

# public health preparedness and function

## public health lawyer



### Public Health Lawyer Checkpoint

Do you have a law degree, or are you familiar with the United States legal system?

Are you interested in the statutes and regulations that provide the foundations for public health agencies?

Are you willing to immerse yourself in critically important areas of public health policy?

*If so, read on*

### A TRUE TALE

Lawrence Gostin's path into public health took him from North Carolina to the U.K., to Sicily, to Cambridge and finally to Washington. It began in law school and continues today with academic affiliations. Along the way, a combination of personalities, passion and a deadly epidemic guided him into his career.



Lawrence O. Gostin, JD, LLD (Hon.)

After graduating from Duke Law School, Gostin, JD, LLD (Hon.) went directly to Oxford University on a Fulbright scholarship. He remained in England for 11 years, working as a Legal Director of the National Association for Mental Health and as a faculty member at Oxford University. Then while he was attending a meeting in Sicily he met Dr. William Curran who, at the time, was Professor of Health Law at Harvard University. Dr. Curran convinced him to come to Harvard as an NIH Fellow and to

accept a position as adjunct professor of public health and law. While at Harvard, Gostin also became the Executive Director of the American Society of Law, Medicine, & Ethics.

Gostin cites two studies he led in the early 80s concerned with the then new AIDS epidemic as critical factors in shaping his career: the U.S. AIDS Litigation Project and the Harvard Model AIDS Legislation Project. It was these studies, Gostin says, conducted in the early and baffling first years of the HIV crisis, that confirmed his interest in public health.

In 1995, Gostin received an offer to consider a joint position as Professor of Law at Georgetown University and Professor of Public Health at Johns Hopkins University. The appointment was part of a unique program combining law and public health, known as the Center for Law and the Public's Health (CLPH) at Johns Hopkins and Georgetown Universities. CLPH was founded with

*“Public health authorities require certain legal powers to be effective, but, at the same time, they must continue to respect individual rights and show toleration of groups.”*

support from the Centers for Disease Control and Prevention (CDC), and serves as a primary national resource on public health law, ethics and policy for public health practitioners, lawyers, legislators, policymakers and others. Gostin is presently the center's director.

### Profiling the job

Public health lawyers work in an area of law that has wide-ranging effects on American life. They are involved in policy, regulation and legislation that governs public health-related activities, such as municipal spraying of pesticides to wipe out mosquito concentrations or determining acceptable levels of natural toxins in water reservoirs. When enforced, public health laws are among the most potent tools available for promoting health and preserving life. Think of the seat belt laws that were enacted around the nation in the late '80s and early '90s. "These laws are critical to the public health system because they promote a kind of health education and method of changing health-related behavior," says Gostin.

Significant constitutional issues often come into play in the world of public health law. For example, where medical interventions may become illegally compulsory, public health lawyers are charged with protecting an individual's rights to due process. When dealing with the possibility of potentially infectious outbreaks, public health lawyers need to strike a balance between the sensitive issue of individual privacy and the public's need to know.

Another area of responsibility for public health lawyers involves managing lawsuits on behalf of the state against any facility or company that may be in violation of state health regulations. They also participate in the approval process for licensing and regulating all health care personnel. Public health lawyers are often called upon to manage the guardianship of hospitalized people who may not be competent to represent themselves. Perhaps the public health lawyer's most far-reaching task is to advise legislators on constructing new health laws and writing and adjudicating agency procedures for implementing and enforcing the law.

Today, lawyers interested in a career in public health law have unlimited opportunities. Virtually every category of law has some public health application. Lawyers can work in local, state or national public health agencies with wide oversight and policy responsibilities. The health divisions of law firms have commercial opportunities, and hundreds of volunteer and social



*"In whatever way you practice, public health law is an exciting and rewarding place to be."*

Lawrence Gostin, JD, LLD (Hon.)

action organizations have opportunities for not-for-profit work. Those interested in contract law will negotiate, develop, comply with and cancel contracts with other persons, organizations and agencies for the provision of essential public health services. Lawyers practicing general public health law can expect to become involved in all essential facets of assuring the public's health, including imposing quarantines, revoking or suspending business and medical licenses, monitoring confidentiality in the collection or release of medical data, mandatory institutionalizations and closings of unsafe public premises.

“People entering the field need to be sure they understand the difference between health care law and public health law,” says Gostin. He explains the difference this way: *health care* law primarily deals with regulating medical practice and personal health care, and mandating and regulating the health care delivery system, its financing, and conducting research. *Public health* law, on the other hand, is primarily concerned with the government's powers and duties to assure conditions under which populations will be as healthy as possible; it might reasonably be considered the body of law that creates a citizen's “right” to exist in a healthy environment. Falling within the realm of public health law are pollution control, reduction in violence, health education and disease prevention.



Gostin cites one recently published paper as an example of public health law. In the paper, he describes five models for legal government intervention intended to prevent injury and disease and promote the public's health. The *power to tax and spend* enables the government to set conditions for receiving and disbursing public resources. For example, federal highway funds are granted on the condition that states set the minimum drinking age at 21. With the *power to alter the informal environment*, the government can utilize labeling requirements to promote healthful consumer behavior. *Direct regulation of individuals* enforces regulations such as mandatory use

of seat belts and motorcycle helmets, inspection of businesses and restaurants, and licensing of health-care professionals. *Use of the tort system on behalf of the public's health* becomes necessary when, for example, manufacturers, service providers and even government itself compromises the safety of consumer goods and services. Finally, through the process of *deregulation*, public health lawyers and legislators routinely examine and re-examine laws whose utility for the public health may be out-of-date or may have unnecessarily adverse consequences for business and the public's health.

### A day in the life

There is enormous variety to Larry Gostin's workdays, although he can almost always count on putting in a sizable chunk of time researching and drafting major public health policy initiatives. "Presently, we're working on the Model Public Health Act, which concerns creating a public health preparedness and infrastructure for protecting the health and security of the nation in the event of a biological attack or a naturally occurring infectious disease of emergency proportions. Obviously, this work has become especially urgent since 9/11, and requires frequent conversations with people from the CDC as well as with governors, legislators at the federal, state and local levels, and other top decision makers," he says.

In addition to his policy formation activities and administrative duties, Gostin teaches weekly classes in human rights, constitutional law and public health law. He also serves on the advisory committees of several international and national agencies, such as the World Health Organization, the National Institutes of Health and the CDC.

In contrast to the broad, big-picture issues that occupy Gostin's attention, many public health lawyers deal predominantly with more day-to-day concerns. For example, someone in the office of general counsel at a state health department might begin her day with a meeting about a proposed nursing home closure because of sanitary code violations. Following the meeting, she and her staff might spend two hours reviewing licensing applications from out-of-state health care practitioners. Later in the morning, they may examine a complaint regarding illegal toxic waste disposal.

In the afternoon, she might drive to a hospital where she meets with the administrator to discuss granting a certificate of need to purchase an MRI machine because none exists within a two-mile radius.



### Did you know?

Law dealing with the power of government officials to take action to protect the public's health comes from four main sources: constitutions, statutes, regulations and judicial decisions. Each of these sources of law can be found at both the state and federal levels of government.<sup>1</sup>

“For any lawyer involved in public health, the rewards are really tremendous,” says Gostin. “You know that your work is helping the public health infrastructure and playing a direct role in the betterment of people’s lives. There is so much we in public health can do for people and populations. The law is the enabler of all that.”

## >>> career at a glance

### Lawrence O. Gostin, JD, LLD (Hon.)

- 2002–Present **Visiting Scholar** Centre for Socio-Legal Studies, Oxford University
- 2000–Present **Member** Institute of Medicine Panel, “Assuring the Health of the Public in the 21st Century”
- 2000–Present **Director** Center for Law & the Public’s Health at Johns Hopkins and Georgetown Universities (CDC Collaborating Center)
- 1996–Present **Co-Director** The Johns Hopkins/Georgetown Program on Law and Public Health
- 1995–Present **Professor of Law & Public Health** The Johns Hopkins University, School of Hygiene and Public Health
- 1993–Present **Professor of Law** Georgetown University Law Center
- 1988–1994 **Associate Director** International Collaborating Center on Health Legislations, Harvard University/World Health Organization
- 1986–1994 **Executive Director** American Society of Law, Medicine & Ethics
- 1985–1994 **Adjunct Professor of Law and Public Health** Harvard University
- 1991–1993 **Vice Chair** Committee on the Use of Human Subjects in Research, Harvard School of Public Health
- 1989–1990 **Visiting Fellow** Centre for Socio-Legal Studies, Wolfson College, Oxford University
- 1987–1988 **Legislative Counsel** Labor and Human Resources Committee, Edward Kennedy, Chairman, United States Senate
- 1983–1985 **General Secretary** National Council for Civil Liberties (UK)
- 1982–1983 **Fellow in Psychiatry and Law** Centre for Criminological Research, Oxford University
- 1975–1982 **Legal Director** MIND (National Association for Mental Health) (UK)

<sup>1</sup> [http://www.jhsph.edu/bioterrorism/Bfaq\\_phlp.htm](http://www.jhsph.edu/bioterrorism/Bfaq_phlp.htm)