



# The Legal Basis of Public Health

An Individual or Group Study Course in Ten Modules

## Module 4 Licensing

SS0004



**CDC**  
CENTERS FOR DISEASE CONTROL  
AND PREVENTION

## ***The Legal Basis of Public Health***

SS0004 - Module 4, Licensing

### **Continuing Nursing Education (CNE)**

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# *The Legal Basis of Public Health*

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## **Course Contents**

This course consists of the following ten modules and a Coordinator Guide, which includes suggestions for using the course materials.

<b>SS0001</b>	<b>Module 1, Introduction</b>
<b>SS0002</b>	<b>Module 2, Data Collection and Surveillance</b>
<b>SS0003</b>	<b>Module 3, Service Delivery</b>
<b>SS0004</b>	<b>Module 4, Licensing</b>
<b>SS0005</b>	<b>Module 5, Inspections</b>
<b>SS0006</b>	<b>Module 6, Enforcement</b>
<b>SS0007</b>	<b>Module 7, Policy Development</b>
<b>SS0008</b>	<b>Module 8, Negotiation</b>
<b>SS0009</b>	<b>Module 9, Communication</b>
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# About this module

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## Overview

Licensing protects public health and safety.

Licensure is a prospective type of regulation; it limits, monitors, and sets conditions for how an occupation or business will be conducted. The major rationale for licensure has traditionally been the protection of public health and safety. It is applied to health-related professions, health-care institutions, and businesses with the potential for affecting public health and safety. Because a license affects a number of legal rights, due process is an important aspect of the licensure process.

## Module components

This module consists of the following components:

- Text and self-study exercises to be completed individually or discussed with your learning community. These exercises are meant to help you absorb what you have just read and immediately apply the concepts.
- A self-check review, found at the end of the text, will help you assess your understanding of the material.
- Group exercises to undertake with your learning community, found at the end of the text.

## Goals

The goal of this module is to help you as a public health professional understand licensure and its legal effects. You will also understand what authority your public health agency has to enforce licensure requirements and standards and what procedures must be followed in administering a licensure program.

## Learning objectives

After completing this module, you should be able to:

1. I Describe the full source of authority to issue, deny, conditionally grant, suspend, or revoke licenses.
2. Describe proper due process procedures that should be accorded to license applicants and licensees.
3. Identify the extent of your authority to compel the disclosure of information relevant to the licensure process.

# Introduction

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*Webster's New World Dictionary* defines *license* as "a formal permission to do something; esp., authorization by law to do some specified thing." Grad describes licensure as the "administrative lifting" of a legislative prohibition.<sup>1</sup> Licensure is a legal approach that allows only those persons or facilities that meet the standards of the licensing act to carry out functions defined in the act. The practice of those functions by any unlicensed person or facility is a violation of the law.

Certain activities are illegal without a license.

Licensing statutes operate by first prohibiting the unlicensed practice of particular occupations or the unlicensed operation of specified businesses and facilities. Thus, for example, a medical practice act makes it illegal for an unlicensed individual to provide any of a broadly defined range of medical services, including both diagnosis and treatment.

After it makes certain activities illegal for unlicensed individuals and entities, the typical licensure act then establishes minimum requirements for obtaining and maintaining the license, either directly or through relevant regulations. Licensing laws and regulations are written by the state legislature and rule-making bodies (health agencies and/or health boards) respectively. Module 7, Policy Development describes the process for participating in and influencing the outcome of statutory and rule-making processes.

Authority to license is based on police power.

Authority to establish license requirements is based on the police power of the state. As a leading legal encyclopedia explains:

A state's police power with regard to the protection of health, morals, and welfare of the public includes the right to regulate, by requiring a license, as a prerequisite to the carrying on of certain activities, commonly designated as businesses, occupations, vocations, trades, or callings. Activities that a state may prohibit may be permitted by the state on condition that a license be acquired and a license charge paid.... As a justification for a licensing requirement as a proper exercise of the police power, the courts generally require a showing that the requirement at least tends to promote the public health, morals, safety, or welfare.<sup>2</sup>

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<sup>1</sup> Grad, p. 97.

<sup>2</sup> *American Jurisprudence*, pp. 19-20.



### **The Sunrise Law: Government Regulation of Occupations and Businesses**

Viewed as a continuum of governmental control over occupations and businesses, licensure is at one end of the spectrum. The concept of a continuum is best summed up in South Carolina's "Sunrise Law," which identifies six degrees or options of occupational regulation:

**Option 1. No regulation be created.** A licensing board may not recommend any regulation unless necessary to protect the health, safety, or welfare of the public.

**Option 2. Statutory change to provide for civil causes of action or criminal penalties.** This option is the least stringent form of regulatory change, and is generally indicated when the harm that is occurring is slight and only indirectly related to practitioner competency.

**Option 3. Inspection of a practitioner's premises and activities.** A recommendation for inspection requirements includes authorization of an appropriate state board, agency, or commission to enjoin an activity which is detrimental to the public's health, safety, or welfare.

**Option 4. Listing of practitioners' location, nature, and operation of practice.** This is an appropriate form of regulation when the threat to life, health, safety, and economic well-being is relatively small and when other forms of legal redress are available to the public. Practitioners are not required to demonstrate education or competence, but are required to submit the required information concerning their practice.

**Option 5. Registration of practitioners.** As defined in the Sunrise Law, this form of regulation grants recognition to individuals who have met predetermined qualifications set by a state agency. Although one may practice the occupation without certification, only those who meet the qualifications may legally use the designated title. This form of regulation is especially appropriate when the public needs assistance in identifying competent practitioners, but where the risks to health and safety are not severe enough to warrant excluding individuals who do not meet the established educational standards for the practice of a profession.

**Option 6. Licensure of practitioners.** In imposing licensure on a profession, the State grants permission to persons meeting predetermined qualifications, and passing an examination to demonstrate competency, to have the exclusive use of an occupational title and the exclusive right to engage in an occupation to the exclusion of unlicensed persons. This form of regulation restricts the scope of practice so that it becomes illegal for unlicensed individuals to provide the services in question. The State Reorganization Commission must recommend licensure only if the other means of regulation listed above are inadequate to protect the public.

*Act 572 of 1988, "Review of Occupational Registration and Licensing"*

# State and local licensing activities

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Health departments implement licensing in some but not all areas.

Because the purpose of licensing laws is primarily to protect public health and safety, state or local health departments are frequently made responsible for implementing them. According to the *National Profile of Local Health Departments*, 72 percent of respondent health departments reported some licensing activity. However, health departments are not responsible for all health-related licensure. The licensing of health professionals, for example, is usually administered by a separate governmental entity, such as a state department of registration and education, and the authority to enforce state pollution laws, including the licensing of solid waste disposal systems, is often given to a state environmental protection agency.

Health-related licensure falls into three major categories:

- Occupations and professions, ranging from doctors and nurses to morticians and plumbers
- Health care delivery institutions, including hospitals, nursing homes, and clinical laboratories
- Businesses with particular impact on the public's health and safety, such as restaurants, dry cleaners, and businesses that sell legal drugs such as tobacco and alcohol

## Occupations and professions

Licenses may limit who can engage in a practice or regulate use of official designations.

Occupational licensure laws take one of two forms: either they declare that only those meeting specific requirements may engage in a particular endeavor, such as the practice of medicine, or they declare that only those meeting certain criteria may use a particular designation, such as Certified Public Accountant or Licensed Practical Nurse, although anyone may legally perform the professional functions involved.

## Health care delivery institutions

Through licensure health care resources are distributed.

Licensure of health care delivery institutions is used to distribute state health care resources efficiently through certificate-of-need programs and to establish minimum standards of quality. Other means have also been used to control the quality and costs of health care services.

*Quality control*

Since the late 1940s, virtually all states have enacted licensing laws covering health care delivery institutions, motivated in large measure by the pre-conditions established by the federal “Hill-Burton” legislation, which funded states to plan for, construct, and modernize hospital facilities.

Minimum standards of quality for health care institutions are set.

State licensing laws are primarily directed at quality and safety standards of equipment and the structural integrity of health care institutions. Only infrequently are they concerned with the quality of health care delivery. As Wing suggests, “...licensing generally has been regarded as setting minimum standards for safe facilities, not normative standards for the delivery of care.”<sup>3</sup> The latter function is primarily left to the nongovernmental Joint Commission on Accreditation of Healthcare Organizations (JCAHO) which assumes primary responsibility for accrediting hospitals, nursing homes, and other institutional settings.

Medicare and Medicaid hospital certification relies heavily upon JCAHO accreditation. Most state and local health departments help determine whether institutions meet the requirements of those federal reimbursement programs. Local health departments inspect the institutions and report their findings to their state health departments. State health departments monitor the institutions’ compliance with federal standards and oversee the decertification of institutions that fall out of compliance. Local health departments may play an inspection role which then provides input into the state and federal review process. (See Module 5, Inspections for further discussion.)

*Certificate-of-need programs*

Certificate-of-need programs help determine allocation of resources.

State and local certificate-of-need programs were initially developed as a result of federal health planning legislation enacted in 1974. The 1974 legislation tied funding for state and local planning and development activities to federally mandated guidelines for the supply, distribution, and organization of health resources and services. By the mid-1980s, federal activity in this area ended, and with it the activities of many state and local resource planning efforts. According to Wing, “By 1994, fewer than half the states maintained some sort of certificate-of-need program.”<sup>4</sup>

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<sup>3</sup> Wing, p. 132.

<sup>4</sup> Ibid., p. 142.

The State of Mississippi's certificate-of-need program illustrates the scope and extent of activities covered by this type of legislation. State law designates the Mississippi State Department of Health as the agency responsible for administering and supervising all state health planning and development responsibilities, involving the following activities:

- Identifying priority health needs
- Inventorying available health facilities, services, and personnel
- Recommending corrective actions
- Establishing criteria and standards for certificate-of-need review, covering access, quality, and cost
- Conducting certificate-of-need review of proposals for health facilities and services

The state's law prohibits persons from undertaking the following kinds of activities without first obtaining a certificate-of-need from the State Department of Health:

- Constructing, relocating, or acquiring a new health care facility or major medical equipment
- Changing an existing bed complement
- Offering an extensive array of tertiary health services, nursing home care, home health services, swing-bed services and ambulatory surgical services, comprehensive inpatient rehabilitation services, licensed psychiatric services, licensed chemical dependency services, and long-term care hospital services
- Financing any activity listed above

[Sections 41-7-173 and 41-7-191, *Mississippi Code of 1972, as amended.*]

## **Businesses**

Licenses impose operational standards on businesses that affect the public's health.

In addition to occupations, professions, and businesses involved in the delivery of health care services, there are others that are regulated through licensure or permit requirements in order to protect the public's health. These include dairies, barber shops and hair salons, food-handling establishments, funeral parlors, tattoo parlors, plumbers, rooming houses, waste dumps, and waste treatment plants. Each has specific licensing standards that it must meet. For example, licensing standards may require restaurants to post hygiene notices in employee work areas or periodically to complete a self-assessment form. Similarly, licenses may incorporate building codes which prohibit lead-based paint and asbestos insulation, or which set safety-related fire and electrical standards and similar measures to protect public health.



## Bringing it home...

What kinds of licenses does your agency administer? List occupations, professions, institutions, and businesses.

What are the relevant statutes and ordinances?

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Where differences exist, state law determines whether local or state rules prevail.

States vary as to whether standard-setting and licensing authority will be delegated to local health departments, retained by the state, or exercised concurrently. If strict local standards come into conflict with laxer state health standards, which law governs will be determined by the language of the relevant statutes or sometimes by case law interpretations by the courts. In some jurisdictions, for example North Carolina, state law authorizes a local board to adopt a more stringent rule in an area that is also regulated by a state commission. In other states, state law may prohibit more stringent local standards.

# The constitutionality of licensing laws

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Licensing restricts many rights.

Licensure involves the granting or denial of important rights. Frank Grad describes licensure as “a restriction, an imposition of conditions on a person’s freedom to carry on the activity, profession, occupation, or business of his or her choice. Thus, licensure constitutes a limitation both on a person’s liberty of action and on the use of a person’s property.”<sup>5</sup>

Notwithstanding its infringement of recognized rights and liberties, and an often adverse impact on economic interests, licensing laws have universally been upheld as a valid exercise of the state’s police powers. While states possess broad latitude to implement licensing programs, there are certain constitutional constraints. (This topic is discussed more fully in Module 1, Introduction and Module 7, Policy Development.)

## Substantive due process

Licensure requirements must be clearly stated and related to legitimate goals.

As with other forms of regulatory control, substantive due process requires that there be a clear rationale for licensure requirements and clear criteria for issuing or denying a license. The law must clearly describe the activity or profession which falls within the law’s ambit, and the conditions which must be met to satisfy the law; otherwise the law may be declared “void for vagueness.” In addition, the law must bear a rational relationship to a legitimate state purpose and the means used to accomplish the goal must also be rational. Where licensing imposes overly broad conditions, affecting activities that bear no rational relationship to the public interests the government is trying to protect, the law will be struck down.

In most situations the “rationality test” will be easily met. The courts generally defer to a legislative determination of the need for licensure and the means used to accomplish that goal, giving only cursory scrutiny to the legislative intent. However, where licensing laws impact fundamental constitutional rights or affect a “suspect class,”<sup>6</sup> the courts will closely scrutinize the legislation to determine whether the legislative intent is constitutional and whether there are less intrusive means for accomplishing the same end.

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<sup>5</sup> Grad, p.96.

<sup>6</sup> See Module 3, Service Delivery.

## Procedural due process

Since a license is a legal right, applicants and holders must receive due process protection.

Until recently there was some disagreement within legal circles as to whether a license to practice a profession or operate a business was a legally enforceable right or simply a privilege. But today the courts consistently consider a license a legal right that therefore deserves adherence to specific procedural safeguards.

License applicants must be notified of all actions to be taken involving their license eligibility. A license holder or applicant must be given notice of and an opportunity for a hearing whenever a license is revoked or denied. In addition, the entire administrative procedure must be based on a written record which is subject to appropriate judicial review.<sup>7</sup>

### *Example:*

A New Mexico psychologist sued the State Board of Psychologist Examiners for imposing a requirement that she take and pass an oral examination before reinstating her psychologist's license. Under state law the Board could, "at its discretion, require an applicant to take and pass either a written or oral examination prepared and administered by the Board." The psychologist asked for, but did not receive, an explanation about why the Board was requiring her to take an exam. She then requested a hearing before the Board to challenge its determination that an examination was necessary. Her request was denied. She appealed the Board's decision to the New Mexico civil courts. The appellate court overturned the Board's decision, holding that the applicant was entitled to a hearing to determine whether the Board had a rational basis for imposing the oral examination requirement. The court found that 1) the petitioner had a significant property interest at stake, and 2) a hearing was required to reduce the risk of the Board's arbitrarily imposing an examination requirement which might result in the deprivation of her license to practice psychology. The court said:

"Substantive due process requires that regulations promulgated according to the state's police powers, which place a protected property interest at risk, bear a reasonable and valid relationship to public morals, health, and safety.

Procedural due process requires notice and an opportunity to be heard prior to a deprivation of a protected liberty or property interest."

[*Mills v. New Mexico State Board of Psychologist Examiners*, 941 P.2d, at 507 (1997).]

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<sup>7</sup> Although due process requires a hearing before revocation of a license, legislation typically provides that a license may be suspended in an emergency, with a hearing held as soon as possible thereafter.

## Interstate commerce

The Constitution protects the flow of interstate commerce.

While licensure often impacts economic interests adversely, it also confers substantial benefits. Licensing is frequently sought by professional groups as a means of legitimizing their profession, for example, the fight for recognition by midwives and massage therapists. Licensure also serves as a barrier to entry into a profession or business, conferring benefits on those who are already licensed by making it difficult for newcomers to enter the field.

The Commerce Clause of the Constitution may be violated by applying a licensing law too excessively or in a way that favors a state's own residents. In a 1970 decision, the U.S. Supreme Court noted that:

Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative [supposed] local benefits... [*Pike v. Bruce Church, Inc.* 397 U.S. 137 (1970).]

Licensing ordinances can be challenged in court.

When an Indiana dairy challenged a Chicago milk inspection ordinance that required all dairies selling milk in Chicago, including out-of-state dairies and their suppliers, to obtain a Chicago Board of Health permit and to submit to periodic inspections, the United States Court of Appeals for the Seventh Circuit first looked at the burden imposed on the Indiana dairy and its suppliers by duplicative on-site inspections. The court then balanced that burden against any possible public health benefits and found no evidence of benefit, because the requirements of the Grade A Pasteurized Milk Ordinance for Indiana, which were based on model legislation recommended by the United States Public Health Service and adopted by most states, ensured that the Indiana dairy met equivalent quality standards.

The court therefore declared the Chicago ordinance to be unconstitutional and noted that:



License requirements must not impose undue or unreasonable burdens.

Although the challenged ordinance is ostensibly designed to protect the public health, the record shows, and it is uncontroverted, that in fact the ordinance has no appreciable effect in promoting that interest. The public health goal of the ordinance has become little more than a fiction... And applying the balancing test of Pike and Cottrell, "the burden imposed...on commerce is clearly excessive in relation to the putative local benefits."...which are rendered negligible by the conceded presence "of adequate assurance that the standards of a sister State...are substantially equivalent" to Chicago's. [*Dixie Dairy Company v. City of Chicago*, 538 F.2d 1303 (1976).]

Requirements must have a clear public health rationale.

It should be emphasized, however, that this outcome is the exception that proves the rule and grew directly out of the unreasonable rigidity of the Chicago ordinance. Licensure statutes that can be shown to have some public health rationale will usually be upheld by the courts.



**See Group exercise 4.1 at the end of the module.**

### **Licensees give up certain constitutional guarantees**

Getting a license implies consent to give up certain rights.

Despite due process requirements, a license applicant gives up some of the legal rights of the average citizen, in effect, consenting to governmental intrusion in the form of investigation and monitoring. This consent thereby frees the licensing agency from the need to comply with warrant requirements when conducting an inspection. (See Module 5, Inspections.) A license applicant is also agreeing to give the licensing public health agency information relevant to the continuation of the license. Even if providing such information requires extensive self-reporting, licensees have relinquished much of the protection from self-incrimination that the ordinary citizen could expect.

In discussing this licensure implied consent, Grad explains that:

When a licensee accepts a license with the knowledge that it is legally subject to...revocation by the issuing authority, this becomes a part of the conditions of the license and the licensee has no legal cause for complaint if the license is...revoked [immediately and without a full trial] when events occur for which such summary revocation is provided by law.<sup>8</sup>

<sup>8</sup> Grad, 117.

# Licensure as a regulatory tool

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Licensing is a way to ensure compliance with regulations.

Licensure is an extremely effective regulatory tool. Under many health department programs, applicants must submit detailed documentation proving they have such things as the requisite education and training to perform the duties of the occupation, good moral character, and/or adequate equipment and facilities, as a condition to receiving a license.

For example, Rhode Island requires applicants for a day care license to submit the following documentation:

- Sketches of the building in which the center program will be housed, showing the activity rooms that will be used for child care, the kitchen or food preparation area, bathrooms for children and staff, and office space
- Sketch of the outdoor play area, showing accessibility to the building and the rooms used for child care
- Information on the number and ages of children to be served, age groupings, and staff/child ratio
- Information on staffing, including the name and qualifications of the director, site coordinator, and other identified staff, their medical information, employment history and a criminal background check
- Information on the daily schedule of activities, the daily feeding program, the philosophy of the program, and the developmental goals and objectives on which the program will be based
- A list of the equipment and materials, both indoor and outdoor, available for implementation of the program
- Detailed financial information

In addition, the applicant must submit proof of compliance with local zoning ordinances and with the applicable sections of the State Fire, Building, Health and Sanitation Codes. Finally, prior to issuing a license, the health department visits the facility to determine compliance with agency regulations and to assist in developing the maximum capacity for the program. [*Chapter 23-28.15 General Laws of Rhode Island-Child Day Care Centers*]

Licensees must notify the agency if they make any changes.

Licenses ensure continued compliance with applicable laws and regulations. Detailed provisions, both general in nature and specific to a particular facility, are contained within and incorporated by reference into a license. Generally material submitted in support of an application becomes a condition of the license, so that any material change in the condition or operation of a facility since submitting the application requires the licensee to submit notice to the agency and obtain a license modification.

Rhode Island includes the following provisions in a Child Day Care license:

- The maximum number of children and the age groups to be served in the center
- The dates of the license's validity
- A requirement to post the license in a conspicuous place in the center
- A prohibition against transferring the license to another person or the facility to a new location
- A requirement to notify the Day Care Licensing Office of any major changes which affect the license such as: intent to change the ownership or location of the center, change of key personnel, change in the physical facility, change in the number or ages of children served, or major changes in the program
- A duty to comply with relevant rules and regulations of the Department of Health
- A duty to permit agency inspections of the facility and of pertinent records
- A duty to notify the Day Care Licensing Office at least thirty (30) days prior to discontinuing operations at the facility.

[Chapter 23-28.15 of the General Laws of Rhode Island - Child Day Care Centers]

### **Sanctions**

Sanctions for regulatory control

Historically, the licensure process has consisted primarily of the granting or revoking of licenses. Unfortunately this makes for a rather unsophisticated public health enforcement mechanism. Any "all or nothing" enforcement approach lacks the flexibility needed to encourage improved performance by licensees. Regulatory control can often be more effective with a broader menu of sanctions. Additional sanctions could include:

- The authority to impose corrective action plans
- Conditional licensure subject to immediate revocation
- The placing of agency-appointed monitors in facilities to oversee their operations
- Limits on state patient referrals
- Receivership, i.e., placing management of the business operation under a court-appointed neutral person until such time as the court determines that it may be returned to control of the licensee, or otherwise resolved
- Injunctive relief
- Civil and criminal penalties, including monetary penalties.

Many of these terms are explained more fully in Module 6, Enforcement.

Such a broader menu of licensure sanctions can be used to make licensure a more flexible and effective tool of public health protection. Of course health departments can only impose those licensure conditions for which it has statutory or regulatory authority to do so. If your program lacks sufficient authority to operate an effective licensing program, it may be important to become involved with the policy development process. (See Module 7, Policy Development.)



**See Group exercise 4.2 at the end of the module.**



## Review of terminology...

You may find it useful to check your understanding of legal terms discussed in this module by defining them in your own words. Add to this list if you wish.

interstate commerce

licensure

listing

monitor

procedural due process

prospective regulation

receivership

registration

substantive due process

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# Self-check review

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Check your knowledge of the preceding material by answering the questions below.

1. Authority to establish license requirements is based on
  - A. State constitutions
  - B. Police power of the states
  - C. Health board regulations
  - D. Federal legislation
  
2. Occupational license laws
  - A. May discriminate among professions
  - B. Ensure compliance with federal reimbursement programs
  - C. Declare who can use certain professional titles
  - D. Both A and C
  
3. Licensing ordinances can be successfully challenged in courts if
  - A. They unduly interfere with interstate commerce
  - B. They impose unreasonable burdens on businesses
  - C. Proper due process procedures have not been followed
  - D. All of the above
  
4. Licensing ensures compliance with laws and regulations by
  - A. Requiring applicants to submit proof of their ability to provide the service
  - B. Limiting the number of persons practicing a given profession
  - C. Maintaining a public list of practitioners and information about their practice
  - D. Funding programs that need federal resources
  
5. Licensure is more effective when a broader array of sanctions is used because:
  - A. Substantive due process requires it
  - B. The “punishment should fit the crime”
  - C. Revocation hearings are costly and time-consuming
  - D. Revoking a license for a minor infraction is unconstitutional

6. The legal rationale for allowing licensure laws to force licensees to give up some of their constitutional protections is:
- A. Police power of the states
  - B. Licensees are protected from self-incrimination
  - C. Licensing is optional and confers benefits on the licensee
  - D. It is necessary to protect the public's health

Answers:

1.B, 2.C, 3.D, 4.A, 5.B, 6.C

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# Group exercises

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## Exercise 4.1      **Drafting licensing ordinances**

Imagine that you had helped your department draft a local ordinance requiring the licensure of mobile ice cream vendors who sell their wares from trucks and/or pushcarts. This requirement has been challenged by a potential licensee as having no rational public health purpose, and you are appearing before the judge who must decide on the constitutionality of the provision.

### **Discussion questions**

What would you tell the judge about the rationale for the licensure provision?

Would you attempt to explain that no less intrusive measure could assure the same level of public health protection?

Why would that be relevant?

## Exercise 4.2      **Case Study - Denying a license**

Gore May is an entrepreneur who opened a series of restaurants in the Village of Oak Wood. Each of these restaurants eventually had its license to operate revoked after inspections by the Village Department of Health documented multiple instances of egregious unsanitary practices and conditions. Mr. May is now proposing to open a new restaurant, Botulism Under the Bough, and has applied for a license. Although the Health Department can find nothing wrong with the proposed facility, Mr. May's track record is such that they are hesitant to issue a license. Mr. May threatens to sue if the license is not approved.

### **Discussion questions**

Would your department be able to deny Mr. May a license based on past performance?

What if the application was made by Mr. May's wife?

If the department denies a license, what should it be prepared to demonstrate to a court regarding the process by which this denial was arrived at?

Which of your agency's programs contain "good character" laws?

# To register for continuing education credit and to evaluate this module

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## Registering for Continuing Education Credit

To receive credit for this module you must submit course enrollment forms and the answers to the **Evaluation and Test** (located on the following pages) to CDC. There are several ways to complete this registration process:

### ***Complete the forms online.***

- U** Go to the PHTN website [www.cdc.gov/phtn](http://www.cdc.gov/phtn) and complete the registration and evaluation online. Directions will be given at the website.

### ***Complete the forms on paper. There are two ways to obtain the forms from CDC. (If you plan to study additional modules, you may want to request enrollment materials for those modules also at this time.)***

- U** Request the enrollment materials online by going to the following URL at the PHTN website <http://www.cdc.gov/phtn/legal-basis/req-form.htm> and completing the online request form. After the online form is submitted, an enrollment packet will be mailed to you with instructions.
- U** Request the enrollment materials by calling **1-800-41-TRAIN** (1-800-418-7246). At the prompts, press 1, then 3. Please clearly speak your name, mailing address, daytime phone number, and the correct module name and number. The enrollment materials will be mailed to you with instructions.

If you are unable to register online, you will have to wait several weeks until your course enrollment materials arrive in the mail. If this is the case, you might want to complete the Evaluation and Test immediately after you finish the module by marking your answers directly on the following pages (or make a photocopy) and then, when the enrollment materials arrive, transfer your answers to the answer sheet included with the materials.

## Evaluating the Module

**If you are registering for continuing education credit**, you will be asked to complete an evaluation as part of that process.

**If you are not interested in receiving continuing education credit, we ask that you please take time to evaluate the module.** Follow the procedure specified above for getting continuing education credit, but indicate in the first question on the **Evaluation and Test** that you do not wish to receive continuing education credit. Although this is not required, your opinion of the module is important to us. By letting us know if this module was effective for you, we can improve future editions, as well as other PHTN courses.

**Evaluation and Test**  
***The Legal Basis of Public Health***  
***Module 4, Licensing***  
**COURSE #SS0004**

**Objectives for *Module 4, Licensing***

- g** Describe the full source of authority to issue, deny, conditionally grant, suspend, or revoke licenses.
- g** Describe proper due process procedures that should be accorded to license applicants and licensees.
- g** Identify the extent of your authority to compel the disclosure of information relevant to the licensure process.

**N**Please use the red *CDC Answer Sheet* included in the enrollment materials to complete the following questions.

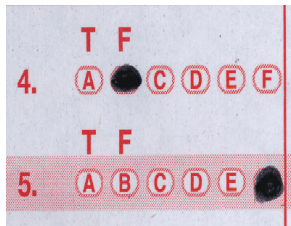
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***Tell us about yourself...***

- 1. What type of continuing education credit do you wish to receive?**
  - A. (CME) *Not Available for this Course*
  - B. Continuing Nursing Education (CNE)
  - C. Continuing Education Units (CEU)
  - D. do not want continuing education credit
  
- 2. Have you previously completed *Module 1, Introduction?***  
***(Completion of Module 1 is required before taking any of the other modules.)***
  - A. yes
  - B. no
  - C. I have just completed ***Module 1, Introduction.***
  
- 3. Are you a**
  - A. Nurse
  - B. Physician
  - C. None of the above

**Please note:** Question 5 is a continuation of question 4. Please answer each question, but choose only **ONE** occupation. Your answer to one of these questions will be **F. None of the above**. For example, a Health Educator would answer as follows:



- 4. Which of the following best describes your current occupation?**
- A. Epidemiologist
  - B. Health Educator
  - C. Laboratorian
  - D. Pharmacist
  - E. Physician Assistant
  - F. None of the above
- 5. Which of the following best describes your current occupation?**
- A. Field Inspector (nursing homes, restaurants, etc.)
  - B. Manager/Supervisor
  - C. Environmental Health Worker/Sanitarian
  - D. Lawyer/Attorney
  - E. Other public health professional
  - F. None of the above
- 6. Which of the following best describes the organization in which you work?**
- A. Academic
  - B. Private health care setting
  - C. Federal government
  - D. State government
  - E. Local government
  - F. Other organization

### ***Tell us about the module...***

- 7. How did you first learn about this module**
- A. State publication (or other state-sponsored communication)
  - B. MMWR
  - C. CDC website (not including PHTN website)
  - D. PHTN source (PHTN website, catalog, e-mail, or fax announcement)
  - E. Colleague
  - F. Other

- 8. How did you obtain this module?**
- A. Purchased from the Public Health Foundation
  - B. Downloaded from the PHTN website
  - C. Borrowed or copied materials from someone else
  - D. Other
- 9. What was the most important factor in your decision to obtain this module?**
- A. Content
  - B. Continuing education credit
  - C. Request from supervisor
  - D. Previous participation in PHTN training(s)
  - E. Ability to take the course at my convenience
  - F. Other
- 10. I completed this module**
- A. As an individual learner
  - B. As part of a learning group that organized itself
  - C. As part of a learning group that was organized by someone outside of the group
- 11. My completion of this module included interaction(s) with an expert(s) (or reasonably experienced person) on the topic?**
- A. Yes
  - B. No
- 12. My interaction(s) with the expert(s) on this topic could be described as follows**
- A. I had no interactions with an expert
  - B. One or more sessions organized by someone outside of the group
  - C. One or more sessions organized by someone within my group
  - D. One or more informal consultations that I initiated on my own
- 13. How long did it take you to complete this module?**
- A. 1 - 2 hours
  - B. 3 - 4 hours
  - C. 5 hours or more
- 14. How many of the ten modules comprising the *Legal Basis of Public Health* have you completed?**
- A. 1 or 2 modules
  - B. 3 to 5 modules
  - C. 6 to 9 modules
  - D. All 10 modules

15. **How many of the ten modules comprising *The Legal Basis of Public Health* do you plan to complete?**  
A. 1 or 2 modules  
B. 3 to 5 modules  
C. 6 to 9 modules  
D. All 10 modules
16. **Please rate your level of knowledge prior to completing this module.**  
A. Had a great deal of knowledge about the content  
B. Had a fair amount of knowledge about the content  
C. Had limited knowledge about the content  
D. Had no prior knowledge about the content  
E. No opinion
17. **Please estimate your knowledge gain due to completing this module.**  
A. Gained a great deal of knowledge about the content  
B. Gained a fair amount of knowledge about the content  
C. Gained a limited amount of knowledge about the content  
D. Did not gain any knowledge about the content  
E. No opinion
18. **If this module is further evaluated through the use of focus groups or other methods (e.g., follow up questionnaires) would you be willing to participate?**  
A. Yes  
B. No

Please use the scale below to rate your level of agreement with the following statements about this module.

- A. Agree  
B. No opinion  
C. Disagree  
D. Not applicable

19. **The objectives were relevant to the purpose of the course.**
20. **I would recommend this module to my colleagues.**
21. **I believe completing this module will enhance my professional effectiveness.**
22. **The content in this module was appropriate for my training needs.**
23. **Reading the text on my own was an effective way for me to learn this content.**

24. The self-study questions contributed to my understanding of the content.
25. The group exercises contributed to my understanding of the content.
26. The Coordinator Guide contributed to my ability to have a learning experience appropriate to my (or my group's) needs.
27. Downloading the materials from the PHTN website was user-friendly.
28. Ordering the materials through the Public Health Foundation was user-friendly.
29. Ordering the materials through the 1-800-41-TRAIN phone number was user-friendly.
30. I am confident I can describe the full source of authority to issue, deny, conditionally grant, suspend, or revoke licenses.
31. I am confident I can describe proper due process procedures that should be accorded to license applicants and licensees.
32. I am confident I can identify the extent of my authority to compel the disclosure of information relevant to the licensure process.