

PHC 6102, Principles of Health Policy & Management
Public Health Law

Presentation Contains 19 Slides

1. Hello and welcome to “Public Health Law.” My name is Zachary Pruitt. The content for this lecture is taken, among other cited sources, from the Centers for Disease Control and Prevention Public Health Law 101 educational series and Public Health Law: Power, Duty, Restraint by Lawrence O. Gostin.

2. The objectives of this lecture are:
 - Define public health law
 - Understand the relationship of federal and state/local governments in public health law
 - Recognize the dichotomy of “common good” vs. “individual freedom” in public health law
 - Contrast public health law and criminal law
 - Distinguish the multiple perspectives of the role of public health law in society
 - Apply various sources of power of public health law to students’ public health concentration

3. Here is Gostin’s definition of public health law where he juxtaposes the government legal powers to protect the public’s health and applicable limitations on those powers. He writes that public health law is “The legal powers and duties of the state to assure the conditions for people to be healthy, and ...the limitations on the power of the state to constrain the autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals for the protection or promotion of community health.”

In the next lecture, public health law and public health ethics are compared and contrasted in more detail. Basically, law is more formal (exemplified by statutes, regulations, and court decisions); ethics is less formal (based on moral norms, professional codes, and previous cases).

Furthermore, public health law is different from healthcare law. Personal health law is concerned with the individual and treatment, but public health law addresses issues associated with populations and prevention.

4. After decades of neglect because of advances in vaccines and improvements in hygiene, we now experience, in Lawrence Gostin’s (2002) words “a renaissance in public health law.” Reacting to the threat of terrorism, Congress has provided billions in funding for terrorism preparedness. Furthermore, the reemergence of infectious disease, such as AIDS, SARS, H1N1, and West Nile Virus, has led to public deliberation about pandemics, the ability of governments to respond, and the importance of civil rights in relation to that response. This includes the legal parameters for police powers such as treating people without their consent or destroying personal property. We’ll talk about state police powers later in this lecture.

Next, the development of genomic technologies has created a new discipline for public health law. While not a new topic, the completion of the Human Genome Project brought questions of the legal parameters of genomics. For example, public health scholars debate the extent to which genetic information differs from other types of health information. In many cases, the law handles genetic information separately.

5. Sources of Public Health Law. It is important to understand that there are multiple sources of public health laws.

- U.S. Constitution
- Federal laws
- State and local laws
- Judicial decisions
- Regulations
- International treaties

As for the U.S. Constitution, you should just understand the basics of the five Amendments that I will mention, as they relate to public health law. I use them only to help illustrate the dichotomy of common good vs. individual freedoms in public health law. The 1st Amendment is freedom of speech and freedom to practice religion. The 2nd Amendment is the right of “people to keep and bear Arms.” The 4th Amendment protects against “unreasonable searches and seizures” and requires requiring any warrant to be judicially sanctioned and supported by probable cause. I’ll also reference the 5th and 14th Amendments which contain rights of “due process” of the law. You will not be tested on your knowledge of these Amendments, specifically.

Later in this lecture, I will discuss these sources of the public health law using five College of Public Health concentration areas as context. I think you’ll find that public health law is relevant and applicable to all public health practitioners.

6. As you know, there are multiple levels of government in the U.S., such as federal (or national), state, county, and city. Federalism is defined as “the relationship and distribution of power between the individual states and national government” (Black, 1999). The 10th Amendment of the Constitution enables states to keep all powers that are neither given to the federal government nor prohibited by the Constitution. Federal preemption is based on the Constitutional doctrine that federal law is the supreme law of the land, that is, federal takes precedence over all other laws. Federal preemption occurs in many areas of public health law, such as with cigarette labeling and advertising regulations and occupational health and safety standards.
7. States retain police powers designed to protect the public’s health. Police powers are the powers of states to enact laws and promulgate regulations used to protect public and to promote the common good. These laws and regulations include “a range of coercive powers to protect the population” (Gostin, 2008: chapter 4). Examples of public health police powers include quarantining of a man with tuberculosis (a limitation on his liberty) or [destroying barrels of contaminated poultry](#) from a distributor (their property).

Police power is different from criminal law power. With criminal law, search and seizure without a probable-cause warrant is forbidden. Individuals have extensive due process rights, must meet the “beyond a reasonable doubt” standard of evidence, and other individual rights protections. In contrast, under public health state police power, probable-cause warrants are not required for search and seizure, may enforce various public health protections without a court hearing, and are only held to the “more probable than not” standard of evidence (Richards, 2002).

8. According to [Gostin \(2002\)](#) public health laws “should be seen not as fixed and authoritative, but rather as transient and culturally derived.” Let’s examine some basic political philosophy positions in the U.S. and their views on public health police powers. We review these positions to illustrate how public health practice strategies are shaped by cultural values of our society. If you are not familiar with these political philosophies, it is not necessary to learn them, because they won’t be on the test. If you are familiar with U.S. political positions, then, hopefully, this is helpful.

- Generally speaking, the ideological left is concerned with personal interests, such as autonomy, privacy, and liberty. Thus, restriction of movement in a quarantine is particularly problematic.
- On the ideological right, people are mainly focused on proprietary interests, that is, the freedom to conduct business, use and develop property, and contract freely. As a result, this position abhors laws and regulations they see as prohibiting free enterprise.
- [Gostin](#) states that a personal libertarianism philosophy position believes that public health officials should not confer compulsory powers of vaccination, isolate, and quarantine at all.
- Economic libertarianism also believes that public health police powers interfere with free enterprise. Therefore, when a strong government role is applied to non-communicable disease threats and the social determinants of health, critics such as [Wiley et al. \(2013\)](#) raise concerns about “public health paternalism” and the “nanny state.”

In the lecture called Ethics in Public Health Practice and Management, I talk about influential ethical theories of Utilitarianism, Liberalism, and Communitarianism. These concepts are important for the exam, and should not be confused with the above political philosophies that I’ve presented to help you understand public health law.

9. The practice of public health law is a balance between diametrically opposed ideas of assurance of the common good and protection of civil liberties. On one side, there is an acknowledgement of the multiple determinants of health, including social, behavioral, and environmental factors. On the other hand, there is a reticence among many in our society to solve these problems through government actions, such as laws and regulations.

The following table illustrates the tension between public good and individual liberties experienced with public health interventions.

Childhood vaccinations / reduce vaccine-preventable disease incidence / religious freedom (1st Amendment); parental autonomy

<http://www.nejm.org/doi/full/10.1056/NEJMs0806477>

Helmet laws / reduce death and head injury / violation of “personal freedom,” according to Gov. Bush

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661439/>

Mandate of flu vaccine for healthcare workers / controlling influenza outbreaks / deprived them of liberty without due process (14th Amendment) and violated their right to free exercise of religion (1st Amendment)

<http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2009.190751>

Quarantine/isolation/compulsory hospitalization” / infectious disease control / freedom of movement; due process (14th Amendment)

<http://onlinelibrary.wiley.com/doi/10.1111/j.1748-720X.2007.00185.x/abstract>

Ban on handguns in homes / controlling gun violence / 2nd Amendment “protects an individual right to keep and bear arms”

<http://www.nejm.org/doi/full/10.1056/NEJMp0800859>

10. Gostin (2002) describes five Models of Public Health interventions and examples that I find particularly helpful in understanding the practicalities of public health law. They are:
 1. Tax and spend (cigarette tax and highway funds tied to legal drinking age)
 2. Alter the informational market (labeling laws)
 3. Direct regulation (business inspection, seat belt laws)
 4. Tort system (resulted in safer cars)
 5. Deregulation (needle exchanges to prevent spread of HIV)
11. Relevant examples from the College of Public Health. Earlier in this lecture, I listed the sources of the public health law. Now I will discuss the sources of public health law using examples from five College of Public Health concentration areas as context. I will discuss Epidemiology, Health Policy, Community and Family Health, Environmental and Occupational Health, and Global Health in the subsequent slides.
12. According to the [CDC](#), the federal powers to require epidemiological reporting by derive from the U.S. Constitution’s 10th Amendment, specifically the Commerce Clause. However, most public health surveillance, such as communicable disease, chronic illnesses, and injuries, are based on state police powers. Some laws for reporting are passed by state legislatures, but most rules and regulations are promulgated by state departments of health.
13. Health Policy and Management and the Affordable Care Act as Public Health Law. First, I acknowledge that the law is principally about insurance market reform. But if forced to label ACA a personal healthcare law vs. public health law, I would choose the latter.

Public health law has a population focus, while health care law tends to concern itself with individual care.

Here's why ACA qualifies it as a public health law, in my opinion. First, the ACA create some important programs to advance public health at the national level and to fund and coordinate projects at all levels. ACA establishes a National Prevention, Health Promotion, and Public Health Council to coordinate public health efforts at the national level. They developed the [National Prevention Strategy](#) that offers evidence-based best practices for prevention.

Next, starting January 1, 2011, Medicare began to cover annual wellness visits without cost-sharing from individual patients. Also, state Medicaid payment for preventive services was raised to the Medicare rate to improve access for patients.

The Supreme Court made decisions about ACA in the summer of 2012. The decision of the court essentially addressed the two major provisions. The first was the individual mandate in the law that requires most legal citizens to obtain health insurance. The Supreme Court upheld this component of ACA by stating that the individual mandate was constitutional under the federal government's power to levy taxes. However, the Supreme Court found that the provisions that required states to cover more low-income individuals through Medicaid expansion were unduly coercive for the states. Therefore, the law was changed to allow states to opt-out of expanding Medicaid. The link to find out which states are not expanding Medicaid is [here](#). This is a good [brief](#) on the ACA and Supreme Court by the Kaiser Family Foundation.

14. ACA also impacts public health more indirectly through reform of health insurance markets. Why is this important? This chart explains why expanding health insurance coverage, through health insurance exchange marketplace and Medicaid expansions, is so important to public health. As you can see, cost and affordability are huge barriers to care for the uninsured, much more so than in the public and provider insurance beneficiaries.
15. So what does health insurance coverage do to help preventive care? The Oregon Medicaid Experiment offers some explanation. In 2008, the state of Oregon wanted to expand Medicaid program for low-income, uninsured adults, but lacked the funds to enroll all of those eligible. As a result, they created a lottery system that led to randomized controlled design study, the gold standard for experimental design. The results of the study are interesting. The chart shown here shows the effect of Medicaid insurance on preventive care, such as cholesterol testing, flu shots and mammograms, as compared to the control group without health insurance. Basically, the research indicates that health insurance leads to more preventive care. This is good news for public health.
16. From a Community and Family Health perspective, public health law plays an important role in injury prevention and in child abuse and neglect. For the most part, injury prevention laws are created by state and local lawmakers. Federal governments sometimes provide incentives in the form of grants to induce states to adopt certain

standards, such as changing the legal drinking age to 21 years. We'll talk about categorical grants in a later lecture of this course.

Efforts designed to prevent harm, such as removing a child from a home of a suspected abuser, are informed by public health law. That is, state social workers can remove the child from a potentially abusive home with an emergency court approval. A court must find "clear and convincing evidence" to terminate parental rights. To prosecute for child abuse, the prosecution follows criminal law, including "beyond reasonable doubt" standard.

17. Environmental health laws and regulations often originate from multiple governmental levels. For example, federal laws set minimum standards for state laws and regulations involving air and water pollution. Some issues are state and locally regulated, such as mosquito and animal control, business operations rules, and the processes involved with enforcement.

Students in the industrial hygiene program are probably familiar with the fact that many businesses must be permitted or licensed by the department of health to operate. These businesses, such as food producers and chemical manufacturers, are subject to warrantless random inspections. Also, public health law sanctions business closures in cases of violation of law or regulation, which may be appealed in court, depending on state or local law. In instances where permits or licenses are not required, administrative warrants can be obtained through the courts in order to protect the public's health, but findings based on these warrants cannot be used in criminal proceedings.

18. For those in the Department of Global Health, international treaties are very important. One such treaty is the World Health Organization Convention on Tobacco Control. The World Health Organization (WHO) was established by the U.N. for protection of global health. According to WHO, tobacco use kills about five million people every year, and the treaty sets "international standards on tobacco control measures such as tobacco prices and tax increases, advertising and sponsorship, product warning labels, smuggling and second-hand smoke." The United States signed the treaty, but neither President Bush nor President Obama sent the treaty to the Senate for ratification.

Another interesting point about international law is that, at the international level, health is recognized as a fundamental [human right](#) in the Constitution of the World Health Organization. [Yamin \(2005\)](#) states that "70 member states' constitutions recognize right to health," but that the United States does not typically conform to international norms. She goes further, though, by stating that the United States is, in fact, a party to the International Convention on the Elimination of All Forms of Racial Discrimination, and that the UN committee that reviews compliance with the treaty has stated that the U.S. racial and ethnic disparities in treatment and access to health care may constitute a "rights violation."

19. This concludes the lecture on Public Health Law. The following questions are some that you will be expected to know:
1. What happens if a federal law conflicts with a state law? Which law should be followed? What is this concept called?
 2. Name five public health law intervention models and give examples of each.
 3. Other than the five presented, name a public health intervention, its objective and how it may infringe on an individual right.
 4. Describe how ACA may indirectly improve the public's health.
 5. How does the United States differ from many governments in the view of health as a human right?