

DEPARTMENT OF EPIDEMIOLOGY AND PUBLIC HEALTH
UNIVERSITY OF MIAMI SCHOOL OF MEDICINE

PUBLIC HEALTH LAW
Summer First Session,
M and Th 12:30 pm to 3:00 pm
May 18 – June 26, 2006

Course Instructor:

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Office hours: after class

Course description: This course will describe the policies underlying public health law and its origin and nature. It will focus on the tension between individual rights and the need of people to forgo some rights in order to ensure health and well being for all.

Program Learning Objectives:

Course Learning Objectives:

- The course will inform students about the fundamental principles and processes of the United States legal system.
- It will examine the constitutional basis of public health law, and the influence of ethics, risk assessment and economics.
- It will consider the theory and practice of public health in a legal context, touching on such topics as privacy (including HIPPA regulations), communications, screening and vaccinations, restrictions of the person, economic regulation, the effect of tort law, and public health reform.
- It will offer an opportunity to do legal research about a subject of the student's choosing.

Course Requirements:

- Students are expected to read assigned materials before class and to be able to discuss them when called on.
- Students will write one paper on a topical subject. An outline and bibliography, as well as a brief discussion of an encyclopedia article, a law review article, one statute, and one case is due midway through the course.
- The student will give a 15 minute presentation of their paper. The formal 10-12 page paper with 10 references (Bluebook format) is due the last day of class.

Course Material:

Gostin, LO: Public Health Law: Power Duty, Restraint. U California Press, Berkeley, 2000.
(Gostin Text)

Gostin, LO: Public Health Law: A Reader. U California Press, Berkeley, 2001.
(Gostin Reader) (updated at <http://publichealthlaw.net/reader>)

Handouts re legal research and writing

Grading Evaluation:

Class participation, 10%.

Outline and bibliography with discussions, 30%.

Class presentation, 30%

Paper, 30%.

Class Format: Lectures with discussions.

COURSE SCHEDULE

Thursday, May 18.

Class 1: Foundations of Public Health Law.

The importance of health.

Definition of public health. IOM (p. 13)

Governments' roles – powers, duties, limitations.

Definition of public health law. (p. 4)

Tradeoff between public goals and private rights.

Constitutional considerations.

History of public health law.

Characteristics of public health law.

Government responsibilities

Population based perspectives

Relation between people and the state

Discrete services and methodologies

Role of coercion

Readings:

Gostin Text:

Preface, Chapter 1.

Gostin Reader:

xix-xxxii.

Handouts

Gostin Reader website: <http://publichealthlaw.net/reader>

Kaiser Family Foundation website <http://www.KaiserEDU.org>

Introduction to Legal Research (Bring items you obtained from U Miami Libraries)

Two levels of government, federal and state, each has legislative, judicial, and executive branches.

The US is a common law state (*stare decisis*)

The founding document is the Constitution.

Legislatures have passed many laws, although not in every area.

The executive creates rules and regulations to flesh out laws.

Courts say what the law is.

There are trial courts and appellate courts at both federal and state levels.

To research

Determine terms in dictionary and thesaurus.

Obtain overview in encyclopedias (American Jurisprudence, Second Edition (Am. Jur. 2d) and Corpus Juris Secundum (CJS)). Obtain more detail in legal periodicals and treatises.

Treatises (Horn books), Restatements

Find laws in USC (annotated series provide much more information)(See also thomas.gov).

Find regulations in CFR.

Find cases in Reporters.

Determine citation form from Bluebook.

Readings

Handouts

Research outline

Outline of Brief

Material from Blue Book

Monday, May 22.

Class 2a: Population Perspectives, Communitarian Traditions, and Human Rights.

Shared obligations.

Need for government to assure conditions for people to be healthy.

Set norms for behavior

Identify and respond to threats

Enforce standards – information, physical, business

Question of breadth.

Need for expertise.

Need for public and political support.

Ethics.

Ethics of public health professionals

Ethics of public health theory and practice

Advocacy

Readings:

Gostin Reader:

1-19, 23-24, 67-68, 95-98.

Handout

Gostin in JAMA

Class 2b: Constitutional Design, Powers, and Duties:

Allocation of power between states and federal government.

Division of power among three branches.

Limitations of government powers.

Obligations of government.

Federal powers – general, tax and spend, commerce, the history of federal laws.

State powers – police power, *parens patriae*.

Balancing powers.

Readings:

Gostin Text:

Chapter 2.

Gostin Reader:

161-62

Thursday, May 25.

Class 3a: Constitutional Limits and Individual Rights.

Measures are “state actions” by “state actors”

Powers include coercion and economic regulation.

Limited by Bill of Rights, each amendment has had public health implications.

Rights include autonomy, liberty, privacy, and property.

People are protected by “due process,” both procedural and substantive, and “equal protection.”

Considerations include necessity, reasonable means, proportionality, and harm avoidance.

The courts use three levels of scrutiny, and defer accordingly.

Rational basis: courts defer if a law is reasonably related to obtaining a legitimate objective. There is also “rational basis with a bite.”

Intermediate review: courts defer if the law is substantially related to an important government interest. Applied if gender or illegitimacy changes the way the person is treated.

Strict review: the court only defers if the law is necessary for a compelling government interest. Used where the law applies differently to people with immutable characteristics, political powerlessness, a history of discrimination, or stereotyping. Applied if a suspect classification such as race, national origin, or alienage changes the way a person is treated. Also applied if “fundamental rights” or liberty interests are affected.

Readings:

Gostin Text:

Chapter 3.

Gostin Reader:

203-06.

Jacobsen v. Massachusetts, 1905, 206-217.

Handout

Parment et al.

5a, 14a

Class 3b: Public Health Evaluations and Reasoning.

Criteria to use to judge whether the public good is worth the infringement on individual rights.

Regulatory justification – risk to others, protection of incompetents, risk to self.

Public risks – risk analysis.

Effectiveness of intervention – means/end test.

Economic costs – direct, indirect, value of health and life.

Personal burdens – use least restrictive alternative.

Policy and fairness – distribution of benefits, costs, and burdens.

Preservation of rights encourages cooperation.
Preserve freedom.
Prevent discrimination and invasion of privacy.
Enables people to protect selves.

Readings:

Gostin Text:

Chapter 4.

Gostin Reader:

127-29

Breyer, 139-45.

Thursday, June 1

Class 4a: Public Health Information. Privacy.

Public health information infrastructure encompasses acquisition, use, retention, and transmission of data, and includes the disciplines of epidemiology, biostatistics. Information is used to detect, evaluate, and intervene in problems. Privacy includes informational and relational (confidentiality) privacy, along with security.

Data gathering.

Surveillance.

Reporting.

Contact tracing, partner notification.

Research – IRBs, informed consent.

Readings:

Gostin Text:

Chapter 5 to page 132.

Gostin Reader:

295.

Bayer, 320-27.

Classes 4b: Privacy Law.

Privacy is not described in the Constitution.

The right to privacy has been recognized in statutes and case law.

Confidentiality and common law/tort law.

Duty to warn – physicians, patients.

Gostin's Model Law

Readings:

Gostin Text:

Chapter 5, from page 132.

Gostin Reader:

295, 328-33.

Monday, June 5.

Due today: Paper title, outline, bibliography of 10 items, and reviews of one encyclopedia article, one law review article, one law, and one case (format as a brief as per handout)

Class 5a: Privacy Law (continued).

HIPPA.

Readings:

Handouts:

45 CFR §§ 160, 164, Analysis, Explanatory Material from the Office of Civil Rights,
GW slide presentation.

Class 5b: Free Speech and its Limitations.

The value of free expression in truth finding.

The First Amendment.

Three kinds of speech.

Government speech used to discuss public health activities and personal behavior

Commercial speech used to convey private information

Identifies product, advertises product, confers economic benefit on speaker

Hudson test: lawfulness/truth, govt interest, govt interest advanced, limited

Compelled commercial speech – health and safety disclosure

Contents, uses, hazards

Example: cigarette advertising

Readings:

Gostin text

Chapter 6

Gostin reader:

335-37.

Thursday, June 8.

Class 6.

Discussion of Paper title, outline, chapter, article, law, and case

General discussion followed by individual meetings

Monday, June 12.

Class 7a: Immunization, Case Finding – Testing and Screening.

Three models – microbial, behavioral, ecological.

Vaccination (ACIP, CDC)

Children – compulsory (religious exception), free, compensation for injuries

Adults

Case finding – screening is testing of a population

Value of screening relates to predictive value, objective, and prevalence of disease

Types of screening:

Compulsory (with or without warrant)

Conditional – pre-employment post-offer, current employee

Advance notice (opt in)

No advance notice (opt out), and

Voluntary.

Example: screening pregnant women for HIV.

Readings:

Gostin text:

Chapter 7.

Gostin reader:

377-79.

Skinner v. Railway Labor Executives' Assn., 1980, 399-404.

Class 7b: Restrictions of the Person.

History and background – victims blameworthy, social intolerance (leprosy, plague, TB, AIDS)

International law, US law (federal law preempts).

Civil confinement – isolation (infected), quarantine (exposed), compulsory hospitalization.

Mandatory examination and treatment, including directly observed therapy.

Overrides common law right of informed consent.

Overrides constitutional law right to refuse treatment, that is not fundamental right, so balancing test used..

But use strict scrutiny: compelling state interest, well targeted intervention, least restrictive alternative, procedural due process.

Criminal penalties for purposefully, knowingly, or reckless exposure

Mens rea (intent), actus reus (dangerousness).

Crimes include homicide, attempted homicide, and assault (simple and aggravated).

Common law, statutes

Problems include low risk or common behaviors

Discourage testing, disclosure, participation in treatment and prevention.

Invites intrusive surveillance, selective enforcement, and discrimination.

Readings:

Gostin text:

Chapter 8.

Gostin reader

415-16.

Thursday, June 15.

Class 8a: Regulation: Economic, Property, and Professions.

Private economic interests v. collective interests in safe and healthy factories, offices, homes, recreational areas, goods, and services.

History of tradition of regulation, evolving in reaction to problems of industrial revolution and urbanization.

Venue of executive agencies, especially state and local public health agencies. Administrative Procedural Act v. “nondelegation.” Agencies engage in rule making, enforcement, and quasi-judicial hearings (Administrative Law Judges – ALJ).

License trades and professions, and institutions, establish standards and monitor with inspections (use of warrants), abate nuisances.

Protections of economic liberty in property through economic due process and recompense for takings including impaired worth due to regulation and of contracts balanced by public good.

Readings:

Gostin text:

Chapter 9.

Gostin reader:

229-31.

Class 8b: Tort Law.

Principles of tort law: duty, breach, causation, damages – money damages, injunctions.

Private nuisance, common law, intent, substantial, unreasonable.

Strict liability

Abnormally dangerous activities

Defective products (implied warranty), ordinary consumer, reasonable use

Design defect, manufacturing defect, failure to warn

Not unavoidably dangerous products, dangerous products / common use

Problem of judging scientific evidence.

Daubert – relevant, reliable, judges gatekeepers.

Problem of lack of expertise of judges and juries.

Tort law shifts costs to business and controls behavior

Problems: costs, stifles innovation, excessive carefulness

Ex: tobacco, firearms.

Readings:

Gostin text:

Chapter 10.

Gostin reader:

265-67.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 1993, 280-87.

Handout

Kaufman

Monday, June 19.

Class 9a: Modernization of Public Health Law.

The legislatures, courts, and agencies are where the public debate about public health occurs and this reflects legal standards and social norms. Law creates missions, assigns functions and specifies the manner in which government exercises authority.

Problems:

- Developing law is a complex political process, limited resources are available.
- Leadership is needed and coordination with other entities.
- Necessary to win trust of those at risk and the public.

Concepts of public health and liberty:

- Power to regulate.
- Limits on regulatory power.
- Government duty to promote health and social well-being.

Guidelines for reform:

- Modernize legal concepts, consistency, uniformity of approach.
- Define mission and essential functions.
- Provide full range of powers.
- Impose substantive limits on powers.
- Impose procedural limits so fair process.
- Protection against discrimination.
- Protection of privacy.

Reform is an opportunity to draw attention to achievements and resource requirements.

Reading:

Gostin text:

Chapter 11.

Start Student Presentations.

Presentations will be 15 minutes with PowerPoint slides followed by 15 minutes of discussion.

No more than one slide per minute plus title slide.

Bring slides on CD or email to Heather.

Bring handouts of slides - 3 per page with lines on right side of slides.

Thursday, June 22.

Classes 10: Student Presentations.

Friday, June 23

Papers due.

Grades due: June 26

Legal Research – please make hard copies of starred items and bring to class for review

Go to web site of
University of Miami Libraries ->
Law library ->

Library information ->

- *Library hours
 - *Directions to library
 - *Library floor plan
- Then

Research guides ->

By subjects

- *Integrated research strategy guide
- *Quick guide to legal research

More research guides

(Georgetown)

Search for a guide

Legal research techniques or Alphabetical lists

- *Cases

Florida

- *Florida case/court research
- *Florida statutory research

Federal

- *Federal statutes

Start again at University of Miami Libraries ->

Data bases and indexes ->

LexisNexis Academic ->

- *Legal research (copy this page for reference)

Here you can find Law reviews, Case law, and Codes and regulations in searchable form.

Citation format (see Bluebook)

Summary of common formats - Inside front cover

Use of citations	Rule 1	p 21
Typefaces	Rule 2	p 30
In text	Rule 2.2	p 32
Short citation forms	Rule 4	p 40
Quotations	Rule 5	p 43
Abbreviations	Rule 6	p 47
Italizations	Rule 7	p 50

Capitalization	Rule 8	p 51
Encyclopedia	Rule 15.7	p 113
Article	Rule 16	p 117
Student	Rule 16.6.2	p 121
Book	Rule 15	p 107
Law		
Session law	Rule 12.4	p 81
USC	Rule 12.3	p 78
Case	Rule 10	p 55
	T1	p 183
Amicus Brief	Rule 10.8.3	p 71
Internet	Rule 18.2	p 132
Report	Rule 14.2(c)	p 98
Refer to Rule 16		p 117

Paper

Papers should be ten pages plus bibliography of 10 items

Say how law was written and how court interpreted law,
or how court decided and then legislature decided to update law after.

Use Gostin's five part classification (in part 3 of JAMA article or in book) for analysis,
plus any ideas from other chapters, and tell me what you think of current situation
and what should be done next, if anything.

Style suggestions

Appearance is important – gives first impression

Times New Roman, 12 point

1” margins

Number pages, start after cover page

Active voice

Cover page

Title – subtitle

Nature of paper (i.e. midterm, description)

Course – title, number – department and school

Professor

Your name

Date

Table of Contents

Paper

Footnotes

Continuous

Email to me by deadline.

Edit papers in Word

Read backward by sentence, read backward by paragraph

Comment

Insert -> Comment

Can right click and erase

Corrections

Tools ->Track changes

When get back, can right click and accept or reject

Symbol for section

Insert -> symbol -> highlight “§” and click on insert