

Defining embryo donation: an Ethics Committee opinion

Ethics Committee of the American Society for Reproductive Medicine

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Building families through the adoption of children has been supported by human society throughout history. The ethical appropriateness of patients donating embryos to other patients for family building, or for research, is well established and is affirmed by this Committee. The use of the term “adoption” for embryos is inaccurate and should be avoided. This document replaces the ASRM Ethics Committee statement by the same name, last published in 2013 (Fertil Steril 2013;99:1846–7). (Fertil Steril® 2016;106:56–8. ©2016 by American Society for Reproductive Medicine.)

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KEY POINTS

- Two family-building options in which children typically are genetically unrelated to the individuals raising them involve: a) the use of donated embryos, and b) the adoption of living children.
- Donation of embryos to support the family-building efforts of others is an important option for patients considering the disposition of cryopreserved embryos in excess of those needed to meet the patients' own reproductive goals.
- Embryos have special significance compared with gametes because of their potential to become persons, but they should not be afforded the same status as persons. Adoption refers to a specific legal procedure that establishes or transfers parentage of existing children.
- Application of the term “adoption” to embryos is inaccurate, is misleading, and could place burdens upon recipients and should be avoided.

Building families through adoption of children has been supported by

human society throughout history. Building families through reproductive donation of supernumerary embryos, in contrast, has become an option only since the onset of assisted reproductive technologies. The ethical appropriateness of patients' donating embryos to other patients for family building or for research, including stem cell research, is well established and has been affirmed by this body and others (1–4). Some groups have used the term “adoption” to describe the process by which infertile patients receive donated embryos from others for their own family-building needs. This use of the term “adoption” in this context is misleading because it reinforces a conceptualization of the embryo as a fully entitled legal being and may lead to a series of legal procedures associated with the adoption of born children that are not appropriate and that unjustly burden recipients, based on the American Society for Reproductive Medicine (ASRM) Ethics Committee's consideration of the embryo's status.

Authorities such as the American College of Obstetricians and Gynecologists and the Human Fertilisation and Embryology Authority in the United Kingdom have opined that an embryo should be accorded “respect” due to its “special status” compared with other human tissues, but should not be viewed as a person (4, 5). Similarly, the Inter-American Court of Human Rights recently ruled that the non-implanted embryo “cannot be understood to be a person” (6). The ASRM Ethics Committee has long recognized that embryos have special significance compared with gametes, but they should not be accorded the same legal or moral status as persons. Embryos have not yet developed sentience or other features of personhood, are not yet established as developmentally individual, and may never realize their biological potential (7). Scientific research indicates that even in natural reproduction with no medical assistance, the majority of human embryos, an estimated 70%, fail to conclude in to live birth (8). The percentage of donated embryos that proceed to live birth may be even lower than in the naturally conceiving population if the gametes are provided by people with impaired fertility.

The use of donated embryos for family building is an established, successful therapeutic option for those

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who are infertile. Like gamete donation, it has resulted in the birth of many children in the more than 25 years the procedure has been in use. The use of donated embryos can provide patients a way to conceive that may be less medically complex and less expensive than gamete donation. It also can provide the donating patients with a sense of fulfillment as their donation helps other patients build a family.

Embryo donation for family building is recognized and regulated by government agencies in the United States and other countries (5, 9). In the United Kingdom, the process falls under the comprehensive system of regulation of all aspects of assisted reproductive procedures. In the United States, the Food and Drug Administration oversees the process through extensive regulations that apply to all donated human tissues, reproductive and nonreproductive alike.

Government plays a more extensive role in the adoption of existing children than in embryo donation for family building. Adoption is a specific legal procedure, and the term has a very specific legal meaning: “adoption, n. 1. The creation of a parent-child relationship by judicial order between two parties who usually are unrelated; the relation of parent and child created by law between persons who are not in fact parent and child. This relationship is brought about only after a determination that the child is an orphan or has been abandoned, or that the parents’ parental rights have been terminated by court order” (10).

Every state in the United States has an adoption statute, and each deals with the changing or establishing parentage of an existing child. In US statutes, the legal term “adoption” does not apply to embryos, which hold the potential for life but as previously demonstrated are not persons.

Equating an embryo with an existing child and applying the procedural requirements of adoption designed to protect existing children to embryos is not ethically justifiable and has the potential for harm. First, the ethical directive to protect an existing child is not applicable to human embryos, which are not persons. Second, the procedures would place unwarranted burdens on the recipient patient. Home visits, legal fees, and judicial review are all standard elements of adoption but are appropriately absent in the context of assisted conception through medical means. Individuals or couples who seek assistance in forming or procuring embryos for their own reproductive use are entitled to the same procreative privacy that accompanies natural conception. There is no justification for applying the language and components of adoption to patients who already face burdensome medical procedures in the pursuit of their family formation goals.

Requiring infertile patients who need donor gametes or patients who need donor embryos to suffer the imposition of unnecessary administrative and legal trappings of adoption and the costs that accompany them is not ethically justifiable. Indeed, this Committee has stated for over 15 years that the experience of embryo donation more closely approximates normal human reproduction than it does traditional legal adoption. The use of donated embryos for

reproductive purposes is fundamentally a medical procedure intended to result in pregnancy and should be treated as such.

The Practice Committee of the ASRM has developed guidance for embryo donation that addresses medical screening, psychological counseling, informed consent, and the transfer of rights over the embryos from donor to recipient (10, 11). These guidelines, like corresponding guidelines for the donation of eggs and sperm, provide a framework for safe and ethical treatment of donors and patients requiring donated embryos for their treatment.

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The following members of the ASRM Ethics Committee participated in the development of this document. All Committee members disclosed commercial and financial relationships with manufacturers or distributors of goods or services used to treat patients. Members of the Committee who were found to have conflicts of interest based on the relationships disclosed did not participate in the discussion or development of this document.

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