

PUBLIC HEALTH LAW AND ETHICS

LAWJ-364-05

Spring 2008

Georgetown University Law Center

James G. Hodge, Jr.¹

Syllabus

The protection and preservation of the public health are quintessential goals of government. Equally critical is the need to respect individual rights and morals in American society. The classic conundrum of public health law and ethics is the extent to which government may restrain or impinge citizens' interests, directly or indirectly, to promote the health and safety of the community. This course, *Public Health Law and Ethics*, explores the inherent tensions between promoting the public health and protecting the legal and ethical rights and interests of individuals.

Public health law and ethics require a careful balancing of collective and individual rights and interests. The objectives of this course are to: (1) better 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 roles of government, private sector entities, and individuals in assuring the conditions for people to be healthy; and (4) assess legal and ethical conflicts between governmental interests in public health and individual interests in liberty or other protected rights in multiple contexts. These conflicts will be examined through critical facets of public health theory and practice— *e.g.*, health promotion and communication; public health powers such as immunization, testing, screening, quarantine, and isolation; public health emergencies; regulation of businesses and professions; and tort litigation for the public's health. While protecting the public's health has global dimensions, which will be explored to some degree, the focus of the course is on public health law in the United States.

COURSE REQUIREMENTS

Time and Place. The course carries three (3) credit hours and meets once a week on Wednesdays from **5:45 - 8:50 p.m.** in **McDonough Room 141**.

Required Texts. The two required texts for this course are (1) LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW AND ETHICS: A READER (2002) [hereinafter **Reader**]; and (2) LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT (2000) [hereinafter **Treatise**]. The

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University of California Press and the Milbank Memorial Fund jointly publish both books, which are (or should be) available in the GULC Bookstore. Additional readings may also be distributed in advance of or during each class.

Reader Website. To provide students with additional information, a companion web site to complement the Reader has been created by Professor Gostin. This web site, which is integrated into the web site of the *Centers for Law and the Public's Health*, includes selected court cases, statutes, regulations, reports, articles, and links to other online resources. Occasionally, you may be instructed to refer to the Reader website for optional reading assignments. The Reader web site is at: <http://www.publichealthlaw.net/reader/index.html>. Additional readings may also be assigned from the *Centers'* website at <http://www.publichealthlaw.net>.

Participation. Please read and analyze all of the assigned materials before class to facilitate discussions. Students will also participate in several class exercises to enhance practice skills of assessment, analysis, and advocacy (see *Case Studies/Exercises* below). Your participation in class discussions and class exercises will be strongly considered in assigning your final grade (see *Grading* below).

Final Exam. The exam shall be distributed on the last day of class on **April 23, 2008**. It shall consist of a lengthy fact pattern including several hypotheticals based on the subject matter of the course or other current issues in public health law. 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.

The examination is completely open-book; students may use any books or written materials that they wish to answer the questions, but may not consult each other (or share materials or notes) concerning the exam or class at any point following the distribution of the examination.

Students shall prepare examination responses within ten (10) double-spaced pages of 12 point font text with standard 1 inch margins. Additional information about the examination format will be provided later in the course. Final copies of exams must be provided to the Registrar's Office by **1:00 p.m. on May 13, 2008**.

Grading. An individual's grade for the course will be assigned based on individual attendance, participation, and the examination as follows: individual attendance (10%); individual and group class participation (20%); and individual examination (70%). Individual class participation will be assessed on a qualitative rather than quantitative basis.

Requests for Extensions. Please note my policy concerning extensions. Absent truly extenuating circumstances (*e.g.*, medical emergencies), extensions for the delivery of the final examination on May 13, 2008 will not be given.

COURSE STRUCTURE

Lectures and Discussions. The first half of many class sessions will be devoted to brief lectures and class discussions of relevant legal and ethical issues. Class discussions showing rigorous thought and an informed understanding of the subject matter are integral to the learning process. Special lecturers may also be invited to speak subject to their availability.

Course Exercises. To enhance the learning experience and provide a practical demonstration of public health legal and ethical issues, various course exercises will be conducted during the second half of many classes (see **Topics and Assigned Readings** below). Students may be assigned to teams comprised of individuals with varied backgrounds to work together on case studies or course exercises.

TOPICS AND ASSIGNED READINGS

The following assignments from the texts 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 textual assignments before any additional assigned material.

DATE:	WEEK #	TOPIC AND ASSIGNED READINGS
January 16	1	<p><i>Introduction to the Course</i> (including review of course requirements, required texts, and professor/student introductions)</p> <hr/> <p><i>Public Health Law, Ethics, and Human Rights: Mapping and Defining the Issues:</i> READER, Chapter 1, text pp. 1-19; TREATISE, Chapter 1, pp. 3-22</p>
January 23	2	<p><i>Reasoning in Public Health: Philosophy, Risk, and Cost:</i> READER, Chapter 5, text pp. 127-158; TREATISE, Chapter 4, pp. 85-109</p>
January 30	3	<p><i>Public Health Law and Constitution: Part I – The Role of Government:</i> READER, Chapter 6, text pp. 161-201; TREATISE, Chapter 2, pp. 25-59</p>
February 6	4	<p><i>Public Health Law and Constitution: Part II – The Protection of Individual Rights:</i> READER, Chapter 7, text pp. 203-226; TREATISE, Chapter 3, pp. 61-83</p> <hr/> <p><i>Course Exercise</i> ~ Historic and Modern Arguments Concerning <i>Jacobson v. Massachusetts</i></p>
February 13	5	<p><i>Public Health Regulation of Property and Professions:</i> READER, Chapter 8, text pp. 229-263; TREATISE, Chapter 9, pp. 237-267</p> <hr/> <p><i>Course Exercise</i> ~ Assessing the Limits of Public Health Nuisance</p>

		Authority
February 27	6	<i>Tort Litigation for the Public's Health:</i> READER, Chapter 9, text pp. 265-291; TREATISE, Chapter 10, pp. 269-305 <hr/> <i>Course Exercise</i> ~ Supreme Court Projections Concerning Firearm Litigation
March 12	7	<i>Public Health Surveillance and Research: Part I – Confidentiality and the Right to Know:</i> READER, Chapter 10, text pp. 295-333; TREATISE, Chapter 5, pp. 113-142 <hr/> <i>Course Exercise</i> ~ Examining Legal Issues for a Modern Public Health Tool: Expedited Partner Therapies (EPT)
March 19	8	<i>Public Health Surveillance and Research: Part II – Public Health Information Privacy:</i> Readings to be provided at the end of Week 7 <hr/> <i>Course Exercise</i> ~ Distinguishing Public Health Practice and Research
March 26	9	<i>Biological Interventions to Control Infectious Disease: Immunization, Screening, and Treatment:</i> READER, Chapter 12, text pp. 377-413; TREATISE, Chapter 7, pp. 175-201
April 2	10	<i>Personal Restrictions in the Interests of Protecting the Public's Health: Isolation, Quarantine, and other Powers:</i> READER, Chapter 13, text pp. 415-443; TREATISE, Chapter 8, pp. 203-234
April 9	11	<i>Public Health Law in Real Time ~ Public Health Emergencies:</i> READER, Chapter 14, text pp. 447-472; TREATISE, Chapter 11, pp. 309-328; <i>Center Website:</i> THE MODEL EMERGENCY HEALTH POWERS ACT <hr/> <i>Course Exercise</i> ~ Legislative Perspectives Concerning the Model State Emergency Health Powers Act
April 16	12	<i>Public Health Law in a Global Economy:</i> Readings to be provided in Week 11 <hr/> <i>Course Exercise</i> ~ Prioritizing Public Health Legal Challenges in the 21 st Century
April 23	13	<i>Course Wrap-up and Make-up Sessions (if any); Distribution of Final Examination; Final Discussion of Issues</i>
May 13, 2008	17	FINAL EXAMINATION DUE: 1:00 p.m.

ADMINISTRATION

Instructor Availability. I will be available before each class or by appointment to

answer any questions or address comments.

Contact Data. Since my primary faculty appointment is at the Johns Hopkins Bloomberg School of Public Health, (and my office is located in Baltimore, MD), the best way to reach me is via email at jhodge@jhsph.edu. *Please do not attempt to reach me at any other email address.* My phone number at Johns Hopkins is (410) 955-7624.