SPECIAL SECTION

Legal Approaches to the Obesity Epidemic: An Introduction

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In the spring of 2003, the Public Health Advocacy Institute, whose mission is to explore law in common cause with public health, held its first annual conference on “Legal Approaches to the Obesity Epidemic.” The goal of this groundbreaking conference was to initiate a national examination of a crucial policy question: How can the law play a role in counteracting the public health threat presented by the widespread, increasing incidence of overweight and obesity both in the United States and globally?

Following this initial conference, the Institute began a series of discussions focusing on intersections between public-health obesity reduction objectives and the instruments of law. These examinations have dealt primarily with the U.S. experience—not inappropriately, since it is in food marketing and promotion practices originating in the United States that the epidemic is rooted. Yet, our examinations have pushed to bring an international focus to the conversation. As the legal community is realizing, the distinction between domestic and international is becoming conceptually untenable. As we continue to work, the Institute strives to broaden its discussion of legal approaches to obesity to become truly global in its approach. The papers in this Special Section are the product of these ongoing discussions.

The papers in this Special Section have been prepared by practitioners in both public health and law who participate in or are affiliated with the Institute’s Obesity-Law Task Force. Each paper has undergone a review process within and beyond the Task Force, as well as a vetting by the Institute’s staff. Taken together, they are an accurate reflection of the work of the Institute in this area. Individually, these

papers offer issue-by-issue information and insights into key aspects of obesity and the potential for controlling it through public policy changes. Each is written to outline broadly different legal approaches to obesity rather than to detail particular solutions in all their complexity. Collectively, they are a unique handbook of guidance for all those in law and public health who want to help achieve a permanent reversal of the obesity epidemic using the tools of law. PHAI is pleased to make these materials available to a wider audience through this Special Section of the *Journal of Public Health Policy*.

Since PHAI's first annual conference on the Obesity Epidemic, much has happened to evidence a growing public recognition that the obesity epidemic cannot be controlled effectively without substantially reshaping national and worldwide policies that create the food environment and how it contributes to excessive consumption. That environment—one that encourages over-consumption of high-energy, low-nutrition foods, especially by children—is determined to an important degree by marketing, product content, labeling, packaging practices, and economic policies employed by the food industry to drive ever-increasing sales targets or enacted by governments to protect economic interests.

The World Health Organization's recently-adopted "Global Strategy on Diet, Physical Activity and Health" (1) reflects this emerging recognition of the problem, especially with regard to children. It calls for reduction or elimination of food marketing messages that "exploit children's inexperience or credulity" and "encourage unhealthy dietary practices." A companion WHO paper, "Marketing Food to Children: The Global Regulatory Environment," (2) notes that "a wide range of regulations have the potential to affect the techniques used to market food to children, including those that apply to all age groups and all products. In fact, non child-specific consumer protection laws have been used as the basis for litigation against several large food companies."

Making law—legislation, regulation, and litigation at the local, national, and international level—can be a powerful process for shaping health policy in general and the food environment in particular. In designing obesity control programs, health policy decision-makers in the United States, both government and private, have been slow to make use of the law. Meanwhile the food industry has been swift to oppose legislative and regulatory proposals that would limit its ability to encourage unhealthy eating habits through marketing and product design. It has also sought the passage of federal and state laws in the

United States to foreclose litigation against food companies for the harm done by their obesity-promoting foods and marketing practices.

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The papers presented in this Special Section address these and other aspects of the role of law in countering the obesity epidemic. Although its onset was recent, without concerted work by public health professionals and legal practitioners, the epidemic will likely be prolonged and aggravated.

The Obesity Epidemic in the United States surveys the growing body of knowledge about the nature and growth of the epidemic. It documents substantial increases in overweight incidence across gender, economic, and racial-ethnic groupings. The increases it finds for children and adolescents are particularly alarming: more and more of America's youth are predisposed at early ages to the severe health-damaging and life-shortening consequences of obesity.

Allison Morrill and Christopher Chinn detail the factors associated with the epidemic: reduced physical activity, increases in consumption of energy-dense, low-nutrition foods, and technologies that reduce agricultural and food processing costs while increasing productivity, particularly of obesity-promoting added sweeteners, such as high fructose corn syrup. Their paper examines the food environment's pervasive promotion of increased consumption of energy-dense low-nutrition foods, especially by children. That environment is shaped by extravagant food-industry advertising aimed at young people: by aggressive in-school product sales via vending machines and event sponsorships; by tie-ins with toys and games; and by in-school media and "educational" messages.

US government dietary guidelines contribute to and perpetuate the environment. Instead of urging that people eat less, particularly high-energy, low-nutrition foods, the government, echoing food industry marketing messages, "advises 'moderation' and affirms that all foods have a place in a healthy diet."

Food Marketing to Children in the Context of a Marketing Maelstrom documents the huge escalation of marketing to children since the 1980s and describes the range of techniques that food companies use to promote consumption and brand loyalty of obesity-promoting foods: Advertising that undermines parental controls by encouraging

children to nag parents into making unhealthy food purchases; product placement in prime-time “family” television programs and movies; internet “advergaming” websites that focus children’s attention on product brands by incorporating them into computer games; infiltrating school educational resources with product-promoting materials; and tie-ins between particular food brands and toys, movies, and TV characters.

“Given their particular vulnerabilities to marketing, there is a powerful argument to be made that it is in the best interest of children that companies refrain from marketing to them at all,” concludes author Susan Linn. Noting that other countries are taking steps toward that goal, she proposes legal actions that would achieve it in the United States.

Legislation weighs the prospects for legislative countermeasures to the obesity epidemic in the United States and finds it discouraging. The tools are there, but Federal and State legislation has tended to serve the interests of the food industry. The influence of food production interests, especially agricultural, has created federally legislated price supports and subsidies that promote rather than discourage marketing of obesity-generating foods, which in turn leads to increases in their consumption. Rachel Weiss discusses congressionally-enacted prohibitions on cigarette advertising as a possible precedent for laws to restrict food advertising aimed at children but sees little likelihood of this happening in the near term.

An overview of proposed federal obesity-control laws finds these are directed at changing personal consumption behavior; they fail to address the need to change food industry behavior and the food environment. In fact, a proposed “Obesity Prevention Act” directs that funds made available under the Act “shall not be used to disparage any agricultural commodity, food, or beverage.” Some state legislatures are showing more initiative by considering proposals to reshape the nutritional content of school meals, limit the presence of soft-drink vending machines in schools, and tax snack foods and soft drinks, but it is too early to assess their impact.

Meanwhile, both federal and state legislatures are under intense pressure from food industry lobbyists to enact statutes prohibiting law-suits against food companies and restaurants for obesity-related claims; a number of states have already passed such laws. Food interests are mindful of the adverse impact that litigation against the tobacco

industry has had on cigarette consumption, and of the damaging internal documents revealed in this litigation that demonstrated the industry's unwavering preference for its own profits over the health of its customers.

Regulating the Environment to Reduce Obesity analyzes a wide and diverse range of potential regulatory steps to mitigate the obesity epidemic, while recognizing the legal and political barriers to achieving them. Cheryl Lyn Hayne, Patricia Moran, and Mary Ford examine regulatory approaches to counteract the food environment's encouragement of unhealthy consumption practices, considering regulation at both the federal and local level in the United States. At the federal level they call for Food and Drug Administration action to strengthen food nutritional and content labeling rules and extend those rules to restaurants, and for action by the Federal Communications Commission to "discourage advertising [on radio and television of] foods of little nutritional value to children and encourage the presentation of balanced information regarding healthy dietary choices."

School environments offer additional opportunities for effective local as well as federal regulatory interventions, the paper notes. Expanded authority could give new powers to the National School Lunch Program to limit high-fat and high-sugar products in schools. Posting nutritional information for food products sold in schools could be mandated, and more nutritious choices offered. Better education—both physical and nutritional—could be encouraged. School boards could modify or eliminate vending contracts that bring obesity-promoting foods onto campuses.

Extending its regulatory analysis to the built environment, the paper sees both opportunities and obstacles to mandating local-level changes that encourage energy-intense activities—walking, jogging, biking, and other outdoor fitness opportunities—along with reduced reliance on motor vehicles. Overall, the paper concludes, successful regulatory initiatives require the understanding and support of stakeholders as well as the involvement of epidemiologists and statisticians to assure collection of useful data for future policymaking.

Private Enforcement: Litigation as a Tool to Prevent Obesity looks at the ways in which litigation against food interests can contribute to obesity control. The prospect of obesity-related lawsuits has already generated increased public attention to the obesity epidemic and its health consequences. Further, some food companies are responding

with pledges to modify their products and marketing practices in the interest of obesity reduction.

Meanwhile, food companies are signaling their fear of litigation by promoting federal and state laws to prohibit it. As authors, Richard A. Daynard, P. Tim Howard, and Cara Wilking point out, the discovery process triggered by lawsuits would compel defendant food companies to disclose internal research and policy documents that might be used as evidence against them—the kinds of internal documents that helped persuade juries of tobacco industry wrongdoing.

The paper enumerates several bases for obesity-related lawsuits, including unfair and deceptive trade practices in states with strong consumer protection laws; personal injury, in which otherwise avoidable harm was caused to individuals by a product's content, marketing, or lack of warning; and marketing that has deceived a consumer into harmful eating practices. Further, the authors address and refute industry claims that obesity-promoting food consumption behaviors are solely a matter of "personal responsibility."

Confronting the Epidemic: The Need for Global Solutions recognizes the frightening worldwide impact of the obesity epidemic and calls on governments, public health workers and the food industry to take dramatic steps toward reversing it. Authors Neville Rigby, Shiriki Kumanyika, and W. Philip James of the International Obesity Task Force stress the urgent need for all stakeholders to pursue the directions set forth in WHO's newly adopted "Global Strategy on Diet, Physical Activity and Health."

Several developments aggravate the international epidemic and its health consequences. They focus on globalization of energy-dense U.S. diets; an increased prevalence of the metabolic syndrome among populations in developing countries; and industry and government policies and programs—including trade and investment practices—that promote obesity-inducing diets. Political will and social controls are needed to place health priorities above the prevailing economic motives of global trade.

"Global populations will continue to become progressively heavier if present consumption forecasts are sustained," they warn. "Only a comprehensive and integrated international approach, based on an effective implementation of the WHO global strategy . . . offers any real hope of arresting the public health catastrophe unfolding throughout the world."

REFERENCES

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