

4/7/09

State Bar of Michigan-Health Care Law Section  
Writing Competition Fact Pattern

You are a new lawyer practicing in the State of Nirvana and have just received a telephone call from one of your clients. The client is an obstetrics practice specializing in reproductive medicine that was established by two young board-certified obstetricians, Dr. Welby and Dr. Kildaire. These doctors formed their own practice with the goal of helping young families who were unable to have children on their own. The doctors also share common traditional/fundamentalist religious values and wish to practice medicine within the scope of their religious beliefs. For example, the doctors do not perform abortions and are very careful to avoid practices which fall outside what they consider to be the mainstream such as the recently publicized “pregnant man”.

Dr. Welby tells you about a new patient, Julie, that has visited the practice. She is a single woman, forty-one years old who has four children. Julie has never been married and there is no legal father of the children. These children were conceived through an artificial reproduction technique (ART) using sperm donated from a male friend. One of the children is autistic and two have respiratory impairments due to the quadruplet’s premature birth.

Julie currently is in a strong two-year relationship with her partner, Cathy. Since Nirvana does not recognize same sex marriages, this is a non-legally recognized partnership. Julie and Cathy would like to have at least two children of their own. The sperm donor has again offered to make his sperm available so all the children will share a common genetic father. Once the new children are born, Cathy plans to legally adopt them so that the new children will have two parents.

Finances are a big factor in Julie and Kathy’s plans, as they are for many fertility patients. Julie does not have any health insurance so she will have to pay cash for these treatments. Once she is pregnant, she will be eligible for Medicaid. Julie used to have a good job, but now works only part-time since her day is very full with the childrearing of her current children. She receives some family support from her widowed mother who has a decent pension. She also receives governmental support for the children (food stamps, health care, and special needs assistance).

In order to keep costs down, Julie and Cathy want to have as many eggs fertilized as possible and all the fertilized eggs (up to six) implanted. They have done their research and know that the odds of a successful birth through ART are quite low and Julie’s childbearing years are rapidly drawing to a close. They ideally would like to have at least two children in one pregnancy.

Dr. Welby has a lot of concerns about this scenario. Julie seems to have more than she can handle as it is with her current children. The current children have no legal father who is involved in their lives. Julie already is receiving public assistance to care for her current children. The new children also will have no legal father involved in their lives, but instead will be raised in a home with two mothers. Their second mother will have no genetic link to the children and there is no guarantee that she will be allowed to adopt the children once they are born.

From a health standpoint, Julie is an older mom and it will be difficult to establish and carry this pregnancy. Even if they are able to harvest sufficient eggs and fertilize them, it is medically dangerous for Julie and the babies to have a multiple pregnancy. If too many fertilized eggs successfully implant and begin developing, the issue of selective reduction must be considered for the health of all involved.

Dr. Welby would like to tell Julie and Cathy to go to another doctor because he does not want to be involved. Dr. Kildare however, has cautioned Dr. Welby that the law is changing rapidly with

respect to fertility medicine and the rights of woman to have children on their own terms. She suggested that Dr. Welby call you for some guidance. You know that Nirvana is unlikely to have any statutes or case law on these points so you decide to see what the general state of the law is in the U.S. on these issues as well as what the reproductive medicine specialty societies say about these practices and then, you may be able to give your client some direction.

**Please advise your client on the following issue:**

Would your client commit medical malpractice if it agreed to implant six embryos at once in an older mother?

**Also advise your client on ONE of the following issues:**

1. May your client lawfully deny services to Julie because Julie's lifestyle as a single, lesbian woman is contrary to the type of family life that the doctor's religion believes is moral and appropriate?
2. May your client lawfully deny services to Julie because selective reduction of implanted embryos may become medically necessary during the pregnancy, but would be contrary to the doctor's religious beliefs?
3. May your client lawfully deny services to Julie out of concern that she may be unable to properly care for additional children due to her limited financial resources and the special needs of her existing children?
4. May your client lawfully deny services to Julie because they believe that the child's best interests will not be served growing up in a family with two mothers and no father?
5. May your client lawfully deny services to Julie because she already has "enough" children, and a belief that ART should be reserved for women who are medically unable to bear children?
6. Does your client have an obligation to advise the sperm donor of the risks, rights and responsibilities of being a known donor, and if so what are those risks, rights and responsibilities?