

# Bioethics Matters

A Newsletter for the Friends  
of Biomedical Ethics at UVA



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Visit our website at: <http://www.healthsystem.virginia.edu/internet/bioehums>

## Director's Letter

Today I participated in one of our many teaching sessions for medical students, this time with second-year students. The topic was "informed consent" and its many variations and misconceptions. It's startling to note how early in their careers students pick up on the prevailing misunderstanding of the process of informed decision making: that it is almost solely legally grounded and legally driven. Our resident scholar of bioethics and law, Lois Shepherd, did a wonderful job of teaching them otherwise, emphasizing that the "informed consent" process is, first and foremost, an *ethical* obligation of healthcare professionals toward their patients, one that in reality rarely plays a significant role in any legal action. But once again I am reminded of

how easily all of us in medicine can confuse legal constraints and moral obligations, and how tempting it is to tune our moral senses only to the standard set by the law, disregarding the depth and breadth of professional and organizational ethical requirements.

In other words, I am reminded of how much work—especially of the educational sort—there is for us to do, and how much of it is not encompassed by the ins and outs of ethics consultation about discrete clinical dilemmas but arises in the everyday interactions of clinicians and patients, staff and administrators, medicine and society. Of course, bioethics is not alone in recognizing the ever-widening scope of its field of interest and attention. Clinical medicine, too, increasingly acknowledges the need to look beyond the pathophysiology at play in a patient's illness to consider the patient's life as a whole and how this situation fits within it. Moreover, increasingly we realize that healers must sometimes turn the healing lens on themselves to examine how they are faring, how their own health—mental, emotional, physical—is holding up in the rough-and-tumble of daily work.

One of the many ways in which clinicians *and* ethicists are

encouraged to care for themselves is to write about our experiences and the effects they have on our lives and our sense of ourselves as persons with a calling to help others in meaningful ways. Our Center, through the efforts of our Director, Dr. Danny Becker, publishes *Hospital Drive*, an on-line journal of such writings—prose and poetry, plus non-narrative forms of expression, such as photography—that I recommend you dip into from time to time. You'll find your spirit refreshed, your experiences corroborated, your mind opened, and maybe your own writing juices stimulated. Here's the link: <http://hospitaldrive.med.virginia.edu/>.

I'll close with a reminder that DSHEP is coming up: March 16-18, 2011. Check out the schedule elsewhere in the newsletter or in the brochure mailed to you earlier. You'll see repeats of familiar topics that never grow old as well as innovative new sessions designed to keep you thinking about all that changes and complicates the multifarious discipline that is bioethics. Hope to see you here in March! ♦

*Margaret Mohrmann*

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## Recent Faculty Publications/Presentations/Activities

### Donna Chen

#### Publications

+ Mills A., Rorty M., Isabella L., Chen D. (2010) Viewing Trading Zones Developed to Advance Health as Complex Adaptive Systems. Chapter 13 in *Trading Zones and Interactional Expertise*. Edited by Gorman M. (MIT Press): 267-281.

+ Chen DT. Perspective Taking and Advance Directives. *Virtual Mentor*. 2010; 12:893-897. <http://virtualmentor.ama-assn.org/2010/11/oped1-1011.html>

#### Presentations

+ September 16, 2011 Chen DT, Foster-Riley M. "Sharing results with participants in large-scale genomic studies: Pitfalls, perils, possibilities." (key note presentation) GARNET/Genomics and Randomized Trials Network Steering Committee meeting. Bethesda, MD.

+ October 28, 2010 Parsons MR, McCollum MA, Childress MD, Chen DT. "What I Did This Summer: The Anatomy Video Project." (colloquium presentation). Food for Thought: Roundtable Conversations in Ethics/Humanities. Center for Biomedical Ethics and Humanities. University of Virginia School of Medicine. October 28, 2010.

+ November 11, 2010. Beach S, Smith J, Santa-Cruz R, Raisinghani R, Chen D. "Development of an Active-Learning-Based Curriculum for Medical Students, Interns, and Residents on a Psychiatric Consultation Service." (poster presentation) 57<sup>th</sup> Academy of Psychosomatic Medicine Annual Meeting. Marco Island, FL. November 11, 2010.

### Podcast

+Chen DT. Can Neuroscience Help Us Improve Advance Directives? American Medical Association Ethics Talk Podcasts. November 2010. <http://virtualmentor.ama-assn.org/site/ethicstalk.html>

### Ann Mills

#### Publications

+Mills A., Engelhard C., Tereskerz P, Truth and Consequences – Insurance-Premium Rate Regulation and the ACA, *New England Journal of Medicine* September 2, 2010 363 (10): 899-901. First published on line at <http://www.nejm.org/doi/full/10.1056/NEJMp1006344> July 10, 2010

+Mills A., Rorty M., Isabella L., Chen D. (2010) Viewing Trading Zones Developed to Advance Health as Complex Adaptive Systems. Chapter 13 in *Trading Zones and Interactional Expertise*. Edited by Gorman M. (MIT Press): 267-281.

#### Activities

+2010: **Biotechnology Industry Organization**. Contract. Study of DNA Patent Renewal Rates. A study conducted and prepared for publication with Patti Tereskerz. \$40,000.

### Lois Shephard

#### Publications

+Shepherd, Lois L. and Hall, Mark A., Patient-Centered Health Law and Ethics. *Wake Forest Law Review*, Forthcoming; *Virginia Public Law and Legal Theory Research Paper No. 2010-34*. Available at SSRN: <http://ssrn.com/abstract=1697652>

+Shepherd, Lois L., Different Ways to Understand Patient-Centered Health Law. *Wake Forest Law Review*, Forthcoming; *Virginia Public Law and Legal Theory Research Paper No. 2010-35*. Available at SSRN: <http://ssrn.com/abstract=1697658>

#### Presentations

+ "April 15-16, 2010 co-organizer, moderator and presenter of a conference entitled, "Patient-Centered Law and Ethics," at Wake Forest School of Law.

### Patti Tereskerz

#### Publications

+Mills A., Engelhard C., Tereskerz P, Truth and Consequences – Insurance-Premium Rate Regulation and the ACA, *New England Journal of Medicine* September 2, 2010 363(10): 899-901. First published on line at <http://www.nejm.org/doi/full/10.1056/NEJMp1006344> July 10, 2010.

#### Activities

+September 30, 2010. Carillion Clinic's Fall Ethics Conference, "Conflicts of Interest in Health Care: How Can They Be Managed?" Roanoke, Virginia. A New Model to Limit Financial Conflicts of Interest.

+2010: **Biotechnology Industry Organization**. Contract. Study of DNA Patent Renewal Rates. A study conducted and prepared for publication with Ann Mills. \$40,000. ♦



## In the News:

### Health Care Reform

Mills, Engelhard and Tereskerz point out in a recent *New England Journal of Medicine* essay<sup>1</sup> that the Patient Protection and Affordable Care Act (PPACA), requires the Health and Human Services (HHS) Secretary, along with individual states, to establish a process for the annual review of “unreasonable” increases in health insurance premiums. No one is sure of what unreasonable increases look like (data from the states and the National Association of Insurance Commissioners is being collected by HHS to attempt some sort of national definition.) But the Act fails to grant federal regulators the power to deny the rate increases if they are deemed unreasonable. Without such federal action, states most likely will continue to use different, often lax, and sometimes no criteria for identifying unreasonable premium hikes.

Nevertheless, insurance companies know that they are being watched and they know that rising insurance premiums could provide momentum for further regulation and oversight. As governmental entities begin to monitor and limit those plans with unreasonable premium increases, insurance companies will have new incentives to try and eliminate unnecessary costs in the delivery of care. Mills, Engelhard and Tereskerz speculate that this could lead this could usher in a resurgence of the 1990’s-style managed care era in which health care utilization and

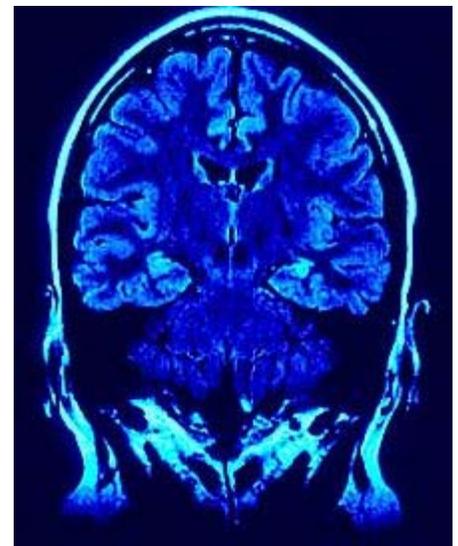
spending were reduced through the use of rigid capitated fees and burdensome requirements that led to widespread accusations surrounding the withholding of necessary medical care. The potential for a repeat of the confusion and disorder associated with 1990’s style managed care makes it more imperative that reforms which have the potential to reduce costs while maintaining or increasing quality such as those outlined by the Commonwealth Fund (which include the establishment of team-based approaches to patient care, the wide dissemination and use of electronic medical records, and the creation of the Patient-Centered Outcomes Research Institute) are realized. If successful, these reforms, by reducing costs, could bridge the tension among government regulators demanding lower insurance premium increases, health insurers placing limits on medical care to achieve savings, and providers pushing back against what they perceive as private industry regulation of medical practice. Without a comprehensive approach to bend the health care cost curve while improving the quality and safety of patient care, neither the promise of premium rate increase stabilization nor the PPACA as a whole will be actualized. ♦

1. Mills A, Engelhard C, Tereskerz P, Truth and Consequences — Insurance-Premium Rate Regulation and the ACA, *New England Journal of Medicine* September 2, 2010 363 (10): 899-901. First published on line at <http://www.nejm.org/doi/full/10.1056/NEJMp1006344> July 10, 2010

### Can Neuroscience Help Align Preferences of Patients and Surrogate Decision Makers?

Center faculty Donna Chen was recently featured in an Ethics Talk podcast on Virtual Mentor, talking about the role neuroscience might play in understanding advance directives. Donna points to research that consistently shows a gap between patients' preferences for end-of-life care and what their surrogate decision makers think those patients want. To help align patients and their surrogates more closely, Chen wonders whether neuroscience and, more specifically, a specific form brain imaging—fMRI—can help.

Donna’s podcast can be found at <http://virtualmentor.ama-assn.org/site/ethicstalk.html> and a related op-ed piece can be found at <http://virtualmentor.ama-assn.org/2010/11/oped1-1011.html> ♦



## *Ethics Conundrums: Saying One Thing and Doing Another*

**All of us are aware of the harm financial conflicts of interest can cause. We hold our healthcare providers accountable when such a conflict results in potential or actual harm. But companies are, or should also be, accountable when they proclaim themselves to strive for excellence in personal relationships and behavior characterized by honesty, fairness and integrity. Below is another example of a large company saying one thing but doing another.**

Abbott Laboratories has maintained a close relationship with Dr. Mark Midei for a number of years. Dr. Midei is formerly a St. Joseph Medical Center (Baltimore, MD.) cardiologist. This relationship included Abbott funding luxury travel for Dr. Midei and lavish parties catered at his home. But according to *The New York Times*, parties at his home were just a small part of the millions in salary and perks showered on Dr. Midei by Abbott for putting more stents in more patients than almost any other cardiologist in Baltimore. (1)

Members of the Senate Finance Committee senators, who obtained thousands of internal documents, letters, and emails from both Abbott and St Joseph, after *The Baltimore Sun*, raised questions about his practice, found that Abbott had long been rewarding Midei for being a high-volume user of its stents. (2) The report issued by the Senate Finance Committee which was obtained by *The New York Times* concludes that Midei, "...may have implanted 585 stents which were medically unnecessary from 2007 to 2009. Medicare paid \$3.8 million of the \$6.6 million charged for those procedures." (1) Hundreds of lawsuits against Dr. Midei and St. Joseph have followed. And St. Joseph's has agreed to pay the federal government 22 million dollars to settle a whistleblower lawsuit over the implantations, without admitting any guilt.

Dr. Midei has denied wrongdoing and some have decried his lost reputation. But regardless of the outcome of these lawsuits, regardless of whether Dr. Midei acted inappropriately and unethically, this is another example of large companies saying one thing and doing another. Abbott Laboratories' "Promise for Life" is a statement that describes for Abbott's customers, communities, shareholders and stakeholders what Abbott believes in, what Abbott values, and what Abbott strives to deliver in day to-day work. One promise made in this statement is, "We strive to earn the trust of those we serve by committing to the highest standards of quality, excellence in personal relationships, and behavior characterized by honesty, fairness and integrity." (3) It does not appear that Abbott meant what it says about behavior characterized by honesty, fairness and integrity.

Moreover, Abbott is a member of both the Pharmaceutical Research and Manufacturers of America and the Advanced Medical Technology Association both of which have introduced prohibitions on some kinds of interactions with health-care professionals and have urged its members to accept these prohibitions and to certify that they have done so. These prohibitions include lavish meals, which presumably includes lavish parties, and luxury travel as well as unreasonable consulting fees and grants. It does not appear that Abbott has taken these prohibitions seriously.

It may interest our readers that Abbott Laboratories has been named by *Fortune* magazine the most admired company in the pharmaceutical industry. Companies are ranked on nine attributes: innovation, people management, use of corporate assets, social responsibility, quality of management, financial soundness, value as a long-term investment, quality of products/services, and global competitiveness. (4) Does social responsibility include wasting tax payer money? Does it include potentially putting patients at risk by performing unnecessary procedures?

Our hope is that the Physician Payment Sunshine Provisions in the Patient Protection Affordable Care Act will put a brake on such interactions. The Sunshine Provisions require manufacturers such as Abbott to report to congress and the states any payment of any kind more than ten dollars to physicians and teaching hospitals. The information will be collected and made available to all of us in the form of searchable database.

Disclosure may not eliminate questionable ties between physicians, teaching hospitals, and industry but it does allow patients and their families to know what kind of ties their providers have with industry and how these ties might compromise the care they receive.

### References

1. G. Harris. Doctor Faces Suits Over Cardiac Stents. *The New York Times*. Dec 5, 2010 available at [http://www.nytimes.com/2010/12/06/health/06stent.html?\\_r=1&pagewanted=2](http://www.nytimes.com/2010/12/06/health/06stent.html?_r=1&pagewanted=2)
2. T. Bishop. Federal Report on Stent Procedures Finds Potential Fraud. *The Baltimore Sun*. Dec 6, 2010 available at <http://www.baltimoresun.com/health/bs-md-senate-stent-report-20101205,0,7820770,full.story>
3. Abbott Laboratories website. "Promise" available at [http://www.abbott.com/global/url/content/en\\_US/10.10:10/general\\_content/General\\_Content\\_00003.htm](http://www.abbott.com/global/url/content/en_US/10.10:10/general_content/General_Content_00003.htm)



## DSHEP-2011

The Center for Biomedical Ethics and Humanities, in cooperation with UVA's Office of Continuing Medical Education, is pleased to announce the 2011 Developing Skills for Healthcare Ethics Programs (DSHEP), March 16-18, 2010 at the UVA Jordan Hall Conference Center.

The overall objective of the program is to enhance the skills and knowledge of people serving on hospital ethics committees and ethics consultation services.

This year specific objectives include:

1. Explain new policies and procedures applicable to ethics programs, such as new Joint Commission requirements.
2. Explain the concept of moral distress and analyze situations of distress in terms of their relation to organizational systems, irreducible conflict, or unsolvable situations.
3. Relay to members of ethics consultation services in their institutions skills, such as case analysis, and information, such as that pertaining to recent legal and scientific determinations affecting patient care and research,
4. Debate current controversial ethical issues in health care and research, such as care of persons with disorders of consciousness and religious diversity.

**Program registrants are expected to have already obtained the basic education expected of most ethics committee members.** The program's faculty and presenters include members of the UVA ethics program, the UVA Ethics Consultation Service, as well members of ethics programs from other institutions. Program registration will be limited so registrants are able to fully interact with colleagues and faculty.

The program is structured so that participants can attend the one day, two days, or the whole program. Program fees are respectively \$250, \$500, and \$650. The fees include continental breakfasts, boxed lunches, CMEs or CEUs, and conference materials.

For a detailed look at the schedule, please see the insert or visit our website <http://www.medicine.virginia.edu/community-service/centers/biomedical-ethics-and-humanities/home-page>.

For registration or to find more details, please contact Carrie Gumm at [cg2b@virginia.edu](mailto:cg2b@virginia.edu), or 434-924-5695. ♦

Questions, comments  
and items of interest  
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## BIOETHICS MATTERS

*The Center for Biomedical Ethics  
and Humanities*



**DSHEP 2011  
March 16<sup>th</sup>- 18<sup>th</sup>, 2011**

**WEDNESDAY, March 16th**

- 8:00 -8:30 Welcome & introductions – Donna Chen MD
- 8:30-10:15 Moral questions/medical questions: perceptions, methods, and roles – Margaret Mohrmann MD, PhD
- 10:15-10:30 Break
- 10:30-11:45 The work of the hospital ethics committee – Robert Boyle MD
- 11:45-12:30 Boxed Lunch
- 12:30-1:30 Medical Center Hour
- 1:45 – 2:45 Ethics consult services: What they do and how they do it well – Earl White MD & Carol Wilson MSHA
- 2:45-3:00 Break
- 3:00-4:00 Ethics consult services (continued)
- 4:00-5:00 Cases – Walt Davis MD

**THURSDAY, March 17th**

- 8-8:30 Welcome & reflection on Wednesday's content – Donna Chen MD
- 8:30-9:30 Integrity – Margaret Mohrmann MD, PhD
- 9:30-9:45 Break
- 9:45-11:45 Moral distress – Ann Hamric PhD, RN
- 11:45-1:00 Boxed Lunch
- 1:00-2:30 Surrogate decision making, fertility policies, & disorders of consciousness – Lois Shepherd JD & Donna Chen MD
- 2:30-2:45 Break
- 2:45-4:00 Surrogate decision making, etc. (continued)
- 4:00-5:00 Ethical significance of religious diversity – Margaret Mohrmann MD, PhD

**FRIDAY, March 18th**

- 8:00-8:30 Reflection on Thursday's content – Donna Chen MD
- 8:30-9:30 Implications of health care reform – Carolyn Engelhard MA
- 9:30-10:30 Difficult discharges – Walt Davis MD
- 10:30-10:45 Break
- 10:45-11:45 Participating in clinical research: ethical questions – Donna Chen MD
- 11:45-12:00 Final reflections – Donna Chen MD
- 12:00 ADJOURN
-