

Public Health Law

Public Health Law

FOURTH EDITION

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Preface to the Fourth Edition

This Fourth Edition highlights the importance of public health to our lives and significant shifts in laws governing public health, as seen in headline news every day: pandemics, immunizations, mass shootings, opioid deaths, diseases of despair, surveillance, data breaches, criminal prosecutions, insurance coverage and access to care, family planning and reproductive health, contaminated food and water, food supply, climate change. These examples, and hundreds like them, present major legal and policy questions, the answers to which can make human lives better or worse. While individual medical care attracts most of the public attention and the vast majority of money spent on health in the United States, some of the most dramatic improvements in health and longevity have occurred through public health measures — adding more than 30 years to Americans’ average life expectancy since 1900.

Public health refers to federal, state, local, tribal, and governmental efforts to maintain and protect the health and safety of the general population, and public health law is now the broad field of ensuring that the law appropriately protects public health, safety, and welfare, as well as human rights. Public health law offers students opportunities for both theoretical thinking and real-world legal problem solving. Laws governing public health span all forms of legal authority — constitutional, statutory, regulatory, common law, and international treaties — and solving public health problems requires using all of these tools.

The Fourth Edition offers a contemporary view of the rapidly evolving field of public health law, while retaining the same basic organizational structure of the third edition. We begin by grounding students in three foundational thematic concepts — what counts as a public health issue, the scope and limits of government power, and ensuring justice and fairness. The three themes are designed to anchor the students’ learning, adding durability to their education in a changing field. To that end, we examine major shifts in constitutional doctrine concerning state and federal power, federalism, administrative agencies, religion, speech, privacy, civil liberties, firearms, and emergency preparedness, as well as human rights at the global level. The cases and materials critically examine how these doctrines may apply to contemporary and future topics, providing a useful framework for analyzing competing interests among governments, private entities, and individuals in multiple contexts and as the law changes.

A substantial portion of the materials in this Fourth Edition are new, including the most recent Supreme Court decisions on public health issues. At the same time, we have retained many of the foundational decisions concerning the state's police power to protect public health and federal powers to regulate health-related matters. The first chapter introduces the broad fields of public health and public health law. Chapters 2–5 provide the foundation for examining government power and policies affecting public health, recognizing the evolution of constitutional protections for individual rights that create limitations on policy options, and applying these concepts to common and novel public health issues. Chapters 6–12 study more complex examples of constitutional principles, laws, and policies to address public health problems. Since public health is a global concern, examples of health as a human right are threaded throughout.

The new edition is designed not only for law students studying public health law, but also for students in other areas of law and public policy, including graduate students in public health, public policy, and medicine. This book can be used in a stand-alone course in public health law and as a supplement or alternative in courses in health law, law and medicine, and law and bioethics. The Notes and Questions continue to provide context, background, and examples of related problems, as well as explanation of many of the court decisions. The Notes also offer examples of current issues to which the materials may apply. We have grouped Notes and Questions to follow the material to which they refer, for ease of reference.

Our First Edition Co-Authors

Professor Ken Wing, of Seattle University School of Law, who inspired the Ken Wing Fun Run held annually at the Health Law Professors Conference, led the writing of the first edition of PUBLIC HEALTH LAW. He greatly disappointed us by retiring, but was generous in encouraging us to go forward with new editions.

Professor Dan Strouse was taken from us too soon. The Center for the Study of Law, Science, & Technology, of which Dan was Director, at Arizona State University Sandra Day O'Connor College of Law honors his memory with the Daniel Strouse Prize.

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