. The fact that lawyers who represent health care providers often work on issues not relating to health law is one important lesson that co-op offers students.

17. Almost none of our students will do four health law co-ops. We discourage such specialization and urge students who believe that they want to work in health law to take at

the opportunity to learn about and taste the myriad ways that lawyers practice health law, while adding progressively to their practice skills. Sometimes those experiences change a student's decision as to what type of work he or she wants to do upon graduation. Other times, a co-op experience reaffirms a student's interest in a particular area. Some students then choose to specialize, doing two or more co-ops in a particular sub-area of health law, such as working for two different medical malpractice firms or several health and human rights NGOs.

All students in the law school's JD/MPH program (with Tufts University School of Medicine) are required to do at least one "public health law co-op," a category that is interpreted very loosely to encompass almost any co-op that exposes to students to issues of health or public health law. Each year the students graduating from the program must write a brief capstone paper, reflecting upon their experiences in the program and the different skills and perspectives that they have gained from studying two different professions. These papers offer an illuminating window into the value of health law co-ops. Almost without exception, students remark on the challenges they faced and the new skills they developed during their health law co-ops. They frequently note that their co-ops offered them the opportunity to integrate the academic lessons and professional values they were taught in their two different degree programs.

For faculty the value of health law co-ops is constantly evident in the classroom. Perhaps because many students in a health law course will have either just finished working on a health law co-op or are in the process of looking for one, our health law students tend to be extremely engaged participants in classroom discussions. Indeed, the iterative process promoted by the students' rotation between co-op and school underscores to the students the relevance of what they are learning in their health law classes. Many students seem to relish theoretical discourse in part because it provides them with the opportunity to reflect upon and make sense of the work they have just completed on co-op.

Class discussions are frequently enhanced because our health law students bring a plethora of different vantage points to the classroom. In a class about health reform, for example, I am apt to have students who have worked for consumer health advocacy groups such as Health Care For All, students who have worked for large health care providers, such as Partners Health, and students who have worked for insurers and federal regulators. Because these students have represented different players in the health care system, they can proffer different perspectives on the policy issues that we discuss, as well as different views as to how health reform will impact health law practitioners. A similar pattern has occurred in my public health

least one co-op in a different field. Moreover a very large percentage of students opt to do at least one judicial clerkship, believing that it will give them an unparalleled opportunity to hone their legal research and writing skills.

law courses. Whether the topic is HIV/AIDs or tobacco control, I've almost always had students who have represented different stakeholders. The result is a rich discussion not only about the legal and policy implications of the topic at hand, but also about the challenges and conflicts that health law lawyers face as they represent different types of clients.

IV. CO-OP AND THE WORLD OF PRACTICE: A PERSONAL VIEW

The discussion thus far has emphasized how co-op by taking students outside of the academy enriches their education and skill development. The title of this symposium, however, points to a different issue: how do health law faculty interact with the outside world? To answer that question in an essay on health law co-ops, let me conclude with some personal observations.

As a health law professor, I have always viewed my own career, as I know many other health law professors have, as rooted in both theory and practice. Indeed, I have long felt that health law, founded as it is on a set of vital human needs and complex social institutions, rather than abstract questions of legal doctrine, is particularly suited to scholars who wish to remain engaged in the "real world." Personally, the co-op program has helped me to do so.

One way co-op has tied me to the world outside the academy is by forcing me to stay abreast of the type of practice issues that students bring to class. After all, if my students are apt to share their practice experience in the classroom, I had better keep up with what health law lawyers are actually doing. But co-op has also helped me to meet and interact with the many health law practitioners who supervise my health law students. For example, in the late 1990s my research assistant, Daniel Jackson, was working on co-op for the AIDS Law Project of the Gay and Lesbian Advocates and Defenders in Boston. There he worked on a disability discrimination case involving a woman who was denied dental care because of her HIV status. Jackson told his supervisor, Bennett Klein, that I had done research relevant to the issues arising in the case and that we should meet. We did. As a result, I ended up having the opportunity to serve as co-counsel in *Bragdon v. Abbott*,¹⁸ the Supreme Court's first HIV discrimination case. Of course, most of the time, the interactions spawned by co-op don't lead to working on a Supreme Court case. But many less notable invitations to go outside of the academy occur regularly, as students bring not only their experiences but also their contacts back to the law school.

Most important, however, is the environment that co-op fosters. As an integral part of NUSL, co-op helps to nurture an atmosphere that encour-

18. *Bragdon v. Abbott*, 524 U.S. 624 (1998) (holding that an individual who was HIV positive had a disability within the meaning of the Americans with Disabilities Act).

ages a deep respect for the practice of law, especially on behalf of the public interest. It is this ethos that has permitted if not encouraged me to join my students in rotating back and forth between the academy and the world of practice. Whether this has made me a better scholar or teacher, I leave to others to assess. I do know it has made for a more rewarding life as a health law professor.