Symposium Articles

7 INTRODUCTION
Donna E. Levin

10 Community Experiments in Public Health Law and Policy
Angela K. McGowan, Gretchen G. Musicant, Sharonda R. Williams, and Virginia R. Niehaus

Community-level legal and policy innovations or “experiments” can be important levers to improve health. States and localities are empowered through the 10th Amendment of the United States Constitution to use their police powers to protect the health and welfare of the public. This article describes innovative approaches to public health law and policy from Minneapolis and New Orleans, communities who have been honored by the Robert Wood Johnson Foundation (RWJF) for addressing health by focusing not solely on health care access and quality, but the wider environment, including transforming neighborhoods, schools, and businesses and addressing inequities. Specifically, this article discusses examples of how these cities have used public health legal and policy approaches and novel partnerships to promote healthy eating and active living, reduce exposure to secondhand smoke, and prevent violence.

15 Domestic Legal Preparedness and Response to Ebola
James G. Hodge, Jr., Matthew S. Penn, Montrece Ransom, and Jane E. Jordan
Initial cases of Ebola in the U.S. raise varied legal issues as discussed at a late-breaking session at the 2014 Public Health Law conference. Session presenters share their perspectives on (1) state and local powers to quarantine and isolate persons, and (2) hospital preparedness under lying the treatment of Ebola patients.

19 Lessons Learned from the Expansion of Naloxone Access in Massachusetts and North Carolina
Corey S. Davis, Alexander Y. Walley, and Colleen M. Bridger
Increasing access to the medication naloxone is an effective and cost-effective method of reducing opioid overdose deaths. This article describes the role of law as a key factor in the evolution of naloxone access initiatives in Massachusetts and North Carolina, providing lessons learned and a brief roadmap for future action.

23 E-Cigarettes: Policy Options and Legal Issues Amidst Uncertainty
Nancy Kaufman and Margaret Mahoney
Responsibly marketed and properly regulated, ENDS could potentially benefit public health. ENDS policies should be adaptable as evidence emerges. FDA must finalize its proposed rule, while states and localities exercise their powers to tax and regulate ENDS as they do other tobacco products.

27 Creating Legal Data for Public Health Monitoring and Evaluation: Delphi Standards for Policy Surveillance
David Presley, Thomas Reinstein, Damika Webb-Barr, and Scott Burris
Public Health Law Research used a Delphi process to develop consensus expert standards for policy surveillance. Consensus was reached on a set of core standards for collecting, analyzing, publishing and maintaining legal datasets for monitoring important public health policies. Further efforts are needed to refine standards and develop the infrastructure for policy surveillance.

32 Lessons from the Residual Newborn Screening Dried Blood Sample Litigation
Michelle Huckaby Lewis
The retention and secondary use of residual newborn screening dried blood samples without parental consent have generated controversy and resulted in lawsuits against health departments in Texas, Minnesota and Indiana. This manuscript summarizes the legal issues raised in the litigation and highlights additional parental concerns.
36 Shared Use and Safe Routes to School: Managing the Fear of Liability
Benjamin D. Winig, John O. Spengler, and Alexis M. Etow

Schools should embrace shared use and Safe Routes to School (SRTS) initiatives to improve student health. Fear of liability, however, has made many schools reluctant to support these efforts despite their proven benefits. This paper discusses school administrators’ concerns about liability and identifies four strategies to help manage their fear.

40 Defining Commercial Speech in the Context of Food Marketing
Jennifer L. Pomeranz and Sabrina Adler

The regulation of food marketing is a strategy to address obesity. Marketers engage in both commercial speech, which receives some First Amendment protection, and non-speech activities that fall outside of the First Amendment’s realm; no marketing practice constitutes fully protected speech. We explore these distinctions in the public health context.

44 Navigating the Incoherence of Big Data Reform Proposals
Nicolas Terry

From 2012-14 various branches of the federal government published five major reports that either deal generally with modern challenges to privacy or specifically address the privacy threats of big data. All five displayed serious intent and were based on reasonably rigorous analysis. While these reports, to lesser and greater extents, all expressed the necessity for legislative or regulatory intervention, their recommendations are diverse. It may be that this lack of coherence is one of the reasons why no legislation has been proffered. In this article, I describe the various proposals and offer a critical synthesis, arguing that Congress needs to take up the 2012 White House FIPPS proposals and ensure that data subjects have more control over what data are collected and that the contexts for any collection are respected.

48 The Role of Law in Supporting Secondary Uses of Electronic Health Information
Tara Ramanathan, Cason Schmit, Akshara Menon, and Chanelle Fox

Law establishes the foundation for the “secondary use” of electronic health information (EHI) for public health purposes. Federal law, state law, and legal tools, such as contracts and policies, support data exchange between providers, facilities, and public health departments. This article describes the legal landscape surrounding secondary use of EHI.

52 The Health in All Policies (HiAP) Approach and the Law: Preliminary Lessons from California and Chicago
Claudia Polsky, Kendall Stagg, Maxim Gakh, and Christine T. Bozlak

Health in All Policies (HiAP) is an approach to enhancing public health by better informing government decisions and public policies made outside the health sector. The City of Chicago and State of California are engaged in concurrent HiAP experiments. Their accomplishments to date demonstrate the power of the HiAP process.

56 Hospitals, Collaboration, and Community Health Improvement
Martha H. Somerville, Laura Seeff, Daniel Hale, and Daniel J. O’Brien

This article explores how the ACA’s community health needs assessment requirement and the Community Reinvestment Act can encourage collaboration among tax-exempt hospitals, public health agencies, financial institutions, and communities to improve population health through aligned health improvement planning and initiatives to address social, economic, and environmental factors that affect health.

60 Tribal Water Rights: Exploring Dam Construction in Indian Country
Jerilyn Church, Chinnyere O. Ekechi, Aila Hoss, and Anika Jade Larson

This paper examines the legal and policy framework related to Tribal water rights, with a key focus on the environmental public health impacts of dam construction in Indian Country. Three dam projects will be highlighted: the Dalles Dam, the Elwha River Dams, and the Pick-Sloan Missouri River Basin Program.

64 State Health Department Employees, Policy Advocacy, and Political Campaigns: Protections and Limits Under the Law
Shannon Frattaroli, Keshia M. Pollack, Jessica L. Young, and Jon S. Vernick

This article examines the laws and agency rules for how state health department employees can participate in policy development and campaign activities outside of their official capacity. With this information, agency leaders and other public sector employees can be supported in maximizing their contributions to advancing public health policies.
69 Harnessing the Public Health Power of Model Codes to Increase Drinking Water Access in Schools and Childcare
Cara L. Wilking, Angie L. Cradock, and Steven L. Gortmaker
Drinking water infrastructure in schools and childcare is shaped by state and local plumbing codes that are derived from model codes set by private organizations. This article describes the model code process and policy intervention points where the public health community can work to improve child drinking water access.

73 Adventures in Nannydom: Reclaiming Collective Action for the Public’s Health
Lindsay F. Wiley, Wendy E. Parmet, and Peter D. Jacobson
This article presents a summary of recent collaborative efforts to understand and respond to nanny state rhetoric. Instead of summarily rejecting the libertarian critique of paternalism, public health advocates must develop a forceful response that exposes its weak legal basis and reframes the debate in terms of democratic collective action.

76 Mental Health Emergency Detentions and Access to Firearms
Jon S. Vernick, Emma E. McGinty, and Lainie Rutkow
Most persons with mental illness are never violent. However, during certain high-risk periods, small subgroups of individuals with serious mental illness are at increased risk of violence. We review epidemiologic evidence, federal law, and a recent case addressing whether persons subject to emergency mental health detentions constitutionally can be denied firearm ownership.

79 Human Health Impacts of Climate Change: Implications for the Practice and Law of Public Health
Jill Krueger, Paul Biedrzycki, and Sara Pollock-Hoverter
This article describes the health impacts of climate change, especially upon vulnerable populations. The bulk of the article sets forth legal and public health strategies to lessen the health impacts of climate change through adaptation and mitigation at the local, state, and national levels. It will demonstrate that action to address this emerging threat to public health is both achievable and necessary and will provide examples of current successes and challenges.

83 Is Sharing De-identified Data Legal? The State of Public Health Confidentiality Laws and Their Interplay with Statistical Disclosure Limitation Techniques
Victor Richardson, Sallie Milam, and Denise Chrysler
The multiplicity and age of state confidentiality laws often stymie the flow of public health data. De-identification promises a solution to this problem, but is shadowed by the specter of re-identification attacks. This article examines de-identification’s efficacy and legality – ultimately concluding it is a safe and effective data liberation tool.

87 The Four Stages of Youth Sports TBI Policymaking: Engagement, Enactment, Research, and Reform
Hosea H. Harvey, Dionne L. Koller, and Kerri M. Lowrey
Drawing from research on a variety of public health law interventions, this article frames such interventions as developing in four key stages: engagement, enactment, research, and reform. Here, we apply this four-stage framework to youth sports TBI laws, while postulating connections to past interventions and predicting future outcomes.

91 Emergency Preparedness and Response for Disabled Individuals: Implications of Recent Litigation
Lainie Rutkow, Holly A. Taylor, and Lance Gable
Legal protections granted to disabled individuals remain in place during emergencies. This article considers lawsuits brought against Los Angeles and New York concerning their treatment of disabled individuals within their emergency plans, explores how the principle of justice supports these rulings, and discusses lessons learned for other localities.

95 Bridging the Gap between Science and Law: The Example of Tobacco Regulatory Science
Micah L. Berman and Annice E. Kim
This article discusses the importance of attorney-scientist collaborations in developing research to inform pressing legal and policy issues. The emerging field of “tobacco regulatory science” is one promising context for fostering such collaborations. This article highlights experiments relating to tobacco advertising and promotion at the point-of-sale that demonstrate the promise of attorney-scientist partnerships.
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.

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From Beginning to End: The Importance of Evidence-Based Policymaking in Vaccination Mandates
Daniel G. Orenstein and Y. Tony Yang
Public health laws and policies often balance individual rights and public good. Evidence is the foundation for public health authority, and vaccination mandates require particular mindfulness due to intrusion on individual choice. New approaches are emerging in several states and must continue to be vetted using the best available evidence.

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Brent Davidson, Susan Sherman, Leila Barraza, and Maria Julia Marinissen
International deployment of government public health and medical personnel is often necessary to respond to emergencies and enhance global health security. However, there are unique legal challenges for donors and recipient countries. Here, we summarize some of those challenges and existing international fora that may help to identify solutions.

Next Issue:
Intersections in Reproduction: Perspectives on Abortion and Assisted Reproductive Technologies
A Symposium Guest Edited by Judith A. Daar and Kimberly Mutcherson