

**The Network for Public Health Law**  
 Ideas. Experience. Practical answers.

# Public Health Law 101


Presented June 7, 2013  
 Dakota Conference on Rural and Public Health  
 Mandan, North Dakota

**The Network for Public Health Law**

Contact the Network to:

- Get practical legal assistance on a variety of public health topics
- Find helpful resources from webinars and trainings to fact sheets and legal briefs
- Connect with a community of experts and users of public health law

Support is available at no cost! Visit [www.networkforphl.org](http://www.networkforphl.org) for more information.



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## Objectives

- » Describe role of law in protecting public health
- » Explain the sources of the government's legal authority to protect public health
- » Identify constitutional principles that limit government power
- » Apply legal thinking to emerging public health challenges
- » Recognize when legal advice or assistance may be required

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## 10 Public Health Achievements

Top 10 Achievements in Public Health

1. Vaccination
2. Motor-vehicle safety
3. Safer workplaces
4. Control of infectious diseases
5. Decline in deaths from coronary heart disease and stroke
6. Safer and healthier foods
7. Healthier mothers and babies
8. Family planning
9. Fluoridation of drinking water
10. Recognition of tobacco use as a health hazard

Illustration from [www.whatispublichealth.org](http://www.whatispublichealth.org)

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## What is Public Health Law?

The study of the legal **authority** of the government to assure the conditions for people to be healthy and **limitations** on the government's power to constrain autonomy, privacy, liberty, property or other legally protected interests of individuals for protection or promotion of public health.

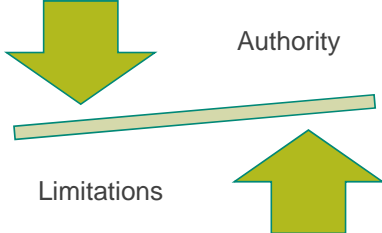
**Power. Duty. Restraint.**

Lawrence Gostin, *Public Health Law: Power, Duty, Restraint*. Berkeley: Univ. of California Press, 2008

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## Two Key Concepts



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## Principles in the U.S. Constitution

- » **Federalism**
- » **Separation of Powers**
- » **Limiting the government's power**

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## Federalism

- » **Powers that are not granted to the federal government, and that are not prohibited to the states, are reserved to the states and to the people**
- » **In general, the "police power" is reserved to the states**
- » **Police power refers to the power to regulate health, safety, and welfare for the common good**

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## Separation of Powers

- » **The Constitution creates branches of government, so that absolute power does not reside in any one branch of government**
- » **Executive**
  - U.S. Department of Health and Human Services
  - North Dakota Department of Health
- » **Legislative**
- » **Judicial**

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## Limits on Government Power

- » **First Amendment**
  - Freedom of speech, religion, and right to peacefully assemble
- » **Second Amendment**
  - Right to bear arms
- » **Fourth Amendment**
- » **Fifth Amendment**
  - Due process of law; just compensation for condemnations
- » **Fourteenth Amendment**
  - Equal protection and due process of law

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## Sources of Law

- » **Constitution**
- » **Statutes**
- » **Regulations**
- » **Ordinances**
- » **Court opinions (case law)**
- » **International agreements and treaties**
- » **Contracts, Memorandums of Understanding or Agreement**

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## Levels of Government

- » **Federal**
- » **Tribal**
- » **State**
- » **Local**

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## Public Health in North Dakota

- » **State Health Council (appointed by governor)**
- » **North Dakota Century Code Title 23 has most key provisions**
- » **Powers and Duties of health council**
  - Establish standards, rules, and regulations
  - Direct state health officer
  - Monitor health care costs and quality
  - Recommend changes to the health care system
  - Publish an annual report on health care


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## State Department of Health

- » **State Health Officer is the administrative officer**
- » **Powers and Duties of State Health Officer**
  - Enforce all rules and regulations passed by health council
  - Advise public health unit boards of health and hold them accountable; coordinate health activities
  - Study health problems and plan solutions
  - Collect and publish vital statistics
  - Publish an annual report on health care
  - Promote the development of local health services
  - Collect and distribute health education material

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## State Health Officer Powers and Duties (Continued)

- Maintain a public health laboratory; issue bulletins and reports on sanitary and pathological analyses
- License medical hospitals and related institutions
- Programs related to sudden infant death syndrome
- Issue orders for measures to prevent spread of communicable disease
- Bacteriological examinations of water, food, and sewage
- Improve sanitation; collect sanitary statistics
- Epidemiological assessments of commercial buildings

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## Local Public Health

- » **Public health unit**
  - Health district
  - Public health department
  - Tribal health unit
- » **Board of health**
- » **Regional public health network**
  - New funding to plan and establish networks under 2013 state legislation, S.B. 2030

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## Public Health Unit

- » **A public health unit is a local organization formed under state law to provide public health services in a city, county, or designated multi-county or city-county area or Indian reservation**
- » **All land in state must be in a public health unit**
- » **Types of public health unit include:**
  - City public health department
  - County public health department
  - Tribal health department
  - Health district

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## Board of Health

- » **A board of health governs a public health unit**
- » **Advised by state department of health**
- » **Meets at least quarterly**
- » **Acts at the district, city, county, or tribal level**
- » **Appoints the local health officer. If the health officer is part time, may appoint a director**
- » **May make rules and enforce orders, or make recommendations to governing body**

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### Tools of Public Health Law

- » Power to tax and spend
- » Power to alter the informational environment
- » Power to alter the built environment
- » Power to alter the socioeconomic environment
- » Direct regulation
- » Indirect regulation through the tort system
- » Deregulation: laws as a barrier to public health

Based on Larry Gostin, *Public Health Law: Power, Duty, Restraint*.

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### Hot Topic: Health Care Reform

Authority: Power to Tax and Spend

Limitations: Liberty interests; Federalism

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### Hot Topic: Emergency Prep.

Authority: Police Power

Limitations: Liberty interests; Property interests

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### Hot Topic: Tobacco Control

Authority: Police Power; Power to Tax and Spend; Power to Alter Info. Environment

Limitations: Liberty interests; Property interests; First Amendment

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### Hot Topic: Vaccinations

Authority: Police Power; Power to Regulate; Power to Alter Info. Environment

Limitations: Liberty interests; Privacy interests; First Amendment

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### Hot Topic: Public Nuisance

Authority: Police Power; Power to Regulate

Limitations: Property interests; Liberty interests; Privacy interests

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## Hot Topic: Obesity Prevention

Authority: Police Power; Power to Regulate; Power to Alter Info. Environment

Limitations: Liberty interests; Autonomy interests; First Amendment

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## Working with an Attorney

- » Recognize that reviewing existing laws and updating them as needed is a PH function.
  - See Domain 6 of PHAB accreditation standards
- » Develop a relationship with your attorney
- » Seek legal input early
- » Understand attorney's risk management goals
- » Explain your public health/program/policy goals
- » The Network is an additional resource for information, brainstorming, and strategizing

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## Additional Resources

The Network Report, [www.networkforphl.org](http://www.networkforphl.org) (free e-newsletter for people who join the Network)

Public Health Law Research Evidence Briefs, <http://publichealthlawresearch.org/>

Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint*.

Institute of Medicine. *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges (2011)*. <http://www.iom.edu/Reports/2011/For-the-Publics-Health-Revitalizing-Law-and-Policy-to-Meet-New-Challenges.aspx>

What Works Wisconsin (Effective Prevention Programs for Children, Youth and Families) . <http://whatworks.uwex.edu/>

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Photo courtesy USDA NRCS

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