Course Description

This course explores the legal and ethical frameworks in which public health operates, with an emphasis on social justice implications at the global, federal, state and local levels. We will examine the constitutional foundations for public health's broad police powers and the consequences and limits of that authority, looking at the structural determinants of public health. We will study the interplay of public health's mission to safeguard the health of the populace with civil rights, and economic and racial justice. We will focus on how to apply public health law and theory in practice through existing and hypothetical cases, examining a range of emerging case studies, such as the ongoing Flint water crisis, disaster related emergencies in Puerto Rico and Texas, as well as current efforts to mandate vaccinations, address terrorism, and regulate firearms. We will assess the history of drug control and the impact of mass incarceration. Throughout the semester, we will examine the expansion of public health law and practice from its traditional focus on communicable disease to include regulating non-communicable conditions, such as diabetes, obesity, and lung disease.

Course Objectives

Students who successfully complete this course will be able to:

- Apply interdisciplinary, collaborative skills that combine law, public health, ethics and social justice;
- Analyze public health law and theory in practice;
- Assess the traditional and evolving mission of public health;
- Examine public health's broad powers to engage in issues including disease control; immunizations, testing, and treatment; isolation and quarantine; health promotion and intervention; screening; regulation of health professionals and businesses that impact public welfare; and litigation;
- Apply critical skills to balance rights and responsibilities on a case-sensitive basis; - describe the range of legal and regulatory realms in which public health functions.
- Analyze the constitutional basis for public health powers, U.S. Supreme Court cases, federal and state statutes and regulations, and local ordinances.
- Examine global health challenges such as syndromic surveillance, bioterrorism, epidemics, social justice, and human rights
- Apply a range of legal, policy and ethical frameworks to longstanding and emerging problems, including bioterrorist threats, infectious diseases, "epidemics" of obesity and diabetes, and others
- Evaluate the recent blurring of the lines between public health and medicine.

Textbook

Lawrence O. Gostin, PUBLIC HEALTH LAW: POWER, DUTY, RERAINT (University of California Press, 3d ed. 2016)
**Method of Evaluation**

Student grades will be based on:

- Mid-term Paper 35%
- Final Exam 50%
- Class Participation and Attendance 15%

**Session 1:**

**Constitutional, Legal, and Historical Foundations of Public Health**

The first two classes offer an overview of the constitutional principles that govern public health, and explore the scope and meaning of public health in the 21st century, including the parameters of public health law and authority, police powers and its limits, and the social and political forces that impact public health policy, practice, and ethics. How - and to what extent - does the traditional notion of public health, as set forth by the U.S. Supreme Court, the WHO, federal and local law, and other bodies, apply in 2018 in light of social justice concerns, globalization, and scientific advances? And what are some of the key legal and ethical principles to consider as we confront the emerging issues of public health, or as some call it, the "new public health?"

**Required Readings**

Rosenberg/Rosen, Chapter 1

**Session 2:**

**Constitutional Limits and Authority**

Introduction to the foundational public health law and ethics case, its origins and evolution, and constitutional parameters, i.e., state regulation of risks to public health and safety. Discussion of mandatory vaccination.

**Required Readings:**

Gostin, Chapter 1, pp. 3 – 42; Chapter 4, pp. 113 – 128; Chapter 10, pp. 370-395

*Jacobsen v. Massachusetts*, 197 U.S. 11 (1905)

*Buck v. Bell*, 274 U.S. 200 (1927)

Session 3

Positive and Negative Rights/State and Federal Roles

Public health powers and duties: the distinction between positive and negative rights, and the relationship of the federal government to the states.

Required Readings:

Gostin, Chapter 2, and part of Chapter 3, pp. 43-104
DeShaney v. Winnebago County Dep’t of Social Services, 489 U.S. 189 (1989)

Session 4

Ethics, Research, and Global Regulations

Public health research, bioethics, and patients' rights in the U.S., and clinical trials and treatments in developing countries. How to apply theories of informed consent and oversight. Implications of rationing.

Required Readings:

Gostin, Chapter 8, pp. 287-313
The Nuremberg Code
James H. Jones, Bad Blood: The Tuskegee Syphilis Experiment 188-205 (Free Press, 1993) (Chapter 12, “Nothing Learned Will Prevent, Find, or Cure a Single Case”)

Suggested Readings:

The Belmont Report
Allan M. Brandt, Racism and Research: The Case of the Tuskegee Syphilis Study, 8 Hastings Ctr. Report 6, 21-29 (1978)
Session 5:

Sex, Sexual Orientation, and State Intervention

Required Readings:

Gostin, second half of Chapter 4, pp. 131-144
Harris v. McCrae, 448 U.S. 297 (1980)
Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence.
http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2072932/

Session 6:

Environmental Health and Environmental Justice

Required Readings:

Gostin, Chapter 5, pp. 147-178
Rosner & Markowitz, Deceit and Denial, Chapter 8.

Suggested Readings:

A petition to EPA to revise the Worker Protection Standard for farmworkers who are exposed to pesticides. (Pages 1-13 are most relevant.)
A complaint from the U.S. District Court for the District of Columbia, seeking to compel EPA to ban lead in aviation gas.
Comments filed with the North Carolina Division of Water Quality regarding the re-permitting of certain concentrated animal feeding operations (“CAFOs” or factory farms)
Session 7:


Global public health and human rights. Discuss the legal instruments related to global health, human rights, and derogations of those rights, and the extent to which these rights are made meaningful in practice. The role of the WHO, United Nations, NGOs, and governments.

The challenge of reconciling human rights and health across borders, cultures, and national laws and practices. Global public health case studies include: infectious disease such as drug resistant TB, HIV and AIDS, SARS, and influenza. The interrelationship between global public health, human rights in domestic violence, and state action.

Required Readings:

Gostin, Chapter 7, pp. 229-83
Sophia Gruskin & Daniel Tarantola, Health and Human Rights, in Perspectives on Health and Human Rights, in Wing, Chapter 8, pp. 757-773
Minister of Health v. Treatment Action Campaign, South Africa Constitutional Court, 2002 (10) BCLR 1033 (CC)

Session 8:

Bioterrorism and Epidemics: Public Health Emergencies, Compulsory Treatment and Confinement, Privacy

Public health surveillance and reporting, quarantine, and privacy: a review of efforts to reconcile public health and civil liberties as inextricable values, and a case that trades one value for the other. Syndromic surveillance, emergency preparedness, and the government's authority to quarantine, isolate, test, treat, and take other coercive measures. The power of the Executive Branch to declare "public health emergencies" and the impact on suspension of laws and/or marshaling of resources.

Government response to emergencies, i.e. Hurricanes Katrina and Irene, as well as emergency preparedness and national security safeguards. How have law and ethics changed post 9/11, and what future changes can be anticipated?

Required Readings:

Gostin, second half of Chapter 10, pp. 395-418, Gostin, Chapter 11, pp. 421-458
Vikki Valentine, A Timeline of Andrew Speaker’s Infection, NPR (June 6, 2007), http://www.npr.org/news/specials/tb/
Stephen B. Thacker, HIPAA Privacy Rule and Public Health: Guidance from the CDC and the
Suggested Readings:


Session 9:

Midterm papers Due. Spring Break.

Watch Contagion
Read Jose Saramago, BLINDNESS 34-60 (1998)

Session 10:

Police Violence and Mass Incarceration

Required Readings:

Ferguson v. City of Charleston, 532 U.S. 67 (2001)
Excerpt from Michelle Alexander, THE NEW JIM CROW (2012), pp. 50-58
Session 11:

Genetics and Newborn Screening

Emerging issues and policies in transition: newborn screening and genetics.

Required Readings:


Suggested Readings:


The President’s Council on Bioethics, *Human Cloning and Human Dignity: An Ethical Inquiry*, BIOETHICS.GOV (July 2002)

*In the Matter of Baby M*, 537 A.2d 1227 (N.J. 1988)
Session 12:

The “New” Public Health: Ethical Duties and Constraints in the Context of Obesity, Diabetes, Lifestyles and Chronic Diseases

Health promotion and education: the "new" public health. Emerging issues and policies in transition: the treatment of chronic disease (obesity, diabetes) as 'epidemics;' and the regulation of 'lifestyle' choices and personal behavior as public health issues: restrictions on smoking, bans/regulations on certain foods, nutrition labeling.

Increasingly porous boundaries between public health and medicine: the growing interplay between public health and medicine. Opportunities for collaboration and work across disciplines. Legal and ethical risks of crossing/eliminating boundaries.

Required Readings:

Wing, Chapter 6, *Health Promotion and Education: Encouraging Healthy Personal Behavior*, pp. 485-96

*Food and Drug Administration*, Tentative Determination Regarding Partially Hydrogenated Oils; Request for Comments and Scientific Data and Information, 60 Fed. Reg. 217 (Nov. 8, 2013)


*Food and Drug Administration*, FDA Targets Trans Fat in Processed Foods, Consumer Health Information (Nov. 2003)


New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dep’t of Health and Mental Hygiene, 110 A.D. 3d. 1 (N.Y. 2013)

Suggested Readings:


Session 13:
The Future of Public Health

Required Readings:

Gostin, Chapter 13, pp. 491-514
The Future of the Public’s Health in the 21st Century, Institute of Medicine (Nov. 2002)
Website for THE BAY AREA REGIONAL HEALTH INEQUITIES INITIATIVE, http://www.barhii.org/

Suggested Readings:


Session 14 -

Review and Prepare for Final Exam