LEGAL REGULATION OF HEALTH CARE

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"Let's just say that You lived up to the highest moral code permitted by law."

"Let me through. I'm a lawyer."

"Are you the baby's father?"
"No, just an attorney."

"It is just a miracle you pulled through, George. Why it was only a few hours ago the whole family was deliberating on whether or not to wring your neck."
JONES V. SMITH, MD

- JONES IS ANGRY
- HIS DOCTOR TREATED HIM FOR GOUT, BUT IT STILL HURTS
- JONES WISHES TO SUIT
- HE GOES TO SEE A LAWYER
- WHAT IS THE LAW ON THIS ISSUE?

SOURCES OF THE LAW

- FEDERAL LAW
- STATE LAW
- JUDICIAL DECISIONS

SOURCES OF THE LAW

Federal

- U.S. CONSTITUTION
- STATUTES [Acts of Congress]
- ADMINISTRATIVE LAW [Federal Agencies]
- EXECUTIVE ORDERS [White House]

States

- CONSTITUTION [e.g. Virginia]
- STATUTES [Acts of Assembly]
- ADMINISTRATIVE LAW [State Agencies]
- LOCAL LAW [City/County Ordinances]

Judicial

- FEDERAL COURTS
- STATE COURTS

FEDERAL COURTS

- US SUPREME COURT [9 Justices Life Tenure]
  Interprets Constitution and Federal Law
- CIRCUIT COURTS OF APPEAL [11 Federal Circuits]
  Appellate jurisdiction only
- FEDERAL DISTRICT COURTS
  [Trial Court Jurisdiction—2 Districts in Virginia]
  Cases arising under the Constitution, Federal Law or when "diversity" applies
STATE COURTS

**STATE SUPREME COURT**
12 justices, 2 per court region
Interprets State Constitution and laws
Appeals from: Constitutional Cases, Life and Liberty of Persons (Habeas corpus)

**COURT OF APPEALS**
4 Regional Panels, 1 Judge
36 Judges, 13 Judge En Banc
Interprets Appeals of Circuit Courts, Domestic Relations and Administrative Agencies

**CIRCUIT COURTS**
31 Circuits, 120+ Courts
General Jurisdiction Trial Court
Civil Claims $1-7000, Criminal Cases, Appeals from lower courts

**COURT OF APPEALS**
7 Justices, 10 Year Term
Jurisdiction: Appeals of Circuit Courts, Domestic Relations, Administrative Agencies

**VIRGINIA SUPREME COURT**
7 Justices, 12 Year Term
Interprets State Constitution and Laws
Jurisdiction: Constitutional Cases, Life and Liberty of Persons (felony appeals)

LEGAL LIMITATIONS ON MEDICAL PRACTICE

- State Statutory/Administrative
- Federal Statutory/Administrative
- Criminal Law
- Antitrust Law
- Insurance Law
- Economic Incentives in the Law
- Tort Law

STATE STATUTES & REGULATIONS

- Medical Practice Act
- The Board of Medicine
- Other Statutory Provisions
  - Tax
  - Confidentiality
- Other Regulatory Boards
  - Nursing
  - Dentistry
  - Pharmacy

FEDERAL STATUTES AND REGULATIONS

- Indirect:
  - Record Confidentiality (HIPAA)
  - Occupational Safety (OSHA)
  - Controlled Substances (DEA)
  - Tax (IRS)
  - Manufacture of Drugs and Devices (FDA)

"ON THE PLUS SIDE WE DON'T NEED A LICENSE"
Criminal Law
- Practice Act Provisions
- Professional Codes of Ethics?
- General Criminal Statutes
  - Reckless or Grossly Negligent patterns of practice

Antitrust Law
- Prohibiting certain agreements between practitioners judged to be “anticompetitive” or “in restraint of trade”

Insurance Law
- For example, Mandatory Liability Coverage, or
- Mandatory Incident Reporting Statutes

Economic Incentives in the Law
- Compliance with regulatory structure is a condition of participation:
  - Medicare
  - Medicaid
  - Chapuss
  - CDC regulation
HOW CAN JONES SUE SMITH?

- CRIMINAL LAW?
- CONTRACT LAW?
- TORT LAW?

Tort Law

- Goals of Tort Law:
  - Compensation
  - Deterrence
  - Punishment??

Civil Liability

Sequence of Analysis

- Duty
  - Who is required to exercise care?
  - What is the standard of care?
- Breach
  - Was the duty carried out?
- Causation
  - Is it possible to fix responsibility?
- Damages
  - Can the resulting harm be measured?

IF JONES SUES SMITH, JONES WILL PROBABLY loose

- AND IT WILL COST HIM SOME SERIOUS CASH
- AND HE WILL ALMOST CERTAINLY NOT GET TO COURT, BECAUSE MOST CASES ARE DROPPED OR SETTLE BEFORE TRIAL (96+%)