


Environmental Health Policy & Practice



Lesson 19.  
**Personal & Agency  
Liability**

7 May 2012

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Dept. of Environmental &  
Occupational Health Sciences

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Announcements

❖ **DEOHS Seminar:**

- *Mouse Models to Study the Genetic Susceptibility to Inhaled Environmental and Occupational Pollutants*
- **Terry Gordon, PhD**  
Professor, Dept. of Environmental Health  
New York University Medical Center
- **Thursday, 10 May 2012**  
12:30 - 1:20 p.m.  
Room T-435, Health Sciences Center

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Lesson Overview

- ❖ **Responsibilities**
- ❖ **Liabilities**
- ❖ **Protections**

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**Lesson Objectives**

- ❖ Know the most likely grounds on which an EH practitioner might be sued;
- ❖ Be able to discuss the legal issues involved with each; and,
- ❖ Understand the legal protections which the practitioner and his/her agency have, and how they might be applied in specific circumstances.

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**Liability**

- ❖ Most sanitarians are concerned with those actions and activities for which he or she may be held personally responsible;
- ❖ The administration is just as concerned with those actions of their employees for which the agency may be held liable.
- ❖ There is not a hard and fast boundary between the two.

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**Responsibilities**

- ❖ Certain powers and protections are derived from the legislature
- ❖ This grant of power entails certain additional responsibilities beyond those of an ordinary citizen.
- ❖ The scope of both is subject to definition and interpretation by the courts.

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### Responsibilities

- ❖ **As a person**
  - Negligence
- ❖ **As a government official**
  - Compliance with agency/legal requirements and procedures
  - Due care
    - ✓ *Campbell v. Bellevue*

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### Liability

- ❖ **There are three basic areas in which the EH practitioner may run afoul of the law.**
  - Misconduct
  - Tort Liability
  - Deprivation of Constitutional Rights

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### Liabilities

- ❖ **Misconduct**
  - **The Feasances**
    - ✓ Malfeasance
    - ✓ Misfeasance
    - ✓ Nonfeasance
  - Bribery

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**Liabilities** *Continued*

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- ❖ **Tort Liability**
  - Legal duty
  - Breach of that duty
  - Damages as a result

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**Liabilities** *Continued*

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- ❖ **Deprivation of a person's civil liberties**
  - Acting "under the color of any statute or ordinance".
    - ✓ That is, an official can deprive a person of a Constitutional right, by improperly exercising a statutory authority, or doing something on the pretense that it is a legally authorized action.
  - Still emerging area of law

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**Agency Liability**

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- ❖ **What are the actions of an employee that might result in law suits against an environmental health agency?**
- ❖ **What are the typical things that an agency does to protect itself from this kind of liability?**

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**Personal Liability**

- ❖ What are the activities that employees perform that could expose them to personal liability?
- ❖ What protections does an employee have from law suits?

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**Protections**

- ❖ Constitutional Rights
  - Individual Freedoms
    - ✓ *Nathanson v. United States*

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**Protections**

- ❖ Constitutional Rights
  - Individual Freedoms
    - ✓ *Nathanson v. United States*
  - Due Process Rights
    - ✓ In re: Grievance of Michael Yashko

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*Protections* Continued

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- ❖ Sovereign Immunity
- ❖ *Respondeat superior*
- ❖ Agency Discretion
- ❖ Good Faith
- ❖ Malpractice Insurance

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*Campbell v. Bellevue*

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- ❖ Facts
  - Who did what to whom, when?
- ❖ Arguments & Legal Issues
  - Who's suing whom, for what, where?
  - Why?
- ❖ Court History
- ❖ Decision
- ❖ Concurrence and/or Dissent

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*Michael Yashko*

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- ❖ Facts & Arguments
  - Who's suing whom, for what?
- ❖ Court History
- ❖ Legal Issues
  - Why?
- ❖ Decision
- ❖ Concurrence and/or Dissent
- ❖ Application

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*Nathanson v. U.S.*

- ❖ **Facts & Arguments**
  - Who's suing whom, for what?
- ❖ **Court History**
- ❖ **Legal Issues**
  - Why?
- ❖ **Decision**
- ❖ **Concurrence and/or Dissent**
- ❖ **Application**

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Next Lesson

**EH  
Competencies**

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