

PUBLIC HEALTH LAW

Fall Term, 2010
Hamline University School of Law
Professor Katrina Pagonis

SYLLABUS

Contact Information

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Class Meetings

Monday 4:00-5:50pm, Law 04

Office Hours

Mon. 6-6:30pm, Wed. 4-5:00pm, *or by appointment*

I. INTRODUCTION & COURSE OBJECTIVES

The Institute of Medicine defines public health as “what we, as a society do collectively to assure the conditions for people to be healthy.” Unlike health care, which focuses on medical interventions to improve the health of individual patients, public health takes a broader look at the wide-ranging determinants of *population health*. These include our built, physical, informational, and socio-economic environments. For example, nutritional labeling, bike paths, vaccination laws, and tobacco regulations all alter the environments in which we live to make them more healthful on a population level.

State and local governments have broad powers to provide for the public’s health, but government action to protect population health may conflict with the constitutionally protected rights of individuals. In this course, we will examine the reach of government power and limitations on that power. We will approach public health problems from both a legal and an ethical perspective: To what extent can the government impede on individual liberties for the promotion of health, safety, and morals? And to what extent should the government do so?

At the conclusion of this course, you should be able to understand the sources of government powers relating to public health and assess conflicts between governmental interests in public health and individual liberty interests. You should be able to examine these conflicts in many of the important realms of public health theory and practice, including:

- Public health surveillance
- Health promotion and communication
- Immunization
- Screening and compulsory treatment
- Isolation and quarantine

At the conclusion of this course, you should also understand how tort litigation can be used as a tool for protecting the public’s health, how tort litigation might complement public health regulations, and the potential costs of litigation.

II. LOGISTICS

- A. **Time and Place.** This two-credit course will meet **Mondays** from **4:00 to 5:50pm** in Law 04.
- B. **Textbook and Readings.** The syllabus contains a list of readings for each class meeting.
- **Required Text: *Reader***
 - LAWRENCE O. GOSTIN, ED., **PUBLIC HEALTH LAW & ETHICS** (2d. ed. 2010). *Note:* Be sure to buy the revised and updated 2010 edition (not the first edition).
 - Publisher: University of California Press
 - ISBN: 9780520261921
 - **Recommended Text: *Treatise***
 - LAWRENCE O. GOSTIN, **PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT** (2d. ed. 2008)
 - Publisher: University of California Press
 - ISBN: 9780520253766

The *Treatise* (recommended) and the *Reader* (required) are organized as companion volumes. The *Reader* contains excerpts of illustrative cases and articles like a casebook does. The *Treatise* is an authored volume that explains the relevant legal concepts. I strongly recommend reading corresponding chapters in the *Treatise* as we make our way through the *Reader*.

In addition to readings from our course textbook, I may occasionally assign additional cases and/or articles, copies of which will be posted on TWEN and/or placed on reserve in the library (as indicated in the list of reading assignments). *Unless the reading assignment indicates otherwise, supplemental readings are required (not optional).*

Lastly, I will assign problems for us to work through in class. Assigned problems will be posted on TWEN one week or more in advance. You are responsible for reading and reflecting on the assigned problems before class, and I expect that everyone will be prepared for active discussion and/or simulation of the problem in class.

- C. **TWEN Site.** Course documents, updated syllabi, problems, and any powerpoints used in class will be posted on the class TWEN site. In addition, you are encouraged to participate in discussions of current events in public health law by posting to our news forum on TWEN.

III. COURSE POLICIES

- A. **Attendance**
- Attendance is important and required by the ABA and Hamline University School of Law. At the beginning of each class, I will distribute a class roster for you to sign. *If you are absent for more than three classes, your absences will be treated*

as “*excessive*” in accordance with Hamline University Academic Rule 108 unless you obtain approval from me in advance.

B. **Punctuality**

Punctuality and preparedness are both important: they demonstrate your respect for your peers and me and they allow you to get the most out of the class. If you are more than 10 minutes late, you have missed a substantial part of that day’s class; your tardiness will therefore count as an absence.

C. **Preparedness and Participation**

Most class sessions will be based on lectures and class discussion of the issues raised by the lecture and readings. Class discussions showing rigorous thought and an informed understanding of the subject matter will be an integral part of the learning process. You must read all of the assigned materials before class to facilitate discussions.

Volunteering to be On Call: At the beginning of each class session, I will have a copy of the seating chart on which you can designate whether you would like to be “on call” for that day. You can sign up to be on call during the 5 minutes preceding class (i.e., once class has begun, you can no longer sign up). If you are on call for at least 12 of our classes, then you will receive a “bump up” on your final grade (e.g., from a B+ to an A-). If you sign up to be on call and are not in fact prepared, you will be barred from receiving the “bump up.”

Participation when not On Call: If you have not signed up to be on call, you will still be expected to actively engage in small group discussions and activities and should be sufficiently prepared to do so. It is particularly important that you come to class prepared to discuss or simulate any assigned problems.

D. **Technology Policy**

Laptops: Students are expected to use technology in a professional and productive manner. The use of laptops in a manner that does not further our learning objectives or a manner that distracts others is strictly prohibited. **If a student uses technology in a way that distracts others, he or she may have his grade lowered by one-half of a letter; if the student does so again, he or she may be asked to drop the course without receiving academic credit for the class.**

Cellphones and Similar Devices: You are prohibited from using cellphones and smartphones during class time. If you use such a device during class, you will have your grade lowered by one-half of a letter. If you do so again, you may be asked to drop the course without receiving academic credit for the class.

IV. COURSE EVALUATION

The grade for the course will be based on your performance on the midterm and final examinations (weight allocated as indicated in the table below) with a possible upward adjustment based on participation (see Part III.C.):

	Details	Percent of Final Grade
<i>Final Paper</i>	Due Wednesday, December 22 Minimum 3,500 words (exclusive of footnotes)	70%
<i>Group Presentations</i>	Final two weeks of class; groups of 4 with 25 minutes apiece	10%
<i>Midterm Quiz</i>	Date TBD	20%
<i>Participation</i>	See Part III.C., above	“Bump up” (see Part III.C.)

A. **Final Paper**

Your performance in this course will mostly be assessed based on an original, short, scholarly final paper on a relevant subject in public health law (domestic or global). Though the requirement is only to produce a short paper, I will be happy to work with any interested student in writing a longer paper of sufficient quality that it can be published in a legal, medical, or health policy journal.

Technical Requirements for Papers. Papers are a minimum of 3,500 words exclusive of footnotes, and you must use the *Bluebook* citation style for law review articles.¹ (I am happy to help with any citation questions or issues; just schedule some time to see me.)

Required Topic Proposal. Each student will select his or her paper topic by the fourth week of class; you are required to e-mail me a short description of your paper topic before class. If you are having trouble choosing or narrowing a topic, please see me during office hours or schedule so time to meet and discuss your ideas.

Optional Written Assignments. To provide you with the best opportunity to write a stellar final paper, I will gladly provide feedback on outlines, drafts, etc. These assignments are optional but highly recommended to keep you on track for the final paper. On the course schedule, I have noted due dates for these optional assignments. ***To receive feedback on any written assignments, e-mail me to schedule a meeting at which I will provide oral and/or written feedback.***

B. **Group Presentations**

After I have approved paper topics for the course, I will assign each student to a group of ~4 students with related paper topics. Each group will be responsible for a 25 minute in-class presentation (including time for questions and answers) that relates to their paper topics. Presentations should be thoughtful and well prepared. An imaginative method of presentation is strongly encouraged to aid in the pedagogic process

¹ If use of a different method of citation (e.g., AMA or *Chicago*) is justified based on the intended audience of the paper, an alternative citation style may be used *provided that* the student obtains my permission to do so.

Students who wish to have handouts distributed to the class (e.g., powerpoint slides) must e-mail them to me the Friday before their presentation.

- C. **Midterm Quiz**
Details TBD.

V. **INSTRUCTOR AVAILABILITY**

I want to be fully available to help students whenever they need assistance with the content and readings in the class.

I will hold *office hours one hour after each class*. I am also available to meet with students by appointment. Feel free to come to office hours individually or with your study group. If you would like oral or written feedback on any of the optional written assignments (e.g., your thesis, outline, draft), you can schedule time to meet with me.

VI. **FINAL THOUGHTS**

I am fascinated by the subject matter of this course and hope you will share my enthusiasm for the intellectually challenging ideas presented in the readings and the class work. I look forward to getting to know you and to our many thoughtful discussions. If I can ever be of assistance, please come by and see me at any mutually convenient time.

COURSE SCHEDULE

The course schedule provided below is tentative and subject to revision. Revised syllabi will be made available through our course TWEN site. It is your responsibility to ensure that you regularly check TWEN for the most up-to-date version.

In reviewing the course schedule, you will notice that the course is slightly front-loaded in terms of reading: the first few weeks are heavier than the remainder of the semester.

Week 1: August 23

What is Public Health Law?

Overview of the course, syllabus, and grading.

Introduction to public health law.

Reading

- Reader 23-56
- Optional: Reader 1-18
- Optional: Treatise 3-41

Assignment

- Take a photo of a scene that represents a public health law issue (broadly construed). Be prepared to discuss the photo in class. **E-mail the photo to kpagonis01@gw.hamline.edu by 10:00 am on Monday morning.** If you cannot take a photo yourself, you may submit a photo you've found online along with source information.

Week 2: August 30

Public Health Ethics

Often, questions of whether the government can (law) or should (ethics) undertake a certain public health intervention are muddled together in public discourse.

Throughout the course we will employ both legal and ethical analysis. This week provides a foundation for discussing public health ethics. We will discuss the ethical justifications for public health interventions, focusing on the most controversial basis for intervention: paternalism.

Reading

- Reader 59-95

Week 3: September 13

Public Health Powers and Duties

This week, we will explore the legal basis for the state and federal governments' power to enact legislation and regulations for the public's health. We will begin by discussing whether the government has a *duty* to protect health. Then, moving on to the government's *power* to protect public health, we will focus on state police powers and *parens patriae* powers. We will briefly recap the sources of federal powers relevant to public health and the division of power between the states and the federal government (a review from Constitutional Law I).

- Reading
- Reader 99-133 (pages 117-132 should be a review from Constitutional Law I; you may skim them depending on your recollection of the materials from first year)
 - Optional: Treatise, Chapter 3
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Week 4: September 20

Limits on Public Health Powers: Individual Rights

At its core, public health focuses on populations not individuals. And, occasionally, public health laws require individuals to subjugate their own interests for population-level benefits. In our constitutional order, however, individuals have rights, and these rights limit the power of public health agencies. We will examine the foundational public health law cases on individual liberties—*Jacobson* and *Jew Ho*; then we will look at equal protection, substantive due process, and procedural due process in the modern constitutional order. *Do not worry if you have not yet studied the Fourteenth Amendment—this class will be a basic introduction.*

- Reading
- Reader 135-157, 161-64
 - Optional: Treatise, Chapter 4

- Assignment
- **Topic Proposals Due via e-mail before class**
You must submit a 1-2 paragraph description of your initial paper topic for consideration and approval by the Professor. The topic must fall within the broad purview of public health law and may involve either domestic or global issues. Once approved, you are strongly encouraged to *not* change the nature of your general topic
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Week 5: September 27

Surveillance & Public Health Research

A core function of public health agencies is surveillance for epidemic diseases. Surveillance gives public health authorities data regarding where and when the incidence of particular diseases is unusually high. In recent decades, we have seen resistance to surveillance efforts that arise out of a growing perception of the importance of medical privacy, the declining sense that surveillance is urgently necessary (as our disease burden has shifted from casually communicable diseases to chronic conditions), and possible overreach by some public health authorities (undertaking surveillance efforts for chronic conditions and linking outreach to surveillance). After discussing surveillance in general, we will look at the legal provisions for surveillance in our medical privacy regulations. Lastly, we will discuss tensions between medical privacy and the safety of others, focusing on partner notification for sexually transmitted infections.

- Reading
- Reader 285-320
 - Optional: Treatise 287-307, 315-330
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Week 6: October 4

Health Communication

The government sometimes seeks to alter the information environment to encourage more healthful behaviors among consumers. It may speak on its own, regulate commercial speech, or compel sellers and manufacturers to make certain disclosures. Each activity raises ethical considerations, and regulating or compelling commercial speech also raises First Amendment considerations.

Reading • Reader 323-54

• Optional: Treatise 333-365

Assignment • Optional: *Short Thesis (several paragraphs) due via e-mail*

A well-crafted thesis is integral to the development of a high quality research paper. The thesis is the theory or main idea of the paper—the principal point the paper advances. The thesis is not the same as the topic (“this paper will cover X”); instead, the thesis is a draft of your thesis paragraphs, telling the reader what the paper seeks to demonstrate, the method of argumentation, and why it is important.

Week 7: October 11

Tort Litigation and the Public’s Health

Guest Speaker: Doug Blanke, Director of the Public Health Law Center

Most often, public health policy is implemented by the legislative and executive branches using prospective laws and regulations and retrospective administrative enforcement actions. At times, however, these mechanisms are insufficient (for political or other reasons) to prevent harmful products from reaching consumers. Tort litigation provides a mechanism to compensate persons harmed by these products and, in some cases, may also provide prospective benefits that protect the public’s health. In this class we will look at tobacco and medical device litigation and discuss the health and economic impacts of litigating for the public’s health.

Reading • Reader 195-219, 224-229

• Optional: Treatise 181-196, 202-216, 224-226

Week 8: October 18

Case Study on Firearms

Further Limits on Public Health Powers

During the first half of today’s class, we will focus on gun violence. Our initial question will focus on whether gun violence should be approached as a public health issue: what are the benefits and risks of this approach? Then, we will synthesize what we’ve learned about limitations on state police powers and tort litigation to discuss options for approaching gun violence as a public health problem.

We will then look at the core regulatory tools used by public health agencies (issuing licenses and permits, conducting administrative searches and inspections, and nuisance abatement) and the limitations on the exercise of these powers.

Reading • Reader 158-161, 221 box 5

[Note that earlier this year, the Supreme Court held in *McDonald v City of Chicago* that the Second Amendment applies to the states.]

- Reader 449-476
 - Optional: Treatise 216-224, 461-473
- Problem
- Firearms Exercise
- Assignment
- Optional: *Full Thesis Statement and Initial Outline due via e-mail*
Your thesis statement would include a detailed statement of what the paper expects to prove, why it is important, how the thesis will be developed, and what main forms of argumentation you will employ. The thesis statement should be supported by an outline of the paper. This outline should be based on your independent research and should present the title and subject matter of the eventual first draft of the paper. The outline should also feature headings and subheadings with sentence-length descriptions of the findings and subject matter within each heading. Well-organized outlines might also contain footnotes.

Week 9: October 25

Obesity: Altering Obesogenic Environments

The greatest domestic public health problem of the coming decades is likely obesity. Obesity rates, particularly among adolescents, are rising at an alarming pace. Many, however, resist treating obesity as a public health issue, viewing it instead as a matter of personal responsibility. In this class, we will discuss whether obesity should be approached using the tools of public health. We will then look at public health tools that might be used to alter obesogenic environments, focusing on health communication, bans and taxes on obesogenic foods, land use policy, and tort litigation.

- Reading
- Reader 505-517, 354-361, 219-224
 - Optional: Treatise 496-513, 365-369, 213-16

Week 10: November 1

Medical Countermeasures: Compulsory Vaccination

Vaccination is one of the greatest public health victories. Since Jenner's discovery of the smallpox vaccine in 1798, we have seen the global eradication of smallpox and a remarkable reduction in the burden of infectious diseases. Integral to these successes, however, have been legal mandates regarding vaccination. After discussing legal challenges to compulsory vaccination, we will look at modern resistance to vaccination and the options faced by policy makers.

- Reading
- Reader 365-389
 - Optional: Treatise 371-95

Problem

- Religious and philosophical immunization exemptions

- Assignment
- Optional: *Detailed Outline due via e-mail*
The detailed outline includes the paper title, parts, and subparts and the main point of each paragraph; citations are strongly recommended in your detailed outline. Using this detailed outline will immensely help the final organization of your paper, ensuring that your arguments flow and your writing is focused.

Week 11: November 8**Medical Countermeasures: Screening and Mandatory Treatment**

In this class, we will talk about legal and ethical issues involved in screening for diseases and mandating treatment, focusing on tuberculosis and HIV/AIDS.

- Reading
- Reader 389-404, 408
 - Optional: Treatise 395-418
- Problem
- DOT in NYC

Week 12: November 15**Isolation and Quarantine**

Isolation and quarantine are among the oldest public health responses to communicable diseases. Though our reliance on isolation and quarantine has been mitigated by the development of medical countermeasures, isolation and quarantine are not obsolete (particularly when we are confronted with novel diseases like SARS). We will focus on constitutional checks on isolation and quarantine and then focus on particular case studies (SARS, XDR-TB, and pandemic influenza).

- Reading
- Reader 411-36, reread 401-03
 - Optional: Treatise 421-458
- Problem
- MDRTB Problem
- Assignment
- Optional: *First Draft due via e-mail*
If you submit a first draft, it should be complete (not a partial draft or an extended version of your outline) and should meet all the technical specifications for the final paper.

Week 13: November 22**Bioterrorism and Biosecurity**

The prospect of widespread harm from an act of bioterrorism has received significant attention since the terrorist attacks of September 11, 2001. Preparing for the intentional release and dissemination of a virulent infectious disease (like smallpox) requires emergency preparedness activities similar to those that would be necessitated by the natural emergency of a novel viral strain (like avian influenza). In this class, we will focus on biosecurity: preparing stockpiles of antivirals, implementing a robust public health reporting system, and creating legal structures that confer necessary emergency powers.

- Readings
- Reader 436-47, 481-98
- Problem
- DOT in NYC

Week 14: November 29**Group Presentations**

Reading • TBD

Week 15: December 6

Group Presentations

Reading • TBD

December 22, 5:00pm

FINAL PAPERS DUE

Submit papers via TWEN by 5:00 pm. No paper extensions will be granted except in emergency situations