

# **PUBLIC HEALTH LAW AND ETHICS**

**LAWJ-364-05**

**Fall Term, 2002**

**Tuesdays 5:45-8:50 PM**

**Room 160**

**Georgetown University Law Center**

**Professor Lawrence O. Gostin**

## **Syllabus**

### **COURSE OBJECTIVES**

Ensuring the health and well-being of citizens is among the fundamental goals of American government. While state and local governments have broad powers to provide for the public's health, government action to protect health and well-being may conflict with constitutionally-protected rights of individuals. Thus, the question that lawyers, legislators, judges, and public health authorities must consider when contemplating government action is the extent to which the state may restrain citizens for the promotion of health, safety, and morals. This course will explore the legal foundations of the American public health system and the resulting struggle between individual liberties and the government's interest in providing for its citizen's collective health and well-being.

Our goal in studying public health law is to provide students with the ability to: (1) understand the structure and functions of the public health system; (2) define public health through an examination of public health theory and practice; (3) understand the role of government (including judicial), community, and individual involvement in public health; and (4) understand and assess conflicts between governmental interests in public health and individual interests in liberty. We will examine these conflicts in many of the important realms of public health theory and practice— e.g, health promotion and communication; immunization, testing, and screening; infectious disease control; regulation of businesses and professions; and tort litigation for the public's health.

The course will begin with an examination of the foundations of public health law, ethics, and human rights. It will then turn to the relationship between public health and the Constitution. The following parts of the course will discuss various methods of legal and economic reasoning in public health. This includes an understanding of risk assessment and cost-effectiveness analysis. Next, the readings will focus on public health theory and practice. Here, we will read about the major areas of public health activity and explore the complex trade offs between individual interests and public goods. Finally, the materials will turn to the future of public health, applying the course's foundations to modern areas of concern, such as emerging infectious diseases, bioterrorism, and public health genetics. For example, students will read and discuss the Model State Emergency Health Powers Act drafted by the Center for Law and the Public's Health in response to September 11<sup>th</sup>, 2001.

## **COURSE REQUIREMENTS**

The course carries three (3) credit hours and meets once a week on Tuesdays from **5:45 - 8:50 p.m.** Class discussions showing rigorous thought and an understanding of the interface of law and public health will be an integral part of the learning process. *Please read and analyze all of the assigned materials before class to facilitate discussions.* Students will also participate in several innovative class exercises and hopefully have one or two influential national public health figures speak to the class. This will allow students to practice skills of assessment, analysis, and advocacy. Your participation in class discussions and class exercises will be considered in assigning your final grade.

## **OPTIONAL FINAL EXAMINATION OR PAPER**

Students will have the choice of a final examination or paper. The paper should be a scholarly paper on a topic in public health law and ethics, proposed by the student and approved by the Professor. Grading will be based on a demonstration that the content and materials of the course were clearly understood. Students will be expected to have an original idea, a well-developed thesis, and a well-researched and written paper. The page limit is 25 double spaced pages.

For students taking the final examination, it will consist of several hypotheticals. The questions will be based on the subject matters examined in the course. Students will be expected to write carefully crafted responses to each hypothetical that incorporate the applicable constitutional, statutory, and case law together with an evaluation of public health policy and ethics. The examination will be in class and open book. You will be permitted to bring any materials you choose with you to the exam.

## **ASSIGNED READINGS**

The two required texts for this course are *Public Health Law: Power, Duty, Restraint* (2000) and *Public Health Law and Ethics: A Reader* (2002). The University of California Press and the Milbank Memorial Fund jointly publish both books. The books are available in the GULC Bookstore. Students should read all materials in preparation for each week of the course.

## **READER WEB SITE**

**<http://www.publichealthlaw.net/reader>**

To provide students with the most comprehensive and timely information possible, I have launched a companion web site to complement the two textbooks. This site, which is integrated into the web site of the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities, is designed to greatly enhance the student's experience. It will provide an important resource for research and scholarship. The site includes selected court cases, statutes, regulations, reports, articles, and links to other interesting resources on the internet. Please visit

the *Reader* web site each week to find relevant readings. These readings are recommended, but not required.

### **OFFICE HOURS**

My office hours will be on Tuesdays, 3:30 – 5:00 PM. We can also meet at any mutually convenient time. I encourage you to come and see me to discuss any aspect after class. My office is on the fourth floor, Room 454. My office telephone number is **662-9373**. The phone number of my secretary, Pauline Latty, is **662-9406**. My e-mail is: [gostin@law.georgetown.edu](mailto:gostin@law.georgetown.edu).

### **FINAL THOUGHTS**

I have long been fascinated by the subject matter of this course and have spent years studying and researching the problems of public health law. I hope you will share my enthusiasm for the intellectually challenging ideas presented in the readings and class work.

We are fortunate at the Law Center to have the resources of the Center on Law & the Public's Health at Georgetown and Johns Hopkins Universities ("The CDC Collaborating Center Promoting Health Through Law"). I am also working with other national (e.g. the National Institutes of Health and Institute of Medicine) and international (e.g., World Health Organization and UNAIDS) public health agencies. I plan to incorporate current problems and controversies of public health into the class.

I look forward to getting to know you and to many thoughtful discussions. If I can ever be of assistance, please come by and see me during office hours or any convenient time.

### **WEEKLY READING ASSIGNMENTS**

*Public Health Law: Power, Duty, Restraint* [hereinafter, "Text"]  
*Public Health Law and Ethics: A Reader* [hereinafter, "Reader"]

## **PART I FOUNDATIONS OF PUBLIC HEALTH LAW AND ETHICS**

### **Week 1      PUBLIC HEALTH LAW, ETHICS, AND HUMAN RIGHTS: MAPPING THE ISSUES**

This week begin a development of a definition and theory of public health law. It provides a justification of the special role of government to assure the conditions for people to be healthy. This justification is based on theories of democracy, normative ideas about the foundational importance of health, and an historical perspective.

Sept 3

Text:      Chapter 1  
Reader:    Chapter 1

**Week 2**

**PUBLIC HEALTH ETHICS AND HUMAN RIGHTS: POPULATION-BASED PERSPECTIVES AND THE COMMUNITARIAN TRADITION**

This week we investigate the field of public health, together with its ethical basis and its connection to international human rights. This includes the communitarian and population-based traditions of public health. We explore the controversies surrounding public health, particularly its “reach” and its connection to the political and democratic processes. We also examine the various forms of public health ethics and the increasing relevance of human rights, particularly the right to health.

Sept 10

Reader: Chapters 2-4

**Week 3**

**PUBLIC HEALTH REASONING: PHILOSOPHY, RISK AND COST**

This week we examine the various forms of reasoning in public health. In particular, we discuss the philosophical foundations (principally utilitarianism, but also the relevance of normative theories). We also discuss risk assessment, drawing from the field of environmental law and policy. Finally, we explore the economic issues, notably cost-effectiveness analysis.

Sept 17

Text: Chapter 4

Reader: Chapter 5

**PART II**  
**THE LAW AND THE PUBLIC’S HEALTH**

**Week 4**

**PUBLIC HEALTH AND THE CONSTITUTION**

In the next three weeks begin coverage of the “building blocks” or constitutive parts of the field of public health law, including the constitution, law and economics, and the tort system. This week we carefully explore the constitutional foundations of public health. First, we explore what duties or obligations, if any, government has to assure the conditions for the public’s health. Next, we explore government powers in the realm of public health, notably the police powers. Finally, we explore the limitations on government power. We will do this within the context of American federalism, asking the question, which government (federal or state) has the power to act in a given case.

Sept 24

Text: Chapter 2-3

Reader: Chapters 6-7

**Week 5**

**PUBLIC HEALTH AND THE REGULATION OF PROPERTY**

The exercise of public health powers entails a great deal of economic regulation. This week we examine the history and structure of public health agencies. We also discuss the powers agencies wield over business and professionals, notably licenses, inspections, and nuisance abatements.

Oct. 1

Text: Chapter 9

Reader: Chapter 8

**Week 6**

**TORT LITIGATION FOR THE PUBLIC'S HEALTH**

Government does not merely regulate directly, but also indirectly through the tort system. This week we review tort litigation as a strategy for improving the public's health. This involves an examination of science, epidemiology and causality. It also involves an exploration of the major tort theories of public health litigation. We also pursue case studies in the fields of cigarette litigation and firearm litigation.

Oct. 8

Text: Chapter 10

Reader: Chapter 9

**Week 7\***

**IN-CLASS EXERCISE: FIREARM LITIGATION AND LEGISLATION**

Oct. 22

Review in-class exercise instructions

\*Note: Monday classes meet on Tuesday, October 15.

**PART III  
TENSIONS AND RECURRING THEMES**

**Week 8**

**SURVEILLANCE AND PUBLIC HEALTH RESEARCH: PRIVACY AND THE "RIGHT TO KNOW"**

In the next several weeks we embark on an exploration of the major public health activities and their effects on law, ethics, and policy. With each activity, we examine the tensions between individual interests (e.g., autonomy, privacy, expression, liberty) and the common good. This week we discuss the public health activities of surveillance and research. We explore the importance of these activities for population health and the burdens they place on personal interests, notably the privacy.

Oct. 29

Text: Chapter 5

Reader: Chapter 10

**Week 9**

**HEALTH PROMOTION: EDUCATION, PERSUASION, AND FREE EXPRESSION**

The public health activity discussed this week is health promotion and health education. There are at least three ways in which government affects the informational environment: government speech (e.g., health communication campaigns), government compelled speech (e.g., labeling requirements) and government restrictions on speech (e.g., commercial speech regulations). We explore the normative aspects of government control of the informational environment, and the First Amendment implications.

Nov. 5

Text: Chapter 6

Reader: Chapter 11

**Week 10****BIOLOGICAL INTERVENTIONS TO CONTROL INFECTIOUS DISEASE: IMMUNIZATION, SCREENING, AND TREATMENT**

The public health activities discussed this week and the next involve personal restraints to control infectious diseases. This week, we discuss immunization, screening, and treatment. These interventions affect autonomy and bodily integrity. But they are traditionally exercised in the face of many serious infectious disease threats. We discuss the legal, ethical and policy implications of the exercise of these powers.

Nov. 12

Class Exercise: Immunization  
Text: Chapter 7  
Reader: Chapter 12

**Week 11****RESTRICTIONS OF THE PERSON: CIVIL CONFINEMENT AND CRIMINAL PUNISHMENT**

This week we discuss the public health powers of civil confinement (e.g., isolation, quarantine, and civil commitment) and criminal punishment. We inquire whether these powers are effective, and in what circumstances. We also inquire about the tradeoffs between control of infectious diseases and liberty interests. We discuss the legal, ethical and policy implications of the exercise of these powers. To illustrate these issues, students will participate in a class exercise involving multi-drug resistant tuberculosis.

TBA

Class Exercise: Directly Observed  
Therapy in New York City  
Text: Chapter 8  
Reader: Chapter 13

**PART IV  
THE FUTURE OF THE PUBLIC'S HEALTH****Week 12****VISION AND CHALLENGES: CASE STUDIES ON EMERGING INFECTIONS, BIOTERRORISM, AND GENETICS**

This week, and the next, we conclude our exploration of public health law and ethics. This week we examine visions and challenges for the future of public health and safety. In particular, we pursue three paradigmatic areas of modern public health: emerging infectious diseases (including the worrying problem of anti-biotic resistance), bioterrorism (including the anthrax outbreak following September 11, 2001, and public health genetics (including modern efforts to reduce the burdens of genetically-related diseases).

Nov. 26

Text: Chapter 11  
Reader: Chapter 14

**Week 13****CLASS EXERCISE: THE MODEL EMERGENCY HEALTH POWERS ACT (PUBLIC SAFETY AFTER SEPT 11<sup>TH</sup>)**

Following September 11<sup>th</sup>, the CDC asked the Center for Law and the Public's Health to draft a Model State Emergency Health Powers Act. More than one-third of the states have thus far adopted the Model Act or a version of the Act. This class exercise provides an opportunity for students to examine the tensions and controversies surrounding the exercise of emergency health powers to combat bioterrorism or a naturally occurring outbreak with a potential for catastrophic health consequences.

Dec. 3

Reader The Model Emergency Health Powers Act  
Web  
Site

**Week 14****FINAL THOUGHTS AND EXAM REVIEW**

This class gives students an opportunity to review the semester's work. Please submit questions in advance to the Professor on any topic or your choice. You will also have the chance to ask questions in class and discuss a variety of subjects in public health law and ethics. We can also discuss activities and careers on public health law. Thank you for participating in this class and for your interest in using law as a tool for advancing the health of the population.

Dec. 10

No reading assignments