Public Health Law and Ethics

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Setting the scene: why is ethics important in PH?

Examples where ethical conflict may occur:

• Resource allocation
• Negotiating the political context
• Data use and management including privacy and confidentiality protection
• Control of infectious diseases
• Immigration
• Community engagement
• Balancing individual choice and freedoms while protecting the public good
How far should law limit people liberties in pursuit of PH? Is it always ethically justifiable?
Learning outcomes of today's session

• Gain an overview of the basics of public health ethics
• Learn how to apply ethics frameworks to public health decision making
• Learn to apply public health ethics tools to address ethical challenges that commonly arise in the practice of public health
• Explore the overlap between ethics and law
• Examine how the use of case studies can assist with exploring ethical issues in public health practice
• Examine specific ways to integrate ethical considerations in the day-to-day decision making in local public health departments
What is Ethics?

• Action of identifying ethical principles to guide action
• Analysing and evaluating the rights and/or wrongs of particular actions
• Ethics asks:
  • What choices should we make and why?
  • What moral norms should guide our actions?
Why Consider Ethics along with Public Health Law?

• Laws are often broadly framed
• Leaves much room for administrative discretion about when to use authority
• Need to think about ethics when the law allows several different actions
Including ethical consideration in public health law teaching allows for:

• Exploration of ethical questions that arise in public health practice (e.g. flu vaccine allocation)

• Development of practitioners’ capabilities to participate in confident deliberation and public exchanges about ethical issues so as to strengthen community trust and cooperation
Including ethical consideration in public health law teaching allows for:

- Enrichment of understanding of the public health professional’s roles and professional values
By the end of today, you should be able to:

• Identify different ethical and legal issues embedded in public health practice and policy

• Use ethics guides/frameworks to facilitate analysis and deliberation about the claims, concerns and values of various stakeholders involved in cases and policies

• Foster the development of ethical justifications for PH actions and decisions when law is indeterminate or unsettled
We will cover:

Definitions and Concepts
• Complementary roles of law and ethics in Public Health
• Ethics, morality and moral norms

Public Health Law and the English Legal System

Ethical Decision Making through Case Examples
• Professional and PH policy/practice cases

Ethics in Practice: Incorporating a Code of Ethics in Day-to-Day Activities
Definitions and Concepts

• **Law in Public Health**: Provides authority for and limitations on state powers, incentives and disincentives for behaviours, often allows for much professional discretion

• **Ethics in Public Health**: Provides on-going analysis, deliberation about, and justification for PH action and policy, often when law indeterminate
What is Public Health Ethics?

• Ethical principles and moral norms particular to the practice of Public Health
• Study of our deliberation about moral norms that guide PH decision-making
• A process for identifying, analysing and resolving ethical conflicts or tensions in PH practice
Law

- Formal institution
  - Statutes
  - Regulations
  - Previous court decisions

Ethics

- Less formal
  - Moral norms, values
  - Professional codes
  - Case analysis
Example: MDR-TB outbreak in community

Law in Public Health:

• provides the legality of authorities to remove people to hospital and to require them to stay there
Ethics in Public Health:

• PH practitioner must decide in particular case whether and how to use that legal authority

• Must demonstrate when imposing detention, that protecting the public’s health carries more weight and justifies over-riding an individual’s moral claim to reject treatment and to live in the community.
Ethics in Public Health:

- PH official must act with both transparency and accountability to maintain public support and trust by explaining, “We are imposing detention because...”
Ethics and Morality

Ethics-the study of our deliberations about:
- What choices should we make and why?
- What moral norms should guide our actions?

Morality-refers to moral norms about rights and wrongs that are stable and widely shared in society
- Provides norms that are a basis for ethical reflection, deliberation and analyses
Moral Norms

• Universal norms: e.g. not to lie, not to kill

• Particular norms: apply only to certain communities, e.g. professional or religious norms—medical norms for informed consent

• Norms not absolute: When they conflict, one norm can be overridden when justified (e.g. lying to save someone from being killed)

• Norms require interpretation and balancing when they appear to conflict
Ethical Theories

Virtue Ethics (Aristotle):

- Character-based ethics, focuses on what a person of character/virtue would do
- A moral action exemplifies the virtues of a person of character
Ethical Theories

Duty-based ethics (Deontological Ethics-Immanuel Kant)

• concerned with what people do, not with the consequences of their actions:
  – Do the right thing.
  – Do it because it's the right thing to do.
  – Don't do wrong things.
  – Avoid them because they are wrong.

• Under this form of ethics you can't justify an action by showing that it produced good consequences, which is why it's sometimes called 'non-Consequentialist'.
Utilitarian Ethics (Consequentialism)

- Weighs up harms and benefits resulting from an action
- Whether an act is right or wrong depends only on the results of that act
- The more good consequences an act produces, the better or more right that act
• **Utilitarianism** states that people should maximise human welfare or well-being (which they used to call 'utility' - hence the name)

• the ethically right choice in a given situation is the one that produces the most happiness and the least unhappiness for the largest number of people
Fields of Healthcare Ethics

• Bioethics-the study of ethical issues brought about by advances in biology and medicine
• Clinical ethics-analysis of ethical issues and dilemmas in clinical practice
• Research ethics-protection of research subjects, consent and timely access to treatments that work
• Public health ethics...
5 min group activity

• What are the particular moral norms and values in public health?
• How are these different than the particular moral norms and ethical issues in clinical medicine?
• What are some of the ethical issues and conflicts that arise most often in public health practice?
Principalism: dominant ethical framework in Western clinical ethics

Beauchamp and Childress (2001)

Four ethical principles of:

- Autonomy (right to self-determination)
- Beneficence
- Non-maleficence
- Justice
Clinical ethics vs. Public Health ethics

**Clinical Ethics**
- Focuses on individual patient-provider interactions
- Individual liberty, autonomy, right to self-determination
- Authority vested in status/knowledge/actions of physicians
- Patient consent
- Beneficence and non-maleficence
- Justice to the individual

**Public Health Ethics**
- Focus on populations, institutions, communities
- Relies on interdependence of people
- Authority vested in the powers of the State
- Societal consent through political process; public engagement
- Social justice and equity
The central problem/issue with PH law and ethics

Right and responsibilities of individuals

Rights and responsibilities of the community

Rights and responsibilities of the State
Take the 2007 smoking ban in public buildings and subsequent smoking legislation, for example:

- What was the justification for this?
- Who were the stakeholders involved and what were their likely claims, concerns and values?
The Harm Principle (J S Mill)

• In a free, liberal society...the only justification for the state to interfere with the actions of others is if those actions causes harm to these others
Further concepts to grasp!

- Libertarianism: to have the freedom to do/act as one wishes (included freedom of speech, free to practice religion, etc etc.)

- Paternalism vs Individual rights/freedom and autonomy

- Collectivism and communitarianism: when do the rights and interests of the community overshadow the rights of the individual?
Example: obesity

• Does a person have a right to consume what and whenever food and drink they want?
• Even if they become morbidly obese?

Why? Why not? What can/should the law be able to do to intervene? Where would place limits of intervention? Would that be right, fair...ethical? Let’s discuss!
Thinking about PH ethics...

• Helps us clarify, prioritise and justify possible courses of PH action
• Increases our capacity to recognise ethical issues
• Provides greater transparency in decision making
• Encourages respectful deliberations about ethical tensions
• Enhances public trust and relationship building
• Strengthens scientific integrity and professional excellence
What does PH Ethics offer us?

• **Vocabulary and frameworks**: to illuminate the ethical dimensions of cases and policies

• **General ethical principles**: which are ‘starting points’ to guide ethical reflection about balancing the competing moral claim

Balancing moral claims similar to process used in cost-benefit tradeoffs but instead of focusing on ‘quantifiable’ health gains/losses, ethics focuses on identifying, weighing up and balancing moral interests at stake in a particular situation
What does PH Ethics offer us?

• An approach to decision-making: to clarify reasons or justifications for particular decisions

• Categories of reasons and major themes

  - **Utilitarianism**: Decisions judged by their consequences (i.e. maximise net utility for all parties affected by the decision)
  - **Liberalism**: Focuses on individual interests and rights
  - **Communitarianism**: Emphasises communal values, visions of the ‘common good’, traditional practices (?)
Types of Ethical Issues in Public Health

• **Professional Ethics Cases**
  - Focus on ethical dimensions about being a PH professional and professionalism. Includes conflicts of interests and conflicts of obligations

• **Policy and Practice Ethics Cases**
  - Focus on ethical dimensions of PH policy and practice e.g. allocating scare resources, making trade-offs between collective groups and individual interests
Case example:

The health department in a deprived community with high dental health care needs and little NHS dental provision is invited by a local fast food restaurant to be a partner on a dental health project. The restaurant, with support from its fizzy drinks vendor, proposes to donate £200,000 a year to set up a health department community dental clinic.

In exchange, the restaurant wants only to have its name and the brand of fizzy drink in very small print on the health department educational material distributed to the community. Two health department officials, including the nutritionist directing the obesity programme, believe such a partnership is unethical. What would you advise the health commissioner?
Public Health Case Analysis: 3-Step Guide

1. Analyse the ethical issues: Assess identities of stakeholders, what they have at stake in the case, and in the alternate courses of action

2. Evaluate the ethical dimensions: Identify moral norms, general moral considerations, and/or ethical principles that may provide guidance about what to do

3. Justify a decision: Present sufficient grounds or reasons for a course of action based on moral norms, ethical principles, professional codes and/or previous cases
1: Analyse the ethical Issues in the Situation

• What are the PH risks and harms of concern in this particular context?
• What are the PH goals?
• Who are the stakeholders and what are their moral claims
• Is the source or scope of legal authority in question?
• Any precedent cases or the historical context relevant?
• Do professional codes of ethics provide guidance?
2: Evaluate the Ethical Dimension of the Alternate Course of Action

- **Utility**: Does a particular PH action produce a balance of benefits over harms?
- **Justice**: Are these benefits and burdens distributed fairly (distributive justice), and do legitimate representatives of affected groups have the opportunity to participate in the decision making process and have a right to appeal (procedural justice)?
2: Evaluate the Ethical Dimension of the Alternate Course of Action

• Respect for legitimate Public Institutions: Does the PH action respect professional and civic roles and values, such as transparency, honesty, trustworthiness, promise-keeping, protecting confidentiality and protecting vulnerable individuals and communities from stigmatisation?
3: Provide Justification for a Particular PH Action

• **Effectiveness**: Is the PH goal likely to be accomplished?

• **Proportionality**: Will the probable benefits of the action outweigh the infringed moral consideration?

• **Necessity**: Is it necessary to override the conflicting ethical claims in order to achieve the PH goal?
3: Provide Justification for a Particular PH Action

• **Least infringement**: Is the action the least restrictive and least intrusive?

• **Public Justification**: Can PH agents offer public justification for the action or policy that citizens and those most affected could find acceptable?
PH case analysis: Summary

• Case deliberation
  - Requires fair process and involvement of appropriate stakeholders
  - Is best practiced in group discussion that involve listening, understanding others perspectives, expressing and challenging each other’s reasons, based on the ethical values at stake in the case, and focusing on facts and details in the particular context
  - Should justify decision in a way the public will find persuasive; frameworks help guiding moral conversation
The development of public health law

• From early times laws have been passed to provide powers to counter health threats such as:
  – poor sanitation,
  – the adulteration of food,
  – the health consequences of child labour and
  – the epidemic spread of disease.

• These early laws were
  – included in the powers to secure law and order,
  – in recognition that it was the mandate of the state to protect its citizens from physical harm,
    • including a duty to protect against health harms
History of public health law in the UK

- **1848: First Public Health Act** - setting up of Health Boards and towns appointing a Medical Officer of Health
- **1853: Vaccination Act** - making smallpox vaccination compulsory (but no-one given power to enforce them)
- **1866: Sanitary Act** - made LAs responsible for sewers, water and street cleaning
- **1871: Amended Vaccination Act** (now with power to enforce)
- **1875 Public Health Act** This brought together a range of Acts covering sewerage and drains, water supply, housing and disease. Local authorities had to appoint Medical Officers in charge of public health. Local sanitary inspectors were appointed to look after slaughterhouses and prevent contaminated food being sold. Local authorities were ordered to cover sewers, keep them in good condition, supply fresh water to their citizens
Towards today

• **1984: Public Health (Control of Diseases) Act**
  Many of the provisions of the Act were based on nineteenth century social conditions and were developed piecemeal over a long time.

• Public health law as a distinct subject matter was one of the fields of study that fell into neglect when public health was thought to have conquered infectious diseases

• Over the past two/three decades, though, the re-emergence of infectious disease as a major public health concern and a growing awareness of the complexity of health regulation at the local, national, and global levels have restored law to importance in public health and academic law
• Updated, amended 1984 Act now clarifies powers of a LA to restrict and detain (and order decontamination) a person, thing or premises that poses a hazard to public health by applying to the local magistrate’s courts for a Part 2A order.

• However, the order CANNOT force a person to take medication or be vaccinated against their will….to do so would be criminally prosecutable under the Offences Against the Persons Act

• E.g. to apply to the courts for a Part 2A order against a person with TB who refuses to comply with treatment and follow expert advice to reduce risk of transmission
Potential of law as a mechanism to protect and improve the public health

• Public health practice is premised on the state’s responsibility to fulfil its moral mandate
  – to protect citizens from foreseeable threats of harm

• Public health takes a collective rather than individualistic approach to health, and its focus lies
  – not only on the collective provision of health services to persons who are suffering from illness and disease
  – but also, critically, on the prevention of risks of health to the population as a whole
**Potential of law as a mechanism to protect and improve the public health**

- Law is a mechanism particularly appropriate to public health regulation because
  - it too works as a collective response to threats of harm in that it addresses populations rather than individuals,
  - and it imposes general obligations (Reynolds 2004).

- “Powers and duties within the realm of public health law are framed in ways which address populations, or groups of the population, and govern the organized efforts of the state to provide services and interventions aimed at population health” (Gostin 2000).
Parameter Setting Role of Law

• Laws provide the boundaries
  - Tell you what you must do, can do and cannot do

• But may not tell you what you should do (among options)

• In some cases, law may conflict with what we ought to do
The relation between law and ethics
Law and ethics: the overlap

Law

Ethics

Murder laws
Law and ethics: law without ethics

Must be over 18 to vote in UK elections
Law & Ethics: Ethics without laws
Law & Ethics: Ethics that cease to be law
Law & Ethics: Ethics that become law
Potential of law as a mechanism to protect and improve the public health

• Public health operates within an ethical framework of communitarianism and utilitarianism:
  – Presupposing that there are circumstances in which the greater good of the community justifies the overriding of autonomy of the individual,
  – and that the intervention which results in the greatest health benefits for the greatest number is the most appropriate.

• All public health interventions require an underpinning of law,
  – Including justifying:
    • where interference with individual rights to protect public health is a public good,
    • where it is proportionate to the public health threat.
Potential of law as a mechanism to protect and improve the public health

• Law has however a wider role to play.
  – Law also serves to provide a public expression of cultural values / norms.
  – Laws can change socio-cultural norms.

• Laws designed to protect health operate
  – not only by providing powers, duties and penalties which operate directly,
  – but also by making a statement of acceptability of behaviour.
Potential of law as a mechanism to protect and improve the public health

• People wear seat belts
  – not because they fear criminal prosecution
  – but because the existence of laws requiring the wearing of seat belts sets a public standard of behaviour
    • with which good citizens would wish to comply.

• Laws re pollution, smoking in public places, regulating workplace safety are effective
  – only in part because of enforcement provisions.
  – also because they
    • have created expectations of standards of health and safety,
    • have educated the public to believe that these health protecting behaviours are the minimum standards acceptable in our society
Potential of law as a mechanism to protect and improve the public health

• The absence of law also serves to send messages about acceptable behaviours.

• Where there is no law to regulate the provision of information about food content, or to prevent the advertising of junk food to children, there is an implication that there is nothing unacceptable about
  – the inclusion of high fat levels in processed food
  or
  – targeting children with crisps advertisements
Potential of law as a mechanism to protect and improve the public health

• Increasingly, in a society where individuals have little control over their living environment,
  – the public expects the state to intervene to prevent known threats to health

• The failure of the state to intervene
  – suggests that the threat is minimal, imaginary, or unimportant.

• Lack of parliamentary attention to public health law over the past century
  – cannot be said to have created a neutral legal environment in public health.

• It has, created a legal environment which is harmful to public health
  – through failure to clarify unacceptable sources of health harms
Potential of law as a mechanism to protect and improve the public health

• Where law:
  – is out of touch with contemporary mores,
  – conflicts with contemporary understandings of the balance between individual right and public benefit,
  – fails to acknowledge advancements in scientific understanding of public health,

• Then that law undermines the work of the state to protect its citizens from harm
What is public health law?

• Public health law:
  – is the legal powers and duties of the state,
  • in collaboration with its partners
    – (e.g., health professionals, business, community, media, universities),
  • to assure the conditions for people to be healthy
    – (e.g. to identify, prevent / ameliorate risks to health of population)
  – and the limitations on the power of the state
    • to constrain autonomy, privacy, liberty, proprietary, or other legally protected interests of individuals / businesses for common good.

• The prime objective of public health law is to pursue the highest possible level of physical and mental health in the population, consistent with the values of social justice.
Law as a tool for the public’s health: models of legal intervention

• The study of the field of public health law requires a detailed understanding of the various legal tools available
  • to prevent injury and disease
  • and to promote the health of the population
Legal tools / models available to govt to advance the public’s health:

• 1: High level general PH legislation
  – government duty to hold “health as a salient value”

• 2: the power to tax and spend (NB devolution in Scotland for general taxation powers)

• 3: the power to alter the informational environment
Legal tools / models available to govt to advance the public’s health:

• 4: the power to alter the built environment
• 5: the power to alter the socio-economic environment
• 6: direct regulation of persons, professionals, and businesses
• 7: deregulation: law as a barrier to health
Law as a tool for the public’s health: models of legal intervention

• Govt has many legal ‘levers’ to prevent injury and disease and promote the peoples health.
• Legal interventions can be highly effective and need to be part of the public health’s arsenal.
• Legal interventions can be controversial
  – raising important ethical, social, constitutional, and political issues.
• These conflicts are complex and important
PH Law versus Medical Law

• Bulk of mainstream medical law study focuses on individuals and their medico-legal rights and responsibilities, e.g.

➢ Consent to treatment, right to treatment, to refuse treatment, clinical negligence, resource allocation, confidentiality, issues of capacity and mental health, autonomy and the right to self-determination in healthcare.

• Common law development in this area has firmly established the high value placed on individual autonomy and rights:
  • “In modern law, medical paternalism no longer rules”
  • (Chester V Afshar 2004, LJ Steyn)
• Public health law interventions, on the other hand, are concerned with populations and, in many cases, might significantly infringe upon individuals’ civil rights and liberties

• Individual autonomy and right to self-determine often need to be traded-off against collectivism, utilitarianism for the common good of the whole population as a whole

• This means that public health action needs to be legitimised through specific legislative authority
Activity!

• Laws (and their implementation) may also have important unintended effects, both positive and negative, on population health

• Can you think of some examples? Probably easier to think of negative ones, rather than positive ones!
How our laws are made

There are 4 sources of law in the UK:

- **Statutory Legislation** (Acts of Parliament)
- **Common Law** (Doctrine of Precedent and hierarchy of courts-only a higher court can overrule a decision of a lower court)
- **European Union Law** (As the UK is a Member State of the EU, this means that EU law takes precedence over UK law)
- **European Convention of Human Rights** (As a Member State of the Council of Europe, the UK is a signatory to the ECHRs. The Human Rights Act 1998, which came into effect in October 2000, requires all the courts in the UK to protect the rights identified in the ECHR)
Statutory Interpretation

• Confusion can result from how the exact words in an Act are interpreted.
• Are they to be interpreted literally or more meaning given to what the Act is trying to achieve, or prevent?
• For example, the case of the RCN vs DoH (1981) about the wording of the Abortion Act of 1967...were nurses being asked to do something illegal and risk prosecution?

• Exact words in Act were:
Abortion is legal “when a pregnancy is terminated by a registered medical practitioner”
Articles of the HRA 1998

• Art 2: Right to Life
• Art 3: Right not to be tortured or treated inhumanely
• Art 4: Right not to be held in slavery or servitude
• Art 5: Right to liberty
• Art 6: Right to a fair trail
Articles of the HRA 1998

• Art 8: Right to privacy
• Art 9: Freedom of conscience
• Art 10: Freedom of expression
• Art 11: Freedom of assembly
• Art 12: Right to family life
• Art 14: Right not to suffer discrimination
Judicial Review

• Legal procedure to challenge decisions, actions or policies of public bodies (e.g. the NHS, PHE, LAs etc)

• Can be either brought by individuals (and their advocates) or else groups (e.g. Patient and pressure groups)

• Application made to the High Court

• Judges will review the decision on the basis of its legality, its reasonableness or its procedural process
Judicial Review

- Illegality most commonly due to the public body acting *Ultra Vires* (acting above and beyond its powers given to it by law).

- Unreasonableness may be due to illogical or irrational decision making or else a *fettering of discretion* (in NHS recourse allocation decisions, for example...having a funding policy that does not take account of individual exceptionality, amounting to a blanket ban).

- Procedural impropriety: failure to observe the rules of natural justice, or comply with procedures laid down in statute (e.g. going ahead with an action or decision affecting the public without first having a public consultation).
Judicial Review

• Due to the ideology of parliamentary sovereignty, judicial review cannot be made against Acts of Parliament

• If judicial review is granted, the court will not substitute its own view or instruct the public body on what they should have done

• It will only rule that the action/decision was unsafe and invite the public body to rethink

• The public body may well continue with the same course of action, only this time the way it goes about it will be defensible.
Southampton water fluoridation was not unlawful

The High Court has ruled that a health authority was not acting unlawfully in seeking to add fluoride to Southampton's tap water.

A judge rejected claims by resident Geraldine Milner that the decision-making process was "defective".

Ms Milner brought the application for a judicial review, backed by local anti-fluoride campaign groups.

Mr Justice Holman dismissed the legal challenge saying there was no substance in the grounds of complaint.

The South Central Strategic Health Authority (SCSHA) welcomed the ruling.

It said: "The board remains satisfied that water fluoridation is a safe and effective way to improve dental health and will now be considering its next steps."
The challenges of public health law

• Does it act modestly or boldly?

• Does it choose scientific neutrality or political engagement?

• Does it leave people alone or seek to change them for their own good?

• Does it intervene for the common welfare or respect civil liberties?

• Does it aggressively tax and regulate or nurture free enterprise?
Summary

• Protecting and preserving public health is often at odds with, and can’t happen without constraining, a wide range of private activities

• Individuals and organisations act rationally for their own interests, but their actions may adversely affect public health

• Absent state authority and willingness to coerce, such threats to the public’s health and safety could not easily be reduced
• Public health legislation is negative in its approach, tackling issues detrimental to health rather than in a positive way to create a healthy physical and social environment.
Practical Public Health Ethics Tools for making Tough Choices
Public Health Ethics Tools

• Case-based approach
• Stakeholder analysis
• Deliberative process
• Prioritising values
• Professional values
Case-based Approach

• Traditional method of using cases to develop practical moral judgement and resolve ethical issues
• The case approach reasons “up” inductively from particular, specific instances to more generally applicable moral conclusions
• Similar to the development of common law using legal precedents
Advantages of case-based Approach

• Encourages ethical reflection and discussion
• Reinforces basic ethical concepts through application to concrete cases
• Highlights practical decision making
• Allows learners to consider different perspectives
• Sensitises learners to complex, multi-dimensional context of issues in PH practice
Stakeholder analysis

• Consider the moral claims, concerns, interests, values of various stakeholders
• Identify potential partners and areas of tension
• May involve community engagement/consultation
Deliberative Process

• Ensures fairness of process
• Weighs stakeholder values in relation to core PH values, e.g. health, interdependence, community, evidence-based decision making
• Designs alternatives consistent with stakeholder and PH values
• Chooses between competing alternatives
Professional values:

- Ethical values for PH practice are not explicit in the UK, but are in the US
Principles of the Ethical Practice of Public Health

1. Public health should address principally the fundamental causes of disease and requirements for health, aiming to prevent adverse health outcomes.
2. Public health should achieve community health in a way that respects the rights of individuals in the community.
3. Public health policies, programs, and priorities should be developed and evaluated through processes that ensure an opportunity for input from community members.
4. Public health should advocate for, or work for the empowerment of, disenfranchised community members, ensuring that the basic resources and conditions necessary for health are accessible to all people in the community.
5. Public health should seek the information needed to implement effective policies and programs that protect and promote health.
6. Public health institutions should provide communities with the information they have that is needed for decisions on policies or programs and should obtain the community's consent for their implementation.
7. Public health institutions should act in a timely manner on the information they have within the resources and the mandate given to them by the public.
8. Public health programs and policies should incorporate a variety of approaches that anticipate and respect diverse values, beliefs, and cultures in the community.
9. Public health programs and policies should be implemented in a manner that most enhances the physical and social environment.
10. Public health institutions should protect the confidentiality of information that can bring harm to an individual or community if made public. Exceptions must be justified on the basis of the high likelihood of significant harm to the individual or others.
11. Public health institutions should ensure the professional competence of their employees.
12. Public health institutions and their employees should engage in collaborations and affiliations in ways that build the public's trust and the institution's effectiveness.
Prioritising Values

• No absolute best
• Determining best depends on context (local circumstances, stakeholder values)
• A decision always implies a prioritisation of values
• Ethical analysis makes implicit values explicit - makes decisions more transparent and is useful for justifying decision, policies, recommendations
Case studies

- Split into 5 groups
- 5 PH ethics cases
- Use the framework analysis we’ve covered
- Each group presents their case and we’ll discuss as a whole
Public Health Case Analysis: 3-Step Guide

1. Analyse the ethical issues: Assess identities of stakeholders, what they have at stake in the case, and in the alternate courses of action.

2. Evaluate the ethical dimensions: Identify moral norms, general moral considerations, and/or ethical principles that may provide guidance about what to do.

3. Justify a decision: Present sufficient grounds or reasons for a course of action based on moral norms, ethical principles, professional codes and/or previous cases.
Some useful ethical frameworks for use in PH: Kass (2001)

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<tr>
<th>Foundational Value(s)</th>
<th>Operating Principle(s)</th>
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<tbody>
<tr>
<td>• Negative right to non-interference</td>
<td>• Minimal interference for improvement of population health</td>
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<td>• Positive right or obligation to improve the public’s health</td>
<td>• Obligation to reduce inequities</td>
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<td>• Social justice</td>
<td>• Reducing harms &amp; burdens</td>
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<td>• Providing evidence of benefits</td>
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Childress (2002)

**Foundational Value(s)**
- Producing benefits
- Preventing, removing harms
- Producing maximal balance of benefits to harms
- Distributing burdens & benefits
- Ensuring participation
- Respecting autonomy
- Protecting confidentiality
- Keeping commitments
- Disclosing information truthfully
- Building & maintaining trust

**Operating Principle(s)**
- Effectiveness
- Proportionality: benefits must outweigh the infringement
- Necessity: ensuring that any infringement is necessary
- Least infringement: only the least possible infringement on autonomy is justified
- Public justification: transparency & accountability require public explanation of infringement
Upshur (2002)

**Foundational Value(s)**
- Individual liberty
- Non-discrimination
- Social duty
- Honesty & truthfulness

**Operating Principle(s)**
- Harm principle
- Least restrictive or coercive means
- Reciprocity principle
- Transparency principle
Thompson (2006)

Foundational Value(s)
• Duty to provide care
• Equity
• Individual liberty
• Privacy
• Proportionality
• Protection from harm
• Reciprocity
• Solidarity
• Stewardship
• Trust

Operating Principle(s)
• Inclusiveness
• Openness & transparency
• Reasonableness
• Responsiveness
Baum (2007)

Foundational Value(s)
• Population-level utility
• Evidence
• Justice/fairness
• Accountability
• Costs/efficiencies
• Political feasibility
• Beneficence
• Non-maleficence
• Autonomy

Operating Principle(s)
• Unmask normative assumptions and ethical trade-offs explicitly
• Add ethical value to economic analyses
• Illuminate and clarify ethical considerations connected to policies or program decisions
• Clarify limits of public health mission
Swain (2008)

**Foundational Value(s)**
- Interdependence
- Community trust
- Fundamentality
- Justice

**Operating Principle(s)**
- Minimal interference for improvement of population health
- Obligation to reduce inequities
- Reducing harms & burdens
- Providing evidence of benefits
- Focus on fundamental causes of disease
- Community participation, collaboration, communication, and consent

- Equality between citizens
- Protection of individual freedom limits state authority
- Social contract that state power may be used to advance welfare
- Autonomy as self-governance
- Health is important for a good life
- Health is defined by individuals
- Limiting liberty is acceptable only when purpose is to prevent harm to others
- Third-party participation in public health delivery

- Reduce risks persons impose on each other
- Use regulation to ensure environmental conditions that sustain good health
- Attend to health of children and vulnerable persons
- Provide programs that help make it easy for people to lead healthy lives
- Ensure access to appropriate medical services
- Reduce unfair health inequalities
- Do not coerce adults
- Minimize interventions that are introduced without some form of consent, individual, community or democratic decision-making
- Minimize interventions that are perceived as intrusive or in conflict with important personal values
Case 1: Banning outdoor smoking in public places

Points to consider:
1) 1st argument focuses on ideas about harms:
Mill’s harm principle: only justifiable to intervene when harm to others
We might have a duty to warn people of the risk to themselves but it would it be unjustifiably paternalistic to ban them from smoking outdoors?
What is the level of “harm” in this case? How do we define it?
Is it just a next, natural step to changing norms about smoking? What other harms might such a ban cause? Esp leading to more smoking indoors where others could be harmed more as a result? E.g. children of smoking parents?
Balance of individual and population rights and benefits...
• Stigma and injustice arguments: Is it an injustice that it increases stigma for already marginalised group?
• Is simply providing information about harms actually increased the socio-economic/deprivation gradient we see with smoking? (higher SES respond more to such info)-banning might increase equality perhaps?
Case 2: Nigerian lead-poisoning crisis

No health and safety law applied, no law that made the activity illegal: absence of law enforcement reveals how desperate people will resort to desperate means to make ends meet.

Who provided the people with the equipment? (without providing adequate training, or safety info/protective equipment? Why did the government not just remove it or provide this? Possible that the miners provided free labour, paid a pittance to mine gold for government involvement? Who was deriving the benefit and who was sustaining the harms?
• Once international agencies realised it was localised environmental issue, many withdrew their concerns? What if it had been due to an infection like Ebola-a very diff response!

• What are the possible harms caused by MSF getting involved? Lack of government commitment, return to mining again once soil decontaminated? Involvement must be balanced between NGOs wanting to help and encouraging governments acting to protect their public health?
Case 3: Obesity surveillance in school children

- Idea that for surveillance to be justified, the data must actually be used in practice
- Benefits (new understanding and insights) and harms from programme (stigma potential-further risk to health)
- Makes obesity a “problem/issue” for children, may lead to bullying of obese children, is that justified? Can it be prevented/reduced?
- Combining obese checks with other routine physical examinations perhaps?
• Distinctions between research v surveillance re: parental consent, opt-in/opt-out issues?
Case 4: Allocation of limited PH resources
Case 5: Directly observed therapy for MDR-TB

• Analyse the ethical issues:
Clarification of the harms and risks of concerns and the goal of PH action: to control the spread of TB? To prevent more drug-resistant TB developing? To provide appropriate care for the child?

Risks to the child: side-effects of treatment, social harms from isolation/loss of privacy

Harm the community by driving other cases underground/increasing stigma leading to more harm to public vs harms caused from not treating the child effectively
• Assess the ethical dimension of PH options: Is there any justification for not allowing the parents to administer treatment themselves? Will requiring in-person DOT on balance produce a more benefits over harms and other costs? Will it distribute benefits and burdens fairly?
Provide justification for one particular action

- Questions to ask:
  
  **Effectiveness**: Is the action likely to accomplish the PH goal?

  **Necessity**: Is it necessary to override the conflicting ethical claims to achieve the PH goal?

  **Least infringement**: Is the action the least restrictive and least intrusive?
**Proportionality**: Will the probable benefits of the action outweigh the infringed moral considerations and any negative effects?

**Impartiality**: Are the burdens and benefits of the action distributed fairly?

**Public justification**: Can PH officials offer public justification that citizens, and in particular those most affected, could find acceptable in principle?