Legal Update

A New Era of Tobacco Control: Policy, Regulation and Prevention

Kansas City, here we come! Close to 3,000 tobacco control supporters from across the U.S. are expected to attend the 2012 National Conference on Tobacco or Health August 15–17, 2012, in Kansas City, Missouri. The conference brings together public health leaders from local, state and national agencies and non-profit health associations; public health lawyers, researchers, advocates; and policymakers — all to strategize and learn how to implement best evidence-based practices and policies to reduce tobacco use.

The conference offers programs in several areas:

- Cessation
- Communications and Media
- Evaluation and Surveillance
- Increasing Diversity/Eliminating Disparities
- Legal Issues
- Nicotine and the Science of Addiction
- Non-Cigarette Tobacco and Nicotine Products
- Tobacco Regulation
- Tobacco Control Movement-Skills Building
- Tobacco Control Policies
- Tobacco Industry
- Youth

Because many sessions include a legal component, but may not be classified under the Legal Issues area, we’ve compiled a list of regular and ancillary conference offerings that may be of special interest to attorneys and others concerned about the legal dimensions of tobacco control. Consortium attorneys will be participating in many of these sessions, as well as ancillary events.

If you’re at the conference, please stop by the Consortium’s exhibit at booth 522 and visit with us. We’d love to meet you, renew old acquaintances, and share our latest publications and resources with you. See you in Kansas City!

» Check out The Legal Perspective: NCTOH Conference Sessions of Special Interest to Lawyers.

» Visit the event website for conference and registration information.
What’s New

Just as many healthcare professionals have taken steps to distance themselves from the sale of tobacco products, several communities have recently adopted laws that restrict tobacco sales by pharmacies and other health-related establishments. The Consortium’s latest publication, *Prohibiting the Sale of Tobacco Products in Pharmacies*, reviews policy options for restricting tobacco sales in pharmacies, and related legal implications and possible challenges to such policies. Check out this publication, and all our other tobacco control materials, on the Public Health Law Center’s website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org) under Tobacco Control.

» Read *Prohibiting the Sale of Tobacco Products in Pharmacies*.

As always, we hope you find our publication a useful and informative resource in your work as a tobacco control and public health professional. We welcome any feedback you may have about our publications and your suggestions on other tobacco and public health law-related topics you would like us to address.

» Browse our other publications and resources on issues ranging from smoking regulation to tobacco sales practices.

Public Health Law Policy Change Webinar Series

The Public Health Law Center offers monthly webinars on significant and timely topics in public health topics, such as tobacco control strategies and regulation. To check out our upcoming webinars, or to access archived recordings of our past webinars, visit our website at [http://www.publichealthlawcenter.org/webinars](http://www.publichealthlawcenter.org/webinars).

New Consortium Webinar on Using Tobacco Documents to Advance Tobacco Control

*August 7, 2012, 12–1:30 p.m. (Central Standard Time)*

Check out the Consortium’s upcoming webinar, “*Digging into the Tobacco Documents: Real Life Examples of How to Advance Tobacco Control*,” August 7, 2012, 12–1:30 p.m. (CDT). Speakers will explain how to take advantage of the wealth of information contained in tobacco industry documents. They will describe how to use this data 1) to identify common tobacco industry strategies that can provide hard evidence to support tobacco control laws and policies, and 2) to help defend against legal challenges to tobacco control measures.

» For more information about this webinar, [click here](http://www.publichealthlawcenter.org/webinars).
Consortium Files Amicus Brief Supporting Providence Tobacco Price Ordinance

On June 15, 2012, the Tobacco Control Legal Consortium filed an amicus brief with the U.S. District Court for the District of Rhode Island, supporting Providence, Rhode Island in a legal challenge to the city’s new tobacco pricing ordinance. The ordinance, which prohibits retail stores from selling multipack tobacco products, offering certain pricing discounts for tobacco products and redeeming tobacco product coupons, was signed into law on January 9, along with a second ordinance, which prohibits the sale of flavored non-cigarette tobacco products. In mid-February 2012, the National Association of Tobacco Outlets and a group of tobacco manufacturers brought suit against the City of Providence, challenging the constitutionality of both ordinances on state and federal preemption and First Amendment grounds. Major public health organizations such as the American Cancer Society Cancer Action Network, American Lung Association, National Association of County and City Health Officials, and the National Association of Local Boards of Health filed an amicus brief arguing that the ordinances were not preempted by the Federal Cigarette Labeling and Advertising Act.

In the Consortium’s brief, which focuses primarily on the pricing ordinance, we argue that the law does not implicate the First Amendment. “Far from representing a government assault on free expression, the [Pricing] Ordinance simply helps to prevent retailers from providing cigarettes and other tobacco products at prices likely to attract and addict youth. It thus closely resembles minimum price laws, which have not been considered constitutionally problematic for 75 years.” Our brief also points out that even if the court were to examine the ordinance as an incidental restriction on protected speech, the ordinance would still pass constitutional muster. The Consortium’s brief was written by Ted Mermin and Tom Bennigson of Public Good Law Center.

» Read the Consortium’s amicus brief in National Association of Tobacco Outlets v. City of Providence.

Minnesota Supreme Court Ends “Light” Cigarette Lawsuit

The Minnesota Supreme Court recently dismissed a class action against Altria Group Inc. (MO)’s Philip Morris over “light” cigarettes, finding the case was barred by Minnesota’s 1998 tobacco settlement. The 3-2 decision reversed an earlier appellate ruling that found the case against Philip Morris could proceed. The dismissed suit was filed in 2001 by Gregory Curtis on behalf of all persons who had bought Marlboro Lights in Minnesota for their personal use between 1971 and 2004. Curtis claimed Philip Morris used deceptive trade practices and false advertising to mislead consumers into believing that “light” cigarettes were less harmful than regular cigarettes. The court said Minnesota’s 1998 settlement with tobacco manufacturers “expressly released” Philip Morris from all claims the state made or could have made about the company’s past conduct, and from “future conduct” claims that directly or indirectly arise from the use of or exposure to tobacco products. Under this disappointing interpretation of the Minnesota tobacco settlement, the state attorney general can presumably waive the rights of private victims (who are not party to any proceeding and who are not required to receive any notice or right to comment) to sue companies for consumer fraud against them.

Two dissenting justices disagreed that the settlement barred claims by smokers under Minnesota’s consumer protection law, arguing that Minnesota law allows injured persons to file lawsuits to recover damages. Dissenting Justice Alan Page wrote that under a deceptive practices claim, plaintiffs need not prove they purchased a product, much less used it. Because the claim is based on whether the statements are false, he wrote that the claim would not be barred by the settlement’s “future conduct” clause.

» Read the decision in Curtis v. Altria Group Inc., A10-215, Minnesota Supreme Court (St. Paul).

» Read the Consortium’s amicus brief supporting Curtis in this lawsuit.
New Legal Staff Join Center for Public Health and Tobacco Policy

A belated welcome to three public health attorneys who recently joined the Center for Public Health and Tobacco Policy at New England Law | Boston. The Center works with the Tobacco Control Programs of New York and Vermont, their contractors and partners. In addition to Micah Berman, director of the Center and associate professor at New England Law, the legal staff now includes:

**Ilana M. Knopf, J.D. | Assistant Director**

Ilana previously served as Counsel to the Tobacco Project of the National Association of Attorneys General (NAAG) in Washington, DC., as a trial attorney with the U.S. Department of Justice, and in pro bono capacity as a voter protection attorney in Arkansas and counsel for Women Empowered Against Violence in Washington, DC.

**Kerry Malloy Snyder, J.D. | Senior Staff Attorney**

Kerry (pictured on next page) previously served as an associate counsel with the New Jersey Office of Legislative Services where she provided legal advice and drafted legislation for members of the New Jersey Legislature. Her experience also includes working as an associate with the law firm of Sidney L. Gold & Associates, P.C., and as a legislative director and chief of staff in the office of Massachusetts State Senator Steven Tolman.

**Whitney S. Dodds, J.D. | Staff Attorney**

Whitney is a 2011 graduate of New England Law | Boston where she was Symposium Editor for the New England Journal of International and Comparative Law and recipient of the Outstanding Scholastic Achievement Award. Whitney began working with the Center as a student at its inception in 2009.

Check out the Consortium’s FDA Tobacco Action Center

The FDA Tobacco Action Center on the Public Health Law Center’s website provides information about the FDA tobacco regulatory process and how to get involved. This website is part of the Consortium’s initiative to mobilize members of the public health community to engage in the federal regulatory process. Check out our resources, publications and email alerts on opportunities to submit comments to the FDA and help strengthen regulations and guidance documents. For more information, please contact Joelle Lester at (651) 695-7603 or joelle.lester@wmitche.edu.

» For guidance, compliance and regulatory news on federal tobacco regulation, visit the FDA website.
Q “I’ve been hearing a lot about tobacco marketing at the point-of-sale and its effect on youth tobacco use. Is this really an issue of concern and, if so, can anything be done about it?”

A Youth are incredibly vulnerable to the marketing strategies of tobacco companies; however, communities can take action to mitigate the effect of marketing on youth tobacco use. Tobacco products are heavily marketed in the United States. The type of marketing that tobacco companies can use has been restricted over the years and the industry’s main focus is now at the point of sale — that is, where consumers purchase tobacco products. Through elaborate contracts with retailers, tobacco companies entice customers by the use of power walls (the large display of cigarette packs and other tobacco products often located behind or near the cash register), price promotions, advertisements, packaging and the placement of other promotional items within stores. Adults often don’t notice these promotions, but children do. As the Surgeon General’s recent report on youth tobacco use demonstrates, evidence continues to show that youth and young adults are far more sensitive than adults to advertising, and in stores they frequent they are bombarded with imagery that makes tobacco products seem attractive.

Since tobacco companies know this type of marketing works, they invest 90 percent of their marketing budget on it — an expenditure that totaled more than $10 billion in 2008 (the most recent year for which data are available). As with the marketing efforts of any product, the strategies used by tobacco companies are designed to attract new users. In the case of tobacco products, however, these new users are overwhelmingly youth who are too young to purchase the products legally, and too immature to appreciate the immediacy of nicotine addiction and consequences of tobacco use. The Surgeon General reports that nearly 90 percent of daily adult smokers begin smoking by the age of 18. Because smoking kills 443,000 people each year nationwide, the tobacco companies know that their survival depends on their ability to attract “replacement smokers” (the industry’s term). Despite its denials, the tobacco industry clearly targets youth through its point-of-sale marketing.

How is the industry making tobacco use so attractive to youth? According to the Surgeon General, the tobacco companies are adept at using imagery that appeals to youth. The marketing promotions (including packaging design and advertisements) “fulfill many of the aspirations of young people by effectively using themes of independence, liberation, attractiveness, adventurousness, sophistication, glamour, athleticism, social acceptability and inclusion, sexual attractiveness, thinness, popularity, rebelliousness, and being ‘cool.’” Moreover, studies reviewed by the Surgeon General show that “tobacco advertising is more prevalent in stores located near schools and where adolescents are more likely to shop.”
John Bloom: A Strategic Leader in Public Health Law

What do the Tobacco Control Legal Consortium, the Campaign for Tobacco-Free Kids, GLOBALink, the Framework Convention on Tobacco Control, and the Global Smokefree Partnership all have in common? John Bloom played an important role as a public health law and policy consultant in the startup of all these initiatives. Over the last twenty-two years, John also has been a key player in many national and international tobacco control projects and campaigns — often related to tobacco taxes, international trade policy, and smoke-free air.

John now serves as Director of the Partnership for Public Health, a new collaboration of four partner associations: the American Public Health Association, the National Association of County and City Health Officials, the Association of State and Territorial Health Officials and the National Association of Local Boards of Health. The Partnership, funded last year by the Robert Wood Johnson Foundation, promotes greater understanding and use of law by public health associations and their members. John’s role includes providing the partner associations with technical assistance and training in public health law issues and helping to strengthen relationships between association staff and other public health law experts around the U.S.

The role of public health law collaborator is a natural fit for someone who has spent his career developing and directing national and international policy advocacy alliances and campaigns. Even as an undergrad at the College of William and Mary, where he served as editor-in-chief of the student newspaper, John’s communications skills stood out. After graduating from the University of Virginia School of Law, and practicing for several years in the public policy-oriented Washington, DC office of Preston Gates Ellis & Rouvelas Meeds (now part of K&L Gates), John was hired to manage the Advocacy Institute’s international tobacco control efforts. There, his activities included advising media and health advocates on international tobacco control.

Cont. on next page
Throughout his career, John Bloom has shown an unusual ability to identify strategic voids in the tobacco control landscape and help craft lasting solutions.

issues, editing a twice-weekly international tobacco control news service, and managing the startup of what was then (1990) a new concept: the international online tobacco control community called GLOBALink.

John next served as director of the American Cancer Society’s national campaign for major federal and state tobacco tax increases. In 1995, he joined the startup team of the Campaign for Tobacco-Free Kids, and became its Manager of International Issues and Special Projects, representing the Campaign at meetings in the U.S. and internationally. Between 1999 and 2011, John managed his own public interest law and policy consulting practice, advising a range of nonprofit, foundation and private sector clients. During many of those years, John was deeply involved in the successful negotiation and launch of the Framework Convention on Tobacco Control, the global tobacco control treaty. John also worked with the American Cancer Society and the Bill & Melinda Gates Foundation to help create a consortium of civil society organizations to lead tobacco control efforts in Sub-Saharan Africa.

Throughout his career, John Bloom has shown an unusual ability to identify strategic voids in the tobacco control landscape and help craft lasting solutions. As one of the many tobacco control organizations that he has helped start up over the years, the Tobacco Control Legal Consortium salutes this dedicated public health law leader.

ANR’s Latest Data on Smoke-free Laws

The ANR Foundation recently released its July 2012 quarterly update of its lists and maps of U.S. municipalities and states with smoke-free laws now in effect. Highlights include:

- A total of 520 municipalities have ordinances in effect for 100 percent smoke-free non-hospitality workplaces, restaurants, AND bars, along with 23 states, Puerto Rico, the U.S. Virgin Islands, and Washington, DC. These strong laws now protect 48.6 percent of the U.S. population.

- A total of 671 municipalities have a local law in effect that requires both restaurants and bars to be smoke-free, along with 29 states, Puerto Rico, the U.S. Virgin Islands, and Washington D.C. These laws protect 64.4 percent of the U.S. population.

- In addition, at least 769 colleges and universities now have smoke-free campus policies, 558 of which are completely tobacco-free.

» Check out ANR’s latest smoke-free lists, maps and data.

HUD Smoke-free Housing Toolkits

The U.S. Department of Housing and Urban Development, in partnership with the Department of Health and Human Services, the American Academy of Pediatrics, and the American Lung Association, recently released two smoke-free toolkits to help property owners/management agents and residents of public and assisted multi-family housing who wish to adopt smoke-free policies.

» Read HUD’s Smoke-Free Housing Toolkit for Public Housing Authorities and Owners/Management Agents.

» Read HUD’s Smoke-Free Housing Toolkit for Residents.

» Read the Consortium’s resources and publications on smoke-free housing.
South Africa Appellate Court Upholds Tobacco Advertising Prohibition

The South Africa Supreme Court of Appeal recently dismissed an appeal by British American Tobacco South Africa (BATSA) and upheld a tobacco product advertising and promotion prohibition in South Africa’s Tobacco Control Act. The tobacco company had challenged the prohibition section 3(1)(a) of the Tobacco Products Amendment Act of 2008, which states that no person may advertise or promote a tobacco product through any means. The company argued that the limitation on commercial speech was a violation of South Africa’s Constitution. In a unanimous judgment, the Court acknowledged the importance of the right to commercial speech but noted that it was not absolute. The Court held that “the seriousness of the hazards of smoking far outweigh the interests of the smokers as a group.” Accordingly, the Court found the tobacco product advertising ban “reasonable and justified,” stating that “[t]here can be no question that government has an obligation to protect citizens from the ravages of tobacco use.” The court also cited the World Health Organization’s Framework Convention on Tobacco Control, and pointed out South Africa, as a signatory to the Framework Convention, was obliged to take steps to protect its citizens from the hazardous effects of tobacco use on others.

» Read the appellate decision in British American Tobacco South Africa (Pty) Ltd v Minister of Health.

Ukraine Passes Strong Tobacco Control Legislation

On June 12, 2012, Ukraine President Viktor Yanukovych signed into law national smoke-free legislation that covers restaurants, bars, and discos, as well as cultural and governmental facilities. The law expands smoke-free places through Ukraine, which already has smoke-free health care facilities, educational and sports venues, public transportation, and playgrounds. The law also applies to the use of electronic cigarettes and hookah. The enactment of this smoke-free legislation follows the passage of a Ukraine law prohibiting the sale, use, and advertising of tobacco products at venues for the Euro 2012 soccer (football) tournament. Also, earlier this year Ukraine passed a law significantly restricting tobacco advertising, promotion, and sponsorship. To cap off this year of significant tobacco control advances, Ukraine’s law requiring graphic health warnings on tobacco product packages goes into effect on September 30, 2012.

» Visit the Campaign for Tobacco-Free Kids website for detailed information on Ukraine’s tobacco policies and links to legislation.
In Remembrance of Marie Fallon

This spring the public health community lost a true champion and leader — Dr. Marie Fallon, Executive Director and Chief Executive Officer of the National Association of Local Boards of Health (NALBOH). Marie’s sudden passing stunned many, but none so much as the thousands of local board of health members to whom Marie was the personification of NALBOH. Marie’s fifteen-year involvement with NALBOH began in 1997, when she was a doctoral student at Bowling Green State University. As part of her studies, she needed to interview a public health leader. She contacted Dr. Ned Baker, NALBOH’s first president, who had founded the organization five years earlier and was working in a small office located at the Wood County Health Department in Bowling Green, Ohio. That one chance meeting with Dr. Baker resulted in her joining the fledgling operation as a project director. By 1999, she had become NALBOH’s Chief Executive Officer, and served in that capacity until she succumbed to pancreatic cancer on May 5, 2012.

During Marie’s tenure, NALBOH quadrupled in membership, expanded its partner outreach, and increased its impact throughout the U.S. Marie, who earned an accounting degree from SUNY-Buffalo, a master’s degree in health administration from St. Joseph’s College, and a doctorate in leadership from Bowling Green State University, was a passionate believer in education and innovation. She was committed to public health and worked tirelessly to enhance the stature of NALBOH, and strengthen and empower local boards of health, through education and training, to improve the health of communities. Her leadership provided guidance to NALBOH’s board of directors, staff, partners and membership. Marie Fallon’s warm engaging personality will be long remembered, as will her legacy at NALBOH. The Tobacco Control Legal Consortium is just one of many public health organizations that mourn her passing. 

Maria Fallon was a passionate believer in education and innovation.

Ask A Lawyer

Cont. from page 5

Given the evidence, tobacco marketing clearly influences youth to begin using tobacco. Despite the tobacco industry’s substantial financial investment in point-of-sale marketing, communities can take steps to reduce its impact on youth. As confirmed by the Surgeon General’s report, comprehensive state-level tobacco control programs work, but adequate funding for them is necessary. Programs that use coordinated and complementary strategies — mass media campaigns, price regulations that keep the price of tobacco products high, smoke-free policies and other policy interventions that influence social norms — can succeed in reducing tobacco use by youth and young adults. In addition, tobacco control programs can be complemented with regulations that reduce youth exposure to tobacco marketing. These policies can include restrictions on the number, type and location of retailers (e.g., through licensing or zoning regulations), restrictions on the display of tobacco products in retail stores, and restrictions on the industry’s price manipulation strategies aimed to keep their products cheap.

For further details, see Cause and Effect: Tobacco Marketing Increases Youth Tobacco Use, a recent Consortium publication that highlights key excerpts from the 2012 Surgeon General’s report and provides more information on policy solutions that address the influence of tobacco marketing on youth.
Upcoming Events

NALBOH's 20th Annual Conference
The National Association of Local Boards of Health will hold its 20th annual conference August 9–10, 2012, in Atlanta, Georgia. The focus of this year’s conference is “Celebrating Achievement, Shaping the Future.”
» Visit the event website for conference and registration information.

2012 Public Health Law Conference
The American Society of Law, Medicine & Ethics and the Network for Public Health Law, with support from collaborating organizations, are sponsoring the 2012 Public Health Law Conference: Practical Approaches to Critical Challenges from October 10–12, 2012 in Atlanta, Georgia. This national conference features networking opportunities, breakout sessions and interactive group meetings on a wide range of public health law issues, all led by top experts.
» Visit the event website for conference and registration information.

APHA Annual Conference & Exposition
The American Public Health Association is holding its 140th Annual Meeting & Exposition in San Francisco, California, October 27–31, 2012. This event, the oldest and largest gathering of public health professionals in the world, addresses current and emerging health science, policy, and practice issues in an effort to prevent disease and promote health. The conference focus is “Prevention and Wellness Across the Life Span.”
» Visit the event website for conference and registration information.

Job Opening

Attorney/Vice President — Tobacco Control Programs
ChangeLab Solutions (formerly Public Health Law & Policy) is seeking a vice president to lead its tobacco control programs. The successful candidate will oversee legal research and technical assistance services on tobacco control and other pressing public health concerns, and will lead a team of five attorneys that work with local and state health departments, housing departments, state and local legal counsel, and community-based organizations. The application deadline is August 27, 2012. Read more about this position.