Essential Readings in Health Policy and Law

Joel B. Teitelbaum, JD, LLM
The George Washington University
School of Public Health and Health Services
Department of Health Policy
Washington, DC

Sara E. Wilensky, JD, MPP
The George Washington University
School of Public Health and Health Services
Department of Health Policy
Washington, DC

JONES AND BARTLETT PUBLISHERS
Sudbury, Massachusetts
Boston  Toronto  London  Singapore
Contents

Series Page vii
Preface ix

Part I Overview of Public Health 1

Introduction 2


Reading 2 Lawrence O. Gostin et al., The Law and the Public’s Health: The Foundations from Law in Public Health Practice 21

Reading 3 Case Law: Jacobson v. Massachusetts (Validity of State Mandatory Vaccine Law) 33

Reading 4 Case Law: DeShaney v. Winnebago County Social Services Department (Public Welfare and the “Negative Constitution”) 43

Reading 5 Case Law: Town of Castle Rock, Colorado v. Gonzales (Public Welfare and the “Negative Constitution”) 53

Reading 6 Executive Summary from The Future of the Public’s Health in the 21st Century 61
Part II Health Care Quality

Introduction 72

Reading 7 Executive Summary from *Crossing the Quality Chasm* 73

Reading 8 Elizabeth A. McGlynn et al., The Quality of Health Care Delivered to Adults in the United States from *New England Journal of Medicine* 87

Reading 9 Summary from *Unequal Treatment* 99

Reading 10 Case Law: *Canterbury v. Spence* (Patient-Oriented Standard of Informed Consent) 113

Reading 11 Case Law: *Jones v. Chicago* (Managed Care Liability for Institutional Negligence) 127

Part III Policy, Law, Medicine, and Ethics 137

Introduction 138

Reading 12 Carol Levine, Analyzing Pandora’s Box: The History of Bioethics from *The Ethics of Bioethics* 139

Reading 13 James F. Childress et al., Public Health Ethics: Mapping the Terrain 151

Reading 14 Case Law: *Roe v. Wade* (Constitutional Right to Abortion) 161

Reading 15 Case Law: *Planned Parenthood v. Casey* (Validity of Pennsylvania Abortion Statute) 175

Reading 16 The Partial Birth Abortion Ban Act 197

Reading 17 Case Law: *Gonzales v. Carhart* (Constitutionality of the Partial Birth Abortion Ban Act) 203

Reading 18 Case Law: *Cruzan v. Director, Missouri Department of Health* (Constitutional Right to Withdraw Life-Sustaining Treatment) 217

Reading 20  Case Law: *Vacco v. Quill* (Physician-Assisted Suicide) 249

Reading 21  The Oregon Death With Dignity Act Statute, Regulations, and State’s Report on Its Use 255

Reading 22  Case Law: *Gonzalez v. Oregon* (Physician-Assisted Suicide) 275

Part IV  Rethinking the Public Health and Health Care Systems 285

Introduction 286

Reading 23  James Morone, Morality, Politics, and Health Policy from *Policy Challenges in Modern Health Care* 287

Reading 24  Thomas Rice, Can Markets Give Us the Health System We Want? 295

Reading 25  Sara Wilensky and Dylan Roby, Health Centers and Health Insurance: Complements, Not Alternatives 307

Reading 26  Bruce Siegel et al., Health Reform and the Safety Net: Big Opportunities; Major Risks 315


Reading 28  State Coverage Initiative, State of the States: Building Hope, Raising Expectations 337

Reading 29  Lawrence Brown, Comparing Health Systems in Four Countries: Lessons for the United States 363

Reading 30  Karen Davis, Learning from High Performance Health Systems Around the Globe 371

Part V  Tools for Health Policy Analysis 383

Introduction 384

Reading 31  Gail Wilensky, Framing the Public Policy Question: Financial Incentives for Efficiency and Effectiveness 385
See www.jbpub.com/essentialpublichealth for the latest information on the series.

TEXTS IN THE ESSENTIAL PUBLIC HEALTH SERIES:

Essentials of Public Health—Bernard J. Turnock, MD, MPH

Essentials of Environmental Health—Robert H. Friis, PhD

Essentials of Health Policy and Law—Joel Teitelbaum, JD, LLM, and Sara Wilensky, JD, MPP
  With accompanying Readings in Health Policy and Law

Essentials of Global Health—Richard Skolnik, MPA

Case Studies in Global Health: Millions Saved—Ruth Levine, PhD, and the What Works Working Group

Essentials of Health Behavior—Mark Edberg, PhD
  With accompanying Readings in Health Behavior

Essentials of Biostatistics—Lisa Sullivan, PhD
  With accompanying Workbook: Statistical Computations Using Excel

Epidemiology 101—Robert H. Friis, PhD

Essentials of Infectious Disease Epidemiology—Manya Magnus, PhD, MPH
  With accompanying Readings in Infectious Disease Epidemiology

Essentials of Public Health Economics—Diane Dewar, PhD


ABOUT THE EDITOR:

Richard Riegelman, MD, MPH, PhD, is professor of Epidemiology-Biostatistics, Medicine, and Health Policy and founding dean at George Washington University School of Public Health and Health Services in Washington, DC.
Essential Readings in Health Policy and Law is a companion to the Essentials of Health Policy and Law textbook. In the textbook, we explain how health policies and laws are influenced and formulated, describe a series of critical issues encountered in the study of health policy and law, and offer various frameworks for thinking about how to approach the issues going forward. The textbook is intentionally introductory and concise; it aims to provide the reader with a foundation in the seminal issues in American health policy and law and with a starting point for further reflection, research, and analysis.

As a companion to the textbook, Essential Readings is meant to assist introductory health policy and law students with their pursuit of more advanced study and discussion. It is a compilation of carefully selected readings—book chapters and articles, case law, statutes and regulations, and public policy “tools” such as health budget proposals—meant to allow for deeper analysis of topics covered in the textbook, as well as the study of a few topics not covered in the textbook due to space constraints.

Although this book is, in terms of its content, closely linked to its companion textbook, this is not the case in terms of its structure. Unlike the chapter structure of the textbook, this book is divided into five broad parts. We adopted this approach because of the flexibility it affords professors and students, given that the study of introductory health policy and law takes place across a spectrum: At some universities, introductory health policy might be taught, whereas health law is not; some institutions teach both health policy and law but do so as distinct courses (if not distinct disciplines), and some students study both health policy and law in the same course. Furthermore, many academic institutions are undertaking efforts to introduce basic health policy and/or law courses into their curriculum. It is our hope that the structure of the Essentials of Health Policy and Law textbook and this companion provide the requisite flexibility to be useful across this pedagogical spectrum.

Although the readings included herein can be fairly said to represent the perspectives of individual authors, policymakers, and judges that span the spectrum of political and social thought, this is true only generally, rather than with respect to each topic covered. This reflects our desire to reproduce a series of writings meant not to divide readers into specific camps—“I agree with that argument” or “I align myself most closely with this policy position”—but to offer thought-provoking readings intended to stimulate discussion, group reflection, and reassessment of one’s own pre-existing thoughts or beliefs. In other words, we hope to not only provide in-depth information on critical health policy and law issues facing the country but to create a classroom environment where free-flowing thought and discussion is more the norm than are preconceived positions seeking affirmation.

In somewhat the same vein, in most instances, we have reproduced the resources completely, rather than as edited versions. (One important exception to this is in the case of some judicial opinions, which can sometimes span dozens and dozens of pages when all related opinions—concurrences and dissents, in addition to the court majority’s opinion—
are included.) We opted for this approach (rather than shortening documents in the hope of being able to include additional items) to maintain the authenticity and full context of the writings, thus allowing students to perhaps more easily form their views about a particular reading.

As mentioned, this book is divided into five parts, with each part including a brief introduction to the reading selections included. Part I provides a basic overview of public health. It is intended to be read by students with little or no background in the field or by those students looking to brush up on the key components of the field of public health, including the legal foundations of public health practice. Part II is concerned with healthcare quality, an area of critical policy and legal importance and one that has received great attention over the last few years, particularly as it relates to information technology. It is an area that deserves more attention among introductory students than we were able to provide in the companion textbook. Part III centers on the intersection of policy and law with medicine and ethics, including the evolution of public health ethics, which has long lingered in the shadow of medical ethics. In Part IV, we offer several resources on the topic of health system reform, which if nothing else is heralded for its ability to utterly defy consensus. The included articles are sure to spawn discussion about whether and how to reform the public health and healthcare systems. Finally, in Part V, we include a series of resources collectively called “Tools for Health Policy Analysis.” These include practical articles describing the methods—and potential pitfalls—of policy analysis, as well as examples of the administrative regulations, informal government memoranda, and budget proposals that serve as important instruments in a policymaker’s toolbox.