

UNIVERSITY AT ALBANY SCHOOL OF PUBLIC HEALTH

HPM 642: Health Law

Fall 2017

3 credits, online

Instructor: Edmund Russell Altone, JD, MA, MPH

Clinical Associate Professor

Department of Health Policy, Management and Behavior

COURSE OVERVIEW

This is a course in public health law as distinguished from courses that focus more on health care law. Competence in public health law is being recognized increasingly as essential to the training of public health practitioners. This course aims to provide students with practical understanding of the basic concepts and tools used in public health law, skill in navigating its substantive and procedural realms, appreciation for how it has developed and changed over time, and insight into how law may be harnessed to improve public health in the future.

Topics covered include the legal foundations for public health practice; federal, state and local public health powers and duties; legislative and administrative processes; legal interventions and approaches to preventing and controlling infectious, food-borne, chronic, and sexually transmitted diseases; laws governing preparation and response to public health emergencies; legal and ethical considerations in research, genetics and biomedical sciences; laws affecting privacy and confidentiality; law and environmental health; and international law and global health.

Required Books (Available via online booksellers)

Title	Law in Public Health Practice
Author	Richard A. Goodman (Editor); Karen L. Foster (Editor); Richard E. Hoffman (Editor); Wilfredo Lopez (Editor); Gene W. Matthews (Editor); Mark A. Rothstein (Editor)
ISBN	978-0-19-530148-9
Publisher	Oxford University Press, Incorporated
Publication Date	November 23, 2006

Title	Public Health Law and Ethics
Author	Lawrence O. Gostin (Editor)
ISBN	978-0-520-26192-1

Publisher University of California Press
Publication Date June 2, 2010

Title **Public Health Law in a Nutshell, 2nd Edition**
Author James G. Hodge, Jr.
ISBN 978-1-63459-279-6
Publisher West Academic Publishing
Publication Date 2016

COURSE CONTENT AND SCHEDULE

ICE BREAKER INTRODUCTION

August 28-September 4

- Practice using various features of Blackboard online learning system
- Make introductions to classmates
- Provide alternate contact information using Blackboard e-mail
- Initiate and participate in online discussion around a specified topic (ungraded)
- Write and post a paper (ungraded) in response to a question posed by the instructor

Required Readings

- Hodge – Preface/Introduction and pp.1-16
- Goodman – Perspective: Law and Great Public Health Achievements (pp. 3-21); and Chapter 1
- Gostin – pp. 1-10; Chapter 1 (pp. 23-38)
- Article: Peter J. Millock, Esq., *David Axelrod, M.D.: His Impact on the Law and Public Policy*, NYSBA *Health Law Journal* \ Winter 2009 | Vol. 14 | No. 1

MODULE 1: LEGAL FOUNDATIONS FOR PUBLIC HEALTH PRACTICE

September 5 - September 17

Public health duties and powers; historical origins; definition of public health law; Constitutional bases; statutory basis of Federal public health mandates, powers, programs; Federalism and preemption; State exercise of public health “police power”; administrative rulemaking and adjudication; due process; authority for public health inspections; court systems and the common law; local government home rule.

Required Readings

- Hodge – Chapter 2 (pp. 25-45)
- Goodman – Chapters 2, 3, 4 (pp. 89-106)
- Gostin – Chapter 3

- Instructor PowerPoint slides for Module 1: Constitutional Foundations of Public Health Law

Recommended Supplemental Resources

- CDC Public Health Law 101 – Unit 1 (Key Concepts of U.S. Law in Public Health Practice) – **see Links/Resources**

MODULE 2: PUBLIC HEALTH POWERS: SCOPE AND LIMITATIONS

September 18-September 29

The exercise of governmental public health powers; protection of public health versus protection of individual rights; *Jacobson v. Massachusetts*, a landmark U.S. Supreme Court decision establishing the court's role in balancing the exercise of police power to require immunization versus protection of individual rights; protection of public health through regulatory tools (e.g. licenses, permits, inspections) versus economic liberty and the right of property; licensing authority; statutes and regulations governing various regulated activities (e.g. operation of hospitals, nursing homes, clinical laboratories, emergency medical services; professional medical conduct); authority for various administrative legal enforcement actions and interventions (e.g. license revocations, assessment of civil penalties) to enforce health laws; administrative terminations of Medicare and Medicaid provider agreements for cause; mandatory reporting by health professionals of abuse, mistreatment or neglect of residents in residential health care facilities; legal consequences of controlled substances violations in health care settings.

Required Readings

- Hodge – Chapter 3; Chapter 6
- Goodman -- Chapter 9 (pp. 222-231)
- Gostin – Chapter 4; Chapter 5 (pp.167-186); and 12
- Instructor PowerPoint slides for Module 2
 - Quality Control Regulation of Health Care Professionals and Institutions
 - Medicare Quality Assurance and Fraud Control
 - Tort Liability of Health Care Professionals

Recommended Supplemental Resources

- CDC Public Health Law 101 – Unit 3 (Administrative Law) – **see Links/Resources**

MODULE 3: LEGAL APPROACHES TO PREVENTING AND CONTROLLING INFECTIOUS AND FOODBORNE DISEASES -- PREPARING FOR AND RESPONDING TO PUBLIC HEALTH EMERGENCIES

September 30-October 11

Legal authorities and issues relating to communicable disease surveillance, outbreak investigations and infectious disease control; mandatory reporting of communicable diseases and other indicators of disease outbreak; Food and Drug Administration regulatory

authority in food safety; New York State authority to embargo food; interventions in public health emergencies; licensing and appointment of health personnel; collection of specimens for laboratory testing and preservation of chain of custody; the Model State Emergency Health Powers Act; relationship of criminal law to public health law; parallel and joint investigations by public health and law enforcement agencies; bioterrorism preparedness; forensic epidemiology; New York State laws relating to planning and responding to a public health emergency: Federal authority in a public health emergency; powers of the Governor, New York State Department of Health and other State agencies; powers of local governments and boards of health; isolation and quarantine; disposal of infectious waste and human remains; authority to destroy private property.

Required Readings

- Hodge – Chapters 4 and 10
- Goodman – Chapters 11, 14 and 15; and pp.159-160; pp. 106-108; pp. 233-235
- Gostin – Chapters 10 (pp. 365-389); Chapter 11; and pp. 481-493

Recommended Supplemental Resources

- CDC Public Health Law 101 – Unit 7 (Infectious Diseases)
- CDC Public Health Law 101 – Unit 5 (Law of Public Health Surveillance, Investigations and Emergencies) - **see Links/Resources**
- Edmund Russell Altone, Esq. (unattributed author writing for NYSDOH), *A Guide to New York State Laws Governing Public Health Emergency Preparedness and Response*. NYSBA Health Law Journal | Spring 2006 | Vol. 11 | No.2, 72-81

MODULE 4: LEGAL APPROACHES TO PREVENTING AND CONTROLLING CHRONIC DISEASES

October 12 - October 22

Tobacco use prevention; Federal Cigarette Labeling and Advertising Act; tort law; litigation against the tobacco industry; Adolescent Tobacco Use Prevention Act; clean indoor air laws; Americans with Disabilities Act; Food and Drug Administration authority to require nutrition labeling on food items; Medicare and Medicaid coverage for screening and preventive care for chronic diseases; the WIC supplemental nutrition program; reducing alcohol consumption through taxation, age restriction, and enactment of severe penalties for driving under the influence of alcohol; legal approaches to addressing obesity.

Required Readings

- Hodge – Chapters 5 and 8
- Goodman - Chapters 17 and 18
- Gostin – Chapters 6 (pp. 195-199; 215-222; 229); and Chapter 9

Recommended Supplemental Resources

- CDC Public Health Law 101 slides - Unit 9 (Obesity Prevention and Control) - **see Links/Resources**

MODULE 5: LEGAL AND ETHICAL CONSIDERATIONS IN PUBLIC HEALTH PRACTICE, RESEARCH, GENETICS AND BIOMEDICAL SCIENCES

October 23 – November 2

The eugenic sterilization laws experience; the Common Rule and human subject research; legal basis for newborn screening; regulation of genetic testing; legal protection of genetic information of individuals; patent law and fruits of the Human Genome Project; ethical and legal analyses as complementary tools for decision-making in public health practice; the Public Health Code of Ethics; the use of law to reduce socio-economic disparities, promote justice and improve public health.

Required Readings

- Hodge – pp. 16-23
- Goodman – Chapter 5
- Gostin –Chapter 2; and pp.10-18, pp. 39-55, and pp. 498-505
- Instructor PowerPoint slides for Module 5 -- Law and Ethics in Public Health Practice and Research

Recommended Supplemental Resources

- Readings about American Eugenics Movement sterilization laws at <http://www.eugenicsarchive.org/eugenics/list2.pl>
- CDC Public Health Law 101 – Unit 2 (Ethics and the Law)

MODULE 6: LEGAL INTERVENTIONS TO PREVENT AND CONTROL HIV AND SEXUALLY TRANSMITTED INFECTIONS – LAWS AFFECTING CONFIDENTIALITY

November 3 - November 13

Mandatory screening, treatment and vaccination for STIs; contact tracing, partner identification and notification; confidentiality requirements regarding HIV and AIDS related information; health information privacy; HIPAA; Freedom of Information Law; legal exceptions to confidentiality requirements.

Required Readings

- Hodge – Chapter 7
- Goodman- Chapters 10 and 16
- Gostin – Chapter 8; and pp. 403-407
- Instructor / CDC PowerPoint slides for Module 6 – Informed Consent and Confidentiality

Recommended Supplemental Resources

- CDC Public Health Law 101 – Unit 6 (Privacy and Confidentiality)

MODULE 7: LAW AND ENVIRONMENTAL HEALTH

November 14 - November 24

Major Federal environmental protection laws including the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Superfund Amendment and Reauthorization Act (SARA), and the Safe Drinking Water Act; use of negligence, strict liability, nuisance, fraud and other common law concepts to improve environmental health and protect the environment; laws affecting land use, using law to create a health-fostering community design and built environment; laws limiting exposure to lead.

Required Readings

- Hodge – Chapter 9
- Goodman – Chapter 20
- Gostin – pp. 505-519
- CDC Public Health Law 101 - Unit 8 (Environmental Public Health, Occupational Health, and Injuries)
- Instructor PowerPoint Slides for Module 7 - Environmental Justice

MODULE 8: INTERNATIONAL LAW AND GLOBAL HEALTH

November 25 - December 5

World Health Organization governance; International Health Regulations; key treaties concerning environmental health; the International Court of Justice; the international right to health; human rights violations affecting the health of displaced persons, immigrants and refugees.

Required Readings

- Goodman - Chapter 7; and pp. 306-311
- Gostin - Chapter 7
- Article: George J. Annas, The American Right to Health, September-October 2009 Hastings Center Report
- Instructor PowerPoint slides for Module 8: Law of Language Access in Health Care; and the Refugee Community Health Partnership Program

Recommended Resources

- Article 25 of the Universal Declaration of Human Rights
- Article 12 of the International Covenant on Economic, Social and Cultural Rights
- WHO - The Right to Health (Fact Sheet)

<http://www.who.int/mediacentre/factsheets/fs323/en/index.html>

- National Economic & Social Rights Initiative. *What is the Human Right to Health and Health Care?* <http://www.nesri.org/programs/what-is-the-human-right-to-health-and-health-care>

The Human Right to Health is also protected in:

- Article 24 of the Convention on the Rights of the Child
- Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination
- Articles 12 & 14 of the Convention on the Elimination of All Forms of Discrimination Against Women
- Article XI (11) of the American Declaration on Rights and Duties of Man
- Article 25 of the Convention on the Rights of Persons with Disabilities

For an opposing view: Leonard Peikoff, Ph.D. *Health Care Is Not a Right*
<http://www.afcm.org/hcinar.html>

FINAL EXAM

December 6 - December 15

HOW YOU WILL BE EVALUATED

The final course grade will be determined as follows:

1. Icebreaker (5% of final grade)

Although the Icebreaker will be "ungraded", reasonable participation and timely completion of its activities are mandatory. A 5% deduction will be taken off the final grade for non-participation or lateness.

2. Online Discussions (35% of final grade)

For each of the eight (8) modules, you are required to:

Post an original Discussion Thread question;
 Monitor and reply responsively to posts that other students make to your original Discussion Thread post.

Respond substantively to at least one (1) Discussion Thread of a fellow student.

Original Discussion Thread postings should be approximately **250 words** in length. They must contain a question (or a group of related questions) that you pose for your fellow students to respond to. The question must relate reasonably to the main subject area of the module and should be designed to elicit thoughtful, high quality responses from your fellow

students. The goal here is for everyone to learn from each other's contributions to each Discussion Thread. Your original Discussion Thread should provide some introductory background that sets the context for your question.

In some courses, a professor might start a Discussion Thread. I have chosen instead to invite you to pose and respond to questions that are most interesting to you and your fellow students as a group.

Hint: Try using open ended questions. Your discussion starter should pose a question that requires comprehension or synthesis of the readings/ course materials, or be provocative in some way -- NOT, for example, "List the 5 major points of"

Your replies to the Discussion Threads created by other students should aim to be approximately **250 words** in length, thoughtful and of high quality. If you can achieve a thoughtful and high quality reply in fewer words, that's ok.

You will be graded (0 to 10) on your entire body of Discussion Thread postings for each module. You will not be graded on each post separately.

Timeliness matters. Discussion Thread postings submitted after the module ends will not be counted and points will be deducted accordingly.

Demonstrate class community. Aim to include each member of the class in the discussion. If you see that certain Original Discussion Thread posts have already attracted multiple responses, aim to respond to a post that has not yet attracted much attention. If you wish, you may also respond to any post that interests you.

All Discussion Thread posts should:

- Demonstrate a thorough and critical reading of the assigned reading material.
- Be well-written and concise.
- Cite sources using APA citation just as you would be expected to do typically for your other courses in public health. For legal citation, you may follow the style used in the References at the end of each chapter of the Goodman text for citing cases, statutes and other sources of legal authority. You are not expected to be skilled in the art of legal citation, nor are you expected to determine whether a particular case has been overruled or is still "good law". However, legal citation is important as it enables others to more easily locate and read the sources you are citing. You will find a clear and useful guide to legal citation in the Blackboard Links / Resources.
- Add value to the discussion. Posts that essentially state "I agree" do NOT add value. I expect a high quality level discussion that shows clearly that you have read and thought

about the module materials, that you are curious to learn more, and that you are engaging with your fellow students in order to satisfy that curiosity.

- Be thoughtful, thorough and original.

- Be timely.

- Be respectful and observe Netiquette.

Please note: Your Discussion Threads should start as soon as you have read the assigned materials during the early part of each module. The Discussion will be considered ended when the module ends. You will need to start posting your original Discussion Thread submission and replying to the postings of your fellow students not more than a few days into the module period in order to allow sufficient time for a meaningful group discussion to ensue. Discussion needs time to flow. A sudden gush of activity near the end of the module will tend to defeat the rich learning experience that can come from the timely sharing of ideas and insights among a group of well prepared students at the graduate level.

As your instructor, I will be closely following all Discussion Threads. As I anticipate that your discussions will be highly interesting, please do not be surprised if I occasionally interject a comment or "direct traffic" as may be necessary.

2. Assignment Papers (35% of final grade)

For each module, students are required to submit an Assignment Paper (approximately 500 - 750 words in length) responding to a question posted by the instructor and relating to the readings for that module.

In writing your Assignment Papers, you should appropriately cite all sources, such as peer-reviewed journal articles, law journal articles and legal authority.

Your Assignment Papers will be evaluated based upon how well they demonstrate a thorough and critical reading of the assigned reading materials and how well they link the content of those materials to the issues posed by the question. Summaries of the material alone will not suffice. Assignment Papers should show original thought and reflection on the material, integrate outside sources, and demonstrate high quality writing with appropriate use of citations. Questions posed may call upon you to support or oppose a position or proposal. You should marshal your evidence and set forth your points directly, logically, and persuasively, with the high degree of competence expected of a public health practitioner.

Assignment Papers should be submitted privately to the instructor using the Assignment area contained within each module. You should not post your Module Response papers in

the Discussion area.

Assignment Papers submitted after the module ends will not be counted and points will be deducted accordingly.

You will receive a grade ranging from 0 to 10 for each Assignment Paper submitted.

3. Final Exam (25% of final grade)

There will be an "open book" final exam consisting of essay questions drawn from topics addressed throughout the entire course. You will have multiple days during the final exam period to complete and submit your answers to the exam questions online. Guidelines for writing your final exam essay answers will be similar to those for writing Assignment Papers.

Expectations Regarding Readings

1. It is very important that you complete the assigned readings for each module during the early part of each module so that your participation in the group Discussion Threads and composition of your individual Assignment Papers for each module will be well-informed by those specific readings.
2. This course covers a multitude of broad topics in public health law. Consequently, you will have to do a lot of reading. I would expect you to use good time management skills in order to keep up and participate fully.
3. Concentrating your reading at the beginning of each module will enable you better to reflect upon what you have read. That in turn will allow you to focus on producing high quality, well researched postings that clearly demonstrate your understanding and critical thinking about the ideas contained in the specific reading assignments.
4. This course requires a substantial amount of reading that must be completed at a fast pace over short periods of time. Please be sure to watch for Announcements that may indicate areas of greater or lesser importance within the reading assignments.

Expectations Regarding Netiquette

I expect that all students will observe proper "netiquette" -- courteous and appropriate forms of communication and interaction over the Internet (within your online course). This means no personal attacks, obscene language, or intolerant expression. All viewpoints should be respected.

For more information about Netiquette, you may visit the following site:

<http://www.albion.com/netiquette/corerules.html>

NOTE: The instructor of this course reserves the right to remove any questionable or offensive material from public areas of this course.

Academic Integrity

Academic dishonesty is not tolerated in this class or at the School of Public Health. You are expected to abide by the standards set forth in the following website:

http://www.albany.edu/judicial_affairs/standardssofconduct.html

Expectations Regarding Your Always Having a Computer Access Back-up Plan

I expect that everyone will arrange to have a computer access back-up plan just in case the worst happens and your computer is not functioning as it should. You are responsible for ensuring that you always have access to a functioning back-up computer - e.g. the public library, borrowing a friend's computer, etc. Personal computer problems will not excuse missed deadlines or lack of participation online during this course.

If you are having technical problems with your computer, see the **Getting Technical Help** section for direction.