

Overview of Public Health Law

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Law's Paramount Role: 10 Great Public Health Achievements, United States, 1900-1999*

Do you know how law contributed to these achievements?

- Vaccination
- Motor-vehicle safety
- Safer workplaces
- Control of infectious diseases
- Decline in deaths from coronary heart disease and stroke
- Safer and healthier foods
- Healthier mothers and babies
- Family planning
- Fluoridation of drinking water
- Recognition of tobacco use as a health hazard



Impact of Specific Laws on Selected Public Health Problems

Law	Public Health Issue	How Law Works
	Herd immunity or individual immunity	
	Exposure to environmental tobacco smoke	
	Unintentional injuries of children	
	Dental caries	



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Impact of Specific Laws on Selected Public Health Problems

Law	Public Health Issue	How Law Works
School entry vaccination laws	Herd immunity or individual immunity	Requires parental behavior
Smoking bans or restrictions	Exposure to environmental tobacco smoke	Requires behavioral change to alter environment
Child safety seat use laws	Unintentional injuries of children	Requires direct behavioral change
Fluoridation of community water supplies	Dental caries	Directly changes physical environment requiring no action on part of target population



Key Concept:
Federalism in the U.S. Constitutional System

- Defined: Relationship and distribution of power between the individual states and national government*
- Impact under U.S. Constitution: Each of 50 states possesses substantial independent legal authority, but also is subject to federal government's legal authorities which overlap those of states*
- Concept shapes system in which laws apply to public health practice



Key Concept:
Police Powers

- Defined: Powers exercised by the states to enact legislation and promulgate regulations to protect the public health, welfare, and morals, and to promote the common good.
- Examples:
 - Investigations of infectious disease outbreaks
 - Childhood vaccinations as condition for school entry
 - Ban on distribution of free cigarette samples in areas around schools and other places frequented by minors
 - Involuntary detention of persons with certain communicable diseases
 - Property seizure and destruction to control toxic substance threats



Constitutional Safeguards:
14th Amendment Due Process Clause*

- Many government actions can affect an individual's life, liberty (self determination), or property (economic interests)
- 14th Amendment: Government cannot deprive individuals of life, liberty, or property without *due process* of law
- Due process: Involves fairness and reasonableness of such actions by government



Basic Sources of U.S. Law

- Constitutions
- Treaties
- Statutes
- Regulations
- Common law



Constitutions

- U.S. Constitution is the source of all legal authority for the federal government
- Both state and federal constitutions are sources of legal authority for the states
- State constitutions differ in significant ways, producing different styles of government in the states



The U.S. Constitution and Public Health

- Term *public health* not mentioned
- Enables some federal public health-related activities (Art. I, Sec. 8)
 - Interstate commerce
 - Taxation and spending
- Primary responsibility for police power and public health left to states (10th Amendment)



U.S. Constitutional Design: Implications for Public Health

- Most public health activities carried out by state and local governments
- Federal government functions in public health carried out through regulatory (e.g., FDA) and non-regulatory (e.g., CDC) agencies
- Federal government shapes state / local public health through funding and defunding



Statutes

- Statutes are enacted by Congress and state legislatures
- Statutes give power to executive branch agencies, such as health departments



Example of Federal Statute

- Section 317 of the Public Health Service Act (42 U.S.C. 247b-14) – “Oral Health Promotion and Disease Prevention”
 - Covers: water fluoridation and school-based dental sealant programs



Example of State Statute (Connecticut): Mandating Action

- Conn. Gen. Stat. § 19a-38 (2008)
§ 19a-38. (Formerly Sec. 19-13b). Fluoridation of public water supplies.

Wherever the fluoride content of public water supplies serving twenty thousand or more persons supplies less than eight-tenths of a milligram per liter of fluoride, the person, firm, corporation or municipality having jurisdiction over the supply shall add a measured amount of fluoride to the water so as to maintain a fluoride content of between eight-tenths of a milligram per liter and one and two-tenths milligrams per liter.

Example of State Statute (New Hampshire): Delegating Discretionary Authority to Lower Jurisdictions

- RSA 485:14 (2008)
485:14 Use of Fluoride.

No fluoride shall be introduced into the public water supply unless and until the municipality or municipalities using said waters have held a public hearing as to the introduction of fluoride into the public water supply of said municipality or municipalities, and the registered voters of such municipality or municipalities have approved such action pursuant to [RSA 44:16](#), [RSA 31:17-a](#), [RSA 52:23](#), or [RSA 485:14-a](#). For purposes of this section "municipality" means a municipality that has 100 or more user connections that are served from the public water supply.

Administrative Regulations

- Legislatures can give agencies the power to make regulations that have the same force as statutes
- Regulations allow agencies to respond to new challenges because they can be promulgated and amended more quickly than statutes, and can address highly technical aspects of issues
- Federal and state laws require agencies to allow the public to participate in rule making



The Courts: Judicial Review

- Courts make law in the process of ruling on disputes between aggrieved parties
- In general, lower courts must follow decisions of higher courts
- State courts review the state's laws to determine if they violate the state or federal constitutions
- Federal courts review the constitutionality of state and federal laws
- U.S. Supreme Court decisions bind all state and federal courts



Landmark court case:

JACOBSON v. MASSACHUSETTS

SUPREME COURT OF
THE UNITED STATES

197 U.S. (1905)

Decided: Feb. 20, 1905



Justice Harlan



Jacobson v. Massachusetts: Facts and Findings

- Setting: 1902 smallpox outbreak in Massachusetts
- Law: State statute compelling vaccination of residents not recently vaccinated
- Defendant: Henning Jacobson, on March 15, 1902, refused vaccination ordered by Cambridge Board of Health and fined \$5
- U.S. Supreme Court (February 1905):

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.

- Provides constitutional support for spectrum of contemporary public health laws



Kaul v. City of Chehalis, 45 Wn.2d 616 (Wash. 1954)

Issue: Did the Chehalis city council exceed its authority when it adopted ordinance No. 653-A providing for fluoridation of the water?

Facts: Appellant, a resident and taxpayer whose only means of obtaining water in his rental home was the municipal water system, challenged the validity of city's fluoridation ordinance as a violation of his constitutional rights and an improper use of police power, since dental caries is not a contagious disease.

Holding: The appellate court held for the city:

- No violation of Kaul's constitutional rights.
- The ordinance was a valid use of the state's police power.
- "Protection of public health includes protection from ... both contagious and non-contagious diseases."

Coshow v. City of Escondido, 132 Cal. App. 4th 687 (Cal. App. 4th Dist. 2005)

Issue: Did the City of Escondido's fluoridation plan violate residents' rights and expose them to unnecessary health risks?

Facts: Several residents challenged the city's plan to fluoridate its water supply, which it was implementing as required by the California Safe Drinking Water Act.

Holding: The court held for the city.

- Fluoridation was an acceptable use of the city's police power, and was required under the SDWA.
- No fundamental constitutional right to fluoride-free water.
- Use of fluoride not forced medication, since residents not forced to drink the water.
- "[c]ourts through[out] the United States have uniformly held that fluoridation of water is a reasonable and proper exercise of the police power in the interest of public health...the matter is no longer an open question."

To-do List for Strengthening Competencies in Law and Oral Health

- Read the U.S. Constitution
- Know from whom to obtain legal advice / counsel on and oral health issues and meet that attorney
- Read the Supreme Court case of *Jacobson v. Massachusetts*
- Include the "public health legal preparedness" construct for addressing oral health
- Utilize other information resources on law and legal preparedness in public health



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Public Health Law Program

**2008 NATIONAL SUMMIT
on Legal Preparedness for Obesity Prevention and Control**

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) and the Public Health Law Program working side-by-side with the Robert Wood Johnson Foundation and the American Society for Law, Medicine, and Ethics jointly convened the 2008 National Summit on Legal Preparedness for Obesity Prevention and Control Summit. The Summit was held on June 19-20, 2008 and focused on the legal issues that affect both direct and indirect, national, state, and physical markets that contribute to the public health epidemic of obesity.

The purpose of the Summit was to develop a shared national agenda of practical steps that actors and partners can complete, implement, to understand and improve the contribution laws and legal authorities make to improving health by preventing and reducing obesity. To achieve the goal, CDC convened the stakeholders and decision makers from relevant sectors to engage in a structured participation process to assess the current status of state and local authorities associated with obesity prevention and control. Participants identified significant gaps in knowledge, policy, coordination, and best practices. The ultimate goal of the Summit will include publishing a shared national agenda of practical steps in a supplemental edition of the Journal of Law, Medicine, and Ethics.

The Summit program focused on both legal and programmatic issues related to national physical activity and obesity. Four national habits and physical inactivity are the top chronic risk factors for obesity. These two risk factors are both directly and indirectly affected by laws and legal authorities at all levels of government. Laws and legal authorities have a significant impact on the health and well-being of the individual, and our fear of legal liability. For example, current and potential specific state, state, federal, and local laws, regulations, and policies that are being and have been implemented impact the school breakfast and lunch program, promote the use of public transportation, and affect our children's exposure to advertising.

The links below provide a wealth of information and resources related to the Summit.

Documents and Materials from the Summit
[Obesity Prevention and Control Legal Bibliography](#)

Public Health Grand Rounds
Real people. Real communities. Real issues.

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ARCHIVED PROGRAM

Overview
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Cutting-Edge Legal Preparedness for Chronic Disease Prevention

Program Overview

CDC is working with partners across the country to meet the public health challenges of the 21st century. CDC's four overarching Health Protection Goals focus on healthy people, healthy places, preparedness, and global health.

The preparedness goal is to protect people in all communities from such "urgent threats" as potential influenza pandemic or terrorist attack and also against such "urgent realities" as heart disease, cancer, stroke, and diabetes, among the top causes of death in the U.S. CDC works closely with city, county and state health departments to address this spectrum of health threats. These "partners in preparedness" use varying strategies and interventions generated from front-line experience and scientific research.

This program was originally broadcast November 29, 2007.





Public Health Law 101

We the People
Article I

A CDC Foundational Course for Public Health Practitioners

Public Health Law Program
<http://www.cdc.gov/phlp>

LAW
in
PUBLIC HEALTH PRACTICE

Second Edition

Richard A. Goodman, Editor-in-Chief

Richard E. Hoffman - Wilfredo Lopez
Gene W. Matthews - Mark A. Rothstein - Karen L. Foster
Editors

REVISED AND EXPANDED SECOND EDITION



PUBLIC HEALTH LAW POWER, DUTY, RESTRAINT

LAWRENCE D. GOSTIN

For Additional Information on Public Health Law

All accessible at WWW.CDC.GOV/PHLP

- Compilation of public health legal preparedness resources
- National Action Agenda for Public Health Legal Preparedness
- "Public Health Law 101" Course
- CDC Public Health Law News

Public Health Legal Preparedness

“Attainment by a public health system (community, state, national) of specified legal benchmarks or standards essential to the preparedness of the public health system.”



Public Health Legal Preparedness: Core Elements

- **Effective laws**
 - Ensure the presence of effective legal authorities to carry out essential public health services
- **Competencies of public health workforce**
 - Establish and sustain the competencies of public health professionals to apply those laws
- **Coordination**
 - Coordinate application of law-based public health measures across jurisdictions and sectors
- **Information and best practices**
 - Develop and make information on public health law best practices available to practitioners, policy makers, and law makers



Example of State Statute (California): Mandating Action

- **§ 116410. Systems requiring fluoridation; Regulations; Schedule; Costs; Exemption**

(a) Each public water system with at least 10,000 service connections and with a natural level of fluorides that is less than the minimum established in the regulations adopted pursuant to this section shall be fluoridated in order to promote the public health of Californians of all ages through the protection and maintenance of dental health, a paramount issue of statewide concern. (...)

Due Process: 2 Types

- **Substantive:** Appropriateness of government's justification for depriving someone of life, liberty, or property
- **Procedural:** Fairness of procedures government uses before depriving someone of life, liberty, or property

U.S. Constitution and States' Powers: The Tenth Amendment

The Tenth Amendment framed the powers of the states:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Impact: States retain police powers and other powers not expressly enumerated to U.S. federal government.

Under U.S. Constitution Congress Enacts Statutes Providing for Federal Roles in Public Health

- **Creation of federal public health infrastructure**
 - Systems: U.S. Public Health Service (USPHS) and explicated authorities / powers (e.g., quarantine)
 - Laws: Governing management / safekeeping of information
- **Establishment of federal public health agencies, programs, and services**
 - Explicit regulatory authorities and functions (e.g., FDA, OSHA) and non-regulatory agencies (e.g., CDC, NIH)
 - Other federal agencies with major public health-related powers (e.g., EPA, NHTSA)
- **Appropriation of funds for federal agencies' public health work or to aid states' public health work**

Jacobson v. Massachusetts:
Key Holdings and Implications

- Beginning of application of modern constitutional analysis to disease control law
- Articulated key holdings for states:
 - Use of police powers for public health concerns
 - Delegation of certain authorities to health agencies and other government subdivisions
 - Use of actions limiting individual liberty for well-established public health interventions
- Provides constitutional support for spectrum of contemporary public health laws