# Compendium of Health Laws
# And
# Commentaries

by

Pearl Aries Conde
Michael Paul Reysio-Cruz
Rosa Natividad P. Villanueva
And
The MEDICAL ACTION GROUP

2005

Aristotle once said “The rule of law is better than that of any individual.”

The supremacy of the law is a fundamental concept in the western democratic order. The rule of law requires both citizens and governments to be subject to known and standing laws. A corollary to this is that the rule of law presupposes the absence of wide discretionary authority in the rulers, so that they cannot make their own laws but must govern according to the established laws. Those laws ought not to be too easily changeable. Stable laws are a prerequisite of the certainty and confidence which form an essential part of individual freedom and security.

The idea of the supremacy of law requires a definition of law. This must include a distinction between law and executive administration and prerogative decree. A failure to maintain the formal differences between these things must lead to a conception of law as nothing more than authorization for power, rather than the guarantee of liberty, equally to all.

The rule of law ensures that individuals have a secure area of autonomy and have settled expectations by having their rights and duties pre-established and enforced by law.[1]

Essential to the rule of law is the presence of an established process by which laws may be made. With few exceptions, the process ensures that there is a clear distinction between what is considered as binding upon the entire society, and that which is not. In our country, laws are passed by the legislature, and must follow a procedure set forth in the Constitution. After having been validly passed and approved, all laws must be published according to a set procedure in order that they may be considered to be “known to all”.

After laws are in place, the Executive branch of the government is tasked to ensure that the laws are followed. In our modern era, however, it would be impossible for a simplistic concept of enforcement. As technology rapidly expands and transforms our society, it would simply be too much to expect of a single agency of government to ensure that all laws everywhere are being followed.

[1] http://www.ourcivilisation.com

Enter the concept of administrative agencies. The government utilizes specialized instrumentalities to oversee and supervise activities in certain key areas of society. Each is headed by a person or committee of recognized expertise in the corresponding area of specialty which the agency is involved in.

For matters concerning public health, the Philippine Government relies on the Department of Health (DOH) to carry out national health policies and health-related legislative enactments.

The DOH does not only have the task of carrying out the will of the executive and the legislature, but is also responsible for implementing its own programs which are, in its own discretion, responsive to the needs of society. The DOH website lists nineteen key programs currently prioritized. Covered are:

1. Family planning/reproductive health
2. Nutrition
3. Women's health and safe motherhood
4. Adolescent health
5. Breastfeeding
6. Dental health
7. Childhood illnesses
8. Newborn screening
9. Diarrheal diseases
10. Older persons
11. Environmental health
12. Occupational health
13. Cardiovascular disease
14. Cancer and Asthma
15. Diabetes, Osteoarthritis
16. Community-based rehabilitation, deafness and injuries
17. Rabies
18. Disabled persons' registry
19. Integrated helminthiasis control

As mentioned earlier, prospective laws must be measured against a definition. In recent years, nations have sought internationally-accepted norms as standards for conduct. Humanitarian and health law are not exempt from this phenomena. The International Covenant on Economic and Social Rights is the most widely-accepted agreement to date concerning the right of all people to health. It has been signed by over a hundred-forty states, and has been in force since 3 January 1976. Article 12 of the Covenant states:

> "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. "

The General Comment released later by the committee asked with monitoring implementation of the covenant expanded the right to health by defining it further, and by laying down certain criteria for evaluating the steps taken by state-parties to the covenant. It says:

> “Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity. The realization of the right to health may be pursued through numerous, complementary approaches, such as the formulation of health policies, or the implementation of health programmes developed by the World Health Organization (WHO), or the adoption of specific legal instruments. Moreover, the right to health includes certain components which are legally enforceable.
>
> The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.
>
> The notion of "the highest attainable standard of health" in article 12.1 takes into account both the individual's biological and socio-economic preconditions and a State's available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual's health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.”

It also stated that state-parties' compliance should be evaluated according to the following criteria:

> **(a)** ***Availability*****.** Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs.
>
> **(b)** ***Accessibility***. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:
>
> Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.
>
> Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities.
>
> Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands

that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

**(c) *Acceptability*.** All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

**(d) *Quality*.** As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

Furthermore, there are three key areas which define a state's obligations to its citizens regarding the right to health: **respect, protect and fulfill.**

> "The right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfill*. In turn, the obligation to fulfill contains obligations to facilitate, provide and promote. The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to *protect* requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to *fulfill* requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health."

We have exerted our best efforts to come up with a compendium of health related-legislation, from the full range of Republic Acts, Presidential Decrees, Batas Pambansa) and Pre-

republic Legislative Acts (Acts), down to the multitude of Administrative Orders issued to carry out the DOH's functions (limited to relevant Administrative Orders from the 1980s onward, for practical reasons). Compilation of laws was only the first step. After we had gathered as much as we could find, we rated the entire lot against the seven criteria discussed above.

## BACKGROUND OF THE RESEARCH

*Methodology*. We began our search with an internet search, beginning with the Department of Health Website[2], the Arellano Law Foundation Website[3] and, eventually, through the use of reputable search engines. From these, we were able to compile a list of health-related legislation.

Copies of the different laws were obtained from a variety of sources. A number of laws, in particular the Administrative Orders were retrieved from the Intranet services of the DOH Central Library in Manila. Others were sourced from the Arellano Law Foundation Website and other internet sources. A number of the older laws were obtained from *Lex* Libris, a cd-based compilation of Philippine laws and jurisprudence. Lastly, we searched for the text of the older and less popular legislation in the UP College of Law Library.

*Limitations*. As a possible consequence of the gaps in health law bibliography, this group must submit its report with the caveat that some administrative issuances may be technically in effect, but unknown to the practical world – having been buried under the rubble of time and numerous administrations.

There likewise exists the possibility that, given the absence of an exhaustive list of health legislation, the research missed laws which are either unreported or undocumented.

Lastly, in spite of our exhaustive search, there were simply some health laws whose text we were unable to find.

## OBSERVATIONS

*NO REPOSITORY OF LAWS*

[2] http://www.doh.gov.ph

[3] http://www.lawphil.net

The principal difficulty in our study arose at the compilation stage, due to the fact that there simply is no central repository of health-related laws and issuances. Amazing as it may seem, not even the DOH itself has a complete list of health-related laws, executive orders, administrative orders and other issuances.

As mentioned earlier, the laws we included in the compendium was the result of three weeks of research done in various libraries and online sources. While there was an attempt to make the list as comprehensive as possible, there was no means by which we could be sure that the list we were able to arrive at was the complete list.

*POPULAR PROGRAMS NOT ADMINISTRATIVELY SUPPORTED*

Administrative orders give flesh and movement to laws from the National Legislature. The group noticed that many programs that were generally well-covered in recent news media, such as the *ASIN* (salt iodization law), *Sankap Pinoy Seal* (food fortification) and the breastfeeding campaigns did not have an implementing AO in the DOH records.

The gap may be cause by one of two reasons. First, it may be a result of incomplete records. Or, second, it may be the result of the absence of any administrative order executed for that purpose. However, whether the record is incomplete or there is in reality no AO supporting the law, the effect is the same – the program losing steam within the agency tasked to specifically implement the law.

*"RESPECT" NOTICABLY LACKING*

One noticeable characteristic of Philippine health law is the seeming reluctance of the state to adopt laws which stress "respect" as defined previously. While there are many laws designed to prohibit third non-state parties from interfering with specific aspects of the right to health, the State seems unwilling to restrain itself from intervening in particular areas of the people's right to health. If any restraint is placed upon a state instrumentality at all, such is only issued at the administrative level, in the form of directives given to DOH facilities.

The statutes that we have researched and assessed usually comply with the obligation of the State to fulfill the full realization of health rights in the Philippines. Health research were promoted

by the government for the prevention and control of diseases (Republic Act No. 8503), including HIV/AIDS and other sexually-transmitted diseases (Republic Act No. 8504).Use of more nutritious substances like breastmilk (Republic Act No. 7600 and Executive Order No. 51, s. 1986) and the use of generic names (Republic Act No. 6675) were also encouraged. Traditional and Alternative Health care is also sought to be developed and accelerated in the Philippines (Republic Act No. 8423). Practice of profession (Medical Act of 1959 or Republic Act No. 2382) and operation of hospitals (Republic Act No. 4226) and blood banks (Republic Act No. 7719) were regulated and controlled to ensure superior and high quality health service and facilities. A number of statutes comply with the State obligation to protect the right to health from interference of third parties as well. Legislative enactments were passed prohibiting the use, manufacture and disposal of adulterated, misbranded, toxic and counterfeit drugs (Republic Act No. 3720).

*HEALTH LAWS NEED UPDATING AND STRICTER ENFORCEMENT*

Noticeable in some health laws of the Philippines is its outdatedness. The Department of Health should observe a monitoring mechanism to review the effectivity of health laws in the present state of the country and to ensure and promote enforcement. An illustration would be Republic Act No. 6615 which requires hospitals and clinics to extend medical assistance in emergency cases. The penalty of imprisonment from one (1) month one (1) day to One (1) year and one (1) day or a fine of Three hundred pesos (P300) to One Thousand Pesos (P1000) should be increased. The fine imposed under Republic Act NO. 8344 which penalizes the refusal of hospitals and medical clinics to render medical assistance in emergency cases should likewise be increased.

*FAILURE TO DISSIMENATE INFORMATION ON A NATIONWIDE SCALE*

It was further observed that very few health-related laws received the necessary attention in terms of publicity and media coverage. While there were others which became famous nationwide, such as ASIN, a number of these laws were passed without much fanfare, resulting in the waning of public interest.

Furthermore, it would seem that while most of these projects were well-known in the urban areas such as Metro Manila, Metro Cebu, and Metro Davao, there was no showing that the smaller provinces were reached by these projects.

*MERELY RESPONSIVE, NOT PROACTIVE*

A number of health legislation in the Philippines result from advisories issued by the World Health Organization (WHO). This is particularly evident in the case of pharmaceutical products and cosmetics. Once a product is banned by the WHO, a corresponding Administrative Order would be issued by the Department of Health effecting the ban within the Philippines.

While the response of the Philippine government is admirable, it is dismal in the sense that the government merely responds to directives rather than it undertaking its own investigation and study on the matter. Even without the advisory of the international organization, the government should be able to conduct its independent study on products made available in the market today.

## RECOMMENDATIONS

*EDUCATION*

It is our belief that it is necessary that all individuals dealing with health be educated with regards to health laws.

For one, the gaps in legislation can be better solved if our congressmen and senators be taught the seven different standards governing health laws. NGOs and other people's organizations can undertake the training of these elected officials. In turn, these NGOS and people's organizations may be given regular updates by Congress regarding new health laws that are passed.

*INFORMATION DISSIMENATION*

Unless people are made aware of the different legislation governing their health rights, no matter how advanced our laws are, they will be unmaximized. It is therefore important that everyone, from the urban areas down to the barrio level be given all the necessary information regarding their health rights.

It is necessary, in this regard, that the National Government take a more aggressive stand when it comes to health-related legislation. In the past, information regarding birth control and population control has been severely limited due to the interference of the Catholic Church. Recently, even the church has interfered when it came to issues regarding patients rights. The government must learn to separate the personal interests of its officials from the interest of the nation.

*INTENSIVE RESEARCH*

People's organizations must likewise rally towards government-led research in the field of health law. The Philippine Government must be made to see that with research, we can better tap indigenous resources already available in the country.

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | | |