Instructor: Diana M. Bowman, LLB, PhD
Office: Risk Science Suite, 6611 SPH Tower
Phone: 647-1825
E-Mail: dibowman@umich.edu
Class Schedule: Mondays and Wednesdays, 10.00 A.M. to 11:30 A.M., Room 1655
Office Hours: Tuesday, 9.00-11.00 A.M

COURSE OBJECTIVES

The purpose of this course is to introduce public health students, especially those interested in the relationship between law and policy, to the legal issues likely to arise in the government’s attempts to regulate personal behavior. One of the enduring tensions in American political and legal theory is the relationship between the individual and the community. Under what circumstances can government limit individual freedoms to protect citizens from the consequences of their personal and lifestyle choices? What is the relationship between the federal, state, and local governments as the locus of regulatory responsibility for controlling individual behavior? How can conflicting rights and interests (i.e., the right to avoid cigarette smoke vs. the right to smoke) between individuals and populations best be resolved?

This course has two main purposes: first, to examine the legal context of the relationship between the individual and the community; and second, to understand public health regulation in the context of a market-driven system. Much of the personal behavior subject to government regulation involves individual risk-taking choices. It is thus important for students who will be in policymaking positions to be familiar with the basic legal principles underlying governmental regulation, how legal rules and doctrine are developed, and how to interact effectively with attorneys.

Exit competencies for the course are for students to:

- Understand legal standards applicable to health care professionals and organizations
- Understand the role of legal rules and regulations in strategy and planning
- Use legal reasoning as a broad analytic and communications tool
- Identify the relationship between ethical values and legal norms
- Promote ethical values as being integral to effective decision-making
Additional **course objectives** include:

- Constitutional authority and limits on governmental intervention in public health (i.e., individual rights vs. society’s rights)
- The functions of and interactions between courts, legislatures, and regulators
- Developing strategies for and ways of communicating with attorneys
- Understanding the process of public health regulation and potential legal barriers to public health strategies, and
- Understanding law’s limits in providing definitive answers

In an introductory course, it is difficult to cover the myriad instances where the law and public health intersect. We will consider the most salient topics public health policymakers are likely to face, as examples of the range of decisions you may be called upon to consider, rather than attempting in-depth coverage of any particular area. Given the controversial nature of the public debate over limitations on personal freedoms, the class will emphasize how to respond to both ongoing and emerging public health issues within a changing legal and ethical context. For example, threats of bioterrorism present public health officials with a critical challenge of how to prevent the spread of disease without undermining individual freedoms. In this course, we will focus on how to make public health decisions within legal constraints.

**Course Requirements**

As the basic text, we will use *Public Health Law: Power, Duty, Restraint* (Second Edition), by Professor Larry Gostin of Georgetown University Law Center and Johns Hopkins University (University of California Press, 2008) (referred to below as Gostin, *Public Health Law*). The text will be supplemented by cases and readings in areas the Gostin text does not cover. Given the dynamic nature of the material covered in this course, additional readings drawn from the peer-reviewed literature and the media as it is published.

In reading the materials, especially the cases, please keep in mind the following types of questions:

- How well does the court, legislature, or regulatory agency understand the public health system or public health question presented?
- What factors did the court consider in reaching its decision?
- What effects do you expect the decision, regulation, or law to have on the governmental or public health agency?
- As a public health official, how would you respond to the decision?
- What information would you request from your agency’s attorney to comply with the court’s decision, the regulation, or the legislation?

I expect everyone to participate in class discussions and exercises. No student will be penalized for not participating in class discussions, but those who actively participate in
the discussions will receive an increase in their final grade. Because many of the issues we will be discussing are topical, we encourage you to scrutinize media reports of law and public health issues, including regulatory and legislative developments, as well as recent court decisions affecting individual rights.

Each student will participate in one in-class exercise to be designed during the course. Students will also be required to complete one paper on an essay question to be distributed during the course, and one research paper on a topic they select (subject to the instructor’s permission). There will also be a final examination consisting of essay questions. The final exam will be posted on Ctools at the beginning of the finals period and you will be able to take the exam at any time over a five-day period (24- midnight 28 April). Please see Professor Bowman if you need a different arrangement.

Grades for the course will be determined on the following basis:

- Essay 20% (due: 13 March)
- Research paper 35% (due: 10 April)
- Final exam 25% (due: 28 April)
- In-class activity 10%
- Class participation 10%

Percentages will be translated into grades using the following break points:

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<thead>
<tr>
<th>Grade</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>A+</td>
<td>96% and above</td>
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<tr>
<td>A</td>
<td>90-95%</td>
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<td>A-</td>
<td>86-89%</td>
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<tr>
<td>B+</td>
<td>80-85%</td>
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<td>B</td>
<td>75-79%</td>
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<td>B-</td>
<td>70-74%</td>
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<td>C+</td>
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<td>C</td>
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<td>C-</td>
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Expectations of Ethical Conduct

My expectations for ethical conduct are simple and straightforward based on the following guidelines for acceptable behavior: don’t lie, cheat, or steal. Except for the in-class exercises, we expect everyone to do their own work on papers and the final exam. While we encourage interaction and discussion among class members, the final work product must represent the student’s individual contributions in conformance with SPH standards of integrity and academic conduct. In addition, I expect that each member of the class will listen respectfully to each other’s ideas and encourage vigorous, but civil, debate over controversial topics.
COURSE TOPICS AND READINGS

PART I: INTRODUCTION TO THE LEGAL SYSTEM

9 January: Framing the Issues in Law and Public Health


United States Constitution, Amendments 1-10 and 14.


Optional


14 January: The Legal System


Optional

*Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008).


**16 January: The Nature and Scope of Public Health Authority**


**21 January: No Class—Martin Luther King Day**

**23 January: The Administrative Process**


**28 January: The Fourteenth Amendment and Public Health**


Optional


30 January: The First Amendment and Public Health


Optional


PART II: CONFLICTS BETWEEN THE INDIVIDUAL AND THE STATE

4 February: Introduction to Legal Research

Guest speaker: Amanda Runyon, Reference Librarian, University of Michigan Law Library.

6 February: Regulating Tobacco Use


Optional


11 February: Injury Prevention


Optional


Virginia v. Harris, 558 U.S. ____ (2009), Roberts, J., dissenting from denial of writ of certiorari.

13 February: Child and Domestic Abuse


Optional


18 February: Handgun Restrictions


Optional


20 February: Nondiscrimination


*Stafne v. Unicare Homes*, 266 F.3d 771 (8th Cir. 2001).

25 February: Chronic Disease—Obesity

*New York State Restaurant Association v. New York City Board of Health*, 2008 556 F.3d 114 (2d Cir. 2009).

Campos P, *The Big Fat Con Story*. The Guardian, 24 April 2004, available at [http://www.guardian.co.uk/print/0,3858,4907685-103425,00.html](http://www.guardian.co.uk/print/0,3858,4907685-103425,00.html) (*on CTools only*).


Optional


27 February: Chronic Disease—Diabetes Surveillance

Chamany S, Silver LD, Bassett MT et al., *Tracking Diabetes: New York City’s A1C Registry*, *Milbank Quarterly* 2009; 87:547-570 (*on CTools only*).

Fairchild AL, Commentary: Beyond Historical Precedent, *Milbank Quarterly* 2009; 87:571-574 (*on CTools only*).

Mello MM and Gostin LO, Commentary: A Legal Perspective on Diabetes Surveillance—Privacy and the Policy Power, *Milbank Quarterly* 2009; 87:575-580 (*on CTools only*).

Optional


11 March: Wellness


Optional


PART III: CONTROLLING COMMUNICABLE AND NON-COMMUNICABLE DISEASES—DOMESTIC AND GLOBAL CONSIDERATIONS

13 March: Privacy


Optional


18 March: Global Public Health Governance: Overview


Optional


20 and 25 March: Infectious Diseases (two classes)

Watch: *Contagion* (2011)


Optional


PART IV: PUBLIC HEALTH REGULATION IN A MARKET DRIVEN ENVIRONMENT

27 March: Regulation Under Conditions of Uncertainty


Maynard AD, Don’t Define Nanomaterials, Nature 2011; 475:35.


Hazelhurst v. Secretary of HHS, 604 F.3d 1343 (Fed. Cir. 2010).
Optional


1 April: Regulating Environmental Risks


*Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991).

Optional


3 April: Balancing Costs and Benefits in Environmental Regulation


*Competitive Enterprise Institute v. NHTSA*, 45 F.3d 481 (D.C. Cir. 1995).

Arrow KJ et al., Clean Water Act Brief, AEI Center for Regulatory and Market Studies, Washington, DC, July 2008 (*on CTools only*).

8 April: Limits to Regulation—Takings


**PART V: ETHICAL CONSIDERATIONS**

**10 April: Public Health Ethics**


**Optional**


**15 April: Public Health Reform: Health Policy & the Uninsured**

**Guest lecturer:** Sister Mary Ellen Howard, Executive Director, St. Frances Cabrini Clinic of Most Holy Trinity Church


**Optional**

Hardcastle L, Record K, Jacobson PD, and LO Gostin, Improving the Population’s Health: The Affordable Care Act and the Importance of Integration, *Journal of Law, Medicine & Ethics* 2011; 317-327

17 April: Genetic Technologies in Public Health Practice

*Molloy v. Meier*, 679 N.W.2d 711 (Minn. 2004).


Optional


22 April: Contracting With the Private Sector to Provide Public Health Services

