



# The Conflict of Public Health Law and Civil Liberties Part IV: Anger, Frustration, and the Loss of Trust

Political power and public trust are fragile things. Short of criminal law enforcement, voluntary agreement with any significant restriction of ordinary freedom of speech or behavior depends on convincing large numbers of citizens that temporary suspension of a particular liberty is in their best interest. Threats to health or property are convincing reasons to change behavior, to give someone else control over our daily lives.

The coronavirus 2019 (COVID-19) pandemic brought fear of death to our doorstep. Long-time friends and acquaintances died or were disabled. Anyone who promised protection from infection was believed, even when their suggestions merely “made common sense” rather than were shown by careful study to be effective. Masking, quarantine, handwashing, and vaccination were all actions with a long history of being successful in other cases, so when recommended, and then mandated, they were considered “for the public good.” Despite epidemiological or infectious disease principles and publications that suggested otherwise, case observations and association studies were accepted as true by the public at large, with fear being the driving force for the acceptance of weak data as “truth.” Association outcomes became causation outcomes for most people that did not understand the difference.

Now that time has passed and more is known, the public (our patients) are angry and distrustful, much like a “jilted lover” who trusted too much. Many have adopted the old saying “Fool me once, shame on you; Fool me twice, shame on me” as the standard by which they judge “expert advice.”

Experts over-promised the effectiveness of vaccines.<sup>1</sup> Also, the censorship of opposing opinion on some social media sites is now the subject of Congressional hearings. In part due to the previous broad opposition to the mandates that left a mark on compliance, and in part due to the under-reporting of side-

effects of the vaccines that many noticed, as of September 2023, only 21% of adults and 8% of those less than 18 years of age in the United States were vaccinated with the most recent booster to COVID-19.<sup>2</sup> Although practicing physicians have been called on to overcome our patients’ resistance to (specifically) COVID-19 vaccination,<sup>2</sup> that is increasingly not possible. I personally have had no problem recommending and administering the annual Fluvax vaccine to my patients, but I have had no one accept the new COVID-19 booster.

Acknowledgment of medical expertise is critical to the acceptance of any advice from the Centers for Disease Control and Prevention or other leading opinion. Baron and Coleman<sup>3</sup> discussed the damage COVID-19 legislation did to the legitimacy of medical expertise by limiting the authority of medical licensure boards. Hoeg et al<sup>4</sup> published a careful analysis of the data before 2024 reviewed in *Morbidity and Mortality Weekly Report*, a highly influential newsletter, on the subject of surgical and N95 masking. More than 75% of the recommendations made by *Morbidity and Mortality Weekly Report* favored masking, with only 30% of the studies actually testing a mask type, and less than 15% showing any effectiveness.

The damage the COVID-19 public health care saga has done to the recognition of physicians’ expertise is still being felt. Supreme Court Justice Rufus Peckham, in a case brought by the American School of Magnetic Healing in 1902 against an allopathic provider who claimed magnetic healing was fraud, said “There is no exact standard of absolute truth by which to prove the assertion false or fraud.”<sup>5</sup> Although a true statement, subsequent case law has refined the statement and rejected the idea that the efficacy of any medical intervention is a matter of opinion, including individual expert opinion. The recognized standard in the law is scientific data, if well researched and broadly accepted. Also, although the scientific technique of discovery is the fundamental basis of physician knowledge and opinion, it is not understood by the majority of our patients as the best source of recommendations for their health.\*

Trust is hard to earn and easy to lose. Much of the public health response to the COVID-19 pandemic has damaged trust in health authorities and physicians, to the lasting harm of this nation’s health.

---

**Funding:** None.

**Conflict of Interest:** None.

**Authorship:** The author is solely responsible for the content of this manuscript. CEH: Conceptualization, Writing – original draft, Writing – review & editing.

Requests for reprints should be addressed to Curtis E. Harris, MD, The Clinic, 905 Colony Drive, Ada, Oklahoma 74820.

E-mail address: [Curtis.Harris@cofmc.org](mailto:Curtis.Harris@cofmc.org)

\*One small example that proves the statement I just made, and that looks back to the early Supreme Court dispute: My patients still come in wearing magnetic bracelets that help “heal their arthritis...,” just as the American School of Magnetic Healing maintained in 1902.

Curtis E. Harris, MS, MD, JD  
*The Clinic, Ada, Okla*  
*Oklahoma City University School of*  
*Law, Okla*

## References

1. Wilson FP. Medscape. COVID boosters effective, but not for long. Available at: [Medscape.com/viewarticle/992538\\_print](https://www.medscape.com/viewarticle/992538_print).
2. Wood SK, Maki DG, Glickman M, Hennekens CH, Ferris AH. Guidance for health care providers on the newest COVID-19 vaccine. *Am J Med* 2024;137(2):79–80.
3. Brown RJ, Coleman CH. Protecting the legitimacy of medical expertise. *N Engl J Med* 2023;388(8):676–8.
4. Høeg TB, Haslam A, Prasad V. An analysis of studies pertaining to masks in *Morbidity and Mortality Weekly Report*: characteristics and quality of studies through 2023. *Am J Med* 2024;137 [254-162.e1].
5. American School of Magnetic Healing vs McAnnulty, 187 U.S. 94 (1902).