Medical Law and Ethics

Chapter 12
Ethical Issues Relating to Life
Fetal Development

- When does life begin?
  - Some say at moment of conception while others say 14 days after sperm and egg unite, forming an embryo, and some say not until birth
  - Embryo stage: second to eleventh week
  - Fetus: third month
Assisted or Artificial Conception

- *Artificial insemination (AI):* injection of seminal fluid into vagina from husband or donor
  - *Artificial insemination husband (AIH)*
Assisted or Artificial Conception

• Artificial insemination (AI): injection of seminal fluid into vagina from husband or donor
  – Artificial insemination donor (AID) (man donates semen for woman who is not his wife)
    + Wise to require consent in writing from both husband and wife
    + Legal status of offspring a concern
    + Ethical considerations in artificial conception
In-Vitro Fertilization

• Ovum and sperm cells combined outside woman’s body
• Cells grown in laboratory and later implanted into woman’s uterus
• In most cases, unused embryos are destroyed
• Embryos may be frozen for possible future implantation
Surrogate Motherhood

- Surrogate mother agrees to bear child for infertile couple
- Contract established
- Couple must pay for medical expenses of surrogate mother
- The Baby M case
Ethical Considerations with Surrogate Motherhood

- Is it right for mother to give up baby she has carried for nine months?
- Does or should child have emotional or physical link to surrogate mother?
- Will relationship between husband and wife be altered if husband’s sperm is implanted into another woman?
Ethical Considerations with Surrogate Motherhood

• What is sibling relationship toward surrogate baby?
• Can contract between surrogate mother and couple be enforced?
Other Ethical Dilemmas with Surrogate Motherhood

- Potential court battle over custody of child
- Potential embarrassment for surrogate (some have likened her actions to prostitution)
- Potential harm to surrogate’s own child when he or she learns she gave one child away and received money in return
Other Ethical Dilemmas with Surrogate Motherhood

• Future emotional distress when child learns he or she was taken from natural mother

• Reduces birth to legal arrangement and the exchange for money to cover medical expenses
Fertility Drugs

• Drugs enhance ability to become pregnant
• Increases woman’s chance of having multiple births
• Physicians may recommend some of the embryos be harvested (selective reduction)
Contraception

- Contra: against
- Conception: union of male sperm and female ovum
- Several states have laws that prohibit selling contraceptives to minors
Sterilization

• Medically altering reproductive organs to terminate ability to produce offspring
• May be surgical intervention such as vasectomy in the male or tubal ligation in the female
• Usually elective procedure; can be therapeutic, incidental, or involuntary
Voluntary Sterilization

• Few legal problems for competent persons
• Becoming most popular method of birth control in the United States
• Sought for a variety of reasons
• Therapeutic sterilization may be done if mother’s health is in danger
Consent for Sterilization

- Requires patient’s written consent
- Many hospitals and physicians also require consent of spouse
- No current federal law requires consent from one spouse for another spouse’s sterilization
- Consenting individual must be at least 21 years of age
Therapeutic Sterilization

• May be necessary if mother’s life or mental health is threatened
Eugenic Sterilization

• Involuntary sterilization: considered to be unethical by many people
• Done to assure that parents won’t pass defective genes along to their children
• Must be proven to be in the best interest of cognitively disabled person
• Several states still allow sterilization of sexual deviants and habitual criminals
• Practice has lost favor
Negligence Suits Related to Sterilization

- Many claims involve women who have become pregnant after sterilization procedure
- In some cases, negligence occurs during sterilization procedure
Ethical Issues Surrounding Sterilization and Birth Control

• Eugenic sterilization is abhorrent to many people.

• Some critics ask if it is morally acceptable for those receiving state and federal funds to dispense contraceptive devices.

• Should violent sex offenders be ordered to undergo sterilization?
Ethical Issues Surrounding Sterilization and Birth Control

• Should women who receive Medicaid, and continue to have children by unknown fathers, be required to be sterilized?
• Should mentally incompetent women be sterilized?
• Are children treated as property?
• Is human life being destroyed?
Abortion

- Termination of pregnancy before fetus is viable (able to survive outside uterus)
- **Spontaneous**: occurs naturally without any interference (miscarriage)
- **Induced**: caused by artificial means (medications or surgical procedure)
Roe v. Wade

- U.S. Supreme Court declared that a criminal abortion law in Texas prohibiting all abortions not necessary to save life of mother to be a violation of woman’s right to privacy
Supreme Court’s Stand on Abortion

- First trimester: decision to have abortion between woman and her physician
- Second trimester: state may regulate medical conditions under which an abortion is performed
- Third trimester: state may prohibit all abortions except to save the life of the mother or protect maternal health
Recommendations from the Court’s Decision

• First trimester abortions should be performed in hospitals
• Approval process for abortions should include other physicians in addition to woman’s physician
• Viability of fetus needs to be carefully defined
• Woman should wait for designated period of time before having abortion and should receive counseling
Recommendations from the Court’s Decision

• Certain medical procedures, such as partial-birth abortions, should not be used
• Father’s consent should be obtained
Historical Progression of Cases Affecting Abortion

• 1976: Unconstitutional to require husband or parental consent before abortion
• 1977: States may refuse to pay for nontherapeutic abortions
• 1980: Federal funds may not be used to pay for Medicaid abortions
Historical Progression of Cases Affecting Abortion

- 1981: Physician must notify, if possible, parents or guardians before abortion on minor
- 1990: Federally funded family planning clinics prohibited from giving abortion advice
- 1992: Trimester approach of *Roe v. Wade* rejected; looked at as “undue burden on the mother”
Partial-Birth Abortion

• Many state legislatures oppose abortion procedures that allow fetus to enter birth canal while still alive
• Great deal of controversy about late-term abortions
Incompetent Persons and Abortions

- Difficult ethical issues arise when incompetent persons are subjected to unplanned or unwanted pregnancies.
- In some cases, court appointed guardian (guardian ad litem) speaks on behalf of incapacitated person.
Opposition to Abortion

- People have very strong and often differing viewpoints about abortion
- Unborn Victims of Violence Act (1999) provides legal penalties for any harm done to unborn child at federal facilities; treats all unborn life as a person
Employee’s Right to Refuse to Participate in Abortions

- Hospital employees have the right to refuse to participate in performing abortion and cannot be dismissed for insubordination.
- Can abstain as matter of conscience or religious conviction.
Funding for Abortion

- Area of great controversy
- Under Hyde Amendment, U.S. Congress limited types of medically necessary abortions for which Medicaid monies may be spent
Ethical Issues Surrounding Abortion

- Catholic Church and others believe it is immoral to deliberately take a life or “kill” an unborn child
- Many people do not want tax money spent on funding abortions for women on Medicaid
- Is it a violation of incompetent persons to have to submit to abortion?
Ethical Issues Surrounding Abortion

- Is it appropriate to deny spouse consent?
- Should abortion be used for gender selection of children?
- Abortion is always a moral decision because it results in loss of human life
Baby Doe Regulations

- Child Abuse Prevention and Treatment Act
- Protects disabled infant
- Prohibits withholding medical treatment
Genetic Counseling and Testing

- Genetic counselors meet with couple before pregnancy occurs to discuss potential for passing on defective gene
- Legitimate means to detect couples who are at risk for passing on genetic disease to offspring
Prenatal Testing

- Amniocentesis is the use of a needle to withdraw, from the uterus, a small amount of the amniotic fluid that surrounds the fetus
- Fluid tested for presence of genetic defects
Prenatal Testing

• Consent form must be signed before procedure
• Risks associated with procedure include early labor
Harvesting Embryos

- Embryos selected to be destroyed
- Preimplantation genetic diagnosis—test for defective genes
Genetic Testing for Newborns

• Routine screening on newborns has become standard in many hospitals
• All states have law requiring testing for PKU (phenylketonuria)
Ethical Questions Regarding Genetic Testing

- Do parents have the right to be informed of all results of genetic testing?
- Does a person have the right to have children who are likely to be impaired?
- Is society ever justified in requiring people to submit to genetic screening and counseling?
Ethical Questions Regarding Genetic Testing

• Does small number of people with potential for disease or genetic condition justify expense of testing all?

• Should public funds pay for genetic testing when parents cannot pay?
Wrongful-Life Suits

• Lawsuit often brought against physician or lab when baby is born with severe defects
• Some lawsuits brought when sterilization failed
• Wrongful conception/wrongful pregnancy: in 1991 case, parents were awarded cost of raising child to adulthood after child was conceived following unsuccessful tubal ligation
Safe Haven Laws

- Infants can be safely left in ‘safe haven’ places if unable to care for them.
- Includes
  - Hospitals
  - Police Stations
  - Fire Houses