



# PUBLIC HEALTH LAW AND ETHICS

KAREN GALLINARI, ESQ.

# CLASS STRUCTURE AND ASSIGNMENTS

- Offered generally Spring Semester
- 13 three hour evening classes (15 minute break)
  - Discussion of Reading assignment
  - Discussion of current public health issues
  - Guest speakers
- Textbook and Supplemental reading
  - Rotate responsibility for leading discussion in teams of 3
  - Annotate related power point slides
- Select a current public health issue to follow and brief our class
- Exam or Final paper options
  - Teams permitted, provided each student's primary section is clear
  - Publication ready!

Class 1

# POPULATION PERSPECTIVE

- Focus shifts from:
  - individual to population and
  - treatment to prevention
- Populations
  - Geographic
  - Employees
  - Ethnic
  - Other characteristics: disabled, prisoners, children etc.
- Producing and Measuring Outcomes
- Reducing disparities and inequalities among subgroups
- Partnerships and coalitions
  - Governments
  - Private

Class 4

# LETTER TO GOVERNOR CUOMO

March 26, 2020

Re: COVID-19 New York Public Health Emergency

and

Disaster Conditions:

Call for Essential Crisis Standards in New York

NYS Bar Association Health Law Section

# THE DOMAIN AND BOUNDARIES OF PUBLIC HEALTH

- Infectious Disease
  - Prevention recognized as governments' responsibility since as early as 600 BC
  - Government expected to promote and protect health, safety and welfare
- State Police Powers
  - When health is at issue, the rights of individuals are subordinate to rights of the public

Class 1

# THE DOMAIN AND BOUNDARIES OF PUBLIC HEALTH

## Law of Necessity

- Example, Small Pox Epidemic
  - 1905 Jacobson v. Massachusetts (US Sup Ct)
    - Held Mass. Statute requiring small pox [vaccination](#) was **not unconstitutional**
    - “[T]he liberty secured by the Constitution...does not import an absolute right in each person to be, at all times....wholly free from restraint.”
  - 1919 Globe School Dist. V. Bd of Health (Sup Ct Ariz)
    - School district unable to prevent health dept’s school closure Spanish flu epidemic
- 1995, NYC Friends of Ferrets v. NYC DOH
  - Dismissed complt against prohibition of keeping ferrets

Class 1

# THE DOMAIN AND BOUNDARIES OF PUBLIC HEALTH

- Limitations on Police Power
  - Rights granted to federal government
  - Civil and private rights of citizens
  - Equal protection
  - Freedom of religion
  - Freedom to contract

Class 1

# 21<sup>ST</sup> CENTURY LEGAL AND ETHICAL ISSUES

- Difficult trade offs
  - Lancet 2002
    - Utilitarianism, liberalism and communitarianism
    - Right choice, most gain?, largest reduction in burden of disease?
    - Immanuel Kant, individual respect as an end in itself versus community good
  - Childress, 2002
    - Instit. Of Med. 1988 Defintion of Public Health:  
*“...what we do...collectively...to assure..people can be healthy.”*
    - Effectiveness. Proportionality, necessity, justification, accountability



# GLOBAL PUBLIC HEALTH EMERGENCIES

- No express federal public health powers
- Public health sovereignty resides with the states
- US Constitution assigns national security to the federal government
- Public health threats to national security include bioterrorism and infectious disease
- Federal statutory authority
  - Public Health Service Act
  - Robert T. Stafford Disaster Relief and Emergency Assistance Act
  - Federal Emergency Management Agency (FEMA)
  - Dept. of Homeland Security
  - National Emergencies Act
- International Health Regulations, World Health Organization

Class 3

# GLOBAL PUBLIC HEALTH EMERGENCIES

- Public health tools
  - Isolation and Quarantine
  - Social distancing
  - Risk communication and burial
  - Travel restrictions
  - Health care settings and obligation of health workers
- SARS
- Ebola
- COVID-19
- Moral considerations
  - Equality

Class 3

# DETERMINANTS OF HEALTH

- Types of Determinants
  - Biological
  - Physical / Environmental
  - Behavioral
  - Social

Class 4

# DETERMINANTS OF HEALTH

- Motor vehicle injuries
  - Bonnie and Guyer, Injury as Field of Public Health
  - Graham, Injuries from Traffic crashes
  - Seatbelts
  - Blood alcohol level and cannibus
- Cardiovascular disease
  - Blood pressure
  - Cholesterol
  - Diabetes
  - Smoking
  - Weight
  - Exercise
- Marketing
- Education

Class 4

# POPULATION STRATEGIES

- New York City
  - HIV/AIDS
  - Diabetes
    - Frieden on rate in people of color
  - 2002, Mayor Bloomberg's controversial strategies
    - Trans fat ban, calorie labeling salt reduction
    - Lawrence Gostin: "urban innovator or meddling nanny"
  - NYC Bd of Health
    - Part of NYC Dept of Health and Mental Hygiene
    - Commissioner, Chairperson and 9 members appointed by the Mayor
- Fairchild on NY's Soda Rule

Class 5

# PATERNALISM CONSTRAINT

- Helmet laws
- Callahan, Legislating Safety
- Tobacco Control
  - IOM, Ending tobacco problem
    - Strong measures
    - Social disapproval
    - Discrimination against smokers, justified?
- Freedom and Paternalism in the workplace
  - Length of work day and work week
  - Minimum wages
  - Safe work place

Class 5

# GOVERNMENT RESPONSIBILITY AUTHORITY AND THE CHALLENGE OF FEDERALISM

- Patient Protection and Affordable Care Act of 2010(“ACA”)
  - Increased access for millions
  - Preventive initiatives
    - Presents opportunities to overcome barriers to eliminating health disparities
- After the ACA
  - Incentivizing better outcomes
  - Health versus treating disease

# ACA IMPACT

## RECENTLY IN THE NEWS

- NY Times, Tuesday, Dec. 10, 2019\*
  - Economists published study finding health coverage reduce number of deaths
  - 3 years ago, 3.9 million fined by IRS for not having health insurance
  - Notices of fines increased insurance sign-ups
  - Due to budget constraints, random 600,000 uninsured were not sent the letter (randomized control group)
  - 12 percent fewer deaths over 2 years among insured (700 lives saved)

*\*Sarah Kliff, The IRS Sent a Letter to 3.9 Million People. It Saved Some of Their Lives*

Class 7



# COMMUNICATION AND PERSUASION

- Constitutional constraints on government speech
- Ethical constraints
  - Liberty enhancing v. manipulative, coercive or insulting
- Persuasion
  - Influenced by the merits
  - Threatens autonomy?
  - Manipulative?
  - Inadvertent harm?
  - Vulnerability?

# LABELING AND ADVERTISING

- Commercial speech about products that may be harmful generally not protected by First Amendment
- Mandated disclosures
  - NYS Resturant Ass'n v. NYC Bd of Health, 2009
    - Court found reasonable relationship between calorie count regulation and goal to reduce obesity
  - Tobacco advertising

Class 13

# PUBLIC HEALTH OPPORTUNITIES

- NYS Bar Association Health Law Section, Public Health Committee
- NYC Bar Association, Bioethics Issues Committee
- Join the Network for Public Health
  - [https://www.networkforphl.org/join\\_the\\_network/](https://www.networkforphl.org/join_the_network/)

Class 1

# EMPLOYMENT IN PUBLIC HEALTH

- Government positions
  - City
  - State
  - Federal
- Health Care Providers
- Law Firms
- Communications
- Human Resources