

# Growing Practice Areas

The profession as a whole has experienced bumpy times in the past five years, but health care, regulatory, and energy law have fared relatively well.

ED FINKEL

**T**he legal profession has undergone a retrenchment in the past several years unlike anything seen in several decades. But certain areas of the law have begun to prosper again, and health care, regulatory, and energy law—often for reasons related to new federal or state legislation—are at the top of the list.

“All of those are areas ... that we have been talking about for the last two years; looking ahead, we see long-term potential,” said Bob Denney, principal with legal management consultants Robert Denney Associates Inc., in Wayne, Pennsylvania. “They’re going to continue to be hot.”

### **AFFORDABLE CARE ACT BOOSTS HEALTH CARE**

The advent of the federal Patient Protection and Affordable Care Act (ACA) has created a great deal of activity in the health-care sector. Denney noted that the buying and selling of health-care facilities has impacted both health-care and corporate attorneys, although “most of it is regulatory, I would say.”

In the four years since she graduated law school, Neda Ryan, an associate at Clark Hill PLLC in Birmingham, Michigan, has seen rapid changes in the job market for health-care attorneys. “We can’t ignore the economics at play in Washington,” she said. “Our client base is mostly providers of health care. They are performing the same if not more services and are getting paid less. That has driven the growth in the [legal] field.”

The additional regulatory layers brought about by ACA means that it’s all the more important for health-care attorneys to be grounded in health-care law as a specialty, Ryan said. “You need to know what you’re talking about and what you’re doing,” she said. “Somebody who doesn’t have that special expertise is setting up their clients for major failure and potential criminal liability.”

Although she comes from a family of health-care professionals, Ryan herself “fell into health-care law” because a health-care boutique was one of the few firms to offer her a position when she graduated into a very rough job market. “Within a few weeks, I absolutely loved it. It was exciting to me. It was

changing every day,” she said. “Health-care practice groups are growing all over the country. When the economy was down, I didn’t know of a health-care group that wasn’t hiring, and I think we’re going to continue to see that.”

Students who are more intentional about going into health-care law than she was at the outset should take courses and apply for internships in the field, and it certainly doesn’t hurt to have had past experience in the field before law school, Ryan said. “We look for people who have shown a dedication to health-care law not just in words,” she said. And ideally, not just in classroom theory, either, since an internship or clerkship “gets [students] thinking more critically and analytically.”

Gwen Chapman, in-house counsel at Alcon Laboratories Inc. in Fort Worth, Texas, had healthcare on her mind when she entered the University of Houston. She spent a semester working as a research assistant for her criminal law professor, who headed the school’s Health Law and Policy Institute, which got her interested in the health-care compliance.

“I specialize in anti-corruption, anti-bribery, [and] anti-kickback,” said Chapman, who serves as compliance officer for the company’s \$3 billion surgical division. “You are not going to be the most popular person at your company because you’re like the police, you’re like internal affairs. Your job is to keep the pharmaceutical company, the medical device company, the hospital, whatever it is, from engaging in acts the government considers bribes or corruption. It takes a very strong personality to do this job.”

Law students should take basic health law courses, find specialized internships, actively seek out a mentor, and be prepared to study up—health-care compliance requires time to build up an adequate knowledge base, Chapman said. “It is a very difficult area to crack,” she said. “It’s highly, highly specialized. Generally you become a corporate lawyer and then get a specialization in health care. It’s also very lucrative from a financial standpoint and job market

standpoint because so few people are experts in it.”

It’s a field full of opportunities for younger lawyers willing to put in the time because it’s relatively young; many of the anticorruption statutes that Chapman deals with are less than 20 years old, such as the False Claims Act and Sarbanes-Oxley. “You’re talking about a very young, developing area of law,” she said. “What’s made the area of law hot is that it’s a revenue generator for the government. You have all these whistleblower protections.”

The area will continue to ramp up among other reasons because there’s a new transparency clause contained within ACA that as of March 31 requires medical device and pharmaceutical companies to report “every dollar they spend on a health-care professional,

even a \$10 sandwich,” Chapman said. And international anticorruption efforts will continue to grow, as well. “It’s going global,” she said. “Me and my colleagues joke that we’ll always have a job.”

### **Health-care compliance work is like being an internal affairs cop.**

### **ENERGY FLOWS IN CERTAIN LOCATIONS**

Energy law breaks down into fuel—and location-specific practice areas, Denney said. Oil and gas, which he places “at the top of the energy list, for obvious reasons,” are big in the Midwest, Southwest, Texas, and California. Coal provides legal work in the upper Midwest, western Pennsylvania, and West Virginia, while alternative energy “still has been more heat than light in over the last five years,” he said.

Natara G. Feller, a Brooklyn-based energy law practitioner, sees Washington, D.C., where she began her career, as having the most opportunities. She clerked with the Office of Administrative Law Judges at the Federal Energy Regulatory Commission, then spent time with the firm of Pillsbury Winthrop Shaw Pittman, around the time the Energy Policy Act of 2005 was being implemented.

“That created a market for energy regulatory attorneys,” she said. “In some respects I was lucky, or smart—who

knows. I have been riding the energy regulatory wave, so to speak, and focusing on navigating my career toward service-providing energy regulatory advice to companies on federal and state regulatory issues.”

Feller left D.C. and moved back to New York, where she found a niche working with retail energy suppliers; her federal background has given her the ability to advise companies on federal and state issues. “I followed my passion. I wanted to do environmental law, but there weren’t jobs. You have to be realistic,” she said. “I work with some renewable clients, and I feel very satisfied and interested.”

Feller advises law students to be patient and realistic, recognizing that an area like energy law is “substantively very heavy. Understanding the law is not going to be enough. You have to understand the business. The better you understand your clients’ business, the more you can help them.” That leads to long-term relationships—and referrals, she added.

In addition to energy law courses, Feller suggested corporate finance, so you can understand basic operating agreements and business structures, as well as administrative law so you can

understand the rule-making process. Becoming involved in ABA entities like the energy markets committee, which Feller chairs, creates all manner of networking opportunities, she said.

Look for opportunities in agencies that might be “under the radar,” such as energy-related divisions within the departments of interior, transportation, or defense. In addition to Washington, D.C., the state of California is a good place to start your career because state agencies there “have very aggressive energy goals,” she said. And then a state like Texas could provide the fuel-specific opportunities that Denney mentioned.

Energy law is moving toward being a practice area the size of mergers and acquisitions, Feller believes. “It’s overlapping with other industries, with regulations at the state and federal level,” she said. “A law student who’s really interested should do a lot of research to see where opportunities are outside of traditional ones, where it might be very, very competitive in this market.”

**More than any other kind of lawyer, regulatory lawyers need to be able to read and understand statutes.**

### **REGULATORY LAW CUTS ACROSS MANY SUBJECTS**

Regulatory law flows through health-care, energy, and many other sectors, at

both the federal and state level, Denney said. “The key factors are the federal government and all the federal agencies, and then the counter-push at the state level, whether it’s state pension funds, or employment issues, or relating to, again, energy,” he said.

Jonathan Cedarbaum, partner at WilmerHale in Washington, said law students interested in regulatory law need to build a two-pronged knowledge base consisting of “how the government works, including the framework statutes that determine how regulatory agencies operate; with subject matter expertise in particular areas, whether it’s food and drug law, or telecommunications law, whatever might be a substantive niche . . . . Being just a generalist regulatory lawyer is not the best way to go.”

Second, aspiring regulatory lawyers must recognize that legal issues often become tied up with broader policy concerns, political controversies, or media interest. “So regulatory lawyers, at least as much if not more than other lawyers, need to be aware of those non-legal dimensions,” Cedarbaum said. That way you know “how to help your clients deal with all aspects of their problems.”

Third, he said, despite the negative connotation of the “revolving door,” it helps to gain experience both in government and in the private sector. “Lawyers who have worked in the government have a better understanding of how regulatory agencies work. When

## **WHAT DID THE CLASS OF '89 FACE?**

The Class of 1989 faced a very different set of “hot” practice areas upon their graduation in the early part of the first Bush Administration, said Bob Denney, principal with Robert Denney Associates Inc.

Litigation presented greater opportunities a quarter-century ago, before the high costs of litigation prompted more individuals and businesses to more frequently turn to arbitration and mediation, he said. Back then the strong economy, startups, and initial public offerings were more common than now, and general commercial litigation was stronger, too.

Labor and employment law presented more opportunities, Denney said, because labor unions were considerably stronger than they are now. “It’s still an issue today, particularly with public employees and public bodies, but it’s not quite the issue it was.”

Finally, he said, “tried and true” areas like divorce and family law presented opportunities. “Divorce still continues strong today,” Denney said.



## PERSONAL RELATIONSHIPS PROMPTED INTEREST IN HEALTHCARE

Arian C. Hull, a 3L at University of Illinois College of Law, has a best friend who's a physician and had a significant other who was a medical student when she decided to go to law school. She had no interest in medical school herself, but she's turned on by both law and the health-care field.

"It's just the way that it touches so many lives. It's one of the most integral parts of American society," she said. "It's very innovative. I always want to be in the cutting edge of new developments, new research, new technologies, and seeing how they fit into society. That's what I find most interesting—it's always changing."

Knowing that she wanted health-care law from the beginning, Hull has taken all health-care law courses offered at Illinois, and she did an independent study as well. She spent her first summer at the nonprofit National Partnership for Women and Family, where her supervisor served in the Federal Advisory Commission for meaningful use of electronic medical records. She spent her second summer in Miami at an agency called Univita, where she updated company-wide policies to make sure they're compliant with a new omnibus Health Insurance Portability and Affordability Act rule that came out last year.

When she finishes law school, Hull might start with a law firm but ultimately would like to work for a research hospital and has her sights set on the general counsel's office eventually. "A lot more students are becoming interested in [health-care law] because they realize it's a growing field," she said. "Because of the Affordable Care Act, we see a lot of large firms that didn't have health-care practices developing those in response. It's a growth industry and will continue to be."



## ENERGY LAW IS A COMPLEX PUZZLE

Bennett Resnik, a 2L at Vermont Law School, compares his intended specialty of energy law to a Rubik's Cube. One has to simultaneously align the forces of financial markets, geopolitics, technological innovation, and the environment to succeed in the practice.

"That complexity to the practice makes it so interesting and fascinating to me," Resnik said. "It's such a multifaceted practice, and with any one thing you do . . . there are many implications for that policy or for that law that's being formed by the federal or state government. There's a multitude of considerations."

Resnik worked at a small lobbying firm prior to law school, called CHG & Associates, and some of his work focused on energy and environmentally related matters, which meant attending congressional hearings on the topic. That introduced him to the subject, and he chose Vermont because of its reputation for energy and environmental programs.

In addition to taking specialized courses, Resnik spent his first summer with a Texas company called Baker Hughes, which focused on regulatory work around hydraulic fracturing. He also joined energy-related professional associations for networking opportunities and has written articles and other short pieces for publication.

Resnik believes the field will continue to grow given the country's push toward energy independence, "or as some say, 'energy less-dependent,'" and an increase in energy exports, he said. "Right now, we're in such a transitional stage in our domestic energy policy. . . . The future of the US becoming a net exporter in energy products is very impressive."



they are in private practice, that insider perspective can help them give clients a more accurate assessment of regulatory agencies' goals and methods of operation. Similarly, government workers who have also worked for private clients may have a better understanding of how

to work effectively with the parties they regulate. The lawyers who go through the revolving door can be stronger lawyers for both sides, for having been on the other side of the door."

And students must have an interest in and aptitude for reading statutes and

regulations—as opposed to contracts, or court decisions, Cedarbaum said. "Regulatory lawyers, more than other lawyers, have to know how to read statutes and regulations and make sense of them," he said. "Look for opportunities to see how much you enjoy" that work.



Sam Wice, a Duke University School of Law 3L, compares a piece of legislation to a house's floor plan. "A lot of the details of how the house actually looks are based upon regulations," he said.

Wice learned this first-hand before law school, when he worked as an assistant analyst at the Congressional Budget Office for two years. Wice participated as part of a team that broke down the Dodd-Frank Act. The team focused on portions of the act that dealt with private equity and hedge funds needing to register with the Securities and Exchange Commission (SEC), and one that increased disclosure requirements and consumer protections.

That experience laid the floor plan of Wice's interest in regulatory law, which deepened during his summer experience back at the SEC and through involvement with the ABA Section of Administrative Law and Regulatory Practice. "Also just my course work, taking classes especially on writing and securities litigation that deal with different types of regulatory requirements," he said.

As his third year winds down, Wice has been applying "broadly" and plans to take a government fellowship if he doesn't get a permanent position. "Administrative law isn't just in D.C.," he said. "It happens in all of the states. Anytime they try to take away somebody's medical license, that's an issue of law. Somebody trying to get a license to operate a business or get a liquor license, that's administrative law."

Wice sees work in regulatory law continuing to expand. "Especially with the Affordable Care Act and Dodd-Frank, there are a lot of new regulations, and regulatory attorneys will be needed to help people understand the laws and stay in compliance," he said.



Cedarbaum studied US history, worked for a member of the House of Representatives before law school, and clerked for a couple of judges afterward, including US Supreme Court Justice David Souter. He has served three stints at the US Department of Justice—as a Bristol Fellow in the Office of the Solicitor General, as an attorney-adviser in the Office of Legal Counsel, and most recently from 2009–2011 as deputy assistant attorney general, a political appointment. He also spent a year working for the chief judge of the International Criminal Tribunal for the former Yugoslavia.

"Many of the issues I worked on at the Office of Legal Counsel were about the scope of the power of government agencies. I fell in love with those issues," Cedarbaum said. "Demand for regulatory lawyers tends to wax and wane with the degree of government activism. When Congress is passing new laws or regulatory agencies are undertaking increased enforcement efforts, there will be more demand for regulatory lawyers."

Although Congress has passed little major legislation the past few years,

regulations under both ACA and the Dodd-Frank Wall Street Reform and Consumer Protection Act from 2010 have combined to keep regulatory lawyers quite busy, Cedarbaum said. Dodd-Frank created an entirely new regulatory agency, the Consumer Financial Protection Bureau, "and when was the last time we had a new federal regulatory agency created from scratch?" he said. "The Obama Administration has been relatively activist. In many regulatory agencies, there has been a push to become more active in the enforcement of existing laws."

Whether regulatory law continues to grow will depend upon the country's mood along with broader social and economic conditions, Cedarbaum predicts. "It depends on which party is in power, and it depends partly on what's happening in the country in general—whether voters and elected officials think a regulatory response is needed to problems the country is confronting." ■

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