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# The Role of Advocacy in Public Health Law

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## Introduction

Being “right” and having the facts and evidence on your side are not sufficient to effectuate policy change. Advocacy, i.e., the process of motivating policymakers to take action, is often the “most difficult phase of the policy process” and requires a distinct skill set.<sup>1</sup> Like any skill, some may have more natural aptitude than others, but everyone can study, practice, and improve their ability to be an effective advocate. With public health under threat from a variety of directions, it is crucial for those who care about public health to master the skills needed to help enact sound policy into law and to prevent the weakening of public health protections.

Yet despite the central role that advocacy plays in translating public health research into law, public health advocacy skills are rarely explicitly taught in either law schools or schools of public health, leaving those engaged in public health practice unclear

about whether and how to advocate for effective policies.<sup>2</sup> This article, based on a panel at the 2018 Public Health Law Conference, discusses how advocacy can be taught to both law and public health students, as well as the role that public health law faculty can play in advocating for public health. We emphasize that courses centering on health justice concerns provide a powerful context in which to teach advocacy skills, and we discuss the work of the George Consortium, which seeks to engage public health law faculty in advocacy efforts.

## Teaching Advocacy in Public Health Law Courses

It is important for students to learn the basics of policy advocacy in the classroom, while also keeping in mind that genuine community engagement — working with and listening to the affected communities — is essential to effective and ethically sound advo-

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cacy. Top-down, expert-led advocacy campaigns risk alienating and disempowering the communities they seek to help. But before engaging community groups, students must, as an initial matter, learn the basics of advocacy theory, tactics, ethics, and law in the classroom.

In the new textbook by Burris et al. and in the associated teaching materials (available at [www.thenewpublichealthlaw.org](http://www.thenewpublichealthlaw.org)), the authors have sought to make the development of advocacy skills an explicit part of the Public Health Law curriculum.<sup>3</sup> These materials allow students to acquire some experience with thinking through how an advocacy plan might be devel-

oped and implemented, and to consider the practical, ethical, and legal challenges in doing so. Though these materials can be used to teach either law or public health students, they are ideally used in interdisciplinary classes including students from law, public health, social work, and other disciplines. As these materials emphasize, in addition to learning about advocacy skills, students should become familiar with the legal limits on policy advocacy, including those imposed by federal tax law or attendant to the receipt of federal grant funding. Nonprofit organizations often act more cautiously than these restrictions require, thereby limiting their impact and effectiveness, so it is important for students to understand what these entities *can* do in terms of lobbying and advocacy, and how they can strategically leverage existing law to maximize their use of various types of funds.<sup>4</sup>

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Notably, the most recent accreditation standards from the Council on Education for Public Health (CEPH) requires MPH students to learn to “advocate for political, social or economic policies and programs that will improve health in diverse populations.”<sup>5</sup> It is not clear that this requirement mandates specific training in advocacy skills, and the authors of this article are not aware of any published reports on how this requirement is being implemented. Nonetheless, we

### Teaching Health Justice and Advocacy

In the past decade, there has been a proliferation of curricula on the social determinants of health (SDOH) and health equity.<sup>6</sup> Many schools of public health, medicine, and other health professions now routinely teach this subject. Often, however, SDOH curricula are not explicit about the specific ways in which laws

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After they have been taught the fundamentals, students can best learn advocacy by doing advocacy. Therefore, providing students from different disciplines with opportunities to practice concrete health justice advocacy skills is critical to instilling advocacy as part of their professional lives.

may construct and perpetuate social conditions that are harmful to health and well-being, how selective enforcement of the law contributes to health disparities, or how law may be used as a tool to address health harming conditions.

Health justice provides a useful frame for teaching students about the role of law in health and for providing training in public health advocacy. Discussions of *health equity* usually invoke the structural factors influencing health, including poverty, discrimination, access to housing, education and health care, but a focus on *health justice* goes further and links inequity directly to law (and injustice). The textbook *Essentials of Health Justice*, by Tobin-Tyler and Teitelbaum, offers a teaching tool for illuminating the particular pathways from laws and policies to the social injustices they create and, ultimately, to the inequitable health effects they have on specific populations.<sup>7</sup> For example, recognizing how selective enforcement of housing laws disparately affects the health of communities of color can help law and public health students identify the need to change specific laws and policies in their own communities.<sup>8</sup> Likewise, explicit discussion of how policy choices lead to the medicalization of poverty (i.e., spending “inordinate amounts of money and other resources to address healthcare needs brought on by

poverty instead of providing for the tangible needs of the poor before illness results<sup>9</sup>) can provide students in the health professions with a foundation from which to advocate for redistribution of health care dollars to social services and safety net programs.<sup>10</sup>

Once students are able to see through a health justice lens, they can then be challenged to think more concretely and strategically about how to advocate for policy change. As in a public health law class, a course focusing on health justice can be used to teach basic advocacy skills and the associated law. After they have been taught the fundamentals, students can best learn advocacy by doing advocacy. Therefore, providing students from different disciplines with opportunities to practice concrete health justice advocacy skills is critical to instilling advocacy as part of their professional lives. These skills include: how to listen to and work in collaboration with stakeholders and allies across disciplines; how to identify advocacy opportunities from the structural and systems barriers they observe in their daily work (for health care professionals, we often call this “patient to policy” advocacy); how to develop a targeted advocacy strategy that has a reasonable chance for success; and how to engage in a range of advocacy tactics, including giving an effective “elevator pitch” about the need for a practice or policy change, working effectively with an advocacy coalition, engaging in grassroots organizing in concert with community organizations, writing and submitting public comments, and delivering oral legislative testimony.<sup>11</sup>

### Teachers as Advocates: The George Consortium

In addition to training their students to be advocates, public health law faculty also engage in advocacy in their own right. Scholars advocate both by creating normative scholarship and by engaging with public health law issues outside of the academy. The George Consortium supports both types of advocacy.

The Consortium formed in 2012 as courts were becoming increasingly receptive to claims challenging government’s ability to protect public health.<sup>12</sup> With support from the Robert Wood Johnson Foundation’s Public Health Law Research Program, over twenty-five public health law scholars and practitioners met in Boston to discuss how legal scholars could help secure the legal foundations for public health laws. Noting the Federalist Society’s success in establishing “the intellectual narratives for a legal and political framework that challenges basic facets of the regulatory state,” the group recognized that public health law scholars could play a valuable role by articulating public health law’s normative and doctrinal underpinnings.<sup>13</sup>

Initially, the Consortium functioned as a loose network that organized academic panels and supported members’ scholarship on core issues such as paternalism or the First Amendment commercial speech doctrine. The scholarship that emerged embraced public health’s central role in our constitutional system, and sought to articulate the justifications for robust public health protection through law.

From its beginning, the Consortium also encouraged members to write amicus briefs, draft regulatory comments, and pen blogs and op-eds. These forms of advocacy — in addition to the on-the-ground, community-engaged advocacy in which many Consortium members are also engaged — gained new urgency following the election of President Trump, who promised an anti-regulatory agenda. In 2017, the Consortium launched *publichealthlawwatch.org*, a project that aims to track public health law threats and influence public discourse by sharing the advocacy and scholarly work of Consortium members.<sup>14</sup>

Both normative scholarship and direct advocacy efforts by public health law scholars raise numerous issues. Space prevents a full discussion, but it is worth noting the inherent tensions between the role of researcher, with its demands of objectivity, and that of advocate. Tensions also exist between the role of teacher and advocate, as not all students may agree with the positions we hold.

Despite such challenges, advocacy appears integral to the job of a public health law scholar. Public health law itself is inherently normative. It takes as its premise that population health is a goal that law can and should further, and that public health science should inform law’s pursuit of that goal.<sup>15</sup> As Gostin and Wiley assert, public health law seeks to secure health “consistent with the values of social justice.”<sup>16</sup> Those who teach and write about public health law cannot avoid taking positions on law’s role in promoting public health.

That does not mean, of course, that we should permit advocacy to blind us to countervailing facts, values, or legal principles. Nor does it prevent us from disagreeing amongst ourselves, or from respecting those with whom we disagree. It does mean that public health law scholars cannot deny public health law’s normativity, nor the need to engage when public health is under threat.

### Conclusion

To properly equip students with the skills needed to improve public health outcomes, advocacy skills must be an integral part of the curriculum. Courses in Public Health Law and Health Justice provide ideal settings in which to teach this material, and new resources are

available to assist faculty in doing so. Public health law academics can also work through the George Consortium to facilitate their own work as advocates and to magnify their collective voice in support of effective public health policies.

#### Note

The authors have nothing to disclose.

#### References

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