

CONSCIENTIOUS OBJECTION IN THE HEALING PROFESSIONS:

A READER'S GUIDE TO THE ETHICAL AND SOCIAL ISSUES

Same Sex Relationships, Medical Care and Reproductive Medicine

Jere Odell, Rahul Abhyankar, Amber Malcolm, Avril Rua

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[Although some health care professionals may resort to conscience-based language when refusing to provide care for lesbian, gay, bisexual, and transgender patients, the current scholarly literature focusses more narrowly on objections to providing assisted reproductive care for same sex couples. Here we summarize this literature; however, articles addressing sex reassignment procedures and other topics are included in the bibliography that follows.]

Assisted reproduction is the use of non-coital technologies to conceive a child and initiate pregnancy.¹ The Center for Disease Control (CDC), however, offers a different definition based on the 1992 Fertility Clinic Success Rate and Certification Act.² Accordingly, Assisted Reproductive Technologies (ART) “includes all fertility treatments in which both eggs and sperm are handled. In general, ART procedures involve surgically removing eggs from a woman’s ovaries, combining them with sperm in the laboratory, and returning them to the woman’s body or donating them to another woman. They do not include treatments in which only sperm are handled (i.e., intrauterine—or artificial—insemination) or procedures in which a woman takes medicine only to stimulate egg production without the intention of having eggs retrieved.”² For purposes of this discussion, reference will be made to all forms of assisted reproduction, including artificial insemination.

Most grounds for conscientious objection to assisted reproduction for same sex couples stem from controversies regarding moral status of these relationships in society. In many states, same sex marriages are not allowed. Physicians, nurses, pharmacists and institutions have refused to provide reproductive health services to same sex couples because they believe it is morally wrong to engage in homosexual behavior.³ Even amongst same sex couples, there is differential treatment between male homosexuals and female homosexuals, with preference being given to female homosexuals.¹ Male, same sex couples who wish to use surrogacy, are also struggle against gender stereotypes that view women as child-rearers and men as providers.¹

Lesbian couples have been denied artificial insemination on grounds that the clinic or healthcare professional has objections not only to homosexuality, but also to the perceived effect that a homosexual relationship may have on the child. In *Benitez v. North Coast Women’s Care*

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Medical Group, a woman who had wanted in vitro fertilization sued a clinic after they refused to perform the service.⁴ Although the case was eventually settled for an undisclosed sum of money, the California court held that refusal to provide the service was discrimination and against the California constitution. Strasser opines that allowing religious exemptions to “religiously objectionable relationships would create a whole host of difficulties that would inure to the detriment not only of those immediately affected but to society as a whole.”⁵

The Christian Medical and Dental Association (CMDA) finds the issue of reproductive technologies and homosexuality (which the Association considers to be voluntary) problematic because some homosexual acts are physically harmful as they purportedly disregard human anatomy and function. Accordingly, homosexuality is attributed to “an increased incidence of drug and/or alcohol dependence, compulsive sexual behavior, anxiety, depression, and suicide.”⁶ Furthermore, the CMDA also finds the following approaches to assisted reproduction morally problematic: artificial insemination by donor, use of donor egg or donor sperm for in-vitro fertilization, gamete intrafallopian transfer and zygote intrafallopian transfer, gestational surrogacy and cryopreservation of embryos. Likewise, the CMDA finds procedures such as selective abortion, pre-implantation genetic diagnosis, and discarding or destroying embryos as “inconsistent with God’s design for the family.”⁶

Outside of the legal disputes resulting from refusals to provide fertility treatments, others argue for a basic right to procreate. In *Skinner v Oklahoma*, a case addressing compulsory sterilization, the court found that the right to reproduce to be a basic civil right.⁷ The Ethics Committee of the American Society for Reproductive Medicine holds that “unmarried persons and gays and lesbians have an interest in having and rearing children.”^{8,9} However, Robertson reports that “[i]n most cases ... the ban on impermissible discrimination does not include sexual orientation, leaving private providers free to deny ART services on the basis of discriminatory criteria that the state could not act on.”^{1 p. 347} Currently, about 80% of ART clinics in the United States provide artificial insemination and related services to single women and lesbian couples, while only about 20% provide services to male individuals or couples.^{1 p. 353}

In response to objections to same sex couples as parents, the American Society of Reproductive Medicine holds that there is no evidence to prove that children raised in families with same sex parents are harmed.⁹ Along these lines, Robertson addresses the procreative liberty of homosexuals, including gay and lesbian rights, to rear children. He gives an in-depth analysis of the legal and ethical implications of gay and lesbian rights to rear their own children, concluding that there is no evidence to suggest that the welfare of children raised by gay and lesbian couples are at a disadvantage in comparison to their counterparts raised in heterosexual families. They have “the same biologic and associational interests as other persons do in having a child and the same general ability to be competent child-rearers.”^{1 p. 330}

Robertson sees no need for restricting reproductive medicine according to a person’s sexual orientation, as “all persons, regardless of sexual orientation or marital status, have the right to procreate and to use assisted reproduction when necessary to achieve that goal.” According to Robertson, the state should not deny the right to procreate, the nature of technique, non-marital status and sexual orientation should not be considered as grounds to intervene.^{1 p. 348}

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