Introduction

Laws, ordinances, regulations, and executive orders create the powers and duties of public health agencies and modify the complex community conditions that affect health. Appropriately trained legal counsel serving as legal advisors on the health officer’s team facilitate clear understanding of the legal basis for public health interventions and access to legal tools for carrying them out.

Legal counsel serve public health agencies via different organizational arrangements — e.g., internal staff counsel, external counsel from the state attorney general’s (AG) office, state health department, county or city, or private counsel under contract, or in combination. As of 2011, most state health departments (63%) employ their own counsel, and 56% use AG counsel, while 17% contract with independent attorneys; most local health departments (66%) work with attorneys and legal staff assigned by local government, by the state health agency (23%), or contract with outside attorneys and legal staff (15%). Arrangements that situate both parties in close proximity can be an informal means to facilitate information exchange between the public health officer and legal counsel, thereby increasing their collective understanding of public health law. These arrangements vary by state; in some, the counsel are employed by the health agency and sit in close proximity to the health officer and is a regular member of the executive team; in others the counsel is employed by the attorney general or health superagency but has their sole office or a second office situated among the health officer’s executive team.

Typically, legal counsel for health departments are not formally trained in public health. Schools of law offer limited or no teaching of public health law, and faculty lack the specific training to do so. Most law schools offer courses in health law, but few offer public health law courses that examine the role law plays in keeping our communities healthy. The core curriculum misses the perspectives, values and insights of public health, and law students learn about public health only if they go out of their way to take a seminar, independent study, or enroll in a J.D./M.P.H. program. The same can be said of most M.P.H. students who are not required to take a public health law course as part of their training.

Thus, counsel and health officials do not automatically possess specific public health knowledge or understanding of public health law, respectively. Understanding ways that public health lawyers and public health practitioners work together to address critical public health issues offers opportunities to
identify barriers and create functional improvements. Understanding the way that both parties think about law is important: is it a tool to improve health, a barrier to getting work done, or something else? To date, there has been little systematic empirical evidence to understand the education, training, and working practices of counsel and public health officials. A recent article begins to do so by examining the relationship between legal training and understanding legal requirements for preparedness. While ASTHO and NACCHO include questions regarding legal services provided and the individuals who provide them in their profiles of state and local health departments, this information only scratches the surface of the relationships. To delve deeper, we designed a mixed-methods study among state and local health officials and legal counsel to better understand the way in which the two parties collaborate. This study and training needs assessments conducted by the Northwest Center for Public Health Practice (Center) are reported here.

**Mixed-Methods Study of Public Health Law Collaboration**

We surveyed all 50 state health officials and a sample of local health officials and their legal counsel, respectively. We then conducted in-depth interviews with health officials and legal counsel in a random sample of 10 states stratified on their governance and organizational structure. Within each of the 10 states, we interviewed a sample of local health officials and legal counsel stratified by geography and population served. The study was the first of its kind to document the way in which the two parties interact and the way they think about law and how to use it.

In addition to an interest in receiving training themselves, state legal counsel (SLC) identified an expanding need for providing legal training to public health officials, middle management, and for local counsel and health department staff. Training by SLCs was viewed as critical for enhancing the use of counsel and empowering managers to triage issues whenever possible. In many health departments where resources for legal services are limited, the ability of managers to make educated decisions while conducting routine public health activities — in essence understanding legal boundaries and operating in accordance with them — makes their legal counsel’s time available for dealing proactively with emerging threats to the public’s health and authority to act. SLC also believe that knowing more about the toolbox of legal options gives managers creative options to avoid the lengthy and risky process of passing legislation.

Barriers identified by counsel included the absence of public health and executive team management skills within the law school curriculum, lack of time and finances mid-career to pursue an M.P.H., and lack of time and teaching tools to train agency staff in legal concepts. Local health officials noted their limited access to attorneys with in-depth knowledge of public health.
**Needs Assessment of Public Health Training**

Over the past three years, the Center conducted three assessments of training needs, interests, and priorities, including topics pertaining to public health law and policy — two quantitative assessments and one qualitative study. The results of the three were consistent.

They demonstrate increased interest by public health professionals in understanding and working with the law. One assessment identified public health law and policy as the topic for which there was the greatest gap between the perceived importance of the topic (high) and the amount of training received or skills level (low). The priority topics for training identified in the related interviews included the need for training of public health staff on recognition of public health law concepts and issues, as well as guidance in working with counsel. The suggestion was also made for “just-in-time” or modular training about public health law topics for counsel, especially those who work with local public health. Both public health practitioners and the public health counsel were very interested in opportunities to learn about contemporary legal issues through the experience of others in the field.

**Opportunities Moving Forward**

The two studies presented here are just a starting point and much more work is needed to understand the way that law is conceptualized and used in public health practice. These studies express the needs and interest among public health practitioners and counsel for using law more effectively in carrying out the mission of protecting and improving the public’s health. The complexities and multi-factor origins of modern society’s public health challenges require teamwork across professions and among colleagues in related government agencies, such as environment, transportation and agriculture. The findings present several opportunities for addressing these concerns.

Firstly, we can work to better prepare future counsel during their legal education for public sector practice working on executive management teams that include non-lawyers. This could be achieved via a course using cases as the basis for team teaching law and public health graduate students together, using faculty from law, public health, and business management schools. Other opportunities include externships within a public health agency or public health sector non-governmental advocacy organization (NGO), such as state offices of the American Cancer Society or American Heart Association, and participation in public health legal clinics following the model developed by the University of Maryland Carey School of Law. All law schools that teach health law should offer a course (or substantial content) on the foundations of public health law and practice, which could be taught within the law school or in collaboration with a school of public health. The Carnegie Commission on Legal Education\(^3\) calls for changing law schools to include methods and experiences that give law students direct training in professional practice. Public health agencies and counsel should reach out to law schools to encourage and assist them with including public health content in the changes in offerings that many schools have underway post the Carnegie call to action.

Secondly, we can work to change M.P.H. curriculum to require that M.P.H. students complete substantive public health law content; such an effort would require careful partnership with the Council on Education for Public Health\(^4\) and its accreditation requirements, who will be undertaking a review of accreditation criteria in the next few years. While some M.P.H. students, such as epidemiologists and biostatisticians, do not necessarily intend to pursue careers in administration and policymaking, the work they do is grounded in law via statutory or regulatory disease reporting requirements, confidentiality and data privacy requirements, and ethical requirements for research.

Thirdly, existing practitioners clearly need opportunities to enhance their legal and public health skills. Public health counsel not able to commit to obtaining an MPH should have access to a certificate program, akin to the health certification now available from some law schools. Partnership with the American Association of Law Schools and the American Bar Association could explore creating a post-J.D. public health law option, with assistance from schools of public health.

Other opportunities include granting sabbaticals to counsel, to enable them to complete field experiences in local health departments, taking counsel into the field on routine or emergency assignments (e.g., inspections, disasters, outbreaks), and including counsel in program staff training or leadership institutes provided by state public health institutes and CDC.

Public health practitioners benefit from on the job training on law. Counsel should find efficient ways of creating and delivering training and methods for engaging adult learners. Training templates on common public health law topics could be created nationally, that would allow counsel to easily modify them to fit their states, localities, typical cases, and cultures. A toolkit for teaching adult learners could be created (e.g., writing learning objectives, using active learning principles, constructing cases studies, slide templates).

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\(^1\) Kaufman, Allan, and Ibrahim

\(^2\) https://www.umsystem.edu

\(^3\) The Carnegie Commission on Legal Education

\(^4\) Council on Education for Public Health
For both groups, web-based, self-paced training emerges as a practical means for delivering basic and specialized just-in-time training. Some web modules have been developed by the Center and CDC’s public health law program, and the Network for Public Health Law and the Public Health Law Research program sponsor monthly webinars. To extend their use by practitioners, indexing online with segment tags would allow learners to go back at a later time and go directly to the information segment needed for quick reference rather than having to replay the entire event.

Tremendous opportunity exists for improving population health through law. Using it most effectively will require a change in the mindset, training, and even organizational arrangements in some agencies to better position health officials and legal counsel to collaborate. Improving the use of law in public health is possible — if practitioners and legal educators work together to fulfill its promise.

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References
4. NACCHO (National Association of County and City Health Officials), 2010 National Profile of Local Health Departments, 2011, Washington, D.C.