

ACOG COMMITTEE OPINION

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Surrogate Motherhood*

Committee on Ethics

ABSTRACT: Ethical responsibilities are described for obstetrician–gynecologists who choose to participate in surrogacy arrangements by 1) advising couples who are considering surrogacy, 2) counseling potential surrogate mothers, 3) providing obstetric services for pregnant women participating in surrogacy, or 4) offering assisted reproductive technologies related to surrogacy. Although the obligations of physicians will vary depending on the type and level of their involvement, in all cases physicians should carefully examine all relevant issues related to surrogacy, including medical, ethical, legal, and psychologic aspects.

Although the practice of surrogate motherhood has become more common since the American College of Obstetricians and Gynecologists (ACOG) issued its first statement on this subject in 1983, it continues to be controversial. There are those who believe that surrogacy should be permitted because such arrangements can be beneficial to all parties, and to prohibit them would limit the autonomy of infertile couples and women who wish to help them through surrogate gestation. Others believe that the risks outweigh the benefits or that because of shifting emotions and attitudes toward the fetus during gestation, it is not possible for a pregnant woman to give truly informed consent to relinquish an infant until after birth has occurred (1).

Many issues related to surrogate motherhood have not been resolved, and considerable disagreement persists within the medical profession, the medical ethics community, state legislatures, the courts, and the general public. Similarly, no one position reflects the variety of opinions on surrogacy within ACOG's membership. Although these differences of opinion are recognized, the purpose of this Committee Opinion is to focus on the ethical responsibilities of obstetrician–gynecologists who choose to participate in surrogacy arrangements on a variety of levels, including caring for the pregnant woman and her fetus.

The first part of this Committee Opinion provides an overview of public policy issues, descriptions of the types of surrogacy, arguments supporting and opposing surrogacy arrangements, and particular concerns related to payment and commercialization. The second part offers ethical recommendations to physicians and patients who may participate in surrogacy. The ethical obligations of physicians will vary depending on the type and level of their involvement in surrogacy arrangements.

General Issues

Public Policy

In some states, the practice of surrogate motherhood is not clearly covered under existing law. There is a split among the states that have statutes. Some states prohibit surrogacy contracts or make them void and unenforceable, whereas others permit such agreements (2, 3).

When a court is asked to decide a dispute regarding parental rights or custody of a child born as a result of a surrogacy arrangement, existing statutes may not prove adequate given the complexity of the problem. Courts faced with such decisions have given preference to different factors: the best interest of the child, the rights of the birth mother (as in adoption situations), the genetic link between the child and the genetic parents, and the intent of the couple who entered into a surrogacy contract to become parents. Often two or more of these factors conflict



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with each other, and there is not a consensus in the legal or ethical communities as to which factor should have priority (2, 4–7).

The obstetrician–gynecologist who facilitates surrogacy arrangements should be aware of any statutes or court cases in the state in which he or she practices. In counseling individuals seeking a child through surrogacy or a woman who is considering surrogate gestation, the physician should encourage consideration of the possible consequences of a surrogacy arrangement, including potential legal complications.

Types of Surrogacy

Surrogacy can be classified on the basis of the source of the genetic material. Eggs, sperm, or both may be donated, thereby altering the “intended parents” biologic relationship to the child.

In one type of surrogacy arrangement, the intended parents are a couple who reach an agreement with a woman (the “surrogate mother”) who will be artificially inseminated with sperm provided by the male partner of the couple seeking surrogacy services. Thus, the genetic and gestational mother of any resultant child is the surrogate mother, and the genetic father is the intended father. The intended parents plan to be the “social” or “rearing” parents of the child. Although this Committee Opinion refers to intended parents as a couple, individual men and women also may seek surrogacy services.

In another type of surrogacy, in vitro fertilization and embryo transfer are combined with surrogacy arrangements. In this case, it is possible for both the intended father and the intended mother to be the genetic parents of the child, and the surrogate fulfills only the role of gestational mother. This type of arrangement originally was called surrogate gestational motherhood, and now the carrying woman is called the “gestational carrier” or “gestational surrogate.”

The different types of relationships that are possible—genetic (either, both, or neither intended parent), gestational (the surrogate mother), and social or rearing (the intended parents)—give rise to both conceptual challenges regarding the nature of parenthood and legal problems as to who should be considered the parents responsible for the child.

Major Arguments for and Against Surrogacy Arrangements

Surrogacy can allow a couple to have a child when they would otherwise be unable to do so except by adoption because of an inability to achieve pregnancy or medical contraindications to pregnancy for the intended mother. Adoption, however, does not provide a genetic link to the child, an important consideration for some prospective parents. Surrogacy is chosen by some prospective parents because of a desire for genetic linkage or for practical reasons, such as the scarcity of adoptable children.

Arguments based on reproductive liberty also support surrogacy arrangements. In the United States, the freedom to decide whether and when to conceive or bear a child is highly valued and protected. Thus, some have argued that intended parents and surrogate mothers should be free to cooperate in procreating, at least in cases of medical need and where care is taken to avoid harming others, especially the prospective child. Furthermore, women willing to participate in surrogacy may derive satisfaction from helping the intended parents. Many women participate in surrogacy primarily for altruistic reasons and see their services as a gift.

The primary arguments against surrogate motherhood are based on the harms that the practice may be thought to produce—harms to the child that is born, harms to the surrogate mother herself, harms to her existing children if she has children, and harms to society as a whole. It is surely harmful to any child to be the object of a custody dispute. In addition, the rejection of an infant—for example, rejection of an infant with a disability by both intended parents and surrogate mother—is a significant harm. If an existing relationship is used to coerce relatives or close friends to become surrogate mothers, that coercion is a harm resulting from the practice of surrogate motherhood. The existing children of a surrogate mother may be harmed if her pregnancy and relinquishment result in high levels of stress for the surrogate mother or her family. These children and society as a whole may be harmed by the perception that reproduction is trivialized by transactions that translate women’s reproductive capacities and the infants that result into commodities to be bought and sold. Depersonalization of a pregnant woman as a “vehicle” for the genetic perpetuation of other individuals may harm not only surrogate mothers but also the status of women as a whole. There also is a concern that redefining concepts of motherhood may threaten traditional understandings of parenting and family.

Children are much more vulnerable than adults. Harms to children who have no choice in a matter are more serious, from an ethical standpoint, than harms to adults who make a choice that they later regret. Further, a distinction should be drawn between harms that inevitably, or almost invariably, are associated with a practice and harms that likely could be avoided through advance planning, appropriate counseling, or oversight mechanisms.

Few studies provide data about harms and benefits resulting from surrogacy arrangements. Absent such data, discussion about possible outcomes does not provide a solid foundation for ethical conclusions and clinical guidelines. It is important to know whether these outcomes actually occur and, if so, how frequently. Studies that will provide more data of this type are needed (8, 9).

In summary, there are strong arguments both for and against the practice of surrogacy. Physicians will be on both sides of this debate. If, after careful consideration of

the arguments, a physician chooses to facilitate or recommend surrogacy arrangements, then precautions should be taken to prevent medical, psychologic, and legal harms to the intended parents, the potential surrogate mother, and the prospective child.

Payment to the Surrogate Mother

Perhaps no topic related to surrogate motherhood is more contentious than compensation of the surrogate mother by the intended parents (10). Payment often is substantial because of the duration and complexity of involvement. As noted previously, some states specifically prohibit surrogacy contracts that involve payment. Several questions about payment for surrogacy have been raised:

For what is payment made? Although there is debate on this point, it is clear that payment must not be made contingent on the delivery of an “acceptable product”—a live-born, healthy child. Rather, payment should be construed as compensation for the surrogate mother’s time and effort, her initiating and carrying the pregnancy, her participation in labor and delivery, her acceptance of the risks of pregnancy and childbirth, and her possible loss of employment opportunities.

Why is payment offered or requested? In many surrogacy arrangements among close friends or relatives, there is no payment for the services of the surrogate mother. Rather, she may provide her services as an act of altruism, and the intended parents will be asked to reimburse her only for out-of-pocket expenses connected with the pregnancy. However, most women are understandably reluctant to undertake the burdens and risks of pregnancy on behalf of strangers without some kind of compensation for their time, effort, and risk.

Is payment likely to lead to the exploitation of potential surrogate mothers? Surrogacy arrangements often take place between parties with unequal power, education, and economic status (11). Unless independent legal representation and mental health counseling are mandated, women serving as surrogate mothers may be particularly vulnerable to being exploited. If a payment offered to a candidate for surrogacy is too low, it may be said to exploit her by not providing adequate compensation; if the payment is too high, it may be said to exploit her by being irresistible and coercive. Opponents of surrogate motherhood also have argued that if a fee must be paid to the surrogate mother, only affluent couples will be able to seek surrogacy services. This access barrier, however problematic, exists for most services related to infertility, for certain other medical procedures, and for adoption and, thus, is not specific to surrogacy agreements.

Responsibilities of Obstetrician–Gynecologists

In this Committee Opinion, the Committee on Ethics makes ethical recommendations for four categories of

physician involvement: 1) advising couples who are considering surrogacy, 2) counseling potential surrogate mothers, 3) providing obstetric services for pregnant surrogates, and 4) offering assisted reproductive technologies related to surrogacy. Although the obligations of physicians will vary depending on the type and level of their involvement, in all cases physicians should carefully examine all relevant issues related to surrogacy, including medical, ethical, legal, and psychologic aspects.

Intended parents and surrogate mothers have both divergent and common interests. Because of these divergent interests, one professional individual (eg, physician, attorney, or psychologist) or agency should not represent the interests of both major parties in surrogacy arrangements. The physician who treats the intended parents should not have the surrogate mother as an obstetric patient because conflicts of interest may arise that would not allow the physician to serve all parties properly.

Responsibilities of Physicians to Couples Considering Surrogacy

When approached by a couple considering surrogacy, the physician should, as in all other aspects of medical care, be certain that there will be a full discussion of ethical and legal issues as well as medical risks, benefits, and alternatives, many of which have been addressed in this statement. An obstetrician–gynecologist who is not familiar with these issues should refer the couple for appropriate counseling. Additional recommendations for advising couples considering surrogacy are as follows:

- Because of the risks inherent in surrogacy arrangements, such arrangements should be considered only in the case of infertility or serious health-related needs, not for convenience alone.
- A physician may justifiably decline to participate in initiating surrogacy arrangements for personal, ethical, or medical reasons.
- If a physician decides to become involved in facilitating surrogate motherhood arrangements, the following guidelines should be used:
 - The physician should be assured that appropriate procedures are used to screen the intended parents and the surrogate mother. Such screening should include appropriate fertility studies, medical screening, and psychologic assessment.
 - Mental health counseling should be provided before initiation of a pregnancy 1) to permit the potential surrogate mother and the intended parents to explore the range of outcomes and possible long-term effects and 2) to consider possible psychologic risks to and vulnerabilities of both parties and the prospective child.
 - It is preferable that surrogacy arrangements be overseen by private nonprofit agencies with credentials similar to those of adoption agencies. However, many existing agencies are entrepre-

neurial and for-profit (9). A physician making a referral to an agency must have assurance that the agency is medically and ethically reputable and that it is committed to protecting the interests of all parties involved.

- The physician should receive only usual compensation for medical services. Referral fees and other arrangements for financial gain beyond usual fees for medical services are inappropriate.
- The physician should not refer patients to surrogacy programs in which the financial arrangements are likely to exploit any of the parties.
- The obstetrician–gynecologist should urge the intended parents to discuss preconditions and possible contingencies with the surrogate mother or her representative and to agree in advance on the response to them. These issues include, but may not be limited to, the expected health-related behaviors of the surrogate mother; the prenatal diagnosis of a genetic or chromosomal abnormality; the inability or unwillingness of the surrogate mother to carry the pregnancy to term; the death of one of the intended parents or the dissolution of the couple’s marriage during the pregnancy; the birth of an infant with a disability; a decision by the surrogate mother to abrogate the contract and to contest custody of an infant conceived with the sperm of the intended father; or, in the case of gestational surrogacy, the option of registering the intended parents as the legal parents.
- The obstetrician–gynecologist should urge the parties involved to record in writing the preconditions and contingency plans on which they have agreed to make explicit the intentions of the parties, to facilitate later recollection of these intentions, and to help promote the interests of the future child. In the preparation of this agreement, both parties should be encouraged to have independent legal representation.
- Whatever compensation is provided to the surrogate mother should be paid solely on the basis of her time and effort, her initiation and continued gestation of the pregnancy, her participation in labor and delivery, her acceptance of the risks of pregnancy and childbirth, and her possible loss of employment opportunities. Compensation must not be contingent on a successful delivery or on the health of the child.
- Where possible, obstetrician–gynecologists should cooperate with and participate in research intended to provide data on outcomes of surrogacy arrangements.

Responsibilities of Physicians to Potential Surrogate Mothers

When approached by a patient considering becoming a surrogate mother, the physician should address ethical and legal concerns fully along with medical risks and ben-

efits as part of the initial consultation. In particular, the physician should be sure that preconditions and contingencies, such as those outlined in the previous section, have been thoroughly considered and that the potential surrogate mother recognizes the importance of having explicit written precondition and contingency agreements. In the preparation of this agreement, both the intended parents and the potential surrogate mother should be encouraged to have independent legal representation. Additional recommendations for counseling and providing other services for potential surrogate mothers are as follows:

- To avoid conflict of interest, the physician should not facilitate a woman’s becoming a surrogate mother for a couple whom the physician also is treating.
- The physician should ensure that appropriate procedures are used to screen and counsel both the intended parents and the surrogate mother. Referral for mental health counseling should be provided before initiation of a pregnancy 1) to permit the potential surrogate mother to explore the range of outcomes and possible long-term effects and 2) to evaluate her psychologic risks and vulnerabilities as well as the possible effects of surrogacy on her existing relationships and on any existing children.
- A physician who provides examinations and performs procedures for an agency that arranges surrogacy contracts should be aware of the policies of the agency and should decline involvement with any agency whose policies are not consistent with the ethical recommendations of this Committee Opinion and those of other professional organizations related to reproductive medicine, such as the American Society for Reproductive Medicine (formerly known as the American Fertility Society) (8, 9, 12).
- Whatever compensation is provided to the surrogate mother should be paid solely on the basis of her time and effort, her initiation and continued gestation of the pregnancy, her participation in labor and delivery, her acceptance of the risks of pregnancy and childbirth, and her possible loss of employment opportunities. Compensation must not be contingent on a successful delivery or on the health of the child.
- The physician should avoid participation in medical care arising from surrogacy arrangements in which the financial or other arrangements are likely to exploit any of the parties. The physician, therefore, is obliged to become as informed as possible about the financial and other arrangements between the surrogate mother and intended parents to make ethical decisions about providing medical care. A physician who agrees to provide medical care in what he or she later recognizes as clearly exploitative circumstances has a responsibility to discuss and, if possible, resolve problematic arrangements with all parties and may choose to transfer care when it is possible to do so.

Responsibilities of Physicians to Pregnant Women Participating in Surrogacy

When a woman participating in surrogacy seeks medical care for an established pregnancy, the obstetrician should explore with the woman her understanding of her contract with the intended parents and any provisions of it that may affect her care. If the physician believes that provisions of the contract may conflict with his or her professional judgment, the physician may refuse to accept the patient under those terms. Once accepted as a patient, she should be cared for as any other obstetric patient, regardless of the method of conception, or referred to an obstetrician who will provide that care. Even if she has already undergone screening by an agency, a physician–patient relationship exists between her and the obstetrician. The obstetrician has the attendant obligations of this relationship. Additional recommendations regarding the provision of obstetric services in this setting are as follows:

- The obstetrician’s professional obligation is to support the well-being of the pregnant woman and her fetus, to support the pregnant woman’s goals for the pregnancy, and to provide appropriate care regardless of the patient’s plans to keep or relinquish the future child. If a physician’s discomfort with surrogacy arrangements might interfere with that obligation, the patient should be referred to another obstetrician.
- The pregnant woman should be the sole source of consent regarding clinical intervention and management of the pregnancy, labor, and delivery.
- Agreements the surrogate mother has made with the intended parents regarding her care and behavior during pregnancy and delivery should not affect the physician’s care of the patient. The obstetrician must make recommendations that are in the best interests of the pregnant woman and her fetus, regardless of prior agreements between her and the intended parents.
- Confidentiality between the physician and the pregnant patient should be maintained. The intended parents may have access to the patient’s medical information only with the pregnant woman’s explicit consent.
- Obstetrician–gynecologists are encouraged to assist in the development of hospital policies to address labor, delivery, postpartum, and neonatal care in situations in which surrogacy arrangements exist.

Responsibilities of Infertility Specialists and Reproductive Endocrinologists to Intended Parents and Surrogate Mothers

In providing medical services related to surrogate motherhood arrangements, infertility specialists and reproductive endocrinologists should follow the recommendations

in the two previous sections. In particular, these specialists should ensure that appropriate procedures are used to screen the intended parents and the surrogate mother and that mental health counseling is provided to all parties before initiation of a pregnancy. Additional recommendations regarding the provision of assisted reproductive technologies are as follows:

- A physician who performs artificial insemination or in vitro fertilization as a part of surrogacy services necessarily will be involved with both the intended parents and the surrogate mother. However, the intended parents and the surrogate mother should have independent counseling and independent legal representation, and the surrogate mother should obtain obstetric care from a physician who is not involved with the intended parents.
- A physician who provides examinations and performs procedures for an agency that arranges surrogacy contracts should be aware of the policies of the agency and should decline involvement with any agency whose policies are not consistent with the ethical recommendations of this Committee Opinion and those of other professional organizations related to reproductive medicine (8, 9, 12).
- Specialists in infertility and reproductive endocrinology are encouraged to participate in research that is intended to provide data on the outcomes of surrogacy arrangements.

Summary

The obstetrician–gynecologist has an ethical responsibility to review the risks and benefits of surrogacy fully and fairly with couples who are considering surrogacy arrangements. The obstetrician who is consulted by a pregnant woman who is participating in a surrogacy arrangement owes her the same care as any pregnant woman and must respect her right to be the sole source of consent for all matters regarding prenatal care and delivery. The gynecologist or specialist in reproductive endocrinology who performs procedures required for surrogacy should be guided by the same ethical principles aimed at safeguarding the well-being of all participants, including the future child.

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