

The Network for Public Health Law
 Ideas. Experience. Practical answers.

Introduction to Public Health Law

New Local Health Officer Orientation
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The Network for Public Health Law

Contact the Network to:

- Get practical legal assistance on a variety of public health topics
- Find helpful resources from webinars and trainings to fact sheets and legal briefs
- Connect with a community of experts and users of public health law

Support is available at no cost! Visit www.networkforphl.org for more information.



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Objectives

- » Describe role of law in protecting public health
- » Explain the sources of the government's legal authority and responsibilities to protect public health
- » Identify constitutional principles that limit government power
- » Apply legal thinking to emerging public health challenges
- » Describe common legal pitfalls
- » Identify strategies for learning laws and statutes and public health law resources
- » Identify situations when legal advice or assistance may be required

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What Is Public Health Law?

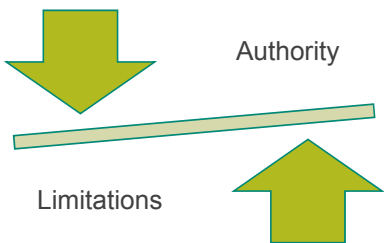
The study of the legal powers and duties of the state, in collaboration with its partners (e.g., health care, business, the community, the media, and academe), to ensure the conditions for people to be healthy (to identify, prevent, and ameliorate risks to health in the population), and of the limitations on the power of the state to constrain for the common good the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals.

Power. Duty. Restraint.

Source: LAWRENCE GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 4 (2008).

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Two Key Concepts



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Jacobson v. Massachusetts

U.S. Supreme Court, 197 U.S. 11 (1905)

- Landmark Court Case
- Setting: 1902 Smallpox Outbreak (MA)
- Law: State statute authorizing compulsory vaccination
- Violation: Jacobson refused to comply with vaccination order and was fined (\$5); challenged the constitutionality of the law
- Ruling: U.S. Supreme Court upheld the law

“Upon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.”

Jacobson v. Massachusetts Key Holdings and Implications

- Beginning of application of modern constitutional analysis to disease control law
- Key holdings for states:
 - » Use of police powers to protect public health
 - » Delegation of authority to health agencies and other government subdivisions
 - » Effective public health interventions may limit individual liberty
- Provides constitutional support for spectrum of contemporary public health laws

Levels of Government

- » **Federal**
- » **Tribal**
- » **State**
- » **Local**

Sources of Law

- » **Constitution**
- » **Statutes**
- » **Regulations**
- » **Ordinances**
- » **Court Opinions (Case Law)**
- » **International Agreements and Treaties**
- » **Contracts, Memorandums of Understanding or Agreement**

Principles in the U.S. Constitution

- » **Federalism**
- » **Separation of Powers**
- » **Limiting the Government's Power**

Federalism

- » The powers of the national government are enumerated and limited.
- » Powers that are not granted to the federal government by the Constitution, and that are not prohibited to the states, are reserved to the states and to the people (10th Amendment).
- » These residual powers ("police powers") authorize states to regulate matters affecting the health, safety, and general welfare of citizens.

Separation of Powers

- » The Constitution creates branches of government, so that absolute power does not reside in any one branch of government.
- » **Legislative**
- » **Executive**
 - U.S. Department of Health and Human Services
 - Wisconsin Department of Health Services
- » **Judicial**

Limits on Government Power

- » **First Amendment**
Freedom of speech, religion, and right to peacefully assemble
- » **Second Amendment**
Right to bear arms
- » **Fourth Amendment**
Prohibits unreasonable searches and seizures
- » **Fifth Amendment**
Due process of law; just compensation for condemnations
- » **Fourteenth Amendment**
Equal protection and due process of law

Federal Public Health Power

- » **Enumerated Powers in the Constitution**
 - Power to regulate interstate commerce, tax, set conditions on federal spending
- » **Implied Powers**
- » **Supremacy Clause**

For an overview on public health legal powers, see JAMES G. HODGE, JR., PUBLIC HEALTH LAW IN A NUTSHELL (2018).

State Public Health Power

- » **Sovereign powers via the 10th Amendment**
- » **Police powers**
 - Police power refers to the power to regulate health, safety, and welfare for the common good.
- » **Parens patriae powers**
 - “Parent of the country”; allows state to act in interests of community and individuals’ own best interests.

Local Public Health Power

- » **County, city or other local public health officials are on the front line of public health practice**
- » **Authority to act comes from delegations of state police power via state constitutional, legislative, or executive means (“home rule” authority)**

Tribal Public Health Power

- » **Public health powers flow from federal government.**
- » **As sovereigns, tribal governments have public health powers similar to states.**
- » **Indian Health Service**

Preemption

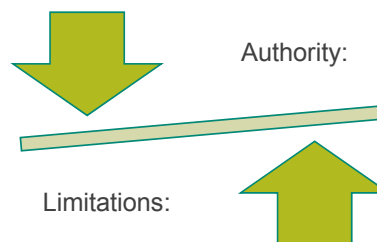
- » **Preemption occurs when a “higher” level of government eliminates or limits the authority of a “lower” level of government to regulate a certain issue.**
- » **Local government may be barred from acting if the state or federal government has “occupied the field.”**
- » **May be express or implicit**

Tools of Public Health Law

- » Power to tax and spend
- » Power to alter the informational environment
- » Power to alter the built environment
- » Power to alter the socioeconomic environment
- » Direct regulation
- » Indirect regulation through the tort system
- » Deregulation: laws as a barrier to public health

Source: LAWRENCE GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 28–38 (2008).

Hot Topic: Obesity Prevention



Anticipating and Recognizing Legal Issues

- » Is there a reasonable chance that the public's health is or may be threatened?
- » Is your ability and authority to address the situation unclear?
- » Is there a possibility that the event or circumstance could expose the health department to liability, media attention or political pressure?
- » Would the cost of a court case outweigh the cost of consulting an attorney?

Case Study Example

Video Directly Observed Therapy for Tuberculosis

- » Your health department is interested in starting a telehealth-delivered Video Directly Observed Therapy program, in which health care providers would observe their TB patients taking their TB medication remotely via a smartphone.



What are some of the legal issues to consider before starting such a program?

Common Legal Pitfalls

- » Failing to build a relationship with your attorney and to seek legal input early
- » Failing to have a proactive legal agenda and only reacting to crises, or only continuing the status quo
- » Failing to get community input and/or provide due process when developing new legal approaches

Strategies for Learning Law and Statutes

- » Start with what is the department working on—how does law affect that aspect of public health?
- » Governance structure - roles of different public health officials
- » Get active in the Public Affairs/Advocacy committees of professional groups such as WPHA and WALHDAB or topical advocacy groups
- » Contact NACCHO for opportunities (public health law workgroup)
- » Explore Network resources:
 - » Join the Network to get regular legal updates; bimonthly newsletter
 - » Free monthly webinars on public health law topics; legal technical assistance
- » Attend the National Public Health Law Conference

The Network for Public Health Law: Public Health Legal Support

» Five Regional Offices provide local and state support



Five Regions

- National Office/Northern Region**
 - » TSNE MissionWorks (Edina, MN Office)
- Eastern Region**
 - » The University of Maryland School of Law working with the John Hopkins Bloomberg School of Public Health
- Mid-States Region**
 - » University of Michigan School of Public Health
- Southeastern Region**
 - » University of North Carolina Gillings School of Global Public Health working with the National Health Law Program
- Western Region**
 - » Sandra Day O'Connor College of Law at Arizona State University

Northern Region

» Serves 8 states



Areas of expertise:

- » Rural health equity
- » Mental health and well-being

Access Helpful Resources


- » Network products, such as fact sheets, tables of state laws, legal briefs and more
- » Monthly webinar series
- » Public health lawyer directory
- » Library of legal assistance questions and answers
- » External resources
- » Network newsletters
- » Events

www.networkforphl.org



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Questions?

Thank you for your attention!