Law and the Public's Health

Volume 118 marks the beginning of a new column, *Law and the Public's Health*, and we thought that it would be worthwhile to devote our inaugural effort to an overview of what readers can expect to find here in future issues.

LAW IN THE CONTEXT OF PUBLIC HEALTH POLICY, PRACTICE, AND RESEARCH

As the editors of the outstanding new public health law treatise *Law in Public Health Practice* remind us, for more than a half century, legal and public health scholars have identified the law as a major component of public health practice and a tool for improving the public's health.[1] Over the past several decades, the nation has witnessed the emergence of a formal body of literature addressing the law of public health. Lawrence Gostin, perhaps the nation's preeminent public health law scholar, powerfully demonstrated the relationship between law and the modern public health enterprise in his seminal 2000 textbook *Public Health Law: Power, Duty, Restraint*.[2] Public health law has become a dominant theme in both national and state capitols not only in response to concerns over emergency public health preparedness but also in response to a historic effort by public health experts and legal scholars to update the nation's "antiquated"[3] public health law infrastructure through the Turning Point Program's Public Health Structure Modernization National Collaborative.[4]

Of equally great interest is the attention now being paid not only to modernizing public health law but to upgrading the legal knowledge and skills of public health practitioners. Indeed, the Institute of Medicine has identified legal training as part of the essential educational core of modern public health practice; the organization's recent report, *Who Will Keep the Public Healthy? Educating Public Health Professionals for the 21st Century*, recommends including health law and policy in the basic curriculum of all graduate public health programs.[5]

In a public health context, much of the attention to law focuses on what Professor Gostin terms "powers, duties, and restraints": that is, the powers and duties possessed by public health authorities and the constitutional limitations on the manner in which those powers are exercised. Regardless of whether the issue is data collection for public health surveillance and research, the establishment of compulsory disease and incidence reporting systems, or the development and enforcement of formal legal standards of conduct for businesses and individuals, the legal power to act to advance public health is a basic issue in law.

But if the law in a public health context is understood as confined to the specific question of government intervention, many of the most significant ways in which the law influences the public's health would be overlooked. Indeed, many of the most important public health policy issues arise today as a result of the manner in which the law fosters, encourages, and shapes the business of medical and health care itself. There are a host of legal matters that at first appear to focus exclusively on the business dimension of medical care. Upon closer inspection, however, the public health stake turns out to be enormous. The astonishing web of federal and state laws that together undergird the nation's public and private health insurance systems has a crucial relationship to public health as a result of the standards established for who is covered, what benefits and services are provided, and the relationship of insurers to health care facilities and institutions. Thus, for example, when the United States Supreme Court decides (as it did in 1985) that employee health benefit plans offered by self-insuring employers lie beyond the furthest limits of state regulatory law,[6] the potential impact of such a decision for public health policy and practice is enormous.

There are a host of similar examples of how laws regulating the business of medical care and health care financing should be of direct and immediate interest to public health authorities. Laws that determine the legality of business transactions among medical care enterprises can profoundly affect the public's health by encouraging—or discouraging—business relationships (such as major hospital mergers) that may impact on broader public health goals. Likewise, if a national managed care corporation becomes insolvent, public health authorities should focus on the public health implications of a nationwide bankruptcy filing. When the Department of Health and Human Services promulgates regulations establishing minimum standards of conduct for hospital emergency departments as a condition of participation in Medicare, these standards may have profound public health implications, particularly in an era of concern about public health emergencies. When employers and pub-

lic purchasers enter into large-scale purchasing agreements with managed care organizations, these complex legal agreements can lead to major changes in the way in which public health is practiced and structured. And when federal agencies establish privacy standards for what are understood to be commercial health care transactions, the public health stake turns out to be profound. In short, there is virtually nothing that goes on in the interaction between the U.S. health system and the law that is not of importance to public health policy makers, practitioners, and academics.

This column will attempt to respond (however modestly) to this vast body of knowledge by exploring topics in the law that affect the public's health as well as the manner in which the nation's public health endeavor is structured and practiced. As such, the column will report not only on those legal developments that relate to the power of public health agencies to act in the public's health but also on legal matters that concern the business of medical and health care, a topic of central importance to modern public health policy and practice.

AUDIENCE AND TOPICS

The Hirsh Health Law and Policy Program, part of the George Washington University's School of Public Health and Health Services and affiliated with the Law School, focuses on law training for an eclectic array of students in medicine, public health, and law. In keeping with our own mission, we aim for a column that will be read by public health policy makers, practitioners, researchers, and academic professionals. Of course, this is not meant as a signal to discourage lawyers but as a way of conveying our interest in reaching as broad an audience as possible.

Our topic selection is meant to reflect the range of legal issues that affect public health and public health practice, as well as the critical forums in which the law is made. This column will cover important federal and state court judicial decisions affecting both the power of public agencies and individual rights and business interests. It also will examine emerging legislative and regulatory matters at both the state and federal levels. Because of the delays inherent in journal publishing, we assume that the information in this column will play a "longer-term perspective" role and that the column will serve as a forum for succinct but thoughtful perspectives on the public health meaning of particular legal developments rather than as a "breaking news" site.

We intend to intersperse our own writing with columns by others; as do many professions, the law has an enormous number of subspecialties, and we hope that the *Public Health Reports* law column will serve as a means of bringing to the attention of the public health community writings by experts in all phases of public health law. We also hope to hear from readers about topics that they might want explored in the coming issues. Please feel free to contact us at the Hirsh Health Law and Policy Program, Department of Health Policy, George Washington University School of Public Health and Health Services; www.gwumc.edu/sphhs/hirsh/.

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Sara Rosenbaum
sarar@gwu.edu

Joel Teitelbaum
joelt@gwu.edu

Brian Kamoie
kamoie@gwu.edu