Disaster Relief: Restricting and Regulating Public Health Interventions

Introduction
The information contained in this teaching module and the accompanying PowerPoint slides is appropriate for use in a survey public health law course or seminar. The purpose of this lesson is two-fold. The first objective is to provide law students with an overview of the authority public health agencies have to set and enforce policies necessary to keep the population healthy. The second objective is to inform law students about the legal constraints courts have placed upon the actions of those agencies. The module ends with a project designed to give law students the opportunity to apply the law to a “real world” situation.

Students need to understand that a public health course is different from a public health law course. Public health courses focus upon the manner in which public health agencies respond to incidents that may negatively impact the health of members of the public. On the other hand, public health law courses are designed to analyze the legal powers and duties given to public health agencies, so that they can perform their responsibilities. In addition, students enrolled in public health law courses will learn about the restrictions put on public health agencies that to protect the autonomy, privacy, liberty, proprietary and other interests of citizens.

States have a responsibility to protect the health of their citizens. Most states delegate that duty to public health agencies. The states’ public health authority comes from the police powers granted by state constitutions and reserved to them by the Tenth Amendment to the United States Constitution. When it upheld a law mandating smallpox vaccinations, the United States Supreme Court stated “…the state may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and public safety.”

The main goals of a public health agency are the following:

1. understand potential threats to the public health;
2. identify a policy for eliminating or reducing the threat;
3. implement that policy; and
4. evaluate the policy’s outcomes.

The purpose of public health law is to define the jurisdiction of public health officials and to specify the manner in which they may exercise their authority.

In their quest to protect or promote community health, states have to take steps to protect the interests of their populations. Thus, legal limits constrain public health interventions as follows:

1. The actions proposed by the agency must be needed to thwart an avoidable public health threat.
2. A reasonable relationship must exist between the planned intervention and the achievement of a legitimate public health objective.
3. The human burden triggered by the intervention must be comparable with the anticipated benefit to the public, and
4. The intervention must not endanger the public's health.

Class Structure
This exercise works best in a class of between 25 and 30 students so that each group can contain at least five students, but it can be adapted for use in larger and smaller classes. The students should be divided up into public health departments, each with a designated director.

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The professor should then discuss the actions local public health departments can take to protect the public in these situations. Those acts include preparedness, response, mitigation, and recovery. A prime example of a preparedness activity is the creation of an emergency preparedness plan. The need for this type of action was highlighted by events like the city of New Orleans’ poor reaction to Hurricane Katrina in 2005 and the city of Dallas’ inadequate handling of the 2014 Ebola case.

After a disaster occurs, the local public health department has to be able to put its plan into action to respond. The manner in which the department responds to the crisis depends on the nature of the activity that caused the emergency. For instance, the public health department’s response to an outbreak of the West Nile virus will be different from its reaction to an increase in small cigar smoking.

A key component of a public health department’s response to disaster involves mitigation. Mitigation entails cooperating with law enforcement and other agencies to reduce the damage caused by the particular public health calamity.

The most difficult and time-consuming obligation of a public health department is to help the community recover in the aftermath of a disaster. Examples include the amount of time it took to clean up New York City and Oklahoma City after the bombings in those municipalities.

After the groups have been assigned their particular public health emergency, the professor should explain the possible legal challenges that may be filed against a public health department as the result of an intervention. Most of those challenges will be based upon state and federal constitutional law. (This would be a good time for the professor to hand out copies of his or her public health statutes and relevant state constitutional provisions for the students to review.)

The professor should then discuss how the First, Second, Fourth, and Fourteenth Amendments may be implicated by a public health intervention. For instance, a resolution to ban tobacco advertising near schools may be challenged on First Amendment grounds. Likewise, if the public health department seeks to prohibit the selling of guns near schools, vendors may bring a Second Amendment challenge. Opponents of mandatory HIV screenings may argue that the screenings are illegal searches and seizures in violation of the Fourth Amendment. Involuntary quarantines in response to events like the recent Ebola scare may be viewed as a violation of the Fourteenth Amendment.

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Amendment's protection against deprivation of liberty without due process. The professor should explain that, in addition to constitutional challenges, public health interventions may be contested based upon the right to privacy, statutory preemption, medical battery and lack of informed consent.

Exercises
The students in each public health department should:

1. Create an emergency preparedness plan to prepare for the crisis assigned to them.
2. Write a memorandum indicating the manner in which they will respond in the event the disaster actually happens.
3. Include steps that they will take to mitigate the damage caused by the calamity.
4. Prepare a memorandum identifying and addressing possible legal challenges to their proposed actions, and
5. Prepare a list of questions that need to be answered about what will happen prior to the event, during the event and after the event.

Scenario I: Natural Disaster Group
The National Weather Service has predicted that a weather-related natural disaster (the type depends on those common to the region where the students are located) will hit your city in approximately 72 hours. If the prediction is correct, the city will suffer severe loss of life and property damage. The students should gather relevant demographic information about their city. After the students complete the assignment, the professor should give the students a copy of the city emergency preparedness plan for comparison purposes. The professor may also show the students, “When the Levees Broke: A Requiem in Four Acts,” Spike Lee’s documentary on Hurricane Katrina. The purpose of showing the movie is for the students to understand the importance of having adequate plans in place to protect the public from the devastation that can occur as a consequence of a natural disaster.

Scenario II: Manmade Disaster Group
A confidential informant has told a local police detective that a radical group plans to put anthrax spores into the city’s water supply. The act is slated to happen three days after the police learn of the threat. The police take the threat seriously because anthrax spores were recently stolen from a local lab. The quantity of spores stolen is enough to contaminate the water within a five mile area of the primary water source. The professor should give the students a copy of the Centers for Disease Control and Prevention’s Bioterrorism Readiness Plan before they embark on the assignment set forth above.

Scenario III: Communicable Disease Group
The students in this group should be assigned the movie “Contagion” to watch. The movie involved the government’s efforts to locate the source of and to contain an Ebola-like virus. After watching the movie, in addition to the five steps in the general assignment for all groups, the students should evaluate the public health response to the outbreak as it was set forth in the movie.

Scenario IV: Antisocial Behavior Group
While surfing the web, a teacher at a local high school comes across a blog created by one of the students in her class. In the blog, the student stated that four students calling themselves Conquest, War, Famine and Death planned to kill seven people each on a school bus and then burn down the school. The teacher has reported her concerns to the police. The identity of the students and the targeted school is unknown. The city has five elementary schools, two middle schools and two high schools. The professor should refer the students to Guidelines for Responding to Student Threats of Violence by Dewey Cornell and Peter Sheras (Sopris West, 2006).

Scenario V: Lifestyle Choices Group
A non-profit group has performed a sting operation to determine the extent of small cigar smoking in the city. The group discovered the following:

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1. Vendors sold small cigars to children without requesting identification;
2. Vendors displayed small cigars in the front of the store along with the candy and gum;
3. Vendors sold single small cigars;
4. Vendors gave “buy-one-get-one-free” coupons for small cigars; and
5. Vendors sold small cigars in “kid friendly” flavors like bubblegum and grape.

The group also conducted an online survey of middle and high school students. The survey results indicated that about 48% of middle school children and 77% of high school children smoke small cigars. The professor should direct students to the Tobacco Control Legal Consortium Fact Sheet Regulatory Options for Little Cigars, available at <http://publichealthlaw-center.org/sites/default/files/pdf/tclc-fs-regulatory-options-little-cigars-2013.pdf>.

Conclusion
This module will be helpful for professors who want to give students an overview of public health law. Professors may use the information contained in the module at the beginning of the course and refer to it periodically throughout the course. As the students gain more knowledge about public health law and policy, professors can modify the problems to cover various scenarios. If there is a particular public health issue that is in the news, the professor may ask the students to attempt to provide a solution based upon the law and policy taught in the class. The finished project could be circulated to the appropriate city official and/or the local public health department.

These exercises will enable students to think about public health law in a broad and concrete way. In addition to learning the law, the students will have the opportunity to collaborate with one another to create health policy. After the students complete the exercises, the professor may decide to share the students’ projects with members of the local public health department. In addition, the professor may decide to invite members of the local public health department to come to class and offer the students a critique of their work. For example, the students could compare their emergency preparedness plan to the one actually adopted by their city. Then, the professor could create an emergency scenario and have half of the students follow the student-created emergency preparedness plan while the other half follows the city-adopted emergency preparedness plan. After the emergency is over, the class could evaluate the outcomes and see which plan provided the most protection to the citizens.

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References