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Melinda A. Pouncey, MD Memorial Lectureship October 2, 2014

Grand Rounds

*"The Child as Donor and Recipient: Ethical and
Policy Issues in Pediatric Solid Transplantation"*

7:30-8:30 am

Monroe Hall

Resident and Student Presentations

9:30-11:15 am

Bowen Room

Pouncey Lecture

*"Ethical and Policy Issues in Newborn Screening:
Case Studies from Around the World"*

12:00-1:00 pm

Brent House Burns and Caldwell Rooms



Lainie Friedman Ross, MD, PhD

Carolyn and Matthew Bucksbaum Professor of Clinical Ethics
Professor, Departments of Pediatrics, Medicine, and Surgery
Co-Director, Institute for Translational Medicine
Associate Director, MacLean Center for Clinical Medical
Ethics, University of Chicago

Disclosure Statement

Lainie Friedman Ross and my spouse or partner have no
actual or potential conflict of interest in relation to this
program or presentation.

Accreditation

The Ochsner Clinic Foundation is accredited by the
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The Ochsner Clinic Foundation designates this live activity
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Annual Bioethics Grand Rounds November 25, 2014

Louisiana Law Changes in 2014: Who Can Consent When a Patient Is Not Able to Consent?

12:00-1:00 pm • Monroe Hall

Lunch is provided

Teleconferenced to all available sites

A [new law in Louisiana](#) effective 8/1/2014 adds additional categories of people who can provide consent for patients when they cannot consent for themselves. A broad area that affects all physicians is the addition of an adult friend or the attending him/herself when all other categories are exhausted, but specific requirements must be met. A [new narrow restriction](#) that will rarely be applicable was created for pregnant women past 20 weeks in end-of-life situations.



Shelley Sullivan, Esq. is a New Orleans native and was a law clerk to the Honorable Edith Brown Clement, Circuit Judge for the US Court of Appeals for the Fifth Circuit. After finishing her clerkship, Shelley practiced at Jones Walker in the Labor and Employment Section. She joined Ochsner in September 2006. Shelley graduated cum laude from the University of Notre Dame and Order of the Coif from Louisiana State University's Paul M. Hebert School of Law.



Dr. V. Theodore Barnett received his MD from University of Illinois College of Medicine in Chicago in 1985. He completed his internal medicine residency at the Presbyterian-University of Pennsylvania Medical Center in Philadelphia followed by a pulmonary/critical care fellowship at the University of Chicago Hospitals. Dr. Barnett is board certified in pulmonary disease, critical care medicine, and hospice and palliative care. Prior to coming to Ochsner, Dr. Barnett worked in various capacities in intensive care medicine in Illinois, Hawaii, Wisconsin, and Florida. Dr. Barnett's role at Ochsner is Director, Medical Critical Care.

Disclosure Statement

Shelley Sullivan and V. Theodore Barnett and their spouses or partners have no actual or potential conflict of interest in relation to this program or presentation.

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Navigating the New Louisiana Consent Law: Obtaining Consent When a Patient Is No Longer Competent

Christine Guillory, Esq.

On August 1, 2014, the Louisiana Legislature's changes to the consent law went into effect. You may be impacted by the change when your patient is not able to give consent for himself/herself. Most providers are familiar with the historic hierarchy for consent in Louisiana, and, with respect to the order of that hierarchy, the law has not changed:

- a competent adult for him or herself
- a curator or tutor appointed by the court
- an individual with medical power of attorney
- spouse
- adult child(ren) – as a class
- sibling(s) – as a class

But what happens if there is no one in the hierarchy? On occasion, patients arrive from a facility without information regarding next of kin. Or a patient has a sudden, sharp decline in mental status, but lived alone and seems to have no living relatives. What then?

A Little Help from Our Friends

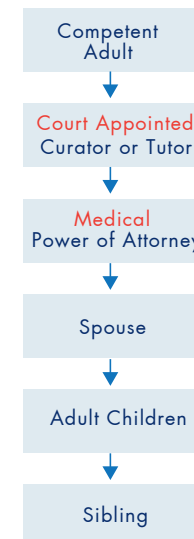
Previously, the law suggested providers seek ascendants and descendants and went no further. The result was often a lengthy research process by the care team that could find no one to give consent and sometimes required expensive legal proceedings to have the court appoint a representative—a process that most judges were reluctant to complete in favor of a continued search for relatives.

Now, after determining that no persons are available or competent to provide consent, Louisiana law recognizes one additional category to whom providers may look for consent: an adult friend. Under the new law, “[u]pon the inability of any adult to consent for himself and in the absence of any competent person in the hierarchy, an adult friend of the patient may give consent by signing and dating an acknowledgment form” for placement in the patient’s records certifying that he or she meets the appropriate criteria (La. R.S. 40:1299.53).

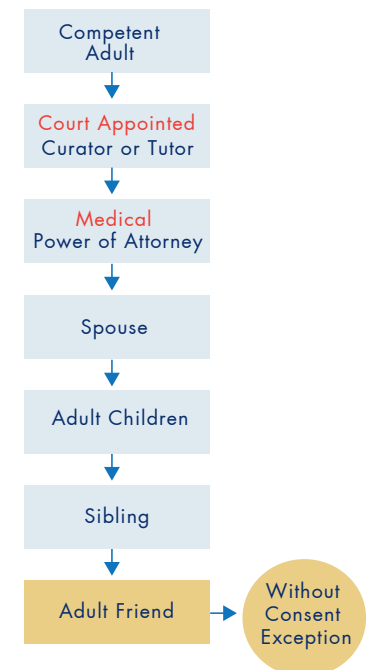
What Is an Adult Friend?

According to the statute, an individual who meets the “appropriate criteria” to be an adult friend is an adult who has exhibited special care and concern for the patient, who is generally familiar with the patient’s healthcare views and desires, and who is willing and able to become involved in the patient’s healthcare decisions and to act in the patient’s best interest.

Hierarchy prior to August 1, 2014



Hierarchy since August 1, 2014



As a practical matter, the adult friend may be a stepchild who was never adopted or a domestic partner or a neighbor who has cared for the patient. Remember to consult the prior categories of the hierarchy first, but know that an alternative is available.

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MDs Proceeding Without Consent

The new law goes further, contemplating scenarios in which the patient has no relative or friend who can assist in determining his/her wishes and/or provide legal consent. If there is no friend or family, the patient's attending physician has the discretion to provide or perform any surgical or medical treatment or procedures, including performing an autopsy and making decisions regarding continued services needed by the patient, including but not limited to approving the placement or transfer of the patient to another facility.

To proceed without consent, the attending physician must

• Document, Document, Document

At a minimum, the attending physician must note the following in the medical record:

- The facts that establish what medical decisions need to be made and why those decisions are needed
- The steps taken to obtain consent, including specific inquiries to the Louisiana Secretary of State Living Will Registry, the patient's primary care provider, and any facility in which the patient has resided in the last 180 days, as well as documentation that no advance directive or other information is available
- The attempts to contact individuals potentially authorized, listed in the patient's records, or obtained through efforts described above, and to justify that none of them is reasonably available, documentation of how the physician or representative attempted to contact them, the date the physician or representative attempted to contact them, and the result of that attempt

• Confirm the Condition

The attending physician is required to obtain confirmation from another physician, preferably the patient's primary care provider, of the patient's condition and "the medical necessity for such action as is appropriate and consistent with the patient's condition and which cannot be omitted without adversely affecting the patient's condition or the quality of medical care rendered." The confirming physician is required to personally examine the patient and document his/her assessment, findings, and recommendations in the chart prior to the proposed treatment or procedure being performed.

Remember, the provider still cannot give consent for a procedure. Louisiana law has created this limited exception in order to proceed without consent.

• Other Reminders and Considerations

What about emergencies?

This new legislation does not impact emergency care and treatment, for which consent is implied (La. R.S. 40:1299.54).

Who must have the consent conversation?

In addition to meeting specific legal requirements and other regulatory guidelines, informed consent from the patient's perspective is more than just a piece of paper. Informed consent is part of a communication process by which the patient (or his/her representative) is made aware of his/her medical condition and is able to discuss the options available to achieve the best outcome. For the patient, this may be new and unfamiliar territory. For providers, this is likely part of a daily routine. The consent process may require more time for the patient to

- allow the information he or she has learned to set in
- ask questions to clarify what is about take place and the risks and benefits
- consider the options or alternatives, the anticipated procedure, the prognosis, and other pertinent information

Distributing the informed consent form to the patient before the provider reaches him/her may help. This gives the patient an opportunity to review the form and get more information about the procedure once the physician arrives. A physician or provider who will, or is authorized to, perform the contemplated procedure must obtain the patient's consent (La. R.S. 40:1299.39.6 (P)).

The Take-Away

Proper consent = (1) consult the hierarchy, (2) friends may be able to help, (3) possibly proceed without consent after meeting statutory requirements, (4) implied for emergencies, and (5) consent is a conversation, not a form.



Ochsner's Annual Bioethics Grand Rounds

Joseph Breault, MD, Chair, Bioethics Committee

The Annual Bioethics Grand Rounds in Monroe Hall is sponsored by the Medical Staff's Bioethics Committee to help educate the medical staff in medical ethics issues and new legal developments that affect ethical clinical decision-making by bringing national leaders in medical ethics to Ochsner.

In 2010, Ochsner kicked off its Bioethics Grand Rounds with **Katy Butler** sharing her story, "What Broke My Father's Heart," published in *The New York Times Magazine*. The fourth-most accessed article in the magazine in 12 months, it was named a "notable narrative" by the Nieman Foundation at Harvard, was selected by **Edwidge Danticat** for inclusion in *Best American Essays, 2011*, and was selected by **Rebecca Skloot** for *The Best American Science Writing 2011*. Butler's 2010 memoir, *My Father's Broken Heart*, explores the moral quandaries created by advanced medical technology near the end of life. [Her website](#) at has a helpful section on SLOW MEDICINE. Her new book is *Knocking on Heaven's Door: The Path to a Better Way of Death*. **Dr. Freddy Abi-Samra** followed the Grand Rounds with a review of the ethics of turning off pacemakers/defibrillators at patient request. On the Ochsner network, [click here](#) to access a video of Butler's presentation.

In 2011, **Jeffrey Bishop, MD, PhD** spoke on "Reviving the Conversation around CPR/DNR." He is the director of the Albert Gnaegi Center for Health Care Ethics at St. Louis University and the Tenet Chair of Health Care Ethics. Before joining the Gnaegi Center, Bishop served on the faculties of Vanderbilt University, the Peninsula College of Medicine and Dentistry at the Universities of Exeter and Plymouth in the United Kingdom, and the University of Texas Southwestern Medical Center in Dallas. Bishop holds a PhD in philosophy. His presentation topic was published in *The American Journal of Bioethics*. On the Ochsner network, [click here](#) to access a video of Bishop's presentation.

In 2012, **Erik Fromme, MD**, associate professor of medicine in the Division of Hematology & Medical Oncology and assistant director of the Center for Ethics in Health Care at Oregon Health & Science University spoke on "Approaching Patients and Family Members Who Hope for a Miracle." His presentation topic was published in the *Journal of Pain and Symptom Management*. On the Ochsner network, [click here](#) to access a video of Fromme's presentation.

In 2013, **Tom Mayo, JD**, associate professor at SMU/Dedman School of Law and adjunct associate professor of internal medicine at the University of Texas Southwestern Medical School spoke on "Medical Futility: Practical and Ethical Considerations." On the Ochsner network, [click here](#) to access a video of Mayo's presentation.

In 2014, because of new state legislation affecting who can consent, the presentation will be by **Shelley Sullivan, JD** and others on these changes and their impact on ethical decision-making.

In 2015, **Dan Sulmasy, MD, PhD** will speak on end-of-life issues—focusing on spirituality, ethics, and surrogate decision-making. Sulmasy is professor of Medicine and the Divinity School at the University of Chicago and associate director of the MacLean Center for Clinical Medical Ethics. He is a member of the Presidential Commission for the Study of Bioethical Issues. An ethicist and a practicing physician, Sulmasy studies end-of-life decision-making, ethics education, and spirituality in medicine.

Funding for the Annual Bioethics Grand Rounds from its inception to the present was generously provided by the Academic Division with the approval of **Dr. William Pinsky**. In the future, Bioethics Grand Rounds will be funded by the Medical Staff Office as part of the function of the Bioethics Committee, a Medical Staff committee. The travel costs, honorarium, lunch at the lecture, and other costs usually total more than \$3,000. The Bioethics Educational Endowment Fund was established a few years ago to help fund the lecture and other bioethics educational activities in perpetuity. Approximately \$13,000 is in the fund, and 5%-6% is allowed to be withdrawn annually. Consequently, the fund can provide about one-fourth of the annual lecture cost. We ask all to consider designating part of your annual giving for the Bioethics Educational Endowment Fund; your giving might include the donation of up to 3 GPT days. Having a strong bioethics education program at Ochsner is critical to our mission, and as healthcare margins get tighter, it may be increasingly difficult to fund these programs through normal operating revenue. Your generous support of the Bioethics Educational Endowment Fund will fund national bioethics leaders coming to Ochsner to present important insights into ethical decision-making to the medical staff and to meet with key Ochsner leaders, giving us insights to improve and strengthen our ethics programs.

If you have recommendations for speakers or topics, please contact the Medical Staff Office at medicalstaffadmin@ochsner.org. All suggestions will be passed on to the Bioethics Committee.

Bioethics Resources *for You***How to Request a Bioethics Consult at Any Ochsner Facility**

- Request a consult online - <http://academics.ochsner.org/bioethicsform.aspx>
- Call an Ochsner Chaplain 504-842-3286
- Call Risk Management 504-842-4003
- Contact your OMC local bioethics coordinator

Any Clinic	Contact Chaplain's Office
OMC-Eastbank	Contact Chaplain's Office
OMC-Westbank	Contact Chaplain's Office
OMC-Kenner	Dawn Puente, MD
OMC-Baptist	Gretchen Ulfers, MD
OMC-BR	Ralph Dauterive, MD
OMC-St. Anne's	Marsha Arabie, RN
OMC-Elmwood	Contact Chaplain's Office
OMC-Slidell	James Newcomb, MD

"...most hospitals in the USA provide clinical ethics consultation that is mainly due to the requirement of The Joint Commission for Accreditation of Healthcare Organizations—in 2007 renamed the Joint Commission—that accredited hospitals must have a method for addressing ethical issues that arise." From <http://www.iep.utm.edu/bioethic/>

Bioethics Q&A**What is a bioethics consult?**

- Medical Ethics Website <http://academics.ochsner.org/bioethics.aspx>
- Bioethics Consultations and Resources <http://www.ochsnerjournal.org/doi/pdf/10.1043/1524-5012-11.4.357>

What is sometimes helpful prior to a bioethics consult?

- Asking the chaplain to come visit
- Holding a family conference <http://www.atsjournals.org/doi/pdf/10.1164/rccm.2501004>
- Requesting a palliative care consult <http://ochweb/page.cfm?id=2429>
- Having a discussion with Risk Management <http://ochweb/page.cfm?id=3325>

Bioethics Education Fund

When a bioethics consult is called, the expectation is that those providing services are well trained, not just people of good will. This training is the responsibility of the Bioethics Committee. Please support the committee's educational work by donating to the Bioethics Education Fund - Endowed, managed by the Philanthropy Department as fund #3804126. In Lawson, employees can select the Bioethics Education Fund in the dropdown box during the annual giving campaign, and anyone can click the Donate Now button at www.ochsner.org/lp/bioethicsfund/. Every donation, however small, does great good and is used to build an endowment fund to permanently support bioethics educational programs at Ochsner.

End-of-Life Resources

- **5 Wishes** <http://academics.ochsner.org/bioethicsdyn.aspx?id=54656>
- **Advance Directives, Living Wills, & Healthcare Power of Attorney** <http://ochweb/page.cfm?id=3919> scroll down to Miscellaneous Forms
- **Palliative Care** <http://ochweb/page.cfm?id=2429>
- **State Living Will Declarations** <http://www.sos.la.gov/OurOffice/EndOfLifeRegistries/Pages/default.aspx>
- **UpToDate: Ethical Issues Near the End of Life** <http://www.uptodate.com/contents/ethical-issues-near-the-end-of-life>
- **Katy Butler: Slow Medicine** <http://katybutler.com/site/slow-medicine/>
- **LaPOST: Handbook for Health Care Professionals** <http://lhcf.org/images/stories/LaPOST/LaPOST-Handbook-for-Health-Care-Professionals-2013.pdf>
- **LaPOST: State Website** <https://lhcf.org/lapost-home>
- **LaPOST video: Using the LaPOST Document to Improve Advance Care Planning (intranet only)** <http://mediasite.ochsner.org/mediasite50/Viewer/?peid=b54700807b474e1e8fe96113ca985e4b>
- **Respecting Choices Training** http://respectingchoices.org/training_certification

Bioethics Education Program

- **Annual Clinical Ethics Symposium** - Saturday, May 9, 2015
- **Bioethics Website (consults)** - <http://academics.ochsner.org/bioethics.aspx>
- **Bioethics Website (resources)** - <http://ochsner.org/bioethics>
- **Quarterly Bioethics Newsletter** - <http://ochsner.org/bioethics>
- **The Ochsner Journal Bioethics column** - <http://www.ochsnerjournal.org>
- **Schwartz Rounds**