

Public Health and the Law

PubH 288.10 (Three Credits)

Spring Semester 2005

Mondays, 3:00-5:50 p.m., 2175 K Street, #7011

Instructor:

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Prerequisites: None.

Required

Texts:

1) Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint*, University of California Press (2000) (referred to herein as “Text”)

2) Lawrence O. Gostin, ed., *Public Health Law and Ethics: A Reader*, University of California Press (2002) (referred to herein as “Reader”)

3) Jonathan Harr, *A Civil Action*, Vintage Books (1995)

Other readings distributed in class & via e-mail.

Office hours: Fridays, 9:30am-12:30pm, or by appointment. Note: I spend Monday-Thursday at HHS and Friday at GWU. If you would like to meet at a time other than Fridays, e-mail or call me and we'll schedule a meeting.

Description: Designed for health professions students, law students, and lawyers, this course examines how law can both promote and impede the public's health. It introduces students to the legal concepts that underlie the public health system and that inform public health policymaking in the United States. Topics to be covered include the role of law in public health care and policy (e.g., governmental powers vs. civil liberties, regulation of public health, tobacco regulation), managed care and public health, the role of public health officials in shaping law and policy, and public health law reform.

Objectives: Objectives of the course include understanding the fundamental principles and processes of the legal system as they relate to the United States public health care

system; laying the foundation for students to keep abreast of legal developments during their career; understanding the basic legal rights and duties of the relevant stakeholders in the system; appreciating the extensive and complex role played by federal and state constitutions, statutes, regulations, and judicial opinions in the day-to-day workings of the system; developing a vocabulary of public health and legal terms in order to facilitate communications between public health and legal professionals; and improving skills related to analytical reasoning, public speaking, and public health policy evaluation.

Methods of Evaluation:

A student's overall grade is made up of the following:

- one group assignment, i.e., the policy debate (oral presentation and 5-page paper) (25%);
- an in-class midterm exam (25%);
- a set of 5 discussion questions for one class session that reflects an analysis of the assigned readings (10%); and
- the final exam (40%).

Additionally, students may obtain a one-step increase to their overall grade (e.g., from B+ to A-, up to a maximum of "A") for substantial and substantive class participation. **Assignments must have student ID numbers instead of names, as all assignments are graded anonymously.** The final exam is a take-home exam to be prepared on a computer, due by **5:00 p.m. on May 16, 2005**. This final exam will be discussed in detail in class.

Late Assignments: Students must meet the due dates for all assignments. If not able to meet a deadline, you must receive an extension, and the assignment grade will be reduced one-step for each day it is late (A to A-, B+ to B, etc.).

Class attendance: The seminar nature of this course makes class attendance critical. Basic legal and policy analysis skills and substantive content discussed in class will form the basis for the assignments and the final exam.

Policy

Debates:

Students will work in groups (size to be determined based upon class size) to present one policy debate topic in class. In response to a policy question posed, one group will debate one position and another will debate the opposite position. Additional details will be discussed in class.

Code of Academic Integrity:

All graded work products and assignments are to be completed in conformance with The University's Code of Academic Integrity. Students are strongly encouraged to read GW's Code of Academic Integrity regarding plagiarism and cheating, found at: <http://www.gwu.edu/~ntegrity/code.html>

SYLLABUS

I. INTRODUCTION TO THE LEGAL SYSTEM AND TO PUBLIC HEALTH LAW

JANUARY 24: Course Overview and Introduction

- a. Introduction to the U.S. legal system: The distribution of power among the three branches of government and how they regulate public health
- b. Sources of law
- c. Tutorial on analyzing judicial opinions
- d. Defining public health
- e. Overview of public health law: Essential characteristics
- f. Public health law vs. health services law vs. medico-legal issues

No Readings.

II. THE ROLE OF LAW IN PUBLIC HEALTH

A. Government Powers vs. Individual Rights

JANUARY 31: The Constitution and Public Health

- a. Federalism
- b. Federal powers to ensure the public's health
- c. State and local powers to ensure the public's health

- Readings:
- 1) Text, Chapters 1 and 2
 - 2) Reader, Chapter 6
 - *DeShaney v. Winnebago County Department of Social Services*
 - *South Dakota v. Dole*
 - *U.S. v. Lopez*
 - *New York v. U.S.*

FEBRUARY 7: Constitutional Limits on Governmental Authority

- a. Drawing the line: introduction to government limitations in the Bill of Rights in a public health context
- b. Constitutional limitations: The *Lochner* era
- c. Constitutional limitations: The modern era
- d. The Sands Shift: the Impact of September 11, 2001
- e. The USA Patriot Act
- f. Introduction to the Model State Emergency Health Powers Act

- Readings:
- 1) Text, Chapter 3
 - 2) Reader, Chapter 7
 - *Jacobson v. Massachusetts, Jew Ho v. Williamson,*
 - *City of Cleburne v. Cleburne Living Center, Greene v. Edwards*

FEBRUARY 14: Focus on the Individual: Immunization, Testing, and Screening/Restrictions of the Person

- a. Overview of compulsory vaccination
- b. Compulsory screening: constitutional considerations
- c. Compulsory screening: discrimination considerations
- d. Quarantine and forced civil confinement

Readings: 1) Text, Chapters 7 and 8
 2) Reader, Chapters 12 and 13

FEBRUARY 21: Presidents' Day (no class)

FEBRUARY 28: Public Health Information and the Right to Privacy

- a. Origins of the right to privacy
- b. Public health surveillance (in a 9/11 context)
- c. Mandatory reporting
- d. Personally identifiable information protections/HIPAA
- e. A brief overview of confidentiality

Readings: 1) Text, Chapter 5
 2) Reader, Chapter 10
 • *Whalen v Roe*

MARCH 7: **POLICY DEBATE:** The Model State Emergency Health Powers Act

MARCH 14: Spring Break (no class)

B. Government Regulation of Public Health

MARCH 21: Public Health Regulation and the Administrative State

- a. Justification for public health regulation
- b. Understanding risk in regulating public health
- c. Effectiveness, economic cost, and fairness of public health regulation
- e. An overview of administrative agencies (federal, state, local)

Readings: 1) Text, Chapter 4
 2) Reader, Chapter 5
 • *Benning v. Vermont*

MARCH 28: Gov't Regulation of Free Speech in a Public Health Context

NOTE: 1.5 HOUR IN-CLASS MID-TERM EXAM TAKEN

- a. Government speech
- b. Commercial speech
- c. Compelled commercial speech
- d. Disclosure requirements

- Readings:
- 1) Text, Chapter 6
 - 2) Reader, Chapter 11
 - *44 Liquormart, Inc. v. Rhode Island*
 - *Lorillard Tobacco Co. v. Reilly*
 - *International Dairy Food Ass'n v. Amestoy*

APRIL 4: Economic Behavior and the Public's Health

- a. Brief history of commercial regulation
- b. Regulatory tools of public health agencies
- c. Economic liberty

- Readings:
- 1) Text, Chapter 9
 - 2) Reader, Chapter 8
 - *Food and Drug Administration v. Brown & Williamson Tobacco Corp.*
 - *Boreali v. Axelrod*
 - *Dent v. West Virginia*
 - *Camara v. Municipal Court*
 - *New York v. New St. Mark's Baths*
 - *Lochner v. New York*
 - *Lucas v. South Carolina Coastal Council*

C. Tort Law and Public Health

APRIL 11: Liability, Causation, and Evidentiary Matters

*Public Health Law in the Cinema: Immediately following class, join us in a viewing of "Erin Brockovich." Food/drink will be provided.

- a. An overview of tort liability
- b. Institutional liability
- c. Evidence and epidemiology
- d. The public health value of tort litigation
- e. A discussion of *A Civil Action*.

- Readings:
- 1) Text, Chapter 10
 - 2) Reader, Chapter 9 (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*)

III. THE ROLE OF THE PUBLIC HEALTH OFFICER

APRIL 18: The Public Health Officer's Role in the Development of Law

Guest lecturer: Tim Westmoreland, J.D., Counsel in the Office of Congressman Henry Waxman and former Director, CMS (formerly HCFA) Center for Medicaid & State Operations

- a. The Federal legislative and appropriations process
- b. Program development and making a case for new legislation
- c. Assisting in the preparation of draft legislation
- d. Assisting in the passage of proposed laws through the legislative process
- e. The role of the public health lawyer
- f. Enlisting public interest in and support for new legislation

Readings: 1) Grad, Chapter 16 (to be distributed)

IV. PUBLIC HEALTH AND HUMAN RIGHTS, ENVIRONMENTAL JUSTICE, AND HEALTH SERVICES DELIVERY

APRIL 25: Public Health Ethics, Environmental Justice, and Health Services Delivery

- a. Public health ethics
- b. Public health and human rights
- c. Environmental justice
- d. Public health and managed care

Readings: 1) Reader, Chapters 3 and 4
2) Rosenbaum and Kamoie, "Managed Care and Public Health: Conflict and Collaboration" 30 *Journal of Law, Medicine & Ethics* 191-200 (2002) (to be distributed)

V. THE FUTURE OF PUBLIC HEALTH LAW

MAY 2: Public Health Law Reform (in a Post-9/11 Environment)

FINAL EXAM DISTRIBUTED: DUE MAY 16, 5:00PM

- a. Inherent problems of public health
- b. Concepts of public health and liberty
- c. Guidelines for reform

Readings: 1) Text, Chapter 11
2) Reader, Chapter 14

MAY 4: The Denouement (**NOTE: this is a Wednesday that GWU designates a Monday to make up classes for the Feb. 21 President's Day Holiday**)

- a. Course review & wrap-up
- b. Remaining questions concerning the final exam
- c. Student evaluations