(UN)HEALTHY CHOICES: TOBACCO, OBESTIY, AND BEYOND

Summer 2012, June 23-28
Hamline University School of Law
Professor Katrina Pagonis

SYLLABUS

Class Meetings (Room 240A)	*Credits*
Sat. 6/23, 8:30am – 5:30pm; Sun. 6/24, 1 – 4:30pm	Students: 2 credits
Mon.–Thurs. 6/25 – 6/28, 5 – 8:45pm	Attorneys: Qualifies for 24 CLE credits
Office Hours (Room 218E)	Contact Information
One hour after each class *or by appointment*	kpagonis01@gmail.com; 612-293-5724

I. INTRODUCTION & COURSE OBJECTIVES

Today, tobacco, poor diet, and physical inactivity are the root causes of at least one third of deaths in the United States. Domestically and globally, noncommunicable diseases outstrip all other causes of death. In contrast, communicable diseases and accidents have been the primary causes of death for most of human history.

While effectively addressing tobacco use, obesity, and the causes of other noncommunicable diseases is a matter of clear urgency, policies aimed at enabling or encouraging communities to make healthier choices are legally and ethically contentious. Can the FDA require tobacco companies to display doctored photographs depicting the risks of smoking and information on quitting? Should states tax junk foods? Should food stamps be redeemable at fast food restaurants? Are outdoor smoking bans permissible? What about smoking bans in subsidized housing? Should frozen cheese pizza count as a serving of vegetables in school lunch programs? These types of questions pervade public debate today, raising questions about the balance of powers between federal and state governments, the proper scope of individual liberties and market freedoms, and the value of paternalistic policies compared to a focus on personal choice and responsibility.

In this class, we will focus on public health responses to noncommunicable diseases, primarily using tobacco control and obesity-reduction measures as case studies. We will evaluate the daunting domestic and global health burden of noncommunicable diseases, look at the relationships between choices and environments in fueling the spread of noncommunicable diseases, and examine legal tools for addressing the tobacco and obesity epidemics. In doing so, we will also explore legal barriers, ethical objections, and popular resistance to public health

policies targeting noncommunicable diseases. Each student's performance will be assessed based on class participation and a paper on an instructor-approved topic of the student's choosing.

II. LOGISTICS

A. **Time and Place.** This two-credit course (qualifies for 24 CLEs) will meet from June 23rd to 28th. On Saturday, June 23rd, we will meet from 8:30 am until 5:30 pm. On Sunday, June 24th, we will meet from 1:00 to 4:30 pm. From Monday thru Thursday, June 25th to 28th, we will meet in the evenings from 5:00 until 8:45 pm. All class meetings will be in Room 240A of the law school (by the library entrance).

B. **Course Materials.** There is a required textbook for this class and a required reader. The textbook is LAWRENCE O GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT (2d ed., 2008). The reader is available for purchase from the law school bookstore. These readings can be found in the reader for this course, which is available for purchase from the law school bookstore.

In addition, I may occasionally assign additional cases and articles, copies of which will be posted on TWEN.

The syllabus contains a list of readings for each class meeting. *Students are responsible for reading and analyzing all assigned course materials before each class.*

C. **TWEN Site.** Course documents, updated syllabi, 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 global health law by posting to our news forum on TWEN.

III. COURSE REQUIREMENTS & POLICIES

A. **Attendance**

To obtain academic or CLE credit for this course, you must be present for all of our class sessions.

B. **Preparedness & 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***. Everyone is expected to actively engage in class discussions, small group work, and simulations and should be sufficiently prepared to do so.

C. **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.

IV. COURSE EVALUATION

If you are taking this course for academic credit, your grade will be based on your in-class participation and your final paper on an approved topic.

	Percent of Final Grade
In-Class Participation	25%
Final Paper (Due 8/3/2012 via TWEN)	75%

A. In-Class Participation

Class participation will be assessed on a qualitative rather than quantitative basis. I expect that everyone will come to class prepared for a thoughtful discussion of the readings.

B. Final Paper

Final papers will be original, scholarly works on an instructor-approved topic relating to public health law and noncommunicable diseases.

Deadlines. Final paper topics must be submitted and approved by the last day of class (Thursday, June 28, 2012). The final paper is due via TWEN by Friday, August 3, 2012 at 5:00 pm. A student who does not submit the final paper to me by the deadline identified above will receive a grade of "F" for the paper, unless properly excused. In addition, failure to meet any other course requirement, including submission of your proposed paper topic, can be the basis for a final grade of "F" in the class, unless properly excused (AR-105(B)(8)). Please note, audit students do not need to complete a final paper.

Technical Requirements. Papers must be a minimum of 4,000 words (exclusive of footnotes). Legal style citations (Bluebook) are required unless a different method of citation is justified and the student obtains instructor permission to use an alternative method of citation (e.g., AMA or Chicago).

Improving your Writing. If you would like, you may e-mail me an outline of your paper or portions of your paper to obtain feedback prior to the submission of your final draft. You should also seek to obtain feedback from peers and others to improve your final work product. In addition, I am happy to provide additional assistance to students who wish to have their papers published, even after the summer is over.

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.

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

Subject to Revision

SATURDAY, JUNE 23, 8:30AM – 5:30PM

The Problem of Noncommunicable Diseases (NCDs)

- Mokdad et al. Actual Causes of Death
- Goodarz Danaei et al., "The Preventable Causes of Death in the United States: Comparative Risk Assessment of Dietary, Lifestyle, and Metabolic Risk Factors" *PLoS Medicine* 6(4): e1000058 (April 2009) (this is a technical, scientific article: selected pages have been included only).

Law as a Tool: A Conceptual Backdrop

- Gostin, Treatise Ch. 1 & 2
- Howard M. Leichter, "'Evil Habits' and 'Personal Choices': Assigning Responsibility for Health in the 20th Century" (2003) 81 The Milbank Quarterly 603-626
- Richard A. Epstein, *Let the Shoemaker Stick to His Last: A Defense of the ''Old'' Public Health*
- Lawrence O. Gostin & M. Gregg Bloche, *The Politics of Public Health: A Response to Epstein*

Case Study: Motorcycle Helmet Laws

- Marian Moser Jones and Ronald Bayer, Paternalism and Its Discontents: Motorcycle Helmet Laws, Libertarian Values, and Public Health

Law as a Tool: Our Constitutional Design

- Gostin, Treatise Ch. 3 & 4 (skip *Jacobson* discussion)

Regulating Obesity: Background

- Treatise, Ch. 13 – Powers and Limits in Public Health
- Kelly D. Brownell et al., *Personal Responsibility And Obesity: A Constructive Approach To A Controversial Issue*, 29 HEALTH AFF. 378 (2010).
- Nestle & Jacobson, *Halting the Obesity Epidemic*, 115 PUB. HEALTH REP. 12 (2000)

SUNDAY, JUNE 24, 1 – 4:30PM

Taxing and Spending Powers

- Michael F. Jacobson and Kelly D. Brownell, "Small Taxes on Soft Drinks and Snack Foods to Promote Health," 90 AM. J. PUB. HEALTH 854 (2000)
- Forbes.com, *The Fat Tax: A Controversial Tool in War against Obesity*, January 11, 2006, http://www.forbes.com/lifestyle/health/feeds/hscout/2006/01/11/hscout530229.html.

- U.S. Government Accountability Office, School Lunch Program: Efforts Needed to Improve Nutrition and Encourage Healthy Eating, GAO-03–506 (Washington, DC: U.S. Government Accountability Office, 2003).
- Mortazavi, *Are Food Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger-Free Kids Act and the Farm Bill*, 68 WASH & LEE L. REV. 1699 (2011)

Administrative Law: The FDA and Tobacco Regulation

- Gostin, Treatise, Ch. 5
- FDA v. Brown & Williamson Tobacco
- Siegel, *Tobacco Regulations are no Regulations at All*, L.A. TIMES (June 3, 2009), http://articles.latimes.com/2009/jun/03/opinion/oe-siegel3
- Redhead & Burrows, Congressional Research Service, FDA Tobacco Regulation: The Family Smoking Prevention and Tobacco Control Act of 2009 (2009)
- Sokol, *Smoking Abroad and Smokeless at Home: Holding the Tobacco Industry Accountable in a New Era*, 13 N.Y.U. J. LEGIS. PUB. POL'Y 91 (2010)

Speech and Health: Introduction

- Gostin Treatise Ch. 10
- Ruth R. Faden, Ethical Issues in Government-Sponsored Public Health Campaigns
- "A sirloin a day?" *The Washington Post*, 11 November 2011.

MONDAY, JUNE 25, 5:00 – 8:45PM

Speech and Health (cont'd): Regulating Commercial Speech

- 44 Liquormart
- Lorillard Tobacco
- Sewell Chan, "Kellogg to Restrict Ads to Settle U.S. Inquiry into Health Claims for Cereal" *New York Times* 3 June 2010
- Committee on Children's Television v. General Foods Corp., 35 Cal. 3d 197 (1983)
- SF Toy Give Away Ordinance

Speech and Health (cont'd): Compelled Commercial Speech

- Court of Appeals for the Second Circuit, International Dairy Foods Association v. Amestoy
- Tobacco – Graphic Warning Labels
    - Discount Tobacco City & Lottery v. United States (6th Cir. 2012)
    - R.J. Reynolds v. Food & Drug Administration, (D.C. 2012)
- Obesity – Menu Labeling
    - New York State Restaurant Association v. New York City Board of Health (2d Cir. 2009)
    - Cusick, *Menu-Labeling Laws: A Move from Local to National Regulation*, 51 Santa Clara L. Rev. 989 (2011)

TUESDAY, JUNE 26, 5:00 – 8:45PM

Economic Liberty & Controlling Our Environment

- Smoking Bans
    - Players, Inc. v. City of New York (S.D.N.Y. 2005)
- Licensing and Zoning
    - Wendy C. Perdue, Obesity, Poverty, and the Built Environment: Challenges and Opportunity
    - Center for Public Health and Tobacco Policy, Tobacco Retail Licensing: Local Regulation of the Number, Location and Type of Tobacco Retail Establishments in New York, October 2010, Boston: The Center for Public Health & Tobacco Policy at New England Law; http://www.tobaccopolicycenter.org/documents/Licensing_Report_Combined_October2010.pdf
    - Manny Fernandez, "Pros and Cons of a Zoning Diet: Fighting Obesity by Limiting Fast- Food Restaurants" *New York Times* 24 September 2006.

WEDNESDAY, JUNE 27, 5:00 – 8:45PM

Litigation and Noncommunicable Diseases

- Gostin, Treatise Ch. 6
- Stephen P. Teret, Litigating for the Public Health
- Wendy E. Parmet and Richard A. Daynard, The New Public Health Litigation
- Tom Christoffel and Stephen P. Teret, Epidemiology and the Law: Courts and Confidence Intervals
- Jon S. Vernick, Lainie Rutkow, and Stephen P. Teret, Public Health Benefits of Recent Litigation against the Tobacco Industry
- *United States v Philip Morris USA*, (Dist. D.C. 2009)
- *Pelman v. McDonald's Corp.* (2d Cir. 2009)

THURSDAY, JUNE 28, 5:00 – 8:45PM

Controlling Chronic Diseases in a Globalized World

- Gostin, Treatise Ch. 7 (Epidemiological Transition, FCTC, and World Trade)
- Allyn L. Taylor and Douglas W. Bettcher, WHO Framework Convention on Tobacco Control: A Global "Good" for Public Health
- Framework Convention on Tobacco Control
- M. Gregg Bloche and Elizabeth R. Jungman, Health Policy and the WTO
- United States – Measures Affecting the Production and Sale of Clove Cigarettes
- Todd Weiler, "Philip Morris vs. Uruguay: An Analysis of Tobacco Control Measures in the Context of International Investment Law", Opinion given by Investment Treaty Counsel, 28 July 2010 (Report #1 for Physicians for a Smoke Free Canada). The

Executive Summary, and selected extracts from Counsel's opinion. Available at: http://www.smoke-free.ca/eng_research/pscresearch_papers.htm