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ARTICLES

**Flipping the Light Switch: New Perspectives on Default to Donation
for Organs and Tissues**

Daniel G. Orenstein and Layne M. Bettini 1

The decision to donate organs and tissues after death is a complex choice, implicating numerous ethical, moral, legal, and other values. However, it is also a simple one in that it has two mutually-exclusive options (consent or decline). As with other such binary decisions, the legal “default” that applies when no affirmative choice is made provides an important framework. Other scholars have robustly analyzed the possibility of increasing solid organ donation by transitioning to a system of presumed consent and the potential concerns for individual autonomy that would be associated with such a system. Less attention, however, has been paid to the potential impacts in two other respects: (1) cadaveric ocular and tissue donation, and (2) donor families. While the existing U.S. system does an excellent job procuring solid organs for transplant – even in the current opt-in structure – there is comparatively much more room for improvement in ocular and tissue procurement rates. Additionally, presumed consent offers several benefits to donor families who, under the current system, are suddenly thrust into decision-making roles under exceedingly difficult circumstances. A properly structured presumed consent system would not significantly affect the donation decision directly – much as the initial position of a light switch does not affect one’s choice to light a room. However, the public health benefits a change to the default rule could be significant if it successfully fosters a culture that supports donation and views it as the norm, rather than the exception.

The Legal Anatomy of Product Bans to Protect the Public’s Health

James G. Hodge, Jr. and Megan Scanlon 20

Products that present significant health risks to individuals or populations are routinely banned in the U.S. However, some products that negatively impact health remain available commercially despite efforts to ban their sale or possession. Underlying public health powers to ban products are multiple, countervailing law, policy, and ethics arguments that sometimes thwart public health efforts. Using product bans in furtherance of the public’s health is predicated on successfully identifying and navigating these

arguments. Lacking a definitive assessment of such product bans, this article assesses the “legal anatomy” for identifying and implementing bans that are effective, and avoiding those that are not.

The Expansion of Newborn Screening: Implications for Public Health and Policy

Leila Barraza and Lauren Burkhart 42

Newborn Screening Programs have proven to be a successful model of public health intervention. Shortly after birth, a blood sample is taken from the heel of newborn babies and tested for certain conditions. Analysis of the newborn’s genome is used at the present time only for confirmation of a positive test from a newborn screen. Whole Genome Sequencing (WGS) of newborns as a routine procedure, however, is the next progression in the development of newborn screening programs. This article examines the history of current newborn screening programs and looks beyond into the potential for expansion into WGS as a newborn screening method. Benefits from WGS of newborns could reap enormous benefits for public health research for disease prevention and health promotion. Expansion into new scientific areas is never easy and will require a consideration of ethical and legal constructs and changes in state statutory law. This article looks at policy considerations that will necessarily be examined and addressed for a shift from the current blood spot program to a WGS approach.

ACA Implementation: The Court Challenges Continue

Jane Perkins and Dipti Singh 59

This article provides an overview of litigation related to Supreme Court’s upholding of the constitutionality of the Patient Protection and Affordable Care Act (ACA) by identifying three “rounds” of litigation that have emerged. Round One involves litigation that culminated in the 2012 Supreme Court ruling. Almost uniformly, that litigation sought to repeal the ACA in its entirety. The second round of litigation, comprised of cases filed since the 2012 decision and dominated by cases seeking to curtail an ACA requirement for health insurers to cover contraception without cost sharing. Notably, there have been a large number of such cases (approaching 100, to date), and the Supreme Court has agreed to decide whether for-profit businesses have religious rights entitling them to an exemption from the contraceptive coverage requirement. Finally, the emerging Round Three of litigation seeks to enforce the ACA so that its benefits can be realized.

Monitoring the Law: Court Watch Programs in Maryland

Megan Griest..... 74

Traditionally, domestic violence has been treated as a women’s issue, not the public health problem it is. This national problem affects the health and well-being of people across all demographics of this country. The Maryland court system is failing victims of domestic violence. In some cases, these victims do not report the crime to the police out of fear of repercussions from the abuser; in other cases, a lack of trust in the criminal justice system alienates victims. Throughout the process, victims may feel alone and unprotected. One way the state could address this issue is by more widely implementing court watch programs, which train volunteers to observe judicial behavior in court and complete a record of the case and behavior of judges, bailiffs and other court staff. Program administrators then compile these records and typically prepare a report

discussing the consistency of the judges' behavior, best practices observed, and recommendations for improvement, to disseminate to judges in that jurisdiction. This article discusses domestic violence as a public health concern and the need for policy change within the court system. Then it discusses how the current system is failing domestic violence victims in Maryland and reviews court watch programs as a potential solution to increase the consistency of judicial behavior and provide increased protections to victims in domestic violence cases.

Priorities in Public Health Law: A Practice-Based Analysis of Trends in the Legal Needs of Public Health Professionals

Caty Schmitter and Jennifer A. Bernstein87

The Network for Public Health Law (Network) works to address public health legal issues may be able to contribute relevant information gained through their program activities. Through its activities assisting public health professionals with legal questions, the Network has compiled a considerable amount of data on the needs of these professionals. This article is a report summarizing the results of a detailed analysis of this data and identifies trends among requests submitted to the Network from public health professionals in an effort to build on past reviews of Network activities, identify opportunities for further analysis and contribute to the expanding body of research that will inform public health law's priorities moving forward. The report provides background on the Network, including its purpose and activities, its relevance to a discussion of the legal needs of public health professionals and several limitations in the Network's existing data set which have prevented more complex analysis. It then lays out the goals of a new study of Network data and describes the methods which were used to collect, prepare and analyze data for the purposes of this study. The report then describes the results of the study and highlights trends in requests submitted to the Network across a number of factors. Finally, it discusses potential explanatory factors and implications for several key trends. These findings will facilitate public health professionals being able to make use of law and policy to promote the public's health.