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Shades of Gray

There is no black and white.

Having attended both medical school and law school, I have finally understood the difference between doctors and lawyers. The difference is in the way we think. In medical school, we are taught the scientific method of reasoning based on Koch's postulates [16]. It is a process that is logical and verifiable by the physical evidence we observe. For example, either my patient has acute appendicitis or he does not have acute appendicitis, based on the pathology report [17]. Medicine is primarily concerned with the result, less with the process. Medicine is black and white.

In law school, we are taught that there is no black and white; there are only shades of gray. The law is primarily concerned with the analysis of the process, less with the result. A legal conclusion is based on an analysis, which is based on how the facts are applied to the existing law or rule. Every law or rule has an exception or qualification. Indeed, much of our time in law school was devoted to learning about the exceptions to the law! This grayness concept in the law is very uncomfortable and frustrating for most doctors, especially surgeons. As surgeons, we like exactness, clarity, and structure.

Additionally, the law may be expressed (written) or implied (between the lines). This implied quality of the law adds a layer of abstractness that increases the complexity of the law. Indeed, it is this abstractness that makes the law deceptively complex. For example, the concept "use a gun, go to prison" seems very clear and straightforward. Nevertheless, whether the one who uses a gun will actually go to prison always depends (grayness) on the circumstances. This abstractness flows to the person such that the

results may vary with each individual perspective and set of facts involved. It may not only vary with the individual perspective but have a chameleon-like quality, causing it to change with each environment or set of circumstances. Implied law also occurs in the legal phrases and legal terms of art. A member of the public or a doctor may have an intellectual understanding of the term “informed consent,” but legally it has a very specific meaning. The public generally views the phrase “assault and battery” as to hit or batter someone. However, the law defines assault and battery as merely unpermitted touching or the fear of unpermitted touching [14]. Legally, it is a more subtle and broader definition. The implied law is very powerful for the patient plaintiff or government agency but most frightening for an individual physician defendant. Therefore, the physician caregiver is not in a very comfortable environment when any litigation develops.

Grayness invokes a counterintuitive reaction, especially from doctors. As scientists, we physicians live in a world of structure supported by verifiability. However, scientists constitute a minority influence in present-day society. Grayness is not verifiable because it changes constantly with each set of facts and circumstances. It is important for us to understand this concept of shades of gray because it is how much of the world operates, especially the legal world. Many bylaws, rules, and policies have interpretations as variable as the number of persons reviewing the document [18]. Moreover, the ultimate challenge comes from the need to develop a consensus on the exact meaning of any rule or policy.



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