

**PUBLIC HEALTH LAW:
INDIVIDUAL RIGHTS & PUBLIC HEALTH POWERS
LAW H512 / HSERV 551 (3 Credits) Winter, 2024**

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Summary of Course

This course explores the legal basis of the public health system in the United States. We will examine the inherent tension between the government's fundamental goals of ensuring and protecting the public's health and respecting constitutionally-protected individual rights. Over the last few years, the extent to which the government may limit individual liberties to promote public health, safety, and morals has been thrust into the limelight. This term we will profile public health law through the lens of the both individual rights and the challenges of the recent Covid-19 epidemic and other reemerging infectious threats.

However, we will also consider a panoply of other contemporary issues in law, regulation and governance that affect the policies and practice of public health. The goal of the course is to equip students to identify and evaluate legal and ethical issues that underlie the field of public health. In addition to public health current events, we will address topics such as constitutional law relating to public health; tort litigation furthering public health aims (tobacco, guns); privacy protections and health (access to abortion and contraception); and longstanding public health powers such as immunization, testing, screening, quarantine, and isolation.

This 3-credit version of Public Health Law is designed to be offered as a synchronous/asynchronous hybrid course. Much of the background public health law and theory will be provided in taped modules so that we can concentrate on its capacity to face and address current public health threats during our in-class discussions. * Please do review the brief Panopto Introduction to Course that will discuss my expectations.

During the term, you will be required to proceed through the course following the sequence of asynchronous modules, consider and respond in writing to discussion questions and arrive in class on Tuesday prepared to actively participate in discussion. As we are living through numerous public health law crises, one of the goals of the course is for you to become attuned to evolving public health law issues embedded in contemporary society. Our Tuesday classes will provide an opportunity for discussion of such contemporary issues, clarify questions raised by course materials, verify underlying legal principles, and focus on the continuing challenges of responding to public health challenges in our nation and the world.

Course Objectives

- Identify constitutional foundations of the American public health system.
- Evaluate the balance between individual rights and societal needs to achieve public health goals.

- Understand the role of government, its powers and limitations with respect to individual rights.
- Recognize the current federal, state and local laws that seek to regulate and promote public health.
- Identify stakeholders and interests at issue in public health law and recognize and critique the arguments they present.
- Differentiate between the social, economic and political underpinnings of public health disparities and inequities, and analyze how these interdependent variables apply in engineering public health policy
- Review and analyze the strengths and weaknesses of public health law and policy through the lens of the challenges to individual rights and necessary limitations on liberty, emerging infectious diseases, and an unstable world order.

Questions to keep in mind

- Who do public health policies protect, and how? Who protects the public from the policymakers, and how?
- How do health policies protect and compromise individual rights and privileges? When should individual rights be curtailed for the public good?
- To what extent does the legal system appreciate public health issues involved?
- Do people have a right to harm themselves or engage in behavior that is dangerous to others?
- Who are the stakeholders and what are their interests in health policies and their consequences?
- How do federal, state, and local government actions differ? How do they relate to each other
- What about international laws? Does it have any role in public health – especially in infectious disease?
- How do we balance collective interests with individual interests?

Class Participation

Active and thoughtful discussion are important in this course. Before coming to class, please review the assigned modules, read the assigned materials and think critically about them. Participate in the [Discussion Board](#); this is a requirement of the course and your active engagement is required; as detailed below participation in the discussion board is part of your grade for the course

We will sometimes discuss controversial topics. Although we encourage debate and interaction, please be respectful of different points of view.

Course Materials

Wendy K, Mariner, George J. Annas, Nicole Huberfeld, & Michael Ulrich, PUBLIC HEALTH LAW (Carolina Academic Press, 2019). Note: this book is also available in electronic format and also available for rent.

- Additional cases and articles posted on course website.
- Recorded Panopto lectures are designed to be viewed in order and should be viewed during the assigned week. Course participants should also respond to the weekly discussion questions during the assigned time period.

Course Grade

Your course grade will be based on Discussion Board responses and participation in class discussions (40%), two quizzes and a final exam question. The quizzes are each worth 20%, will be time limited and administered on CANVAS; they will be composed of multiple-choice questions and short answer questions. The Final Exam question will be a single "thought" essay question.

With respect to the participation component, there will be a set of questions on the discussion board that will provide a frame for our weekly class discussions. Each student should respond in writing to at least one of the questions on the discussion board prior to each class session and be prepared to present their views in class. Note that the discussion board questions will be published well in advance and so there is ample time to think about and submit responses. The discussion board response should be substantive and be presented in full sentences and paragraph form. I will be providing up to 4 points per week for your discussion board submissions.

In class, we will open each session with the following questions prior to considering the Discussion Questions.

What's new in Public Health and Law this week? Why do we care? How does it touch our lives?

You need to be prepared to contribute to the discussion of these questions as well as to present your views on the discussion board questions.

COURSE SYLLABUS

REVIEW INTRODUCTION TO COURSE MODULE

WEEK 1 – CLASS ON TUESDAY, JANUARY 9

Panopto Module 1: [What is Public Health?](#)

Panopto Module 2: [What is a Public Health Risk and what Tools do we have?](#)

Panopto Module 3: [What is Law? The Constitution and Standards of Constitutional Review](#)

Panopto Module 4: [What is Federalism?](#)

Readings:

Text: Chapter 1, pages 3-23, 29-35

Additional Reading:/Media:

Held v. Montana, Montana First Judicial District Court, Lewis and Clark Count, CDV-20200307, filed August 14, 2023, available at https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230814_docket-CDV-2020-307_order.pdf [Links to an external site.](#)

Youth v. Gov; Juliana v US, Summary and Timeline, available at <https://www.ourchildrenstrust.org/juliana-v-us>

[City of Cleburne v. Cleburne Living Center](#), 473 U.S. 432 (1985)

[Craig v. Boren](#), 429 U.S. 190 (1976)

Watch Hans Rosling: 200 years in 4 minutes - BBC News, available at <https://www.youtube.com/watch?v=Z8t4k0Q8e8Y>

Jeffrey Koplan and David W. Fleming, Current and Future Public Health Challenges, JAMA, October 14, 2000 - VOI 284, no.13, available at

<https://jamanetwork.com/journals/jama/fullarticle/193125>

Class Discussion on the Basic Tools of Public Health and Role of the US Constitution in Public Health Law

WEEK 2 - CLASS ON TUESDAY, JANUARY 16

Panopto Module 5: [State Authority to Regulate for Public Health, Safety, and Welfare](#)

Panopto Module 6: [State Police Power: Limits and Scope](#)

Panopto Module 7: [Washington State Public Health Law](#)

Panopto Module 8: [Local Law in Public Health Practice](#)

Panopto Module 9: [Tribal Sovereignty and Public Health Practice](#)

Readings:

Text: pages 63-81; 107-128; 223-233

Additional Reading:

[Wong Wai v. Williamson](#), 103 F. 384 (N.D. Cal. 1900)

Review Held v. Montana

Bush v. Schiavo, No SCO4-925, decided September 23, 2004, available at

<https://caselaw.findlaw.com/court/fl-supreme-court/1222354.html>

[Spokane County Health District v. Brockett](#), 120 Wash.2d 140, 153, 839 P.2d 324 (1992)

Donald Warne & Linda Bane Frizzell, American Indian Health Policy: Historical Trends and Contemporary Issues, Am J Public Health. 2014 June; 104(Suppl 3): S263–S267, available at

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4035886/>

Sahir Doshi, et al., The COVID-19 Response in Indian Country; A Federal Failure, Center of American Progress, June 18, 2020, available at

<https://www.americanprogress.org/issues/green/reports/2020/06/18/486480/covid-19-response-indian-country/>

Discussion on State, Local & Tribal Jurisdiction in Public Health Law

WEEK 3 - CLASS ON TUESDAY, JANUARY 23

Panopto Module 10: [Historical Deprivation of Liberty on basis of Contagion](#)

Text: pages 780-782

Additional Reading:

Review [Wong Wai v. Williamson](#), 103 F. 1 (C.C.N.D. 1900)

Panopto Module 11: 20th Century Deprivation of Liberty on basis of Contagion

Text: pages 81-101

Additional Reading:

City of New York v. Antoinette R., 630 N.Y.S.2d 1008, N.Y.Supp. (Apr 21,1995)

Souvannarath v. Hadden, 95 Cal. App. 4th 1115

Panopto Module 12: Civil Commitment & Detention

Text: pages 101-107

Additional Reading:

O'Connor v. Donaldson, 422 U.S.563 (1975)

Addington v. Texas, 441 U.S. 418 (1979)

In re Harris, 94 Wn.2d 430 (1980)

Kansas v. Hendricks, 521 U.S. 346 (1997)

Discussion on Deprivation of Liberty in the Name of Public Health

WEEK 4 - CLASS ON TUESDAY, JANUARY 30

Panopto Module 13: Direct Federal Regulation

Text: Chapter 3, pages 129-158

Panopto Module 14: Indirect Federal Regulation

Text: Chapter 3, pages 164-194

Additional Reading:

USAID v. Alliance for Open Society (2020) available at <https://www.oyez.org/cases/2019/19-177>

California v. Texas, available at https://www.supremecourt.gov/opinions/20pdf/19-840_6jfm.pdf

Discussion on Federal Jurisdiction in Public Health

Quiz ONE -- available on Canvas from 8AM February 2 through 11:59 PM February 2

WEEK 5 - CLASS ON TUESDAY, FEBRUARY 6

Panopto Module 15: Privacy, Confidentiality and Surveillance

Text: Chapter 11, pages 685-741

Additional Reading:

Whole Woman's Health, et al. v. Austin Reeve Jackson , Judge et al, 594 U. S. ____ (2021), available at https://www.supremecourt.gov/opinions/20pdf/21a24_8759.pdf

Panopto Module 16: Mandatory Reporting and Duty to Warn

Text: Chapter 11, pages 743-55

Additional Reading:

Tarasoff v. University of California, 7 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (Cal. 1976)

Volk v. DeMeerleer, 386 P. 3d 254 - 2016

People v. Hodges

Panopto Module 17: [Testing, Screening, and Searching for Public Health Risks](#)

Text: Chapter 10. pages 642-684

Additional Reading:

[Safford Unified School Dist.#1 v Redding](#), 557 US 364 (2009)

Additional Reading:

Discussion on [Privacy, Screening and Searching for Public Health Risks: Regulation of Private Behavior and Health Care; Mandatory Reporting and Duty to Warn](#)

WEEK 6 - CLASS ON TUESDAY, FEBRUARY 13

Panopto Module 18: [Infectious Diseases and Pandemics](#)

Text: Chapter 12; pages 782-826

Additional Reading: Roxana Filip, et al., [Global Challenges in Public Health Care Systems during the Covid -19 Pandemic: A review of Pandemic Measures and Problems](#), , J. Pers. Med. 2022, 12, 1295, available at

Panopto Module 19: [International Human Rights Law and International Health Regulations](#)

Text: Chapter 1, pages 55-64; Chapter 4, pages 253-258

Additional Reading:

[Draft Human Rights Principles for a Pandemic Treaty](#), International Commission of Jurists and Global Health Consortium, October 28, 2021

Discussion on the Global Health Law:

WEEK 7 - CLASS ON TUESDAY, FEBRUARY 20

Panopto Module: [Women, Privacy and Reproductive Rights](#)

Additional Reading:

Dobbs v, Jackson Womens' Health Center, available at https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

US v Idaho, September 28, 2023 available at <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/09/28/23-35450.pdf>

[Links to an external site.](#)

Kelcie Mosley-Morris, In Quick Reversal, Ninth Circuit will Reconsider Idaho Abortion Issue, Idaho Capital Sun, Oct 10, 2023, at <https://idahocapitalsun.com/2023/10/10/in-quick-reversal-ninth-circuit-will-reconsider-idaho-abortion-case/>

[Links to an external site.](#)

John Kruzal, Idaho Ask US Supreme Court to Allow Near-total Abortion Ban, Reuters, November 27, 2023, available at <https://www.reuters.com/legal/idaho-asks-us-supreme-court-allow-near-total-abortion-ban-2023-11-27/>

WEEK 9 - CLASS ON TUESDAY, FEBRUARY 27

Panopto Module 20: Public Health and Religion

Text: Chapter 8: 483—533

Additional Reading:

Review [People v. Hodges](#)

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania et al, available at https://www.supremecourt.gov/opinions/19pdf/19-431_5i36.pdf

Braidwood v Becerra, available at

https://storage.courtlistener.com/recap/gov.uscourts.txnd.330381/gov.uscourts.txnd.330381.113.0_2.pdf

Discussion on Public Health and Religion

Quiz TWO -- available on Canvas from 8AM March 1 through 11:59 March 1

WEEK 10 - CLASS ON TUESDAY, MARCH 5

Panopto Module 21: Firearms and the Second Amendment

Text: Chapter 9, pages 549-620 (SKIM)

Additional Reading:

Katherine Schaffer, Pew Research Center, Key facts about Americans and Guns, September 13, 2023, available at <https://www.pewresearch.org/fact-tank/2021/09/13/key-facts-about-americans-and-guns/>

Pew Research Center, April 30, 2021, Amid a Series of Mass Shootings in the US, Gun Policy Remains Deeply Divisive, available at <https://www.pewresearch.org/politics/2021/04/20/amid-a-series-of-mass-shootings-in-the-u-s-gun-policy-remains-deeply-divisive/>

District of Columbia v Heller, 554 US 570 (2008), available at <https://www.oyez.org/cases/2007/07-290>

New York State Rifle & Pistol Association v Bruen, available at https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf

Michelle Cottle, How Parkland Students Changed the Gun Debate, The Atlantic, February 28, 2018, available at <https://www.theatlantic.com/politics/archive/2018/02/parkland-students-power/554399/>

Discussion on Guns, Gun Violence and the Law

FINAL EXAMINATION - available during Finals period - 2 hours