



# 2026 PCRS ANNUAL MEETING

REPRODUCTIVE FRONTIERS: BRIDGING BIOLOGY,  
PRACTICE, AND POSSIBILITY

**MARCH 18-22 | RANCHO MIRAGE, CA**



PACIFIC COAST  
REPRODUCTIVE  
SOCIETY

# Jones Case Rounds: Facing Challenging Inter-Disciplinary Issues



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# Disclosure Slide

- Neither I nor members of my immediate family have any actual or potential financial interests to disclose relating to the content of this presentation.

# Needs Assessment Statement and Expected Learning Outcomes

At the conclusion of this presentation, attendees should be able to:

1. Demonstrate a strong understanding of the underlying Bioethics and Legal principles applicable to their REI practices.
2. Recognize and apply inter-professional insights and awareness to their treatment of patients and their family members.
3. Better manage, respond to, and develop protocols to address novel ART scenarios resulting in a reduction in legal vulnerabilities for both ART professionals and patients.



# Welcome to (a mini) Jones Case Rounds

## Jones Rounds®: at the intersection of Reproductive Medicine, Law & Ethics

An inter-disciplinary educational program  
in honor & in furtherance of the legacy of Howard W. Jones, Jr. (1910-2015)

*“Two roads diverged in the woods... & I ---  
I took the path less travelled by,  
And that has made all the difference...” \**

*\*From “The Road Not Taken,” by Robert Frost (1916)*

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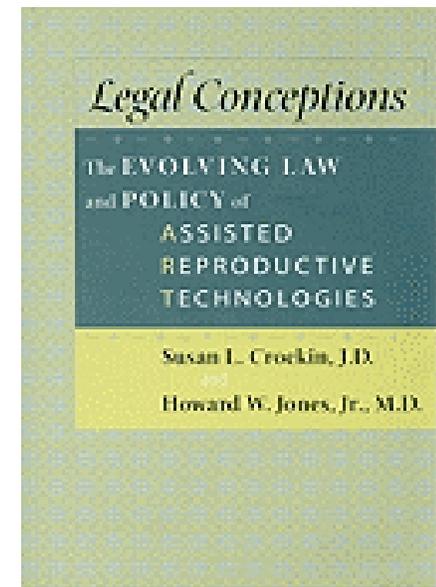
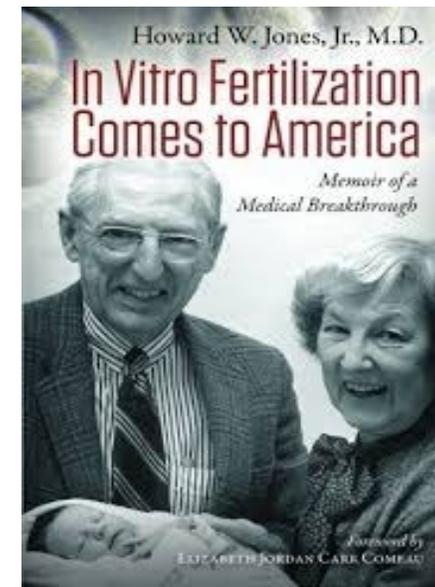
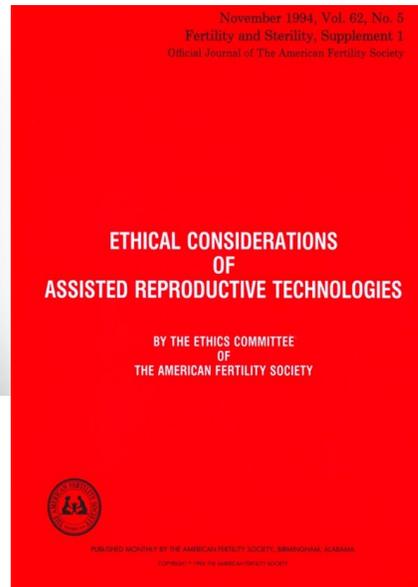
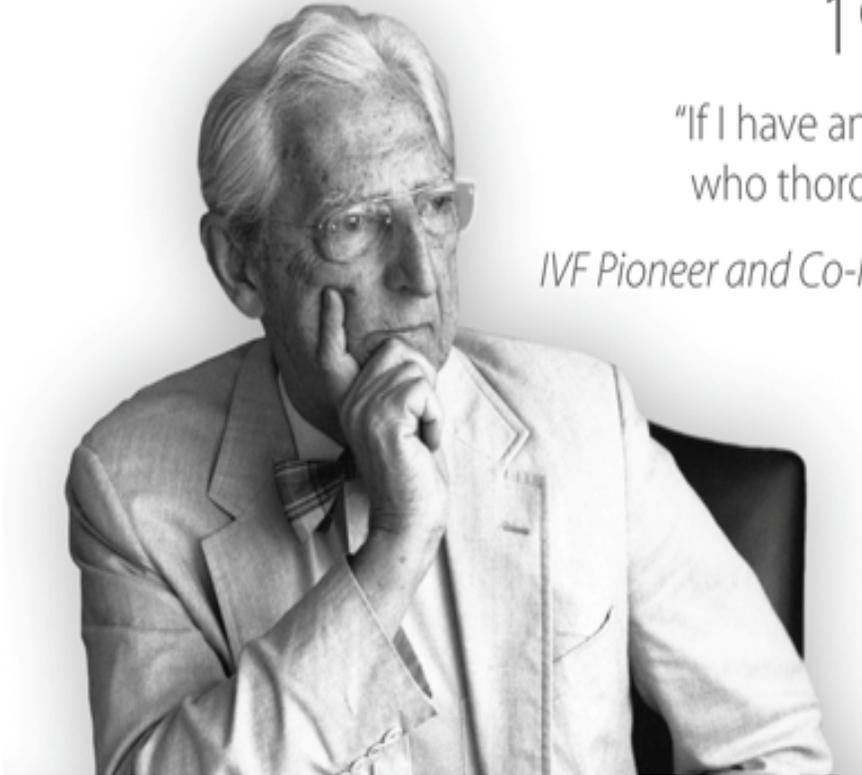


# A medical pioneer & ethical visionary who always believed in learning through dialogue

## Howard Jones Jr., MD 1910-2015

"If I have any legacy, it is of someone who thoroughly enjoyed his work."

*IVF Pioneer and Co-Founder of the EVMS Jones Institute*



# Jones Rounds: Helping Create Toolboxes to Meet Complex ART Issues



- Grand Rds: Address emerging legal, ethical, medical issues
- Case Rds: Interactive complex case study w/1-3 programs
  - Introductory presentation on foundational ART ethical & legal principles
  - The Case Study:
    - Structured breakouts consider 1 participant's perspectives (emotions & interests); with worksheet, moderator, note-taker
    - Share out each group's findings > Full group discussion
  - Presentation & analysis of relevant legal precedent
  - Full group discussion & Q&A
  - Wrap-up & Take-Aways/"Tools"



# Today's mini-Jones Case Rounds

## A few case studies: speed dating!

- Posthumous reproduction- access, use & parentage \*
- Fertility preservation- embryo law updates & issues
- Interstate surrogacy concerns: new red-blue states challenges
- \*Stay tuned: Embryo Mix-Ups/Wrong-embryo-transfer

# Law 101:

## A *very* brief “Level-Set” on Laws Impacting the ARTS

*Post-Dobbs*, no Constitutionally protected right to abortion

- Leaves states free to set their own restrictions or protections
- Need not follow any other states
- Raises a myriad of new Qs ~ extra-territoriality, right-to-travel, over-reach?

New restrictive abortion & Reproductive Rights laws? (Sat. speaker)

- “RRM” initiatives (AR and others)
- “Personhood” laws: “Life begins at fertilization”?
- “TRIP” laws: including registries for embryo “deaths”
- “Blue” State protections for IVF/ART?
- Federal efforts ongoing in every direction

“ART” Law Impacts? Many more questions than answers...

- If IVF embryos = “persons,” impacts on PT. decision-making, discard, testing..?
- Is the historical FE balancing test “right to/not to reproduce” going/gone?

# Speed Date Case Study #1: Posthumous Reproduction

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## Meet Peter Zhu (In the Matter of Zhu, NY 2019)



- 21-Year-Old West Point Cadet
- After tragic ski accident, on life support
- Single, no will or testamentary documents
- Parents ask Court to authorize sperm retrieval, storage & use
- Parents advise Court:
  - Peter always wanted a large family
  - He was their only child
  - Want option for child/heir w/surrogate
  - How should/does the Court rule?
    - Why?

# Time to Get to Work- “Breakouts”

- Peter’s mother & father’s feelings? Senses? Interests?  
Conflicts, if any? Duties, if any?
- Peter’s “feelings”? Interests?  
Conflicts, if any? Duties, if any?

# Murky Legal Waters for Posthumous Use & Extraction: How would you decide?

- ***Matter of Zhu (NY Sup. Ct. 2019): 21 YO Cadet on life support***
  - Parents ask court to allow extraction, use sperm w/surrogate
- ***In re Estate of Kievernagel (CA App. 2008): H killed***
  - Married couple undergoing IVF treatment; H killed in helicopter accident
  - Wife seeks to use stored sperm, can she? What do you want to know?
- ***Robertson v. Saadat (CA App.2020)***
  - 29 YO Man with Marfan Syndrome placed on life support after stroke
  - Can widow extract & later use his sperm to attempt a pregnancy?
  - What do you want to know?
  - (Both UCLA ethics committee & risk management approved)

# “PR”: An emerging area of Law, Policy & Ethics

## Legally Speaking: hard questions; little consensus

### 1. Access & Use: who, when, why/why not?

- Extraction &/or use of stored gametes or embryos
- Law & ASRM Ethics Opinion not always aligned

### 2. Who's a Legal Parent of any resulting child?

- *Astrue v. Capato* (US 2012): follow state law of decedent for inheritance
- State laws: both legislation & case law vary
  - RE: Deceased's consent, writing, evidence, length of time until use...

### 3: MD, JD professional duties: owed by & to whom?

## ASRM 2018 Opinion

### Posthumous retrieval and use of gametes or embryos: an Ethics Committee opinion

Ethics Committee of the American Society for Reproductive Medicine  
American Society for Reproductive Medicine, Birmingham, Alabama

Posthumous gamete (sperm or oocyte) retrieval or use for reproductive purposes is ethically justifiable if written documentation from the deceased authorizing the procedure is available. Retrieval of sperm or eggs does not commit a center to their later use for reproduction, but may be permissible under the circumstances outlined in this opinion. Embryo use is also justifiable with such documentation. In the absence of written documentation from the decedent, programs open to considering requests for posthumous use of embryos or gametes should only do so when such requests are initiated by the surviving spouse or partner. This document replaces the report of the same name, last published in 2012. (Fertil Steril® 2018; ■■■■■. ©2018 by American Society for Reproductive Medicine.)

Earn online CME credit related to this document at [www.asrm.org/elearn](http://www.asrm.org/elearn)

Discuss: You can discuss this article with its authors and other readers at <https://www.fertstertdialog.com/users/16110-fertility-and-sterility/posts/31815-26070>

#### KEY POINTS

- Posthumous gamete (sperm or oocyte) retrieval or use for reproductive purposes is ethically justifiable if written documentation from the deceased authorizing the procedure is available. Retrieval does not commit a center to their later use for reproduction, however. Embryo use is also justifiable with such documentation.
- Programs are not ethically obligated to participate in posthumous assisted reproduction. Programs should prior to and during any assistance with posthumous reproduction. Programs should be aware that state laws vary on whether posthumously conceived children are legally recognized as offspring of the deceased. State laws also may vary on the permissibility of posthumous retrieval or use of gametes or embryos. Clinics should be knowledgeable about and follow any applicable state laws, and should advise patients that they may wish to seek legal counsel regarding state law part, this is because of the importance to individuals of having and rearing their own children. The case of posthumous reproduction, however, is different in a number of respects. First, the deceased obviously will not be able to rear the child. This raises the question of whether an individual can have an interest in reproducing, even when rearing is not possible, and further, whether such an interest ought to be respected. Conversely, the possibility of posthumous reproduction remains a possibility, whether or not

# Take-Aways/“Tools” for Posthumous Extraction/Use

## Unique legal issues & questions



- For IVF patients, write it down! Include posthumous choices in dispositional agreement
- But often in ERs, where PT & preferences are unknown & time is of the essence
- Multiple Qs:
  - Who may request/authorize? What evidence of deceased’s intent required/wanted?
  - Cooperating programs/MDs/storage facilities in place?
  - Is litigation/Ct. order necessary? Helpful? Who are “necessary parties”? Indemnification instead sufficient (ask hospital counsel)?
  - Are eggs different? (NEJM 2010)
  - “Dead Dads”? Legal parent-child relationship complex, states differ, refer to a lawyer!
    - Even written prior instructions may not determine parentage
- Guidance/“Tools”:
  - Easier to “freeze the status quo” & defer use authorization (but be careful)
  - Advance protocols, consent forms, agreements will be very helpful
- And, collected data shows majority of extracted & stored sperm never used

# Speed Date Case Study #2: Oncofertility & Fertility Preservation

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# Meet Erika & Jason: with an Urgent FP Matter...



- Erika & Jason, both in their mid-30's, present to your IVF clinic as a married couple; currently residing in IL; Erika is from IL, Jason is from AL
- Referred by Erika's oncologist following her breast cancer diagnosis to discuss FP options before her imminent chemotherapy treatment
- They tell you they want to have at least 1 child & are seeking your advice on how to proceed
- Time is of the essence

# Time to Get to Work- “Breakouts”

- Erika: What is she feeling? hearing? thinking?  
What if any conflicts, duties to anyone does she have?
- Jason: What is he feeling? hearing? thinking?  
What if any conflicts, duties to anyone does he have?

# Selective Frozen Embryo Cases: Lessons Learned?

1. Davis v. Davis (TN 1992) seminal case; w/o agreement balancing rights test  
Follows AFS Ethics Committee def: deserving of special respect; may discard
2. McQueen v. Gadberry (MO App.Ct. 2016)
  - “Noah & Genesis”, GAL? Thomas More Society assistance
3. In re Marriage of Rooks (CO Sup.Ct. 2018; cert. denied)
  - Clinic agreement: “decide at divorce”; W argues FEs are human, SCOTUS must decide
4. Terrell v. Torres (AZ Sup.Ct. 2020; cert. denied)
  - All AZ courts find agreement to discard clear & reject W’s claim:
  - Legislature enacts new statute: “Award to spouse who intends to develop them to birth...”
    - Priority to genetic intended parent if used donor gametes
    - Other spouse has no parental responsibilities, unless agrees to them
  - **“Regardless of the couple’s agreement”** (2018 Ariz. Rev. Stat. § 25-318.03)

# Loeb v. Vergara (CA); Emma & Isabella v. Vergara (LA); CA again? (2014-2025)



**2014:** Loeb sues Vergara in CA over 2 female embryos, despite agreement only to use w/mutual agreement

**2018:** Embryos sue Sofia in LA to access their trust (“**juridical persons**” under LA statute)

**Eventually** Nick, Emma and Isabella all lose

**2024:** Sofia & Mike divorce (over issue of having a family)...

**2025:** The 2 female embryos remain still stored in a CA clinic’s storage facility

# 2024-25: Post-Dobbs Selective Divorcing Embryo Cases

## Any *New* Lessons Learned?

- 3 State Supreme CTs (MI, OH, TX) have refused to reconsider FE disputes where litigants raised anti-abortion developments
- **Markiewicz v. Markiewicz (MI 2025)**; declined after heard arguments:
  - Upheld intermediate court's award of remaining FE to ex-H to discard over W's desire to use (made w/donor egg from W's sister; couple had 4 children ages 4-9 at divorce)
  - **Lower Court:** *"...Well, there's an agreement to keep it in the game so to speak, to keep it viable, to kick the can down the road. So there's not an agreement at the time that it should either be used or not used. It's just a punt at the time."*
  - **Ct:** W/o valid existing agreement w/storage facility balancing of interests favored H's right not to use
  - **Lower Ct. analyzed Agreement:** *"...Well, there's an agreement to keep it in the game so to speak, to keep it viable, to kick the can down the road. So there's not an agreement at the time that it should either be used or not used. It's just a punt at the time. ...So I guess the long and short of it has to be there's not a meaningful valid agreement as to disposition of the embryo."*

# So, what happened to Erika & Jason?



- If they froze embryos & divorced 3 yrs. later?
  - And Erika still wants to use or discard them?
  - But Jason disagrees?
- In Alabama?
- In Illinois?
- Or in Connecticut...

# *Bilbao v. Goodwin*, 217 A.3d 977 (Conn. 2019)

- Divorcing couple's Dispositional Agreement: "discard" at divorce
  - H sought to enforce a change of mind, hoping to reconcile or donate
- Ct. refused; adopted K approach: found it honors couple's directives &
  - "...provide[s] practical certainty for clinics"
  - Reduces "likelihood of abandonment"
  - Ensures clinics' ability to "satisfy their ethical obligations"
- But Ct. explicitly noted it was not deciding whether:
  - A prior choice to procreate would be enforceable or against public policy
  - **W/o an agreement it would balance parties' interests [?]**
- **So... After a 2-year struggle, "Erika" "wins"...???**

# With egg freezing no longer experimental, recommend over FEs? Eggs v. Embryos- the debate

- **Pro-Embryo Arguments:** PGT; know what you have; respect spouses/partners
- **Pro-Egg Arguments:**
  - In many programs success rates are now similar
  - *Dobbs & LePage* have highlighted existing legal uncertainties
  - Autonomy & continuing legal inconsistencies surrounding IVF embryos are critical reasons to present option to all PTs
- **How to counsel?** It doesn't have to sound like, "in case you divorce..."
  - It's our standard protocol; less \$
  - Either of you could be hit by a bus?
  - "We'll call you tomorrow"
- **Q: Potential liability for failing to offer/recommend? Especially in today's legal environment!**

*When's the last time you asked a  
**male patient**  
if he preferred to freeze sperm or embryos?*

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# Managing IVF Embryos in today's uncertain world?



Establish & document clear protocols/choices for managing embryos, including FP

Always clarify-- & document-- any man's role: Partner/patient/donor/caring bystander?

Learn & keep updated on your state's law (but don't practice law w/o a license!), e.g.:

- NY law (2024): allows enforceable dispositional agreements that upon divorce (or 3 yrs. apart) couples can transfer sole legal control/parentage to 1 spouse
- Model UPA Law suggests allowing ex-spouse to relinquish parentage
- **LA nullifies & AZ law overrides dispositional agreement in favor of ex-spouse wanting to use**
- PTs may need home state legal counsel re: potential legal impacts (health, family, estate)

**IMO: Customize & use SART's 2 separate model forms: IC & Dispositional Agreement**

- Provides clarity, protects patients' intent, should reduce litigation & related delays
  - Dispositional documents are contracts (not consents) (but check local law!)
  - But query if they will be applied to procreation?
- Some IVF Clinics may be considering requiring court orders re: post-divorce use to extricate themselves from disputes – may protect clinics but not patients? Stockpiling FEs?

# Speed Date Case Study #3: Interstate Surrogacy in a post-Dobbs World?

# 3<sup>rd</sup> Party ART: 2 Legal Aspects Parentage Determination & Protecting all Participants



# Case Study: Interstate Surrogacy Arrangement

- Josh & Brian, married intended parents reside in MA
- Marie, married gestational surrogate/carrier, resides in TX
- Surrogacy match made & agreement written under MA law
  - All parties agree to pre-natal testing, termination or selective reduction if medical indication
  - GC agrees to travel to MA or elsewhere as needed for procedure
- 1<sup>st</sup> trimester screening reveals Trisomy 21 (Downs)
- Termination scheduled in MA
- Marie heads to the airport...



# Breakouts: Let's Look at the Parties & Interests?

- Marie?
- Josh & Brian?
- Anyone else?
  - Texas AG/TX Laws?
    - SB 8? [authorizes private citizens to sue someone who “aids & abets”]
    - Trigger Ban?
    - Penal code? [“individual” includes “unborn child” “from fertilization to birth”]

# Surrogacy arrangements-- what if...?

## Uthmeier v. GC, et. al. (pending Jan. 2026)

- French IPs, married male couple, embryo created w/1 man's sperm & donor egg
- Surrogacy w/married gestational carrier resides in Florida
- Baby born & placed with parents
- Ct. issues pre & post birth declaration of parentage & adoption, everybody happy?
- **Not quite:** FL AG has interceded, attempted to vacate orders & now motioned FL S. Ct for expedited hearing, arguing:
  - Surrogacy contract unenforceable; embryo treated like “chattel”
  - US & FL Constitutions require ‘best interest of the child’ determination
- Appellees (all parties) oppose, arguing:
  - Embryos/children not chattel & IVF clinics not modern plantations
  - No Constitutionally mandated “best interest of the child standard” exists/applies

# Interstate Surrogacy Today? Two Perspectives



# Interstate Surrogacy today? It truly takes an inter-professional (Blue?) Village



## Caution Patients and Call in the Lawyers!



# And a Jones Case Rounds Preview: Wrong-Embryo-Transfer

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# Embryo Mix-Ups (“wrong-embryo-transfer”)?

US NEWS

## Florida couple sues fertility clinic after alleged embryo mix-up results in birth of ‘non-Caucasian child’ not biologically theirs

By Richard Pollina

Published Jan. 30, 2026, 5:20 a.m. ET

- Couple froze/stored 3 embryos in 2020 w/Orlando clinic
- Transfer in 2025 resulted in 12/25 birth of child w/no DNA match
- Couple claim, despite loving & more than willing to raise the child, a legal & moral obligation to ID genetic parents
- Also seeking to determine where their embryos may be
- *“The lawsuit is seeking emergency court action to force the clinic to alert all affected patients, pay for widespread genetic testing, and disclose whether other families may have been impacted by the embryo mix-up.”*



# Our Goal: Practicing Safer ART Together

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# Acknowledgments

## Jones Rounds: Practicing safer ART together

### Jones Rounds™

Grand Rounds & Case Based Didactics  
Modules at the intersection of Reproductive  
Medicine, Law & Ethics

In honor of Howard W. Jones Jr. (1910-  
2015)

A medical pioneer & ethical visionary who  
always believed in learning through  
dialogue

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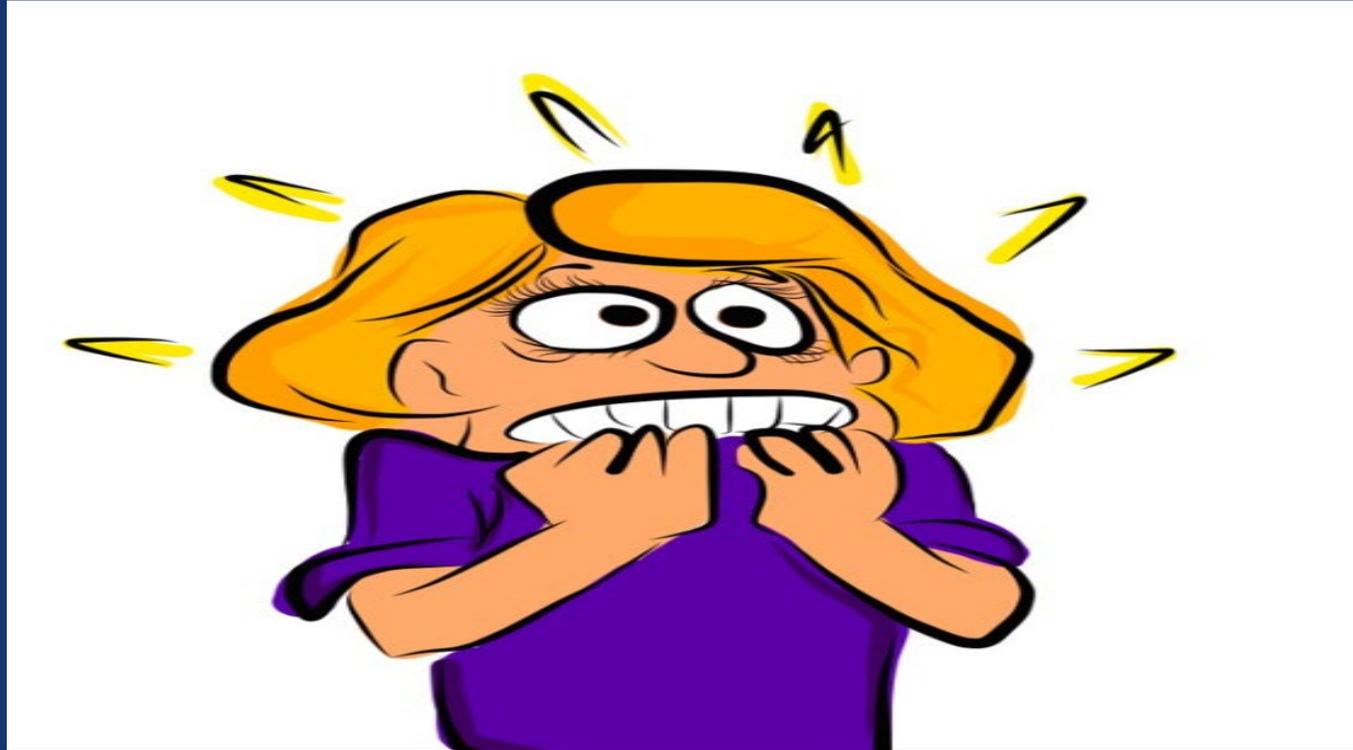
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Thank you!  
~~Questions?~~ Answers?



# Q&A



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