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Introduction: Remembering Stephanie Feldman Aleong

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INTRODUCTION: REMEMBERING STEPHANIE FELDMAN ALEONG

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I wish I were not writing this Introduction. As wonderful an issue of the *Nova Law Review* as this is—and it is indeed a *tour de force*—it commemorates the loss of my dear friend and colleague, Stephanie Feldman Aleong. I would gladly trade this publication opportunity to have Stephanie back. The tragedy of her unexpected death in 2008 at the age of thirty-six shook Nova Southeastern University’s Shepard Broad Law Center to its core, and we still sorely miss her. I’m sure we always will.

Nevertheless, we play the cards we are dealt in life, as no one knew better than Stephanie. A juvenile diabetic who coped with her disease and overcame past tragic events with sheer force of will and a huge personality, this tiny woman liked to credit her infinitely positive attitude to her father’s advice that “You have to fake it until you can make it.” Everyone who knew Stephanie knew how she incorporated this admonition into her life, consistently putting a positive spin on bad news and counseling others to look on the bright side of any situation. Stephanie faced bad news countless times as she battled melanoma this last time, from the day she first learned the diagnosis, throughout her research of treatment options, with her decision to enroll in a clinical trial, and while preparing for anticipated discomfort as she began the trial. Yet, “faking it until she could make it,” she found the silver lining in each cloud. Not long before she began the trial, only thirteen days before her death, she assured her friends, family, colleagues and students that “I am a tough little bird so I will undergo this therapy with a cheery heart and a smile”¹

The tributes at the beginning of this issue afford the reader some glimpse into why Stephanie was special to those of us who had the opportunity to know her.² On personal notes, Stephanie’s friends Madison Gray and Susan Polsinelli offer snapshots of the roles that she played in their lives at

1. E-mail from Stephanie Feldman Aleong to Faculty at Nova Southeastern University Shepard Broad Law Center (Oct. 8, 2008) (on file with author).

2. See also James B. Levy, *In Memoriam: Stephanie Feldman Aleong*, 15 J. LEGAL WRITING INST. xiii (2009) (eulogizing her); Jennifer S. Bard, *What We in Law Can Learn From Our Colleagues in Medicine About Teaching Students How to Practice Their Chosen Profession*, 36 J. L. MED. & ETHICS 841, 848 (2008) (describing her as “a distinguished health law scholar and law professor whose remarkable commitment to innovative teaching is a model for us all”); Ani B. Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, 83 WASH. L. REV. 513, 513 n.1 (2008) (dedicating article to her).

Vanderbilt University and in the Office of the State Attorney in Miami-Dade County, Florida. Assistant Dean Carsten Evans of Nova Southeastern University's College of Pharmacy explains the important role Stephanie played in the lives of countless Floridians as she and a team of investigators vanquished a major pharmaceutical counterfeiting operation when she was an assistant statewide prosecutor.³ After serving the state attorney general's office in that capacity, Stephanie moved into teaching, heading to Emory Law School, where she was a colleague of Professor Ani Satz, whose tribute reflects great respect and affection. Finally, Stephanie came to our law school, where her colleagues and students found her *joie de vivre* and talent inspirational, as is evident from the tributes of Dean Bill Adams, Professors Joel Mintz and Anthony Niedwiecki, and alumnus Anthony Stella, once one of Stephanie's students.

In part because of her juvenile diabetes, Stephanie felt strongly about using her academic scholarship to further combat drug counterfeiting. While teaching her beloved Criminal Law and Lawyering Skills & Values students, she influenced pharmacists and other health care professionals through her directorship of our Master of Science in Health Law program. She also researched and wrote about America's flawed pharmaceutical supply chain.⁴

When the editors of the *Law Review* and I planned this issue, however, it did not seem appropriate to narrowly focus on pharmaceutical regulation when remembering Stephanie. Far from one-dimensional, Stephanie could intelligently discuss, debate, and offer valuable comments on every subject ranging from bioethics to health care policy. Therefore, it seemed most fitting to include in this issue articles on a similarly broad range of health law topics. Thanks to hard work by the *Law Review* editors and staff, especially Alyson Sincavage and David Stahl, these articles address a variety of important topics. Stephanie would be proud.

Notably, although the following articles analyze a cross-section of legal issues in the health care industry, they all address matters that are of tremendous importance to patients. Stephanie would have liked that. Much as cost, quality and access comprise a "three-legged stool" underpinning health care policymaking,⁵ *patients'* costs, the quality of care *patients received*, and

3. See KATHERINE EBAN, DANGEROUS DOSES: HOW COUNTERFEITERS ARE CONTAMINATING AMERICA'S DRUG SUPPLY (2005) (recounting and putting into context the effort, titled "Operation Stone Cold").

4. Stephanie Feldman Aleong, *Green Medicine: Using Lessons From Tort Law and Environmental Law to Hold Pharmaceutical Manufacturers and Authorized Distributors Liable for Injuries Caused by Counterfeit Drugs*, 69 U. PITT. L. REV. 245 (2007).

5. Thomas M. Mayo, *Foreward: Nonfinancial Barriers to Health Care*, 32 HOUS. L. REV. 1187, 1187 (1996).

patients' struggles to access care concerned Stephanie. In this, she and I were kindred spirits, so I am especially thankful that this selection of articles reflects a patient-centric focus.

Professor Matthew Seamon, for example, attempted to choose a topic that “Professor Aleong would acknowledge as important,”⁶ and he succeeded admirably by choosing one affecting the costs patients might bear for drugs in the future. While most patients would not know what “biologics” are, such drugs are of tremendous importance to them. A “biologic” is a drug “derived from a living organism or one of its products and . . . manufactured” through a genetic pathway.⁷ Such genetically tailored drugs could improve the lives of hundreds of thousands of patients, and Professor Seamon urges the development of an abbreviated path to their approval. As he himself says, this topic would “impact [patients’] wallets.”⁸

Stephanie also worried about the quality of care patients received. Her method of ensuring quality care was to ensure that patients received the prescription drugs they were supposed to receive, rather than counterfeits. Two of the authors in this issue, Rebecca Feinberg and Shane Levesque, propose health care system changes that would also improve the quality of care patients receive. Specifically, Ms. Feinberg addresses the problem of impaired physicians⁹ and suggests nationwide standardization of methods to prevent impairment, identify afflicted physicians, treat them, and follow up thereafter. Mr. Levesque focuses on improving care for mentally ill prisoners upon release from prison, in an attempt to break the cycle of recidivism. He proposes diversion programs, comprehensive discharge planning before release from prison, and pre-release enrollment in public benefits to help ensure continuity of care upon release. There can be no doubt that taking steps to ensure that physicians are functioning at peak levels and reforming the way the correctional system treats the mentally ill would improve the quality of care patients receive—patients of many different types in the first instance and a tightly circumscribed category of patients in the latter instance.

Finally, Stephanie shared my concern about the impact on patients of America’s employer-based system of health care coverage. Within this area,

6. Matthew J. Seamon, *Antitrust and the Biopharmaceutical Industry: Lessons from Hatch-Waxman and an Early Evaluation of the Biologics Price Competition and Innovation Act Of 2009*, 34 NOVA L. REV. 629, 629 n.a1 (2010).

7. *See id.* at 649–650.

8. *Id.* at 629 n.a1.

9. She defines an “impaired physician” as a “medical doctor who suffers from alcoholism, drug addiction, or mental illness.” Rebecca Sara Feinberg, *The Impaired Physician: Medical, Legal, and Ethical Analysis with a Policy Recommendation*, 34 NOVA L. REV. 595, 598–600 (2010).

Robert Sheres takes on one of the more perplexing puzzles arising from litigation on the part of such patients under the Employee Retirement Income Security Act of 1974 (ERISA).¹⁰ Although Congress enacted ERISA with the stated goal of protecting employees in the wake of spectacular pension plan failures, the statute's effect on employees who receive health care coverage through their employers has been far from protective. The United States Supreme Court has narrowly interpreted the list of statutory remedies available to patients alleging that their health insurers improperly denied payment for treatments. The result, as Mr. Sheres concludes after reminding the reader of the statute's pro-employee goal, "contravenes this goal by refusing to allow participants and beneficiaries to be made whole by way of consequential damages."¹¹ His proposal that the Supreme Court revisit the issue is a sound one, while his suggestions to those representing such patients in the meantime are ingenious. Perhaps his article can help patients gain access to treatments by putting some weapons in the hands of attorneys representing them.

I cannot conclude this introduction without mentioning the contributions of two student authors about health law topics, for Stephanie loved her students. Here, Morgan Geller and Ashley Dutko join the four authors whose works I just described in addressing issues that could greatly impact patients in the future. Ms. Geller analyzes a case alleging that the United States Patent and Trademark Office acted unconstitutionally in granting patents on human genes to researchers, and Ms. Dutko writes about an important Florida statute intended to combat prescription drug abuse. Stephanie would have been glad to see student work of such quality.

In short, just as Stephanie aimed at improving her surroundings in every way possible during her short life, this issue of the *Nova Law Review* is chock-full of scholarship aimed at improving the health care system in a variety of areas important to patients. It memorializes a terrific person who lives on in our minds and hearts. It also reminds us that Stephanie did nothing halfway and could juggle many different balls while smiling and inspiring others to be better and to achieve more than they ever thought they could. It reflects the variety of ways in which Stephanie continues to inspire others to improve the health care system through public service,¹² to use the law as

10. 29 U.S.C. §§ 1001–1461 (2006).

11. Robert C. Sheres, *The Need for an Equitable Revolution to "Appropriately" Remedy Wrongfully Denied Benefits Under ERISA*, 34 NOVA L. REV. 679, 710 (2010).

12. In tribute to Stephanie, Nova Southeastern University's College of Pharmacy and the Drug Safety Institute have created an award titled the "Stephanie F. Aleong, J.D., National Patient Safety Award" to recognize "individuals whose unique efforts have significantly advanced patient safety." See News Release, Nova Se. Univ., Two Florida Drug Inspectors

an instrument of change,¹³ or simply to do the best job possible under any and all circumstances.¹⁴ It is something she would be glad to see in print.

But I still wish I had not written this Introduction.

Receive National Patient Safety Award from Nova Southeastern University (Dec. 4, 2008), <http://nsunews.nova.edu/two-florida-drug-inspectors-receive-national-patient-safety-award-from-nova-southeastern-university/>.

13. For example, when Stephanie and two of our colleagues teamed up to lead the Goodwin Symposium at the law school, they chose to focus on “the impact women have had on the law and legal profession and to outline what challenges lay ahead.” Stephanie Feldman Aleong, Olympia Duhart & Linda F. Harrison, *Tilting the Scales: The Changing Roles of Women in the Law and Legal Practice*, 31 NOVA L. REV. 217, 219 (2007).

14. See, e.g., Anthony M. Stella, *The Un-Taxability of Computer Software as Tangible Personal Property by Florida County Governments*, 34 NOVA L. REV. 281, 281 n.1 (thanking her for “unwavering guidance and mentorship”); David Stahl, *The Role of the Florida Courts in Protecting the Uninsured From Being Overcharged for Emergency Medical Services*, 33 NOVA L. REV. 269, 269 n.1 (thanking her for “valuable suggestions and guidance”); Yeemee Chan, *Abolishing Capital Punishment: A Feminist Outlook and Comparative Analysis of the Death Penalty Using Equal Protection and Gender Discrimination Law*, 31 NOVA L. REV. 339, 339 n.1 (thanking her for “wisdom and guidance”); Richard V. Blystone, *School Speech v. School Safety: In the Aftermath of Violence on School Campuses Throughout This Nation, How Should School Officials Respond to Threatening Student Expression?*, 2007 B.Y.U. EDUC. & L.J. 199, 199 n.1 (thanking her for “guidance and contributions to this project”).