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Public Health Law News

July 2021




Public Health Law Program
Center for State, Tribal, Local, and Territorial Support
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Announcements


23rd Annual Advocacy Summit: Society for Public Health Education (SOPHE)

The 2021 SOPHE Advocacy Summit will take place virtually on **October 13–14**. The theme is *Health Education: Advancing Health Equity at Every Level*. SOPHE and other public health and advocacy professionals and students gather to engage in effective advocacy for a common agenda at national, state, and local levels. [Register today](#) .


Do No Harm Guide: Applying Equity Awareness in Data Visualization

Learn how researchers and data communicators can improve how they represent and talk about diversity across groups and communities. [Read the report](#) .


Register for the Public Health Law Conference

The 2021 Public Health Law Conference, hosted by the Network for Public Health Law, will be held in Baltimore on **September 21–23**. The theme is *Building and Supporting Healthy Communities for All*. The conference will provide an opportunity to learn how the strategic use of legal and policy tools can address fundamental drivers of inequity, promote health and well-being, and save lives. (Current cancellation policy allows for a full refund if pandemic conditions do not improve by fall.) [Here's how to register](#) .

American Public Health Association (APHA) 2021 Registration Open


APHA will hold its annual meeting and expo **October 24–27** in Denver and online. The theme is *Creating the Healthiest Nation: Strengthening Social Connectedness*. [Register today](#) .

Public Health Law Academy Certificate


CDC and ChangeLab Solutions created the Public Health Law Academy to bridge the learning gap between formal public health and legal training and practice. The Academy now offers a certificate track for its **free, on-demand trainings**. To earn the certificate, you must complete seven trainings in core competencies that all public health practitioners need. The estimated completion time is 7.5 hours. [Get started](#) .

Tribal Announcements


10th Annual Native Harm Reduction Virtual Summit

The 2021 Annual Native Harm Reduction Summit, sponsored by the National Indian Health Board (NIHB), will take place July 21–23. The theme is Sharing Our Knowledge and Strengthening Our Communities. The summit provides an opportunity to work together at the intersection of racial equity, health equity, and social justice as they relate to hepatitis C, HIV, and drug use in Tribal, urban Indian, and rural communities. [Register today](#). .

Report: Priorities in Tribal Public Health


The Tribal Public and Environmental Health Think Tank, commissioned by CDC and supported by APHA, aims to educate and inform decision-makers and local, state, and federal government officials about the determinants of health that currently affect Tribal health and well-being through their 2018 report “Priorities in Tribal Public Health.” [View the report \[PDF – 9.1 MB\]](#) .

Job Openings at the National Indian Health Board (NIHB)


NIHB is hiring a **policy analyst** and a **policy research analyst**. Both positions will report to the Director of Policy and will be a member of the NIHB Policy Center. These positions require a combination of education, experience, cultural competency, and political acumen that would adequately prepare one for a critical role at a national, Tribal, nonprofit organization. [Learn more and apply](#) .

Legal Tools

The Thomas Woodward Houghton 50 State Ethics Guide

Use this guide to collect key information about legal ethics and professional responsibility from across the country. It provides an easy-to-use clearinghouse where attorneys, law students and faculty, judges, the public, and other researchers can obtain free access to legal ethics opinions and laws for all 50 states. [Explore this tool](#) .

2021 State Trends in Child Well-Being

The 32nd edition of the Annie E. Casey Foundation’s KIDS COUNT® Data Book describes how children across the United States were faring before—and during—the pandemic. This year’s publication delivers the Foundation’s annual state rankings and the latest available data on child well-being. It identifies multiyear trends, comparing statistics from 2010 to 2019. [View the interactive data book](#) .

Top Story

Oregon: Oregon lawmakers approve creation of new office to support immigrants and refugees

OPB (06/18/2021) Sam Stites

Story Highlights

Oregon bipartisan lawmakers overwhelmingly supported the creation of a new state government office dedicated to advocating for the needs of undocumented immigrants and refugee populations in the state. The proposed law would have \$1.3 million in initial funding and would provide long-term support through community partnerships.

The new office will not provide direct services to these groups, but it aims to advance their health and socio-economic wellbeing by: collecting data on those who are new to the state and track their progress; evaluating programs and investments for efficacy; advocating for federal funding; and providing policy and coordination support to bring together stakeholders, agencies, and community-based organizations to provide adequate services.



While telling her story to the Oregon House of Representatives, Representative Khan Pham of East Portland, a daughter of Vietnamese refugee parents, said, "I think it's important to mark this moment in the story of Oregon . . . Carrying a bill that creates an agency that serves people like our families, amidst a year that has seen hate increase in our community, and attacks on the very foundation of this capital of democracy." She continued, "This moment is one built on love, of labor, of those who came before us, who survived so that future generations can thrive."

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

Briefly Noted

Connecticut: [Connecticut has become the latest state to legalize marijuana for recreational use](#) 

NPR (06/22/2021) The Associated Press

[Editor's note: Learn more about [Connecticut's S.B. No. 1201 bill](#) , and review the [memo issued by the Department of Justice \[PDF - 357 KB\]](#)  restating the illegality of marijuana at the federal level.]

New York: [Johnson & Johnson agrees to pay \\$230 million to settle opioid case in New York](#) 

Stat News (6/26/2021) Ed Silverman

[Editor's note: Read [the lawsuit](#)  [\[PDF - 6.2 MB\]](#)  and [the settlement](#)  [\[PDF - 1.2 MB\]](#) .

North Carolina: [Juul agrees to pay North Carolina \\$40 million to settle vaping accusations](#) 

The Washington Post (6/28/2021) Laurie McGinley

Ohio: [Bringing back trees to "forest city's" redlined areas helps residents and the climate](#) 

NPR (06/23/2021) Dan Charles

[Editor's note: Learn more about [parks, trails, and health](#), and access the [Complete Parks Playbook](#) .

Oregon: [Oregon's pioneering drug decriminalization experiment is now facing the hard test](#) 

NPR (06/18/2021) Eric Westervelt

[Editor's note: Read more about Oregon's [Drug Addiction Treatment and Recovery Act](#)  [\[PDF - 182 KB\]](#)  and review [the DEA's drug scheduling guidelines](#) .

Texas: [Texas girds for blackouts as heat wave rolls on](#) 

Bloomberg Green (06/16/2021) Will Wade and Brian K Sullivan

[Editor's note: Learn more about [extreme heat](#).]

Vermont: [Tampons and other menstrual products become tax-exempt in Vermont this week](#) 

Burlington Free Press (6/28/2021) Ella Ruehsen

Tribal: [Blackfoot Nation welcomes back tourists after risky shutdown pays off](#) 

NPR (06/22/2021) Aaron Bolton



Tribal: [Supreme Court upholds Affordable Care Act, secures Indian Health Care Improvement Act](#) 

Native Sun News Today (06/24/2021) Native Sun News Publisher

[Editor's note: Read the [National Indian Health Board press release](#)  and the [Supreme Court decision](#)  [\[PDF - 296 KB\]](#) .

National: [Helping drug users survive, not abstain: 'harm reduction' gains federal support](#) 

The New York Times (06/28/2021)

[Editor's note: Learn more about [syringe services programs](#), [resources on opioid overdose prevention](#) , and [strategies to reduce opioid misuse](#) .

National: [Supreme Court rejects request to lift federal ban on evictions](#) 

The New York Times (06/29/2021) Adam Liptak

[Editor's note: Review the [Supreme Court decision](#)  [\[PDF - 77 KB\]](#) .

National: [Virtual care becomes a common cause in a divided Congress](#) 

Politico (06/30/2021) Ben Leonard

[Editor's note: Learn more about using [telehealth](#).]

Global Public Health Law News

Japan: [Alcohol will be banned at the Tokyo Olympics](#) 

The New York Times (06/23/2021) Hisako Ueno and Makiko Inoue

[Editor's note: Learn more about [alcohol and public health](#).]

Japan: [Expected to be demure, Japan's girls face steep hurdles to athletic dreams](#) 

The New York Times (06/30/2021) Motoko Rich and Hikari Hida

[Editor's note: Review the [US Department of Education Title IX law](#)  and [CDC's guide to preventing sexual violence on campus](#)  [\[PDF - 3.5 MB\]](#).]

International: [How do you help girls thrive in school? There's a surprising answer](#) 

NPR (06/27/2021) Joanne Lu

Court Filings and Opinions

Arkansas

The Supreme Court of Arkansas held that the Arkansas Department of Human Services (ADHS) lacked authority to immunize a child in its temporary custody because the child's parent properly asserted a religious or philosophical objection to vaccination.

ADHS became the temporary custodian of a hospitalized one-year-old child after a lower court determined that the child had been neglected. After the child's attending physician asked ADHS for permission to immunize, ADHS denied the request because the child's mother, the plaintiff, had a documented philosophical/religious objection to immunizations. However, ADHS indicated it may immunize the child in the future based on the results of a medical assessment provided to all children in its custody. The plaintiff subsequently filed a motion to prohibit ADHS from vaccinating her child, arguing that ADHS—acting as temporary custodian—cannot immunize a child over the religious or philosophical objections of the parent. The lower court disagreed and denied her motion. The Supreme Court reversed this decision on appeal. The court explained that state law gives parents a right to exempt their children from certain immunization requirements based on the parents' religious or philosophical beliefs and that, by voicing her objection, the plaintiff properly exercised this right.

The dissenting opinion disagreed with the majority's interpretation of the relevant statute, arguing that the provision did not require ADHS to obtain a court order before immunizing a child in its custody. The dissent also argued that the legislature did not intend for the philosophical exemption to apply outside of school and daycare enrollment.

[Macklin v. Ark. Dep't of Hum. Servs.](#) 

Supreme Court of Arkansas

No. CV-20-714

Decided June 24, 2021

Majority Opinion by Barbara W. Webb, Justice

Dissenting Opinion by Rhonda K. Wood, Justice

California

The Court of Appeals of California, Fourth Appellate District, issued a preemptory writ of mandate instructing the trial court to vacate its order compelling production of documents and to enter a new order denying the motion to compel production.

The County of Los Angeles filed a claim against Johnson & Johnson for alleged injuries caused by the company's advertising practices for opioid medications. The county stated the advertising was misleading and led to an opioid abuse health crisis in California. The county was seeking damages from Johnson & Johnson to compensate for the cost of dealing with the opioid crisis. During discovery, Johnson & Johnson requested health records of patients in various county programs, including prescription data and records related to substance abuse treatment. The county asked the court to reject the request, as the records would potentially expose data for 5,867 patients and more than 1.7 million encounters, along with other protected healthcare information. Nevertheless, the trial court issued an order compelling the county to produce these records. The county appealed.

In its decision, the Court of Appeals applied the *Hill* test (*Hill v. National Collegiate Athletic Association*) and reviewed whether the county established a legally protected privacy interest, whether there was a reasonable expectation of privacy, and whether the request for the information posed a serious intrusion into that privacy interest. The court held that the county did establish that there was a high risk of invasion of privacy for these patients if the documents were provided to Johnson & Johnson. The court said the record request was overly broad and would provide data that, when linked despite redactions, could lead to identification of patients. The court also determined that there was a reasonable expectation of privacy by the patients in these programs and that, although the patients were not listed as plaintiffs, Los Angeles County was permitted to act on their behalf by filing this claim. The court also stated that Johnson & Johnson did not provide sufficient support as to why this request for data outweighed the serious intrusion into the patients' privacy interests.

[County of Los Angeles v. Superior Court \[PDF - 284 KB\]](#) 

Court of Appeals of California, Fourth Appellate District, Division One

No. D077794, D077795

Decided: June 15, 2021

Opinion by Aaron, J.

Pennsylvania

The Supreme Court of Pennsylvania held that a liability waiver used by the City of Philadelphia at a charity event was unenforceable because it violated public policy.

In 2015, plaintiff Anthony Degliomini participated in a charity bike race hosted by the city. Any individual who registered for the event signed a form that released the city from liability for any personal injuries or property damage arising from participation. During the race, the plaintiff crashed his bike into an unmarked sinkhole and suffered severe injuries. The plaintiff and his wife subsequently filed a claim for negligence against the city based on tort liability and state common law.

The trial court rejected the city's argument, which maintained that the release Degliomini signed insulated the city from liability because his injuries occurred during the bike race. A jury subsequently found that the city had been negligent. After a court of appeal relied on the liability waiver to reverse this decision, the Supreme Court of Pennsylvania upheld the jury's verdict. The Supreme Court noted that, at trial, Degliomini demonstrated that the city knew about the sinkhole several months before the bike race and that the city had started—but not completed—repairs. The Supreme Court explained the city had an "essential duty of public service" that existed notwithstanding the charity race and, by having knowledge of the hole, the city triggered that duty. Accordingly, the court held that enforcement of the release was contrary to public policy because it would allow the city to contract around an essential duty and risk the safety and health of the public.

[Degliomini v. ESM Productions, INC & City of Philadelphia](#)

Supreme Court of Pennsylvania, Eastern District

No. 5 EAP 2020

Decided: June 22, 2021

Opinion by Dougherty, Justice

Federal

The US District Court of the District of Columbia granted summary judgment to the Food and Drug Administration (FDA), holding that the rules requiring pasteurization of butter fall within the scope of the Public Health Services Act (PHSA) and serve the governmental interest of stopping the spread of communicable diseases.

FDA had established a rule that all interstate commerce of any product containing dairy must be pasteurized. Plaintiffs filed a claim against FDA stating that this rule exceeded its authority under PHSA and that the rule conflicted with the Food, Drug, and Cosmetic Act (FDCA). The FDCA sets standards of identity for all food products and specifically defines butter. By requiring butter to be pasteurized under PHSA, the plaintiffs claimed FDA violated the FDCA's definition and created a conflict between the two laws. The plaintiffs also held there was little evidence that unpasteurized butter spread communicable disease and, therefore, the pasteurization rule was arbitrary and capricious.

The District Court disagreed with the plaintiffs' arguments. The court held that an agency is free to decide under which of its statutory authorities it can create a new administrative rule. The court held that FDA's ability to create administrative rules to prevent communicable diseases under PHSA does not conflict with its authority to set standards of identity under the FDCA. The court also held that it found no legislative intent for the definition of butter in the FDCA to limit the authority of FDA under PHSA.

Regarding the claim that the pasteurization rule was capricious and arbitrary and there was no proof that unpasteurized butter causes outbreaks of communicable diseases, FDA was able to refute the data that the plaintiff presented. Most of the data were gathered from research collected since pasteurization has become common (therefore, not reflecting actual information about unpasteurized butter), or were too narrow, providing information only on listeria. FDA also shared its own research connected to outbreaks traced to unpasteurized butter and provided information on other microbes, such as *E. coli* and *Staphylococcus*.

The court held that FDA's requirement for pasteurized butter was a judgment based on research and therefore was not capricious or arbitrary. The requirement also served a broader governmental interest to prevent communicable diseases and did not create a conflict between the FDCA and PHSA's statutory authorities.

[McAfee v. U.S. Food & Drug Admin.](#) [PDF – 293 KB]

United States District Court for the District of Columbia

No. 19-3161

Decided: May 24, 2021

Opinion by Contreras, District Judge

Federal

The US Court of Appeals for the Eleventh Circuit held that the Food, Drug, and Cosmetic Act (FDCA) does not preclude private companies from suing competitors under the Lanham Act for false or misleading statements in pharmaceutical advertisements, regardless of whether the product is regulated by the Food and Drug Administration (FDA). The Eleventh Circuit held that the FDCA and the Lanham Act are complementary statutes, explaining that causes of action under the Lanham Act do not interfere with FDA's enforcement or regulatory authority.

[Belcher Pharms. v. Hospira, Inc.](#)

United States Court of Appeals, Eleventh Circuit

No. 20-10497

Decided June 24, 2021

Opinion by Grant, Circuit Judge

Quiz Question: July 2021

Question: Which city has recently launched a plan to increase the number of trees within its neighborhoods?


Last Month's Quiz Answer

Question: Which state recently passed a law requiring measures to protect athletes from heat-related injuries?

Answer: Maryland

Quote of the Month

"It's an enormous signal, recognizing that not everybody who uses drugs is ready for treatment," said Daliah Heller, Director of Drug Use Initiatives at Vital Strategies, a global public health organization. "Harm reduction programs say, 'OK, you're using drugs. How can we help you stay safe and healthy and alive first and foremost?'"

[Editor's note: This quote is from the above article [Helping drug users survive, not abstain: 'harm reduction' gains federal support](#) , The New York Times (06/27/2021).]

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CDC's Public Health Law Program (PHLP) works to improve the health of the public by performing research, creating tools, and providing training to help practitioners understand and make law and policy decisions. Every month, PHLP publishes the *Public Health Law News* with announcements, legal tools, court opinions, job openings & more.

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Last Reviewed: July 15, 2021