

University of Maryland, College Park

Department of Health Services Administration

HLSA 720 – Health Law and Ethics

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 Semester: Fall 2008
 Classroom/Time:

OFFICE HOURS
 TBD

Required Textbook	<u>Required</u> <ul style="list-style-type: none"> • Gostin, Lawrence O., <u>Public Health Law: Power, Duty, Restraint</u> (California Press, 2003). • Gostin, Lawrence O., <u>Public Health Law and Ethics: A Reader</u> . (California Press, 2002). • Readings as assigned
Course Description	<p>Our government is charged with the health and well being of its citizens. Yet this same charge protects the individual from excessive intrusion from government or state action. The legal system balances these conflicting mandates and The legal system shapes the relationships prevailing among individuals, institutions and governments by setting out the rights, duties and powers of the various parties. This course will look at some of the more important concepts the law uses within the context of health services administration and give students an in depth understanding of tensions between individual legal rights and societal needs and public health programs. In addition the student will gain an appreciation for how law can serve as serve as a tool to organize, implement and or change health programs.</p>
Course Objectives	<p><u>At the conclusion of this course, the student will be able to:</u></p> <ol style="list-style-type: none"> 1. Identify and describe basic concepts of the American legal system. 2. Describe the way laws are made and the relationships among the various law makers and why this often results in some uncertainty about what our legal system requires. 3. Analyze statutes and regulations. 4. Work more effectively with legal counsel serving his or her organization. 5. Identify and describe the respective rights and duties of providers and patients/clients of health care and the way in which the legal system regulates or attempts to regulate the delivery, financing, quality and access to health care. 6. Define and describe the power of the state over individuals in matters of public health and the way in which individual rights limit this power. 7. Identify and describe the principle programs through which government regulates health care providers. 8. Recognize those areas of health care, such as managed care, that are closely regulated by the legal system and where substantial changes in the law are now taking place.

possible. You can also contact Learning Assistance Services (301-314-7693) and/or the Counseling Center (301-314-7651) for assistance.

ACADEMIC INTEGRITY:

The Student Honor Council encourages any individuals teaching a course Fall semester to include the following information in the course syllabus:

The University of Maryland, College Park has a nationally recognized Code of Academic Integrity, administered by the Student Honor Council. This Code sets standards for academic integrity at Maryland for all undergraduate and graduate students. As a student you are responsible for upholding these standards for this course. It is very important for you to be aware of the consequences of cheating, fabrication, facilitation, and plagiarism. For more information on the Code of Academic Integrity or the Student Honor Council, please visit <http://www.shc.umd.edu>.

To further exhibit your commitment to academic integrity, remember to sign the Honor Pledge on all examinations and assignments: "I pledge on my honor that I have not given or received any unauthorized assistance on this examination (assignment). "

Website: shc.umd.edu

The University's code of academic integrity is designed to ensure that the principle of academic honesty is upheld. Any of the following acts, when committed by a student, constitutes academic dishonesty:

- ✓ CHEATING: intentionally using or attempting to use unauthorized materials, information, or study aids in an academic exercise.
- ✓ FABRICATION: intentional and unauthorized falsification or invention of any information or citation in an academic exercise.
- ✓ FACILITATING ACADEMIC DISHONESTY: intentionally or knowingly helping or attempting to help another to violate any provision of this code.
- ✓ PLAGIARISM: intentionally or knowingly representing the words or ideas of another as one's own in any academic exercise.

For more information see:

<http://www.inform.umd.edu/CampusInfo/Departments/PRES/policies/iii100a.html>

OTHER SOURCES OF INFORMATION

There are various Medicare and Medicaid guides, one of which is an absolute necessities for anyone working with those programs, although Medicare and Medicaid are not covered in detail in this course. Among medical publications, *American Journal of Law & Medicine*; *Journal of Law, Medicine & Ethics*; *Hastings Journal*; *New England Journal of Medicine*; *Hastings Center Report*; *Journal of the American Medical Association* and *Lancet*, published in the UK, are the best sources of material applicable to this course. Some of these publications can be accessed through Lexis/Nexis.

Among law schools, those at George Washington University, Georgetown, Whittier, University of Houston, Case Western, University of Seattle, New York University, Yale, Harvard, Boston University, among others, publish annual or monthly law reviews on health law issues. The Williams Project on Sexual Orientation Law at the UCLA Law School publishes a law review covering LGBT legal issues that often has useful information on health law matters. These law reviews can be accessed through Lexis/Nexis.

Many organizations representing health care providers or consumers publish materials reflecting the interests of their constituents. Besides the organizations listed in the preceding paragraphs, these include American Nurses Association, American Medical Association, America's Health Insurance Plans, American Public Health Association, American Dental Association, Pacific Business Group on Health, National Health Law Program, as well as organizations dedicated to specific health conditions such as diabetes and cancer. JCAHO, the medical specialty boards and the other health care professions have web sites which may list publications.

The American Society for Law, Medicine & Ethics and the National Health Lawyers Association have particularly useful web sites which list the conferences they put on and materials they have available. The NHLA maintains a file of cases which can be ordered.

Because so many of the issues discussed in class are currently before the courts, Congress, the legislatures of the various states, and our local county governments, students are also encouraged to pay close attention to the news media during the time of the course. *The Los Angeles Times*, *The New York Times*, *The Washington Post*, *The Wall Street Journal* and National Public Radio's "All Things Considered" and "Morning Edition" have good coverage of health issues. *The New York Review of Books* frequently has excellent articles on such topics as Medicare, AIDS and the pharmaceutical industry. These publications are available on line through Lexis or their own web sites. There are many other web sites covering health care, cases and legislation. Copies of cases and statutes can be obtained from the Research Port on the University website and information on how to do this will be presented to the class.

Students should be aware that, apart from CNN and sometimes public television, television news has poor to nonexistent coverage of health law matters. In fact, most TV channels provide very poor coverage of any issue of political or economic importance. Students should not rely on television for any information that will help them make intelligent choices about important matters such as healthcare. *Time*, *Newsweek* and other popular news publications often have very shallow coverage and are not always reliable, either, although they sometimes have good statistical tables. The major newspapers and other publications mentioned above are the best sources of in-depth coverage of health law and other issues but are not to be considered a primary source for research papers.

WEEKLY READING ASSIGNMENTS

PART I: FOUNDATIONS OF PUBLIC HEALTH LAW AND ETHICS

Week 1 *A theory and definition of Public Health Law:*
09/08 *Mapping the Issues*

"Public health is what we, as a society, do collectively to assure the conditions for people to be healthy." (IOM 1988,19) We are all students of public health but come

from varying backgrounds as consumers, advocates and providers. This class sets the tempo for exploring those roles, the legal implications and ethical dilemmas when individual rights are exploited for the societal good. The focus will be on the relationships to healthy public policy and specifically, the political and democratic processes touching on ethics and the relevance of human rights, particularly the right to health and the right to choose.

Readings:

PDR: Chapter 1

Reader: Chapter 1

Week 2
09/15

Theoretical undertones:

Population-Based Perspectives and the Communitarian Tradition

This class provides a theoretical grounding in public health law – and three bases for considering the public health of populations.

Readings:

- Reader: Chapters 2-4
- Ottawa Charter; Iona Kickbusch and Don Nutbeam

PART II: THE LAW AND THE PUBLIC'S HEALTH

Week 3
09/22

Public Health and the Constitution

In the next three weeks we begin coverage of the “building blocks” of public health law, including the constitution, law and regulations, and the judicial system. This week we carefully explore the constitutional foundations of public health. First, we explore what duties or obligations, if any, government has to assure the conditions for the public's health. Next, we explore government powers in the realm of public health, notably the police powers. Finally, we explore the limitations on government power. We will do this within the context of American federalism, asking the question, which government (federal or state) has the power to act in a given case.

Readings:

- PDR: Chapter 2-3
- Reader: Chapters 6-7

Week 4
09/29

Public Health Regulation

This week we examine the various forms of reasoning in public health. In particular, we discuss the philosophical foundations (principally utilitarianism, but also the relevance of normative theories). We also discuss risk assessment, drawing from the field of environmental law and policy. Finally, we explore the economic issues, notably cost-effectiveness analysis.

Readings:

- PDR: Chapter 4
- Reader: Chapter 5

Week 5
10/6

Tort Litigation for the Public's Health

To balance government/state action there is the separate branch of government (judicial) that interprets the regulation and statutes. This would be through civil action or tort litigation. This week we review tort litigation as a strategy for improving the public's health. This involves an examination of the interplay between the judicial and legislative branches and the issue of causality and examines the major tort theories of public health litigation.

Readings:

- PDR: Chapter 10
- Reader: Chapter 9

Week 6
10/13

ADA: A Healthy Public Policy or An Ethical Dilemma

Week 7
10/20

Mid Term

PART III: TENSIONS AND RECURRING THEMES

Week 8
10/27

Privacy and the "Right to Know"

In the next several weeks we will begin to the major public health activities and their effects on law, ethics, and policy. With each activity, we examine the tensions between individual interests and the common good. This week deal with how and when to share public health information.

Readings:

- PDR: Chapter 5
- Reader: Chapter 10

Week 9
11/03

***Health, Communication and Behavior::
Freedom of Expression***

Promotion and health education are cornerstones of public health program. Through these readings the author highlights ways in which government affects the informational environment: government speech (e.g., health communication campaigns), government compelled speech (e.g., labeling requirements) and government restrictions on speech (e.g., commercial speech regulations). What is government control and its relationship to the First Amendment?

Readings:

- Text: Chapter 6
- Reader: Chapter 11

Week 10 ***Immunization, Screening, and Treatment***

11/10

Personal restraints and vaccinations to control epidemics and infectious diseases have been in the national and international news over the past several years. We discuss the legal, ethical and policy implications of the exercise of police powers.

Readings:

- Text: Chapter 7
- Reader: Chapter 12

Week 11 ***Restrictions of the Person:***

11/17

(Quarantines)

This week we discuss the balance between controlling/preventing infectious diseases and personal liberty or property interests.

Readings:

- Text: Chapter 8
- Reader: Chapter 13

PART IV: THE FUTURE OF THE PUBLIC'S HEALTH

Week 12 ***Vision and Challenges:***

11/24

This week, and the next, we conclude our exploration of public health law and ethics. This week we examine visions and challenges for the future of public health and safety. In particular, we pursue three paradigmatic areas of modern public health: emerging infectious diseases (including the threat posed by SARS and the international legal tools needed to address international epidemics), bioterrorism (including the anthrax outbreak following September 11, 2001), and public health genetics (including modern efforts to reduce the burdens of genetically-related diseases).

Readings:

- Reader: Chapter 14

Week 13

12/01

The BRAIN

This class exercise will extend over the last two weeks presenting our web of causation and illustrating the relationship between regulations, ethics and public health issues/programs that result in a model of a healthy public policy. The documented case law will provide a basis for legal implications..

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Week 14
12/08

The Brain continued and behavioral issues

While science has diminished many threats the public's behaviors has become the root of many public healthy issues. This class will explore how these behaviors fit into the model of a public healthy policy.

This syllabus is subject to change as the class progresses but all material will be covered.

Evaluation		Points	Grading		
			Number Grade	Letter Grade	Points
Debate/Opinion Paper 1	12.5%	50			
Debate/Opinion Paper 2	12.5%	50	90-100%	A	360-400
Debate/Opinion Paper 3	12.5%	50	80-89%	B	320-359
Debate/Opinion Paper 4	12.5%	50	70-79%	C	280-319
Midterm examination	20%	80	60-69%	D	240-279
Final	30%	120	<60%	F	≤ 239
			96-100%	A+	384-400
			93-95%	A	372-383
			90-92%	A-	360-371
			86-89%	B+	344-359
			83-85%	B	332-343
			80-82%	B-	320-331
			76-79%	C+	304-319
			73-75%	C	292-303
			70-72%	C-	280-291
			66-69%	D+	264-279
			63-65%	D	252-263
			60-62%	D-	240-251