State Law Delegating Power to Healthcare Ethics Committees

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Power of ethics committees
Gatekeepers
Decision-makers

Therapeutic abortion
Dialysis allocation
IRB
<table>
<thead>
<tr>
<th>Use</th>
<th>Result Optional</th>
<th>Result Mandatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Mandatory</td>
<td>2</td>
<td>4</td>
</tr>
</tbody>
</table>

**De facto authority**

“Lumping”

Resource barriers

Judicial deference
De jure authority
“function . . . make decisions regarding ethical questions, including . . . life-sustaining therapy”

Haw. Rev. Code 663-1.7(a)

Adjudicator

Gatekeeper

Adjudicator

Futility dispute

Surrogate disputes
Role 1: Adjudicate Futility Disputes

You may stop LST for any reason -- if your ethics committee agrees.
“not civilly or criminally liable or subject to . . . disciplinary action”

No judicial review

HEC = forum of last resort
Role 2: Adjudicate Surrogate Disputes

Spouse Adult child Parent Adult sibling
Gatekeeper

Unbefriended

LST decisions
Role 3: Gatekeeper for “un-befriended”

Attending = surrogate

HEC = check
HEC = surrogate
S.B. 579 (2011)

Role 4:
Gatekeeper for LST Decisions
Competence of ethics committees
Expected evolution vs. Actual evolution.
Minimize 4 risks

HEC do more
More risk of error
Corruption
self-interest

Carelessness
ill-considered
ill-supported

Bias
disparaging to
certain class
Arbitrariness

Abuse of process
norms like notice