

**LAW AND PUBLIC HEALTH
Spring 2001, Professor Kinney**

**COURSE SCHEDULE
(Preliminary and Subject to Change)
(Revised 2/5/01; 2/12/01, 3/2/01)**

The texts for the course is Lawrence O. Gostin, *Public Health Law: Power, Restraint, and Duty* (2000) and *Public Health Law and Ethics: A Reader* (2000). The first text, *Public Health Law: Power, Restraint, and Duty*, is a book available for purchase in the bookstore. The second text is a “reader” which is available by chapters on the course web site (See [Table of Contents](#)). Please note that assignments will be made in both course text. Additional materials may also be assigned and will be available on the course web page.

Part I: Conceptual Foundations of Public Health Law

Class 1 (Jan. 16th)

A Theory and Definition of Public Health Law

- Government Power and Duty in Public Health: A Theoretical Construction of What Is “Public” in Public Health Law
- The Population-Based Perspective of Public Health
- The Relationship Between the People and the State
- The Services of the Public Health System
- The Role of Coercion and Individual Rights in Public Health Law

Gostin, *Public Health Law*, Chapter 1

Gostin, Reader, [Preface](#) & Chapters [1,2,3](#) & [4](#)

Class 2 (Jan. 23rd)

Public Health in the Constitutional Design

- Constitutional Functions and Their Application to Public Health
- The Negative Constitution: The Absence of Government Duty to Assure the Conditions for Public Health
- Federal Power to Assure the Conditions for Public Health
- State and Local Power to Assure the Conditions for Public Health
- New Federalism: Public Health in the American Federalist System

Gostin, *Public Health Law*, Chapter 2

Gostin, Reader, [Chapter 6](#)

Class 3 (Jan. 30th)

**Constitutional Limits on the Exercise of Public Health Powers:
Safeguarding Individual Rights and Freedoms**

- Public Health and The Bill of Rights

- Constitutional Limitations on the Police Power in the Early Twentieth Century
- Public Health Powers in the Modern Constitutional Era
- Procedural Due Process
- Substantive Due Process
- Equal Protection of the Laws
- Levels of Constitutional Review of Public Health Activities
- Beyond Levels of Constitutional Scrutiny

Gostin, Public Health Law, Chapter 3

Gostin, Reader, [Chapter 7](#)

Class 4 (Feb. 6th)

Public Health Regulation: A Systematic Evaluation

- General Justifications for Public Health Regulation
- Understanding Risk
- The Effectiveness of the Public Health Regulation (The “Means-Ends” Test)
- The Economic Costs of the Public Health Regulation
- The Personal Burdens of Public Health Regulation: The Least Restrictive Alternative
- Fairness in Public Health: Just Distribution of Benefits, Burdens, and Costs
- A Systematic Evaluation of Public Health Policies: A Summary
- The Synergy Between Human Rights and Public Health

Gostin, Public Health Law, Chapter 4

Gostin, Reader, [Chapter 5](#)

Class 5 (Feb. 13th)

Introduction to Public Health and Epidemiology

Guest speakers: Elise Papke, Director of the Masters of Public Health Program
 Dr. James Howell, State Epidemiologist, Indiana State Department of
 Health

Chapters from Mary-Jane Schneider, *Introduction to Public Health* (Gaithersburg, MD, Aspen Publishers, Inc. 2000) (Selected Chapters distributed in Class)

Part II: Public Health And Civil Liberties in Conflict

Class 6 (Feb. 20th) (Class Canceled)

Class 7 (Make Up Class), Feb. 22, 2001, 7:45 pm (Room 116)

Inaugural Professorship Lecture: “The International Human Right to Health: What Does This Mean for Our Nation and World,” Eleanor D. Kinney, Samuel R. Rosen Professor of Law

Gostin, Reader, [Chapter 4](#)

Class 8 (Feb. 27th)

First Hour:

The Public Health Information Infrastructure: Personal Privacy

- Public Health Surveillance
- Mandatory Reporting of Diseases and Other Health Conditions
- Partner Notification (Contact Tracing)
- Population-Based Research
- Definitions of Privacy, Confidentiality, and Security
- The Nature of the Privacy Interest: Personally Identifiable, Coded, and Anonymous Data
- Health Informational Privacy: Ethical Underpinnings
- Health Informational Privacy: Legal Status
- Confidentiality
- Balancing Collective Benefits with Private Interests: Toward a Model Public Health Information Privacy Law

Gostin, Public Health Law, Chapter 5

Gostin, Reader, [Chapter 10](#)

Second Hour: Panel on "Ensuring Access to Health Care: The "Patients Bill of Rights," IU School of Public and Environmental Affairs Colloquium Series

This class will be held at the Indiana Government Center Conference Facility located across West Street. We will have class at the Government Center in a room to be assigned and then stay for the Roundtable on Patient Protection Legislation which is now a very current public health topic at the state and federal level. I will be moderating a panel for state legislators and health policy makers. Panelists will include physicians from IUMC and other expert on patient protection. Attendance is required.

Class 9 (Mar. 6th)

Health, Communication, and Behavior: Freedom of Expression

- Two Antithetical Theories of Health Communication
- Government Speech: Public Health Communications
- Commercial Speech
- Compelled Commercial Speech: Health and Safety Disclosure Requirements
- Regulation of Cigarette Advertising: A Case Study

Gostin, Public Health Law, Chapter 6

Gostin, Reader, [Chapter 11](#)

SPRING VACATION

Class 10 (Mar. 20th)

Please note that I have combined made this assignment extra long to compensate for the missed class. What we do not complete of the materials on "Restrictions of the Person" on March 20th, we will conclude on March 27th.

Immunization, Testing, and Screening: Bodily Integrity

- Conceptualizing the Determinants of Health and Disease
- Compulsory Vaccination: Immunizing the Population Against Disease
- Case Finding: Testing and Screening
- Compulsory Screening From a Constitutional Perspective: Unreasonable Search and Seizure
- Compulsory Screening From a Disability Discrimination Perspective
- Case Study: HIV Screening of Pregnant Women and Infants

Gostin, Public Health Law, Chapter 7

Gostin, Reader, [Chapter 12](#)

Restrictions of the Person: Autonomy, Liberty, and Bodily Integrity

- A Brief History of Personal Control Measures
- Civil Confinement: Isolation, Quarantine, and Compulsory Hospitalization
- Compulsory Physical Examination and Medical Treatment
- The Criminal Law: Knowing or Willful Exposure to Infection

Gostin, Public Health Law, Chapter 8

Gostin, Reader, [Chapter 13](#)

Class 11 (Mar. 27th)

Economic Behavior and the Public's Health: Direct Regulation

- A Brief History of Commercial Regulation: The Industrial Revolution and the Sanitarian Movement
- Public Health Agencies and the Rise of the Administrative State
- The Regulatory Tools of Public Health Agencies
- Economic Liberty and the Pursuit of Public Health: Contracts, Property Uses, and “Takings”
- The Normative Value of Economic Liberty

Gostin, Public Health Law, Chapter 9

Gostin, Reader, [Chapter 8](#)

PLEASE NOTE THERE IS NO CLASS ON APRIL 3, 2001.

Class 12 (Apr. 10th)

Tort Law and the Public's Health: Indirect Regulation

Dr. Steven Jay, Chairman of the Department of Public Health, IUMC will participate in our discussion of the Tobacco Litigation as he has played a prominent role in this litigation in Indiana.

- Major Theories of Tort Liability
- Scientific Conundrums in Mass Tort Litigation: Epidemiology in the Courtroom
- The Public Health Value of Tort Litigation
- “The Tobacco Wars”: A Case Study
- Tort Litigation to Prevent Firearm Injuries: A Case Study
- The Limitations on Tort Law: Social and Economic Costs

Gostin, Public Health Law, Chapter 10
Gostin, Reader, [Chapter 9](#)

Part III: The Future of Public Health Law

Class 13 (Apr. 17th)

Public Health Law Reform

- The Inherent Problems of Public Health
- Three Concepts of Public Health and Liberty
- Guidelines for Public Health Law Reform
- The Future of Public Health Law

Gostin, Public Health Law, Chapter 11
Gostin, Reader, [Chapter 14](#)