



Public Health Professionals Gateway

Public Health Law News

December 2021



Public Health Law Program
Center for State, Tribal, Local, and Territorial Support
Centers for Disease Control and Prevention

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Editor's Note

The Public Health Law Program (PHLP) thanks Mareyba Fawad for her exceptional research and writing assistance on the September, October, November, and December editions of the *Public Health Law News*. Ms. Fawad is a master of public health candidate at Columbia University's Mailman School of Public Health.


PHLP would also like to thank Darian Diepholz, MBA, MPH, CHES, for her assistance researching and briefing the court cases for the September, October, November, and December editions of the *Public Health Law News*. Ms. Diepholz is a juris doctor candidate at Saint Louis University School of Law.

PHLP is honored to work with such outstanding students. We hold them in the highest regard and wish them every success in their future endeavors.

Abigail Ferrell, JD, MPA
Editor in Chief

Announcements


NACCHO 360 Conference Now Accepting Abstract Submissions

The National Association of County and City Health Officials (NACCHO) abstract submission period for NACCHO 360 is now open. The conference will be held virtually and in-person **July 19–22, 2022, in Atlanta**. The theme is “Looking to the Future: Reshaping the Public Health System” and will explore innovative and traditional approaches to restructure the public health system. Abstract proposals are due on **January 7**. [View the submission information](#) .


Application Period for CDC’s Public Health Associate Program (PHAP) Opens January 18

The application period for **recent graduates** interested in becoming public health associates is **January 18–25**. PHAP, a workforce development program, provides associates with hands-on experience in the day-to-day operations of public health organizations and is managed by CDC’s Center for State, Tribal, Local, and Territorial Support. [Learn more and apply](#).


Register for the American Bar Association’s Health Law Event: In-Person

The American Bar Association is hosting an in-person event in **Miami** on the “False Claims and Qui Tam Trial Institute.” The event is scheduled to be held in-person on **February 2–4, 2022**. The award-winning False Claims Act Trial Institute will feature a two-day mock jury trial in which experienced False Claims Act lawyers try a healthcare fraud case to a jury. It is a perfect opportunity for junior attorneys seeking to become litigators, experienced attorneys seeking to hone their skills, in-house counsel who might be responsible for overseeing trials, and litigation consultants seeking to better understand how their work is used in trial. [Register by January 26](#) .


Bioethics Intensive Course: In-Person

The Center for Medical Ethics and Health Policy at Baylor College of Medicine and Houston Methodist Hospital are hosting a five-day Bioethics Intensive Course. It is scheduled to be held in-person in Houston **April 18–22, 2022**. This course will train participants how to manage the complex ethical challenges that people who work in healthcare encounter. (There’s an early-bird registration discount through February 11.) [Register today](#) .

Job Opportunity—Public Health Attorney: The Network for Public Health Law


The Network for Public Health Law is hiring a senior attorney to work with its Mid-States Region Office, located at the University of Michigan School of Public Health in Ann Arbor. The position will report to the director of the Mid-States Region Office. Apply by **January 7**. [Learn more and apply](#) .

Journal Article: “Examining Sociodemographic Data Reporting Requirements in State Disease Surveillance Systems”

The Saint Louis University *Journal of Health Law and Policy* recently published an informative piece by CDC employees that delves into how law plays an important role in the **collection of data related to disease and injury** in a population. The article covers how a system of laws sets out requirements for the collection, analysis, and dissemination of disease reporting data from local, state, territorial, and federal public health institutions. It also discusses a legal epidemiological analysis of state disease reporting laws that require the collection and reporting of social and demographic information. This approach clarifies gaps in data and helps to proactively address future disease outbreaks. [Read more \[PDF – 401 KB\]](#) .


Legal Tools & Training

CDC’s Public Health Emergency Law Virtual Training


CDC offers free, online Public Health Emergency Law (PHEL) training about management of public health emergencies and how to effectively use legal authorities. PHEL consists of three competency-based units and covers legal issues to consider before, during, and after public health emergencies. (Each unit takes about 40 minutes.) The training prepares state, tribal, local, and territorial practitioners to make better informed legal decisions related to **emergency preparedness and response** activities in their jurisdictions. [Take the training](#) .

ASTHO Public Health Emergency Law “Legal Preparedness Series” Toolkits

The Association of State and Territorial Health Officials (ASTHO) has developed a series of toolkits that address the **key information needs of public health officials** in understanding and using legal authorities to prepare for and respond to public health emergencies. This series arose from needs identified by state and local public health agencies regarding

certain legal questions and uncertainties that were perceived to be barriers to effective planning and response to infectious disease outbreaks, natural disasters, intentional acts, and other emergency events. The toolkits and their component documents can help with education, training, and planning activities to prepare for emergencies. [Access the toolkits](#) .

ChangeLab Solutions Releases New “Good Governance” Training Series

ChangeLab Solutions created *Uprooting the Structural Drivers of Health Inequity*—part of their “Good Governance” online trainings. It is a six-part virtual discussion series that explores how organizations and advocates are **addressing inequity** in their initiatives to improve health outcomes. Training episodes feature a diverse panel of partners who engage in deep-dive discussions and connect the drivers of health inequity to policy change in key areas: community health, employment, education, planning, food systems, and housing. [Take the training](#) .

Top Story

National: [CVS, Walgreens and Walmart fueled opioid crisis, jury finds](#)

The New York Times (11/23/2021) Jan Hoffman

Story Highlights

A federal jury in Cleveland, Ohio, found that CVS Health, Walmart, and Walgreens—three of the largest US pharmacy chains—have created a public nuisance by distributing an overabundance of prescription opioid drugs and have substantially contributed to the crisis of opioid overdoses and deaths in two Ohio counties. This is the first successful jury verdict in a case seeking to hold pharmaceutical retailers liable for the opioid crisis.

The plaintiffs, Lake and Trumbull counties in northeastern Ohio, argued that pharmaceutical companies contributed to a “public nuisance,” that exacerbated the public health crisis created by opioids. This argument was rejected in cases against opioid manufacturers in California and Oklahoma.

CVS, Walgreens, and Walmart, the defendants, said they would appeal the verdict. According to a statement from CVS, “[p]harmacists fill legal prescriptions written by D.E.A.-licensed doctors who prescribe legal, F.D.A.-approved substances to treat actual patients in need.”

Despite some of the positive momentum as a result of this ruling, the myriad of opioid cases filed since 2014 continue to move through the judicial system slowly. Communities affected by the opioid epidemic hope to address substance use and abuse with funds from these opioid suits. Such aid is in even greater need as recent federal data indicate overdose deaths from opioids have reached record numbers during the pandemic.

[Editor’s note: Learn more about [opioid overdose prevention](#).]

Briefly Noted

California: [US appeals court upholds California’s ban on large-capacity firearms magazines](#)

Los Angeles Times (11/30/2021) Maura Dolan

[Editor’s note: Learn more about [firearm violence prevention](#).]


Iowa: [Iowa tests thousands of backlogged sexual assault evidence kits](#)

Iowa Capital Dispatch (11/30/2021) Katie Akin

[Editor’s note: Learn about the [National Intimate Partner and Sexual Violence Survey](#), a CDC-developed national and state survey database on stalking, intimate partner violence, and sexual violence.]

Oklahoma: [Gavel](#) to gavel: What to expect from Uniform Power of Attorney Act

The Journal Record 10/20/2021) Natalie S. Sears

[Editor’s note: Learn more about [Oklahoma House Bill 2548 \[PDF – 185 KB\]](#) .

Tribal: [Arizona law allows greater cultural expression at graduation](#) 

Indian Country Today (11/29/2021) Cronkite News

[Editor's note: Learn more about [the importance of culture on health](#).]

Tribal: ['Rights of nature' tribal case may upend pipeline law](#) 

Energy Wire News (11/18/2021) Nina H. Farah

[Editor's note: Learn more about [tribal land and water rights](#).]

Tribal: [White House Tribal Nations Summit convenes—executive order addressing missing and murdered indigenous people](#) 

Indian Law Resource Center (11/16/2021)

[Editor's note: Learn more about [violence against Native people](#)  [PDF – 379 KB].]

National: [Supreme Court case could 'rip' laws that protect people with disabilities, advocates warn](#) 

CBS News (11/05/2021) Michael Roppolo

[Editor's note: Learn more about [disability inclusion](#).]

Global Public Health Law News

Australia: [Religious discrimination bill: Does the blessing of the law give us the right to discriminate?](#) 

UNSW Sydney (12/02/2021) Dawn Lo

Denmark: [With dozens in limbo, Denmark pressured to reverse refugee policy](#) 

Aljazeera (11/16/2021) Urooba Jamal

[Editor's note: Learn more about [immigrant, refugee, and migrant health](#).]


Egypt: [Egypt's parliament to discuss new law on fighting epidemics and pandemics](#) 

Ahram Online (11/13/2021) Gamal Essam El-Din

[Editor's note: Learn more about [emergency preparedness laws](#).]

International: [Many people with HIV fail to achieve durable viral suppression](#) 

Pharmacy Times (12/01/2021) Jill Murphy

[Editor's note: Learn more about [global HIV/AIDS](#) and read the [National Institutes of Health report](#) .]

Court Filings & Opinions

Illinois: The Supreme Court of Illinois affirmed the trial court's holding that Petitioner Thomas Brown, an Illinois resident previously convicted of a domestic violence misdemeanor in California, was eligible for a state firearm license under Illinois and federal law.

In Illinois, the Firearm Owners Identification Card Act (FOID Act) requires that residents who seek to possess or acquire firearms must carry identification cards (FOID cards) indicating their eligibility to do so. Brown, an Illinois resident, carried a FOID card. In 2016, Brown attempted to purchase a firearm that required the Illinois State Police (ISP) perform a background check. The background check revealed that, in 2001, Brown pled guilty to inflicting injury to a spouse, a misdemeanor in the state of California. Federal law prohibits a person from possessing a firearm after a domestic violence conviction and, under the FOID Act, ISP may revoke a FOID card when firearm possession would violate federal law. Accordingly, ISP revoked Brown's FOID card.

Brown filed a petition to challenge ISP's decision, relying on an exception to the federal statute that permits gun ownership after a domestic violence conviction if an individual's "civil rights" are restored. The court found that the exception applied to Brown; first, the court noted that firearm possession is a civil right and that, under California

law, Brown lost this right after his conviction. However, because the law only suspended his right to own a firearm for 10 years, the court reasoned that Brown's civil rights were restored for purposes of federal law. Accordingly, the court held that Brown is entitled to a valid FOID card.

[Brown v. Illinois](#) 

Supreme Court of Illinois

No. 126153

November 18, 2021

Opinion by Overstreet, Justice

Iowa: An Iowa court found that the state's prohibition of Medicaid coverage for sex reassignment surgeries violated Iowa law.

Petitioners were Iowa Medicaid recipients diagnosed with gender dysphoria, a medical term that describes the feeling of incongruence between a person's gender identity and birth-assigned sex. After their respective physicians indicated that sex reassignment surgery was medically necessary, Petitioners applied to have the procedures covered by the state Medicaid program. Amerigroup, petitioners' assigned managed care organization, denied the requests based on state law prohibiting the use of state funds for sex reassignment surgery. Petitioners filed suit against Respondent Iowa Department of Human Services, arguing that the prohibition unlawfully discriminated against transgender Medicaid recipients in violation of the Iowa Civil Rights Act and the Equal Protection Clause of the Iowa Constitution.

The court agreed and found that Petitioners' evidence reflected an unrebutted medical consensus that sex reassignment surgery was necessary to treat Petitioners. Accordingly, denial of coverage could not be justified on medical grounds. The court also noted that the respondent failed to rebut petitioners' evidence that denying coverage for transition-related surgical care was associated with greater medical costs, explaining that the percentage of Iowans on Medicaid who identify as transgender and require sex-reassignment surgery "is incredibly small and the costs are negligible." The court therefore ordered that the respondent strike any language from its law excluding sex reassignment surgeries from Medicaid coverage and that, going forward, relevant laws and regulations must be interpreted to provide coverage where sex reassignment surgery has been deemed medically necessary to treat gender dysphoria and "other relevant diagnoses."

[Vasquez v. Iowa Dep't of Human Services](#) 

Iowa District Court for Polk County

No. CVCV061729

November 19, 2021

Opinion by William P. Kelly, Judge

Oklahoma: The Supreme Court of Oklahoma reversed a lower court ruling to hold that Johnson & Johnson (J&J) did not create a public nuisance when marketing and selling opioid medications.

In 2019, an Oklahoma state court held a bench trial and determined that J&J was liable under the state's public nuisance statute for misleading and dangerous marketing practices to sell prescription opioids. The Supreme Court disagreed with this decision and held that Oklahoma's public nuisance law did not extend to the sale of prescription medications. Specifically, the court explained that the lower court improperly obfuscated the boundaries between public nuisance and products liability laws. Public nuisance laws protect from interference with public rights and are meant to remedy injuries from nuisances like diseased animals, pollution in drinking water, or the discharge of sewage on property. Extending that right to be free from the threat of prescription opioid abuse could hold manufacturers, distributors, and prescribers liable for all prescription drug abuse. The court reasoned that tort and products liability laws, rather than public nuisance laws, were better suited for injuries of this nature.

[State ex rel. Hunter v. Johnson & Johnson](#) 

Oklahoma Supreme Court

No. 118474

November 9, 2021

Opinion by Judge J. Winchester

Federal: The United States Court of Appeals for the Third Circuit upheld a preliminary injunction that stayed a city ordinance banning the sale of flavored tobacco products. The City of Philadelphia enacted the ordinance in 2019 to combat the negative health effects of tobacco use among its residents. The ordinance outlawed the sale of tobacco products that smelled or tasted like anything other than tobacco. On appeal, the court found that the district court did not abuse its discretion in granting the preliminary injunction. Specifically, the court found that a Pennsylvania state law regulating tobacco sales explicitly preempted all local ordinances on the topic and that the cigar manufacturers put forth sufficient evidence to demonstrate irreparable financial harm in the absence of an injunction.

[Cigar Ass'n of America, Inc. v. City of Philadelphia](#) 

United States Court of Appeals, Third Circuit

No. 20-3519

November 24, 2021

Opinion by Porter, Circuit Judge

Federal: The United States Court of Appeals for the Sixth Circuit declined to stay the Food and Drug Administration's (FDA's) order denying petitioner Breeze Smoke, LLC's Premarket Tobacco Product Application (PMTA) for its flavored vaping products.

Federal law requires certain new tobacco products to undergo premarket review by FDA. To comply with this requirement, companies like Breeze Smoke must submit a PMTA with sufficient information to show that "permitting such tobacco product to be marketed would be appropriate for the protection of the public health." Should an applicant fail to meet this burden, FDA must deny the application. After FDA rejected its PMTA, Breeze Smoke filed the at-issue motion to stay the decision.

The Sixth Circuit found that Breeze Smoke failed to show that FDA's denial was arbitrary capricious. While the court noted that FDA could have better considered Breeze Smoke's marketing plans, it was satisfied with the agency's reliance on scientific data showing that flavored vaping products pose unique and substantial public health risks to youths. Accordingly, the court held that Breeze Smoke failed to show a strong likelihood of success on the merits and declined to issue a stay.

[Breeze Smoke, LLC v. US Food and Drug Admin.](#)  [PDF - 198 KB] 

United States Court of Appeals for the Sixth Circuit

No. 21-3902

November 12, 2021

Opinion by Moore, Gilman, and Kethledge, Judges

Federal: The United States Court of Appeals for the Ninth Circuit upheld the Federal Aviation Administration's (FAA's) review of a proposal to build an air cargo facility at the San Bernardino International Airport.

The proposed facility would include a 658,000 square-foot sorting, distribution, and office building. The National Environmental Policy Act (NEPA) requires the FAA to issue an environmental assessment that evaluates the facility's environmental impact. The FAA reported after the assessment that it found no significant environmental impacts from the construction or operation of the facility.

Several environmental groups challenged the FAA's decision. However, the court found that the FAA considered all pertinent evidence and information, that the record did not contain any issues requiring more extensive review, and that the proposed facility did not appear to violate state or federal law. Therefore, the court upheld the FAA's decision.

[Ctr. for Cmty. Action & Env't. Just. v. FAA](#) 

United States Court of Appeals for the Ninth Circuit

No. 20-70272, 20-70464

November 18, 2021

Opinion by Siler, Judge

Quiz Question: December 2021

Question: What CDC program for recent graduates interested in becoming public health professionals has an application period that opens January 17, 2022?

Last Month's Quiz Answer

Question: What does MMIW stand for?

Answer: Missing and Murdered Indigenous Women. There is an epidemic of missing and murdered Indigenous women in the US—with roots that trace back to 1492. The total number of missing or murdered Indigenous women is unknown because federal databases do not yet contain comprehensive national data.

Quote of the Month

“This law may be the tool of the future for Indian tribes . . . We have an independent set of rights and ability to make laws and we have a territory that we have a right to defend,” said Frank Bibeau, a tribal attorney for Honor the Earth, who is representing White Earth Band of Ojibwe in a lawsuit against Minnesota. Mr. Bibeau is also a member of the Minnesota Chippewa Tribe, which includes White Earth.

[Editor's note: The quote is from the above article [‘Rights of nature’ tribal case may upend pipeline law](#) , EnergyWire, Niina H. Farah (11/18/2021)]

About *Public Health Law News*

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