

## Artificial Conception: Legal Issues Addressed during Artificial Insemination or In-vitro Fertilization

By Julie A. Dialessi-Lafley, Esq.

### FAST FACTS

- Artificial conception has created legal issues surrounding parentage, making adoption more common.
- In all 50 states, unknown sperm donors assume no legal responsibility for any resulting children born, which is not necessarily the case with known donors.
- In Massachusetts, the spouse of a woman who conceives by artificial insemination from an unknown donor is considered the legal parent of the child.

**W**ith the amazing advancements in modern medicine and science, opportunities are now available for conceiving children through artificial insemination, in-vitro fertilization, and embryo transplantation. These new techniques, however, have created legal questions and disputes regarding the child's status and the rights and designation of the parents.

### In-vitro Fertilization

In-vitro fertilization and egg transplantation involve the fertilization of the egg outside the womb. In the eyes of the law, when the egg is donated by another woman, the birth mother is treated as the legitimate mother of the child. When donated sperm is used to fertilize the egg, the laws governing artificial insemination come into play.

### Artificial Insemination

In Massachusetts, when a married woman, with the consent of her husband, conceives a child by artificial insemination from an unknown donor (i.e., someone other than her husband), the law

recognizes the child as the husband's legitimate child. It is fair to say that most states have adopted "presumption" laws, which presume that a child born to a married woman during the course of the marriage is the child of her husband. In a case involving artificial insemination, the designation of the husband as father of this child so conceived derives from those laws.

The law, however, is different when dealing with an unmarried woman who has decided to become pregnant through donor insemination. In some states, the law treats donors differently when the donor is known or when the donor is unknown from a sperm bank. Therefore, it is vitally important that a donor recipient first understand the laws governing donor insemination in her state. These laws, after all, may determine the shape of whatever family is created by the recipient. For unmarried individuals wishing to conceive in this way, they should evaluate the laws in their state as some states allow sperm donors to assert parental rights while other states do not.

As previously stated, Massachusetts law only takes into consideration the use of donor insemination by married couples. According to state law, a child born to a married woman as a result of artificial insemination with the consent of her husband is the legitimate child of both spouses. There is, however, no provision for donor insemination of an unmarried woman. It may be that the mother who carries the child would have parental rights, and any partner of the mother would have to adopt the child in order to create parentage.

In all 50 states, men who provide sperm as unknown donors assume no

legal responsibility for any resulting children born. In some states, however, if a man is known to the woman or couple to whom he provides sperm, he may be required to assume the legal responsibilities of a parent.

In California, Ohio, and Wisconsin, a known donor releases himself from legal responsibility if the procedure is performed with a physician's involvement. In Colorado and New York, a known donor may be able to assert parental rights; however, it is unclear whether a court would impose any responsibilities on a known donor in these two states. In Pennsylvania and Utah, the law is unclear, and a known donor may be assigned some parental responsibility. In the remaining states, there are no laws or cases that assign or allow a donor to

*continued on page 40*

### About the Author



*Julie A. Dialessi-Lafley, Esq.*

Julie A. Dialessi-Lafley, Esquire, is a multifaceted attorney with the law firm of Bacon Wilson, P.C., who focuses her practice in business law, real estate, estate planning and administration, and family law. She is committed to community service, serves on

several charitable and organizational boards, and has been honored as a SuperLawyers Rising Star in *Boston Magazine* for the past 2 years. Julie is a frequent lecturer on legal topics and has written numerous articles that may be found on her website, [www.BaconWilson.com](http://www.BaconWilson.com).

*Julie Dialessi-Lafley can be reached at 413-781-0560 or [JDialessi-Lafley@BaconWilson.com](mailto:JDialessi-Lafley@BaconWilson.com)*

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*continued from page 28*

assert parental responsibilities. Women who undergo donor insemination from a known donor in Massachusetts can be assured that no parental responsibilities can be asserted.

Interestingly, the manner and method of insemination can also effect the legal rights and responsibilities of the participants. The regulation and laws in this area can vary, and it should be noted that some states also have laws that require that donor insemination be performed by a physician and not privately by parties who desire to inseminate at home or other less “sterile” environments than the doctor’s office or hospital.

In one 2001 case, *Culliton v. Beth Israel Deaconess Medical Center*, the Supreme Judicial Court granted a joint request from the participants in a gestational surrogacy agreement to have the genetic parents listed as the parents on the baby’s birth certificate. The court noted that existing state law only addressed artificial insemination (which did not occur here) and only considered that procedure as performed on a fertile wife whose husband consents to her insemination by an anonymous donor.

With the advent of legal marriages between same-sex couples in Massachusetts, the status of the laws and cases in this area and how they apply to same-sex married couples is unclear. It is also unclear in situations where opposite sex partners do not marry but decide to bear children. The final word on the matter may not be clear, and so individuals must evaluate their situation and proceed fully aware of the potential complications as to parentage. Deciding to begin a family is a huge decision, and given the possible problems of alternative methods of conceiving, it is wise to investigate not only the medical issues but the legal issues as well. ■