

# State Law Delegating Power to Healthcare Ethics Committees

Thaddeus Mason Pope, J.D., Ph.D.  
ASBH Annual Meeting  
Minneapolis, MN • October 16, 2011

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# Power of ethics committees

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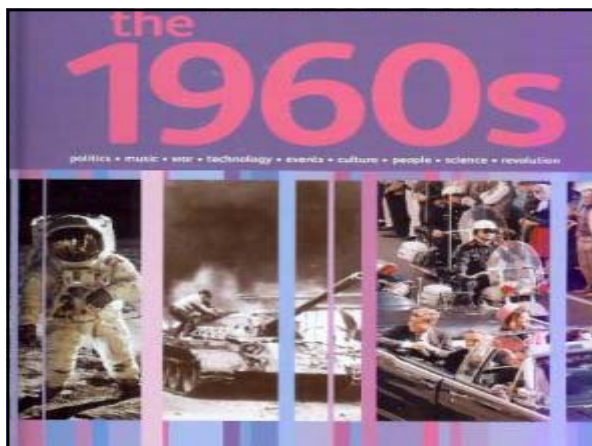
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**Gatekeepers**

**Decision-makers**

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Therapeutic abortion

Dialysis allocation

IRB

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	Result Optional	Result Mandatory
Use Optional	1	3
Use Mandatory	2	4

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***De facto***  
**authority**

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“Lumping”  
Resource barriers  
Judicial deference

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***De jure***  
**authority**

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“function . . . **make decisions** regarding ethical questions, including . . . life-sustaining therapy”

*Haw. Rev. Code 663-1.7(a)*

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**Adjudicator**  
**Gatekeeper**

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**Adjudicator**

Futility dispute

Surrogate disputes

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**Role 1:  
Adjudicate  
Futility Disputes**

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You may stop LST  
for **any reason** --  
if your ethics  
committee agrees

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“not civilly or  
criminally liable  
or subject to . . .  
disciplinary action”

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No judicial review  
HEC = forum of  
last resort

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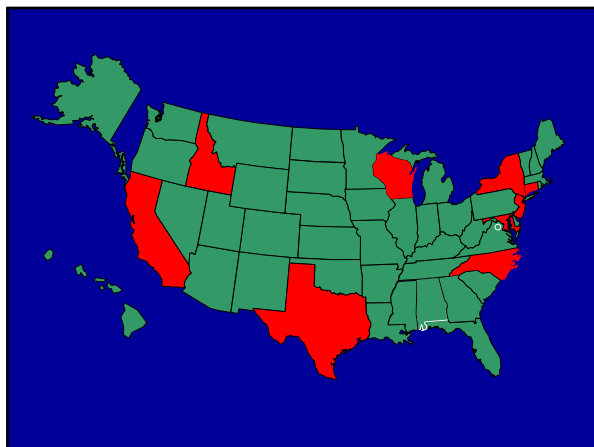
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# Role 2:

Adjudicate  
Surrogate  
Disputes

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Spouse

Adult child

Parent

Adult sibling

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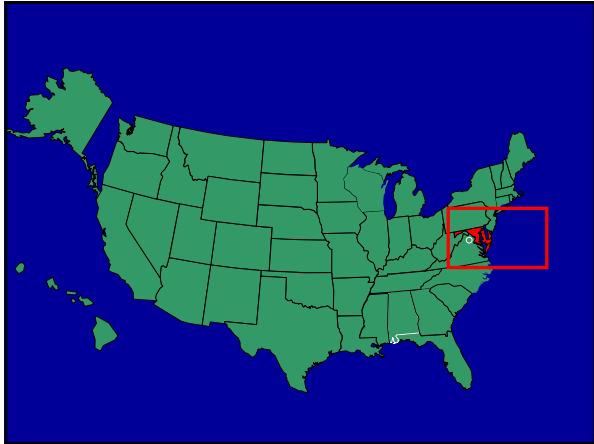
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**Gatekeeper**  
Unbefriended  
LST decisions

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**Role 3:  
Gatekeeper for  
“un-befriended”**

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Attending = surrogate

HEC = check

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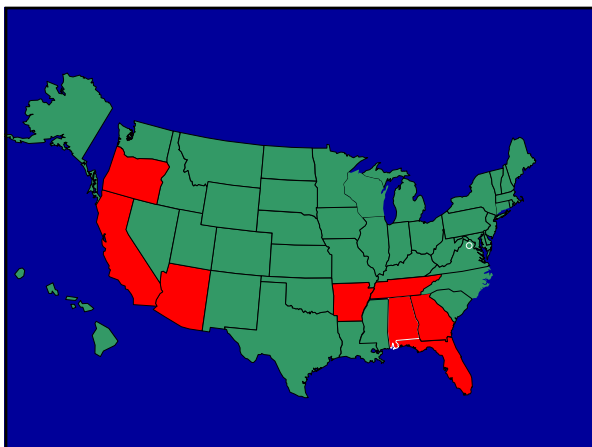
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**Role 4:**  
**Gatekeeper for**  
**LST Decisions**

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**Competence  
of ethics  
committees**

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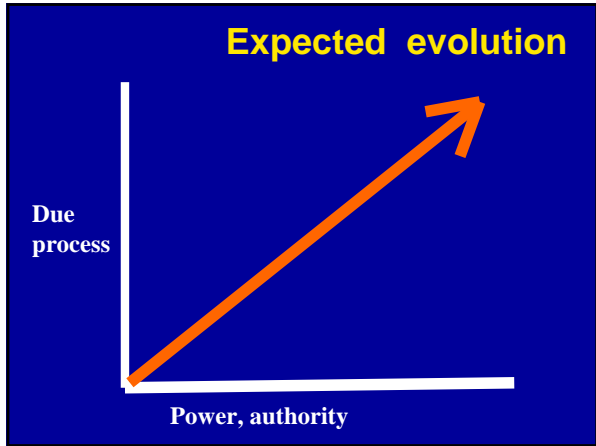
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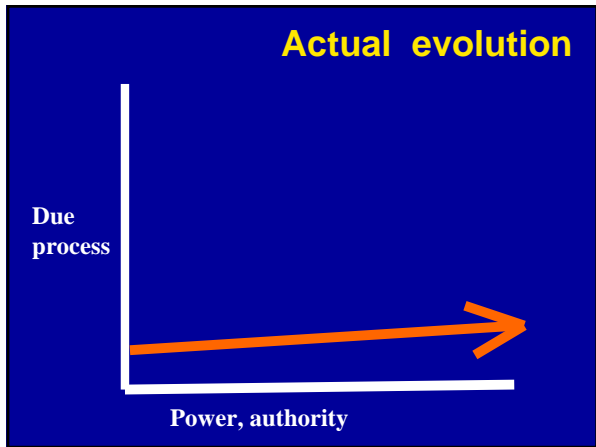
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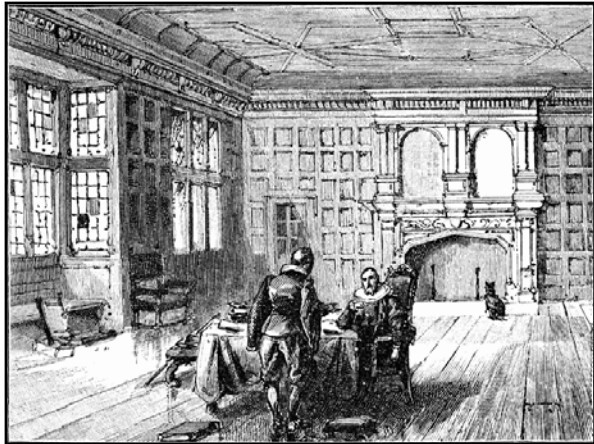
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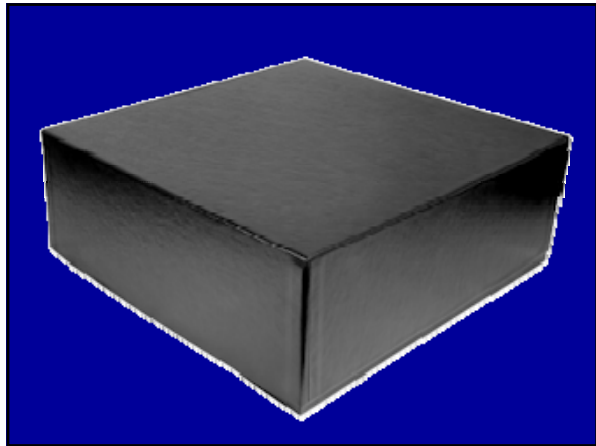
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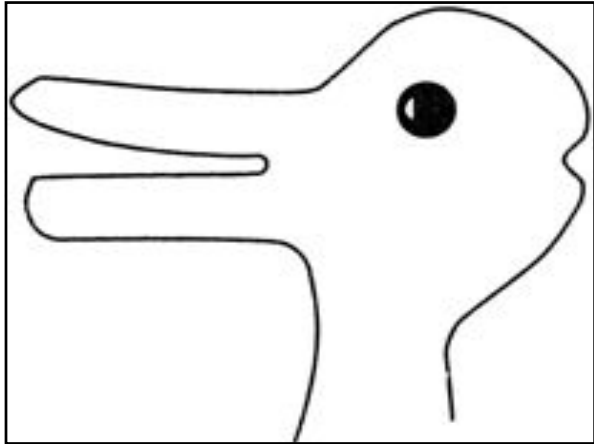
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**Minimize  
4 risks**

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HEC do more  
  
More risk of error

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# Corruption

self-interest

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# Carelessness

ill-considered

ill-supported

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# Bias

disparaging to  
certain class

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# Arbitrariness

Abuse of process  
norms like notice

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University**

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