



Special Committee on
Bioethics and the Law



2010 ANNUAL MEETING GUIDE TO BIOETHICS RELATED PROGRAMS

ABA2010

SAN FRANCISCO Annual Meeting
August 5-10



YOUR EXPERIENCE
YOUR COMMUNITY

THE AMERICAN BAR ASSOCIATION
Special Committee on Bioethics and the Law

presents a *FREE CLE* program

MYRIAD GENETICS: A NEW ROADMAP TO PATENTING GENES?

Saturday, August 7 • 8:30 am to 10:00 am
Room 2024, 2nd Floor, Moscone Center West

This program will dovetail the Special Committee on Bioethics and the Law's previous program which discussed the pros and cons of predictive genetic testing. On March 29, 2010, the U.S. District Court of the Southern District of New York invalidated the patents for the BCRA1 and BCRA2 genes, predictors for ovarian and breast cancer, in *Association for Molecular Pathology, et al. v. United States Patent and Trademark Office, et al.*, No. 09-Civ-4515 (S.D.N.Y.) ("Myriad Genetics"). Many had thought the lawsuit would not survive the summary judgment phase, since patents have been issued on living organisms since 1980 in the landmark Supreme Court decision, *Diamond v. Chakrabarty*. The Myriad Genetics case will be appealed, but what are the implications for existing patents, genetic testing, and the future for research and development and individuals? Please join a panel of national experts as they discuss these and other important questions.

Moderator:

Nanette R. Elster, JD, MPH

Director, Health Law Institute, DePaul University College of Law, Chicago, IL

Panelists:

Bernard Lo, MD

Director, Program in Medical Ethics, University of California San Francisco Department of Medicine,
San Francisco, CA

Kayhan P. Parsi, JD, PhD

Associate Professor of Bioethics & Health Policy, Neiswanger Institute for Bioethics and Health Policy,
Loyola University Chicago Stritch School of Medicine, Chicago, IL

Additional Sponsors:

Health Law Section, Section of Individual Rights and Responsibilities,
Section of Science and Technology Law, Division for Public Education, Division for Public Services

THURSDAY, AUGUST 5

2:00 p.m. to 3:30 p.m.

NEUROSCIENCE, NEGOTIATION AND PERSUASION: APPLICATIONS AND IMPLICATIONS IN LITIGATION AND DISPUTE RESOLUTION

Room 3018, 3rd Floor, Moscone Center West

Neuroscience and neuropsychology have yielded many important insights about the functioning of the human brain, and in turn, the mind. These insights are of enormous importance to anyone involved in advocacy and persuasion, activities which form the core of litigation, negotiation, mediation and arbitration. However, until recently, there is precious little organized information about how neuroscience and neuropsychology impacts the practicing lawyer. In this presentation, a negotiation professor with significant trial experience will illuminate the intersection between the study of the brain and the practice of law.

Panelist: Richard Birke, Salem, Oregon

Sponsor: Section of Dispute Resolution

>Ticket Price: \$75, Judges: \$35, Govt Atty: \$35, Young Lawyer: \$75

3:45 p.m. to 5:15 p.m.

ARBITRATING COMPLEX CASES IN THE HEALTHCARE FIELD: EDUCATION OVER ADVOCACY

Room 3018, 3rd Floor, Moscone Center West

Arbitration is the favored method of resolving complex healthcare business disputes. In fact, these disputes can become so complex, and the concepts so unfamiliar, that the primary goal of counsel is often to educate, not to advocate. Put differently, a focus on advocacy without education may leave the arbitrator or panel wondering just what the dispute is really about, and how to approach resolution. This presentation will focus on some tried and true techniques for organizing complex health care case presentations so that counsel can both educate and advocate, and get the best result possible.

Panelists: Stephen Goff, Sacramento, California
James L. Poth, Irvine, California

Primary Sponsor: Section of Dispute Resolution

Additional Sponsor: Health Law Section

>Ticket Price: \$75, Judges: \$35, Govt Atty: \$35, Young Lawyer: \$75

FRIDAY, AUGUST 6

8:30 a.m. to 12:00 p.m.

JUSTICE 12.0—IS THERE AN APP FOR THAT?

Ballroom Salons 1/2, Lower B2 Level, San Francisco Marriott Marquis

The futuristic 2002 Tom Cruise blockbuster, “Minority Report,” depicts Washington, D.C. in the year 2054, where murders can be foreseen and the “guilty” arrested, before the crime has even been committed. Just how realistic is that scenario? What will the justice system really look like 20 or 30 years from now? This entertaining, interdisciplinary, multi-media presentation will take a provocative, “sci fi” look at the future of the justice system, focusing on the effects of phenomena such as demographic change and globalization, as well as developments in fields including nanotechnology and neuroscience. Will it be possible to use genetic testing, or other technology, to predict crime with sufficient specificity to prevent it? Will imprisonment be abandoned in favor of psychosurgery, and other new forms of preventing and/or punishing crime? In the future, will brain scans serve as reliable “lie detectors”? Or, better yet, will it be possible to “download” an individual’s brain, and (in effect) hit “replay” to view exactly what the person was seeing and thinking at a particular moment in time? What new types of evidence will be available in the future? What changes does the future hold for substantive law? With an increasingly crowded planet, what new areas of law will develop to deal with scarcity and ration resources? How will the law evolve to address the growing challenges of science and technology, and privacy (or lack thereof)? As one thoughtful academic has quipped, when it comes to the future, there are three types of people—“those who let it happen, those who make it happen, and those who wonder what happened.” This is a complimentary CLE program.

Chair: Honorable Delissa A. Ridgway, New York, New York

Panelists: Jack L. Brown, Tulsa, Oklahoma

Fred Dust, San Francisco, California

Deborah Enix-Ross, New York, New York

Peter N. Fowler, Washington, D.C.

Mark J. Mills, J.D., M.D., Washington, D.C.

Honorable John R. Tunheim, Minneapolis, Minnesota

Primary Sponsor: Judicial Division

Additional Sponsors: General Practice, Solo and Small Firm Division, Senior Lawyers Division, Young Lawyers Division, Section of Administrative Law and Regulatory Practice, Criminal Justice Section, Section of Dispute Resolution, Section of Environment, Energy and Resources, Health Law Section, Section of Intellectual Property Law, Section of International Law, Section of Public Contract Law, Section of Science and Technology Law, Section of State and Local Government Law, Tort, Trial and Insurance Practice Section, Forum on Air and Space Law, Standing Committee on Federal Judicial Improvements, Standing Committee on Judicial Independence, Standing Committee on Legal Aid and Indigent Defendants, Standing Committee on Public Education, Center for Human Rights, Center for Racial and Ethnic Diversity, Coalition for Justice, Commission on

Immigration, Commission on Sexual Orientation and Gender Identity, Commission on Youth at Risk, Coordinating Council of the Justice Center, Council for Racial and Ethnic Diversity in the Educational Pipeline, Special Committee on Bioethics and the Law, American Immigration Lawyers Association, American Judicature Society, Conference of Chief Justices, International Association of Young Lawyers (AIJA), National Asian Pacific American Bar Association, National Association of Bar Executives, National Association of Women Judges, National Association of Women Lawyers, National Center for State Courts, National Conference of Bar Presidents, National District Attorneys Association, National Organization of Bar Counsel, The National Judicial College, The National LGBT Bar Association, UIA International Association of Lawyers, Center for Professional Responsibility

2:00 p.m. to 3:30 p.m.

FUNDAMENTALS OF MANAGED CARE & INSURANCE

Room 2020, 2nd Floor, Moscone Center West

Managed care, in the form of “Accountable Care Organizations,” has been given new life as one of the few cost containment strategies in federal health reform. Successful law practice in this area will require an excellent understanding of the fundamentals of managed care law and policy governing the rights and obligations of patients, payors, and providers. In addition to exploring the state and federal underpinnings of managed care, our expert panel will discuss the current trends in managed care; the legal and practical implications of these trends on both provider and health plan operations; and future issues that lawyers practicing in this area are likely to encounter. Lawyers who are new to the world of managed care or who simply want a refresher and update on hot topics in the area will benefit from this focused presentation.

Speakers: Michelle Apodaca, Austin, Texas
Cindy Ehnes, Sacramento, California
Shelley Hubner, San Francisco, California

Primary Sponsor: Health Law Section

Additional Sponsor: Special Committee on Bioethics and the Law

>Ticket Price: \$75, Judges: \$35, Govt Atty: \$35, Young Lawyer: \$75

2:00 p.m. to 3:30 p.m.

JUDGING AGING: THE QUIZ SHOW

Room 3002, 3rd Floor, Moscone Center West

How do age and aging affect the process of judging? Historically, the glare of the media spotlight has focused most critically on the octogenarian members of the Supreme Court. But age does have its advantages. President Ronald Reagan famously quipped that he would not exploit the “youth and inexperience” of his opponent. This highly-

interactive presentation will begin with a brief multi-media overview of the subject. Then, in an entertaining “game show” format, audience members will use hand-held technology to “vote” (anonymously) on the answers to quiz questions on topics including the specific cognitive functions used in the process of “judging.” After audience voting on a question is complete, a panel of experts will explain the correct response. The bottom line? What matters is not how old you are, or how old you feel – it’s how old you think! This is a complimentary CLE program.

Chair: Honorable Delissa A. Ridgway, New York, New York

Panelists: Honorable D. Brock Hornby, Portland, Maine
Honorable M. Margaret McKeown, San Diego, California
Wilfred van Gorp, Ph.D., New York, New York

Primary Sponsor: Standing Committee on Federal Judicial Improvements

Additional Sponsors: General Practice, Solo and Small Firm Division, Senior Lawyers Division, Section of Administrative Law and Regulatory Practice, Criminal Justice Section, Section of Dispute Resolution, Section of Environment, Energy and Resources, Section of Intellectual Property Law, Section of Public Contract Law, Tort, Trial and Insurance Practice Section, Forum on Air and Space Law, Standing Committee on Judicial Independence, Standing Committee on Legal Aid and Indigent Defendants, Standing Committee on Professionalism, Standing Committee on Public Education, Center for Human Rights, Center for Racial and Ethnic Diversity, Commission on Immigration, Commission on Lawyer Assistance Programs, Commission on Mental and Physical Disability Law, Commission on Youth at Risk, Coordinating Council of the Justice Center, Special Committee on Bioethics and the Law, American Immigration Lawyers Association, American Judicature Society, Conference of Chief Justices, International Association of Young Lawyers (AIJA), National Asian Pacific American Bar Association, National Association of Bar Executives, National Association of Women Judges, National Association of Women Lawyers, National Center for State Courts, National Conference of Bar Presidents, National District Attorneys Association, National Organization of Bar Counsel, The National Judicial College, The National LGBT Bar Association, UIA International Association of Lawyers, Center for Professional Responsibility

3:30 p.m. to 5:00 p.m.

INFORMATION SECURITY COMMITTEE MEETING: TECHNICAL AND LEGAL CHALLENGES TO HEALTH INFORMATION EXCHANGE

Stanford, 3rd Floor, Westin San Francisco Market Street
Health Information Exchange is moving forward, stimulated by billions of federal dollars and the specter of penalties for failure to engage. There is a gap between available technology and the laws regulating privacy and security of

health information. The panel will discuss the effects of this disconnect and the potential for resolving the challenges confronting health information exchange.

Sponsor: Section of Science and Technology Law

3:45 p.m. to 5:15 p.m.

CAREERS IN PUBLIC INTEREST LAW: PATHWAYS, OPTIONS, AND SOCIAL NETWORKING

Room 2016, 2nd Floor, Moscone Center West

Please join a discussion on careers in public interest law. The practice of public interest law is varied; it encompasses the protection of individual rights, the advancement of justice, and making improvements for the good of the general public. All of these important objectives can be accomplished through a variety of means and in many settings. Our expert panel of national and local practitioners representing the public interest, private, public, and non-profit sectors will discuss opportunities available to interested attorneys and law students. The panelists will share their own career paths, experiences, and general trends in the profession. The discussion also will focus on an American Bar Foundation study on how lawyers in public interest law organizations conceptualize and pursue their goals, as well as how the use of social networking can lead to a fulfilling practice in the public interest law arena.

Moderator: Casey Trupin, Seattle, WA

Panelists: Laura Beth Nielsen, Chicago, IL

Marina Sarmiento Feehan, San Francisco, CA

Hannah Yu, Sacramento, CA

Primary Sponsor: Division for Public Services

Additional Sponsors: Government and Public Sector Lawyers Division; Section of Individual Rights and Responsibilities; Section of State and Local Government Law; Standing Committee on Election Law; Standing Committee on Environmental Law; Standing Committee on Substance Abuse; Standing Committee on the Law Library of Congress; Commission on Homelessness and Poverty; Commission on Immigration; Commission on Mental and Physical Disability Law; Special Committee on Bioethics and the Law; American Bar Foundation; Division for Public Education

SATURDAY, AUGUST 7

8:30 a.m. to 10:00 a.m.

MYRIAD GENETICS: A NEW ROADMAP TO PATENTING GENES?

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Moderator: Nanette Elster, Chicago, IL

Panelists: Bernard Lo, San Francisco, CA

Kayhan Parsi, Chicago, IL

Primary Sponsor: Special Committee on Bioethics and the Law

Additional Sponsors: Health Law Section, Section of Individual Rights and Responsibilities, Section of Science and Technology Law, Division for Public Education, Public Services Division

10:30 a.m. to 12:00 p.m.

ABA CLE CENTRE SHOWCASE PROGRAM: MARIJUANA REGULATION AND FEDERALISM: A CLASH OF STATE AND FEDERAL POLICY

Room 2014, 2nd Floor, Moscone Center West

The number of states which have enacted marijuana control laws which conflict with federal law is increasing. Federal law can preempt state laws, but preemption is not self-enforcing, and the lack of standardized enforcement has resulted in confusion for legislatures, executive branches, courts, doctors and patients. The practices allowed under these state laws, including possession for medical purposes, have been tolerated by the federal Drug Enforcement Agency in some jurisdictions, while there have been persecutions in others. This timely program will address the variety of state laws presently in effect, the effects which have been seen since their implementation, and the scope of the exception created by the Justice Department's announcement that medical dispensaries complying with state law will not be targeted for federal prosecution, and the growing interest of many additional jurisdictions in establishing medical marijuana distribution schemes. In the event the King County (Washington) Bar Association moves forward with its planned House of Delegates resolution to de-federalize the control of marijuana, the program will be expanded to discuss the resolution. This is a complimentary CLE program.

Moderator: H. Robert Fiebach, Philadelphia, Pennsylvania

Panelists: Professor Jesse Choper, Berkeley, California

Allen Hopper, Santa Cruz, California

Nora Volkow, Rockville, Maryland

Primary Sponsor: Standing Committee on Substance Abuse

Additional Sponsors: Section of Administrative Law and Regulatory Practice, Section of Family Law, Health Law Section, Standing Committee on Legal Aid and Indigent Defendants

2:00 p.m. to 3:30 p.m.

BRAVE NEW WORLD OF HEALTHCARE: THE REVOLUTIONARY IMPACT OF HEALTH INFORMATION TECHNOLOGY AS ELECTRONIC HEALTH RECORDS AND HEALTH INFORMATION

Room 2010, 2nd Floor, Moscone Center West

With 2010 shaping up as a revolutionary year in healthcare, the industry is being redefined. The transition towards longitudinal Electronic Health Records including the use of Health Information Exchanges will require new methodologies and strategies, and give rise to new technological and legal issues. Our distinguished panel will include perspectives from those in the healthcare industry as well as legal expertise from practitioners in the field. The panelists will provide a timely look into this evolving environment including: (1) What are the differences between Electronic Medical Records, Electronic Health Record and Health Information Exchanges (2) Where is the industry heading with regard to EHRs being web based and modular with interchangeable components, and what are the implications related to cost and facility of adoption (3) How will cloud computing facilitate adoption, affordability and flexibility in meeting the needs of healthcare stakeholders (4) What are some of the legal issues involved including privacy and security (5) What are some of the key risks posed by EHRs and HIEs and how to possibly mitigate those risks (6) Where are we now with regard to the policy issues central to Health Information Technology including stimulus funding for EHRs and HIEs.

Moderator: Natalie Mosallam, Chicago, Illinois

Speakers: Kevin Carr, New York, New York

Thomas Stevenson, Alto, Michigan

Hugh B. Wellons, Roanoke, Virginia

Marcy Wilder, Washington, D.C.

Primary Sponsor: Section of Science & Technology Law

Additional Sponsors: Health Law Section, Section of Public Utility, Communications and Transportation Law, Tort, Trial and Insurance Practice Section, Special Committee on Bioethics and the Law

>Ticket Price: \$75, Judges: \$35, Govt Atty: \$35, Young Lawyer: \$75

2:00 p.m. to 3:30 p.m.

RETIREMENT SECURITY: IS THIS WHAT'S NEXT AFTER HEALTH CARE REFORM?

Room 2014, 2nd Floor, Moscone Center West

The private retirement system has gone through a number of changes over the past fifty years—moving from defined benefit “pension” plans to self-directed 401(k) plans and changing the manner in which retirement benefits are funded from basic insurance products to mutual funds and more complex investments. With health care reform a reality, retirement reform of some kind—from Social Security reform to automatic IRAs—is now on the horizon. This panel will explore the future of our private retirement system and alternatives for enhancing the security of that system, including a discussion of the stress on today’s retirement system, the role of government and Social Security, the role of private employers and what alternatives are likely to enhance retirement security. This is a complimentary CLE program.

Chair: Mary Ellen Signorille, Washington, D.C.

Moderator: Eleanor Banister, Atlanta, Georgia

Panelists: Connie Hiatt, San Francisco, California
David Levine, Washington, D.C.

Christine Richardson, San Francisco, California

Primary Sponsor: Section of Labor and Employment Law

Additional Sponsors: Business Law Section, Health Law Section, Section of Real Property, Trust and Estate Law, Tort, Trial and Insurance Practice Section

SUNDAY, AUGUST 8

8:30 a.m. to 10:00 a.m.

THE EMERGING PRACTICE OF ELDER/ADULT FAMILY MEDIATION: A RESOURCE FOR DECISION-MAKING AND CONFLICT MANAGEMENT

Room 3022, 3rd Floor, Moscone Center West

In 2008, persons 65 years or older numbered 38.9 million, an increase of 4.5 million or 13% since 1998. During the same period, the number of persons 45-64 who will reach 65 over the next two decades increased by 31%, and the number aged 100 or older increased 147%. Concurrently, health care costs skyrocketed, the economy took a nosedive and families became increasingly dispersed and alienated. It is timely for Elder/Adult Family Mediation’s emergence as a powerfully effective process in enabling families to address the multiple, complex issues encountered as family members transition from independence to dependence. Elder mediation allows conflicted families to make wise decisions about independence (housing, care-giving, health care) and money (gifts, family business succession, estate planning) and to prevent the painful and costly consequences of contested conservatorship proceedings and, later, trust and estate litigation. This program will: (1) Explore the “universe” of elder mediation; (2) Examine the value added opportunities for families in elder mediation; (3) Clarify the early warning signs that family decisions may

lead to conflicts appropriate for mediation; (4) Outline the distinguishing features of elder mediation; (5) Help you find an elder mediator; and (6) Explore the role of the lawyer in elder mediation. This is a complimentary CLE program.

Panelists: William M. Andrews, Santa Rosa, California
Dana Curtis, Sausalito, California

Primary Sponsor: Section of Dispute Resolution

Additional Sponsor: Senior Lawyers Division

10:30 a.m. to 12:00 p.m.

ABA CLE CENTRE SHOWCASE PROGRAM: TRYING HIGH-PROFILE CASES IN A 24/7 "NEW MEDIA" WORLD

Rooms 2001/2003, 2nd Floor, Moscone Center West

The ranks of newspapers, newspaper readers, and traditional journalists are rapidly dwindling, replaced by bloggers, twitterers, "citizen journalists," and other so-called "social" and "new" media. Can "trial by twitter" be far behind? In a fast-paced, multi-media "talk show" format, renowned judges, and journalists (representing both conventional and "new" media) will use real-life examples "ripped from the headlines"—screening actual news reports on select trials—to highlight the growing challenges of litigating high-profile cases in a world where a 24/7 news cycle is the norm, the journalists' code of ethics is being rewritten "on the fly," and jurors are negotiating book deals during coffee breaks and researching case details on their Blackberries to reach a verdict. Don't miss this frank and stimulating exchange on how to protect parties' rights to a fair trial while—at the same time—satisfying the rights of the public and media to access to the courts. This is a complimentary CLE program.

Chair: Honorable Gene E. K. Pratter, Philadelphia, Pennsylvania

Panelists: David Boies, Armonk, New York
Honorable Barbara M.G. Lynn, Dallas, Texas
Ron Sylvester, Wichita, Kansas
Jonathan Turley, Washington, D.C.
Honorable Vaughn Walker, San Francisco, California

Primary Sponsor: Judicial Division

Additional Sponsors: General Practice, Solo and Small Firm Division, Law Student Division, Senior Lawyers Division, Young Lawyers Division, Section of Administrative Law and Regulatory Practice, Section of Antitrust Law, Criminal Justice Section, Section of Dispute Resolution, Section of Environment, Energy and Resources, Section of Health Law, Section of Individual Rights and Responsibilities, Section of Intellectual Property Law, Section of Labor and Employment Law, Law Practice Management Section, Section of Litigation, Section of Public Contract Law, Tort, Trial and Insurance Practice Section, Forum on Air and Space Law, Forum on Communications Law, Standing Committee on Federal Judicial Improvements, Standing Committee on

Judicial Independence, Standing Committee on Legal Aid and Indigent Defendants, Standing Committee on Public Education, Center for Human Rights, Center for Racial and Ethnic Diversity, Coalition for Justice, Commission on Immigration, Commission on Sexual Orientation and Gender Identity, Commission on Youth at Risk, Coordinating Council of the Justice Center, Special Committee on Bioethics and the Law, American Immigration Lawyers Association, American Judicature Society, Association of Professional Responsibility Lawyers, Conference of Chief Justices, International Association of Young Lawyers (AIJA), National Asian Pacific American Bar Association, National Association of Bar Executives, National Association of Women Judges, National Association of Women Lawyers, National Center for State Courts, National Conference of Bar Presidents, National Conference of Women's Bar Associations, National District Attorneys Association, National Organization of Bar Counsel, The National Judicial College, The National LGBT Bar Association, UIA International Association of Lawyers, Center for Professional Responsibility

2:00 p.m. to 3:30 p.m.

HEALTH CARE REFORM: WHAT EMPLOYERS NEED TO KNOW NOW!

Room 2024, 2nd Floor, Moscone Center West

The Patient Protection and Affordable Care Act (Public Law No. 111-149) as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law No. 111-152) signed into law on March 23 and 30, 2010, respectively (the "Affordable Care Act") significantly impacts virtually every individual and business. Effective for plan years beginning after September 23, 2010, a panel of government experts and informed practitioners will discuss the recently released DOL, Treasury and HHS regulations dealing with some of the most pressing issues facing employers. This program will provide the attendees with an in-depth analysis of the key components of the Act. Learn how the Act and its implications relative to employee benefit design, cost and compliance are relevant to you and your clients. This is a complimentary CLE program.

Chair: Mary Ellen Signorille, Washington, D.C.

Moderator: Bernard King, Syracuse, New York

Panelists: Alden Bianchi, Boston, Massachusetts
Honorable Phyllis Borzi, Washington, D.C.
George Bostick, Washington, D.C.
Julie Burbank, San Francisco, California
Eugene Holmes, Washington, D.C.

Primary Sponsor: Section of Labor and Employment Law

Additional Sponsors: Business Law Section, Section of Health Law, Section of Real Property, Trust and Estate Law, Tort, Trial and Insurance Practice Section