

UM Professor David Hyman Serving as Special Counsel to Federal Trade Commission

Last fall, School of Law Professor David Hyman was asked to serve as Special Counsel in the FTC's Office of General Counsel. The FTC has had a long history in developing and implementing competition policy for health care. The FTC has brought significant cases against physicians, hospitals, professional associations, and a wide range of other entities in the health care market. In the past year, the FTC has pursued several important cases against pharmaceutical companies for anti-competitive conduct that restricted the availability of generic versions of particular drugs. The FTC has also pursued price-fixing cases against a number of physician groups and obtained consent orders in those cases.

Health care is a particular interest of FTC Chairman Timothy Muris. On November 7, 2001, Muris told the Subcommittee on Commerce, Trade and Consumer Protection of the House Energy and Commerce Committee that, in addition to continuity of the FTC's enforcement initiatives, the FTC is committed to studying the evolving health care marketplace and developing antitrust policy. The FTC intends to hold public hearings, conduct studies, and issue reports to Congress and the public on its findings. Hyman was called upon to help effect that mission.

Since November 2001, Hyman has been working with the FTC's General Counsel, William Kovacic, on a number of projects concerning the role of competition law and policy in dealing with the health care marketplace. In July, the FTC made public the first of Hyman's projects, a Workshop on Health Care and Competition Law and Policy. The Workshop, held September 9-10, 2002, in Washington, D.C., considered the impact of competition law and policy on the cost, quality



David Hyman, MD,

and availability of health care and the incentives for innovation in the field. Representatives of federal agencies and state governments, academics, and private individuals presented on topics including: competition and antitrust in health care; recent developments in the health care market; health care initiatives of the FTC, DOJ, and state attorneys general; and an empirical perspective on health care competition policy. Panel presentations included: provider integration; health insurance payor/provider issues; hospital group purchasing organizations; generics and branded pharmaceuticals; and direct-to-consumer advertising of pharmaceuticals. School of Law students were invited to attend the Workshop.

Hyman is also busy at the School of Law this fall teaching Health Care Finance and Regulation, an upper level seminar that considers a variety of issues relating to the regulation and financing of health care in the United States, focusing on legal doctrines, institutions and policy choices that are the foundation of the current health care system. Hyman hopes that students in

the course will come to appreciate the complexity of the legal doctrine and framework affecting health care delivery in the United States. In addition, students will examine the conflicting ideas from which these laws and policies flow, exploring the "moral battleground" of health care.

In addition to his FTC and teaching activities, Hyman has written several recently published articles on fraud and abuse and result-based compensation for health care providers. In the June 2001 issue of the *Journal of Legal Studies*, Hyman examines health care fraud and abuse by looking at social norms—that is, what people think is appropriate behavior, regardless of what the law says. Hyman has also recently written on fraud and abuse as it is affected by the Health Insurance Portability and Accountability Act (see *Cato Journal*, Vol. 22, No. 1 (Spring/Summer 2002)). Both of these articles are available on Hyman's faculty website, http://www.law.umaryland.edu/fac_hyman.asp. Hyman also published two articles on result-based compensation, one in the *Journal of Law, Medicine & Ethics* and the other in *Washington & Lee Law Review*. Both were co-authored with Professor Charles Silver of the University of Texas School of Law. A fifth article, looking at medical malpractice and the tort system, was published in the *Texas Law Review* in June 2002 (Vol. 80, No. 7).

Hyman's current appointment at the FTC (an intergovernmental "IPA" in which he spends one half of his time at the FTC and one half at the School of Law) runs until June 30, 2003.