

The Journal of Law, Medicine & Ethics (JLME): Material published in *The Journal of Law, Medicine & Ethics (JLME)* contributes to the educational mission of the American Society of Law, Medicine & Ethics, covering public health, health disparities, patient safety and quality of care, and biomedical science and research, and more.

Editorial Office

Journal of Law, Medicine & Ethics, 765 Commonwealth Avenue, Suite 1704, Boston, MA 02215 USA
Phone: 617-262-4990; Fax: 617-437-7596
E-mail: thutchinson@aslme.org

Letters to the Editors: Comments on articles in the Journal should be addressed to the Editor at the editorial office or emailed to thutchinson@aslme.org.

Submission Guidelines: For submission guidelines, please contact the editorial office at thutchinson@aslme.org. Submission guidelines are also available online at <http://journals.sagepub.com/home/lme>.

The Journal of Law, Medicine & Ethics (ISSN 1073-1105) (J812) is published quarterly—in March, June, September and December—by SAGE Publishing, 2455 Teller Road, Thousand Oaks, CA 91320 in association with the American Society of Law, Medicine & Ethics. Send address changes to the Journal of Law, Medicine & Ethics, c/o SAGE Publishing, 2455 Teller Road, Thousand Oaks, CA 91320.

Copyright © 2017, the American Society of Law, Medicine & Ethics. All rights reserved. No portion of the contents may be reproduced in any form without written permission from the publisher.

Subscription Information: All subscription inquiries, orders, back issues, claims, and renewals should be addressed to SAGE Publishing, 2455 Teller Road, Thousand Oaks, CA 91320; telephone: (800) 818-SAGE (7243) and (805) 499-0721; fax: (805) 375-1700; e-mail: journals@sagepub.com; website: journals.sagepub.com. Subscription Price: Institutions: \$912. For all customers outside the Americas, please visit <http://www.sagepub.co.uk/customerCare.nav> for information. Claims: Claims for undelivered or damaged copies must be made no later than six months following month of publication. The publisher will supply replacement issues when losses have been sustained in transit and when the reserve stock will permit.

Member Subscription Information: American Society of Law, Medicine & Ethics member inquiries, change of address, back issues, claims, and membership renewal requests should be addressed to Membership Director, American Society of Law, Medicine & Ethics, 765 Commonwealth Avenue, Suite 1704, Boston, MA 02215; telephone: (617) 262-4990 ext. 15; fax: (617) 437-7597. Requests for replacement issues should be made within six months of the missing or damaged issue. Beyond six months and at the request of the American Society of Law, Medicine & Ethics, the publisher will supply replacement issues when losses have been sustained in transit and when the reserve stock permits.

Copyright Permission: To request permission for republishing, reproducing, or distributing material from this journal, please visit the desired article on the SAGE Journals website (journals.sagepub.com) and click "Permissions." For additional information, please see www.sagepub.com/journals/permissions.nav.

Advertising and Reprints: Current advertising rates and specifications may be obtained by contacting the advertising coordinator in the Thousand Oaks office at (805) 410-7772 or by sending an e-mail to advertising@sagepub.com. To order reprints, please e-mail reprint@sagepub.com. Acceptance of advertising in this journal in no way implies endorsement of the advertised product or service by SAGE, the journal's affiliated society(ies), or the journal editor(s). No endorsement is intended or implied. SAGE reserves the right to reject any advertising it deems as inappropriate for this journal.

Supplements: Address all correspondence to Barbara Eisenberg, SAGE Publishing, Thousand Oaks, California 91320, (805) 410-7763 (phone), reprint@sagepub.com (e-mail).

Change of Address for Non-Members: Six weeks' advance notice must be given when notifying of change of address. Please send the old address label along with the new address to the SAGE office address above to ensure proper identification. Please specify the name of the journal.

THE JOURNAL OF
LAW, MEDICINE & ETHICS
SPECIAL SUPPLEMENT TO VOLUME 45:1 • SPRING 2017

BOARD OF EDITORS

- Anita Allen-Castellitto, J.D., Ph.D.
University of Pennsylvania Law School
- Troyen A. Brennan, M.D., J.D., M.P.H.
*CVS Caremark
Harvard School of Public Health*
- Baruch A. Brody, Ph.D.
Baylor College of Medicine
- Arthur L. Caplan, Ph.D.
University of Pennsylvania Medical Center
- R. Alta Charo, J.D.
University of Wisconsin Law School
- James F. Childress, M.A., Ph.D.
University of Virginia
- Ellen Wright Clayton, M.D., J.D.
Vanderbilt University School of Medicine
- Bernard M. Dickens, Ph.D., LL.D., LL.M.
University of Toronto Faculty of Law
- Nancy Neveloff Dubler, LL.B.
Montefiore Medical Center
- Ezekiel J. Emanuel, M.D., Ph.D.
University of Pennsylvania
- Norman C. Fost, M.D., M.P.H.
University of Wisconsin Medical School
- Barry Furrow, J.D.
Drexel University Earle Mack School of Law
- Jay A. Gold, M.D., J.D., M.P.H.
MetaStar, Inc.
- Lawrence O. Gostin, J.D., LL.D. (Hon.)
*Georgetown University Law Center
Johns Hopkins University*
- Ana Smith Iltis, Ph.D.
Wake Forest University
- Sandra H. Johnson, J.D., LL.M.
Saint Louis University School of Law
- Jeffrey P. Kahn, Ph.D., M.P.H.
Johns Hopkins University
- Marshall B. Kapp, J.D., M.P.H.
Florida State Colleges of Medicine and Law
- Nancy M. P. King, J.D.
*University of North Carolina
School of Medicine*
- John D. Lantos, M.D.
Center for Practical Bioethics
- Zita Lazzarini, J.D., M.P.H.
University of Connecticut Health Center
- Theodore R. LeBlang, J.D.
*Southern Illinois University
School of Medicine*
- Robert J. Levine, M.D.
Yale University
- Wendy K. Mariner, J.D., LL.M., M.P.H.
Boston University School of Public Health
- Maxwell J. Mehlman, J.D.
Case Western Reserve University
- Alan Meisel, J.D.
University of Pittsburgh School of Law
- Christine I. Mitchell, R.N., M.S., M.T.S., FAAN
Children's Hospital Boston
- Jonathan D. Moreno, Ph.D.
University of Pennsylvania
- E. Haavi Morreim, Ph.D.
*University of Tennessee College
of Medicine*
- Thomas H. Murray, Ph.D.
The Hastings Center
- Wendy E. Parmet, J.D.
Northeastern University School of Law
- Edmund D. Pellegrino, M.D.
Georgetown University Medical Center
- Stephen G. Post, Ph.D.
Stony Brook University
- Philip R. Reilly, M.D., J.D.
Third Rock Ventures
- Arnold J. Rosoff, J.D.
*University of Pennsylvania —
Wharton School*
- Karen H. Rothenberg, J.D., M.P.A.
University of Maryland School of Law
- Margaret A. Somerville, A.M., FRSC
McGill University
- Daniel P. Sulmasy, O.F.M., M.D., Ph.D.
University of Chicago
- Susan M. Wolf, J.D.
University of Minnesota Law School
- Stuart J. Youngner, M.D.
Case Western Reserve University

THE JOURNAL OF
LAW, MEDICINE & ETHICS
C O N T E N T S

SPECIAL SUPPLEMENT TO VOLUME 45:1 • SPRING 2017

Symposium Articles

SYMPOSIUM

2016 Public Health Law Conference — Lead, Connect, Innovate: Strategies for Achieving Health Equity

Guest Edited by
Donna E. Levin

1
Letter from the Editor

Cover image © Getty Images

8

INTRODUCTION

Donna E. Levin

11

Maximizing Community Voices to Address Health Inequities: How the Law Hinders and Helps

Julie Ralston Aoki, Christina Peters, Laura Platero, and Carter Headrick

This paper highlights the need to apply an equity lens when assessing the impact of preemption and related legal doctrines on community health. Community autonomy to set and pursue public health priorities is an essential part of achieving health equity. Unfortunately, the priorities of organized industry interest groups often conflict with health equity goals. These groups have a history of successfully using law to limit community autonomy to pursue public health measures, most notably through preemption and related legal doctrines. We examine this phenomenon using two examples. First, we look at dental association efforts to block the spread of dental therapists in Indian Country. Native dental therapists have been improving the oral health of native people in Alaska for over a decade; yet the national and state dental associations have sought with mixed success to leverage state and federal laws to hinder other tribal governments from utilizing these providers. We compare these efforts with a restaurant association-led movement to limit what municipal governments can do to address food-based health inequities, focusing on a “model” ALEC bill that started in Ohio. Finally, we discuss how municipalities and Tribes are fighting back and continuing to pursue health equity for their communities.

16

The Latest in Vaccine Policies: Selected Issues in School Vaccinations, Healthcare Worker Vaccinations, and Pharmacist Vaccination Authority Laws
Leila Barraza, Cason Schmit, and Aila Hoss

This paper discusses recent changes to state legal frameworks for mandatory vaccination in the context of school and healthcare worker vaccination. It then discusses state laws that allow pharmacists the authority to vaccinate.

20

Action, Not Rhetoric, Needed to Reverse the Opioid Overdose Epidemic

Corey Davis, Traci Green, and Leo Beletsky

Despite shifts in rhetoric and some positive movement, Americans with the disease of addiction are still often stigmatized, criminalized, and denied access to evidence-based care. Dramatically reducing the number of lives unnecessarily lost to overdose requires an evidence-based, equity-focused, well-funded, and coordinated response. We present in this brief article evidence-based and promising practices for improving and refocusing the response to this simmering public health crisis. Topics covered include improving clinical decision-making, improving access to non-judgmental evidence-based treatment, investing in comprehensive public health approaches to problematic drug use, and changing the way law enforcement actors interact with people who use drugs.

24

Public Health and Politics: Using the Tax Code to Expand Advocacy

Eric Gorovitz

Protecting the public's health has always been an inherently political endeavor. The field of public health, however, is conspicuously and persistently absent from sustained, sophisticated engagement in political processes, particularly elections, that determine policy outcomes. This results, in large part, from widespread misunderstanding of rules governing how, and how much, public advocates working in tax-exempt organizations can participate in public policy development.

This article briefly summarizes the rules governing public policy engagement by exempt organizations. It then describes different types of exempt organizations, and how they can work together to expand engagement. Next, it identifies several key mechanisms of policy development that public health advocates could influence. Finally, it suggests some methods of applying the tax rules to increase participation in these arenas.

28

**Homelessness and the Public's Health:
Legal Responses**

*James G. Hodge, Jr., Barbara DiPietro, and
Amy E. Horton-Newell*

This commentary addresses public health issues underlying homelessness and related law, policy, and advocacy options. After framing public health issues for affected individuals and the community, legal and policy approaches and related barriers are assessed. Major topics include deficits in housing availability, the role of state-based Medicaid programs, criminalization of homelessness, and the use of emergency declarations seeking to address particular issues related to homelessness in select states and localities.

33

**Expanding Access to Care: Scope of
Practice Laws**

Kathleen Hoke and Sarah Hexem

Allied health professionals play an integral role in providing safe, affordable care to communities in need. Laws that define the permissible scope of practice for these professionals may take full advantage of these providers and may unnecessarily restrict safe and effective care. Nurse practitioners in many states may provide care independent of a physician; research reveals that this care is safe, affordable and accessible. Yet hurdles exist that prevent communities from securing the full benefit of NPs in independent practice. The scope of independent practice for allied dental providers varies greatly across the country, often including stringent supervision requirements. Emerging approaches to allowing allied dental providers to practice independently in certain settings or with dentist supervision via telemedicine and creating the intermediate provider, the dental therapist, may increase access to safe, affordable dental care. Research on the impact of laws that allow broader independent practice by NPs to ferret out the hurdles to full implementation of the spirit of such laws is needed. That research could support expanded independent scope for allied dental providers and other allied health care providers.

37

Promoting Mental Health and Well-Being in Public Health Law and Practice

*Jill Krueger, Nathaniel Counts,
and Brigid Riley*

This article discusses the relationship between stress, physical health, and well-being in cultural context, offers examples of laws, policies, and programs to promote mental health and well-being, and examines how collective impact supports mental health and well-being.

41

**Finished with Menthol: An Evidence-
Based Policy Option That Will Save Lives**

*Joelle M. Lester and Stacey Younger
Gagosian*

Smoking remains the leading cause of preventable disease and death in the United States, killing approximately 480,000 people each year. This crushing health burden falls disproportionately, and recent CDC data shows that large disparities in adult cigarette smoking remain. One factor in these disparities is the use of flavors. Menthol cigarettes and other flavored tobacco products are used at higher rates by vulnerable populations including youth and young adults, African Americans, women, Hispanics and Asian Americans. This is no accident; the tobacco industry has long targeted these same groups. Given FDA's failure to act to ban flavored tobacco products, states and municipalities are considering taking matters into their own hands to protect their communities from these dangerous products. The authors will explore state and local authority to restrict the sales of these products and review the evidence base indicating that removing flavored tobacco products – and menthol combustible products in particular – from the market would significantly reduce the toll of illness and death caused by these products.

45

**The Prescription Drug Pricing Moment:
Using Public Health Analysis to Clarify the
Fair Competition Debate on Prescription
Drug Pricing and Consumer Welfare**

Ann Marie Marciarille

Fair competition law and public health law talk past each other when discussing pharmaceutical pricing and distribution. The former cannot agree on the relevant definition of consumer welfare. The latter does not fully comprehend the highly complex but inherently collective nature of pharmaceutical drug acquisition in the United States. This essay proposes to inject public health discourse into this debate to enrich it, focus it, and render it more accessible to those who must live by its outcome.

50

**Motorcycle Policy and the Public
Interest: A Recommendation for a New
Type of Partial Motorcycle Helmet Law**

*Kurt B. Nolte, Colleen Healy, Clifford M.
Rees, and David Sklar*

Motorcycle helmet laws are perceived to infringe upon individual rights even though they reduce mortality and health care costs. We describe proposed helmet legislation that protects individual rights and provides incentives for helmet use through a differential motorcycle registration fee that requires higher fees for those who wish to ride without a helmet.

THE JOURNAL OF
LAW, MEDICINE &
ETHICS

C O N T E N T S

SPECIAL SUPPLEMENT VOLUME 45: I
SPRING 2017

55

Immigration and Health: Law, Policy, and Ethics

Wendy E. Parmet, Lorianne Sainsbury-Wong, and Maya Prabhu

Immigration poses numerous challenges for health professionals and public health lawyers. This article reviews these challenges. We begin by offering some background on immigration and health and then explain some of the reasons why immigrants are less likely than natives to have health insurance. Next we turn to a discussion of some of the particular challenges relating to the health care of refugees. We conclude by analyzing and rejecting some of the arguments that are made for discriminating against immigrants with respect to the provision of public health benefits and services.

60

Collaborating for Health: Health in All Policies and the Law

Dawn Pepin, Benjamin D. Winig, Derek Carr, and Peter D. Jacobson

This article introduces and defines the Health in All Policies (HiAP) concept and examines existing state legislation, with a focus on California. The article starts with an overview of HiAP and then analyzes the status of HiAP legislation, specifically addressing variations across states. Finally, the article describes California's HiAP approach and discusses how communities can apply a HiAP framework not only to improve health outcomes and advance health equity, but also to counteract existing laws and policies that contribute to health inequities.

65

EPSDT's Role in Improving Child Vision, Hearing, and Oral Health

Jane Perkins

The Medicaid Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefit offers health care coverage specifically targeted to meet the needs to low-income children and children with disabilities. This article provides a brief overview of EPSDT and then discusses how states are working to bring vision, hearing, and oral health services to children through EPSDT.

69

Legal Epidemiology: The Science of Law

Tara Ramanathan, Rachel Hulkower, Joseph Holbrook, and Matthew Penn

The importance of legal epidemiology in public health law research has undoubtedly grown over the last five years. Scholars and practitioners together have developed guidance on best practices for the field, including: placing emphasis on transdisciplinary collaborations; creating valid, reliable, and repeatable research; and publishing timely products for use in decision-making and change. Despite the energy and expertise researchers have brought to this important work, they name significant challenges in marshalling the diverse skill sets, quality controls, and funding to implement legal epidemiology activities. The Centers for Disease Control and Prevention (CDC) has worked to develop cross-cutting research and translation on issues of national priority in legal epidemiology, and has explored ways to overcome some of these challenges. As such, this article describes a case study of the use of law to characterize states' prior authorization policies regarding medication used to treat attention-deficit/hyperactivity disorder (ADHD), a central component of a broader effort to improve behavior therapy options for young children with ADHD. This article highlights the types of legal epidemiology work we have undertaken, the application of this work to an emerging public health problem, and the lessons learned in creating impactful research for the field.

73

Employer Requirements to Work during Emergency Responses: Key Ethics Considerations

Lainie Rutkow, Holly A. Taylor, and Tia Powell

Local health departments and their employees are at the forefront of emergency preparedness and response. Yet, recent studies have found that some local public health workers are unwilling to report to work in a variety of disaster scenarios. This can greatly compromise a response, as many local health departments need "all hands on deck" to effectively meet increased demands. To address these concerns, local health departments have employed varied policy strategies to ensure that employees do report to work. After describing different approaches taken by local health departments throughout the United States, we briefly identify and explore key ethics considerations that arise for local health departments when employees are required to report to work for emergency responses. We then discuss how these ethics considerations may inform local health department practices intended to promote a robust emergency response.

77

Applying an Equity Lens to the Child Care Setting

Krista Scott, Anna Ayers Looby, Janie Simms Hipp, and Natasha Frost

In the current landscape, child care is increasingly being seen as a place for early education, and systems are largely bundling child care in the Early Care and Education sphere through funding and quality measures. As states define school readiness and quality, they often miss critical elements, such as equitable access to quality and cultural traditions. This article provides a summary of the various definitions and structures of child care. It also discusses how the current child care policy conversation can and ought to be infused with a framework grounded in the context of institutional racism and trauma. Models and examples will explore the differences between state government regulations, and how those differ than the regulation and structure of child care in Indian Country.

82

Climate Change and Public Health Policy

Jason A. Smith, Jason Vargo, and Sara Pollock Hoverter

Climate change poses real and immediate impacts to the public health of populations around the globe. Adverse impacts are expected to continue throughout the century. Emphasizing co-benefits of climate action for health, combining adaptation and mitigation efforts, and increasing interagency coordination can effectively address both public health and climate change challenges.

86

Reducing Hospital Readmissions: Addressing the Impact of Food Security and Nutrition

Mathew Swinburne, Katie Garfield, and Aliza R. Wasserman

Food insecurity in the United States is a profound public health challenge that hospitals are uniquely situated to address. Through the enactment of the Hospital Readmission Reduction Program, the Affordable Care Act provides a strong economic incentive for hospitals to actively confront food insecurity within the communities they serve. While there is a spectrum of nutrition interventions that hospitals can look to when engaging in these efforts, healthy food prescriptions and medically tailored meals are two particularly innovative and promising approaches that could help hospitals reduce readmissions by addressing the nutritional needs of vulnerable patients.

90

Policy Approaches to Improving Housing and Health

William C. Tilburg

Safe and healthy housing conditions are critical to improving population health, particularly for the most vulnerable – young children, senior citizens, and individuals with chronic illnesses and disabilities – who spend more time at home and are more susceptible to illness and injury. Across the country, millions of Americans are exposed to lead, radon, asbestos, volatile organic compounds, pests, mold, carbon monoxide, and tobacco smoke in the home, affecting the air they breathe and the water they drink. These household hazards are also associated with a wide range of illnesses and injuries, including asthma, cancer, falls, respiratory infections, and mental health issues. Legal and policy interventions can assist communities grappling with the adverse impacts of poor housing conditions and improve the health and safety of all residents, including vulnerable populations.

94

Health Care System Transformation and Integration: A Call to Action for Public Health

Lindsay F. Wiley and Gene W. Matthews

Restructured health care reimbursement systems and new requirements for nonprofit hospitals are transforming the U.S. health system, creating opportunities for enhanced integration of public health and health care goals. This article explores the role of public health practitioners and lawyers in this moment of transformation. We argue that the population perspective and structural strategies that characterize public health can add value to the health care system but could get lost in transition as changes to tax requirements and payment systems are rapidly implemented. We urge public health leaders to take a more active role in hospital assessments of community health needs and evaluation of the patient outcomes for which providers are accountable.

THE JOURNAL OF
LAW, MEDICINE &
ETHICS

C O N T E N T S

SPECIAL SUPPLEMENT VOLUME 45:1
SPRING 2017

98

**Background Checks for all Gun Buyers
and Gun Violence Restraining Orders:
State Efforts to Keep Guns from High-Risk
Persons**

*Jon S. Vernick, Ted Alcorn, and
Joshua Horwitz*

There were more than 36,000 firearm-related deaths in the U.S. in 2015. Under federal law, a background check is required only for gun purchases from licensed dealers. Research suggests that some persons prohibited from owning a gun turn to private sellers, including those identified online, to attempt to obtain a firearm. State-level approaches to make it more difficult for high-risk persons to purchase or possess firearms include universal background check (UBC) and gun violence restraining order (GVRO) laws. UBC laws, on the books in 18 states as of the end of 2016, can reduce both homicide and suicide rates. After Colorado adopted a UBC law in 2013, the number of background checks conducted by private sellers for sales occurring at places other than gun shows steadily increased. GVRO laws give law enforcement and families the authority to petition a court to temporarily remove firearms from an individual who presents a danger to himself or others during times of crisis, regardless of whether that person has been diagnosed with a mental illness. California enacted a GVRO law in 2014. Data are emerging to suggest the effectiveness of GVRO-type laws at averting suicides and providing an entryway to services.

Symposium articles are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

Independent articles are essays unrelated to the symposium topic, and can cover a wide variety of subjects within the larger medical and legal ethics fields. These articles are peer reviewed.

Columns are written or edited by leaders in their fields and appear in each issue of JLME.

Next Issue:

**Covert
Medication**

A Symposium
Guest Edited
by Rosalind
Abdool