Teacher’s Guide
I. Background
Public health law courses typically focus a good deal of attention on two related topics: the duty of government agencies to control the spread of communicable diseases and their use of the police power to do so. While governments sometimes take forceful actions in responding to disease outbreaks, they can also act to prevent their occurrence. Indeed, one of the great triumphs of public health in the 20th century was the development of vaccines and their widespread use, which seemed on course to relegate many formerly crippling or deadly diseases to the history books. Particular success occurred with vaccinations against childhood diseases such as polio, smallpox, and measles, outbreaks of which once routinely closed schoolrooms, playgrounds, and community swimming pools. By the last quarter of the century, completion of an elaborate schedule of immunizations was not merely the standard in pediatric practice but an official requirement for school enrollment. As a result, the range of communicable diseases that had once terrified parents had become threats to be feared only in memory.

From the origin of vaccines in the 18th century, a few people have objected to the procedure as unnatural or unacceptably risky, especially since it is performed on otherwise healthy people; likewise, some people object to all government mandates regarding personal life. These objections have been a part of general debates among the public and in legislative chambers about the correct balance between individual liberty and state action to protect the health of the community. This tension can be expressed in terms of benefits and harms: in a society with a high rate of vaccination, any particular child would be better off not taking on the very small risk of injury from being vaccinated, but if everyone acted that way, then all would be much worse off, as the risk of coming down with a vaccine-preventable disease would go from miniscule (as it is when the community enjoys the “herd immunity” that a high vaccination rate provides) to substantial (as it was pre-vaccines).

The result is that, to overcome the “collective action” and “free rider problems,” all states have compulsory school immunization laws; each state decides which vaccines to require, based on recommendations from the CDC, acting with guidance from the Advisory Committee on Immunization Practices. Children with medical contraindications to immunization are exempted. In response to parents with religious objections, all states save Mississippi and West Virginia grant exemptions to those who claim (with varying degrees of required affirmation and documentation) that their religion prohibits vaccination. In addition—perhaps to foreclose a potential Establishment Clause objection that particular religious beliefs were being privileged — 20 States allow parents with “moral” or other personal objections to vaccination to register their children for school entrance without providing evidence that the children have completed the required immunizations.
This exercise deals with the changes that took effect in California in 2013, restricting the “personal belief exemption” to childhood immunization requirements; to bring the issue up to date, several additional sources are provided regarding another measles outbreak in 2014-15 that led to the adoption of a more restrictive statute in June 2015.

Although religious and personal belief exemptions from compulsory immunizations have been filed for only a small percentage of school-age children, the number has been rising in recent years and in some communities has reached levels high enough to eliminate herd immunity for a number of childhood diseases. The anti-vaccination forces were given a big push by a 1998 article in The Lancet in which Dr. Andrew Wakefield, a British surgeon and researcher, produced research results showing a link between the MMR (measles, mumps, and rubella) vaccine and autism and bowel disease. Subsequent investigations not only failed to confirm Wakefield’s findings but resulted in his being struck off the medical register and the withdrawal of the 1998 article by The Lancet, whose editor stated that it had been “deceived” by Wakefield into publishing his “utterly false” paper. Independent studies by the Institute of Medicine (part of the National Academy of Sciences) have concluded that the purported link between vaccination and autism spectrum disorder lacks any factual basis.

Nonetheless, vocal critics (including a few celebrity parents and the occasional medical skeptic) remain and the rates of vaccination-refusal have risen, ironically in some affluent, middle-class neighborhoods where the high rate of residents with college and advanced degrees is usually reflected in a high level of acceptance of scientific data (on issues like evolution, climate change, etc.). When an imported case of measles turns up in such a community, the disease — which is highly contagious — can spread widely and quickly due to the suboptimal local rate of vaccination. Several such outbreaks in recent years have led to calls to tighten or remove the exemptions to the required vaccinations. This exercise deals with the changes that took effect in California in 2013, restricting the “personal belief exemption” to childhood immunization requirement; to bring the issue up to date, several additional sources are provided regarding another measles outbreak in 2014-15 that led to the adoption of a more restrictive statute in June 2015.

The question for students is: to what extent should the state allow parents to make choices about vaccinating their children against communicable diseases that can cause injury or even death?

II. The Exercise: A Review

I conducted this two-part exercise in my spring 2015 public health law class. It proceeded as follows.

1. I provided students with a description of the issue at “Stage 1,” including a bill pending in the California legislature as of August 20, 2013, and some background articles, and a list of questions to consider. The students could pick which of five groups they would represent in analyzing the pending law, and the presentations were made to the whole class.

2. The exercise can be run in a number of different ways, depending on the size of the class and the pedagogical and assessment objectives — i.e.,

• students can just present their analysis orally or also submit written analyses;
• the exercise can be used to promote teamwork or to allow the students or instructor to assess individual abilities;
• the analysis can be assigned as homework or undertaken as an in-class activity, etc.;
• a sixth group of students can play the role of the legislative committee developing the bill, who would ask questions of the each student (or group of students) representing a particular client at the “hearing.” The students in this role would then present an explanation of which arguments they found most persuasive; if the exercise is being evaluated based on a written product, they could write up a “committee report” to accompany the legislation.
3. The students were very creative in formulating their positions. Here are a few of the points I expected them to raise:
   a. **Relative v. Absolute Risk:** Some of the rising level of vaccine-refusal is based on genuine belief on the part of some parents that the choice is most protective of their child’s welfare. In a community with a level of vaccination high enough to create herd immunity, this may well be an accurate appraisal of the risk of getting vaccinated versus not, although the probability of suffering harm from getting vaccinated remains very small.
   b. **The Tragedy of the Commons:** If everyone follows this rationale, then herd immunity is lost and all the children are at much higher risk.
   c. **The Unfairness of Free Riding:** Leaving choice in individual hands may still result in an adequate level of immunity, but children whose parents exempt them from vaccination are exploiting the community-oriented acts of others to gain protection without contributing to the achievement of the herd immunity.
   d. **Collective Action:** Is it legitimate for the state to force children to get vaccinated, not because any one unvaccinated child poses a measurable risk to other children (principally, those too young to be vaccinated and those for whom vaccination is contraindicated, such as children with compromised immune systems) but to counteract the problems described in b. and c. above?
   e. **How Some “Exemptions” Arise:** Some parents do not object in principle to vaccinating their children but simply haven’t completed the course of recommended vaccinations. It is in the interest of school administrators to accept all the children who come to enroll, since payments from the state to schools are based on the number of students present in their classrooms. When faced with a child who is ready to enroll but who lacks the required vaccination documentation, the school official can either instruct the parent to come back after obtaining the documentation or can tell the parent that the child can be enrolled if the parent fills out a form exempting the child from the requirement based on a “personal belief.”

   f. **The Overt Rationale for the Change in the Law:** A.B. 2109 would change the personal belief exemption as then applied by requiring a parent (or guardian) who has not had his or her child vaccinated to provide a health care practitioner’s “signed attestation” that the practitioner has given the parent “information regarding the benefits and risks of the immunization and the health risks of specified communicable diseases,” as well as a statement by the parent indicating that he or she has received this information. The ostensible reason is to ensure that parents (and guardians) are aware of the scientific and medical evidence regarding vaccinations, in case their refusal was based on ignorance or misunderstanding of the risks and benefits.

   g. **Behavioral Economics:** Under the existing law, filing a personal belief exemption is a fairly costless act: it simply requires a signature (and, perhaps, a willingness to aver something that isn’t the case). Indeed, prior to the recent development of a registry accessible to schools, the exemption was even used by parents who do not actually object to vaccinating their children but who simply did not bring the necessary documentation when they came to register their children for school. Thus, the requirement that a parent go to a health care provider to receive information about immunization can be seen in behavioral as well as cognitive terms: it raises the cost of refusing to allow vaccination because that — like getting the child immunized — now also requires a trip to the health care provider. (Note that this effect would be lessened if a school has a nurse on site who could provide the required educational information without necessitating a trip to a pediatrician or clinic.)

4. A major point of an exercise like this, with role-playing, is to have the students understand that reasonable arguments can be made for and against the proposal. Further, some of the arguments for a conclusion made by one group may be inconsistent with other arguments for the same conclusion made by another group. Can legislators who favor that conclusion use these varying reasons in supporting the bill (as an instance of the “mud-
dling through” described by Yale political scientist Charles Lindblom)?

5. The exercise is designed to be done in two parts; I did it in two successive classes. Stage 2 is a shorter assignment, with less reading and a shorter list of questions for the students — still representing the same groups as during Stage 1 — to consider. I ran it as a general discussion, rather than as a legislative hearing. Some of the ideas that should emerge:
   a. **Executive Power:** In recent years, when signing legislation into law Presidents and Governors have taken to issuing “signing statements” in which they announce their reading of the statute.
      • If the chief executive has discretion in executing the law in question, would announcing his or her intention to apply the law narrowly be nothing more than making clear how the law will be enforced?
      • What if the signing statement purports to add a provision absent from the text of the statute?
      • Should other officials or the courts give any weight to such statements?

This issue has not been well addressed but the consensus seems to be that such statements cannot literally amend a statute.

b. **Religious Exemptions:** When he signed A.B.2109 into law in September 2012 Governor Brown issued a statement to the State Assembly in which he said an extra exemption would be added to the form issued by the Department of Public Health to implement the new law: people whose religious beliefs preclude vaccinations would not be required to seek a health care practitioner’s signature on their exemption forms.
   • Is such an exemption in line with the purpose the legislature had in amending the immunization exemption process? (No, since the legislature intended to reduce the number of exemptions.)
   • Is the broader exemption necessary to protect the rights of persons with religious objections to vaccinations under the Free Exercise Clause of the First Amendment?
   • At the same time, would it create a privileged class of persons under the Establishment Clause? This is the classic tension regarding religious exemptions to public health practices, but Mississippi is the only state whose highest court has held a religious exemption unconstitutional because most parents would not qualify for it (unless they joined a church with such a doctrine).

c. **Competing Pressures on Agencies:** Should the appointed director of the department follow his own reading of the statute or the instructions of the governor? The answer would seem to be, “He should do what he is told to do if he wants to keep his job,” but students ought to think about the pressures from the public health professionals within the department (who supported the bill to make exemptions more difficult); these might push a director to advocate with the governor for some solution that would better reflect the legislature’s objective and the health interests of the public — but that would also not cause the governor to lose face.

d. **Challenging Executive Action:** Students should also think about the topic in terms of the litigation that might arise with either solution, which is different from thinking about the issues solely as matters of abstract principle. Sometimes, it is not obvious how a particular person would have the sort of interest that is required for standing to challenge a governmental act. So, if the department of public health issues a form lacking the language that the governor had instructed it to include:
   • What kind of action could a person with a religious objection to vaccinations bring, and would its likely success differ from a suit brought had the governor not made his statement?
   • Could such a person successfully seek to have the form enjoined because the department did not include the language ordered by the governor?
   • Would a religious objector’s cause of action have a better chance of success by challenging a school’s refusal to enroll his or her child based on the absence of a health practitioner’s signed attestation on the exemption form?

The converse hypothetical is even more interesting — that is, if the form issued by the department did contain the additional exemption for religious objectors as promised by the governor — what action might someone who objected to that added exemption take?
• Could a legislator sue to enjoin the use of such a form because it departed from the language specified in the statute?
• Could the department claim that the governor was “not amending the statute” but merely including language in the form that he believed was needed to make it constitutional?
• Doesn’t it seem doubtful that a parent who had complied with the law by getting her children vaccinated could not sue a school for admitting students whose parents had neither done so nor produced an attestation of “education” by a health care professional?

Even the parent of a child who cannot be vaccinated for medical reasons and who is therefore placed at risk by the presence of unvaccinated schoolmates probably could not succeed in court, though that is a closer case. But perhaps a school district that believes the additional exemption is neither wise nor authorized by statute could issue its own form without the religious exemption.

• How should a court rule on a suit brought by a parent with a religious opposition to vaccination on the ground that only the state department of public health is authorized to issue the forms and the form that it had issued included the exemption from providing a practitioner’s attestation?

Compromise: The same issues would face the five groups represented by the students as regards the form issued by the department in October 2013. Some may think the form is wrong because it contains an exemption not specified in A.B. 2109; while others may object that the exemption is narrower than the one that the governor promised. Again, the students can examine this from the perspective of “what is the right policy?” or “who would prevail on what set of facts in litigation?”

6. Another outbreak of measles, which began in December 2014 among children who had been to Disneyland and spread from California to a number of other states, serves as a reminder that the new law did not put an end to vaccine refusal; indeed, the number of cases of measles—a disease that had been declared eliminated in the U.S. in 2000—reached a 20-year high in 2014. As the Disneyland measles cases continued to spread in the first months of 2015, legislatures in a number of states took up bills that would have ended all non-medical exemptions for school enrollment as well as bills that sought to narrow the exemption or place burdens on it, as A.B. 2109 had done. While many of the most restrictive bills failed in the face of strong opposition from vaccine opponents, in California S.B. 277, which eliminates the personal and religious exemptions, was enacted despite heated opposition by some parents’ groups and signed into law on June 30, 2015. This provides a starting point for further discussion of what steps a state may— and should—take, at what cost to liberty versus to health, in trying to achieve the particular public health goal of avoiding vaccine-preventable childhood infectious diseases.

Materials
Stage 1
1. Exercise (Stage 1): Personal Beliefs Exemption from Mandatory Immunization of Children for School Entry [see below].
2. Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 through 18 Years—United States, 2015, 64 MMWR 93-94 (Feb. 6, 2015) [see ASLME website].
3. CDC, Outbreak of Measles—San Diego, California, January-February 2008, 57 MMWR 1-4 (Feb. 22, 2008) (Early Release) [see ASLME website].
4. Pediatric Infectious Disease Society Statement Regarding Personal Belief Exemption from Immunization Mandates (www.pids.org/images/stories/pdf/pids-pbestatement.pdf) [see ASLME website].
Stage 2
1. Exercise (Stage 2): Personal Beliefs Exemption from Mandatory Immunization of Children for School Entry [see below].
2. Governor Edmund G. Brown, Jr., To the Members of the California State Assembly (Sept. 30, 2013) [see ASLME website].
3. California Department of Public Health, Personal Beliefs Exemption to Required Immunizations, CDPH 8262 (Oct. 2013) [see ASLME website].

Postscript
1. CDC, Measles Outbreak—California, December 2014–February 2015, 64 MMWR 153-54 (Feb. 20, 2015) & 196 (Feb. 27, 2015) [see ASLME website].
2. California Department of Public Health, California Measles Surveillance Update (April 10, 2015) [see ASLME website].
3. Senate Bill No. 277 (Approved by Governor June 30, 2015) [see ASLME website].

*These materials are not provided but can be obtained for student use in accordance with the access policies for educational use of journal articles followed by the instructor's institution.

Reference
1. An electronic database, CAIR (California Immunization Registry), has now been established, which once completely updated and kept current should contain information on the birth and vaccination history of all children in the state; it can be accessed by schools as well as by healthcare providers, unless a parent declines to allow access.

Personal Beliefs Exemption from Mandatory Immunization of Children for School Entry

Stage 1: Analysis of the Legistlative Proposal
State requirements that children entering school settings (typically, at time of entry to pre-school or childcare program, kindergarten, and seventh grade) have received all required immunizations for vaccine-preventable childhood diseases have been very effective in achieving high immunization coverage and assuring herd immunity that not only prevents disease outbreaks but protects members of the community who are unable to be vaccinated (e.g., too young; immunosuppressed; etc.). California is one of twenty states that allow parents, guardians or emancipated minors to file a Personal Beliefs Exemption (PBE) to opt out of one or more vaccines, based on their beliefs about immunization. Parents typically exercised their right to reject vaccination by simply signing a pre-written affidavit that appears on the so-called “Blue Card” (the School Immunization Record which a school must have for every enrolled child).

In California, as elsewhere across the country, a rapidly growing number of parents express hesitancy about the safety and efficacy of vaccination. Between 1996 and 2010, the rate of PBEs for children entering kindergarten rose 380%, from 0.5% to 2.3%. This increase is fed not only by popular media coverage of the views of a few celebrities and physicians who are vocal “vaccine skeptics” and who have fueled parental concern that immunization causes autism and other conditions but also by the social-group influences that produce pockets of vaccine resistance. Thus, while most of California’s counties have continued to see rising rates of PBEs (to a state-wide rate of 2.7 per 100 kindergarteners in 2012), in five counties, the rate is now over 10 per 100 kindergarteners. While such high rates are mostly found in the more remote parts of northern California, clusters are also found in urban areas; for example, in one city in Los Angeles County, 59% of students had a PBE on file at kindergarten entry.

The risk of unvaccinated children contracting diseases such as measles is up to 35-fold that of children who have been vaccinated, and clusters with high numbers of vaccine-refusers therefore pose a serious risk of outbreaks. For example, a 2008 measles outbreak in San Diego, which was linked to a child whose parents had refused vaccinations, involved a dozen children; three were too young to be vaccinated, but all but one of the others had PBEs on file.

In addition to parents who are skeptical about vaccination programs, some may sign a PBE as a path of least resistance, perhaps with the encouragement of school personnel, who may feel that their main responsibility is to get children enrolled in school and who are not aware of, or sufficiently concerned about, the risk posed by growing rates of non-immunized children in their communities to undertake the trouble associated with following up with families whose children have been “conditionally” admitted, pending getting the required immunizations. (Although it might seem that particularly high rates of PBEs would therefore be found in communities with large numbers of poor, migrant families, who may lack well-established relationships with healthcare practitioners and who, with frequent moves, might have trouble keeping track of immunization records as they move their children from school to school, the areas in California where
such families are prevalent do not have particularly high rates.)

Consider the following bill in the California legislature (as amended as of August 20, 2012) as a means to address the PBE problem. It was modeled on a Washington statute requiring parents to discuss vaccination with a health practitioner before signing a PBE. The year after that law was adopted, Washington State saw a drop in PBEs from 6% to 4.5% of entering students.

Assembly Bill No. 2109
An act to amend Section 120365 of the Health and Safety Code, relating to communicable disease.

LEGISLATIVE COUNSEL’S DIGEST


Existing law prohibits the governing authority of a school or other institution from unconditionally admitting any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized against various diseases, as specified.

Existing law exempts a person from the above-described immunization requirement if the parent or guardian or other specified persons file with the governing authority a letter or affidavit stating that the immunization is contrary to his or her beliefs.

This bill would instead require this letter or affidavit to document which required immunizations have been given, and which have not been given on the basis that they are contrary to the parent or guardian’s or other specified person’s beliefs. The bill would require, on and after January 1, 2014, a form prescribed by the State Department of Public Health shall accompany the letter or affidavit filed pursuant to subdivision (a). The form shall include both of the following:

1. A signed attestation from the health care practitioner that indicates that the health care practitioner provided the parent or guardian of the person who is subject to the immunization requirements of this chapter, the adult who has assumed responsibility for the care and custody of the person, or the person, if an emancipated minor, who is subject to the immunization requirements with information regarding the benefits and risks of the immunization and the health risks of specified communicable diseases. The bill would require the form to include a written statement by the parent, guardian, other specified persons, or person, if an emancipated minor, that indicates that he or she received the information from the health care practitioner.

By imposing new duties upon local officials, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 120365 of the Health and Safety Code is amended to read:

120365. (a) Immunization of a person shall not be required for admission to a school or other institution listed in Section 120335 if the parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of a minor, or the person seeking admission if an emancipated minor, files with the governing authority a letter or affidavit that documents which immunizations required by Section 120355 have been given, and which immunizations have not been given on the basis that they are contrary to his or her beliefs.

(b) On and after January 1, 2014, a form prescribed by the State Department of Public Health shall accompany the letter or affidavit filed pursuant to subdivision (a). The form shall include both of the following:

1. A signed attestation from the health care practitioner that indicates that the health care practitioner provided the parent or guardian of the person who is subject to the immunization requirements of this chapter, the adult who has assumed responsibility for the care and custody of the person, or the person, if an emancipated minor, who is subject to the immunization requirements with information regarding the benefits and risks of the immunization and the health risks of the communicable diseases listed in Section 120335 to the person and to the community. This attestation shall be signed not more than six months prior to the date when the person first becomes subject to the immunization requirement for which exemption is being sought.

2. A written statement signed by the parent or guardian of the person who is subject to the immunization requirements of this chapter, the adult who has assumed responsibility for the care and custody of the person, or the person if an emancipated minor, that
indicates that the signer has received the information provided by the health care practitioner pursuant to paragraph (1). This statement shall be signed not more than six months prior to the date when the person first becomes subject to the immunization requirements as a condition of admittance to a school or institution pursuant to Section 120335.

(c) The following shall be accepted in lieu of the original form:
1. A photocopy of the signed form.
2. A letter signed by a health care practitioner that includes all information and attestations included on the form.

(d) Issuance and revision of the form shall be exempt from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) When there is good cause to believe that the person has been exposed to one of the communicable diseases listed in subdivision (a) of Section 120325, that person may be temporarily excluded from the school or institution until the local health officer is satisfied that the person is no longer at risk of developing the disease.

(f) For purposes of this section, “health care practitioner” means any of the following:
1. A physician and surgeon, licensed pursuant to Section 2050 of the Business and Professions Code.
2. A nurse practitioner who is authorized to furnish drugs pursuant to Section 2836.1 of the Business and Professions Code.
3. A physician assistant who is authorized to administer or provide medication pursuant to Section 3502.1 of the Business and Professions Code.
4. An osteopathic physician and surgeon, as defined in the Osteopathic Initiative Act.
5. A naturopathic doctor who is authorized to furnish or order drugs under a physician and surgeon’s supervision pursuant to Section 3640.5 of the Business and Professions Code.
6. A credentialed school nurse, as described in Section 49426 of the Education Code. SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

In addition to AB 2109, read the following:

Advisory Committee on Immunization Practices Recommended Immunization Schedules for Persons Aged 0 Through 18 Years – United States, 2015, 64 MMWR 93-94 (Feb. 6, 2015).
Pediatric Infectious Disease Society Statement Regarding Personal Belief Exemption from Immunization Mandates (www.pids.org/images/stories/pdf/pids-pbe-statement.pdf)

Stage 1: Analysis of the Legislative Proposal
You are the member of a legal team that has been asked by one of the following groups to prepare an analysis of the bill and to recommend whether the group should support its adoption. (Some of the groups listed may be actual organizations; others are hypothetical. The basic views of each group are presented but you are free to extrapolate additional concerns or positions that would be consistent with the group’s orientation.) Anticipate and respond to objections to the positions you develop on behalf of your client.

A. The American Academy of Pediatrics
When contacting your team, the executive director of this group informed you that the Academy has long been on record favoring universal vaccination of children and has been very critical of physicians who are public “vaccine deniers.” The group recognizes that the professional advice (and signature on a form) that pediatricians may be asked to provide by families that want to file a PBE is a service that many health insurance policies may not cover. At the same time, the Academy’s board members are concerned that obtain-
ing the necessary attestation from a healthcare provider should not be significantly easier than obtaining the required vaccinations.

B. The Local Department of Public Health
The department’s director informed your team that the department has always strongly supported childhood vaccination. She noted that the official position of the National Association of County and City Health Officials (NACCHO) is that PBEs be removed from state immunization laws and regulations; pending such action, the organization urges that the availability of PBEs be limited. The department is concerned, however, about two things. First, it may face a net increase in work, not only at its Community Health Centers, where it has provided vaccinations and counseling to eligible families but also in having to provide materials to and educational programs for school personnel. Second, they believe that the information provided and attestation signed by the parents or guardians under the bill are not sufficiently direct and forceful concerning the risks in failing to obtain the recommended vaccinations. Instead of “information regarding the benefits and risks of the immunization and the health risks of the communicable diseases listed in Section 120335 to the person and to the community,” they suggest that parents should have to acknowledge that they have been informed “that without vaccination, their child is at significantly higher risk of illness, disability and death and is also placing other people with whom the child comes into contact at higher risk of illness, disability and death should the child become infected.”

C. Parents United Against Forced Vaccinations
The president of this group reports that they want to eliminate immunization as a condition for school enrollment for a number of reasons. Some of their members hold religious objections to vaccination; some are libertarians and don’t believe it is right for the government to force people to do things “for their own good” or to take risks to protect others against problems they don’t create (such as a naturally occurring disease); and some believe medical groups and government officials are lying when they insist that vaccinations are beneficial for children and do not cause autism or other developmental problems.

D. California Association of School District Superintendents
The chair of the CASDS board told your team that PBEs put school personnel in an awkward position because of the central conflict between their need to enroll students and their recognition that unvaccinated students present a risk to themselves and others. In terms of administering the revised PBE, the group points out that the persons handling school enrollment typically lack either the knowledge or the authority to respond to questions from parents about the relative risks and benefits of childhood immunization (particularly from parents who strongly object to vaccinations because of what they have read in the media); many schools lack full-time school nurses, who would be able to answer questions and provide the proposed attestation that the parents have received the required explanation of vaccination’s risks and benefits; and their schools are understaffed to pursue the immunization status of children who lack evidence of required vaccinations but who are conditionally admitted to school based upon their parents’ promise to get them vaccinated promptly. Finally, the school superintendents are concerned that parents, who will be annoyed at the added burden of having to obtain an attestation from a healthcare provider, will direct their ire at school personnel.

E. American Society for Fair and Equal Treatment
This group’s leader informs your team that its members believe that the personal beliefs exemption is actually a form of religious exemption, which treats non-believers unfairly; in effect it creates a privilege for people who adhere to particular religious beliefs. They also think that the law should make people who refuse having their children vaccinated for non-medical reasons liable for harm suffered by other children who acquire a vaccine-preventable disease from a child whose parents registered a PBE against immunization.

Stage 2: Implementing the Statute
The California Assembly approved AB 2109 on May 10, 2012. A series of amendments in the Senate produced the version you read in Stage 1, which was approved by the Senate (2214) on August 22. On August 27 the Assembly concurred in the Senate amendments (51-29). The bill was then enrolled and presented to the Governor on September 6, and upon his approval on September 30, 2012, it entered into law, as Chapter 821, Statutes of 2012.

When approving the law, however, Governor Brown sent a “signing message” to the Members of the California State Assembly (which is attached to
this assignment) in which he praised the statute on the ground that getting an explanation of “the value of vaccinations—both the benefits and risks—for an individual child and the community” will be “valuable” whether or not parents choose to vaccinate. He stated that he was directing the State Department of Public Health “to oversee this policy so parents are not overly burdened in its implementation.” Perhaps to elaborate what he meant by this, he then added: “I will direct the department to allow for a separate religious exemption on the form. In this way, people whose religious beliefs preclude vaccinations will not be required to seek a health care practitioner’s signature.”

I. What position should the group that you represented in Stage 1 take on how the Department of Public Health, local health departments, and schools should respond to the instructions in Governor Brown’s statement? Consider, for example:

A. How does Governor Brown’s directive to the California Department of Public Health differ from the instructions provided to the department in the statute?
B. What is the status of signing statements by a state or national chief executive?
C. What new legal issues has the governor potentially inserted into the exemption process?

D. What could any group do if it objected to the PBE form issued by the department in conformity with the governor’s instructions?

II. In October 2013, the public health department issued the new form for recording a “Personal Beliefs Exemption to Required Immunization,” to become effective on Jan. 1, 2014. (That form, CDPH 8262, is attached.) What position would you advise your client to take on the form?

F. How does the form differ from the instructions issued by the governor?

G. If your client has an objection to the form, should the client raise the objection or wait to see what results the form produces? If you recommend that the client object now, what steps should the client take to raise the objection or provoke litigation to challenge the form, on the ground that it does not match the statute or on some other ground? If your client supports the form, what role could it play in litigation brought by others?

H. Why do you think the statute and form will or will not reduce the rate at which PBE are exercised by parents when enrolling children in school?

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