

**The Unbefriended Must  
Not Be Unprotected:  
Organizational & Clinical  
Management of Patients  
without Surrogates**

ASBH Annual Meeting, Houston, TX  
October 22, 2015

**Thaddeus Mason Pope, J.D., Ph.D.**  
Hamline University Health Law Institute

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**3 panelists**

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**1. Problem  
nature &  
scope**

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## 2. **Solution:** University Hospitals

Barbara J. Daly Ph.D., R.N., F.A.A.N

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## 3. **Solution:** Cleveland Clinic

Martin Smith, STD

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## **Terminology**

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Unbefriended  
Unrepresented  
Adult orphan

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Patient w/o proxy  
Incapacitated &  
alone

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**Definition**

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**3** conditions

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**1**

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Lack  
capacity

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No available,  
applicable  
AD or POLST

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No reasonably  
available  
authorized  
surrogate

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No AD / DPAHC  
**appointed**  
  
Or named agent  
not **available**

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Nobody available  
on default  
surrogate  
priority list

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No reasonably  
available  
guardian /  
conservator

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**Nobody** to  
consent to  
treatment

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**Big  
problem**

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**3 - 4%**  
nursing  
home  
population

**Incapacitated and Alone:**  
Health Care Decision-Making  
for the Unbefriended Elderly

Naomi Karp and Erica Wood



American Bar Association  
Commission on Law and Aging

July 2003

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**> 50,000**

23

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**16% ICU  
admits**

Decisions to limit life-sustaining treatment for critically ill patients who lack both decision-making capacity and surrogate decision-makers<sup>27</sup>

Douglas B. White, MD; J. Randall Curtis, MD, MPH; Bernard Lo, MD; John M. Luce, MD

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# 5% ICU deaths

ARTICLE | Annals of Internal Medicine

Life Support for Patients without a Surrogate Decision Maker:  
Who Decides?

Douglas B. White, MD, MAs, J. Randall Curtis, MD, MPH; Leslie E. Wolf, JD, MPH; Thomas J. Prendergast, MD;  
Doreen B. Tachman, MD, PhD; Gary Komiyoshi, MD; Frank Acosta, DO; Bernard Lo, MD; and John A. Luce, MD

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# > 25,000

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# Growing problem

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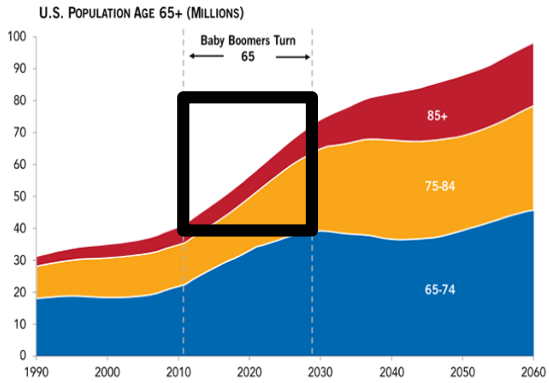
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SOURCE: U.S. Census Bureau, National Intersectal Estimates, and 2014 National Population Projections, December 2014. Compiled by PCPF.  
© 2015 Peter G. Peterson Foundation PCPF.ORG

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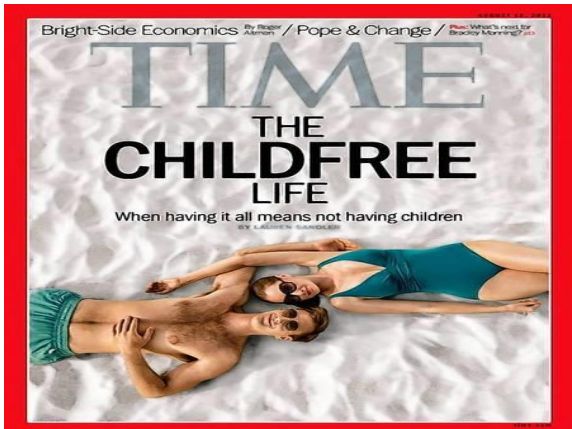
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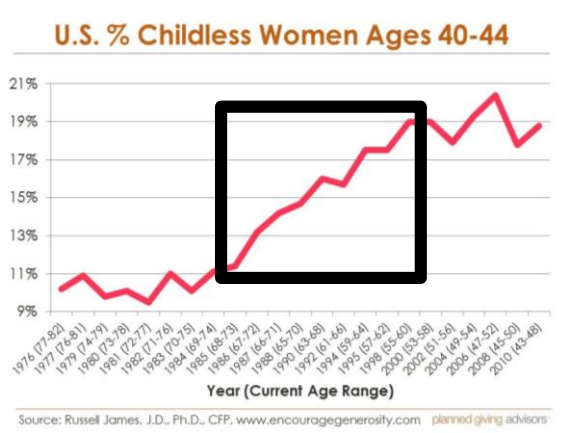
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Source: Russell James, J.D., Ph.D., CFP, www.encouragegenerosity.com planned giving advisors

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# Law as causal factor

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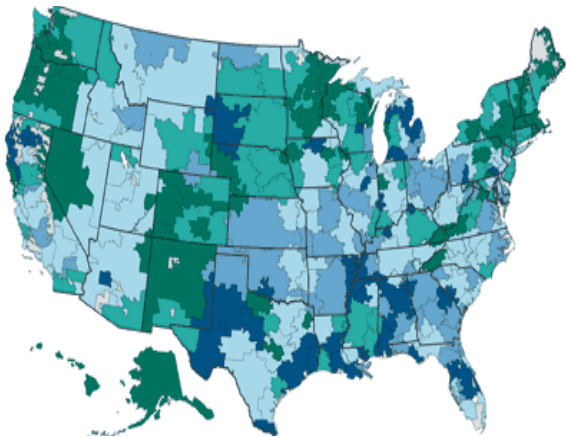
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# Scope of default surrogate lists

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Spouse  
Adult child  
Parent  
Adult sibling  
Grandparent / adult grandchild  
Aunt /uncle, niece / nephew  
Adult cousin  
**Close friend**

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Existence of  
public guardian  
system

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Slow  
Expensive

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# Ethical Problems

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Nobody to authorize treatment

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**3** ways to respond

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**No**  
treatment

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**Wait** until  
emergency  
(implied  
consent)

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Physician acts  
**without**  
consent

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Most  
common  
approach

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Bias

COI

Careless

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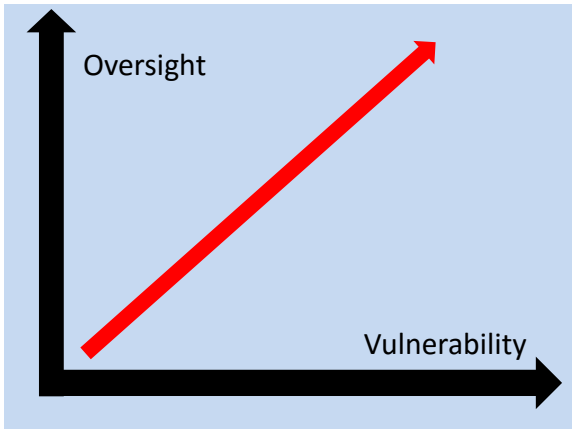
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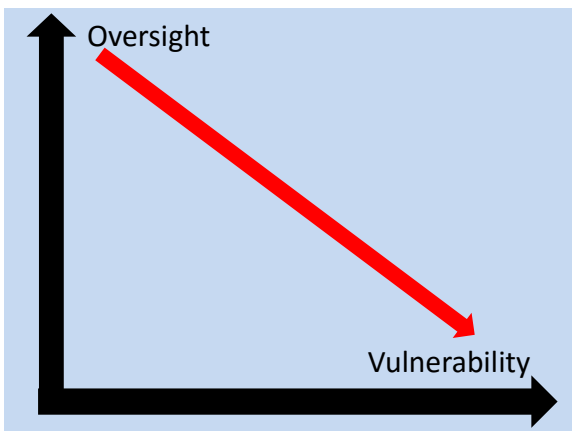
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~~Under treatment~~

~~Solo physician~~

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Scrutiny

Vetting

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**References**

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TM Pope, "Legal Briefing: Adult Orphans and the Unbefriended: Making Medical Decisions for Unrepresented Patients without Surrogates," *Journal of Clinical Ethics* 2015; 26(2): 180-88.

TM Pope, "Making Medical Decisions for Patients without Surrogates" *New England Journal of Medicine* 2013; 369(21): 1976-78.

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TM Pope & T Sellers, "Legal Briefing: the Unbefriended - Making Healthcare Decisions for Patients without Proxies – Part 1" *Journal of Clinical Ethics* 2012; 23(1): 84-96.

TM Pope & T Sellers, "Legal Briefing: the Unbefriended - Making Healthcare Decisions for Patients without Proxies – Part 2" *Journal of Clinical Ethics* 2012; 23(2): 177-92.

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