Testing, Screening, and Searching for Health Risks

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Syllabus

• Updated syllabus online is SUBJECT TO CHANGE!
• Class 6 slides now posted (titles are hyperlinked)
• Updated readings for June 30 and July 21
• Stay tuned for updates to July 7 and July 14
• Guest speakers for July 14 and July 21!


Public Comment Brief

• Public Comment drafts coming back to you in the order they were received
• I will not be reviewing future edits – polish up a draft and submit!
• Please be sure to accept/reject all changes and comments before submitting!
• Florida v. Becerra content will make your Public Comment timely and relevant to the CDC
• Public Comment must be submitted to the docket on Regulations.gov BEFORE MIDNIGHT on June 30th!

Final Paper

• 16-18 pages in length, BlueBook footnotes. (50% of grade)
• Proposals are back to you
• If requested, please send revisions back as soon as you can!
• Final paper is due by 3pm on Tuesday, August 24, 2021

Prevention and Screening

H. Gilbert Welch, Overdiagnosed

• This excerpt challenges the widespread assumption that prevention is always beneficial.
• Screening for some risk factors can lead to risky overtreatment, which can often be quite costly.
• Can you name some examples where this is the case?
  • Breast Cancer (sensitive, not specific)
  • Prostate Cancer (not always clinically meaningful)
• Any examples of screening that is extremely cost-effective?
  • Colon cancer – colonoscopy vs. fecal occult blood test (FOBT)?
  • Screening for infectious diseases (HPV, HIV, hepatitis B/C)
**Pyle v. Woods** (10th Cir. 2017)

**Background and Holding**
- What are some potential benefits to prescription drug monitoring programs (PDMPs)?
- What are some potential risks?

**Ferguson v. City of Charleston** (2001)

**Background and Holding**
- Are the hospital’s criteria for selecting patients for drug testing reasonable? Are they indicative of drug use?

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3. Those criteria were as follows:
   1. No prenatal care
   2. Late prenatal care after 24 weeks gestation
   3. Incomplete prenatal care
   4. Abruptio placenta
   5. Intrauterine fetal death
   6. Preterm labor 'of no obvious cause'
   7. IUGR [intrauterine growth retardation] 'of no obvious cause'
   8. Previously known drug or alcohol abuse
   9. Unexplained congenital anomalies
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**Ferguson v. City of Charleston** (2001)

**Background and Holding**
- The Court found that invasion of privacy in Ferguson “is far more substantial” than prior cases, and that the government’s “special need” was not very different from any other criminal prosecution. Do you agree?
- What do you think of Scalia’s dissent?

**Board of Education v. Earls** (2002)

**Background and Holding**
- What does the school assert as its “special need” for testing students?
- Does it matter if the tests are held internally vs. sent to law enforcement authorities?
- What is different about the dissenting opinion’s characterization of the facts?


**Background and Holding**
- What was the fire department’s justification for requiring blood draws?
- Are you surprised that blood draws qualify as “searches” under the Fourth Amendment?
- Can you imagine other circumstances in which a required blood draw might be justifiable in this setting?

**AARP v. U.S. EEOC** (D.C. DC 2017)

**Background and Holding**
- How does the court distinguish between the different purposes of the ACA, ADA, and GINA?
- Should health behaviors or participation in “wellness programs” be a condition of employment?
Design a Workplace Wellness Program

- Consider what the ACA says about wellness programs (p 669-672)
- In your small group, develop a framework for a workplace wellness program:
  - Structure/Format?
  - Monitoring of participants?
  - Data collection?
  - Incentives for participation?
  - Evaluation of success/failure?
  - Avoiding a “search or seizure” under the Fourth Amendment?
  - Avoiding violations of ADA, HIPAA, or GINA?

Do wellness programs work?

- Worksites with the wellness program had an 8.3% higher rate of employees who reported engaging in regular exercise and a 13.6% higher rate of employees who reported actively managing their weight.
- There were no significant differences in other self-reported health and behaviors; clinical markers of health; health care spending or utilization; or absenteeism, tenure, or job performance after 18 months.

What about corporate values?

- Wisconsin business’ implantable microchips (to enter facilities and pay for food)?
- Prohibiting wearing ties to work?
  - Restrict blood flow to the brain (maybe)
  - Can also increase room-to-room spread of infectious diseases in hospitals
- Pieces of flair?

15 Minute Break