

Defining embryo donation: an Ethics Committee opinion

Ethics Committee of the American Society for Reproductive Medicine

American Society for Reproductive Medicine, Washington, DC

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 2016. (*Fertil Steril*® 2023;119:944-47. ©2023 by American Society for Reproductive Medicine.)

El resumen está disponible en Español al final del artículo.

Key Words: Donation, embryo, definition, infertility, reproduction

KEY POINTS

- Two family-building options in which children are not genetically directly related to the individuals raising them are the use of donated embryos and the adoption of living children.
- The 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 their own reproductive goals.
- Embryos have the potential to become persons, but they should not be afforded the same legal status as a person. Adoption refers to a specific state-regulated legal procedure that establishes the legal parentage of existing children. Both medical and legal procedures to transfer control over donated embryos are distinct from those involved in adopting existing children.
- The application of the term “adoption” to embryos is inaccurate and misleading, as well as could place unintended legal and procedural burdens on both recipients and donors.

Building families through the adoption of children have been supported by human society throughout history. Building families through the reproductive donation of supernumerary embryos, in contrast, has become an option only since assisted reproductive technologies came into existence. The ethical appropriateness of patients’ donating embryos to other patients for family building or research, including stem cell research, is well established and has been affirmed by this body and others (1–5). Some groups have used the term “adoption” to describe the process by which the intended parents receive donated embryos from others for their own family-building needs. The use of

the term “adoption” in this context is misleading because it reinforces a conceptualization and status of the embryo as a fully entitled legal being and may lead to a series of legal procedures required for the adoption of born children that are not appropriate and that would unjustly burden both donors and recipients, as well as restrict medical practices, based on the embryo’s legal status. As one example of the inapplicability of adoption laws to embryo donation, adoption laws in almost every state require a “cooling off” or change-of-mind period, which ranges from a few days to a few months following the birth of a child, allowing for either birth parent to change their mind about a decision

made to place their child for adoption (6). In contrast, embryo donation decisions are finalized and memorialized before an embryo is transferred to a recipient, and no change of mind by an embryo donor following the initiation of a pregnancy would be appropriate, or acceptable, to any embryo donation participants (7).

Authorities such as the American College of Obstetricians and Gynecologists and the Human Fertilisation and Embryology Authority in the United Kingdom have opined that while embryos have the potential to become persons, they should not be afforded the same legal status as a person (4, 8). The ASRM Ethics Committee has also since its inception in 1988 recognized that embryos have special significance, and should be accorded “special respect” compared with the gametes; however, they should not be accorded the same legal or moral status as a person (5, 9).

Received March 8, 2023; accepted March 8, 2023.

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Fertility and Sterility® Vol. 119, No. 6, June 2023 0015-0282/\$36.00

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<https://doi.org/10.1016/j.fertnstert.2023.03.007>

Scientific research indicates that even in natural reproduction with no medical assistance, an estimated 70% of the embryos fail to result in a live birth (8). Similarly, not all donated embryos that are transferred into the uterus will get implanted.

The use of donated embryos for family building is an established, successful therapeutic option. Similar to gamete donation, it has resulted in the birth of many children in the decades since the procedure has been in use. Donated embryos can provide patients a way to conceive that may be less medically complex and less expensive than gamete donation or ovarian stimulation. It can also provide a sense of fulfillment to patients who do not wish to discard unused embryos as their donation has the potential to help other patients build a family.

Embryo donation for family building is recognized and regulated by government agencies in the United States and other countries (8, 10). In the United Kingdom, the process falls under a 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, including both reproductive and nonreproductive tissues. In several states, laws also apply to gamete and embryo donation, providing clarity in those jurisdictions as to the legal transfer of rights over reproductive tissue (11, 12). The 2017 Uniform Parentage Act, proposed model legislation by the National Conference of Commissioners of Uniform State Laws, also supports this form of regulation (13).

The government plays a more extensive role in the adoption of existing children, with an emphasis on the best interests of a specific child than in embryo donation for family building. Adoption is designed to protect the best interests of children, and the term has a very specific legal meaning that applies to existing children, not embryos which hold the potential for life but are not rights-bearing persons: "adoption, n. 1. The creation of a parent-child relationship by judicial order between 2 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 through the prescribed legal procedures and following the determination that a child no longer has an existing legal child-parent relationship with the child's prior legal parents, either through voluntary or involuntary relinquishment or court termination of parental rights or if a child has been orphaned (14). Every state in the United States has adoption laws that address changing and establishing the legal parentage of an existing child.

Equating an embryo with a child and applying the procedural requirements of adoption designed to protect children to embryos is neither ethically nor legally justifiable and has the potential to harm. First, the ethical directive to protect a child is not applicable to human embryos, which are not legal persons. Second, adoption procedures would place unwarranted burdens and potential restrictions on both donors and recipients. To ensure the best interests of a child, home studies and other assessments of parental fitness and judicial intervention are all standard elements of adoption but are not appropriate or justified in the context of assisted conception through medical means. Individuals or couples who seek

medical assistance for their own reproductive use are entitled to the same procreative privacy that accompanies the natural conception, and already face potentially burdensome medical procedures in the pursuit of their family formation goals. Imposing the unnecessary and poorly fitting administrative and legal framework of adoption and the costs that accompany it to infertile patients is not ethically justifiable.

Indeed, this Committee has repeatedly reaffirmed 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. Any legal procedures, including contracts or laws, that enhance the security of these embryo transfers from donors to recipients should be distinct from adoption laws and procedures. Importing the language of adoption into such legislation would serve to inappropriately elevate the legal status of embryos. If enacted, such laws would personify and equate human embryos with living persons, and not only restrict procreative choices for prospective donors but restrict established and protective in-vitro fertilization practices, including cryopreservation and preimplantation genetic testing.

The Practice Committee of the ASRM has developed guidance for embryo donation that addresses medical screening, psychological counseling, informed consent, and the transfer of legal rights over embryos from donors to recipients (7, 15). These guidelines, like corresponding guidelines for the donation of eggs and sperm, provide a framework for the safe and ethical treatment of donors and patients who choose to use donated embryos for their treatment.

Acknowledgments: This report was developed under the direction of the Ethics Committee of the American Society for Reproductive Medicine as a service to its members and other practicing clinicians. Although this document reflects appropriate management of a problem encountered in the practice of reproductive medicine, it is not intended to be the only approved standard of practice or to dictate an exclusive course of treatment. Other plans of management may be appropriate, taking into account the needs of an individual patient, available resources, and institutional or clinical practice limitations. The Ethics Committee and the Board of Directors of the American Society for Reproductive Medicine have approved this report.

This document was reviewed by ASRM members and their input was considered in the preparation of the final document. The following members of the ASRM Ethics Committee participated in the development of this document: Sigal Klipstein, M.D., Deborah Anderson-Bialis, Ricardo Azziz, M.D., M.P.H., M.B.A., Tolulope Bakare, M.D.; Katherine Cameron, M.D., Susan Crockin, J.D., Ruth Farrell, M.D., Elizabeth Ginsburg, M.D., Mandy Katz-Jaffe, Ph.D., Jennifer Kawwass, M.D., Joshua Morris, M.D., M.A., Gwendolyn Quinn, Ph.D., Catherine Racowsky, Ph.D., Robert Rebar, M.D., Jared Robins, M.D., M.B.A., Mary Samplaski, M.D., David Shalowitz, M.D., Chevis N Shannon, Dr.P.H., M.P.H., M.B.A., Sean Tipton, M.A., Lynn Westphal, M.D., and Julianne Zweifel, Ph.D. 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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Definiendo la donación de embriones: opinión del Comité de Ética.

La sociedad ha respaldado a lo largo de la historia la creación de familias mediante la adopción. Este comité claramente afirma y ratifica la adecuación ética de la donación de embriones por parte de pacientes para crear familias. El uso del término “adopción”, para los embriones, es impreciso y debe ser evitado. Este documento reemplaza al informe previo del mismo nombre del Comité de Ética de la ASRM, publicado en 2016.