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Public Health Law News

February 2021



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

Virtual Conference: Long-Term Care and the Law 2021

Learn about the legal issues faced by long-term care providers in this virtual conference hosted by the American Health Law Association on **March 3–4**. Sessions will cover regulatory changes, compliance, and other cutting-edge topics in the long-term care continuum. [Here's how to register](#) .

Webinar: Addressing Secondhand Smoke—Tobacco and Cannabis Smoke in Multi-Unit Housing


On **February 24**, the Public Health Law Center at the Mitchell Hamline School of Law will host a webinar on the health risks of exposure to secondhand smoke in multi-unit housing. Legal and policy considerations, as well as best practices and recommendations, will be discussed. [Register here](#) .

Decline in COVID-19 Hospitalization Growth Rates Associated with Statewide Mask Mandates


A new CDC Morbidity and Mortality Weekly Report (*MMWR*) suggests that statewide mask mandates may reduce the spread of the virus that causes COVID-19, resulting in declining COVID-19 hospitalization growth rates. [Read the new MMWR report](#).

Hiring: Loyola University School of Law (Chicago, IL)

Loyola University is hiring a **practitioner in residence** within the Beazley Institute for Health Law & Policy. The desired candidate is a legal expert in the field of corporate or transactional health law with at least five years of experience.


[Review the desired qualifications and apply](#) .

Hiring: Harvard Law School (Cambridge, MA)

The Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School is seeking a full-time post-doctoral **research fellow** for their Diagnostic Digital Home Health initiative. This sponsored project focuses on the ethical, social, and legal challenges of digital home health. [Learn more and apply](#) .

Tribal Announcements

Funding: DOJ Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention, US Department of Justice (DOJ), is offering two grant opportunities with a **March 16** deadline. The grants are nationwide and offer Tribes support in developing programs that address juvenile delinquency and substance abuse. Federally recognized Tribes are eligible to apply. [Learn more and apply](#) .


Tribal Public Health Law Resource Table

The Network for Public Health Law released an updated Tribal Public Health Law Resource Table listing organizations with experience in both **Tribal and public health law**. This resource denotes the relationship between Tribes and state or federal governments by listing organizations such as epidemiology centers, academic institutions, and legal services.


[View the table](#) .

Legal Tools

State Practice Environment for Nurse Practitioners

The American Association of Nurse Practitioners released an interactive **state practice environment map** that provides an overview of state laws and regulations for nurse practitioners in all 50 states, Washington, DC, US territories, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. [View the map](#) .

State Rabies Vaccination Laws


Different states have varied legal requirements for rabies vaccinations. This **recently released chart** from the American Veterinary Medical Association compiles state laws that govern US rabies vaccinations for domesticated animals. [Learn more](#) .



Top Stories

National: [Toyota to pay a record fine for a decade of Clean Air Act violations](#)

The New York Times (1/14/2021) Hiroko Tabuchi

Story Highlights

The US Attorney's Office in Manhattan announced a \$180 million settlement in a civil lawsuit against Toyota Motor Company for systematic violations of Clean Air Act regulations from 2005 to 2015, according to the [complaint \[PDF - 1.31 MB\]](#) . Audrey Strauss, Acting US Attorney for the Southern District of New York, alleged that "Toyota shut its eyes to the noncompliance" and failed to ensure "proper training, attention, and oversight" of Clean Air Act regulations.

A spokesperson for Toyota said that the delay in reporting offenses "resulted in a negligible emissions impact, if any," but that the company recognizes "some of our reporting protocols fell short of our own high standards." Toyota has agreed to a [consent decree](#)  [\[PDF - 582 KB\]](#)  that resolves the federal complaint through a \$180 million penalty and injunctive relief.


As noted in the Department of Justice [press release](#) , this penalty is the largest to date for a violation of the Environmental Protection Agency's emission-reporting requirements, which are meant to protect public health and the environment against harmful air pollutants produced by vehicle emissions. The consent decree is pending [public comment](#) and court approval.

[Editor's note: Read the [Clean Air Act emission standards](#) .]


California: [Why are there so few Black economists at the Fed?](#)

The New York Times (2/2/2021) Jeanna Smialek

Story Highlights

The [Dodd-Frank Act](#)  [PDF - 274 KB] urged the US Federal Reserve System to expand its inclusive hiring effort in response to lack of staff diversity in 2010. Yet, the system, which includes the Federal Reserve Board in Washington and 12 regional banks, is still facing a diversity shortfall. Based on data provided by the Federal Reserve, only 0.5 percent of the board and 1.3 percent of economists across the system are Black. In stark contrast, Black people make up 3 to 4 percent of yearly economics PhD graduates and 13 percent of the US population. Further, the system lacks inclusion at the leadership level, with only one of the dozen branch presidents and none of the six presidentially appointed governors being Black.

This story highlights Mr. Monroe Gamble IV, who became the San Francisco Federal Reserve's first Black research assistant in 2018. In considering the challenges he faced in earning his position and the lack of diversity he witnessed, Gamble theorized that Federal Reserve hirers "pick people who are like them." His story speaks to the larger institutional inequality facing this nation and concerns that lack of diversity in policy discussions perpetuates existing disparities. As Mary C. Daly, President and CEO of the San Francisco Federal Reserve, phrases it, "policymaking reflects those around the table."

[Editor's note: [View aggregate Federal Reserve System demographics](#)  [PDF - 2.37 MB] and learn more about [health disparities and inequalities](#) and how such disparities can lead to [greater risk](#) for disease.]

Michigan: [Former Michigan governor and 8 others face charges in the Flint water crisis that left 12 people dead](#)

CNN (1/14/2021) Dakin Andone, Evan Simko-Bednarski, Madeline Holcombe, Taylor Romine

Story Highlights

Nine individuals, including former Michigan governor Rick Snyder, have been charged for their involvement in the Flint water crisis, which contaminated the water supply with lead and led to fatal outbreaks of Legionnaires' disease. Snyder, members of his staff, and several city and state officials face a range of charges, including willful neglect and involuntary manslaughter.

In 2019, prosecutors dropped all pending criminal cases related to the crisis, but a renewed investigation now has led prosecutors to be "confident in all charges," according to Kym Worthy, the Wayne County prosecutor leading the case. Michigan Solicitor General Fadwa Hammoud asserted that "the people of Flint continue to suffer" and public officials "trampled upon their trust and evaded accountability for far too long."

Snyder pleaded not guilty to his charges of willful neglect of duty, and his attorney Brian Lennon maintained that the charges were "wholly without merit" and the actions "merely perpetrate an outrageous political persecution."

[Editor's note: Read CDC's information about [Legionnaires' disease](#), the [health effects of lead exposure](#), and [preventing childhood lead poisoning](#).]

Briefly Noted

Tribal: [Key bills supporting Native American veterans signed into law](#)

Char-Koosta News (1/14/2021)

[Editor's note: Read the bills [here](#) and [here](#) .]

National: [McKinsey settles for nearly \\$600 million over role in opioid crisis](#) 

The New York Times (2/3/2021) Michael Forsythe and Walt Bogdanich

[Editor's note: Read the [settlement](#)  [PDF - 249 KB] .]

Arkansas: [18 states back Arkansas on Medicaid work rule](#) 

Arkansas Democrat-Gazette (1/28/2021) Frank Lockwood and Michael Wickline

[Editor's note: Read the [petition](#)  [PDF - 1.3 MB]  and [amicus curiae](#)  [PDF - 419 KB] .]

California: [New California law requires insurance companies to cover more mental health treatment](#) 

Palo Alto Online (1/13/2021) Kevin Forestieri

[Editor's note: [Read the law](#) .]

Massachusetts: [New law requires public be notified of sewage releases into Merrimack River](#) 

Andover Townsman (1/21/2021) Richard K. Lodge

[Editor's note: [Read the law](#) .]

New Mexico: [Groups challenge utility plan to dump New Mexico power plant](#) 

Associated Press (1/29/2021)

Pennsylvania: [In Philadelphia, judges rule against opening 'supervised' site to inject opioids](#) 

NPR (1/14/2021) Nina Feldman


[Editor's note: [Read the opinion](#)  [PDF - 496 KB] .]

Tennessee: [CMS approves first Medicaid block grant waiver in Tennessee](#) 

Healthcare Finance News (1/11/2021) Mallory Hackett

Virginia: [Legislation to address elder abuse advances unanimously in Virginia House, Senate](#) 

WCYB (1/28/21)

[Editor's note: Read the bills [here](#)  and [here](#) .]

Global Public Health Law News

Egypt: [Egypt's cabinet toughens law banning female genital mutilation](#) 

Reuters (1/21/2021) Menna A. Farouk

France: [Man saved from deportation after pollution plea in French legal 'first'](#) 

The Guardian (1/12/21) Jon Henley

Hungary: [Hungary 'systematically' breached EU air pollution limits, says court](#) 

Reuters (2/3/2021) Kate Abnett

Netherlands: [Dutch court orders Shell Nigeria to compensate farmers](#) 

Associated Press (1/29/2021) Mike Corder

Profile in Public Health Law: Burton Edelstein, DDS, MPH

Title: Professor of Dental Medicine (in Pediatric Dentistry) and Health Policy & Management at Columbia University Irving Medical Center

Education: DDS, SUNY Buffalo, MPH, Harvard Chan School of Public Health



Public Health Law News (PHLN): Tell us about your career path in oral health and policy.

Edelstein: While applying public health principles to the private practice of pediatric dentistry in order to serve my community, I became increasingly sensitized to the role of law and policy in my ability to serve all local children. This led to increasing engagement with state and federal Medicaid authorities and legislatures culminating in a 15-month Congressional Fellowship as a health legislative aide to US Senate Minority Leader Thomas A. Daschle during enactment of the Children's Health Insurance Program. Finding that children's oral health was not well represented on The Hill, I founded the DC-based Children's Dental Health Project, a policy shop dedicated to advancing the oral health of all children. Now as an academic dentist, my research and teaching focus on the application of policy through population oral health management.

PHLN: How is oral health related to medical health and public health?

Edelstein: As a body organ that is essential for ingestion, digestion, communication, expression, protection, and immunity, the mouth is directly integrated with overall "medical" health and wellbeing. From a public health perspective, oral health is significant as the aggregate of individuals' oral health and also critical because of the high prevalence of oral diseases and their disparate distribution. As such, oral health is a core public health issue, particularly the need for equity in healthcare as a social justice issue.

PHLN: What are the major issues you see in the field of oral health and public health today?

Edelstein: The major issue at the intersection of oral health and public health today is the un-affordability of dental care for too many working-age adults. The American Dental Association's Health Policy Institute reports that adult dental utilization has been in decline since at least 1997 with only about a third of working age adults now using dental services in a year. Its studies confirm that cost is the greatest barrier to care and that dental is the least affordable health service for people with and without medical and dental insurance coverage.

PHLN: How are these issues related to law and policy?

Edelstein: Resolving the cost barrier to dental care for working age adults requires direct engagement of federal and state legislatures establishing policies that mitigate this barrier. Specifically, I believe Medicaid must establish a mandatory dental benefit for adults as it has for children—rather than leaving it up to each state to elect adult dental coverage as a Medicaid "option." As working age adults are already aging into Medicare eligibility, Congress must additionally establish a mandatory core dental benefit for seniors.

PHLN: Tell us about the [Healthy People 2020 Oral Health report](#)  [PDF - 2.14 MB] .

Edelstein: Our report recognizes that dental care is a critical determinant of oral health. It focuses specifically on the *Healthy People* objective regarding use of dental services. The report also acknowledges the behavioral, social, and environmental determinants of health and seeks to place dental use into the broader context of how people obtain and maintain oral health. We highlight the roles of financing and workforce in improving access to care and then feature an important discussion of utilization barriers that too often limit care for those with greatest needs. The report is long, detailed, and authoritative. It has been thoroughly vetted with public and private communities of interest to ensure accuracy and balance. I hope it will become a go-to document for everyone and anyone concerned with oral healthcare equity.

PHLN: What are the gaps in oral health from a public health perspective?

Edelstein: There are many gaps that need to be addressed in order to fulfill the vision of Healthy People:

- Gaps between medical and dental care delivery and financing
- Gaps between care available to people and populations with higher incomes and lower incomes
- Gaps between care available to healthy people and people living with disabilities
- Gaps between the availability of care in urban and rural areas
- Gaps between the availability and utilization of dental services
- Gaps between dental coverage and affordability

PHLN: How could we use law and policy to improve population-level oral health?

Edelstein: Each and every one of these gaps demands the government's attention (particularly the federal government) for resolution through legislation and regulation in public programs and through attention and investigation in private

programs. For example, the lack of public dental coverage for adults with incomes below the federal poverty level, working people with inadequate incomes, and people with disabilities can be addressed only through dental coverage in Medicaid while congressional investigation can highlight disparities in private dental coverage.

Law and policy could be used to advance an agenda that includes the following:

- Extending dental coverage
- Incentivizing a more appropriate workforce distribution
- Enhancing training of tomorrow's dentists
- Expanding dental workforce authorities and autonomies
- Endorsing new types of dental providers
- Including oral health in efforts to reform healthcare for accountability and value
- Promoting positive oral health behaviors; for example, through USDA/WIC and early childhood support program regulations and public information campaigns
- Expanding financing for direct dental services

These potential “fixes” too often fail to gain attention and action by policymakers. I believe that this is because many policymakers conflate oral health with dental esthetics, because of inadequate oral health advocacy, and because total dental expenditures are small compared to medical expenditures.

PHLN: What else are you working on?

Edelstein: My active engagements cluster into two approaches to improving the oral health of socially vulnerable young children. One approach is to investigate novel ways of helping families adopt and sustain positive oral health behaviors through home- and community-based preventive efforts focused on healthful diets and regular oral hygiene. The other approach is to support public policymaking for children's oral health by investigating opportunities and options for accountable value-based purchasing of oral healthcare. My teaching and publications reflect these two approaches as we develop new curricula on population oral health management.

PHLN: What advice would you give to young public health practitioners and lawyers?

Edelstein: To young public health practitioners and lawyers, **welcome** to the expansive, engaging, and impactful world of oral health policy. Because dentistry is discrete, unique, and small (relative to all of US healthcare), it is actionable. Concerted and persistent efforts to improve oral health and dental care for individuals and groups experiencing disadvantages can succeed, providing personal reward as well as meaningful contribution to social justice. Learn the issues. Learn the policy process. Get active. Just do it.

PHLN: What weekend activities do you typically enjoy?

Edelstein: Thanks for asking. When not committing time to professional activities, my go-tos during the pandemic are practicing my bassoon, riding my e-bike over area hills, reading US history, hiking, and enjoying the ruckus created by my grandsons and their dogs.

Court Filings and Opinions

California: A California appellate court vacated trial court orders compelling four nonparty state agencies to produce complete administrative records, investigatory files, and millions of Controlled Substance Utilization Review and Evaluation System files.

Several California counties filed a lawsuit against various pharmaceutical companies that manufacture, market, distribute, and sell prescription opioid medications. The counties alleged that false and misleading statements of the pharmaceutical companies led to increased opioid prescriptions, use, abuse, and related deaths, causing a public health crisis in California. To refute the claim, the pharmaceutical companies served business record subpoenas on four nonparty state agencies—the California State Board of Registered Nursing, the California State Board of Pharmacy, the Medical Board of California, and the California Department of Justice—to demand documents and communications related to the use and abuse of illegal drugs in California.

The appellate court concluded that the motions to compel against the Pharmacy Board and the Medical Board were untimely and not reasonably calculated to lead to the discovery of admissible evidence, and that the pharmaceutical companies failed to serve consumer notices on the healthcare professionals whose identities would be disclosed in the subpoenaed records and files.

[Board of Registered Nursing v. Superior Court of Orange County](#) 

Court of Appeal, 4th Appellate District, Division 1

Case Nos. D0077440, D077441, D077442, D077443

January 15, 2021

Opinion by Guerrero, Judge

New York: A New York appellate court denied a summary judgment motion by defendant Consolidated Edison to dismiss a complaint, ruling that there was an unresolved factual dispute as to whether the defendant had properly considered an accommodation to permit the plaintiff's medical marijuana treatment.

The plaintiff, Kathleen Gordon, was a probationary employee of Consolidated Edison. After applying for, but before receiving, New York State certification for using medical marijuana for her irritable bowel disorder (IBD), Gordon tested positive for marijuana in a random drug test at work, leading to her termination. Though status as a medical marijuana patient is not a protected disability under the New York City Human Rights Law, that law says IBD is a physical impairment and thus, a disability. Therefore, factual questions remain whether Consolidated Edison should have accommodated the plaintiff's medical marijuana treatment and whether the accommodation could extend to a positive marijuana test during a certification process.

The court did, however, deny the plaintiff's discrimination claim, finding that the statute in question has no express anti-discriminatory provision that permits a private citizen to bring a lawsuit.

[Gordon v. Consolidated Edison, Inc., 2021 NY Slip Op 492 – NY: Appellate Div., 1st Dept. 2021](#) 

Appellate Division of the Supreme Court of New York, First Department

152614/17, Appeal No. 12969, Case No. 2020-02500.

Decided on January 28, 2021

Opinion by Acosta, Presiding Judge; Webber, Oing, Scarpulla, Judges

Federal: The United States District Court for the Eastern District of California granted summary judgment for the defendant, M. D. Biter, warden of Kern Valley State Prison (KVSP), finding there was no evidence of deliberate indifference in providing contaminated water to prison inmates. Plaintiff Michael Sullivan alleged that Biter violated Sullivan's Eighth Amendment right to be confined in "human conditions," including the basic human needs, medical care, and a reasonably safe environment. Sullivan alleged that Biter discovered, but deliberately neglected to fix, arsenic-contaminated drinking water at KVSP.

The court evaluated whether Sullivan's claims show evidence of "deliberate indifference," which is required of Eighth Amendment claims. The analysis involved objective and subjective elements. First, the court determined that the contaminated water was not associated with an objectively substantial risk of harm. The court found that the contamination level stayed well below EPA's old maximum contamination level standard and that lifetime consumption of KVSP's arsenic-contaminated water likely would not pose a serious health risk. Second, the court examined the subjective evidence of "deliberate indifference" to the potential risk. The court concluded that Biter did not ignore the issue and that he deferred to the corrective actions already underway at KVSP.

[Sullivan v. Biter, Dist. Court, ED California 2021](#) 

United States District Court, E.D. California

Case No. 1:15-cv-00243-DAD-SAB (PC)

Decided on January 19, 2021

Opinion by Boone, Magistrate Judge

Federal: The US Court of Appeals for the Third Circuit confirmed the district court ruling that the plaintiff did not prove constitutional violation and discrimination by the Department of Environmental Protection (DEP) and its employees.

The case arises from the DEP's discovery of *E. coli* and coliform in the plaintiff's spring water, which he sold to the public. The plaintiff alleged that DEP violated his due process right when it refused to give confirmation that the plaintiff's water operation could resume. Using the "shock the conscience" standard, the court found no evidence of a constitutional violation. DEP ordered corrective actions targeting the contamination to protect the public from the harmful effects of *E. coli* and coliform. Because the plaintiff did not comply, DEP's refusal was reasonable, failing to "shock the conscience." The plaintiff also failed to provide sufficient evidence that DEP discriminated against the plaintiff or favored his "similarly situated" competitors in other cases of discovering *E. coli* in water supplies.

[Frompovicz v. Hissner, Court of Appeals, 3rd Circuit 2021](#) 

United States Court of Appeals, Third Circuit

No. 20-1364.

Decided on January 21, 2021

Opinion by Nygaard, Judge

Quiz Question: February 2021

Question: What is mental health parity?

Last Month's Quiz Answer

Question: When does "surprise billing" occur in the healthcare context?

Answer: When a patient receives a bill for care by an out-of-network provider, even though the care was received at an in-network facility.

Quote of the Month

"The Flint water crisis is not some relic of the past"— Fadwa Hammoud, Michigan Solicitor General

[Editor's note: This quote is from the above article [Former Michigan governor and 8 others face charges in the Flint water crisis that left 12 people dead](#) , CNN (1/14/2021).]

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