

The Sperminator Needed a Magic Number

SUSAN KERR BERNAL

From North Wales, Pennsylvania.

There is a good reason why the United States is the home of the Terminator[™], oops, I mean the Sperminator. It is because, unlike other countries, the United States has yet to make laws regarding the reproductive medicine field. In suggesting legal oversight, I am not trying to tell the majority of responsible ethical physicians how to practice medicine. Rather, I am trying to protect them, their reputation, and their patients from Sperminator types for whom specific criminal punishment should be available.

To this end, I was recently made aware of a dialog on the *Androlog* listserv that was prompted by a query from Dr Sharon Warner of the Galway Fertility Unit in Ireland. Dr Warner sent out a request to elicit worldwide information on the use of donor sperm for human assisted reproductive technology (ART). Specifically, she wanted to know, "What is the maximum number of babies/families permitted or recommended per semen donor in each country? Are these limits set by guidelines, legislation or best practice? And are these limits based on the general population of the county, social concerns or donor's request?"

Dr Warner received the following 7 applicable responses:

Ole Shou, HD, Managing Director of Cryos International Sperm Bank in Denmark, replied that, according to guidelines set forth by the Danish National Board of Health, an individual donor's semen can be used in 25 pregnancies plus siblings throughout a geographic spread of 5.3 million Danish citizens, and there is no limit on the number of samples that can be exported. She reports that 1 seemingly popular donor has been credited with greater than 100 pregnancies.

Correspondence to: Susan Kerr Bernal (e-mail: bernal@erols.com).

Received for publication March 18, 2005; accepted for publication March 18, 2005.

* *Journal of Andrology* welcomes letters to the editor regarding "Forum" articles and other ethical and legal issues of interest in your own practice or research. We also invite you to suggest topics that deserve attention in future issues. Papers appearing in this section are not considered primary research reports and are thus not subjected to peer review. Unsolicited manuscripts are welcome, and will be reviewed and edited by the Section Editor. All submissions should be sent to the *Journal of Andrology* Editorial Office.

DOI: 10.2164/jandrol.05060

Bioethics and Law Forum*

Norway, Spain, and Sweden all have 6 as their magic number. In Norway, 6 is the maximum number of babies per donor. Under Spanish Law 35/1998, 6 is also the maximum number of babies permitted to be born per donor (of semen or oocytes), but Ernesto Veiga Alvarez, the laboratory coordinator of Centro Materno Infantil La Rosaleda, notes that this number includes the donors' own children. While in Sweden, 6 is reported to be the maximum number of babies per donor, there is an allowance for siblings, according to Ulrik Kvist. As to the parameters in Sweden, I can only more reasonably assume them to mean there can be only 6 recipients per donor who have had at least 1 successful pregnancy.

Similarly, Brazil, Columbia, and the United Kingdom share the magic number 10 in response to Dr Warner's query. In 1992, Brazil's Federal Council of Physicians recommended a maximum number of 10 babies born per donor, and Colombian law established the same in 1998. Since 1991, the United Kingdom's Human Fertilisation and Embryology Authority has allowed 10 donor children and siblings, reports Lars Bjorndahl of the Assisted Conception Unit at Birmingham Women's Hospital. I again would interpret 10 to represent the number of successful recipients. And my own research revealed that, as of 1992, Taiwan's Committee on Scientifically Assisted Human Reproduction recommends limiting the number of babies per donor to 3. I speculate that other countries also have laws or guidelines addressing the issue—most likely countries such as Australia, Canada, France, Germany, and Argentina, which have other regulations or laws governing ART in general.

So what about the United States? There were no replies to Dr Warner's inquiry. Furthermore, I am confident most of you are aware there is no specific body of law pertaining to ART as a whole. That, of course, is not to say the ART field is completely unregulated. There is a tripartite structure that has long been in place in the American legal system for providing oversight of medical fields. The highest and most stringent level of oversight is at the government level, in its licensing and regulation of health professionals and health facilities. In addition to government licensure is oversight imposed by professional organizations' self-regulation. Organizations such as the American Medical Association have been instrumental in developing and proffering guidelines for their members to follow in an effort to establish norms and standards in a given discipline or profession. Often, such stan-

dards serve as the basis for specialty certification. Additionally, a third level of oversight is at the trial court level in the form of private medical malpractice cases.

This traditional oversight structure has generally served patients and practitioners of diverse medical specialties well for decades. Yet it has not been successfully implemented or enforced in the field of assisted reproductive medical technologies. For example, standards and guidelines proffered by professional groups are too often so minimalistic as to be irrelevant, as evidenced by their inability to usher practitioners away from basic mistakes and wrongdoing. And, they have no legal consequences. Additionally, private medical malpractice actions have often been challenging to bring in a field where rapidly advancing technology makes a standard of care elusive and traditional legal theory an awkward prosecutorial fit.

In light of these shortcomings and the serious repercussions resulting from carelessness in clinics and the actions by some physicians who apparently feel that they are beyond reproach and beyond the law, setting a limit or “magic number” regarding the number of recipients reproducing with a given donor’s semen (or oocytes) would be one practical step to preventing unintentioned consequences as donors’ offspring matured and reproduced. Without specific laws and appropriate criminal consequences, the United States will continue to be the home of the Sperminator and leave to the courts, with

great potential for inconsistent outcomes, answers to questions such as: How many offspring should be permitted from an individual donor? Should the country’s population be a factor in the calculation? Should the geographic diversity of the recipients be taken into consideration? There are also more general ART-related questions such as: When a couple divorces, who gets “custody” of the frozen embryos? Should morality or legalities determine the permissibility of surrogacy and whether sperm should be taken from dead men to make babies?

A comprehensive body of law specifically addressing the ART field would change little for responsible, ethical physicians and researchers. For these individuals, laws would simply provide legal protection from malpractice suits by establishing common practice and a minimum level of competence. However, specific laws or regulations could greatly protect patients from unscrupulous and negligent doctors and researchers and provide civil and criminal penalties so that the United States would no longer be home of Sperminators—such as Dr Cecil Jacobson, who repeatedly used his own sperm to fertilize his patient’s eggs to avoid paying donors. He allegedly fathered up to 70 children, and when angrily confronted by his duped patients, he could not understand their ungratefulness because, after all, he believed everyone would want their child’s father to be a “successful” doctor. Unlike in other countries, it seems the Sperminator had no magic number.