



## From The Director

In this issue of the *Tobacco Regulation Review*, we update you on Center activities and highlight recent State, local and national tobacco control victories. We continue to work with the advocacy community to provide legal advice and insight on tobacco control policy while at the same time educating law students who will undoubtedly use their community lawyering skills as their careers unfold.

*Kathleen Hoke Dachele, J.D.*  
Director

## First Annual Maryland Hispanic/Latino Tobacco Control Summit Held in Baltimore

In November 2003, Center staff attended and participated in the 1<sup>st</sup> Annual Maryland Hispanic/Latino Tobacco Control Summit: Social Injustice Stops HERE, at St. Patrick's Church in Baltimore. Together, leaders in the Hispanic/Latino community and tobacco control advocates identified the particular tobacco-related health issues they face, how health departments and tobacco control organizations should approach and work in their community, and where research must focus for the benefit of their community.

tion, Evelyn Rosario from the Hispanic Apostolate/Immigration Legal Services, and Ricardo Flores from the Latino Legal Assistance & Public Justice Centers. These speakers made clear that the disparate impact on the Latino community of Maryland's workplace smoking law, which exempts bars and restaurants, creates social injustice because Hispanics are overrepresented in jobs in which workers remain exposed to secondhand smoke. Also clear, however, is that bringing the Latino community into the tobacco control movement will take time and effort as trust must be earned by tobacco control advocates. Too often the Latino community is brought into a movement for political or policy gain, only to have its needs ignored once the movement concludes or moves on to another issue. Tobacco control advocates can learn from other advocates who made the mistake of taking advantage of the Latino community and build a true partnership on this important public health issue.

In break-out groups, Conference attendees discussed the current statewide clean indoor air campaign,

Insightful comments by participants from the Hispanic/Latino advocacy community set the framework for the day's discussion. Speakers included Alejandro Garcia-Barbon from the National Latino Council on Alcohol and Tobacco Prevention, Sonia Fierro-Luperini, M.D., from the Maryland Public Health Associa-



from left: Alejandro Garcia-Barbon, National Latino Council on Alcohol and Tobacco Prevention; Mark Breaux, SmokeFree Maryland; Soraya Galeas, American Cancer Society



### Tobacco Regulation Review

is published twice a year by the  
**Legal Resource Center for Tobacco  
Regulation, Litigation & Advocacy**

at the

**University of Maryland School  
of Law**

**500 West Baltimore Street  
Baltimore, MD 21201**

**STAFF**

**Kathleen Hoke Dachille, J.D.**  
Director

**Michael F. Strande, J.D.**  
Managing Attorney

**Michael J. Cuneo, M.A.**  
Administrative Assistant / Editor

**AFFILIATED FACULTY**

**Diane E. Hoffmann, J.D., M.S.**  
Associate Dean & Director,  
Law and Health Care Program

**Robert V. Percival, J.D.**  
Director,  
Environmental Law Program

**Allyn Taylor, J.D., L.L.M, J.S.D.**  
Adjunct Professor of Law

## In This Issue

### • Maryland Happenings

- First Annual Maryland Hispanic/Latino Tobacco Control Summit* ..... 1
- Maryland Team Participates in CDC-OSH Sustaining State Programs Training* ..... 3
- Baltimore County School Grounds Tobacco Free 24/7* ..... 3
- Montgomery County Ban Survives Injunction Hearing* ..... 4
- Talbot County Becomes Second Maryland Jurisdiction to Enact Comprehensive Smoke Free Law* ..... 4
- Kent County Passes Sales to Minors and Product Placement Law* ..... 5
- Federal Agency Reviews Maryland's Youth Tobacco Prevention Program* ..... 5
- Maryland Attorney General Stops Online Tobacco Seller* ..... 6

### • National News

- Smoke Free Ballot Initiative Sought In Washington, D.C.* ..... 6
- National Conference Offers Opportunities to Learn and To Educate* ..... 7
- New York Becomes First State to Require Fire Safe Cigarettes* ..... 8

If you would like to to subscribe to the *Tobacco Regulation Review* or participate in our listserv, please send an email to tobacco@law.umaryland.edu. Please include your mailing address if subscribing to the Review.

# Maryland Happenings

## Maryland Team Participates In CDC-OSH Sustaining State Programs Training

As state tobacco control programs across the country suffer significant reductions in funding, program leaders need to identify new sources of funding, hone programs to their most effective components, and reach out to partners to enhance efforts. Recognizing this need, the Center for Disease Control and Prevention's Office on Smoking and Health brought together leaders and partners from several states for a day of brainstorming, experience-sharing and goal development. Representatives from Maryland, including Center Director, Kathleen Dachille, participated in the Sustaining State Programs Training in November 2003.

During the training, each state's representative shared recent successes and setbacks with the group<sup>1</sup>. Then, each state team met with a facilitator to prioritize the state's goals, identify who must be involved in achieving the goals, and clarify the message sent to political leaders, funders, and supporters. Teams also listed available resources and identified first steps in achieving the stated goals. In addition to Dachille, the Maryland team was comprised of Joan Stine, Director and Dawn Berkowitz,

Tobacco Control Coordinator, Office of Health Promotion, Education and Tobacco Use Prevention, Maryland Department of Health & Mental Hygiene; Kevin Kempske, Director of Public Relations, GKV Communications; and Kari Appler, Executive Director, Smoke Free Maryland. Although the team expressed frustration over 2003, and anticipated 2004, budget cuts, by the end of the work session, the team had established goals and created a list of who to ask for assistance. The group also realized the strength and importance of the governmental agency, as well as the grassroots support, that exists in Maryland.

At the closing session, conference participants shared the results of their work group sessions, revealing a consistent theme: the need to find new and sustainable funding sources. As we work toward our goals, information sharing among the state programs and advocates will undoubtedly benefit all states.

---

<sup>1</sup> In addition to Maryland, seventeen states were represented at the conference: Arizona, Colorado, Connecticut, D.C., Georgia, Louisiana, Illinois, Massachusetts, Minnesota, Mississippi, Nebraska, New Mexico, Ohio, Utah, Virginia, Washington, and Wisconsin.

## Baltimore County School Grounds Tobacco Free 24/7

On March 23, 2004, the Baltimore County School Board adopted amendments to their tobacco-free grounds policy making all school property tobacco-free at all times on all days. Policy 2372 (available at [http://www.bcps.org/system/policies\\_rules/policies/2000series/pol2372.pdf](http://www.bcps.org/system/policies_rules/policies/2000series/pol2372.pdf)) provides:

*The Board of Education of Baltimore County is committed to providing a Tobacco-Free work environment for its students and employees. Due to the evidence concerning the health effects of tobacco use, smoking and passive smoke, Baltimore County Public Schools prohibits the sale and use of any form of tobacco in school system owned or leased buildings, grounds and vehicles at all times (24 hours a day, every day) regardless of whether or not students are present.*

The impact of this comprehensive policy will be felt across Baltimore County as the policy applies to anyone on school property at any time for any purpose. School property is frequently used for youth and adult recreation programs, cultural events and other community gatherings. Those activities will now take place free of tobacco in Baltimore County.

## Montgomery County Ban Survives Injunction Hearing

### Major Municipalities of Rockville and Gaithersburg Follow Lead

Montgomery County Circuit Court Judge Patrick Woodward denied a preliminary injunction requested by local restaurants to halt temporarily the County's newly enacted smoking ban. The decision allowed the long-awaited ban to go into effect on October 9, 2003, as scheduled. (For the history of the ban, see *Tobacco Regulation Review* Vol. 1, Issue 1 and Vol. 2, Issue 2.)

On October 8, 2003, Montgomery County again found itself in circuit court defending the smoking ban, this time against a motion seeking a preliminary injunction. In order to obtain a preliminary injunction – an order prohibiting enforcement by the County until a trial on the law has ended – a plaintiff must meet four tests, one of which is that the plaintiff is substantially likely to succeed on the merits of the challenge. Judge Woodward refused to issue the injunction, finding that the plaintiffs are not likely to succeed on the merits of their challenge to the ban. Therefore, the ban went into effect as planned. Although the case is still pending, the plaintiffs have taken no action on the matter and the court has not scheduled the case for trial.

Although most Montgomery County restaurants were required to comply with the ban on October 9, 2003, restaurants in the municipalities of

Gaithersburg, Kensington, Poolesville, Rockville, and Takoma Park were not covered by the ban due to a curious provision in the Montgomery County Code. These municipalities were left to decide whether to pass identical bans, tailor their own legislation or leave things as they had been. Had the municipalities failed to pass similar bans, however, the County Council may have been able to cover those areas with Board of Health regulations.

On December 8, the Rockville City Council voted to adopt the County's ban and decided it would take effect February 1, 2004. On March 1, 2004, Gaithersburg became the last major municipality in Montgomery County to ban smoking inside restaurants and bars.<sup>1</sup> In an attempt to strike a compromise with opponents, the Gaithersburg City Council granted businesses with completely enclosed and separately ventilated smoking areas one year to make all areas smoke free. Together, the County law and municipal laws cover nearly every restaurant in Montgomery County.

---

<sup>1</sup> *Takoma Park adopted the ban on October 24, 2003, however, Poolesville voted to continue to allow smoking and Kensington has not yet taken action on the ban. Currently Kensington and Poolesville each have one restaurant.*

## Talbot County Becomes Second Maryland Jurisdiction to Enact Comprehensive Smoke Free Law

On February 3, 2004, the Talbot County Council extended its existing smoking ban so that smoking is now prohibited in all indoor workplaces, including restaurants and bars. This makes Talbot County the second jurisdiction in Maryland to enact a comprehensive smoking ban and the first to do so on the Eastern Shore.

After two public hearings and much heated discussion, the Council voted in favor of the smoking ban by a vote of four to one. "It's the right thing to do," said Talbot County Councilman Thomas Duncan. "I weighed the pros and cons, and I refuse to play politics with people's lives. The evidence is in and it's overwhelming. Tobacco smoke causes cancer. Nobody should have to breathe it to hold a job."

Center staff responded to several questions from the County Health Department, community coalition and councilmembers during the course of the legislative process. Tobacco Control Clinic student, Dr. Sharon Pusin, testified at the second hearing, describing to the Council studies demonstrating that a ban does not cause economic harm to the affected

community, even when the community is closely bordered by jurisdictions lacking smoke free laws.

The County Health Officer or her designee will enforce the law. Individual violators and business owners are subject to civil penalties for violations. Additionally, a business owner is subject to a temporary suspension of his alcoholic beverages license for three or more violations within a one-year period. Several other counties considering a ban will watch how implementation and enforcement works in Talbot County.

## **Kent County Passes Sales to Minors and Product Placement Law**

In May 2003, Kent County became the fifth jurisdiction in Maryland to pass a tobacco sales to minors law and the seventh jurisdiction to pass a tobacco product placement law. The law, passed unanimously by the Kent County Commissioners, prohibits retailers from storing or displaying their tobacco products in any place accessible to buyers without the assistance of a store employee and prohibits the sale of tobacco to minors. Individuals and storeowners cited for violating the law are subject to civil penalty. Enforcement will be conducted by the Kent County Alcohol Beverage Inspector, as designated by the County Health Officer.

## **Federal Agency Reviews Maryland's Youth Tobacco Prevention Programs**

With passage of the SYNAR Amendment in 1992, 42 U.S.C.A. 300x *et. seq.*, the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) became involved in states' youth tobacco prevention programs. SAMHSA regulations require that states:

- *Prohibit tobacco sales to minors;*
- *Conduct random inspections to measure compliance with youth sales restrictions; and*
- *Develop a strategy for achieving youth access rates of less than 20%.*

States that fail to comply risk loss of precious substance abuse funding.

To insure compliance and assist in program development, implementation and evaluation, SAMHSA's Center for Substance Abuse and Prevention operates the State Prevention Advancement Support Project (SPAS). In November 2003, a SPAS team visited Maryland to learn about existing laws and programs to reduce youth access to and use of tobacco. Ultimately the group will issue recommendations for Maryland legislation or regulations.

Center Director, Kathleen Dachille, spoke to the SPAS team about current state and local enforcement

programs designed to identify and warn or punish retailers who sell tobacco to minors. Although acknowledging the lack of a comprehensive statewide enforcement program and the limited funds available for local enforcement, Dachille touted the work being performed in many Maryland counties. Enforcement officers Ron Salisbury from Prince George's County and Bob Brown from Baltimore City enhanced the presentation with their "from the trenches" reports. The SPAS panel asked many questions about local government law in Maryland and the likelihood of increased local enforcement efforts.

Maryland's SYNAR figures have been approaching the mandated 20% mark, making clear that local enforcement efforts in jurisdictions like Baltimore City and Anne Arundel, Carroll, Howard, Frederick, Kent, Montgomery, and Prince George's Counties have an impact. As more counties join these efforts, and new statewide initiatives are planned and implemented, Maryland should have little trouble meeting SAMHSA's goal and continuing the decline in youth access to and use of tobacco.



## Maryland Attorney General Stops Online Tobacco Seller

Understanding the ease with which minors are able to purchase cigarettes on the internet and that such sales cost the State in unpaid tobacco and sales taxes, Maryland Attorney General, J. Joseph Curran, Jr., pursued an online tobacco vendor known to be illegally selling into Maryland. As reported in Volume 2, Issue 2 of *Tobacco Regulation Review*, the Consumer Protection Division filed charges against the operators of [www.dirtcheapcigs.com](http://www.dirtcheapcigs.com) asserting that the vendor sold cigarettes to minors in violation of State criminal law and failed to collect tobacco taxes on cigarettes sold in Maryland in violation of State tax law. In December 2003, the online vendor and the Attorney General entered into a settlement that prohibits the vendor from selling cigarettes over the internet into Maryland. The company also agreed to pay \$61,000 in exchange for resolution of all sales-to-minor and tax-evasion charges. According to Attorney General Curran, "The settlement ensures that Maryland's kids will have one less avenue for buying cigarettes through the anonymity of the internet." The Center for Tobacco Regulation continues to work with the Office of the Attorney General on initiatives designed to prevent youth access to tobacco through retail stores or online sellers.

## National News

### SmokeFree Ballot Initiative Sought in Washington, D.C.

Smokefree DC, a grassroots organization of residents and workers, has filed language with the D.C. Board of Ethics and Elections (BOEE) to place a smokefree workplace measure on the November 2004 ballot. The specific language of the smoking prohibition has already been approved by the BOEE (see box). The next step is for Smokefree DC to collect signatures from five percent of the voters, approximately 18,000 individuals, by July 5, 2004, a costly and time-consuming process. Unfortunately, legal fighting has kept the BOEE from distributing the necessary petitions for Smokefree DC to begin the signature collection process. Although Smokefree DC and the BOEE appear to have complied with all relevant legal provisions regarding the ballot process, the Restaurant Association of Metropolitan Washington (RAMW) filed suit against the BOEE in D.C. Superior Court in an attempt to stop the ballot initiative. The District's laws prohibit the BOEE from distributing the petitions to Smokefree DC until the legal conflict is resolved. The American Cancer Society and Campaign for Tobacco Free Kids have filed motions to intervene, in an attempt to speed

along the often sluggish legal process and deliver the petitions to Smokefree DC in a timely manner. Should the initiative reach the ballot, D.C. voters will be given the opportunity to register their support for or opposition to the smokefree measure when they cast votes in the 2004 Presidential election. *Tobacco Regulation Review* will continue to cover the progress of the ballot initiative.

The following Summary Statement has been approved to appear on the Smokefree DC petitions:

This initiative, if passed, would create smokefree work environments in all enclosed public and private places of employment in the District of Columbia. This initiative would:

- *prohibit smoking in indoor workplaces and indoor public places;*
- *require no-smoking signs to be posted and ashtrays to be removed in all smokefree areas;*
- *and establish fines for violations.*

The smokefree requirements of this initiative would not apply to private residences except those used as workplaces that regularly provide day care, educational services or health services.

## National Conference Offers Opportunity to Learn and To Educate

Center staff and Law School Clinic students attended and participated in the National Conference on Tobacco or Health in Boston in December 2003, sharing and gathering information and insight with colleagues from across the country. Clinic students Jaclyn Ford and Clare Maisano presented a poster entitled: Disparate Impact on Minorities of Weak Clean Indoor Air Laws. Using information from the 2002 Maryland Tobacco Study performed by the Maryland Department of Health and Mental Hygiene's Cigarette Restitution Fund Program and other public health research, the students created a poster explaining that clean indoor air laws that leave restaurant and bar workers exposed to secondhand smoke result in higher exposure for ethnic minorities and those in lower economic brackets. During the 90-minute poster session, the students fielded questions from Conference attendees and were praised for the quality of their presentation.

Center Director Kathleen Dachille participated in a panel presentation entitled "Surviving and Triumphant in Residential Settings with Secondhand Smoke Intrusions." With colleagues from similar centers in Michigan,

Massachusetts and California, Dachille explained the legal issues for individuals living in multi-unit dwellings in which drifting smoke from a neighbor is a problem. Dachille focused on the common-law remedies a tenant may have while other panelists discussed statutory remedies, federal laws and specific issues for senior living facilities. The number and variety of audience questions about these issues demonstrates that this area is ripe for significant legal analysis and that the need for legal assistance for people facing these problems is great. With that in mind, the Center is preparing a tenant education brochure for Marylanders dealing with the problem of drifting smoke in a multi-unit dwelling.

Dachille also had the opportunity to explain the function and work of the Center during a panel presentation entitled "Call My Lawyer! Legal Programs as Essential Tools for Public Policy." Other panelists described how they, as public health advocates, have made use of legal resources when advancing their public policy initiatives. By the end of the session, attendees were more aware of the value of legal advice on policy matters and the importance of seeking legal assistance early in the legislative process.

Along with Ford and Maisano, Clinic student Sharon Pusin, M.D., attended the Conference and came away with a great many ideas for study in Mary-

land as well as a wealth of information to assist with new projects. Pusin, a retired ophthalmologist and second-year law student, found the conference valuable as a networking tool as well: "We met and learned from many tobacco control advocates who have been a part of the movement for quite some time. It was humbling and invigorating to be a part of this important public health effort."

Conference attendees adopted several resolutions to guide the future of tobacco control efforts, including:

- *Imploring the federal government to urge states to fully fund tobacco control and cancer prevention efforts at CDC recommended levels;*
- *Urging tobacco control programs, private and governmental, to create comprehensive plans that eliminate disparities and provide adequate resources to all communities; and*
- *Making cessation services more accessible and affordable.*

For more on the Resolutions, go to: [www.tobaccocontrolconference.org/2003Conference/general\\_information/resolutions.cfm](http://www.tobaccocontrolconference.org/2003Conference/general_information/resolutions.cfm).

## New York Becomes First State to Require Fire Safe Cigarettes

In June 2004, New York will become the first state to require that cigarettes sold there are "fire safe." A fire safe cigarette is a cigarette that self-extinguishes if the smoker does not draw upon it for 60 seconds. New York enacted fire safe cigarette laws in order to diminish the number of deaths and injuries that cigarette fires cause each year. Experts estimate that fires caused by cigarettes kill more than 1,000 people and injure more than 3,000 people annually. In addition, each year, cigarette-induced fires cause approximately \$400 million in property loss.

The new regulations require that all cigarettes sold in New York, including cigarettes manufactured in a different state or in a different country, must be certified as self-extinguishing after June 28, 2004. The new law demands that cigarette manufacturers test the cigarettes' degree of fire-safety in accordance with standards set forth by the American Society of Testing and Materials. After the testing is completed, the manufacturer must provide notice of the cigarettes' certification to all wholesale dealers and agents. The new law also requires that cigarette packaging clearly identify that the cigarettes adhere to New York standards. Finally, the law provides for civil monetary penalties of up to \$10,000 for manufacturers who falsely certify

cigarettes and for wholesalers or agents who sell cigarettes that are not certified.

Public documents reveal that at least one tobacco manufacturer has possessed the technology to produce fire safe cigarettes for at least 15 years, however, tobacco companies have been staunchly resistant to production of self-extinguishing cigarettes. Tobacco manufacturers may believe that cigarette sales will decrease if consumers can purchase cigarettes that could easily be relit. Fire safe cigarettes have speed bump-like rings that extinguish the cigarette if it is not draw upon after a period of time; with fire-safe cigarettes the smoker has the choice to reignite the cigarette rather than discard it before it is fully smoked. With the New York law in place and the technology available, the manufacturers' concerns of lost profits will give way to saved lives.

Although we do not yet know the impact of the law, the cost and complexity of compliance with New York's self-extinguishing cigarette requirement may result in the sale of fire safe cigarettes across the country as producers choose one manufacturing process for all cigarettes sold in the United States. Fire safety and public health officials hope that the New York law will benefit all states and will likely push for regulation in other states should countrywide changes not occur as a result of New York's current law.

---

*Latino Summit, Cont. from page 1*

---

grassroots education and advocacy, research and health disparities and program implementation. By the end of the session, representatives from the Maryland Department of Health and Mental Hygiene, local health departments, the American Lung Association, the American Heart Association, and the American Cancer Society better understood the health and justice issues facing the community.

After the summit, Center staff and Mark Breaux, Community Organizer of Smoke Free Maryland, agreed that creation of a Task Force, comprised of tobacco control advocates and members of the Hispanic/Latino community, would allow the work of summit participants to continue and expand. While that group takes shape, Center staff will continue to conduct research on the impact of tobacco on the Hispanic/Latino community and consider policy and legal avenues to ameliorate the harm that tobacco causes that community.

---