

# PUBLIC HEALTH LAW

LAWJ-364-05

Fall Term, 1998

Georgetown University Law Center

Professor James G. Hodge, Jr.

## SYLLABUS

### COURSE OBJECTIVES

The protection and preservation of the public health is among the most important goals of government. The protection and preservation of individual rights is a cornerstone of American society. The classic problem of public health law is the extent to which the state may restrain its citizens in order to promote the health, safety, and morals of the community. This course will explore the inherent tensions between promoting the public health and protecting the legal interests of individuals.

After examining the powers and duties of the state to protect and preserve the public health, we will explore in detail the constitutional and statutory rights of persons with communicable diseases -- their liberty and privacy interests under the Fourteenth Amendment, First Amendment rights to free expression and association, Fourth Amendment rights to be free from unreasonable searches and seizures.

Public health law requires a careful balancing of collective and individual rights and interests. Our goal will be to clarify the conflicts and establish a rigorous method of assessing and balancing these interests in each of the realms of public health regulation. The course will examine HIV/AIDS disease and other communicable diseases, as well as various public health conditions, for illustrative purposes.

### COURSE REQUIREMENTS

The course carries three (3) credit hours and meets twice a week, Mondays and Tuesdays, from **3:30 - 4:55 p.m.**, in Room 160, GULC. Class discussions showing rigorous thought and an informed understanding of the subject matter are integral to the learning process. *Please read and analyze all of the assigned materials before class to facilitate discussions.*

The required texts and materials are: **JUDITH AREEN ET AL., LAW, SCIENCE, AND MEDICINE, Foundation Press (1996)** [the focus of the course will be Chapter 5: Public Health Law, although other readings are required] and a handout of additional materials available at the Fourth Floor copy distribution center. The required text is used in a number of other health-related courses at GULC, and thus its value to students exceeds the scope of this course.

## FINAL EXAMINATION

The final examination will be on **December 15, 1998** at **1:00 p.m.** It will consist of several hypotheticals that will be based upon the subject matter examined in the course. Students will be expected to write carefully crafted responses to each hypothetical which incorporate the applicable constitutional, statutory, and case law together with an evaluation of public health policy. The examination will be in class and last for three (3) hours. The examination is completely open-book; students may use any books or written materials that they wish.

### GENERAL SUBJECT MATTER

As mentioned above, the course will focus on Chapter 5: Public Health Law of the required casebook, although readings from other chapters will be assigned. The general subject headings of Chapter 5 illustrate the scope of the course, including the following:

#### **I. FOUNDATIONS OF PUBLIC HEALTH LAW**

- A. Defining Concepts
  - 1. Public Health Law in the Modern Sense
  - 2. Historical Underpinnings, Review, and Analysis
- B. The American Public Health System
  - 1. Definition of Public Health
    - a. The mission of public health
    - b. The substance of public health
  - 2. Role of Government in Public Health
    - a. The functions of government in public health
    - b. State, local, and federal roles in public health
  - 3. Basic Services of Public Health
  - 4. The Public Health System At A Crossroads
  - 5. Refocusing and Revitalizing Public Health
  - 6. The Process of Change

#### **II. SCIENCES OF PUBLIC HEALTH**

- A. Biostatistics
- B. Epidemiology
- C. Toxic Torts
  - 1. "Reasonably Exclusive Factual Connection"
  - 2. What Does This Mean?
- D. Environmental and Behavioral Threats to Health
- E. Emerging and Re-Emerging Microbial Threats to Health
- F. Assessing and Regulating Risk
  - 1. Public perceptions
  - 2. Congressional Action and Reaction

3. Uncertainties in the Technical Regulatory Process

### **III. PUBLIC HEALTH AND LEGAL REASONING**

- A. Constitutional Law
  1. Sources of Authority for Public Health Action: State Police Powers
    - a. Federalism: the Constitution as a fountain and levee of power to the states
    - b. Traditional limitations on the state police power
  2. The First Amendment: Freedom of Expression, Association, and Religion
    - a. Freedom of Expression
      1. The Commercial Speech Cases: Restrictions on Advertising Cigarettes, Alcoholic Beverages, and Gambling
      2. The Adult Video and Book Store Cases
    - b. Freedom of Association
      1. The Bath House Cases
    - c. Freedom of Religion
      1. The Immunization Cases
  3. The Fourth Amendment: Medical Testing As a Search and Seizure
  4. The Fourteenth Amendment: Autonomy, Privacy, and Liberty
- B. Legislative Authorization for Public Health Activities

#### *CASE STUDY I: HARD LIQUOR ADVERTISING*

### **IV. SURVEILLANCE AND DISEASE CONTROL: TESTING, REPORTING, AND CONTACT TRACING**

- A. Testing and Screening
  1. Scientific Measures of Accuracy in Screening Tests
  2. Informed Consent to Medical Testing
  3. Testing of HIV-Infected Health Care Professionals
  4. Judicial Review of Screening Programs
- B. Reporting
- C. Partner Notification

#### *CASE STUDY II: NAMED HIV REPORTING*

### **V. PERSONAL CONTROL MEASURES: QUARANTINE, ISOLATION, AND MANDATORY TREATMENT**

- A. Quarantine, Isolation
- B. Mandatory Treatment and Directly Observed Therapy

### **VI. RISKING TRANSMISSION OF DISEASE: TORT LAW**

- A. Duty to Take Reasonable Care to Avoid Sexual Transmission of Disease
- B. Negligent Infliction of Emotional Distress: "Disease Phobia" Cases

- C. Litigation Following Transfusion of Contaminated Blood and Blood Products

**VII. RISKING TRANSMISSION OF DISEASE: CRIMINAL LAW**

- A. Assault With a Dangerous Weapon
- B. Attempted Murder
- C. Public Health Offenses
- D. Goals of the Criminal Law

**VIII. HEALTH INFORMATION PRIVACY**

- A. The Constitutional Right to Privacy
- B. Privacy Legislation
- C. Physician/Patient Privilege
- D. HIV-Infected Health Care Professionals and the "Right to Know"
- E. The Duty to Warn
- F. Computers and Privacy

*CASE STUDY III: MODEL STATE PRIVACY LEGISLATION*

**IX. DISCRIMINATION AGAINST PERSONS WITH DISABILITIES**

- A. Disability Discrimination Law
  - 1. Americans with Disabilities Act of 1990 (ADA)
  - 2. Rehabilitation Act of 1973
  - 3. Application of the ADA to Public Health Regulation
- B. Discrimination in Employment
- C. Discrimination in Public Accommodations

ASSIGNED READINGS

The following assignments from the text are required in addition to the *weekly readings* (if any) of materials in the handout to this course. Students should read all materials in preparation for each week of the course. It may be to your advantage to read the text assignments before the weekly materials in the handout to provide background for the latter readings.

<b>WEEK OF:</b>	<b>#</b>	<b>TEXT PAGES IN ADDITION TO OTHER ASSIGNED READINGS</b>
August 24, 25	1	<b><u>FOUNDATIONS OF PUBLIC HEALTH LAW:</u></b> text pp. 484-494; <b>Contrasting Value Systems</b> , text pp. 49-59; <b>Ethical Foundations</b> , text pp. 687-702

August 31, September 1	2	<b><u>SCIENCES OF PUBLIC HEALTH</u></b> : text pp. 450-463, 495-519; Week 2 handout materials <i>Guest Lecturer - Dr. Peter Cohen</i>
September 8 <sup>1</sup>	3	<b><u>PUBLIC HEALTH AND LEGAL REASONING: Constitutional Law Including Federalism</u></b> , text pp. 519-529; Week 3 handout materials
September 14, 15	4	<b><u>FREEDOM OF EXPRESSION AND ASSOCIATION</u></b> : text pp. 529-544; <b><u>THE FOURTH AND FOURTEENTH AMENDMENTS</u></b> : text pp. 544-552; <b><u>LEGISLATIVE AUTHORIZATION FOR PUBLIC HEALTH ACTIVITIES</u></b> : text pp. 552-557
September 21, 22	5	<b><i>CASE STUDY I: HARD LIQUOR ADVERTISING</i></b> : Week 5 handout materials
September 28, 29	6	<b><u>SURVEILLANCE AND DISEASE CONTROL: Testing and Screening</u></b> , text pp. 564-593; and Week 6 handout materials
October 5, 6	7	<b><u>REPORTING &amp; PARTNER NOTIFICATION</u></b> : text pp. 593-608, 1400-1405 and Week 7 handout materials
October 13 <sup>2</sup>	8	<b><i>CASE STUDY II: NAMED HIV REPORTING</i></b> : Week 8 handout materials
October 19, 20	9	<b><u>PERSONAL CONTROL MEASURES</u></b> : text pp. 608-616; Week 9 handout materials
October 26, 27	10	<b><u>RISKING TRANSMISSION OF DISEASE: TORT LAW</u></b> , text pp. 617-640; <b><u>RISKING TRANSMISSION OF DISEASE: CRIMINAL LAW</u></b> , text pp. 641-654
November 2, 3	11	<b><u>HEALTH INFORMATION PRIVACY: Constitutional Right to Privacy, Privacy Legislation, &amp; Physician Patient Privilege</u></b> , text pp. 654-661; <b><u>Computers and Privacy</u></b> , 1405-1414; Week 11 handout materials

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<sup>1</sup>. The class on September 7 will not meet in observance of Labor Day.

<sup>2</sup>. The class on October 12 will not meet in observance of Columbus Day.

November 9, 10	12	<b><u>HIV-INFECTED HEALTH CARE PROFESSIONALS: The "Right to Know" &amp; The Duty to Warn</u></b> , text pp. 661-673
November 16, 17	13	<b><i>CASE STUDY III: MODEL STATE PUBLIC HEALTH PRIVACY LEGISLATION</i></b> : Week 13 handout materials
November 23, 24	14	<b><u>DISCRIMINATION AGAINST PERSONS WITH DISABILITIES: Disability Discrimination Law</u></b> , text pp. 557-564, 673-686 <b><i>Bragdon v. Abbott</i></b> - Guest Lecturer Professor Lawrence O. Gostin, Week 14 handout materials
November 30, December 1	15	Course Wrap-up, Discussion of Issues and Final Exam, Make-up Sessions
December 15	17	<b>FINAL EXAMINATION: 1:00 p.m.</b>

#### OFFICE HOURS

My office hours will be on Tuesday from 10:00 a.m. - 11:30 a.m., or at any mutually convenient time. Office hours will be held in my Scholar's Study, Room 421, in the Williams Law Library. Please feel welcome to contact me at any time if you cannot reach me during office hours. My phone number is (202) 543-2992 (please always leave a message). My email is [hodgej@bulldog.georgetown.edu](mailto:hodgej@bulldog.georgetown.edu).