



# *A Free for All!*

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Charlottesville, Virginia

# 30<sup>th</sup> Annual Symposium



How many people e-mailed a topic to me?



Zero. Zip. Zilch. Nada!





# Regular Old Law

- Duty
- Breach of duty
- Proximate cause
- Damage



- Blah
- Blah
- Blah
- Blah



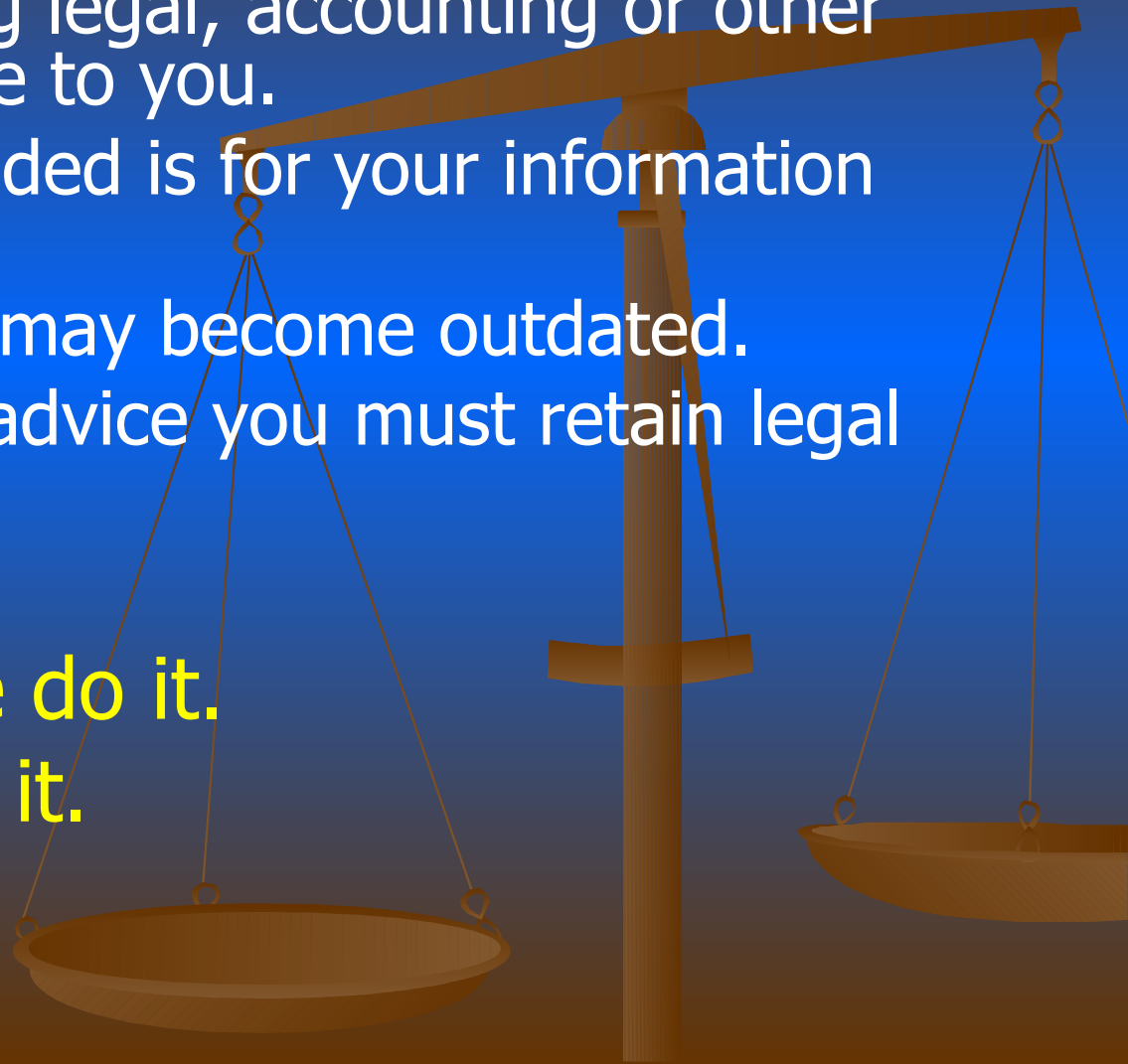
# Topics

- ECO/TDO
- Technology – Your friend?
- Disclosing “Health Records”
- “Recruiting and Retention”
- Interacting with fellow members



# Standard Attorney's Disclaimer

- I am not rendering legal, accounting or other professional advice to you.
- The material provided is for your information only.
- Legal information may become outdated.
- If you need legal advice you must retain legal counsel.
- I didn't do it.
- Nobody saw me do it.
- You can't prove it.





# Judicial Involvement in Medicine

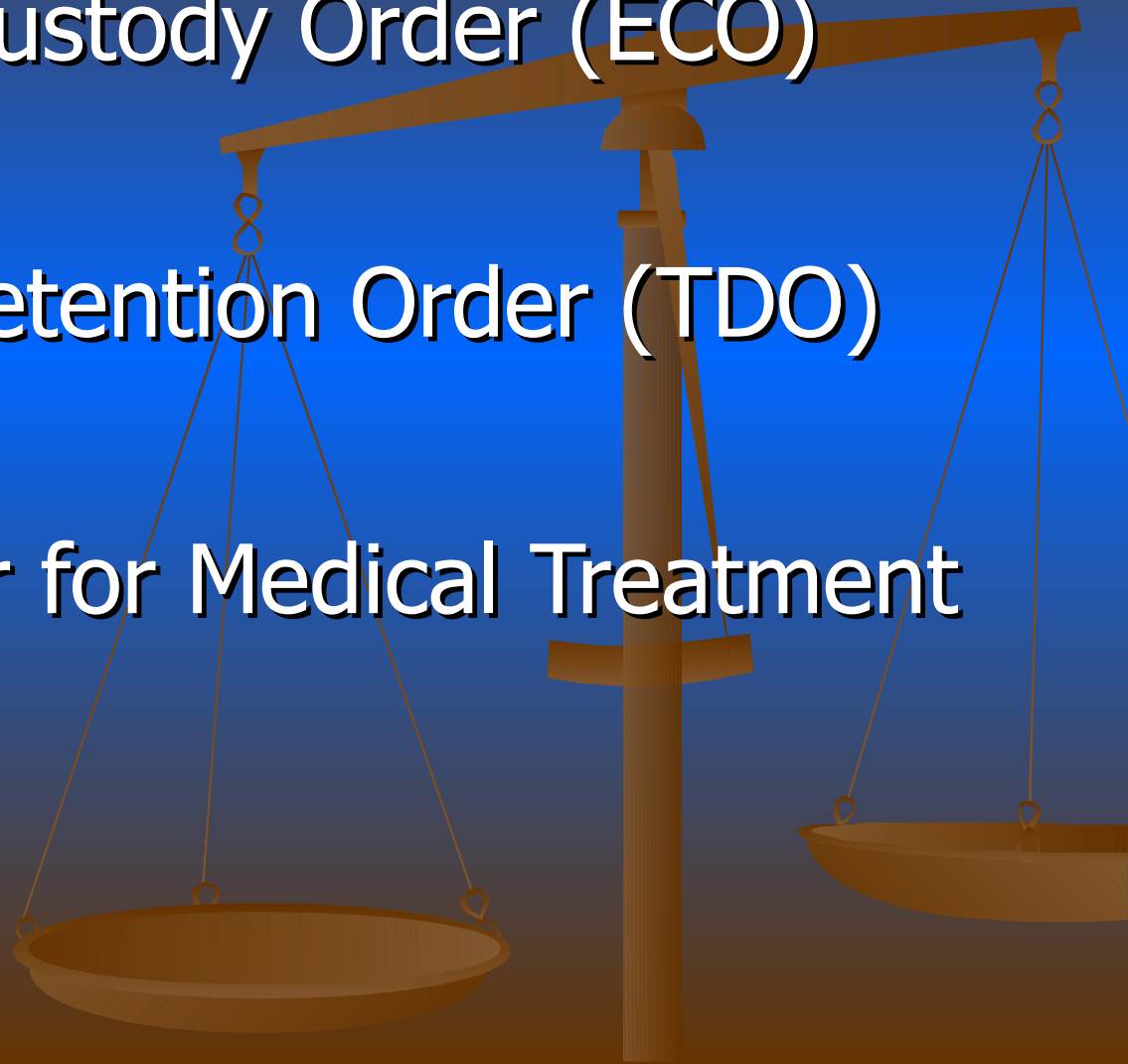


# Judicial Involvement in Medicine

Emergency Custody Order (ECO)

Temporary Detention Order (TDO)

Judicial Order for Medical Treatment



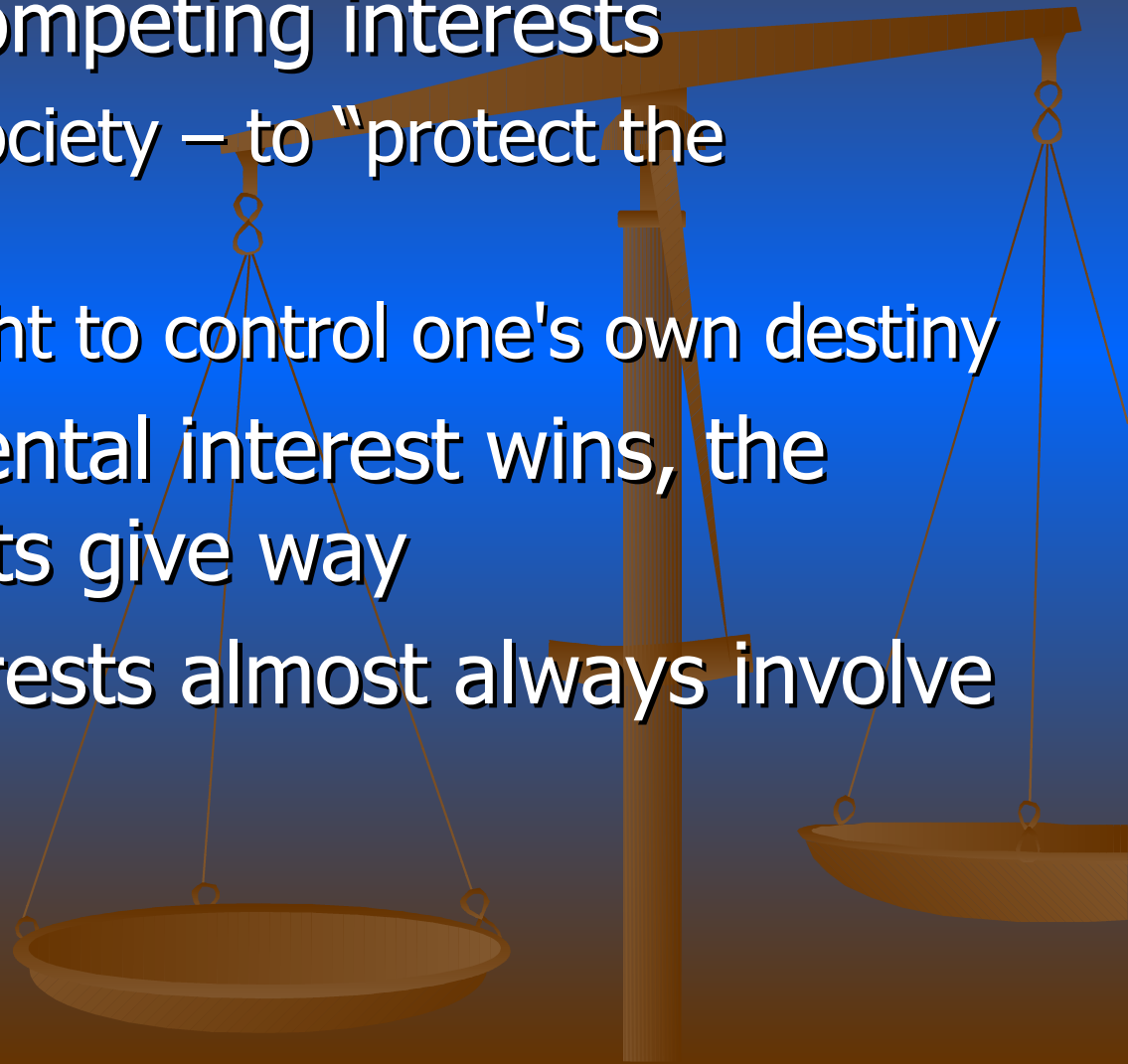
# CAUTION



- The laws concerning Judicial Involvement in Medicine are complex
- The law is discussed without trying to include every little exception or special circumstance
- “The Law” may not be interpreted or applied the same everywhere in Virginia
  - Difficult to cover every possible eventuality
  - Humans are involved in decision making
  - SO – talk to YOUR local magistrate

# Judicial Involvement in Medicine

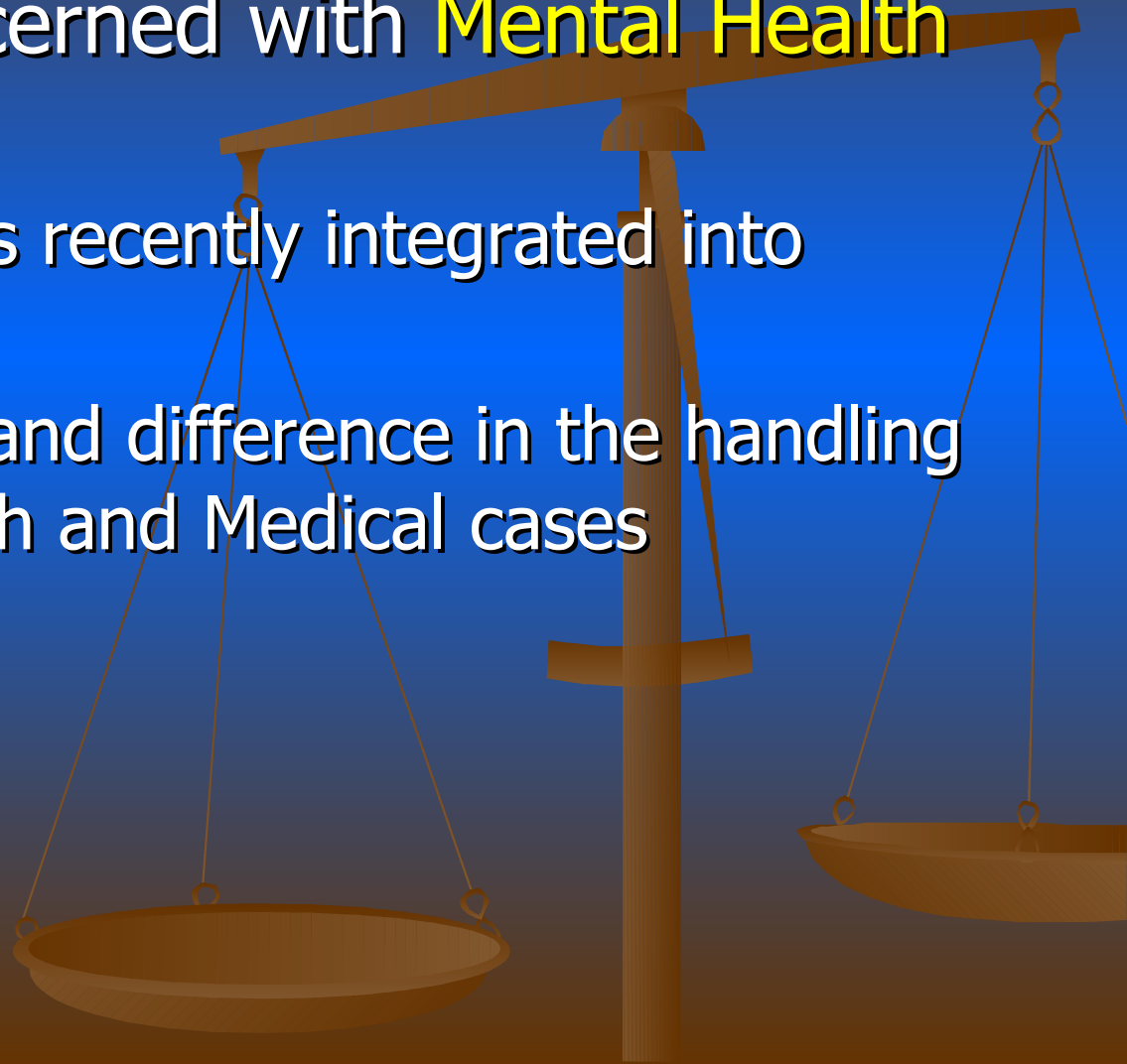
- Must balance competing interests
  - Government/Society – to “protect the helpless”
  - Individual – right to control one's own destiny
- If the governmental interest wins, the individual's rights give way
- Competing interests almost always involve “gray areas”





# Judicial Involvement in Medicine

- Historically concerned with **Mental Health** issues only
  - MEDICAL issues recently integrated into statute
  - Both similarity and difference in the handling of Mental Health and Medical cases



# Judicial Involvement in Medicine

- Governmental force does not become an issue if the patient **CONSENTS** to assessment and/or treatment, and/or transport
  - “Surrogate decision makers” recognized in Virginia
    - Guardian or Committee
    - Spouse
    - Adult child
    - Parent
    - Adult sibling
    - Any other relative



# Judicial Involvement in Medicine

- Mental Health Issues

- ECO

- TDO

- Involuntary Commitment

- Judicial Order for Treatment

- General District Court Judge or Special Justice

- Juvenile and Domestic Relations District Court

- Circuit Court



# Judicial Involvement in Medicine

- Medical Issues

- ECO

- TDO

- Judicial Order of Treatment

- General District Court Judge or Special Justice

- Juvenile and Domestic Relations District Court

- Circuit Court





# Judicial Involvement in Medicine

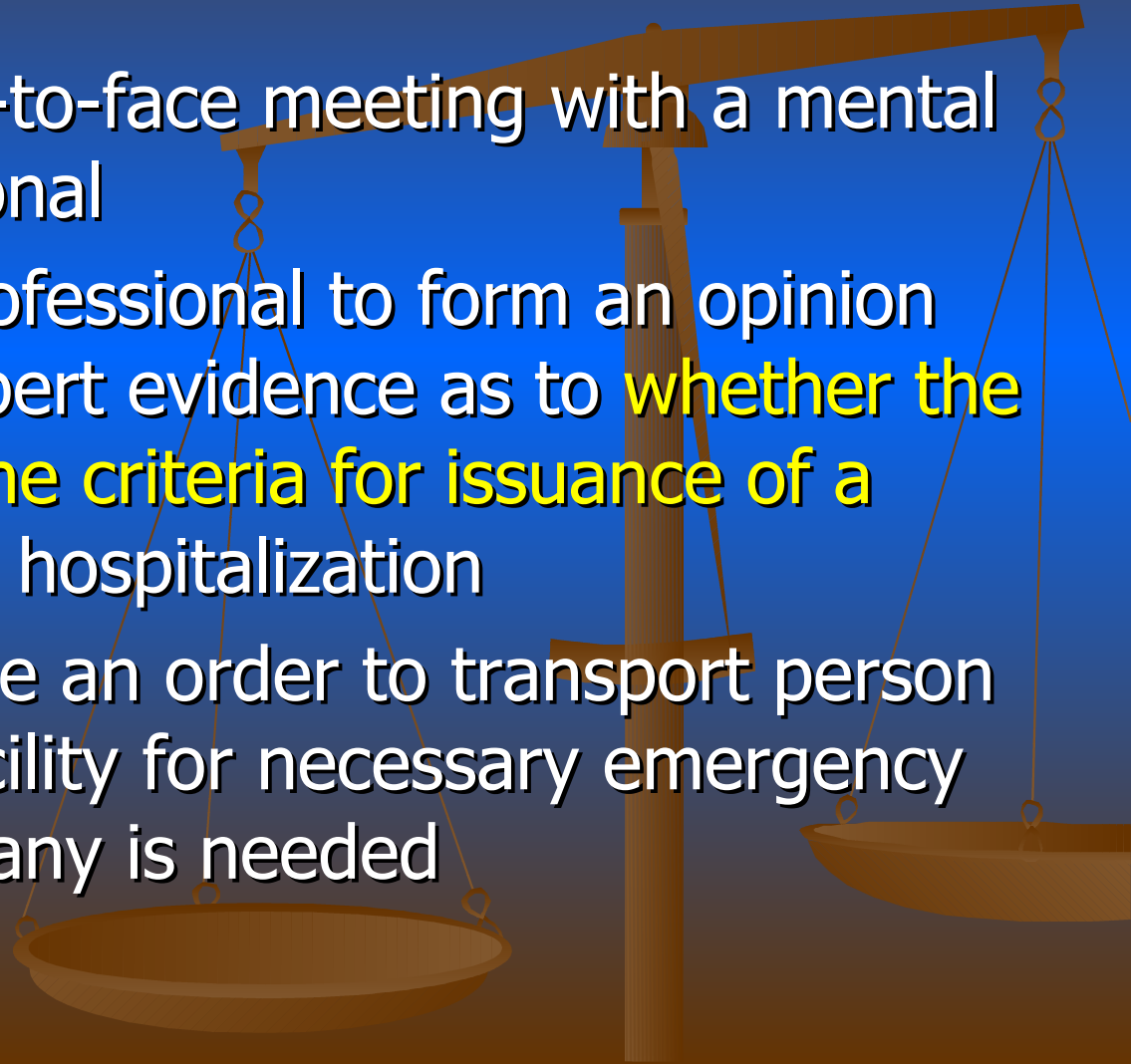
- *Ex parte* proceeding
  - ECO
  - TDO
- Adversarial Hearing
  - Involuntary commitment
  - Order of treatment



# Mental Health

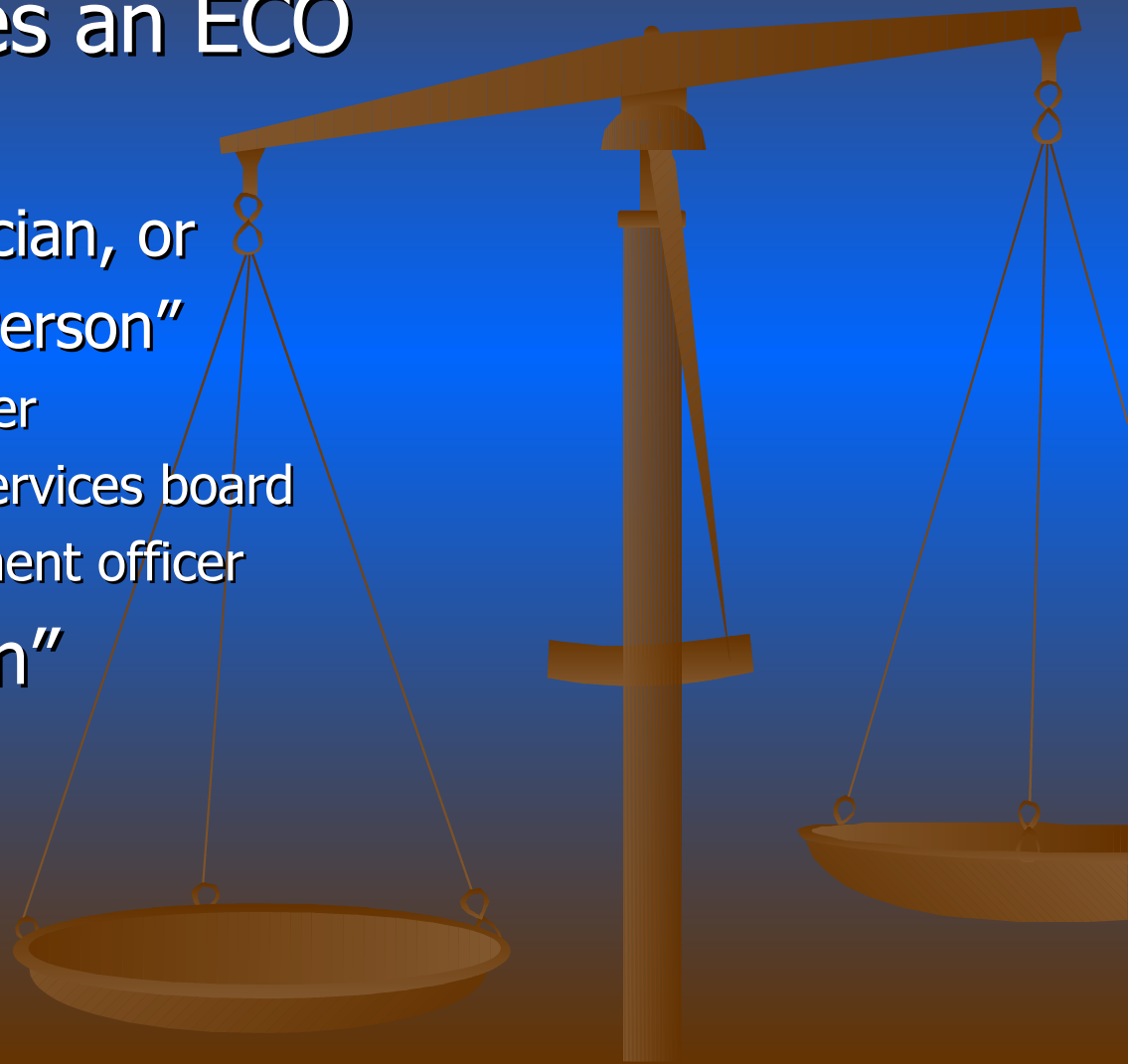
## ■ ECO

- To allow a face-to-face meeting with a mental health professional
- To allow the professional to form an opinion and provide expert evidence as to **whether the person meets the criteria for issuance of a TDO** and needs hospitalization
- MAY also include an order to transport person to a medical facility for necessary emergency medical care if any is needed



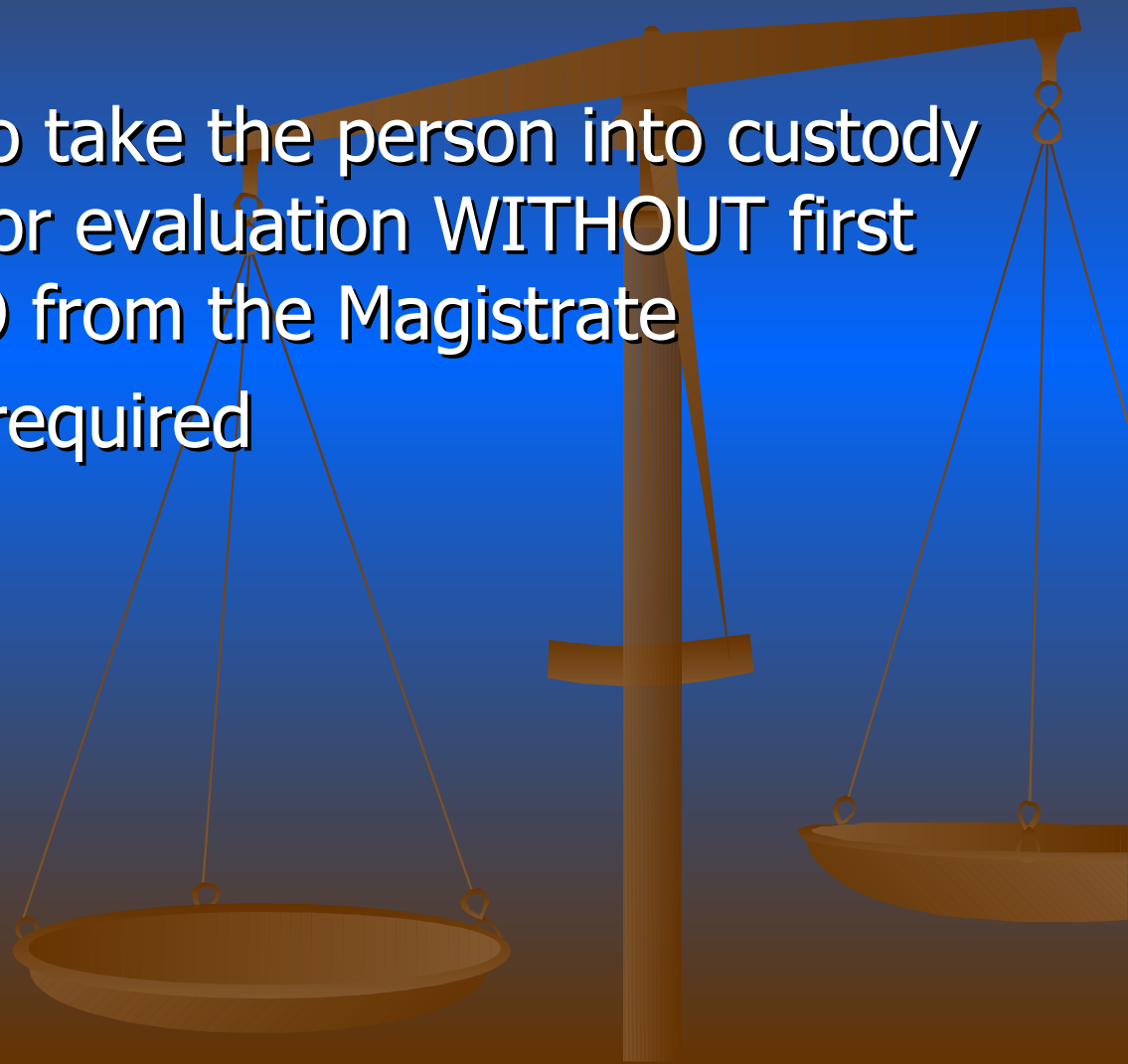
# Mental Health

- Magistrate issues an ECO
  - If requested by
    - Treating physician, or
    - “Responsible Person”
      - Family member
      - Community services board
      - Law enforcement officer
  - On “own motion”



# Mental Health

- Police Officer
  - Has authority to take the person into custody and transport for evaluation WITHOUT first seeking an ECO from the Magistrate
  - No paper ECO required

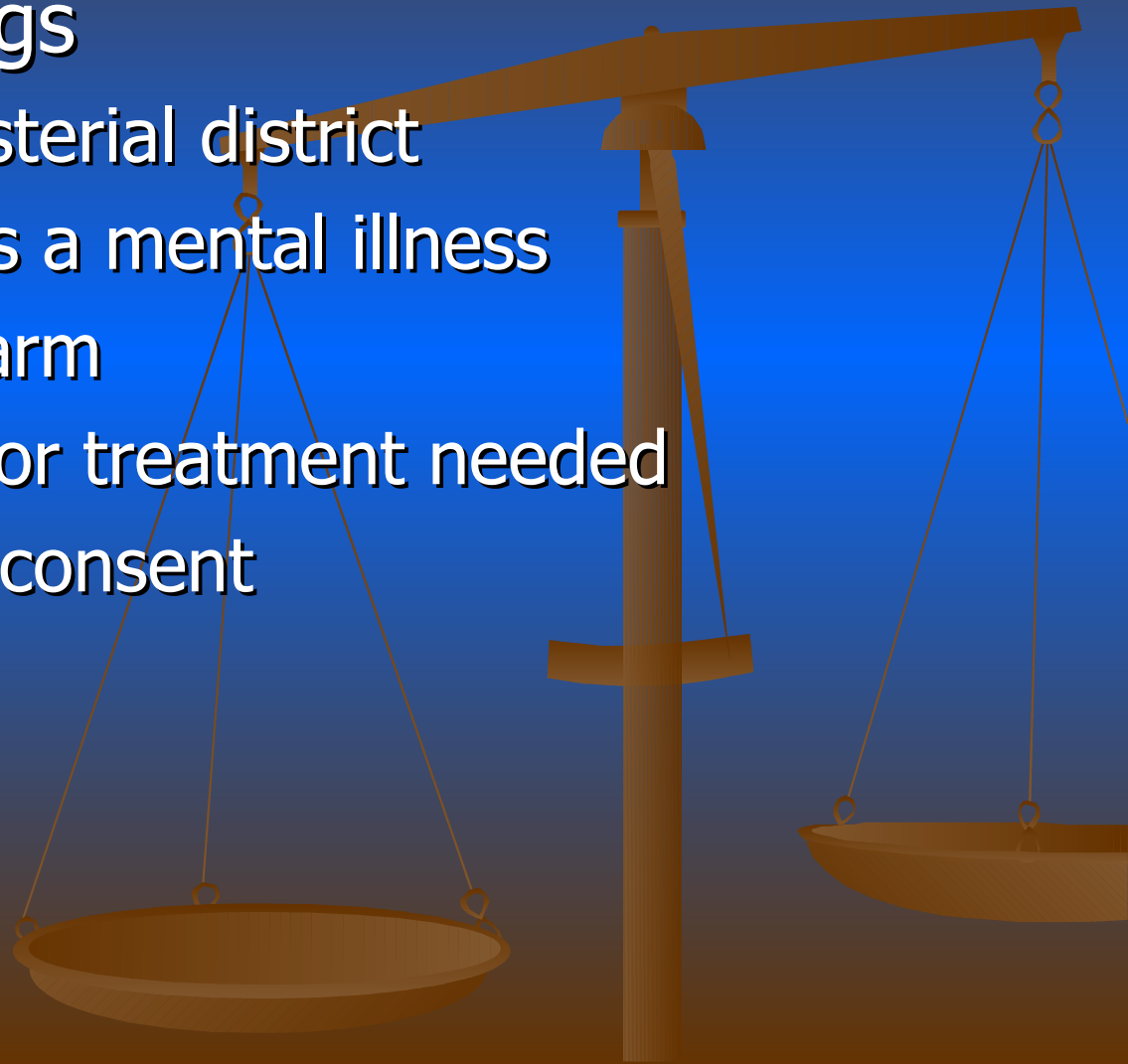




# Mental Health

## ■ Required Findings

- Person in magisterial district
- Respondent has a mental illness
- Likelihood of harm
- Hospitalization or treatment needed
- Person will not consent

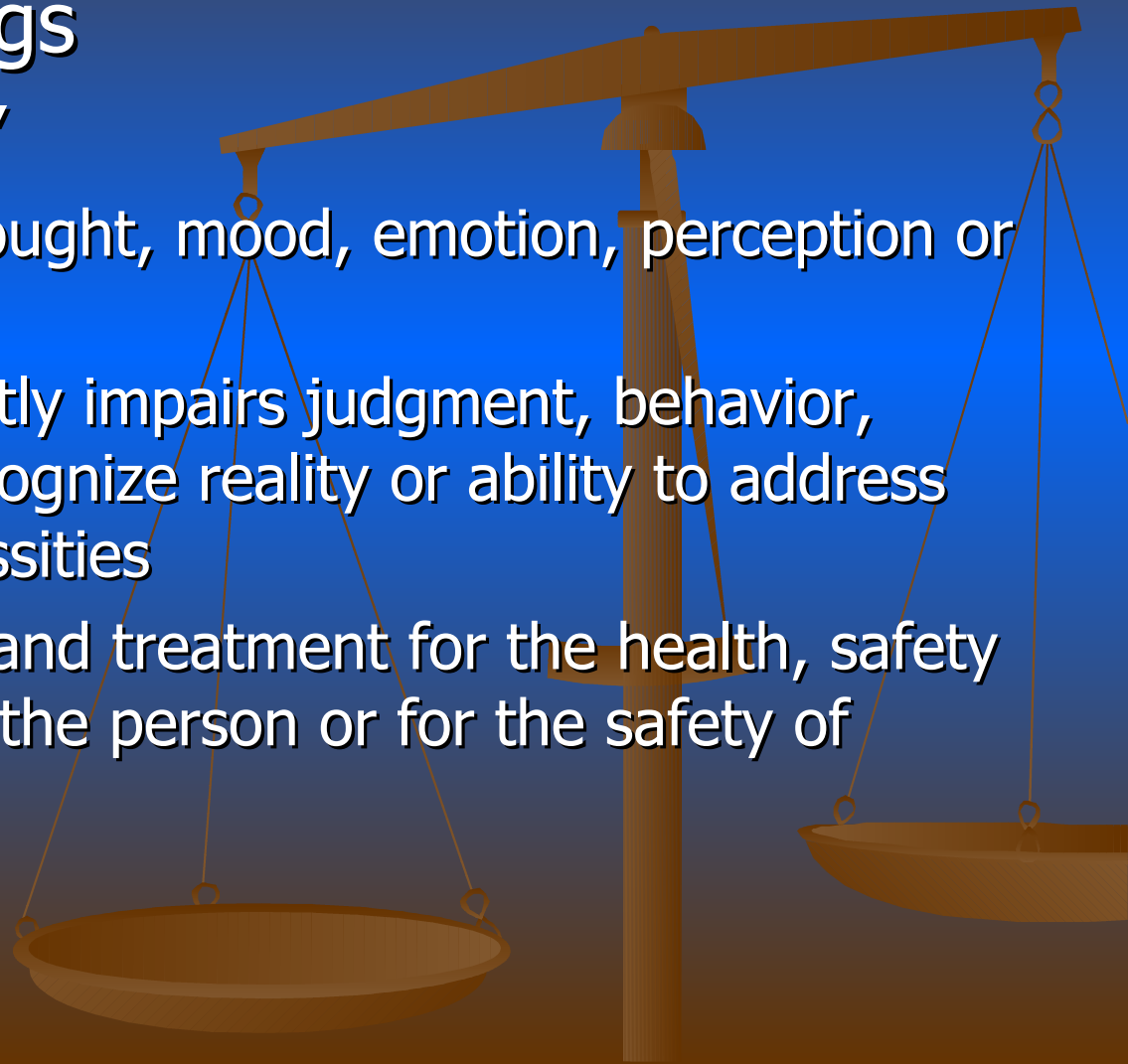


# Mental Health

## ■ Required Findings

### ■ “Mental Illness”

- Disorder of thought, mood, emotion, perception or orientation
- That significantly impairs judgment, behavior, capacity to recognize reality or ability to address basic life necessities
- Requires care and treatment for the health, safety or recovery of the person or for the safety of others



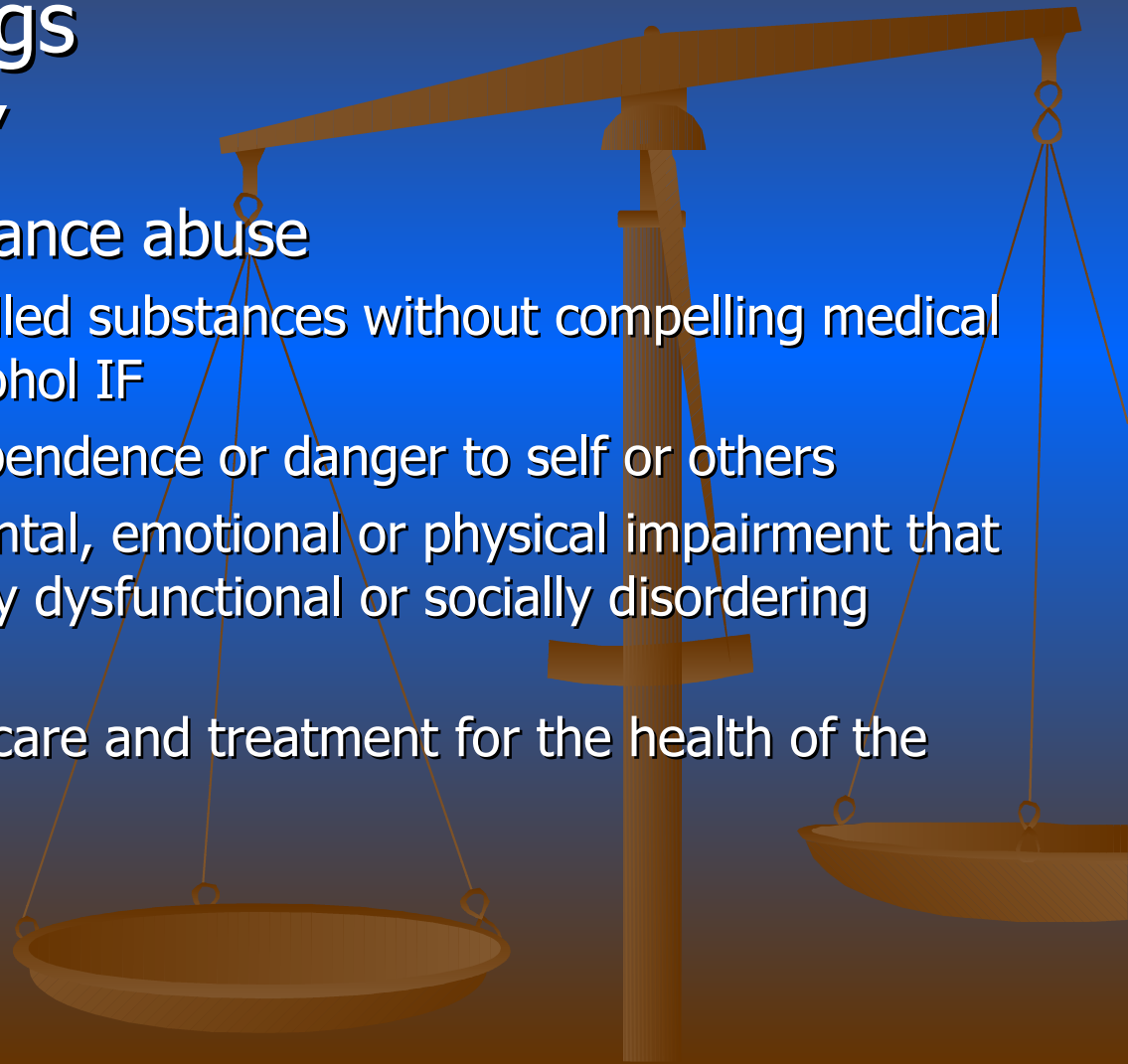
# Mental Health

- Required Findings

- “Mental Illness”

- Includes substance abuse

- Use of controlled substances without compelling medical reason or alcohol IF
      - Results in dependence or danger to self or others
      - Results in mental, emotional or physical impairment that causes socially dysfunctional or socially disordering behavior
      - And requires care and treatment for the health of the individual

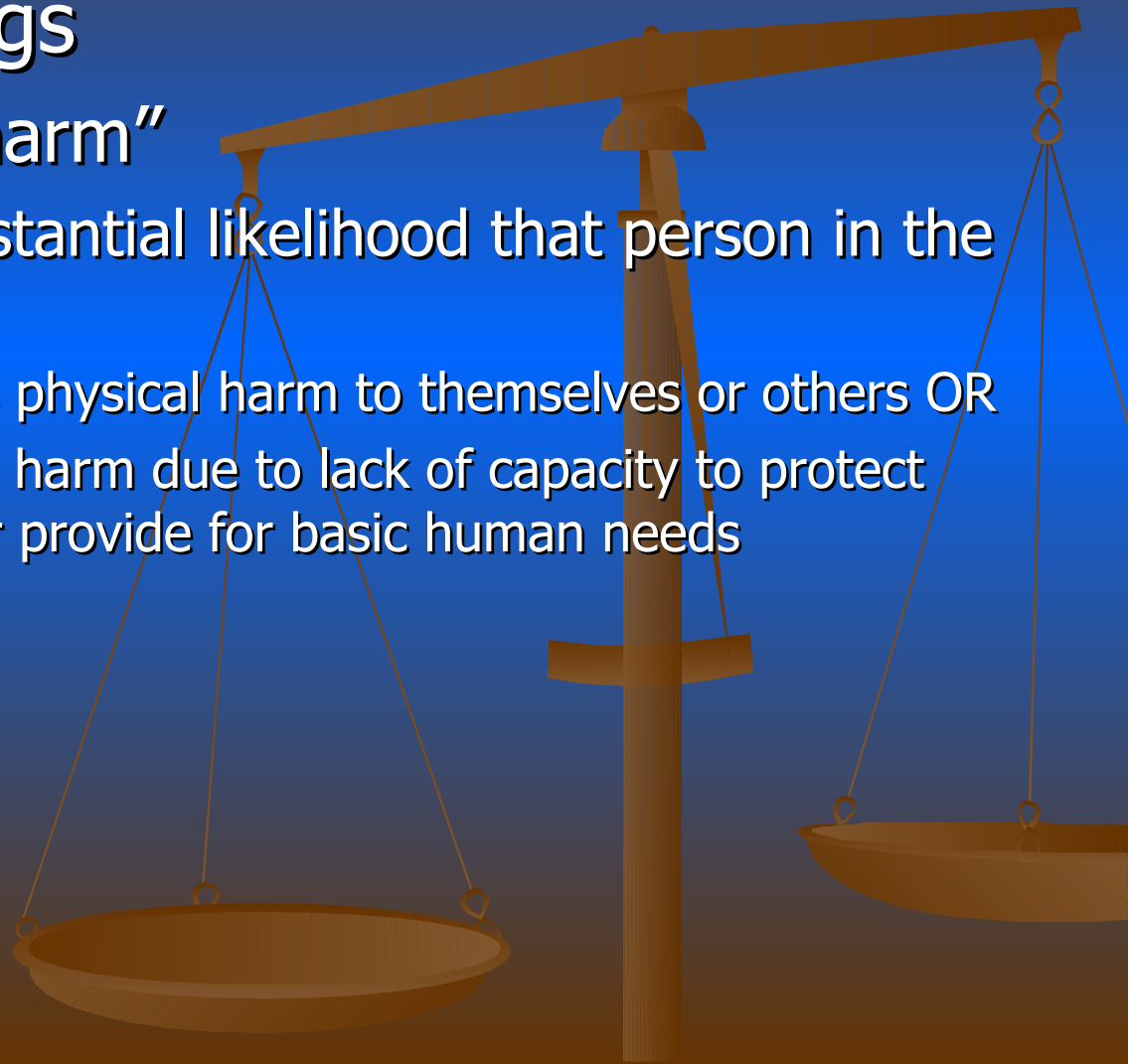


# Mental Health

- Required Findings

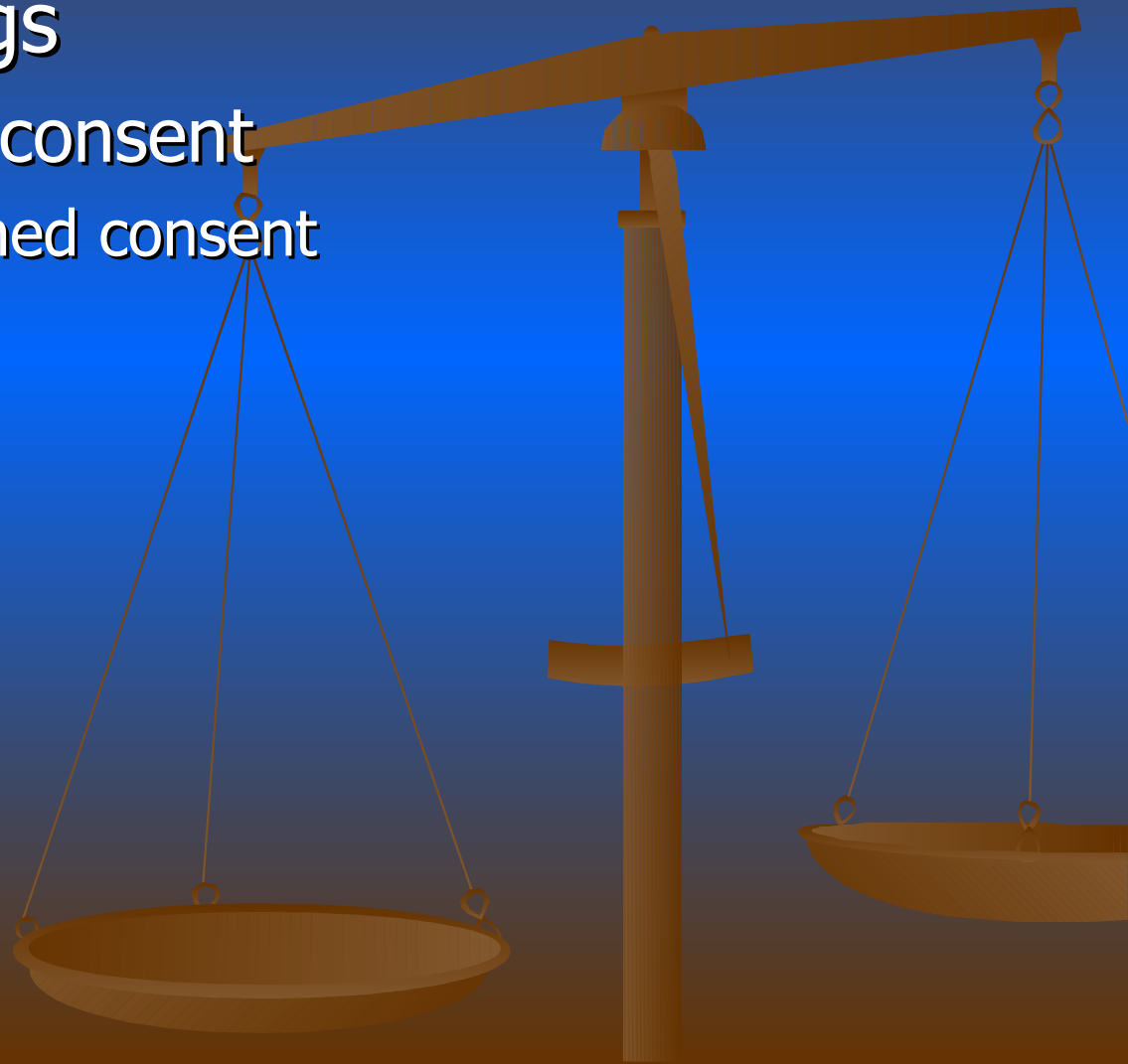
- “Likelihood of harm”

- There is a substantial likelihood that person in the near future
      - Cause serious physical harm to themselves or others OR
      - Suffer serious harm due to lack of capacity to protect themselves or provide for basic human needs

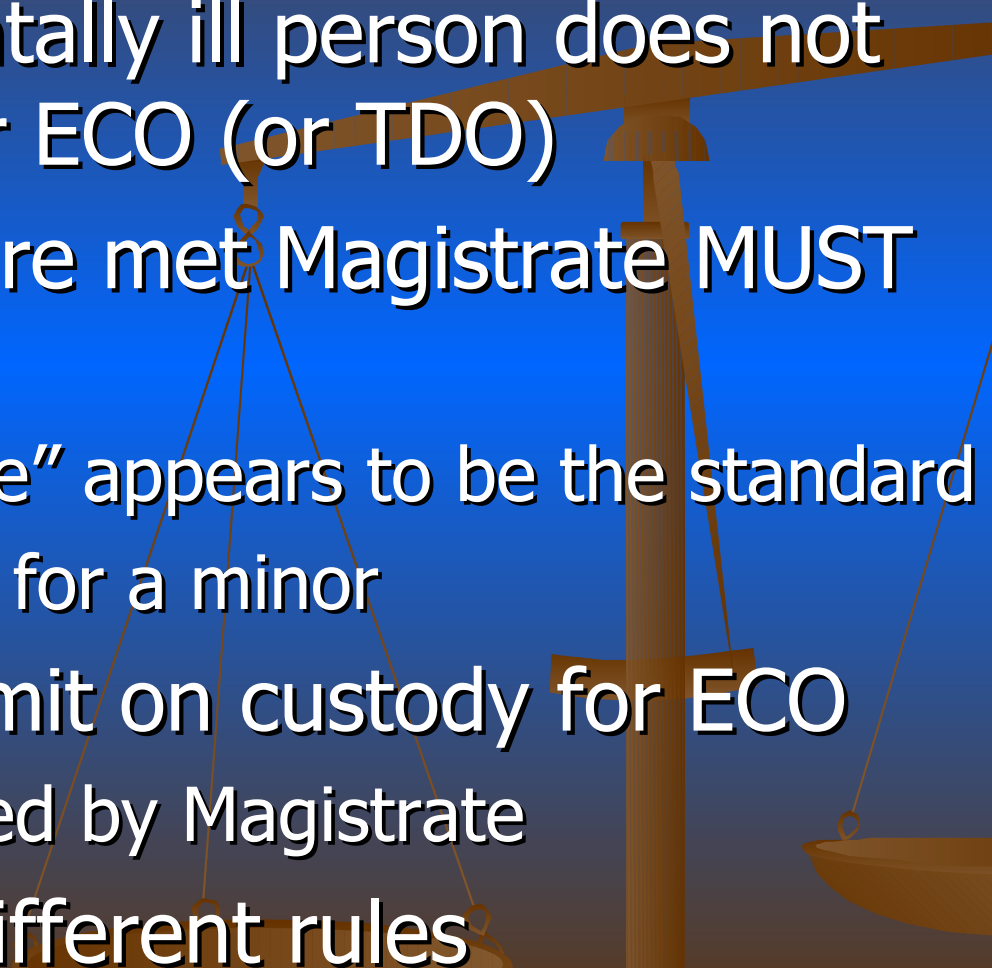


# Mental Health

- Required findings
  - Person will not consent
    - Must be informed consent



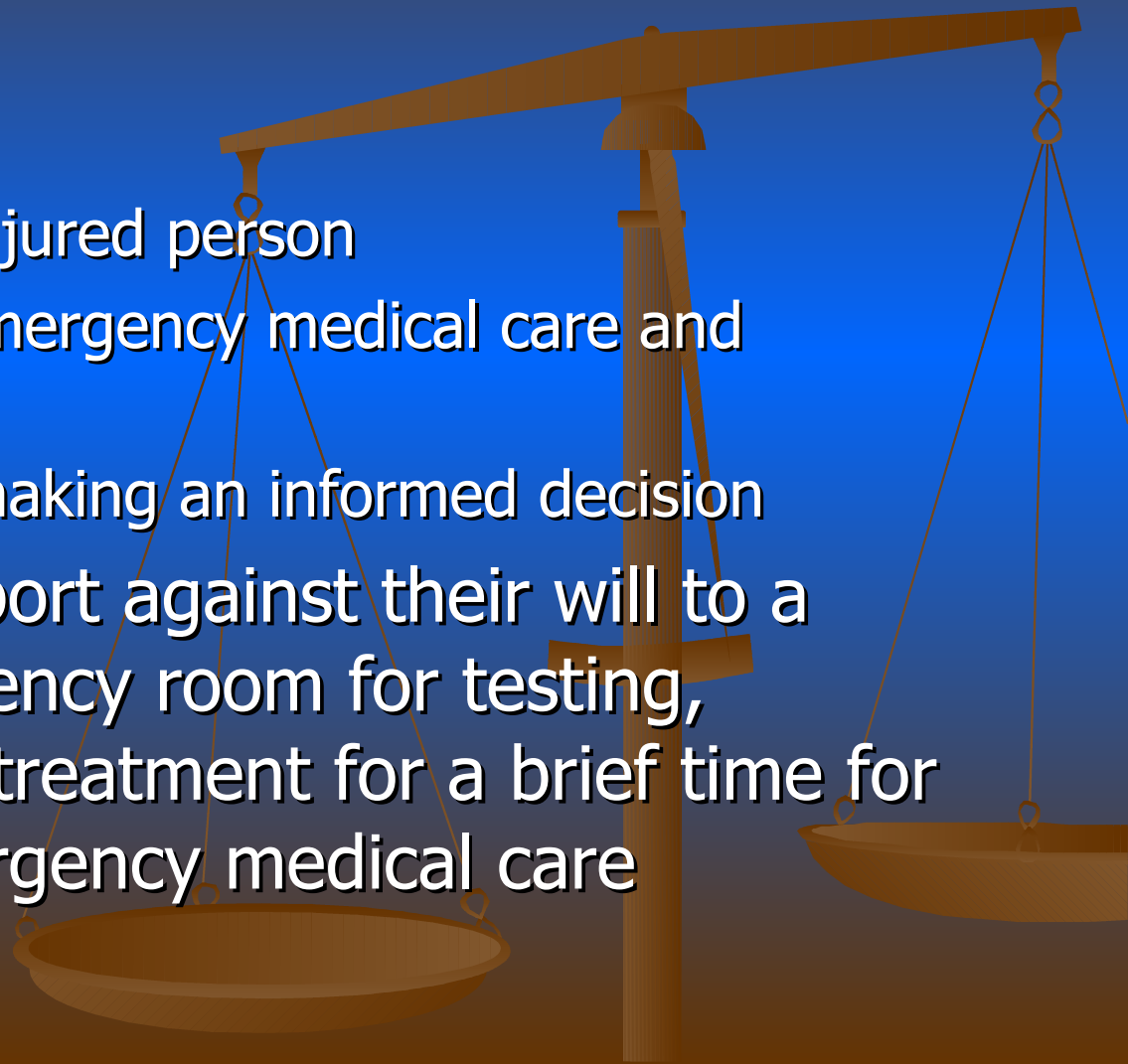
# Mental Health

- A *harmless* mentally ill person does not meet criteria for ECO (or TDO)
  - If all 5 criteria are met Magistrate **MUST** issue ECO
    - “Probable Cause” appears to be the standard
    - May also issue for a minor
  - Four (4) hour limit on custody for ECO
    - May be extended by Magistrate
  - Inmates have different rules
- 

# Medical

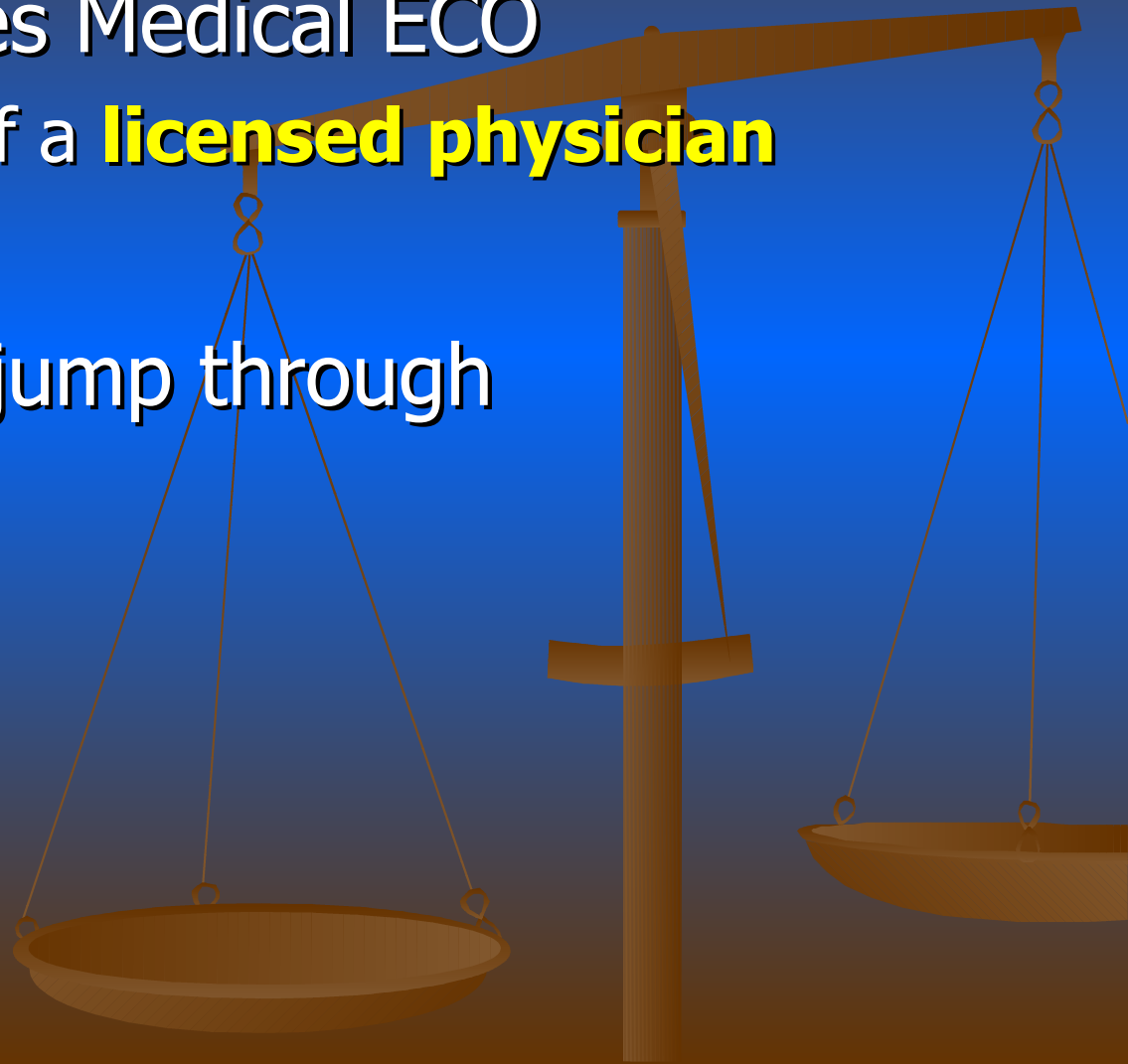
## ■ Medical ECO

- Applies to
  - gravely ill or injured person
  - Resistant to emergency medical care and transportation
  - Incapable of making an informed decision
- Requires transport against their will to a hospital emergency room for testing, observation or treatment for a brief time for necessary emergency medical care



# Medical

- Magistrate issues Medical ECO
  - Upon opinion of a **licensed physician**
- Not mandatory
- Many hoops to jump through

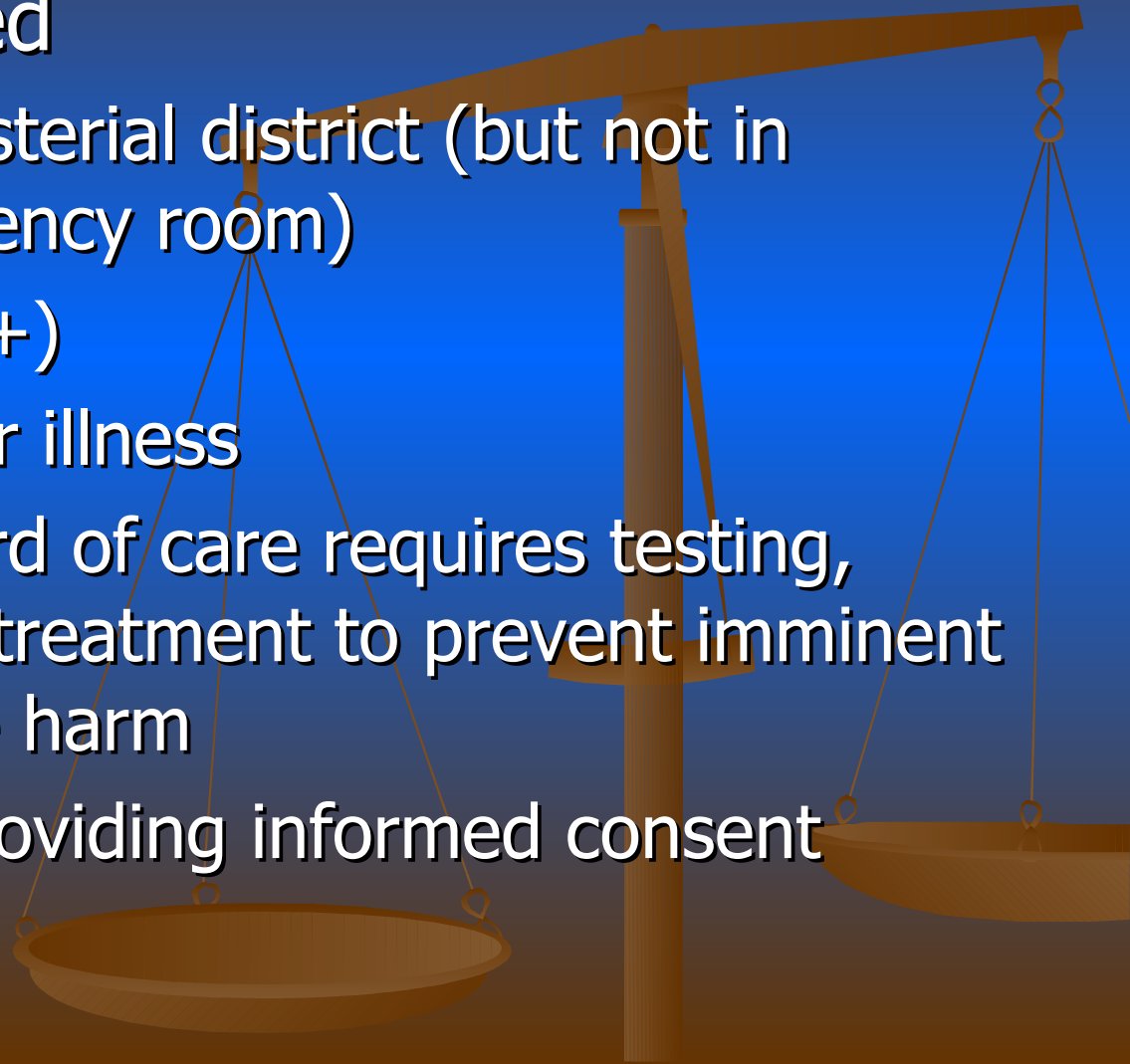




# Medical

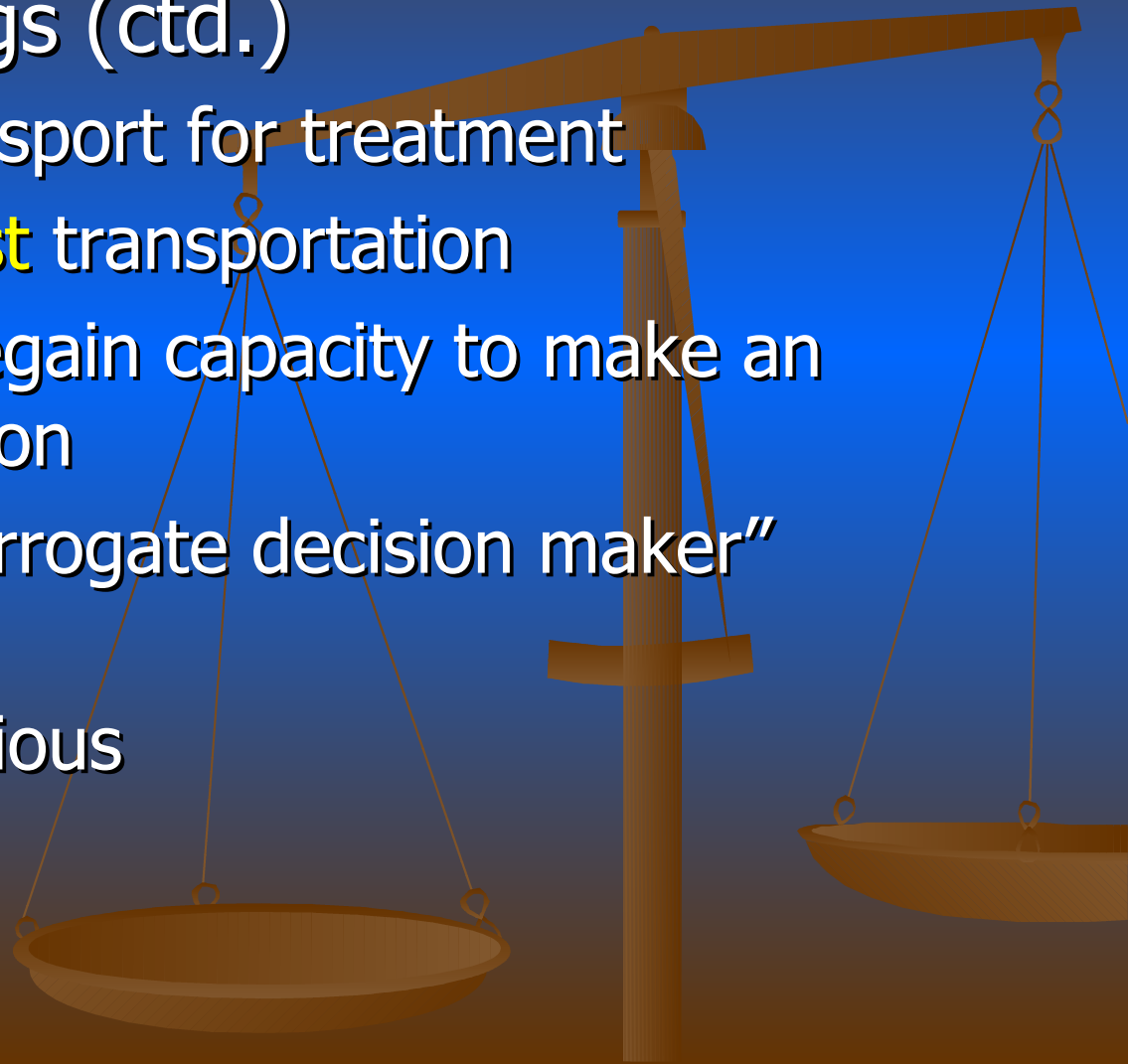
## ■ Findings required

- Person in magisterial district (but not in hospital emergency room)
- Is an adult (18+)
- Has an injury or illness
- Medical standard of care requires testing, observation or treatment to prevent imminent and irreversible harm
- Incapable of providing informed consent



# Medical

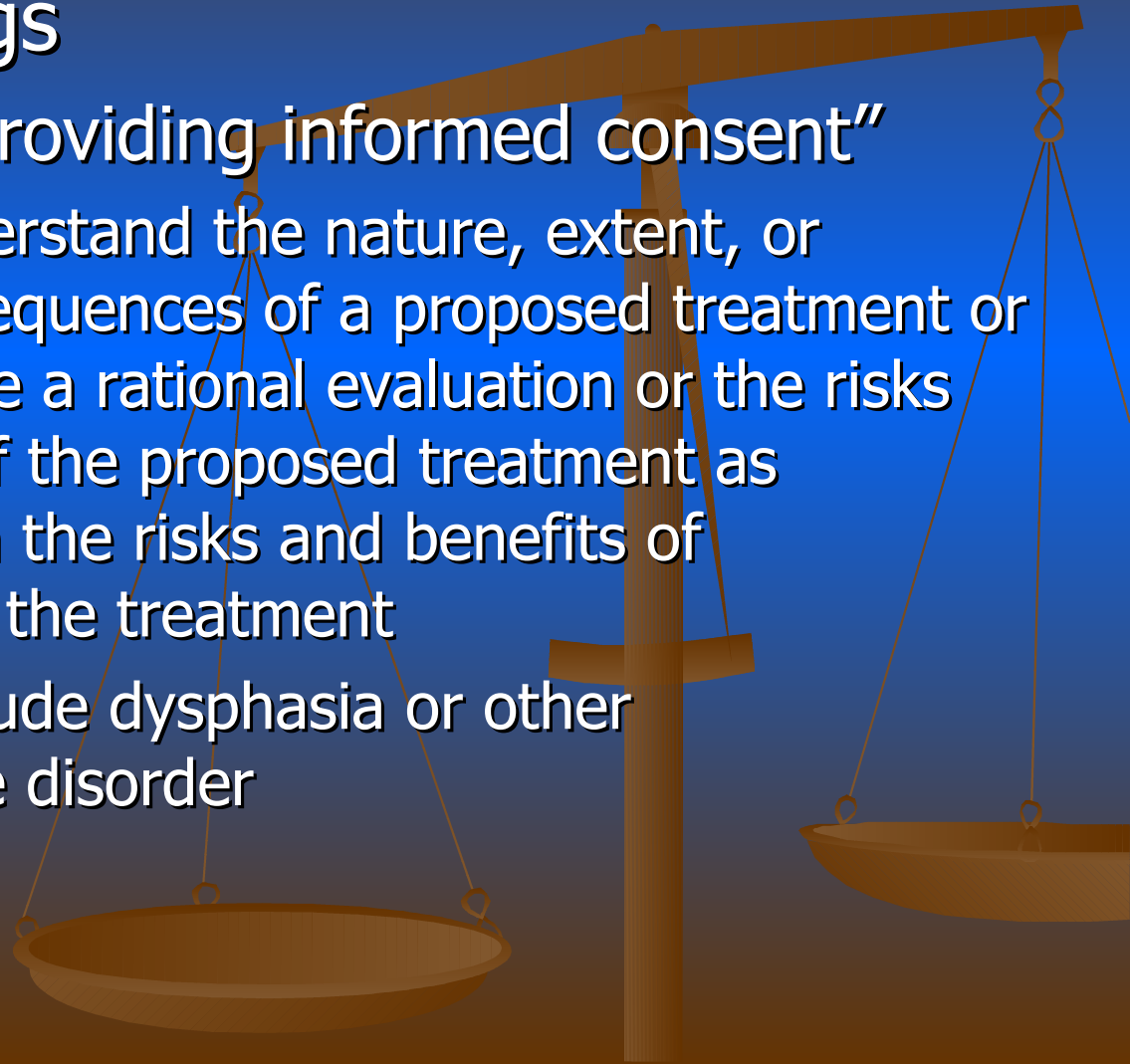
- Required findings (ctd.)
  - Is refusing transport for treatment
  - **Intends to resist** transportation
  - Is unlikely to regain capacity to make an informed decision
  - There is no “surrogate decision maker” available
  - They are conscious



# Medical

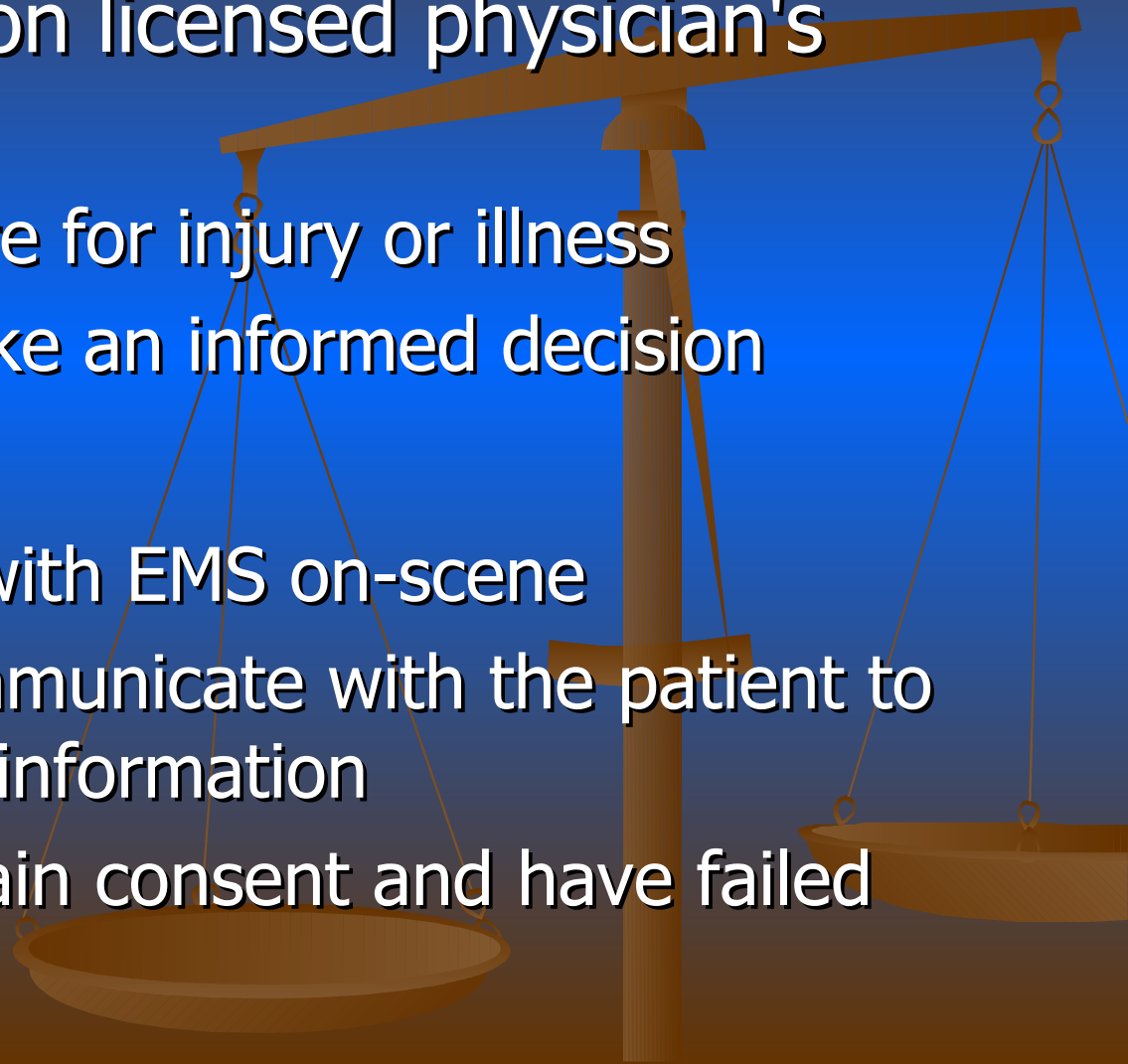
- Required findings

- “Incapable of providing informed consent”
  - Unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment
  - Does NOT include dysphasia or other communicative disorder



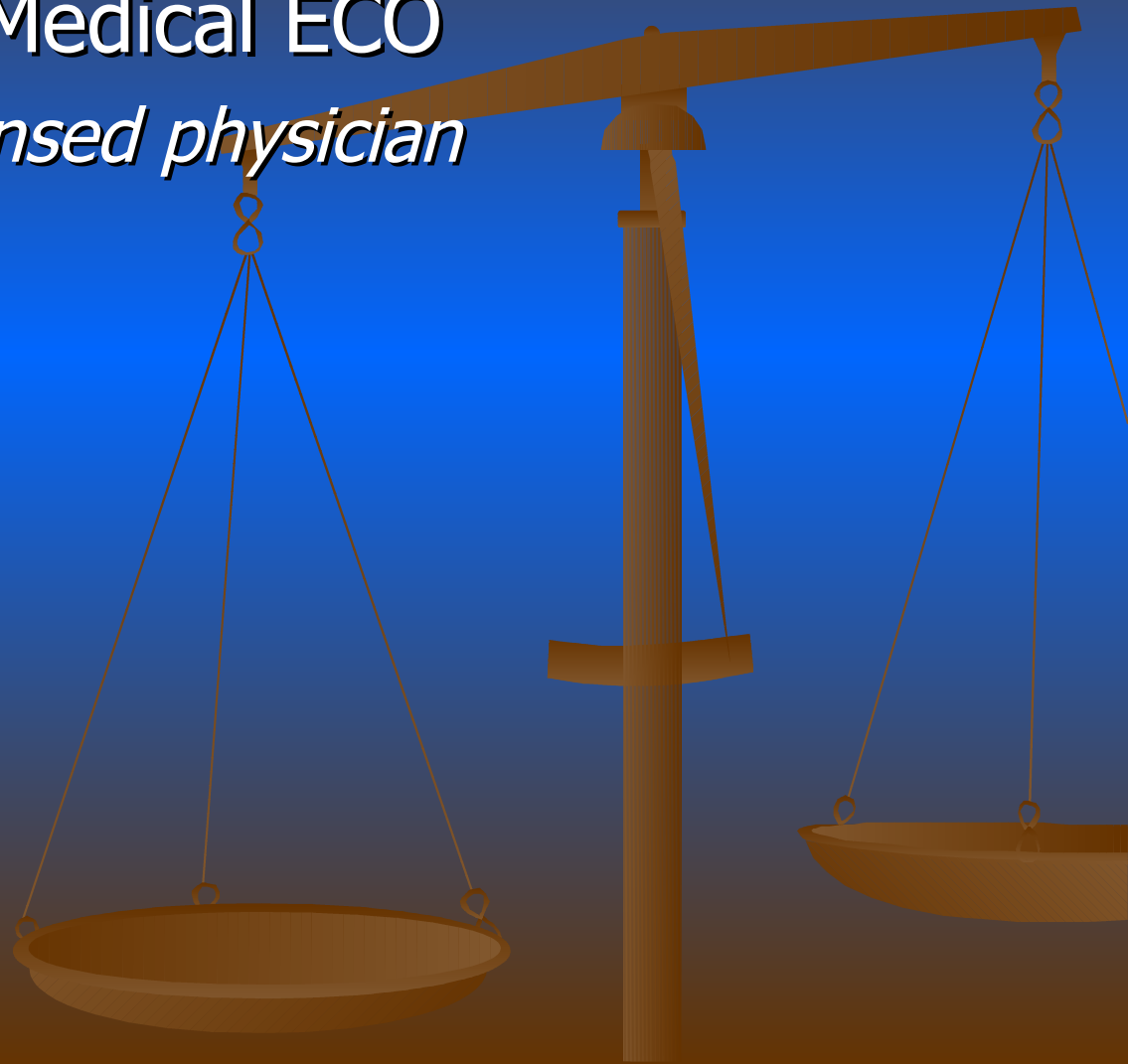
# Medical

- Must be based on licensed physician's opinion
  - Standard of care for injury or illness
  - Capacity to make an informed decision
- Physician must
  - Communicate with EMS on-scene
  - Attempt to communicate with the patient to obtain medical information
  - Attempt to obtain consent and have failed



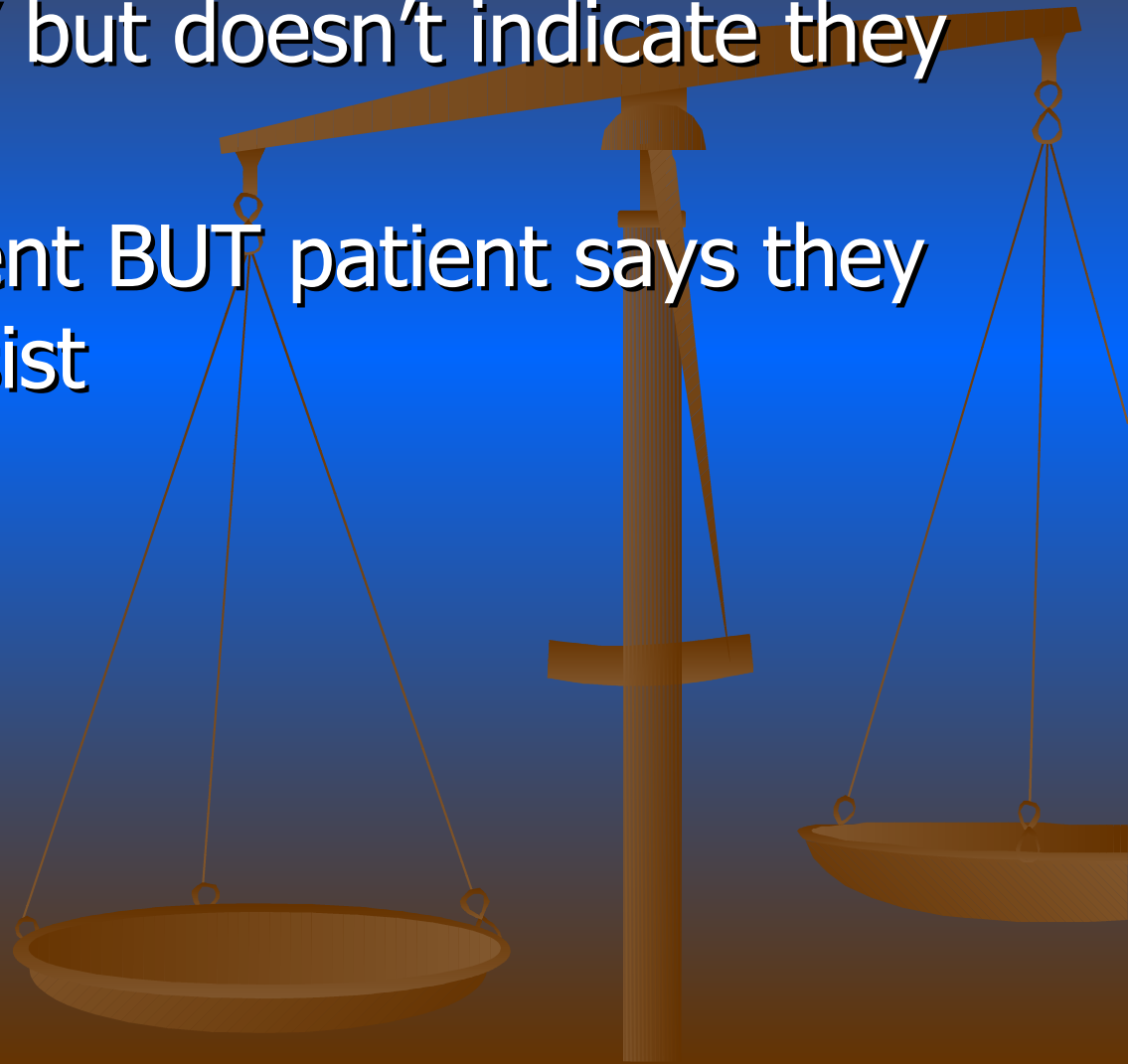
# Problem Areas

- Who can get a Medical ECO
  - MUST be a *licensed physician*



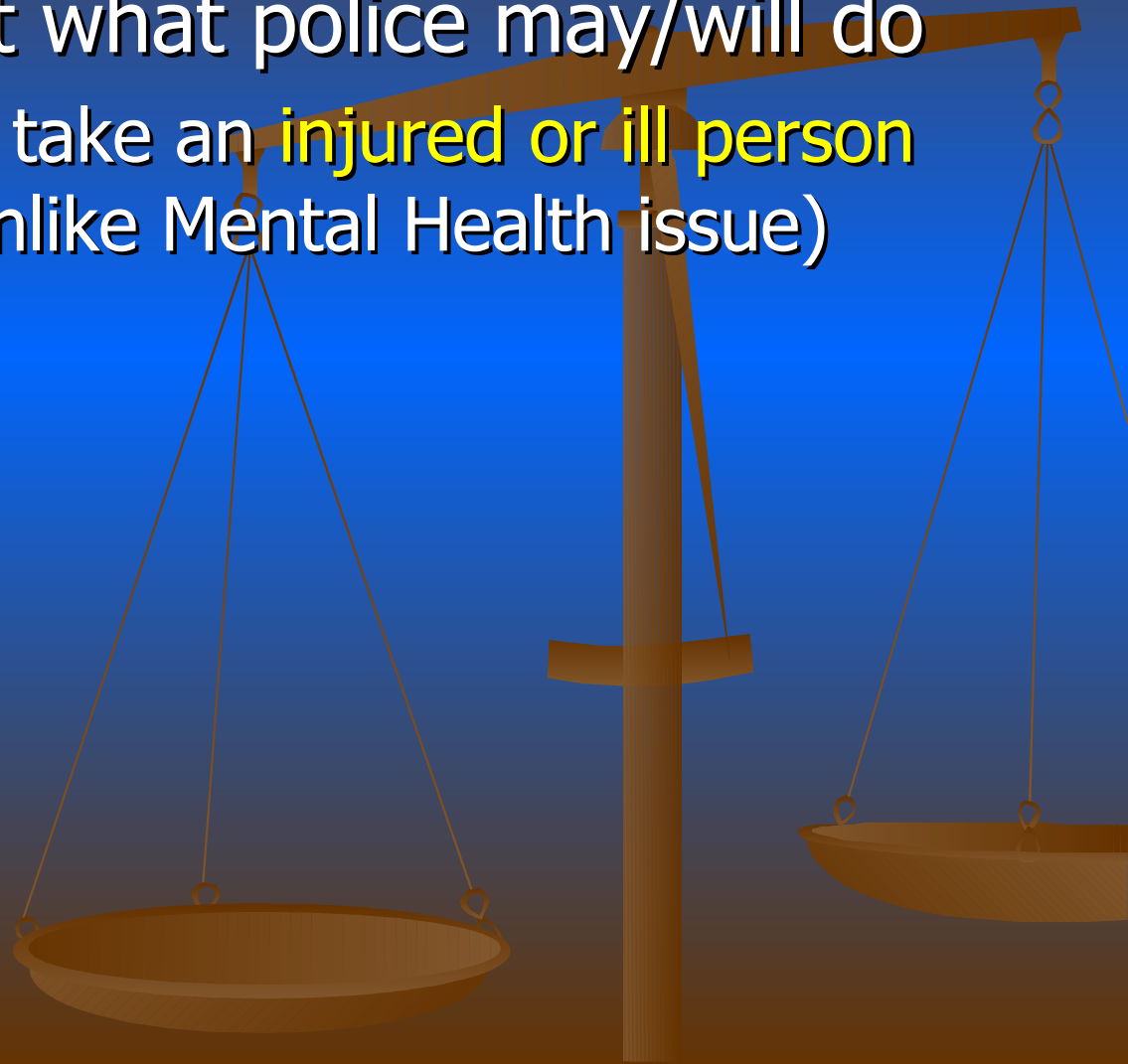
# Problem Areas

- Patient 'refuses' but doesn't indicate they will 'resist'
- Surrogate present BUT patient says they are going to resist



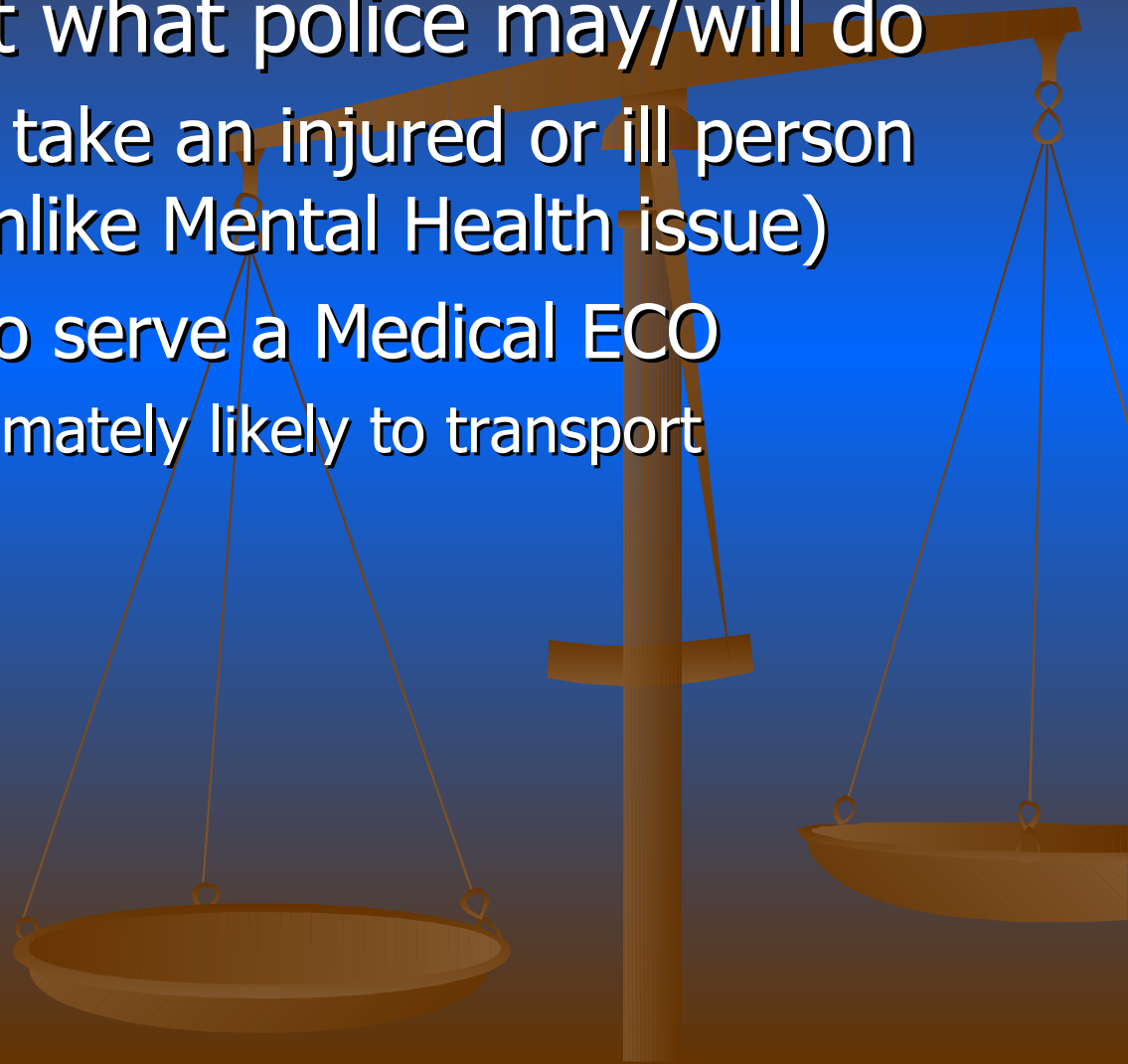
# Problem Areas

- Confusion about what police may/will do
  - No authority to take an **injured or ill person** into custody (unlike Mental Health issue)



# Problem Areas

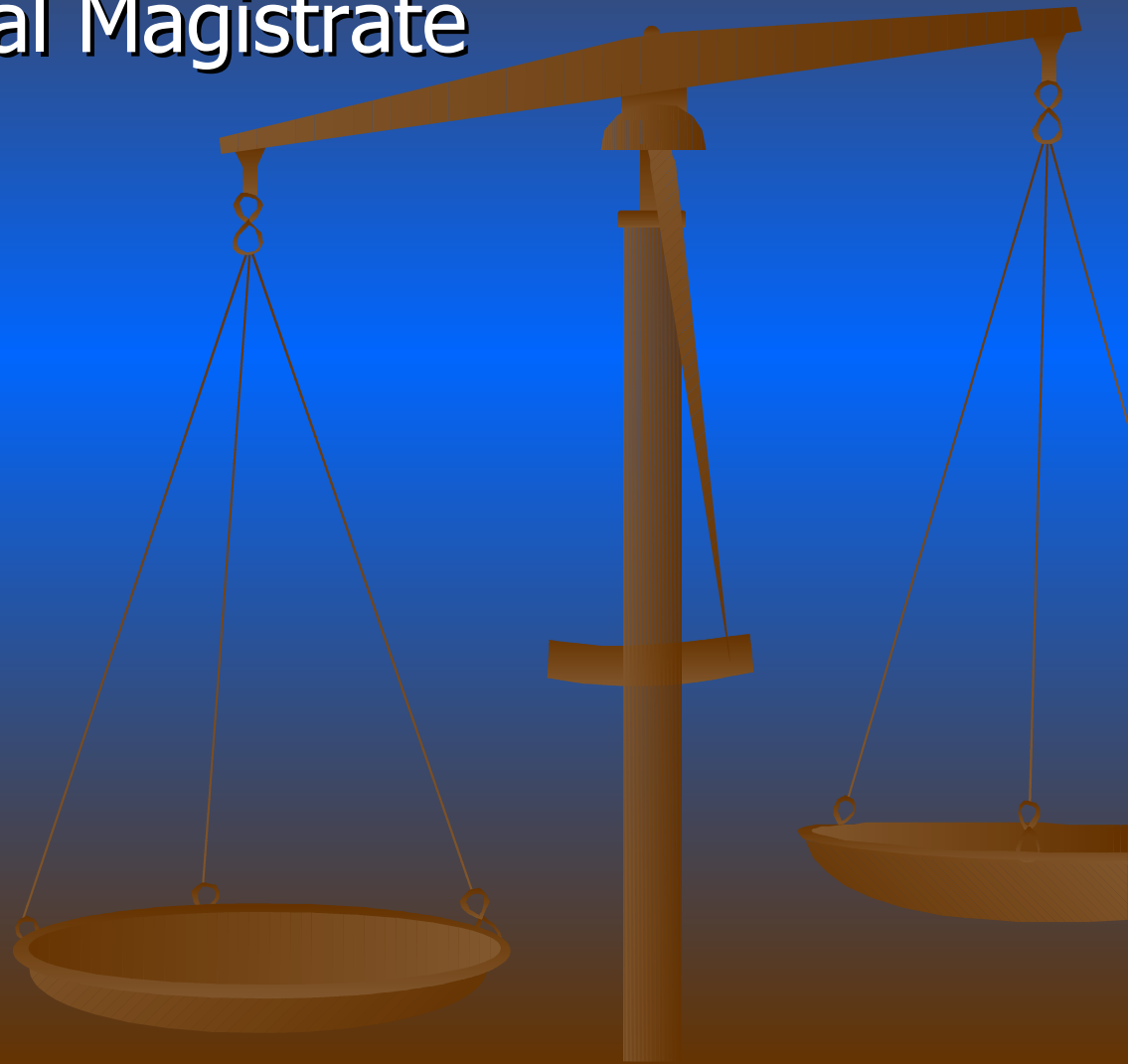
- Confusion about what police may/will do
  - No authority to take an injured or ill person into custody (unlike Mental Health issue)
  - May not want to serve a Medical ECO
    - Ambulance ultimately likely to transport





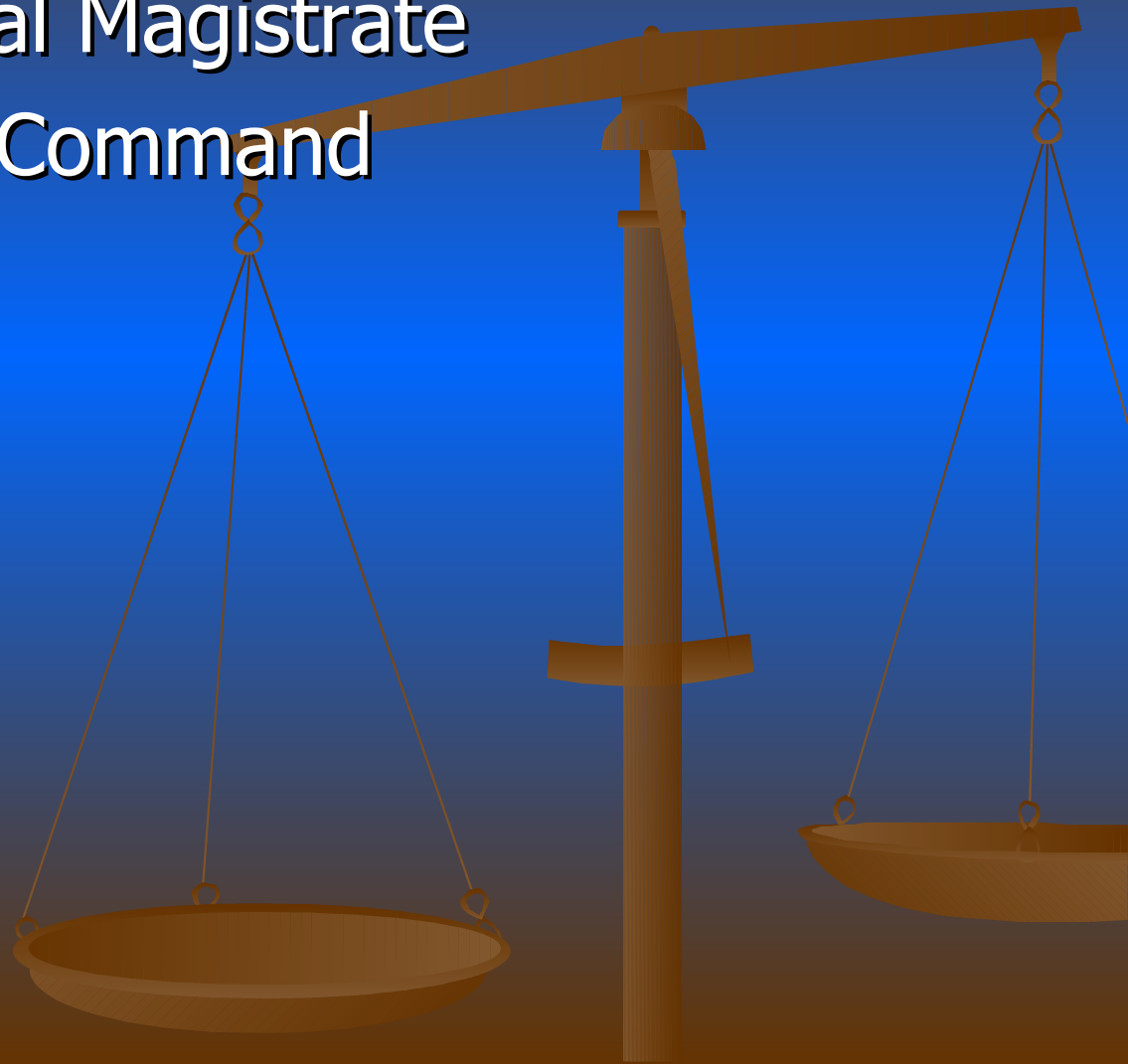
# Suggestions

- Talk to your local Magistrate



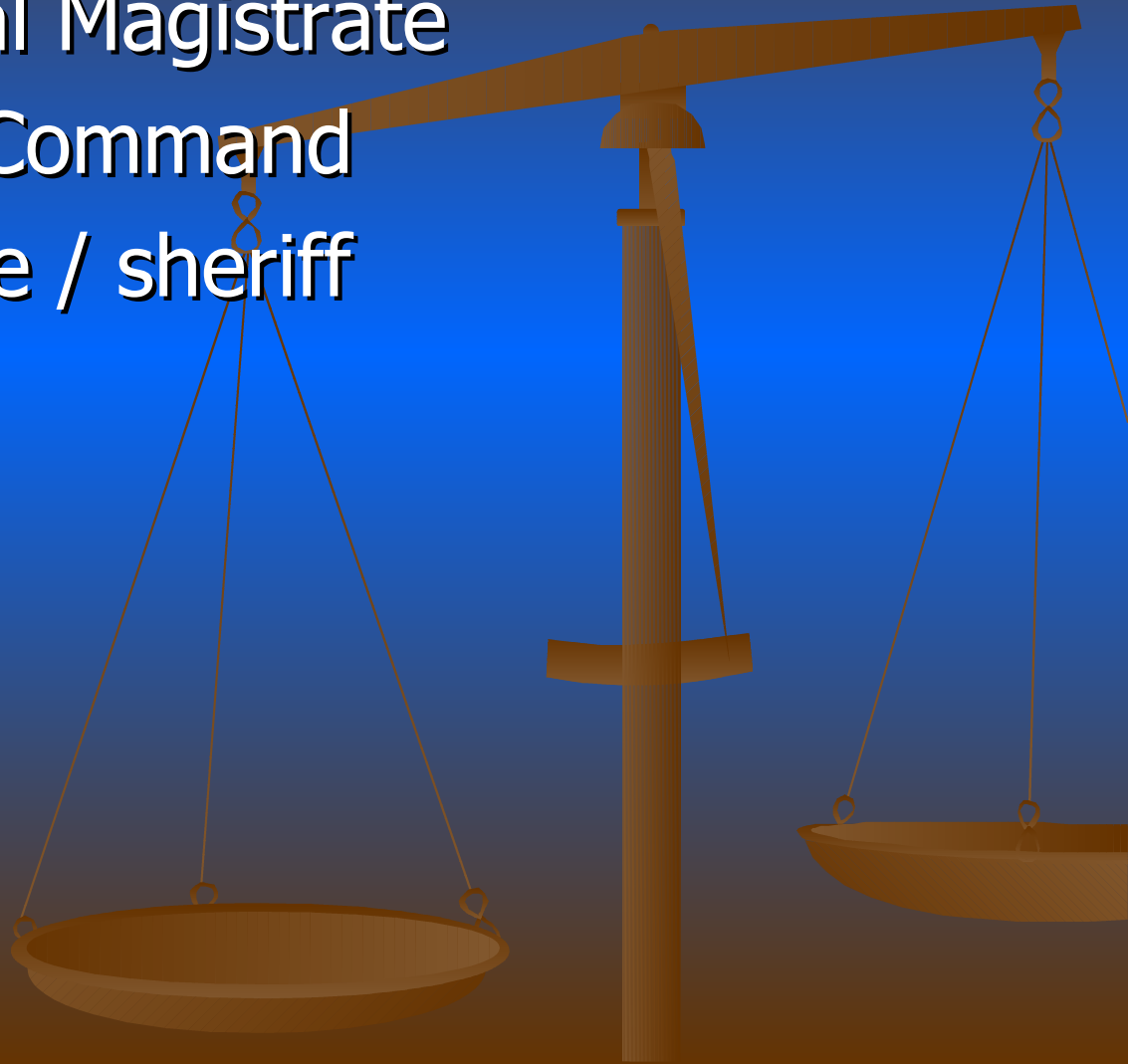
# Suggestions

- Talk to your local Magistrate
- Talk to Medical Command



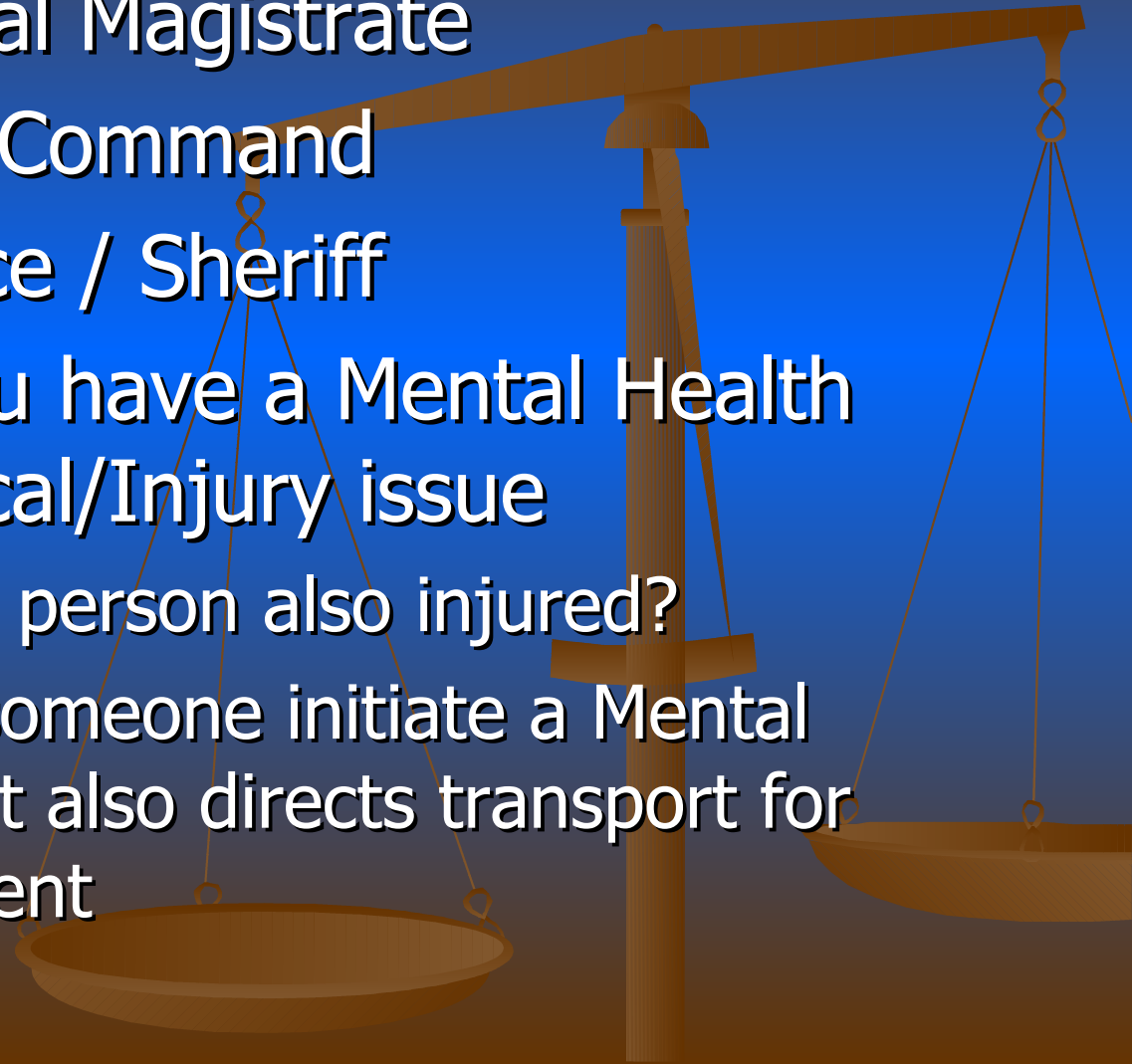
# Suggestions

- Talk to your local Magistrate
- Talk to Medical Command
- Talk to the police / sheriff

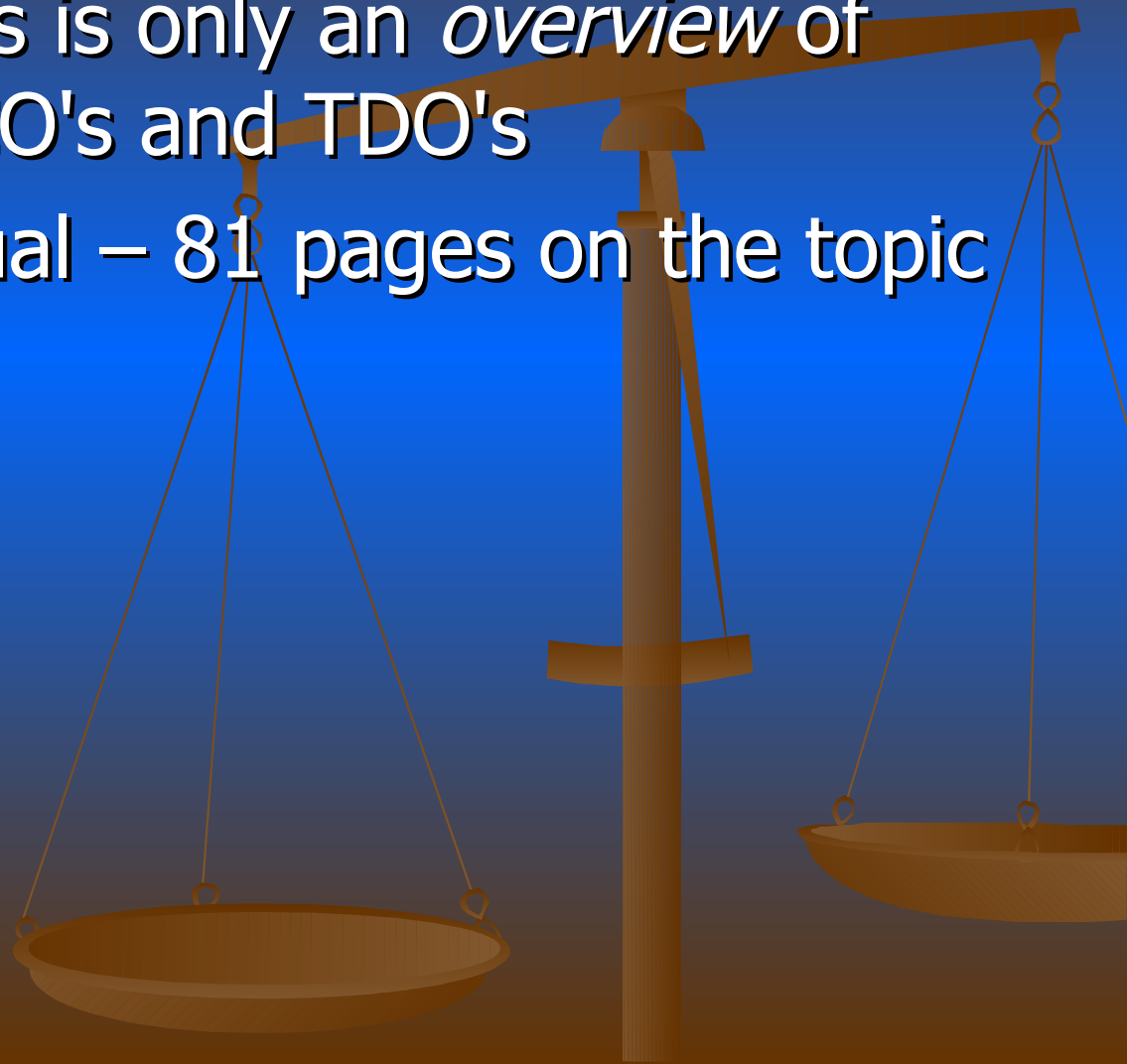


# Suggestions

- Talk to your local Magistrate
- Talk to Medical Command
- Talk to the police / Sheriff
- Determine if you have a Mental Health issue or a Medical/Injury issue
  - Is a mentally ill person also injured?
  - Can you have someone initiate a Mental Health ECO that also directs transport for medical treatment



- Remember – this is only an *overview* of “The Law” of ECO's and TDO's
- Magistrate Manual – 81 pages on the topic



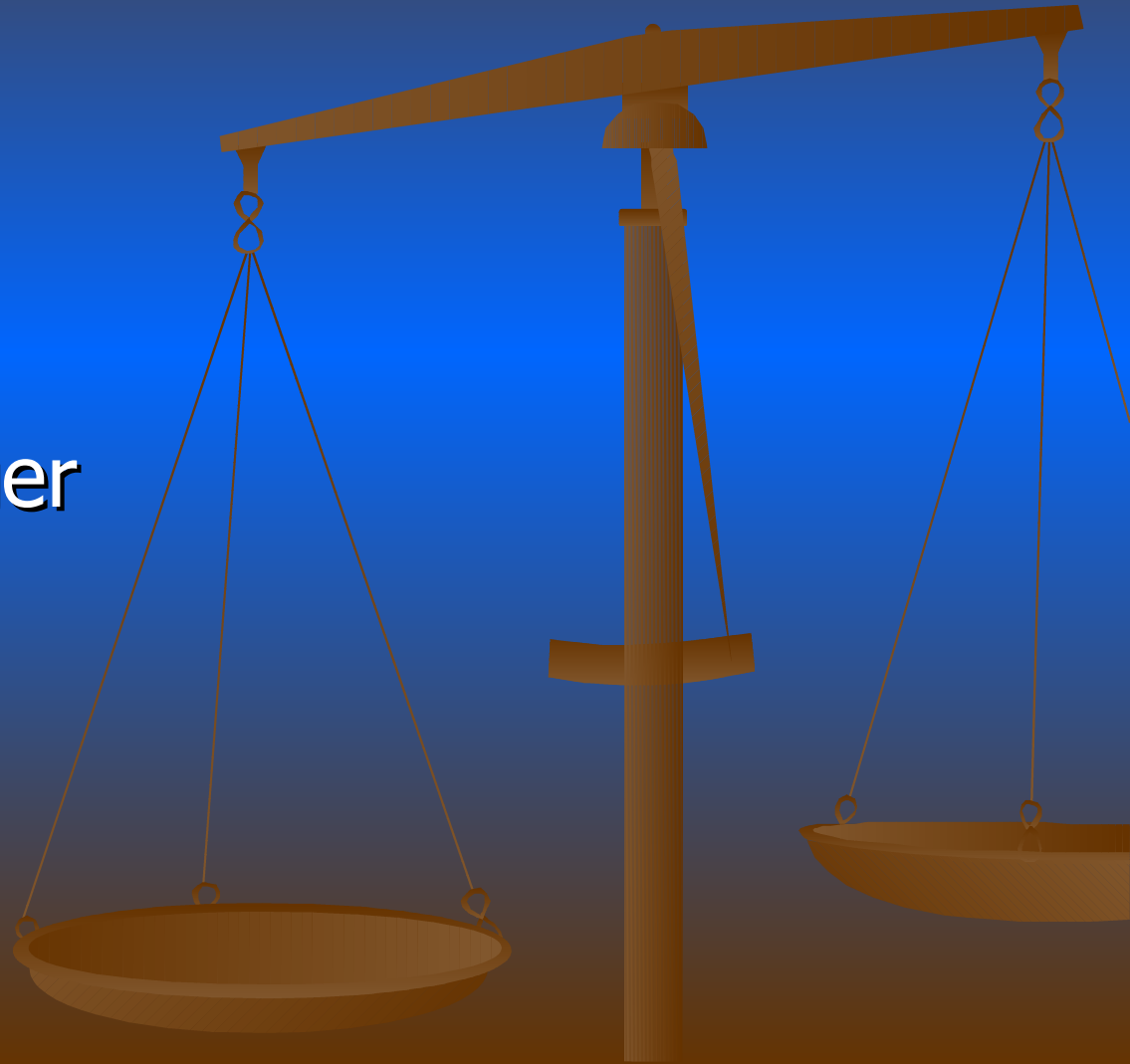


- Duty
- Breach of duty
- Proximate Cause
- Damage

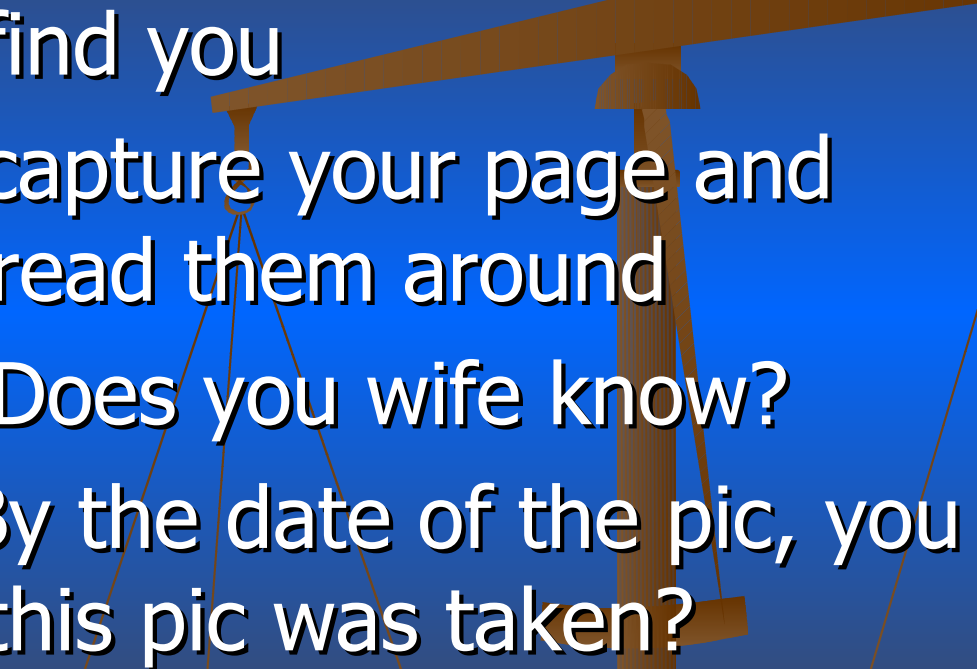


# The I-net

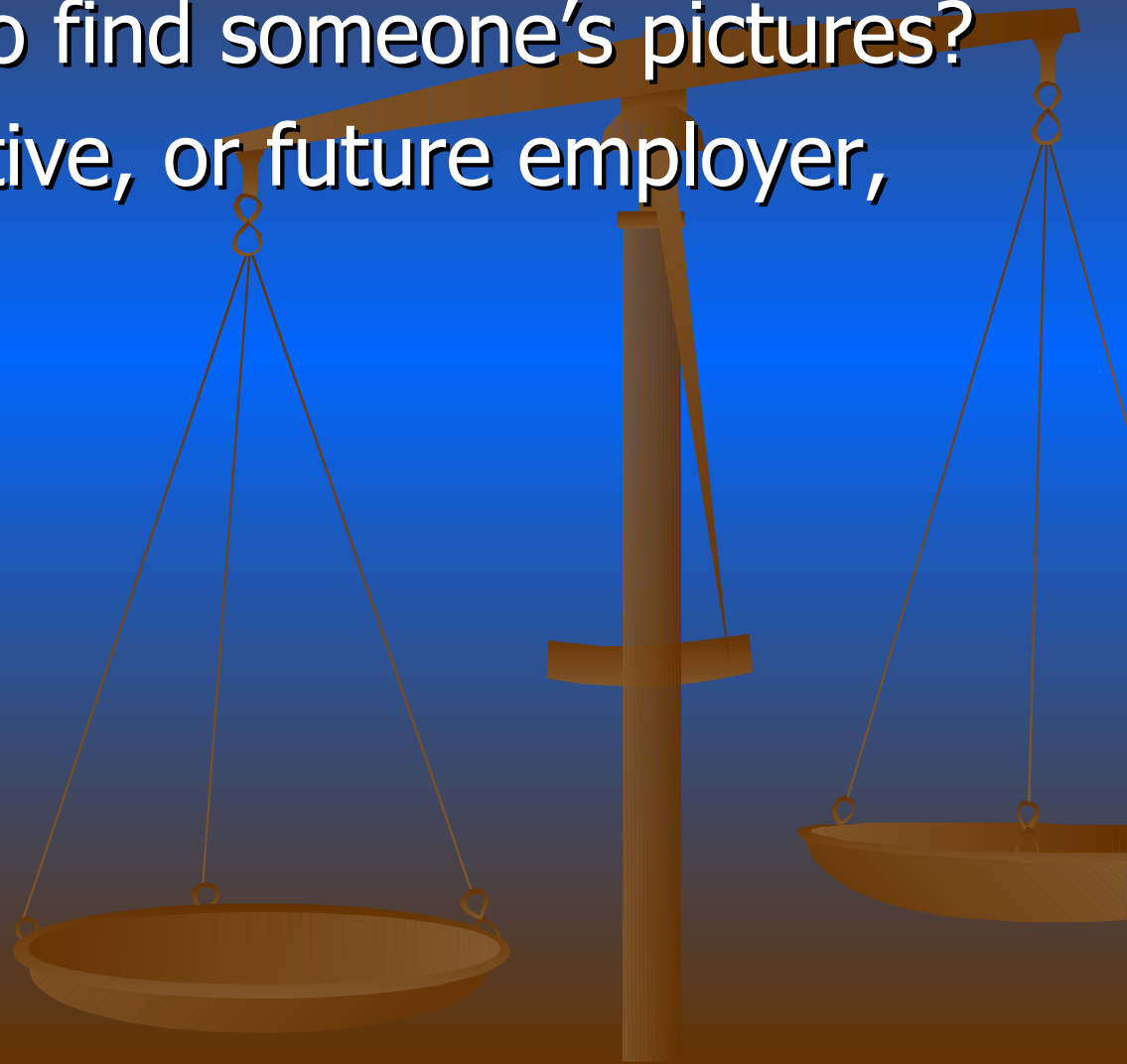
- My Space
- Facebook
- Blogs
- E-mail
- Instant Messenger





- 
- ANYBODY can find you
  - ANYBODY can capture your page and the pics and spread them around
  - Single. Really? Does you wife know?
  - Hmmmmmm. By the date of the pic, you were 17 when this pic was taken?

- How hard is it to find someone's pictures?
- I'm not a detective, or future employer, BUT...



- If I can do it...



- On-scene



## ■ Off Duty

- Be aware
- Establish a 'camera free zone' for relaxation events
  - Throw their camera in the toilet
  - Dis-invite people who just can't resist trying to catch people in an embarrassing pose or acting stupid
- Get out of the picture



# E-mail

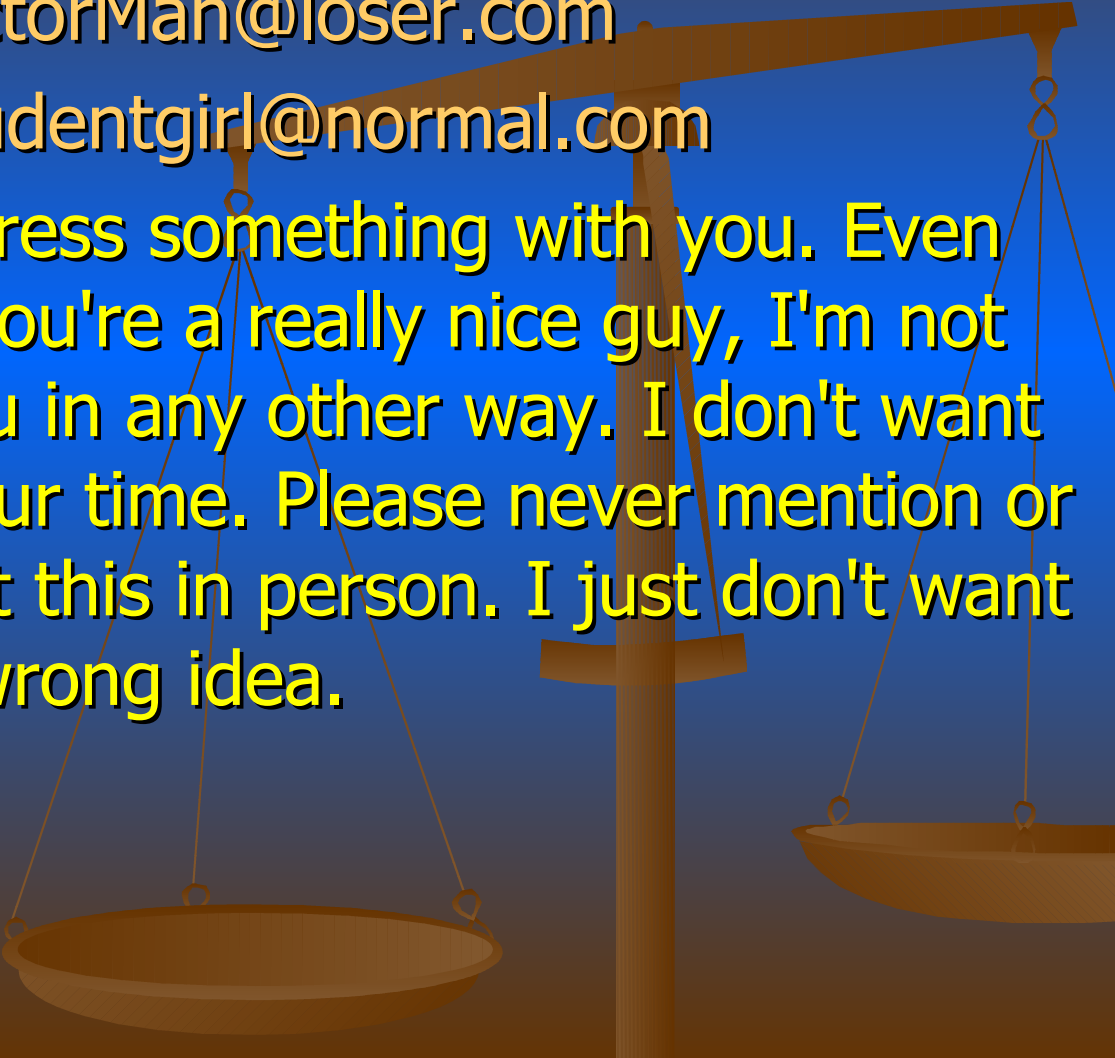


# E-mail # 1 – 10:49 a.m.

To: OldEmtInstructorMan@loser.com

From: PoorEMTstudentgirl@normal.com

I wanted to address something with you. Even though I think you're a really nice guy, I'm not interested in you in any other way. I don't want you to waste your time. Please never mention or talk to me about this in person. I just don't want you to get the wrong idea.



# E-mail # 2 – 11:27 a.m.

To: PoorEMTstudentgirl@normal.com

From: OldEmtInstructorMan@loser.com

I'm not sure where this is coming from, but you are way off base.

You have issues you keep them out of my class.

I expect you to now stay far away from me. As a matter of fact, consider dropping out so you can take the class where you won't have an instructor that won't have anything to do with you.

The next e-mail you get from me will be me telling you you are no longer welcome in my class. You had best maintain a low profile, move to another seat and not give me a reason to send that e-mail.

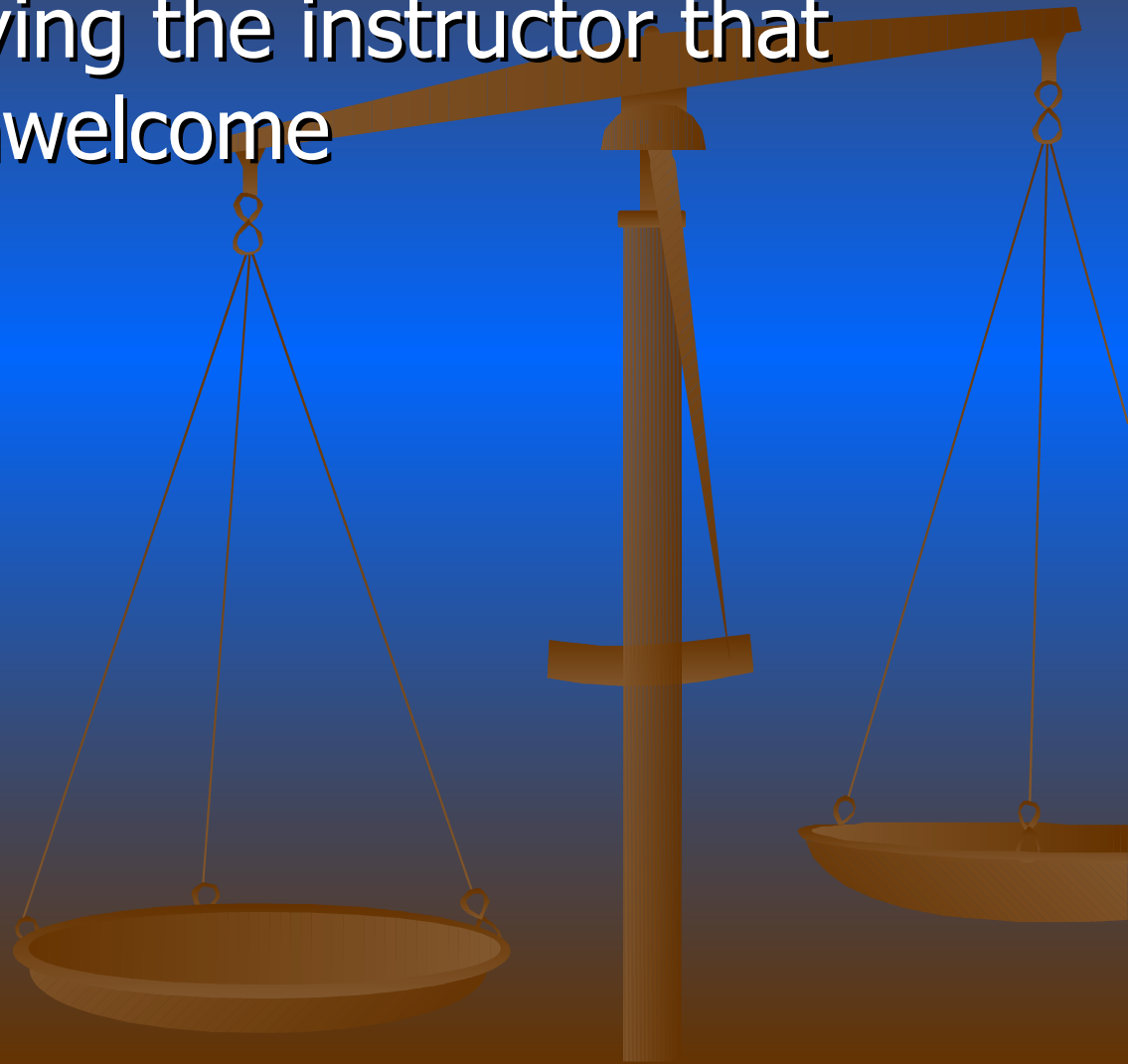
A copy of your e-mail and this reply is being sent the Membership Committee so there will be no secrets and so they can monitor what may be the tip of a problem child iceberg.



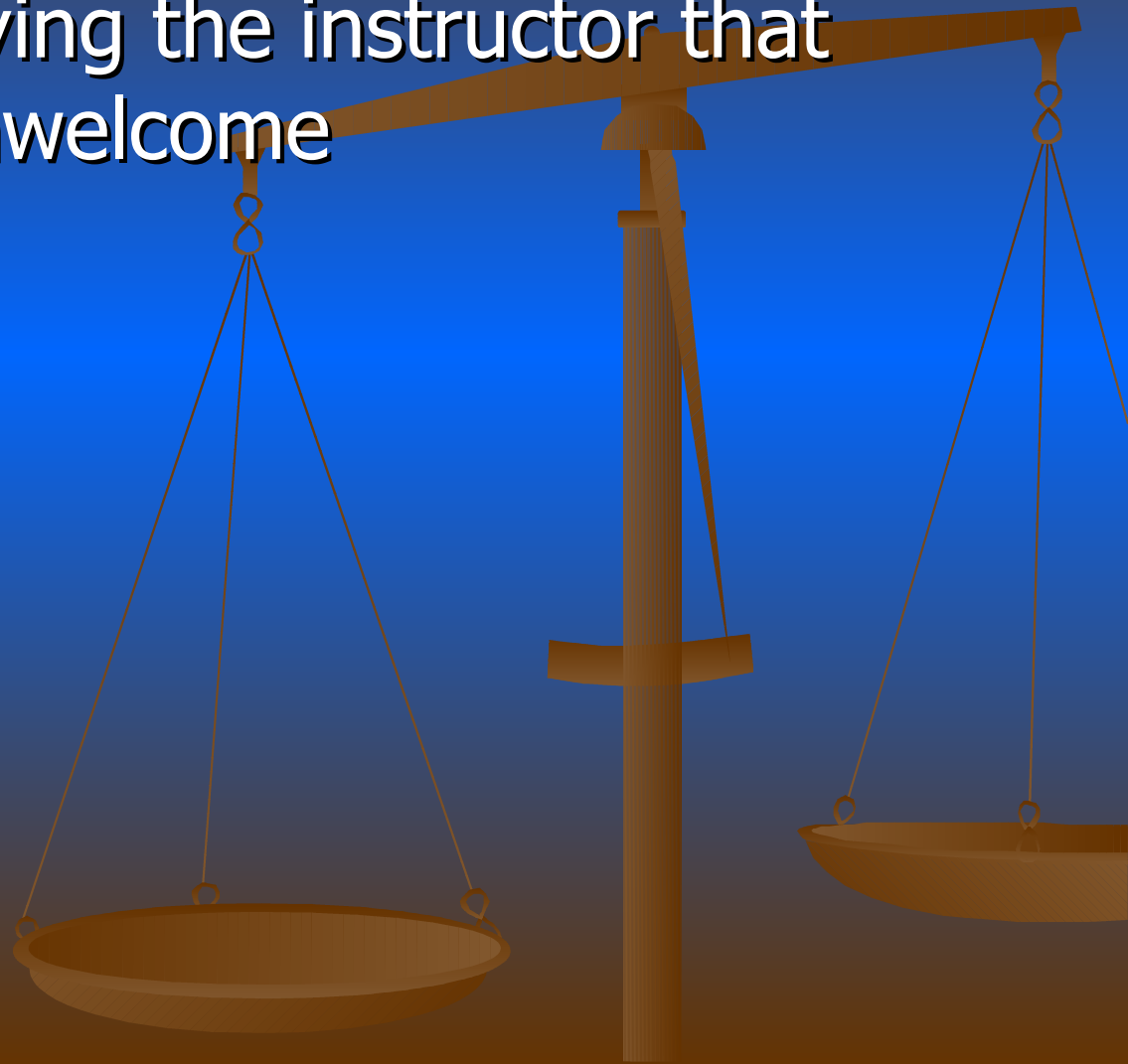
- E-mail 1 -



- E-mail 1 – Notifying the instructor that advances are unwelcome



- E-mail 1 – Notifying the instructor that advances are unwelcome
- E-mail 2 -

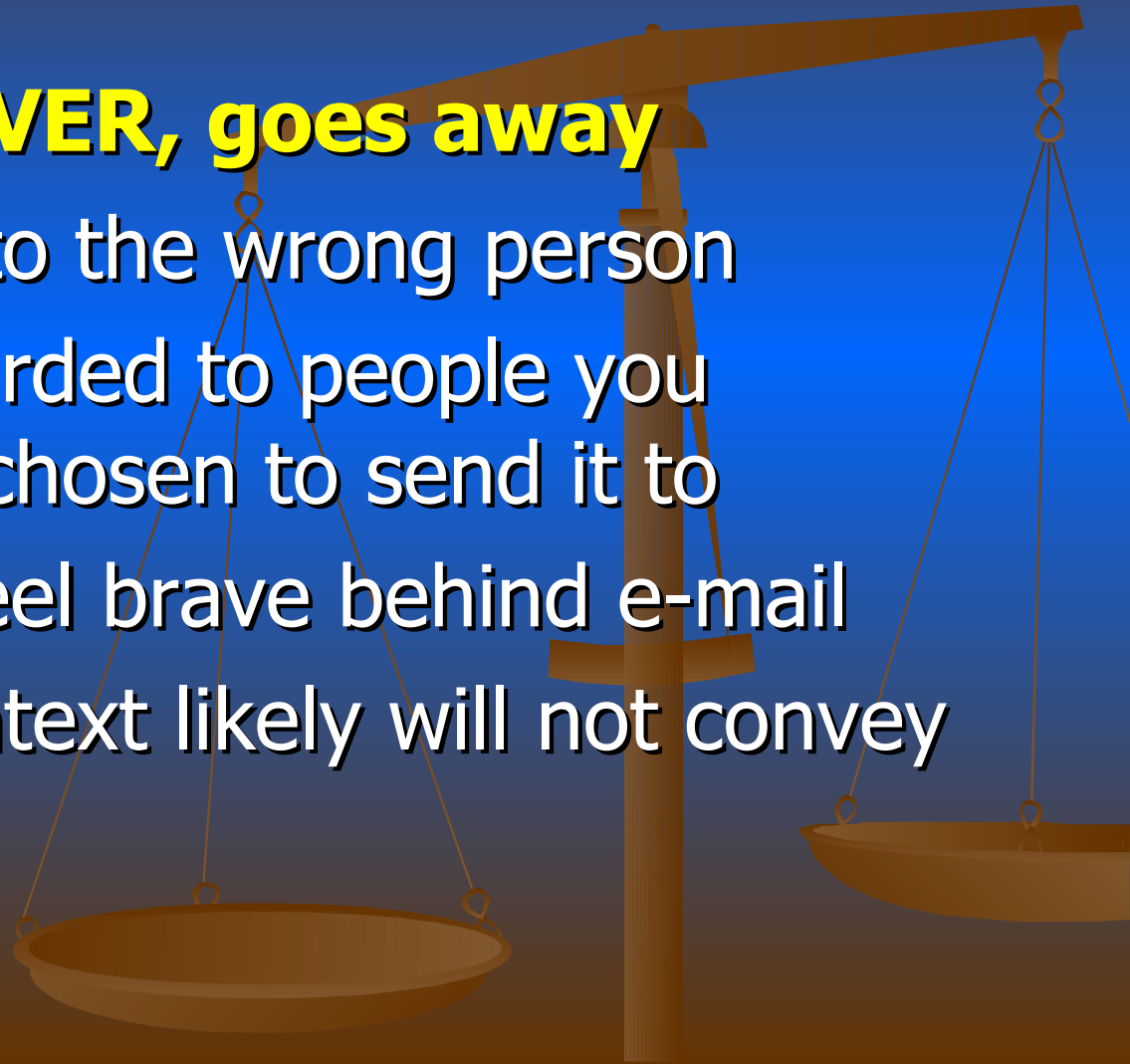


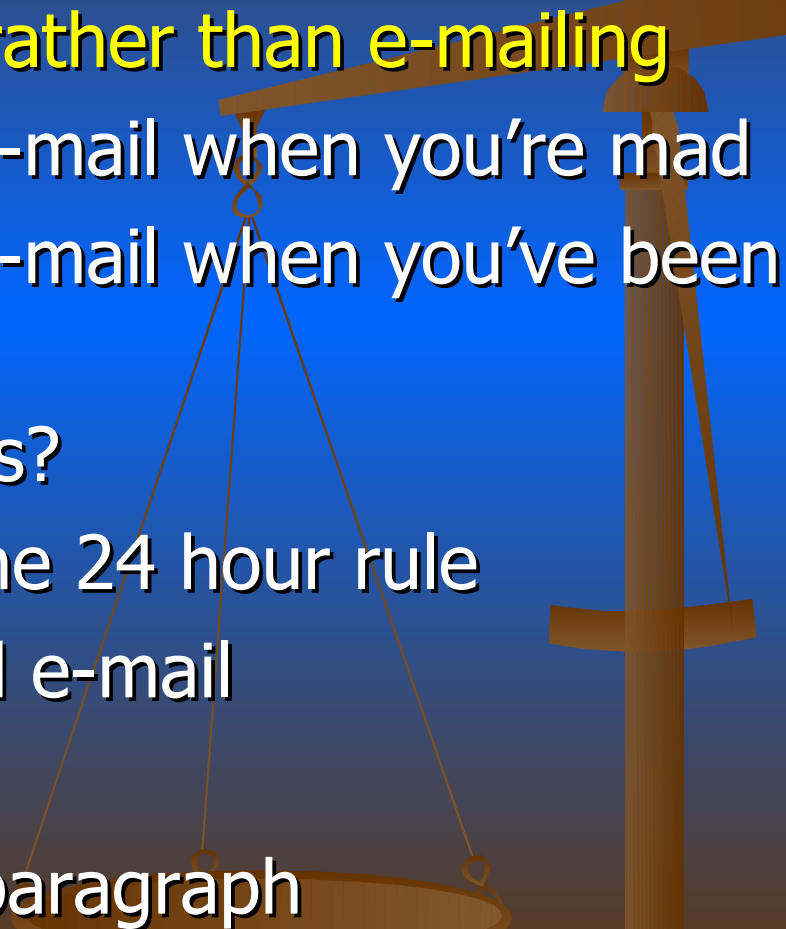
- E-mail 1 – Notifying the instructor that advances are unwelcome
- E-mail 2 – TEXTBOOK retaliation against a person complaining about sexual harassment



# E-Mail = EVIDENCE Mail

- It **NEVER, EVER, goes away**
- It can be sent to the wrong person
- It can be forwarded to people you wouldn't have chosen to send it to
- Some people feel brave behind e-mail
- Humor and context likely will not convey well



- 
- Consider talking rather than e-mailing
  - **NEVER** send an e-mail when you're mad
  - **NEVER** send an e-mail when you've been drinking
    - Google Goggles?
  - ALWAYS follow the 24 hour rule
  - Don't hide behind e-mail
  - Keep it short
  - A couple lines a paragraph

# BLOG's



We arrive at the local senior apts to find an 86 year old female laying down in her lazy boy chair. She is on home o2 at 2 liters per min via nasal. Her resps are at 28 and labored. Patient has no history of copd but does have a history of chf, cad, esrd, and dm. Patient has no visiable adema. What would you do!

This is what we did. We moved the patient to our cot and then sat her up. Sitting her up seemed to help more than anything. We gave her an albuterol sulfate breathing treatment, this provided some relief. Next we placed our patient on high flow o2 via non rebreather mask and provided rapid transport to the hospital! **Tell me what you think.** JS



+

- Blah
- Blah
- Blah
- Blah

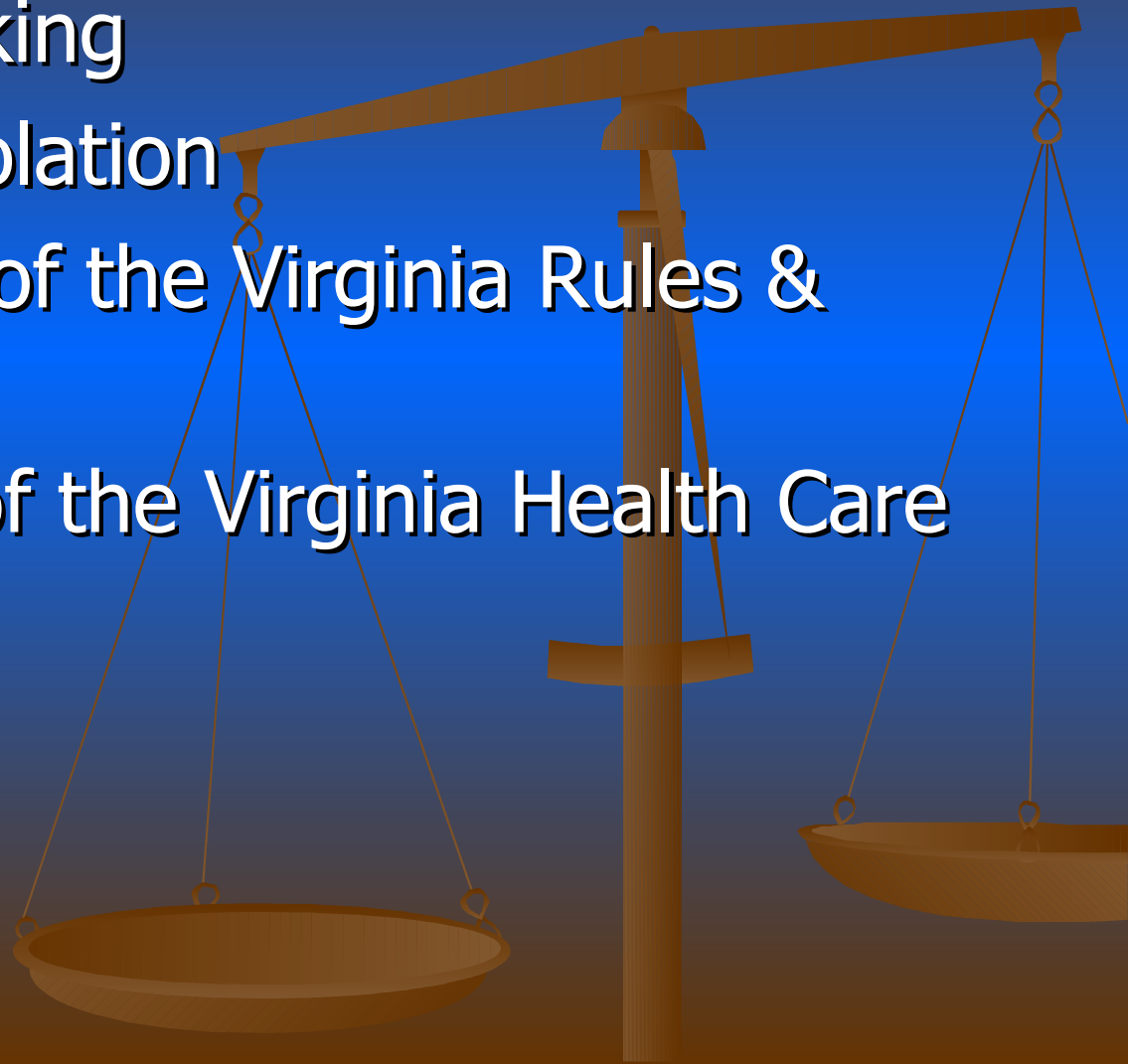


# Blogs

A Level 1 trauma center  
nurse got fired for entering  
a patient name on her blog



- People ARE looking
- It is a HIPPA violation
- It is a violation of the Virginia Rules & Regs
- It's a violation of the Virginia Health Care Records statute



SO.....

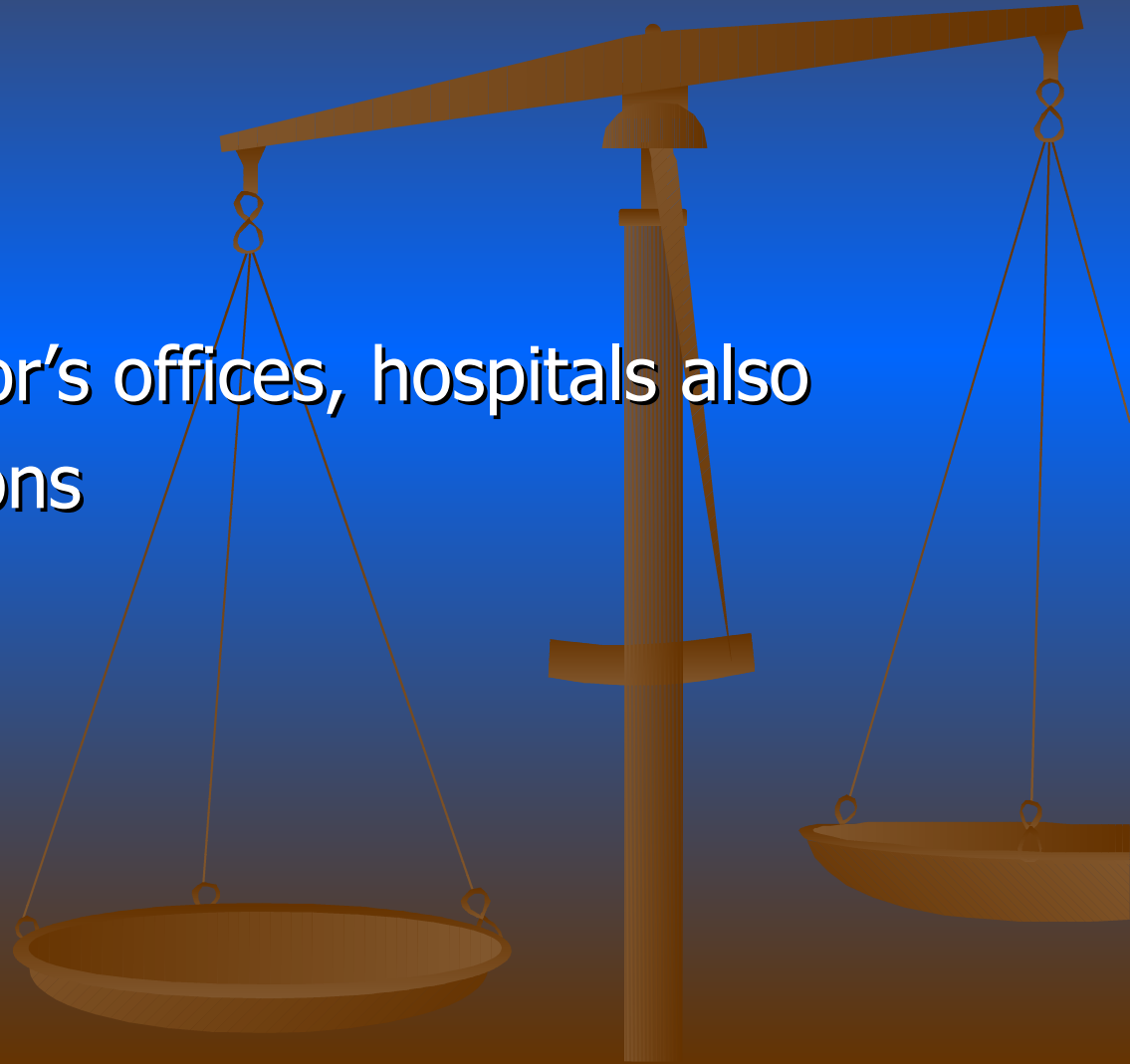


SO – When CAN you disclose  
information?



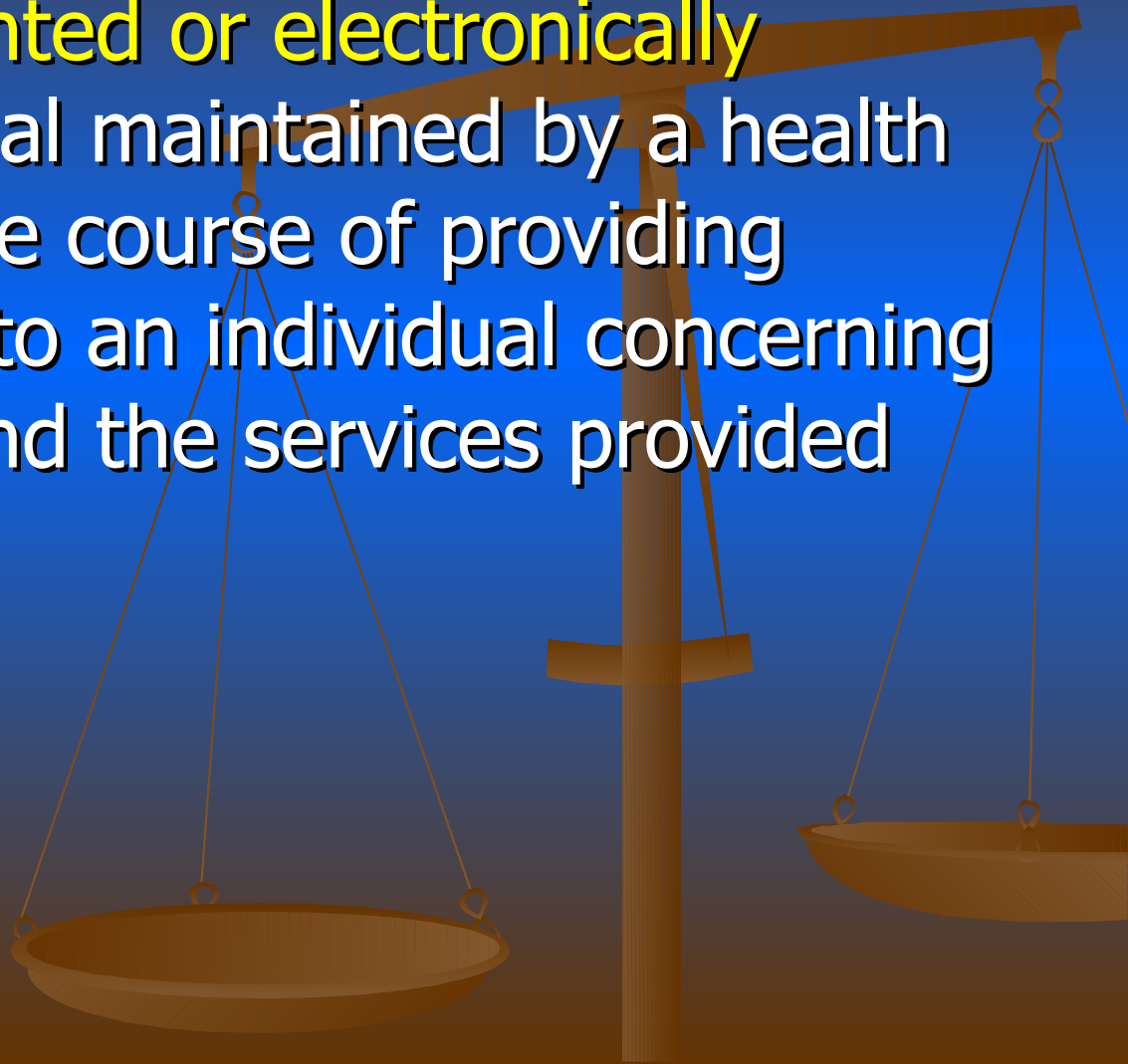


- HIPPA
- Virginia Statute
  - Long
  - Applies to doctor's offices, hospitals also
  - Lots of exceptions



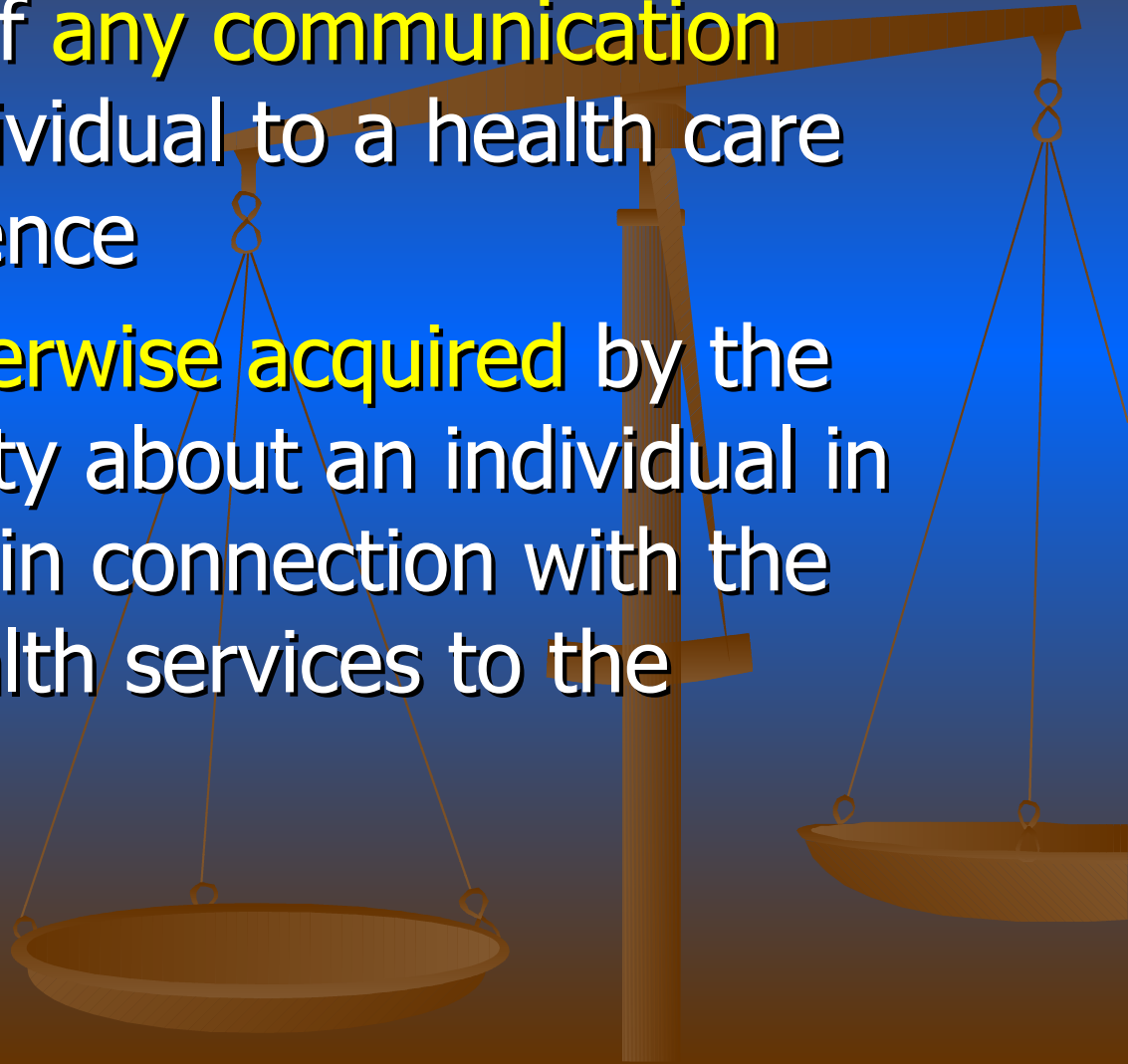
# “Health Record”

- any **written, printed or electronically recorded** material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided



# “Health Record”

- the substance of **any communication** made by an individual to a health care entity in confidence
- **information otherwise acquired** by the health care entity about an individual in confidence and in connection with the provision of health services to the individual

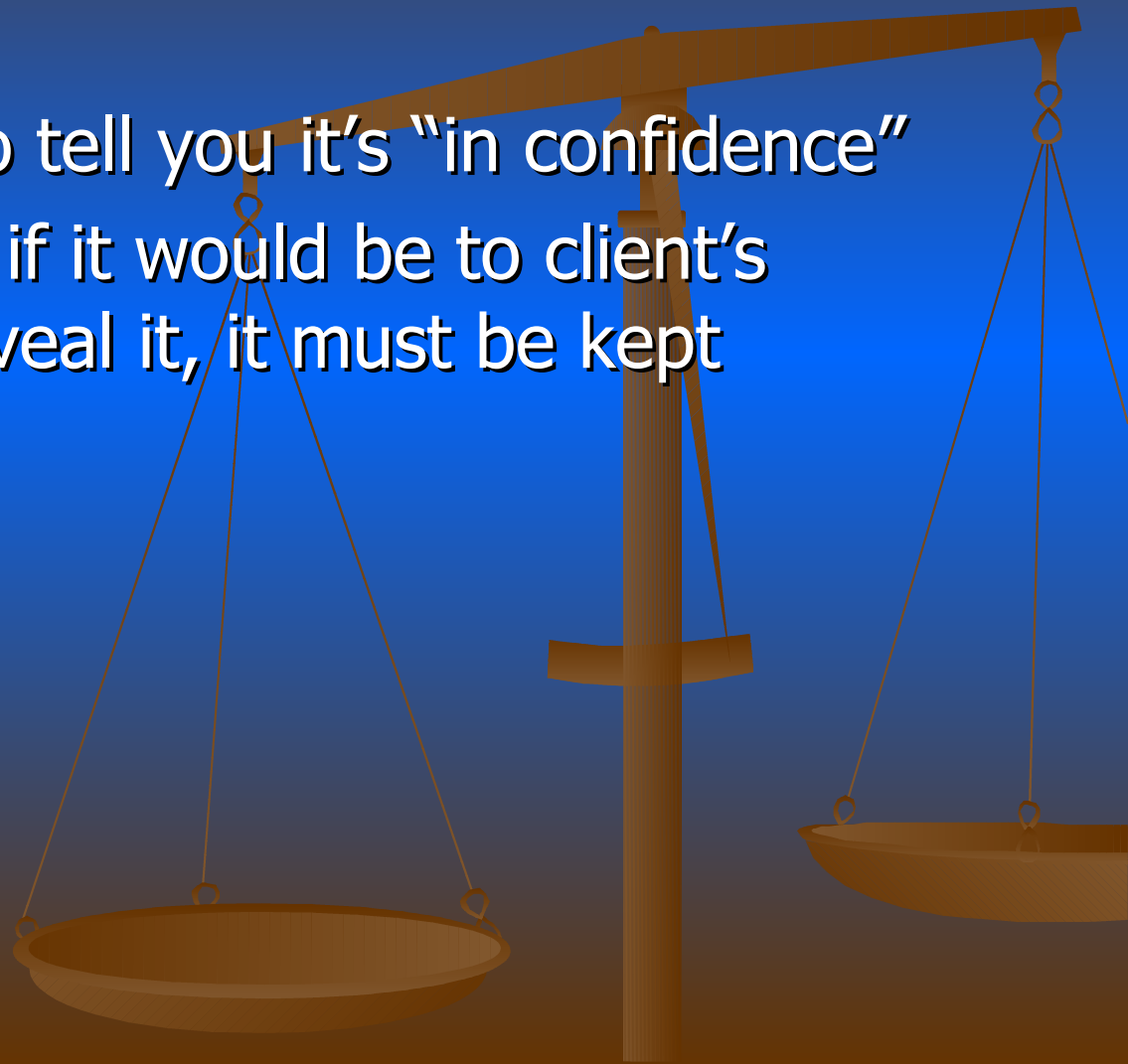




- “in confidence”
  - Do they have to tell you it’s “in confidence”

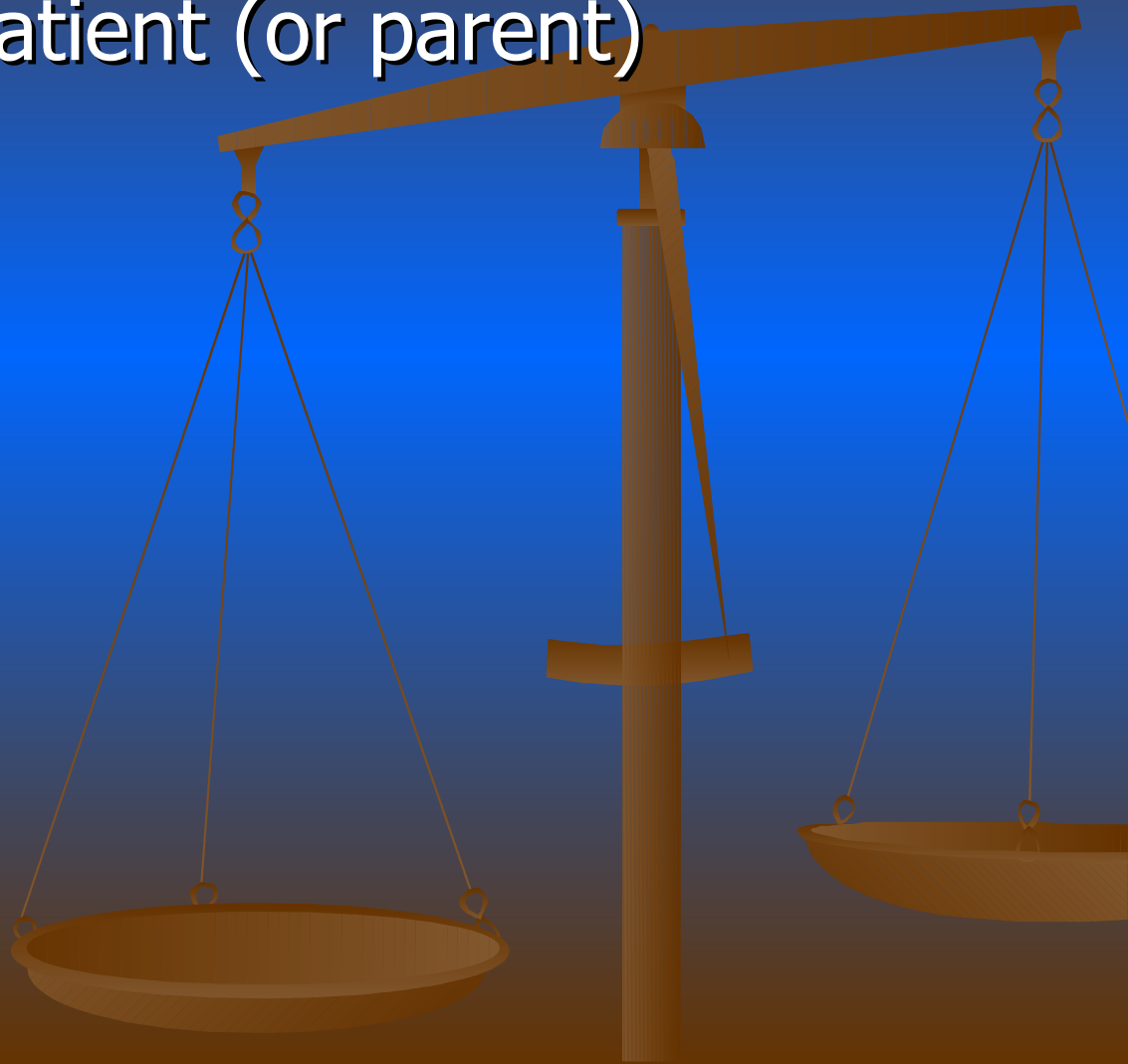


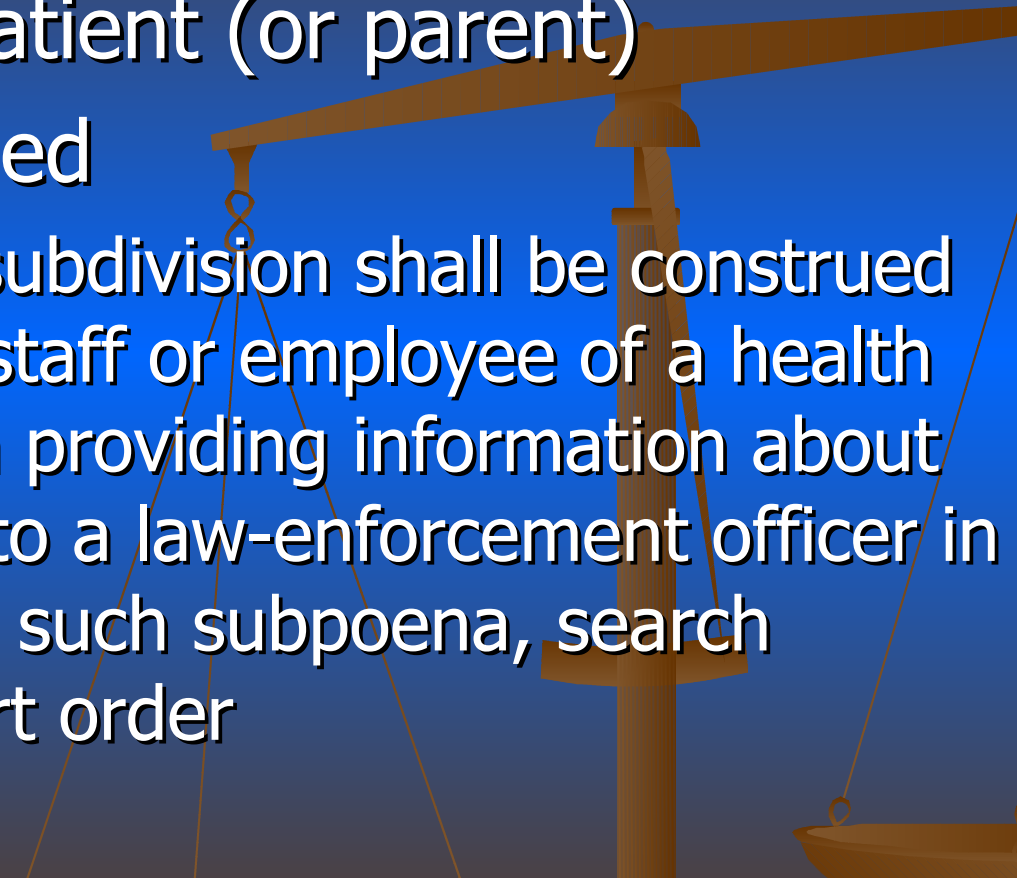
- “in confidence”
  - Do they have to tell you it’s “in confidence”
  - Va. State Bar – if it would be to client’s detriment to reveal it, it must be kept confidential

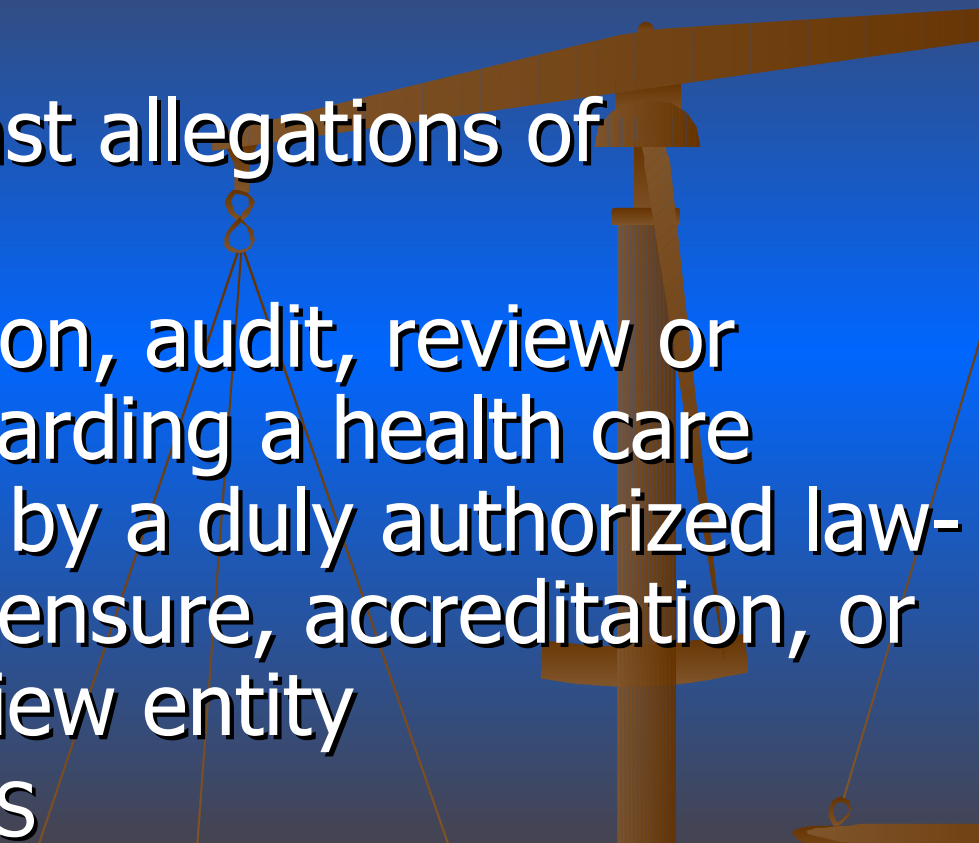


# When Release Allowed

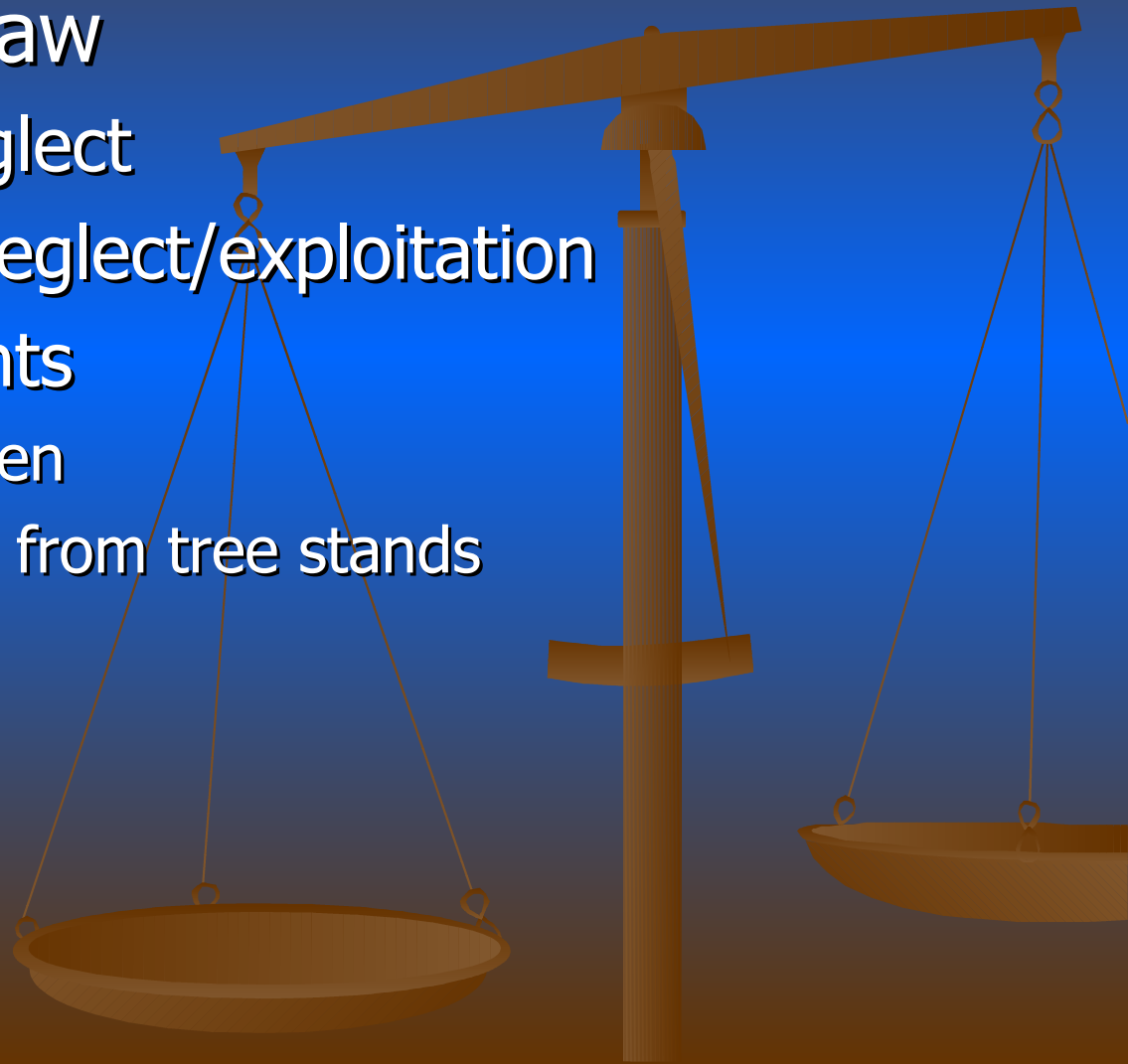
- Authorized by patient (or parent)

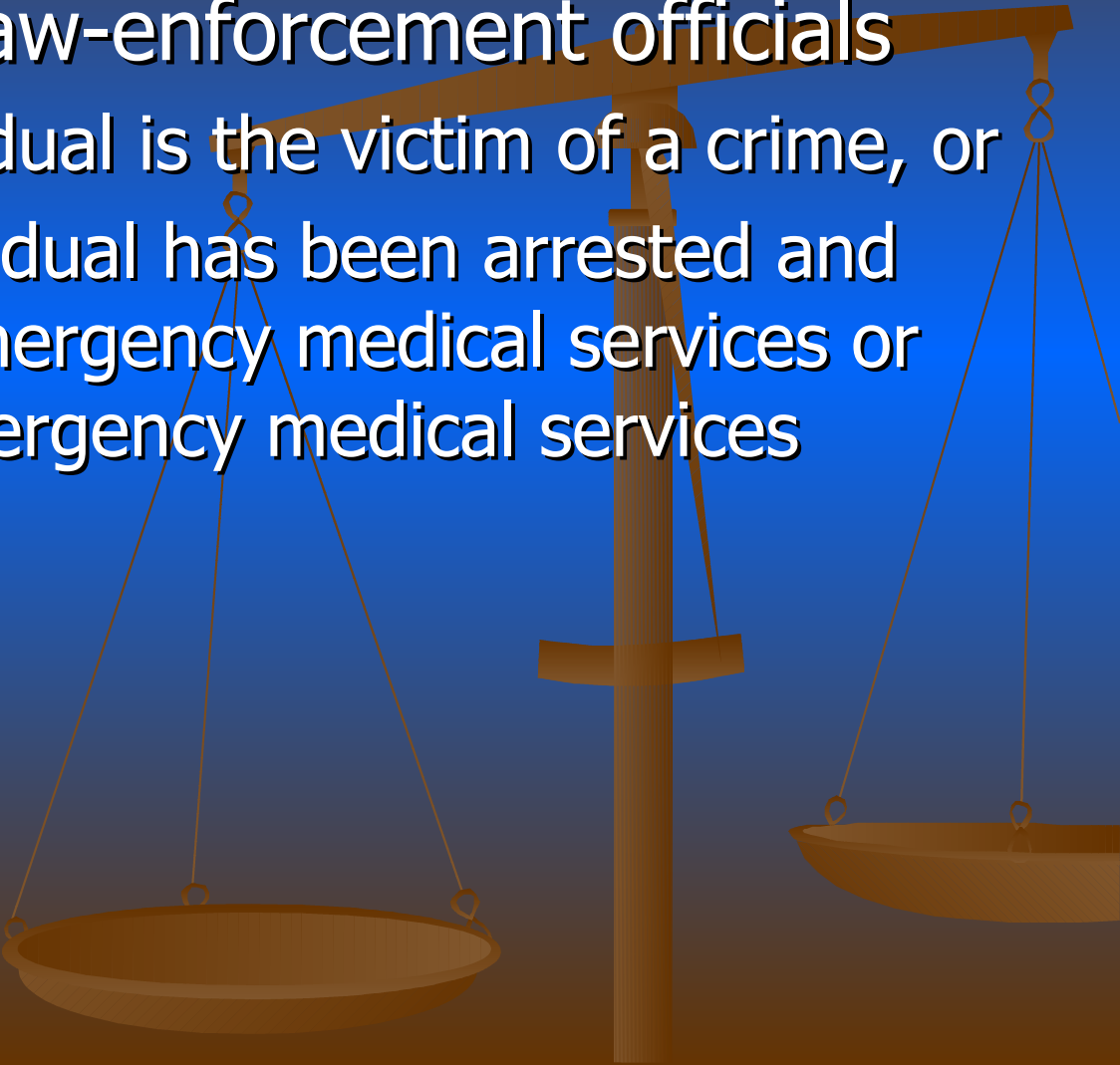



- 
- Authorized by patient (or parent)
  - When subpoenaed
    - nothing in this subdivision shall be construed to prohibit any staff or employee of a health care entity from providing information about such individual to a law-enforcement officer in connection with such subpoena, search warrant, or court order
  - When testifying

- 
- To collect a fee
  - To defend against allegations of misconduct
  - In an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity
    - INCLUDES OEMS

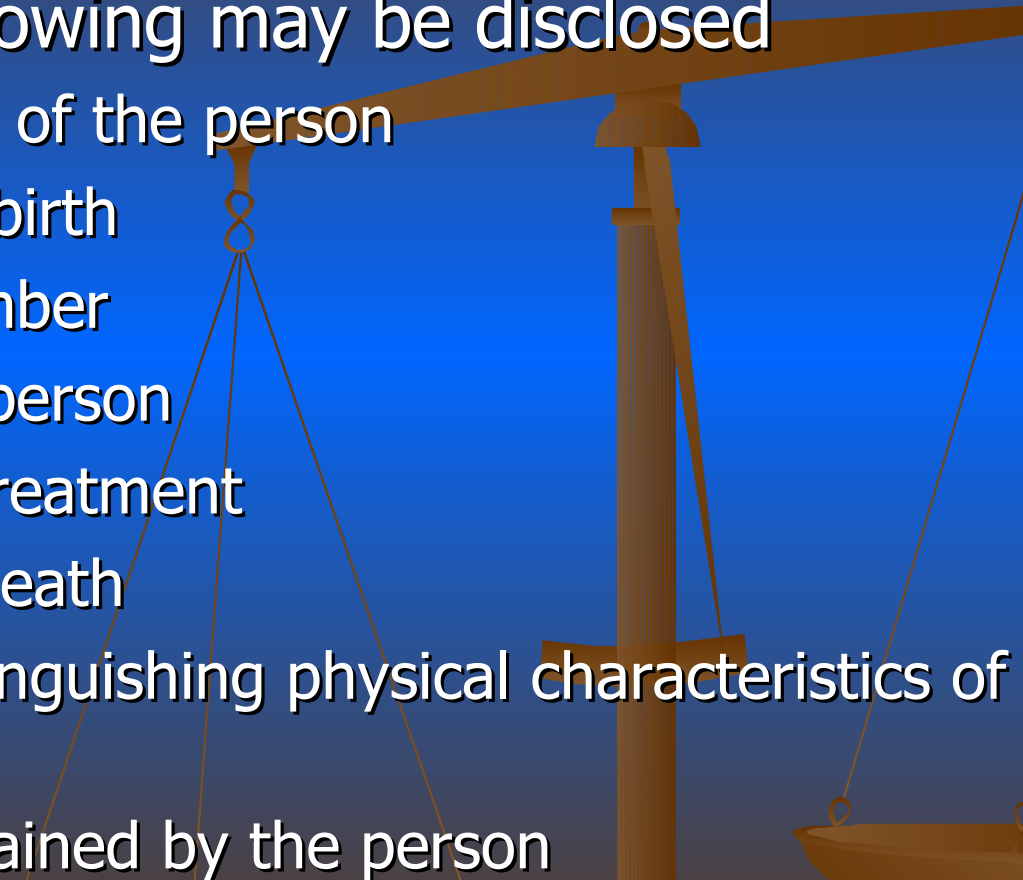
- As required by law
  - Child abuse/neglect
  - Elderly abuse/neglect/exploitation
  - Hunting accidents
    - To Game Warden
    - INCLUDES falls from tree stands

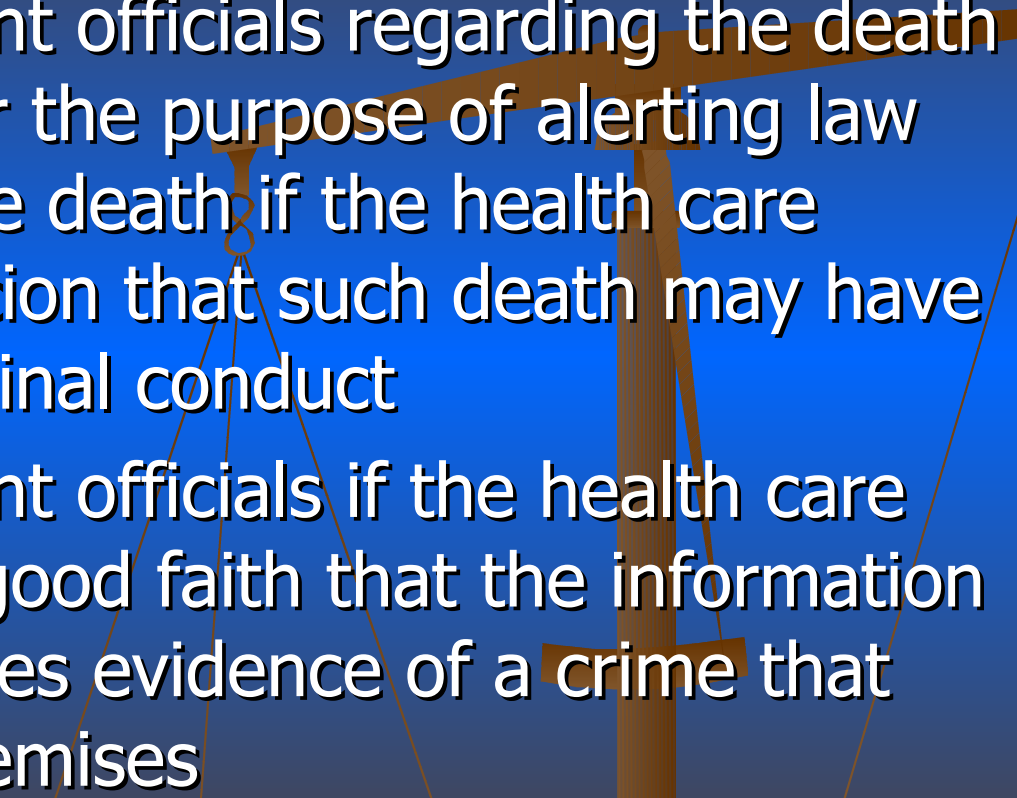


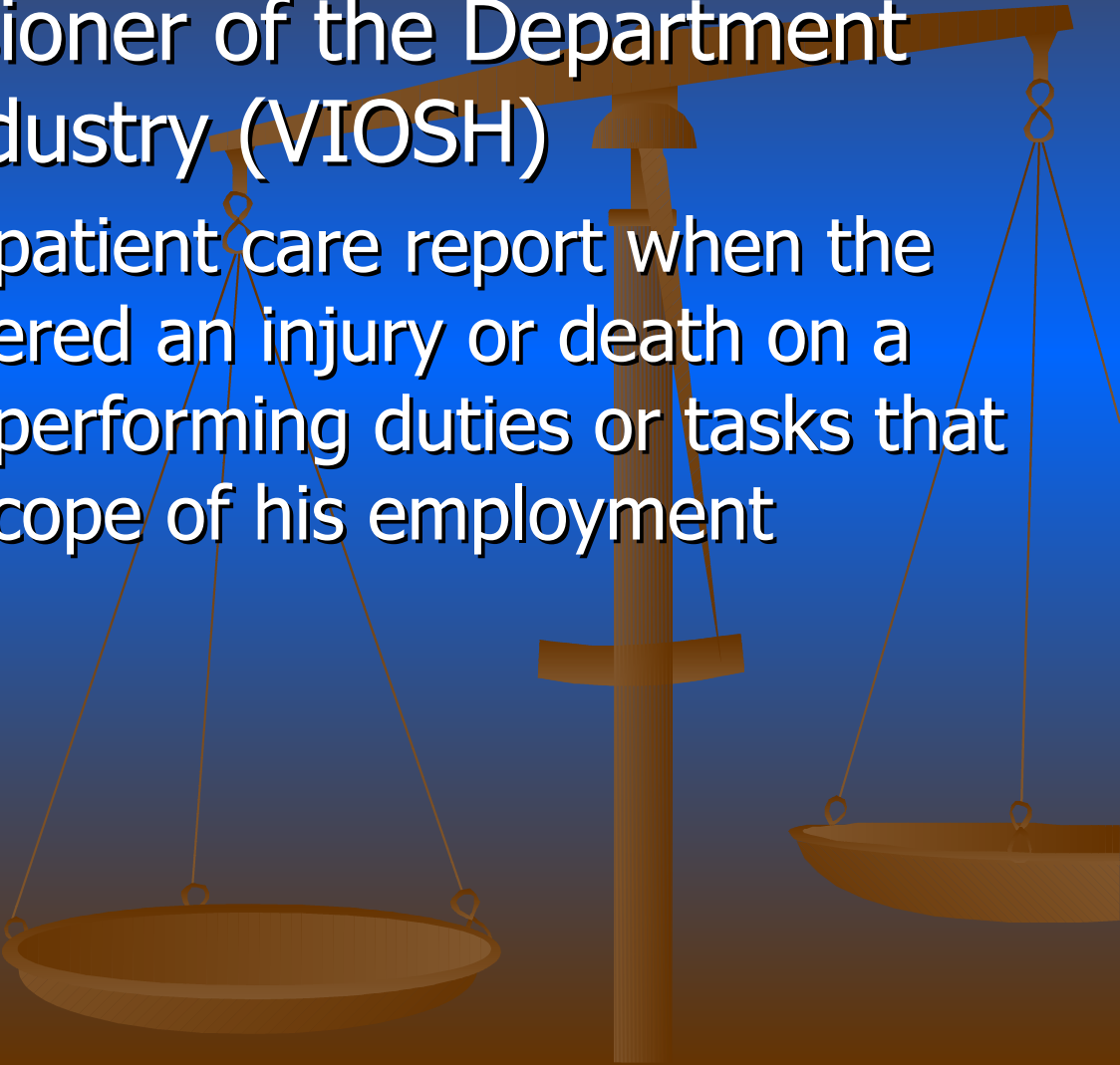
- 
- **PPCR ONLY** to law-enforcement officials
    - when the individual is the victim of a crime, or
    - when the individual has been arrested and has received emergency medical services or has refused emergency medical services

- 
- To law-enforcement officials for the purpose of identifying or locating
    - a suspect
    - fugitive
    - person required to register as Sex Offender and Crimes Against Minors Registry Act
    - material witness
    - missing person



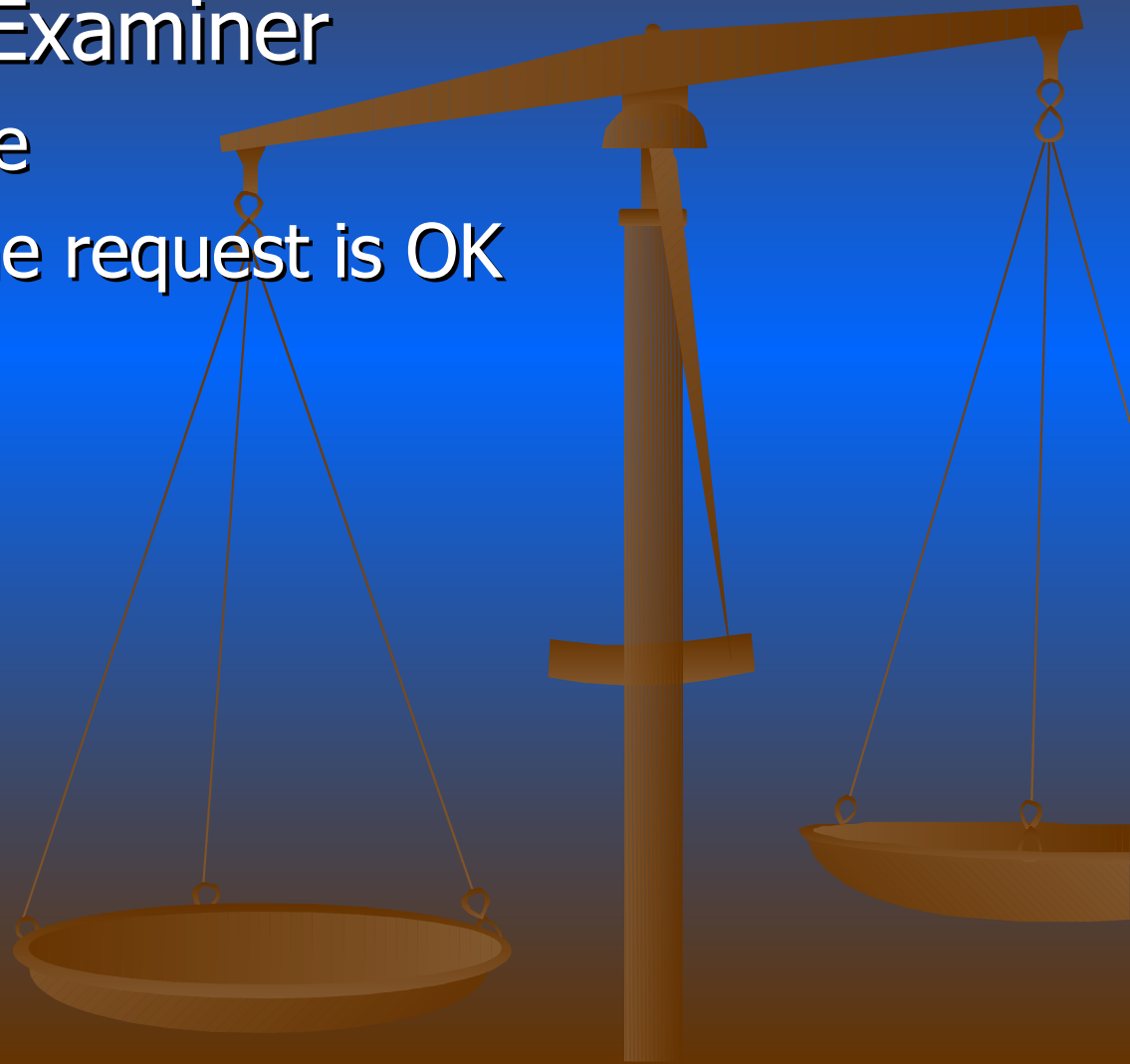
- 
- BUT - only the following may be disclosed
    - name and address of the person
    - date and place of birth
    - social security number
    - blood type of the person
    - date and time of treatment
    - date and time of death
    - description of distinguishing physical characteristics of the person, and
    - type of injury sustained by the person

- 
- To law-enforcement officials regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct
  - To law-enforcement officials if the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises

- 
- To the Commissioner of the Department of Labor and Industry (VIOOSH)
    - the prehospital patient care report when the patient has suffered an injury or death on a work site while performing duties or tasks that are within the scope of his employment

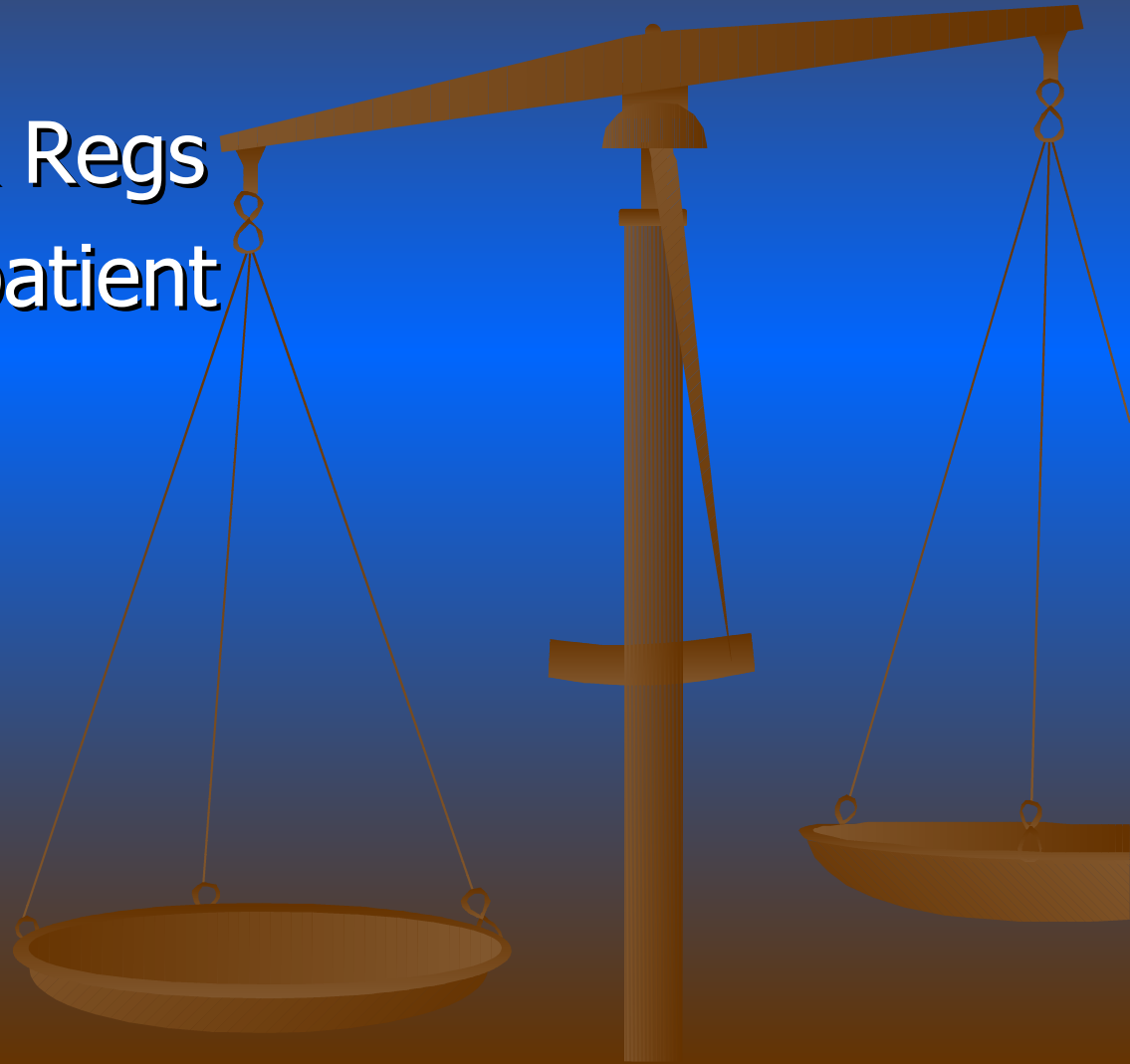
+

- To the Medical Examiner
  - Separate statute
  - Oral / Telephone request is OK



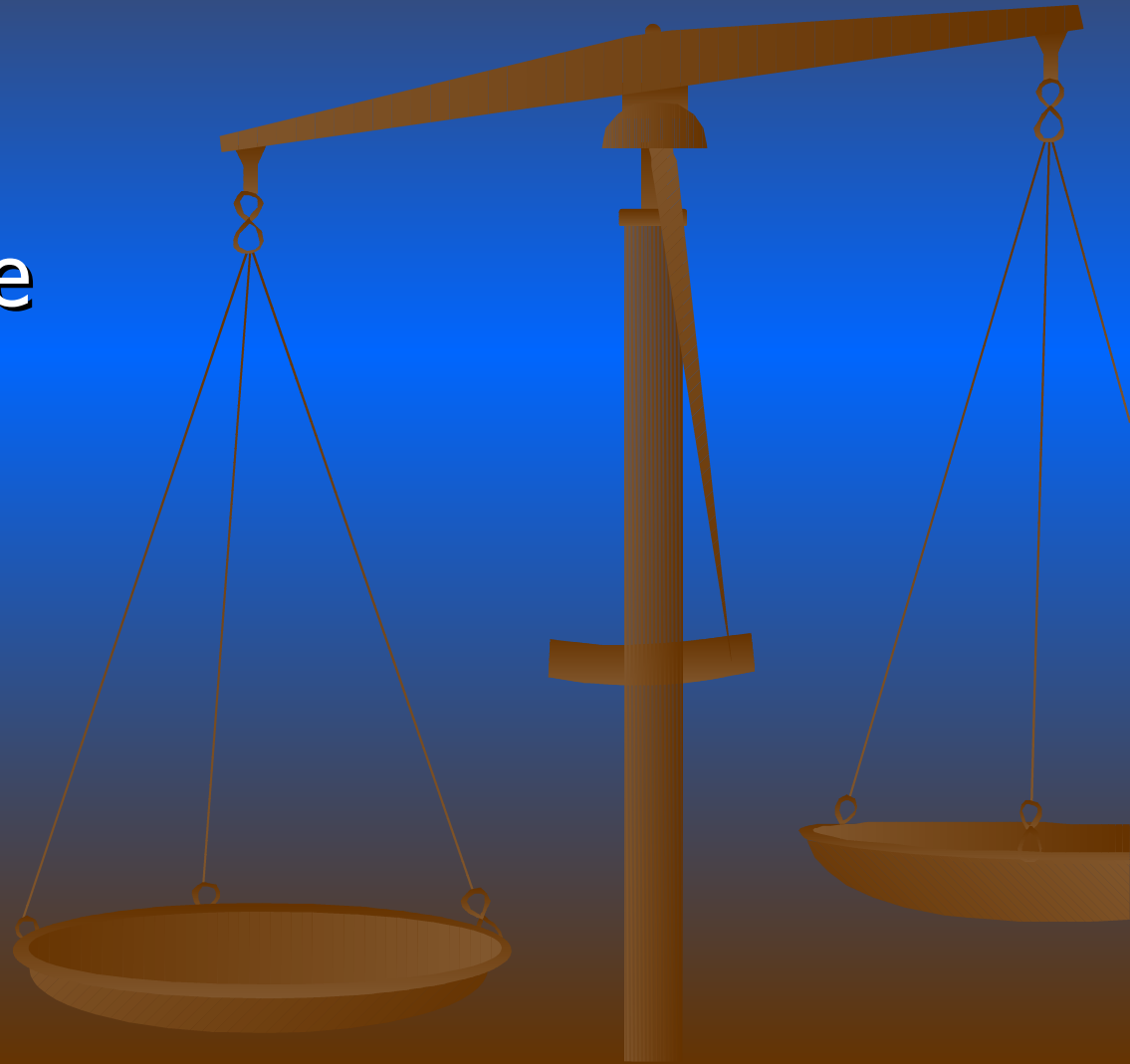
# What happens if you improperly disclose records?

- HIPPA
- Virginia Rules & Regs
- Civil Action by patient



+

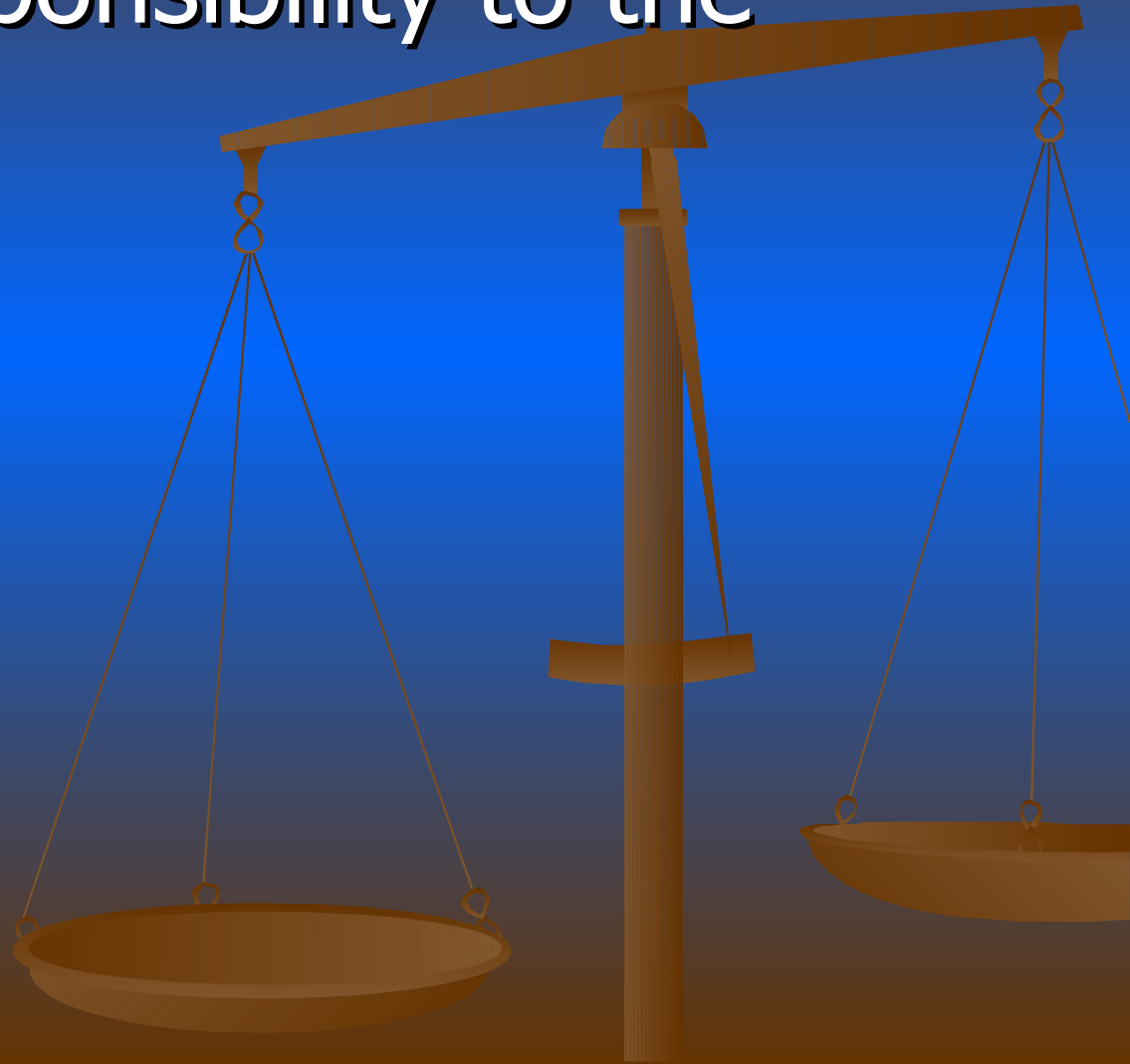
- Duty
- Breach of Duty
- Proximate Cause
- Blah, blah, blah



# Recruiting and Retention



- Nobody is ENTITLED to volunteer/employment
- You owe a responsibility to the public





# Do they meet your requirements?

- Initial applicant
- Probationary member
- Full member

**IF NOT, GET RID OF THEM!**



- Duty
- Breach of Duty
- Proximate Cause
- Blah, blah, blah



Am I *prejudiced*?

Am I *biased*?





# How do you successfully go from this.....



**CHARLOTTESVILLE-ALBEMARLE RESCUE SQUAD OFFICERS**

From Left, Daniel Strider Jr., Larry Adams, Steven Key, Thomas Dudley, Robert Jaskiewicz. Center, James Harlow



How do you successfully go from this.....



CHARLOTTESVILLE-ALBEMARLE RESCUE SQUAD  
From Left, Daniel Strider Jr., Larry Adams, Steven Key, Thomas

To this:



A golden balance scale is positioned on the right side of the image. It has a central vertical pillar, a horizontal beam, and two pans hanging from the ends. The scale is slightly tilted, with the right pan being lower. The background is a blue gradient.

Look at a calendar....

Note it is ***2009*** !



- Volunteer agencies are ***community service organizations***
  - BUT – anyone else could do the task
- You enjoy the support of the community
- We want to be nice
  - Treat every patient like your mother
  - Drive like your name is on the side of the truck and your grandmother is in the back
  - Don't do anything you would want shown on the front page of the paper (or on YouTube)

**What's missing?**





For your members, your  
department *should be* a...



**Summary: Watch Your Back?  
Watch EACH OTHER'S BACK!**



????????????????????

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