



PUBLIC HEALTH LAW AND ETHICS

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CLASS STRUCTURE AND ASSIGNMENTS

- Offered generally Spring Semester
- 13 three hour evening classes (15 minute break)
 - Discussion of Reading assignment
 - Discussion of current public health issues
 - Guest speakers
- Textbook and Supplemental reading
 - Rotate responsibility for leading discussion in teams of 3
 - Annotate related power point slides
- Select a current public health issue to follow and brief our class
- Exam or Final paper options
 - Teams permitted, provided each student's primary section is clear
 - Publication ready!

Class 1

POPULATION PERSPECTIVE

- Focus shifts from:
 - individual to population and
 - treatment to prevention
- Populations
 - Geographic
 - Employees
 - Ethnic
 - Other characteristics: disabled, prisoners, children etc.
- Producing and Measuring Outcomes
- Reducing disparities and inequalities among subgroups
- Partnerships and coalitions
 - Governments
 - Private

Class 4

LETTER TO GOVERNOR CUOMO

March 26, 2020

Re: COVID-19 New York Public Health Emergency

and

Disaster Conditions:

Call for Essential Crisis Standards in New York

NYS Bar Association Health Law Section

THE DOMAIN AND BOUNDARIES OF PUBLIC HEALTH

- Infectious Disease
 - Prevention recognized as governments' responsibility since as early as 600 BC
 - Government expected to promote and protect health, safety and welfare
- State Police Powers
 - When health is at issue, the rights of individuals are subordinate to rights of the public

Class 1

THE DOMAIN AND BOUNDARIES OF PUBLIC HEALTH

Law of Necessity

- Example, Small Pox Epidemic
 - 1905 Jacobson v. Massachusetts (US Sup Ct)
 - Held Mass. Statute requiring small pox [vaccination](#) was **not unconstitutional**
 - “[T]he liberty secured by the Constitution...does not import an absolute right in each person to be, at all times....wholly free from restraint.”
 - 1919 Globe School Dist. V. Bd of Health (Sup Ct Ariz)
 - School district unable to prevent health dept’s school closure Spanish flu epidemic
- 1995, NYC Friends of Ferrets v. NYC DOH
 - Dismissed complt against prohibition of keeping ferrets

Class 1

THE DOMAIN AND BOUNDARIES OF PUBLIC HEALTH

- Limitations on Police Power
 - Rights granted to federal government
 - Civil and private rights of citizens
 - Equal protection
 - Freedom of religion
 - Freedom to contract

Class 1

21ST CENTURY LEGAL AND ETHICAL ISSUES

- Difficult trade offs
 - Lancet 2002
 - Utilitarianism, liberalism and communitarianism
 - Right choice, most gain?, largest reduction in burden of disease?
 - Immanuel Kant, individual respect as an end in itself versus community good
 - Childress, 2002
 - Instit. Of Med. 1988 Defintion of Public Health:
“...what we do...collectively...to assure..people can be healthy.”
 - Effectiveness. Proportionality, necessity, justification, accountability

GLOBAL PUBLIC HEALTH EMERGENCIES

- No express federal public health powers
- Public health sovereignty resides with the states
- US Constitution assigns national security to the federal government
- Public health threats to national security include bioterrorism and infectious disease
- Federal statutory authority
 - Public Health Service Act
 - Robert T. Stafford Disaster Relief and Emergency Assistance Act
 - Federal Emergency Management Agency (FEMA)
 - Dept. of Homeland Security
 - National Emergencies Act
- International Health Regulations, World Health Organization

Class 3

GLOBAL PUBLIC HEALTH EMERGENCIES

- Public health tools
 - Isolation and Quarantine
 - Social distancing
 - Risk communication and burial
 - Travel restrictions
 - Health care settings and obligation of health workers

- SARS

- Ebola

- COVID-19

- Moral considerations
 - Equality

Class 3

DETERMINANTS OF HEALTH

- Types of Determinants
 - Biological
 - Physical / Environmental
 - Behavioral
 - Social

Class 4

DETERMINANTS OF HEALTH

- Motor vehicle injuries
 - Bonnie and Guyer, Injury as Field of Public Health
 - Graham, Injuries from Traffic crashes
 - Seatbelts
 - Blood alcohol level and cannibus
- Cardiovascular disease
 - Blood pressure
 - Cholesterol
 - Diabetes
 - Smoking
 - Weight
 - Exercise
- Marketing
- Education

Class 4

POPULATION STRATEGIES

- New York City
 - HIV/AIDS
 - Diabetes
 - Frieden on rate in people of color
 - 2002, Mayor Bloomberg's controversial strategies
 - Trans fat ban, calorie labeling salt reduction
 - Lawrence Gostin: "urban innovator or meddling nanny"
 - NYC Bd of Health
 - Part of NYC Dept of Health and Mental Hygiene
 - Commissioner, Chairperson and 9 members appointed by the Mayor
- Fairchild on NY's Soda Rule

Class 5

PATERNALISM CONSTRAINT

- Helmet laws
- Callahan, Legislating Safety
- Tobacco Control
 - IOM, Ending tobacco problem
 - Strong measures
 - Social disapproval
 - Discrimination against smokers, justified?
- Freedom and Paternalism in the workplace
 - Length of work day and work week
 - Minimum wages
 - Safe work place

Class 5

GOVERNMENT RESPONSIBILITY AUTHORITY AND THE CHALLENGE OF FEDERALISM

- Patient Protection and Affordable Care Act of 2010(“ACA”)
 - Increased access for millions
 - Preventive initiatives
 - Presents opportunities to overcome barriers to eliminating health disparities
- After the ACA
 - Incentivizing better outcomes
 - Health versus treating disease

ACA IMPACT

RECENTLY IN THE NEWS

- NY Times, Tuesday, Dec. 10, 2019*
 - Economists published study finding health coverage reduce number of deaths
 - 3 years ago, 3.9 million fined by IRS for not having health insurance
 - Notices of fines increased insurance sign-ups
 - Due to budget constraints, random 600,000 uninsured were not sent the letter (randomized control group)
 - 12 percent fewer deaths over 2 years among insured (700 lives saved)

**Sarah Kliff, The IRS Sent a Letter to 3.9 Million People. It Saved Some of Their Lives*

Class 7

COMMUNICATION AND PERSUASION

- Constitutional constraints on government speech
- Ethical constraints
 - Liberty enhancing v. manipulative, coercive or insulting
- Persuasion
 - Influenced by the merits
 - Threatens autonomy?
 - Manipulative?
 - Inadvertent harm?
 - Vulnerability?

LABELING AND ADVERTISING

- Commercial speech about products that may be harmful generally not protected by First Amendment
- Mandated disclosures
 - NYS Resturant Ass'n v. NYC Bd of Health, 2009
 - Court found reasonable relationship between calorie count regulation and goal to reduce obesity
 - Tobacco advertising

Class 13

PUBLIC HEALTH OPPORTUNITIES

- NYS Bar Association Health Law Section, Public Health Committee
- NYC Bar Association, Bioethics Issues Committee
- Join the Network for Public Health
 - https://www.networkforphl.org/join_the_network/

Class 1

EMPLOYMENT IN PUBLIC HEALTH

- Government positions
 - City
 - State
 - Federal
- Health Care Providers
- Law Firms
- Communications
- Human Resources