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Articles

**HEALTH LAW TEACHING AND RESEARCH IN CHINESE LAW SCHOOLS:
RESULTS OF A PRE-SARS SURVEY**

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I. Introduction

"Health Law" is a field of legal research and training commonly understood in the United States to encompass public health law, [FN1] health care law, [FN2] food and drug law, [FN3] bioethics, [FN4] occupational safety, and health law. [FN5] Law is an important component of health practice, regulating the financing and delivery of health care services, the development and distribution of pharmaceutical or other health-related products, and the activities a government undertakes to promote health and prevent illness. Health care and public health systems function best when a strong legal infrastructure exists to define the roles and authorities of health product manufacturers, health service providers, health consumers, and officials addressing health needs. An important component of a nation's health law infrastructure is the capacity to teach, train, conduct research, and provide policy-advising services in health law--in other words, the capacity to provide legal expertise and legal experts on health issues. [FN6]

*78 Law schools are the training institutions for future legal experts. Law schools can work with schools of public health, medicine, and business, or with government ministries, to provide necessary legal training for non-lawyers and train lawyers who will go on to teach in other professional settings. [FN7] Thus, law schools play a crucial catalyzing role in the development of health law. [FN8] This article evaluates China's current capacity to provide and support health law experts, based on a survey of health law in selected Chinese law schools.

II. Legal Education in China

There are 320 law schools in China, which can be divided into national schools that are funded by the central government and draw students nationwide, and provincial schools that are funded at the provincial level and draw students mostly from within the province. Applicants must pass a national qualifying examination to begin the study of law. National schools are generally more rigorous, with more competitive admission standards, than provincial schools. Law school curriculum is partly determined by the Legal Section, a joint office of the Ministry of Education and the Ministry of Justice. This office has the authority to decide what topics may be included in the legal curriculum and must approve of teaching textbooks before they can be used in a course. Health law is not currently one of the areas of specialization in which advanced legal degrees may be awarded. [FN9]

Legal education in China begins at the baccalaureate level, with a four-year program of study. Alternatively, those who already possess a bachelor's degree in a different field may pursue a three-year master's program in law. Students who have earned a master's degree in law may seek a doctoral degree in law, also a three-year program of study and the highest legal degree.

Besides the more obvious jobs of lawyer, prosecutor, or judge, a degree in law in China is also considered an advantage when seeking employment with government agencies. To become a lawyer or a judge, a graduate must take the National Judiciary Exam, a recently

established qualifying test. Only a certain percentage of test-takers are allowed to pass this exam. To qualify for government work, graduates must pass the civilian exams, which are equivalent to the judiciary exam for general study applicants.

*79 III. Survey Method

From January to March of 2003, before news of the Sudden Acute Respiratory Syndrome (SARS) outbreak became widely known, seven law students from Temple University's LL.M. program at Tsinghua University School of Law returned to their home provinces to survey law schools about attitudes towards health law in China. Each law student surveyed respondents from four to five law schools, representing a total of thirty-one law schools. These schools are listed in Appendix I at the end of this article. The main criteria used to select respondents were the law schools' convenience to the surveyors' hometowns, along with their importance and reputation. Highly reputed law schools are included, as these schools set trends for other law schools and are good predictors of future developments in law school curricula. Due to the wide geographical distribution of the students' hometowns, a significant geographic diversity was achieved in the survey. The surveyors used their personal and professional connections to establish contact with the deans of the law schools, or with faculty members. Nineteen surveys were completed independently by the respondents, while twelve others were completed through personal interviews.

The survey consisted of twenty open-ended questions. Respondents were read a definition of health law that included public health law (the role of law in preventing and controlling diseases and injury), health care law (the licensing, regulation, and financing of health care activities), food and drug law (food safety law, regulation of health product development and marketing, drug safety, and record-keeping) and bioethics (the ethical standard of medical care and medical research). Questions concerning applicable course offerings included: whether the respondent's law school offered any courses on these subject areas, at which level of study courses were offered, for how many years such courses were offered, how many faculty members taught within these subject areas, how many students took such courses, whether the courses were mandatory or elective, and what type of textbooks were used in the course. For schools without health law offerings, there were also questions about intentions to add health law classes to the curriculum, perceived obstacles to teaching health law at the respondent's law school, and how courses in health law should be structured.

IV. Survey Results

It was found that health law is not currently taught in any of the surveyed law schools. The reasons given for the current lack of health law offerings in the curriculum of the respondent's law school fall into two categories: 1) lack of interest in and knowledge of the subject by the administration, faculty, or students; and 2) lack of resources to offer coursework on the subject. The reasons in the first category included the perception by others that health law is not a necessary course offering or legal specialty area, and the perception that health law is too narrow of a subject to merit a full course offering. Another common reason for the lack *80 of interest is that health law is not included on the National Judiciary Test, and thus little

external incentive exists for busy law students to study it. The reasons posited in the second category included the lack of qualified teachers, lack of funding to purchase textbooks, lack of time in the law school's curriculum to cover health law, lack of official sanction of the topic from the Legal Section, and lack of well-developed health law teaching materials. Appendix II includes a complete list of the responses given.

When asked their personal opinion of health law, the respondents generally remarked that health is an important area of policy, especially health care quality and access. Health care workers need to be held accountable for delivering adequate health care services, government officers should consistently enforce laws relating to health, and patients should be aware of their rights with regard to issues relating to their health. Law, according to respondents, plays a necessary role in developing responses to these health issues. Twenty-nine respondents said that the development and enforcement of effective health regulations is definitely important to promoting the well being of the country as it continues to develop economically. Another common concern, mentioned by twenty-five respondents, was that the reform of the national medical system depends, in significant part, on effective regulations. Twenty-three respondents agreed that health can be seen as a basic human right, and that, therefore, the enforcement of food safety, environmental quality, and other health laws can be seen as a human rights issue.

Respondents had views on how health law could become recognized as an important legal specialty in China. A few respondents noted that it would take time for health law, as a topic, to develop to a level where it could be effectively taught to law students. Sixteen respondents saw health law education as an important means to increasing the recognition of the importance of health law. When asked whether their law school had any plans to add health law to the curriculum, respondents from nine schools indicated that they either planned to offer health law or expressed interest in adding health law to their curriculum; overall, twenty respondents acknowledged the need to offer health law.

V. Limitations of this Study

Because this study used a sample generated by convenience, results cannot be strictly generalized to the Chinese legal education system as a whole. This study did not seek to determine the extent to which health law is taught in schools of public health or medicine. It is reported that at least ten schools of public health in China teach health law or bioethics courses. [FN10]

*81 VI. Discussion

As China's wealth increases and the quality of life of its population improves, old problems rooted in scarcity become less pressing and matters of health protection and promotion become correspondingly ripe for attention. Since the communist revolution in 1949, life expectancy in China has doubled from thirty-five years to seventy-one years. [FN11] Now that basic needs such as food, water, and shelter are mostly met, China is turning its attention to other important health challenges.

A. Public Health Law Challenges

China faces a high incidence of infectious diseases--such as HIV/AIDS, tuberculosis, and hepatitis B and C. [FN12] These diseases exact a high cost in terms of worker productivity and health care services, and may reduce China's attractiveness to foreign business investments. [FN13] Finding ways to reduce infection rates and treat those already infected will be an important factor in China's ability to maintain robust economic growth. An accurate surveillance system is necessary to assess the extent of infection and craft appropriate responses to these diseases. [FN14] Widespread education about how infection occurs is needed to inform people about how to appropriately protect themselves from infection, especially with regard to HIV/AIDS, which is regarded by many Chinese as a disease that only affects marginal populations. [FN15] Law generally plays an important role in the response to HIV and communicable diseases. [FN16]

B. Health Care Law Challenges

The efficacy of the health care system in China has greatly decreased since funding for services was transferred from government collectives to ***82** local authorities and individual users in the early 1980s. [FN17] Health insurance coverage has also decreased tremendously. [FN18] Privatization was intended to relieve the central government of the high cost of government-subsidized health care services and allow it to concentrate its resources on economic growth. [FN19] This decision resulted in both inadequate and costly health care services for significant segments of the population. [FN20] The parties that are now responsible for paying for health services are often unable to afford the high fees. [FN21] The situation is particularly dire in rural areas, where facilities are rundown, the medical qualifications of health workers are dubious, most people are not covered by health insurance, out-of-pocket costs are higher than the income-capacity of most patients, and, with staff salaries so low and patients' desire for medication so high, the sale of drugs are promoted with little regard to medical appropriateness. [FN22] Health spending in the rural areas of China was reported by the World Bank in 1997 to be four times less than that of urban areas. [FN23] Even though health services are more readily available in cities, these services are still very costly, and privatization has produced an unfortunate tendency to cater to the wealthiest patients to the detriment of more pedestrian health care needs. [FN24] Improved systems for delivery of affordable health care services are needed. Once solutions are approved, these new systems will need to be codified in law.

Further, law has a role to play in health care quality. Malpractice suits are becoming more common and are being used to deal with unlicensed practitioners. [FN25]

C. Environmental Health Law Challenges

Environmental factors--such as air pollution, water pollution, and water scarcity--also create health hazards in specific geographic areas of China. ***83** Rural areas are usually more severely affected by water scarcity, while both rural and urban areas suffer from air and water

pollution. [FN26] Air quality has been shown to have a significant impact on morbidity and mortality rates in at least one large Chinese city. [FN27] Water scarcity, which is particularly severe in the drier northern regions of China, directly affects health through a lack of drinking water and because agriculture suffers from the diminished supply of irrigation water. [FN28] Even when water is available in sufficient quantities, the water may be unsuitable for human consumption. Unsanitary drinking water exposes people to waterborne infections and parasitic diseases--such as hepatitis A, diarrhea, typhoid, and various worms. [FN29] Water contaminated by industrial waste, pesticides, or fertilizers also poses a health risk to populations. [FN30] The increase in industrial contaminants due to increased economic activity, in addition to more typical viral and bacterial infectious agents, probably amplifies the harmful effects of polluted water. [FN31] Illnesses associated with unsanitary water are the most common infectious diseases in China. [FN32] Environmental regulations either need to be created, or existing ones enforced, to address the harmful and economically costly effects of pollution on human health. The organization of safe drinking water and waste systems is the foundation of community health. Laying this foundation requires the creation and enforcement of basic sanitary standards.

VII. The SARS Outbreak: A Catalyst for Change

Space does not permit a full description of the roster of health-related tasks for law in China. In addition to those already described, problems that can be added to the list include: a high rate of worker injury; [FN33] a high rate of pharmaceutical counterfeiting; [FN34] and the need for the harmonization of China's health and medical research practices with internationally recognized ethical standards. One current event, perhaps more than any ***84** other, may motivate Chinese leaders to strengthen the country's health infrastructure and health law capacity, including health law training.

The outbreak of SARS, a new and unknown influenza-like infectious disease, revealed to both domestic and international audiences that China's health systems require a strong infusion of funding, establishment of infrastructure, and clearer lines of communication between different health entities to begin to adequately address health issues. The SARS outbreak, which originated in the Guangdong Province in southern China in November of 2002, demonstrates how health problems can hurt even a strong economy. At the height of the SARS outbreak, fear of infection kept people in affected areas at home as much as possible, and caused local residents in villages and towns near affected areas to take it upon themselves to refuse entry to travelers and even returning residents. [FN35] News of the disease dramatically curtailed tourist activities, domestic and international travel, and domestic retail sales. [FN36] The health of employees is a significant factor in deciding where to locate business operations, and the unchecked spread of infectious diseases can seriously damage the productivity of a workforce. [FN37] Foreign companies operating in the affected areas implemented emergency procedures to lessen the possibility that SARS would spread to their workers. Such measures slowed productivity and added an extra financial burden to conducting business in China. [FN38]

Apart from the fear of actually contracting SARS, worries about the nature of the

government's response to the outbreak (both at the central and provincial level) may have also interfered with business activities. Some businesspersons cancelled trips to China not out of fear of catching SARS, but to avoid possibly being delayed in quarantine. [FN39] The SARS outbreak and the initial mistakes made in addressing it were negative factors taken into account by foreign investors contemplating business operations in China. China's initial slow response to the disease may have reduced international confidence in its commitment to providing a stable environment for foreign investors, such as healthy workers and a strong consumer base. [FN40]

***85** A lack of legal preparedness played a role in China's slow response to SARS. One striking example was the reported effect of the State Secrets Law. This law currently prohibits local health officials from discussing an emerging disease outbreak until the Ministry of Health in Beijing has announced the existence of an epidemic. [FN41] China, like other modern states, depends upon law to authorize emergency measures, as well as to reassure the public that matters are under control. [FN42] Considerable delay attended the drafting and passing of legislation to address SARS, [FN43] during which both the epidemic and fears among the population continued to spread. [FN44] Although ultimately successful in controlling the disease, China was forced to limit the movements of millions of people, using hastily enacted SARS control powers. [FN45] Law, while only one part of the solution to improve China's health infrastructure, is an indispensable component.

VIII. Recommendations

Legal expertise in health matters may be fostered through the training of students of law, medicine, and public health. An interdisciplinary approach with the goal of preparing specialists who understand both law and substantive health issues is essential to creating the capacity to accurately evaluate how law affects health issues. Two immediate steps for grooming experts comfortable across these fields would be: 1) identifying and supporting current law teachers willing to develop courses and research agendas in health law; and 2) developing interdisciplinary centers providing health law research and teaching in medical, public health, and law schools.

The Ministries of Health, Education, and Justice should work together to support the development of health law curricula and one or more interdisciplinary health law centers. These centers would draw faculty and students from law, medical, and public health schools to ensure that students are concurrently educated in substantive health issues as well as the laws and regulations that affect and shape these issues. The mission of these centers would be to develop specialists in health law who are capable of conducting legal research on health issues, of guiding health workers and health-related ***86** industries in appropriately following health laws and regulations, of advising the government in the development of appropriate and effective health laws, and of providing a source of expertise and knowledge in health law to interested parties.

Further, scholars and researchers should be encouraged to develop textbooks on health law in China and be granted access to information from all relevant government resources; these

textbooks should be published and approved for classroom use as soon as possible; current law teachers should be trained in health law topics; and new teachers should be recruited to teach health law.

IX. Conclusions

This study indicates that, at least before SARS, health law was not a major area of law school teaching or scholarship in China. Currently, none of the surveyed law schools offer coursework addressing the responsibilities, duties, rights, authorities, or limitations of health workers, patients, and officials. Given the need to know who is responsible for different aspects of health promotion, legal expertise in this area is an invaluable tool in creating a health infrastructure. Implementing effective health law in China, especially public health law, is already a challenging endeavor because of the changing political environment and the inadequate state of the public health and health care systems themselves. While expertise in health law alone does not guarantee an efficient system of health promotion, little hope exists of creating or maintaining an efficient system without a legal infrastructure.

Appendix I - Law Schools Surveyed

National

Beijing University, School of Law;
Central University of Nationalities, School of Law;
China Renmin University, School of Law;
China University of Politics and Law, School of Economic Law;
East China Normal University, School of Law;
East China Politics and Law University, School of Economic Law;
Fudan University, School of Law;
Jilin University, School of Law;
Lanzhou University, School of Law;
Northwest Second University of Nationalities, Department of Law;
Shanghai Police Command College;
Southwest University of Political Science and Law, School of Law;
Tsinghua University, School of Law;
Wuhan University, School of Law;
Xiamen University School of Law; and
Zhongnan University of Economics and Law, School of Law.

Provincial

Anhui Financial College, School of Law;
Anhui Normal University, School of Law;
Anhui Police Official Professional College, School of Law;
Anhui University, School of Law;
Anqing Normal College, School of Law;
Beijing Youth College of Political Science;
Guangxi Normal University, Department of Resources & Environment Science;
Guangxi University for Nationalities, Department of Political and Law;
Guangxi University, School of Natural Resources and Environment;
Heilongjiang University, School of Law;
Henan Science and Technology University, School of Law;
Henan University, School of Law;
Shanxi University, School of Law;
Suzhou University, School of Law; and
Zhengzhou University, School of Law.

*88 Appendix II - Survey Responses

Below are the reasons that were given for why Health Law is not offered in the respondent's law schools:

Reason given	Number of law schools represented (out of 31)
Health Law is not widely perceived as a necessary law course.	28
Lack of qualified teachers to teach Health Law.	23
Lack of money to purchase textbooks or support research on Health Law.	20
Lack of information about Health Law as it operates in China and also Health Law abroad.	20
Lack of official sanction from the Legal Section, which must approve curriculum and textbooks.	19
Some people think that Health Law is too narrow a topic to be offered as a full law course.	12
There is not enough time in the law school curriculum for students to study Health Law	9
Health Law as a topic is not yet included in the National Judiciary Test, and therefore there is little incentive for students to learn about it.	5

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[FN1]. See generally Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint* (2000).

[FN2]. See generally Mark A. Hall et al., *Health Care Law and Ethics* (6th ed. 2003).

[FN3]. See generally Dominique Lauterburg, *Food Law: Policy & Ethics* (2001); Peter Barton Hutt & Richard A. Merrill, *Food and Drug Law: Cases and Materials* (2d ed. 1991).

[FN4]. See generally Tom L. Beauchamp & James F. Childress, *Principles of Biomedical Ethics* (4th ed. 1994).

[FN5]. See generally Mark A. Rothstein, *Occupational Safety and Health Law* (West 1990).

[FN6]. Tom Christoffel, *Health and the Law* 7 (1982).

[FN7]. See, e.g., *Who Will Keep the Public Healthy? Educating Public Health Professionals for the 21st Century* (Kristin Gebbie et al. eds., 2003).

[FN8]. See, e.g., R. A. Goodman et al., *Other Branches of Science Are Necessary to Form a Lawyer: Teaching Public Health Law in Law School*, 30 *J. L. Med. & Ethics* 298 (2002); Wendy E. Parmet & Anthony Robbins, *A Rightful Place for Public Health in American Law*, 30 *J. L. Med. & Ethics* 302 (2002).

[FN9]. Interview with Wang Zhemin, Professor, Tsinghua University School of Law (July 31, 2003) (on file with author). These areas include Civil Law, Civil Procedure, Constitutional Law, Criminal Law, Economic Law, Environmental Law, Legal History, and Military Law.

[FN10]. Interview with Dr. Wang Ruotao, M.D., Ph.D., Chinese Center for Disease Control and Prevention (CDC) (Aug. 1, 2003) (on file with author).

[FN11]. World Health Organization, China, at [http:// www.who.int/country/chn/en](http://www.who.int/country/chn/en) (last visited Aug. 4, 2003) (providing general health statistics concerning China).

[FN12]. Ted Plafker, China Admits its AIDS Crisis, 323 *Brit. Med. J.* 714 (2001); Bates Gill et al., China's HIV Crisis, *For. Affairs*, Mar./Apr. 2002, at 96; Bates Gill & Andrew Thompson, The Impact of HIV/AIDS on Business in China, *China Bus. Rev.*, Jul.-Aug. 2003, at 6; World Health Organization, Country Profile: China, in WHO Report 2003: Global Tuberculosis Control Report-- Surveillance, Planning, Financing, available at http://www.who.int/gtb/Country_info/index.htm (last visited Aug. 4, 2003); Leslie Chang, Beijing Heeds the Red Flags of Disease, *Wall St. J.*, May 30, 2002, at A10; Robert Dexter, Breakdown, *Bus. Wk.*, Apr. 28, 2003, at 46.

[FN13]. Gill & Thompson, *supra* note 12, at 6.

[FN14]. *Id.*

[FN15]. *Id.*

[FN16]. See, e.g., Scott Burris & Lawrence O. Gostin, The Impact of HIV/AIDS on the Development of Public Health Law, in *Dawning Answers: How the HIV/AIDS Epidemic Has Helped to Strengthen Public Health* 96-117 (Ronald O. Valdiserri ed., 2003); Lawrence O. Gostin, Scott Burris, & Zita Lazzarini, The Law and the Public's Health: A Study of Infectious Disease Law in the United States, 99 *Colum. L. Rev.* 59 (1999).

[FN17]. Richard Tomlinson, Health Care in China is Highly Inequitable, 315 *Brit. Med. J.* 835 (1997); see also Marilyn Beach, China's Rural Health Care Gradually Worsens, 358 *Lancet* 567 (2001).

[FN18]. Tomlinson, *supra* note 17, at 836.

[FN19]. David Murphy & Ben Dolven, Health or Wealth?, *Far E. Econ. Rev.*, May 1, 2003, at 28.

[FN20]. *Id.*

[FN21]. Tomlinson, *supra* note 17.

[FN22]. Beach, *supra* note 17; Marilyn Beach, Role of Pharmacies in Chinese World of Health Care, 354 *Lancet* 493 (1999); Arthur Kaufman, Commentary: Lessons for Health Professions Education from Reform in Rural China, 12 *Educ. in Health: Change in Learning and Prac.* 159 (1999); Joan Kaufman & Fang Jing, Privatization Of Health Services and the Reproductive Health of Rural Chinese Women, 2002 *Reprod. Health Matters* 108, available at [http:// www.ids.ac.uk/ghen/resources/papers/RHM20KaufmanFang.pdf](http://www.ids.ac.uk/ghen/resources/papers/RHM20KaufmanFang.pdf).

[FN23]. The World Bank, *Financing Health Care: Issues And Options For China* 23 (1997); Tomlinson, *supra* note 17.

[FN24]. Murphy & Dolven, *supra* note 19; see also Tomlinson, *supra* note 17.

[FN25]. See, e.g., Workers' Rights Must Be Guaranteed, *Beijing Rev.*, July 3, 2003, at 7; 'Omnipotent Doctor' Sentenced, *Beijing Rev.*, Feb. 28, 2001, at 6.

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[FN30]. *Id.*

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[FN32]. World Resources Institute, *supra* note 26.

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[FN34]. Trish Saywell & Joanne McManus, What's in That Pill?, *Far E. Econ. Rev.*, Feb. 21, 2002, at 34.

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[FN36]. Ben Dolven et al., Challenges to Business as the Virus Spreads, *Far E. Econ. Rev.*, Apr. 17, 2003, at 26; Lynch, *supra* note 35.

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[FN38]. Dolven et al., *supra* note 36.

[FN39]. Ben Dolven & David Murphy, Building New Chinese Walls, *Far E. Econ. Rev.*, May 22, 2003, at 24.

[FN40]. Dolven et al., *supra* note 36; Lynch, *supra* note 35; Gill, *supra* note 12; Bates Gill, China and SARS: Lessons, Implications, and Future Steps (Prepared for Presentation before the Congressional-Executive Commission on China, May 12, 2003).

[FN41]. Gill, *supra* note 12.

[FN42]. Lawrence O. Gostin et al., The Model State Emergency Health Powers Act: Planning for and Response to Bioterrorism and Naturally Occurring Infectious Diseases, 288 *Jama* 622-28 (2002).

[FN43]. Hearing on Severe Acute Respiratory Syndrome Threat Before the Senate Committee on Health, Education, Labor and Pensions, 108th Cong. (2003) (statement of Dr. David Heymann, Director of Communicable Diseases, World Health Organization); G. Qiang, Remarks at the WHO Global Meeting on SARS (June 17, 2003), available at http://www.who.int/csr/sars/conference/june_2003/materials/presentations/qiang/en.

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