

PUBLIC HEALTH LAW AND ETHICS

LAWJ-364-07, Fall Term 2004

Tuesdays 5:45-8:50 PM, Room 160

Professor Lawrence O. Gostin

Syllabus

I. 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, obesity, 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 11th, 2001.

II. COURSE REQUIREMENTS

A. Participation

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.

B. Final Examination

Final Examination. The final examination 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 **closed book**. You will NOT be permitted to bring any materials you choose with you to the exam.

III. ASSIGNED READINGS

A. Required Texts

The two required texts for this course are PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT (2000) [hereinafter **Text**] and PUBLIC HEALTH LAW AND ETHICS: A READER (2002) [hereinafter **Reader**]. 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.

B. Reader Website

<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.

IV. OFFICE HOURS

My office hours will be on Tuesdays, 11:00am – 12:30pm. 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 401. My office telephone number is **662-9373**. My assistant is Stephen Barbour and he can be reached at **662-9762** or **slb23@law.georgetown.edu**. My e-mail is: **gostin@law.georgetown.edu**. Lance Gable, (202) 662-9281, and Lesley Stone, (202) 662-9777, are fellows at Georgetown University Law Center and will be assisting me in teaching this course. Their offices are located in the Hotung Building on the 5th floor. They are also available by appointment to answer any questions you might have. Lesley Stone can be reached at **662-9777** or **las47@law.georgetown.edu**. Lance Gable can be reached at **662-9281** or **gable1@law.georgetown.edu**.

VI. 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.

VII. WEEKLY READING ASSIGNMENTS

PART I: FOUNDATIONS OF PUBLIC HEALTH LAW AND ETHICS

Week 1 ***Public Health Law, Ethics and Human Rights:
08/31*** ***Mapping the Issues***

This week we 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.

Readings:

- Text: Chapter 1
- Reader: Chapter 1

Week 2 ***Public Health Ethics and Human Rights:
09/07*** ***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.

Readings:

- Reader: Chapters 2-4
- Mokdad et al., *Actual Causes of Death in the United States, 2000*, 291 JAMA 1238 (2004).

PART II: THE LAW AND THE PUBLIC’S HEALTH

Week 3 ***Public Health Reasoning:
09/14*** ***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.

Readings:

- Text: Chapter 4
- Reader: Chapter 5

Week 4
09/21

Public Health and the Constitution

In the next three weeks we 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.

Readings:

- Text: Chapter 2-3
- Reader: Chapters 6-7

Week 5
09/28

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, firearm litigation, and obesity litigation.

Readings:

- Text: Chapter 10
- Reader: Chapter 9

Note: Monday classes meet on Tuesday, October 12th.

Week 6
10/05

Class Exercise:
Firearm Litigation and Legislation

Readings:

- Review in-class exercise instructions

PART III: TENSIONS AND RECURRING THEMES

Week 7
10/19

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.

Readings:

- Text: Chapter 5
- Reader: Chapter 10
- Amy L. Fairchild & Ronald Bayer, *Ethics and the Conduct of Public Health Surveillance*, 303 SCIENCE 631 (Jan. 30, 2004)

Week 8
10/26

***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. We also explore recent controversies over misleading government speech.

Readings:

- Text: Chapter 6
- Reader: Chapter 11
- M. Gregg Bloche, *Health Care Disparities— Science, Politics, and Race*, 350 NEW ENG. J. MED. 1568 (2004)
- James Glatz, *Scientists Say Administration Distorts Facts*, N.Y. TIMES (Feb. 19, 2004), at A18

Week 9
11/02

***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.

Class Exercise: Immunization

Readings:

- Text: Chapter 7
- Reader: Chapter 12
- *Boone v. Boozman*, 217 F.Supp. 2d 938 (2002)
- Review in-class exercise instructions

Week 10
11/09

***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.

Class Exercise: Directly Observed Therapy in New York City

Readings:

- Text: Chapter 8
- Reader: Chapter 13
- Review in-class exercise instructions

PART IV: THE FUTURE OF THE PUBLIC'S HEALTH

Week 11
11/16

***Vision and Challenges:
Case Studies on Emerging Infections, Bioterrorism, International Health, 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 threat posed by SARS and the international legal tools needed to address international epidemics), bioterrorism (including the anthrax outbreak following September 11, 2001), and public health genetics (including modern efforts to reduce the burdens of genetically-related diseases).

Readings:

- Reader: Chapter 14
- Lawrence O. Gostin et al., *Ethical and Legal Challenges Posed by Severe Acute Respiratory Syndrome*, 290 JAMA 3229 (2003)
- Lawrence O. Gostin, *International Infectious Disease Law*, 291 JAMA 2623 (2004)

Week 12
11/23

***Class Exercise:
The Model Emergency Health Powers Act (Public Safety after September 11th)***

Following September 11th, 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.

Class Exercise: The Model Emergency Health Powers Act

Readings:

- Reader Website: The Model Emergency Health Powers Act
- Lawrence O. Gostin, *Public Health Law in an Age of Terrorism: Rethinking Individual Rights and Common Goods*, 21 HEALTH AFFAIRS 79 (Nov./Dec. 2002)
- George J. Annas, *Bioterrorism, Public Health, and Human Rights*, 21 HEALTH AFFAIRS 94 (Nov./Dec. 2002)
- Review in-class exercise instructions

Week 13
11/30

***The Obesity Epidemic:
Non-Communicable Diseases, Diet, and the Sedentary Lifestyle***

In centuries past, infectious diseases constituted the greatest burden on the public's health, however, modern scientific advancements have diminished the threat posed by infectious diseases. The United States, like many parts of the world, is experiencing an "epidemiological transition" from infectious to chronic diseases as the primary causes of morbidity and mortality. An underlying cause of many of these non-communicable diseases (including heart disease, type 2 diabetes, stroke, and asthma) is obesity. This class explores the opportunities and challenges posed by public health approaches to the obesity epidemic.

Readings:

- INSTITUTE OF MEDICINE, THE FUTURE OF THE PUBLIC'S HEALTH IN THE 21ST CENTURY 76-79 (2002).
- Marion Nestle and Michael F. Jacobson, *Halting the Obesity Epidemic: A Public Health Policy Approach*, 115 Public Health Reports 12 (Jan./Feb. 2000)
- *Pelman v. McDonald's Corporations*, 237 F.Supp. 2d. 512 (2003). Read pp519-520 and Parts II.B.2, III, and IV

Final Exam
12/11
10:00 am

Final Exam