

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 8, 2016

RESOLUTION

RESOLVED, That the American Bar Association adopts the ABA Model Act Governing Assisted Reproductive Technology Agencies dated February 2016 and recommends consideration and adoption of the Model Act by appropriate governmental agencies and legislatures.

**AMERICAN BAR ASSOCIATION MODEL ACT
GOVERNING ASSISTED REPRODUCTIVE
TECHNOLOGY AGENCIES
(February 2016)**

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34 ARTICLE 1. DEFINITIONS

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36 SECTION 101. SHORT TITLE

37 This Act is entitled a Model Act Governing ART Agencies.

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39 SECTION 102. DEFINITIONS

40

41 1. "Assisted Reproductive Technology" or "ART" means a variety of clinical treatments
42 and laboratory procedures, which include the handling of human oocytes, sperm, or
43 Embryos, with the intent of establishing a pregnancy. This includes, but is not limited to,
44 in vitro fertilization (IVF), Gamete intrafallopian transfer (GIFT), zygote intrafallopian
45 transfer (ZIFT), Embryo biopsy, preimplantation genetic diagnosis (PGD), Embryo
46 cryopreservation, oocyte or Embryo donation, and gestational surrogacy. This definition,
47 for purposes of this Act, does not include artificial insemination, the process by which a
48 man's fresh or frozen sperm sample is introduced into a woman's vagina, other than by
49 sexual intercourse.

50

51 2. "Assisted Reproductive Technology Agency" or "ART Agency" means any Person
52 that facilitates Collaborative Reproduction by:

53

54 (a) Planning or arranging the details of agency services with the Intended
55 Parent(s);

56 (b) Setting the timeline for the services; establishing the type of services to be
57 rendered; acquiring or coordinating the services of third party licensed
58 professionals;

59 (c) Recruiting and/or obtaining personal information regarding Donors,
60 Gametes or Surrogates;

61 (d) Making, negotiating, or completing the financial arrangements;

62 (e) Directing, having real or apparent authority over, or supervising, directly
63 or indirectly, the matching process between the Intended Parent(s) and
64 Donors, Gametes or Surrogates;

65 (f) Directing, being in charge or apparent charge of, or supervising, directly
66 or indirectly, the services to be provided by another licensed Person;

67 (g) Using in connection with one's name or employment the words or terms
68 "Agency," "agency owner," or any other word, term, title, or picture, or
69 combination of any of the above, that when considered in the context in which
70 used would imply that such Person is engaged in the practice of agency
71 ownership or that such Person is holding herself or himself out to the public as
72 being engaged in the practice of providing services related to matching egg
73 Donors or Surrogates; provided, however, that nothing in this paragraph shall
74 prevent using the name of any Owner, department, or corporate director of an
75 agency, who is not a licensee, in connection with the name of the agency with
76 which such individual is affiliated, so long as such individual's affiliation is
77 properly specified; or

78 (h) Managing or supervising the operation of an agency, except for
79 administrative matters such as budgeting, accounting and personnel,

80 maintenance of buildings, equipment and grounds, and routine clerical and
81 recordkeeping functions.

82 (i) A Person who facilitates Collaborative Reproduction shall not be
83 considered an ART Agency under this Act, so long as that Person is not also
84 performing actions detailed above in (a)-(h).

85 (j) A Person who facilitates Collaborative Reproduction shall not provide
86 medical, legal, insurance or psychological services unless they are themselves
87 licensed within such profession.

88
89 3. “Client” means Intended Parent(s) working with an ART Agency.
90

91 4. “Collaborative Reproduction” means any ART in which an individual other than the
92 Intended Parent(s) provides genetic material or agrees to act as a Surrogate. It can
93 include, but is not limited to: (1) attempts by Intended Parent(s) to create a child through
94 means of a Surrogacy agreement, with or without the involvement of Donors; and (2)
95 assisted reproduction involving Donors where a Surrogate is not used.
96

97 5. “Conflict of Interest” means a situation where a Provider has financial interests that
98 could potentially influence the services rendered a Participant in Collaborative
99 Reproduction.
100

101 *Legislative Note: States will insert conflict of interest standards as reflected by statute*
102 *and case law.*
103

104 6. “Cycle” means an attempt to establish pregnancy, with the assistance of a Donor or
105 Surrogate, through the use of medical techniques or therapies including but not limited to
106 ART through IVF or artificial insemination.
107

108 7. “Department” means a division or department of the State government charged by
109 statute with authority to oversee the licensing, regulation and/or administration of
110 professionals in that State.
111

112 *Legislative Note: States should determine the department under the State’s own*
113 *organizational scheme that is best suited to oversee ART Agencies.*
114

115 8. “Donor” means an individual who produces eggs or sperm used for ART, whether or
116 not for consideration. The term does not include: (a) an Intended Parent who provides
117 Gametes, to be used for assisted reproduction; (b) a woman who gives birth to a child by
118 means of assisted reproduction; or (c) an Intended Parent. An “Embryo Donor” means
119 an individual or individuals with dispositional control of an Embryo who provide(s) it to
120 another for gestation and relinquish(es) all present and future parental and inheritance
121 rights and obligations to a resulting individual or individuals.
122

123 9. “Embryo” means a cell or group of cells containing a diploid complement of
124 chromosomes or group of such cells (not a Gamete or Gametes) that has the potential to

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125 develop into a live born human being if transferred into the body of a woman under
126 conditions in which gestation may be reasonably expected to occur.

127

128 10. “Escrow Account” means an independent, insured, bonded escrow depository
129 maintained by a licensed, independent, bonded escrow company; or an insured and
130 bonded trust account maintained by an attorney.

131

132 (a) For purposes of this section, a non-attorney ART Agency may not have a
133 financial interest in any escrow company holding client funds. A non-attorney
134 ART Agency and any of its officers, managers, owners of more than 5%
135 ownership interest, directors or employees shall not be an agent of any escrow
136 company holding client funds; and

137

138 (b) Client funds may only be disbursed by the attorney or Escrow Agent as set
139 forth in the assisted reproduction agreement and the fund management
140 agreement between the Intended Parent(s) and the Escrow Account holder.

141

142 11. “Escrow Agent” means the trustee for an Escrow Account.

143

144 12. “Gamete” means a cell containing a haploid complement of DNA that has the
145 potential to form an Embryo when combined with another Gamete. Sperm and eggs are
146 Gametes. A Gamete may consist of nuclear DNA from one human being combined
147 with the cytoplasm, including cytoplasmic DNA, of another human being.

148

149 13. “Intended Parent” means an individual, married or unmarried, who manifests the
150 intent as provided in this Act to be legally bound as the parent of a child resulting from
151 assisted or Collaborative Reproduction.

152

153 *Legislative Note: This definition is for guidance only and is not intended to change the*
154 *standard of care for the delivery of professional services or shift the burden of proof*
155 *otherwise required within the jurisdiction.*

156

157 14. “Owner” means any and all Persons who, directly or acting by or through one or more
158 Persons, owns more than a 5% interest in an ART Agency.

159

160 15. “Participant” means any Intended Parent, Donor or Surrogate, whether or not a
161 written contractual relationship exists with the ART Agency.

162 16. “Person” means any and all persons, associations, businesses, corporations,
163 partnerships, institutions, agencies, medical centers, and other organizations.

164

165 17. “Record” means information inscribed in a tangible medium or stored in an electronic
166 or other medium that is retrievable in perceivable form.

167

168 18. “Service Agreement” means an agreement between an ART Agency and Intended
169 Parent(s) describing the services to be performed.

170

171 19. "Surrogate" means an adult woman, not an Intended Parent, who enters into a
172 surrogacy agreement to bear a child, whether or not she has any genetic relationship to
173 the resulting child. Both a traditional surrogate (a woman who undergoes insemination
174 and fertilization of her own eggs *in vivo*) and a gestational surrogate (a woman into whom
175 an Embryo formed using eggs other than her own is transferred) are surrogates.
176

177 20. "Surrogacy" means an arrangement between Intended Parent(s) and a Surrogate.
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179 ARTICLE 2. LICENSING

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181 SECTION 201. IN-STATE APPLICATION FOR LICENSE
182

183 1. Every applicant for a license as an ART Agency must submit a written application for
184 a license to the Department, in such form as prescribed by the Department.
185

186 2. The Department's application, shall, at a minimum, require the following information
187 to be provided in a sworn statement:
188

189 (a) The business name, each business address, tax ID number, and date of
190 incorporation if applicable, or the true full legal name of the primary agent for
191 the business, date of birth, driver's license number, social security number,
192 and each place of business address;

193 (b) The true name, date of birth, driver's license number, social security
194 number, and home address of all Owners;

195 (c) Degrees and certifications and licenses or other professional designation of
196 primary agent for the business and for all Owners;

197 (d) Each business or occupation engaged in by all Owners during the five (5)
198 years immediately preceding the date of the application, including place of
199 employment and the location thereof;

200 (e) The previous experience of all Owners as it relates to the field of ART;

201 (f) A description of formal and informal education in the field of ART
202 completed preceding the application date by all Owners;

203 (g) Proof of applicable professional liability insurance, if available;

204 (h) The applicant's Conflict of Interest Policy (disclosure procedure/waiver
205 procedure);

206 (i) Statement of whether the applicant or any Owner:

207 (i) has been charged with or indicted for a felony. If so, provide an
208 explanation of the nature of the crime and a certified copy of the
209 relevant court records;(ii) regardless of adjudication, has been
210 convicted of, entered an admission of guilt or a plea of *nolo*
211 *contendere* to a felony and a certified copy of the relevant court
212 records; and/or

213 (ii) regardless of adjudication, has previously been convicted of,
214 has entered an admission of guilt or *nolo contendere* to
215 racketeering or any offense involving fraud, theft, embezzlement,
216 fraudulent conversion, or misappropriation of property and a

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certified copy of the relevant court records.

(j) Whether there has ever been a judicial or administrative finding that the applicant or any Owner has previously acted as an ART Agency without a license, or whether such a license has previously been refused, revoked, or suspended in any jurisdiction. If so, provide a detailed explanation.

(k) Whether the applicant or any Owner has worked for, or provided consulting services to, a company that has had entered against it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice. If so, provide a detailed explanation;

(l) Whether the applicant or any Owner has had entered against him/her/it an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or deceptive trade practice. If so, provide a detailed explanation;

(m) Whether the applicant or any Owner has had any convictions for child abuse, child neglect or sexual misconduct as such is defined by the criminal code of his/her State of residence;

(n) A statement from each Owner specifying that he/she is not currently using any drugs in a manner which violates the laws of his/her State of residence, and is able to fulfill the duties of his/her job description;

(o) A statement of affirmative duties as further described under Section 302 of this Act;

(p) A statement of intent to comply with Department's audit and review policy;

(q) Whether there have been any judicial or administrative findings that applicant or any Owner has been previously denied a license in the area of providing legal, medical, adoption, child-care, assisted reproductive services or counseling services; and

(r) Any material change in business following date of initial or renewal of licensure (as specified below).

3. The Department shall determine the minimum education and experience required for the issuance of licenses.

4. The Department shall implement procedures to obtain the following information regarding each Owner:

- 262 (a) State and federal criminal records;
- 263 (b) Child abuse and neglect check for all states of residency from the age of
- 264 eighteen (18); and
- 265 (c) Sex offender registry check for all states of residency from the age of
- 266 eighteen (18) as well as the federal database.
- 267
- 268 5. Upon the filing of an application for a license and payment of all applicable fees,
- 269 unless the application is to renew or reactivate an existing license, the Department shall,
- 270 in addition to reviewing the application:
- 271
- 272 (a) Review applicant’s policy for client file structure and management;
- 273 (b) Review applicant’s written pro forma Service Agreement for clients to
- 274 ensure compliance with this Act;
- 275 (c) Review applicant’s accounting process;
- 276
- 277 (d) Review the applicant’s system for protection of Participant funds in
- 278 accordance with this Act; and
- 279 (e) Review applicant’s Record retention policy.
- 280
- 281 6. The Department shall issue the license unless the application is incomplete, or grounds
- 282 for denial of the license exist. Grounds for denial shall include, but is not limited to, a
- 283 previous felony conviction, previous license revocation or failure to demonstrate
- 284 sufficient experience or education within the field of ART. Any denial, and reversal of
- 285 same, shall be governed by applicable State or federal law.
- 286
- 287 7. The Department may implement any application fees or other fees necessary or
- 288 convenient to carry out the provisions of this section.
- 289
- 290 8. The Department may permit applicants to operate on an interim basis while license
- 291 applications are pending. Interim licensure shall be permitted only if applicant is licensed
- 292 within another State, all unearned or undisbursed funds of its Intended Parent Clients are
- 293 deposited in an Escrow Account, and the applicant is covered by professional liability
- 294 insurance if such is available.
- 295
- 296 9. Each licensee shall report, on a form prescribed the Department, any change to the
- 297 information contained in any initial application form or any amendment to such
- 298 application not later than thirty (30) days after the change is effective.
- 299
- 300 10. Each licensee shall report any changes in the Owners, partners, departments,
- 301 members, joint venturers or directors of any licensee, or changes in the form of business
- 302 organization, by written amendment in such form and at such time as the Department
- 303 specifies by rule.
- 304 (a) When such change causes a new Person to acquire greater than 5%
- 305 ownership, or be provided direct control over the activities of the licensee,
- 306 such Person must submit an initial application for licensure before such
- 307 purchase or acquisition at such time and in such form as the Department

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- 308 11. Licenses are not transferable or assignable.
309
- 310 12. A licensee may invalidate any license by delivering it to the Department with a
311 written notice of the delivery, but such delivery does not affect any civil or criminal
312 liability or the authority to enforce this chapter for acts committed in violation thereof.
313
- 314 13. A licensee who is the subject of a voluntary or involuntary bankruptcy filing must
315 report such filing to the Department within seven (7) business days after the filing date.
316
- 317 14. A licensee that has been convicted or found guilty of a felony or has had entered
318 against her or him an injunction, a temporary restraining order, or a final judgment or
319 order, including a stipulated judgment or order, an assurance of voluntary compliance, or
320 any similar document, in any civil or administrative action involving racketeering, fraud,
321 theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of
322 any untrue, deceptive, or misleading representation or the use of any unfair, unlawful, or
323 deceptive trade practice must immediately report such filing to the Department, together
324 with a full explanation.
325
- 326 15. The Department shall implement procedures for the renewal of licenses.
327
- 328 16. Streamlined License Procedure
- 329 (a) Any Owner who is a professional subject to regulation under other
330 departments may opt for streamlined licensure requirements under this Act.
- 331 (b) The Department shall determine categories of professionals that qualify for
332 streamlined licensure. Such professionals shall include, but not be limited to,
333 physicians, attorneys, registered nurses, licensed psychologists and licensed
334 social workers.
- 335 (c) An inactive, suspended or otherwise not active professional license shall
336 not qualify for the streamlined licensure requirements.
- 337 (d) The streamlined licensure procedure shall be determined by the
338 Department.
- 339 17. This Chapter does not prevent a licensee from providing services to residents of any
340 part of this State or any other State or country.
341

342 SECTION 202. OUT OF STATE APPLICATION FOR LICENSE

- 343 1. The Department shall establish a mechanism for recognition and licensure of a foreign
344 ART Agency that desires to do business within its borders.
- 345 (a) A licensed, nonresident ART Agency that does not have a substantial
346 nexus within the State shall transmit a copy of their current license to the
347 Department and pay any applicable fees, as determined by the Department,
348 prior to transacting business in the State.

349 (b) A licensed, nonresident ART Agency, that has a substantial nexus within
350 the State shall transmit to this State's licensing body a copy of its current
351 license, pay any applicable fees, as determined by the Department, and submit
352 a completed application as required by the Department.

353 (c) An unlicensed, nonresident ART Agency shall satisfy all licensing
354 requirements previously established for resident ART Agencies.

355 (d) If reciprocity of ART licensing exists between the State of residence of the
356 licensed foreign Agency and this State, the Agency must transmit to the
357 Department a copy of its current license, pay any applicable fees, as
358 determined by the Department, and submit a completed application as
359 required by the Department.

360 2. The Department shall, upon receipt of the required documents and fees, make an
361 expedient determination for licensing.

362 (a) The Department can reject the application with direction for reapplying.

363 (b) The Department can accept the application and issue a license.

364 (c) The Department can accept the application and issue a provisional license,
365 with a remedial program to run concurrent with the timeline of the provisional
366 admission. The Department shall issue a full license upon completion of the
367 remedial program.

368 SECTION 203. DISCIPLINARY ACTION

369 1. The following acts are violations of this chapter and constitute grounds for disciplinary
370 action.

371 (a) A material misstatement of fact in an application for a license.

372 (b) The violation, either knowingly or without the exercise of due care, of any
373 provision of this chapter, any rule or order adopted under this Act, or any
374 written agreement entered into with the Department.

375 (c) Any act of fraud, misrepresentation, non-waived conflict of interest, or
376 deceit, regardless of reliance by or damage to a client, or any illegal activity,
377 where such acts are in connection with providing agency services under this
378 chapter. Such acts include, but are not limited to:

379 (i) Willful imposition of charges in violation of this Act, or
380 previously undisclosed charges, or charges in excess of 10% over
381 the amount originally disclosed in the Service Agreement without
382 reasonable cause;

383 (ii) Misrepresentation, circumvention, or concealment of any
384 matter required to be stated or furnished to a third Person;

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- 385 (iii) The use of false, deceptive, or misleading advertising; and
- 386 (iv) Failure to disclose material information in its possession to
387 Participants.
- 388 (d) Failure to maintain, preserve, and keep available for examination, all
389 books, accounts, or other documents required by this Act, by any rule or order
390 adopted under this Act, or by any agreement entered into with the Department.
- 391 (e) Refusal to permit inspection of books and Records in an investigation or
392 examination by the Department or refusal to comply with a validly issued
393 subpoena issued by the Department.
- 394 (f) Pleading nolo contendere to, or having been convicted or found guilty of, a
395 crime involving fraud, dishonest dealing, or any act of moral turpitude,
396 regardless of whether adjudication is withheld.
- 397 (g) Allowing any Person other than the licensee to use the licensee's business
398 name, address, or telephone number.
- 399 (h) Failure to pay any fee, charge, or fine imposed or assessed pursuant to this
400 chapter or any rule adopted under this chapter.
- 401 (i) Using the name or logo of another Person when marketing or soliciting
402 existing or prospective customers if such marketing materials are used without
403 the consent of that institution and in a manner that would lead a reasonable
404 individual to believe that the material or solicitation originated from, was
405 endorsed by, or is related to or the responsibility of that institution or its
406 affiliates or subsidiaries.
- 407 (j) Payment to the Department for a license or permit with a check or
408 electronic transmission of funds that is dishonored by the applicant's or
409 licensee's financial institution.
- 410 (k) Failure to maintain continuing education as otherwise set out in this
411 Statute. [*Legislative Note: Optional, depending on adoption of continuing
412 education requirements*]
- 413 (l) Failure to meet and/or maintain minimum standards as set forth above
414 constitute grounds for denial of an application.
- 415 2. Under this section, a licensee is responsible for acts of its Owners, members of the
416 partnership, any department or director of the corporation or association, or any Person
417 with power to direct the management or policies of the partnership, corporation, or
418 association.
- 419 3. Under this section, a licensee is responsible for the acts of its employee or agents if,
420 with knowledge or reckless disregard of such acts, the licensee retained profits, benefits,
421 or advantages accruing from such acts or ratified the conduct of the employee or agent as

422 a matter of law or fact.

423 4. Disciplinary action that may be imposed under this section includes:

424 (a) Denial of the issuance of a license or renewal of a license;

425 (b) Issuance of a probationary or conditional license;

426 (c) Fines up to \$25,000 per violation;

427 (d) Suspension of a license;

428 (e) Revocation of a license; and

429 (f) Ordering restitution to aggrieved Participant(s) to the full extent of their
430 damages. Restitution includes, but is not limited to, all amounts paid by the
431 aggrieved Participant(s) to the ART Agency as well as all other economic and
432 non-economic losses incurred by the aggrieved Participant(s) as a result of the
433 ART Agency's and/or Owner's misconduct.

434 5. The Department shall follow the State's administrative procedures act when exercising
435 its duties under this Section, and all remedies available under the administrative
436 procedures act shall be available to the Department and licensee or applicant.

437 6. In the event that the Department takes action under this Section, it shall arrange for the
438 provision of ongoing services to the active Participants.

439 **SECTION 204. FAILURE TO COMPLY**

440 1. The Failure of any ART Agency or any other Person to comply with any provision(s)
441 of this Act shall not affect the validity and enforceability of any lawful direct
442 agreement(s) among the Participants.

443 2. Action taken by the Department against any licensee shall not impair the obligation of
444 any lawful agreement(s) between the licensee and Participant(s).

445

446 **ARTICLE 3. RESPONSIBILITIES OF ART AGENCIES**

447 **SECTION 301. LICENSING REQUIRED**

448

449 1. ART Agencies must be licensed by the Department to operate in this State.

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451 **SECTION 302. AFFIRMATIVE DUTIES AND OBLIGATIONS**

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453 1. An ART Agency shall provide services to its Participants in a non-discriminatory
454 manner. Nothing herein shall inhibit the ART Agency's ability to accept or decline
455 prospective Participants based on its own policies and screening procedures.

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- 457 2. An ART Agency shall respect the autonomy of Participants by not engaging in
458 coercion, fraud, misrepresentation, or unethical behavior.
- 459 3. An ART Agency shall not provide legal, medical, psychological, insurance or other
460 advice that it is not licensed or otherwise qualified to give.
- 461 4. An ART Agency shall respect Participant confidences by first obtaining the
462 appropriate HIPAA releases, attorney-client privilege waivers, or other such written
463 consent from the Participant prior to conversation with other relevant ART professionals
464 on behalf of the Participant.
- 465 5. An ART Agency shall not present a Surrogate or Donor for matching to Intended
466 Parent(s), that they reasonably know or should know has not or will not pass medical
467 and/or psychological testing or is otherwise unavailable.

468 SECTION 303. SERVICE AGREEMENTS

469

- 470 1. Prior to entering into a Service Agreement, an ART Agency shall provide the
471 following items to the Intended Parent:
- 472 (a) A detailed description of the services to be provided by the ART Agency;
473 (b) The estimated costs of the services to be provided by the ART Agency;
474 (c) An explanation of refund and cancellation policies; and
475 (d) The estimated timing for the services to be provided by the ART Agency,
476 as well as a statement that the projected time frame may be subject to
477 variables outside of the control of the ART Agency.
478
- 479 2. All Service Agreements must be in writing and include the following provisions:
- 480 (a) The information required by Article 3, Section 303 of this Act;
481 (b) The name and address, phone number and email of Agency, the corporate
482 identity if any, the main contact person of the agency, and the license number,
483 if one has been provided by the Department;
484 (c) The full legal names, addresses, phone numbers and emails for the
485 Intended Parent(s);
486 (d) A detailed description of the services to be provided by the ART Agency;
487 (e) A detailed description of the estimated costs of the services to be provided
488 by the ART Agency;
489 (f) A description of other known fees and expenses that may be incurred,
490 including, but not limited to, legal fees and medical costs;
491 (g) A timetable for the payment of known costs, fees and expenses;
492 (h) The name and address, phone number and email of the Escrow Agent;
493 (i) The estimated time for completion of the services to be provided, as well as
494 a statement that the projected time frame may be subject to variables outside
495 of the control of the ART Agency;
496 (j) Notification of the right, and an opportunity, to have the Service
497 Agreement reviewed by independent legal counsel, and right to separate
498 counsel for applicable agreements with third parties for each Participant
499 involved;

- 500 (k) An explanation of recordkeeping procedures for Records required to be
501 kept under Section 305 of this Act;
- 502 (l) An explanation of the ART Agency's policies regarding future contact
503 between the Participants following the completion of the direct agreement
504 between the Participants or a statement that the ART Agency does not provide
505 such services;
- 506 (m) Disclosure of any and all relationships, activities, financial or other
507 interests of the Owners of the ART Agency that may constitute an actual or
508 potential conflict of interest as such is defined within the State and to offer the
509 Participant an ability to waive said conflict if such is permitted within the
510 jurisdiction; and
- 511 (n) The name of the ART Agency's professional liability insurance carrier(s)
512 or a statement that the ART Agency does not carry professional liability
513 insurance where none is applicable.

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515 SECTION 304. PREREQUISITES FOR CYCLE COMMENCEMENT

516

- 517 1. No ART Agency shall permit, encourage or facilitate an egg Donor or Surrogate to
518 begin a Cycle until the following tasks have been completed:
- 519 (a) A Service Agreement has been signed by the Intended Parent(s);
- 520 (b) All Participants have each had an opportunity to consult with a licensed
521 attorney of their own choosing;
- 522 (c) A direct agreement between the Participants has been executed (i.e., a
523 direct agreement between Intended Parents and a Donor, or a direct agreement
524 between Intended Parents and a Surrogate);
- 525 (d) The Intended Parent(s) have made the deposit to the Escrow Account, in
526 accordance with the direct agreement(s) between the Participants.
- 527 (e) The Participants are informed to seek advice regarding their life insurance
528 and health insurance/benefits policies and the respective coverage of the
529 fertility treatment, complications, and obstetric costs and fees;
- 530 (f) The Participants are informed to seek advice from medical, psychological,
531 legal, and any other relevant third party professionals to discuss the potential
532 risks and outcomes of the process; and
- 533 (g) The Participants are informed to seek advice regarding their guardianship
534 and estate planning options.

535

536 SECTION 305. RECORDKEEPING

537

- 538 1. The ART Agency shall create and maintain reasonable and ordinary business Records.
- 539
- 540 2. The ART Agency shall maintain copies of direct agreements between Participants,
541 unless the Participants decline to share their direct agreement with the ART Agency.
- 542
- 543 3. All Records required to be kept under this section shall be maintained for a minimum
544 of eighteen (18) years following the completion of the Service Agreement.
- 545

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- 546 4. The ART Agency shall have and follow a written policy that covers the following:
547 (a) The protocol for creating, storing, backing up, accessing, transferring and
548 disposing Records under the ART Agency's control; and
549 (b) The policy for transfer of such Records in the event that the ART Agency
550 ceases to exist or is otherwise unable to continue to maintain the Records for
551 the required time period.
552
- 553 5. Such Records shall be held in strict confidence by the ART Agency and only released
554 upon the written permission of the Participant(s) addressed by the information stored in
555 such Records. This provision applies even when the information is identified and used in
556 a database, for archival research, education, advertising, or for any other purpose. If the
557 Participant is defined in the Record as a couple, both persons shall provide permission
558 prior to release of information.
559
- 560 6. Such Records shall be confidential and the Records and their contents shall not be
561 disclosed nor shall disclosure be compelled except as follows:
562 (a) For the ART Agency Owner to carry out any and all duties under a Service
563 Agreement;
564 (b) With the consent of the Participant(s) whose information is contained in
565 the Record to be disclosed; or
566 (c) Pursuant to a valid court order or subpoena.

567 SECTION 306. CONTINUING EDUCATION

568

569 *Legislative Note: States can choose to implement alternative educational requirements in*
570 *lieu of yearly continuing education.*

- 571
- 572 1. Owners of ART Agencies must complete _____ hours of continuing education each
573 calendar year.
574
- 575 2. Such continuing education may consist of such topics as ethics, communicable
576 diseases, FDA screening, financial responsibility, psycho-social aspects of assisted
577 reproduction, reproductive medicine/biology and reproductive law or other relevant
578 topics. To the extent that the subject matter is identical, licensees that hold other
579 professional licenses may satisfy these requirements through continuing education
580 approved by their respective licensing authority.
581

582 SECTION 307. MANAGEMENT AND DISBURSEMENT OF FUNDS

583

- 584 1. All unearned or undisbursed funds of Intended Parent(s) must be held in an Escrow
585 Account established pursuant to this Act. Trust accounting rules of the jurisdiction of the
586 Escrow Account shall control the disbursement of funds as further reflected in the fund
587 management agreement between Intended Parent and Escrow Agent as well as within the
588 direct agreement between Intended Parent and Surrogate or Donor.
589

590 2. An ART Agency must provide proof of insurance and bonding as required pursuant to
591 this Act, as may be required by the Department.

592 SECTION 308. PROFESSIONAL LIABILITY INSURANCE

593

594 1. An ART Agency must carry professional liability insurance coverage, if available.
595

596 ARTICLE 4. MISCONDUCT

597 *Legislative Note: States should customize this article to comport with the State's*
598 *criminal code.*

599

600 SECTION 401. UNLICENSED OPERATION

601

602 1. No ART Agency shall operate without a license issued in accordance with this Act.

603 Violation of this paragraph shall be punishable by a civil penalty.

604

605 2. No Person shall knowingly operate or permit the operation in this State of an ART
606 Agency that is not licensed in accordance with this Act. Violation of this paragraph shall
607 be punishable by a civil penalty.

608

609 *Legislative Note: States should incorporate the existing statutory scheme for civil*
610 *penalties for unlicensed activities.*

611

612 SECTION 402. AUTHORIZATION OF CIVIL ACTION

613

614 1. An aggrieved Person may bring a civil action against an ART Agency or Owner in the
615 event of negligent conduct or misappropriation of funds.

616

617 2. An aggrieved Person may bring a civil action against an ART Agency or Owner for a
618 breaching the Service Agreement or violating the terms of this ACT.

619

620 3. In the event of knowing or purposeful misconduct, an award of punitive damages is
621 authorized.

622

623 4. In the event of a civil action against an ART Agency or Owner, attorney's fees and
624 costs shall be paid by the unsuccessful litigant.

625

626 SECTION 403. CANDOR WITH THE COURT

627 1. No ART Agency or Operator shall provide, attempt to provide, or solicit another to
628 provide false or misleading information to an administrative agency or court during the
629 parental establishment of a child. Violation of this section shall be a felony and
630 punishable accordingly.

631 2. Destruction of ART Agency records during or in anticipation of a civil action shall be
632 spoliation of evidence for which the court may shift the burden of proof to the ART

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633 Agency to prove non-liability or lack of damages.

634 SECTION 404. PAYMENT FOR GAMETES

635 1. No program of an ART Agency or Owner shall compensate or provide that a Donor, as
636 defined in Section 102.8, be compensated, based on the number or quality of Gametes or
637 Embryos donated. Violation of this section shall be a misdemeanor and punishable
638 accordingly.

639 SECTION 405. REMEDIES NOT EXCLUSIVE

640 1. This Article is not intended to limit the rights of any Person or government entity to
641 bring an action against the ART Agency or Owner under any other provision of law or
642 equity.

643 ARTICLE 5. MISCELLANEOUS PROVISIONS

644 SECTION 501. AUDITS

645 1. The Department may audit the ART Agency to ensure compliance with any and all
646 provisions of this Act and the ART Agency shall fully cooperate in any such audit.

647 SECTION 502. RULEMAKING

648 1. The Department shall, adopt rules to implement the Department's responsibilities
649 under this Act, in accordance with the State administrative procedures act, if any.

650 ARTICLE 6. PUBLIC INFORMATION

651 SECTION 601. DISSEMINATION OF INFORMATION

652

653 1. The Department shall publish a list of all ART Agencies licensed within the State.

654

655 2. The Department shall publish a list of all ART Agencies subject to its sanctions and
656 the sanction levied.

657

658 3. Such lists shall be updated and published as otherwise required of the Department by
659 its administrative regulations.

REPORT

Introduction & Summary

Assisted Reproductive Technologies (ART) is the collaboration of various professions all synchronized to resolve infertility visited upon an Intended Parent. Certain aspects of infertility are respectively addressed by licensed professionals including psychologists, physicians, and attorneys. Each of these professions is guided and regulated to some extent by the substantive and ethical rules of its various professional organizations and its licensing requirements.

The ABA Model Act Governing Assisted Reproduction Technologies was adopted by the ABA House of Delegates in 2008. Resolution 107, adopted by the House of Delegates in February 2008, was cosponsored by the following Sections: Individual Rights and Responsibilities; Real Property, Trust and Estate Law; Science and Technology Law; Young Lawyers Division; and the Health Law. The ABA Model Act governing Assisted Reproduction Technologies established for intended parents and licensed professionals a single baseline legal standard from which to foster predictability within the Intended Parent-Licensed Professional relationship. This is especially important given the tendency in ART for intended parents to seek professional support beyond the geographic boundaries typically seen in medical, psychological and legal sub-specialties.

When ART requires collaboration with persons outside of the intended parent – professional relationship, this is referred to as third party ART. Third party ART (gamete or embryo donation and surrogacy) is impacted by the services provided by certain recruiting and matching agencies. These agencies receive and manage prospective intended parents' funds for the purpose of matching them with desirable donors/surrogates as well as administering various aspects of their ongoing fertility program. Agencies can be owned and operated by anyone without professional training or affiliation. There are documented cases in which the owners of such agencies have misappropriated and absconded with client funds and otherwise inadequately or negligently administered their programs to the detriment of their clients and their donors/surrogates.

The lack of oversight with regard to ART agencies puts the Intended Parents, donors and surrogates at risk of legal and financial harm. Regarding such agencies, there is a significant gap in the licensing and regulation that governs most other aspects of the ART process. Such licensing and regulation should be proposed and adopted. To this end, this Resolution is designed to reduce the possibility of harm and abuse by providing the Intended Parents and other ART participants a basis upon which to predict performance of an ART agency, by promoting professionalism and best practices for ART agencies through licensing. Through this Resolution, Intended Parents and other ART participants can become better-informed consumers as a result of the implementation of objective standards required for the licensure of an ART agency.

This Resolution proposes the ABA Model Act Governing ART Agencies for jurisdictions seeking to develop their own legislation governing ART agencies. By adopting

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this Resolution, the legal community will be providing a model licensing structure to help states ensure that agencies providing support to the third party reproduction process are doing so with accountability and to help establish ethical and best practices for ART agencies, for the benefit of all ART participants.

Background

Infertility, the inability to conceive, may be physiological or anatomical in origin. A problem may arise in the production, delivery or viability of gametes (sperm, eggs or embryos). A problem may arise in the implantation or retention of the embryo or fetus. Within the entire spectrum of infertility, one-third of all infertility is attributed to females, one-third to males and one-third to a combination of problems in both partners or to unexplained causes. (www.asrm.org).

Assisted reproductive technology (ART) procedures are increasingly used as a method of family formation and to overcome various forms of infertility.

Infertility was defined as a disease in 2009, by the World Health Organization. The Supreme Court considers the inability to reproduce as a disability, stating that reproduction is a “major life activity,” and “conditions that interfere with reproduction should be regarded as disabilities” as per the Americans with Disabilities Act of 1991. (*Bragdon v Abbott*, 524 US 624, 629; 118 S Ct 2196. 1998). Under such a rubric, we are dealing with persons who are intellectually compromised, through stress associated with the underlying infertility, and physically. As such, these persons are subject to exploitation.

This Resolution will provide states a model licensing structure which will promote predictability and accountability for the benefit of Intended Parents and all ART participants with respect to the services provided by currently unlicensed third party ART agencies. Such a licensing structure will also help to minimize exploitation of the ART participants, foster professionalism and provide a mechanism for dispute resolution.

Infertility Statistics

A survey of the statistics is instructive to appreciate how infertility impacts society. A couple aged 29-33 years with a normal functioning reproductive system has a 20-25% chance of conceiving in any given month (National Women’s Health Resource Center, 2015). After six months of trying, 60% of couples will conceive without medical assistance; 90% after one-year. (*Id*). The remaining couples are diagnosed as infertile.

The 2011 statistics show that of 2,670,545 births in the US, at least 38,496 (1.44%) of the children were born from ART. (See generally, Thoma ME, Boulet S, Martin JA, Kissin D. *Births resulting from assisted reproductive technology: Comparing birth certificate and National ART Surveillance System data, 2011*. National Center for Health Statistics. 2014). The 2013 census noted there were 3,957,577 births in the U.S. (Hamilton BE, Martin JA, Osterman MJK, Curtin SC. *Births: Preliminary data for 2013*. National vital statistics

reports. National Center for Health Statistics. 2014), suggesting approximately 56,989 births from ART in 2013, and demonstrating an increasing reliance upon ART for family building.

The Psychosocial Costs of Infertility

Infertility is a non-discriminatory offender, and it carries with it a psychosocial overlay. Parenthood is a major aspect of adult life for women and men. The stress associated with infertility is associated with anger, depression, anxiety, marital issues and feelings of worthlessness. Intended Parents experience stigma, sense of loss, and diminished self-esteem as a result of their infertility. (Nachtigall RD, Becker G, Wozny M. *The Effects of gender-specific diagnosis on men's and women's response to infertility*. Fertil Steril 1992). Intended Parents will permit others to provide for results, treatment and fulfillment. "Normal Emotion Responses to Infertility and Coping Strategies." Access Australia, 23 Jan. 2010. Web. Intended Parents exposed to the stress of infertility are predisposed to making decisions without sufficient information and by accepting an unreasonable paradigm of risk.

The Financial Costs of Infertility

Medical fees and costs associated with ART treatment can be characterized as 'direct' or 'indirect'. The direct costs are primarily attributed to medical treatment addressing the infertility and include consultations, medications and hormone treatments, laboratory services, testing, gamete (egg and/or sperm) retrieval and embryo transfer, as well as associated administrative and overhead charges. (See generally, Connolly MP, Hoorens S, Chambers GM. *The Costs and Consequences of Assisted Reproductive Technology*. Hum. Reprod., Update 2010).

On the microeconomic side of infertility, patients expect to pay \$50,000 - \$100,000 for gestational surrogacy, \$15,000 - \$20,000 for donor eggs, \$12,000 for IVF, and \$3,000 - \$5,000 for medications. (Rosata D, *How High-Tech Baby Making Fuels the Infertility Market Boon*. Money, July 9, 2014). Sober thought requires factoring success rates into the true cost of treatment - as the national IVF success rate for a live birth ranges from 40 to 50% depending upon the source of the eggs. (SART.org, *Clinic Summary Report*, 2013). Thus, there is a very real possibility that a second cycle, and another round of costs, may be required. On a macroeconomic level, the infertility marketplace is expanding. As of 2013, the fertility market was independently valued at a recession proof, \$3.5 billion with a 3.6% annual growth. (*U.S. Fertility Clinics & Infertility Services: An Industry Analysis*, October, 2013).

Clearly, costs of fertility treatment are high, and such treatment is voluntary and risky. Within the United States, fifteen states have either an insurance mandate to offer, or an insurance mandate to cover, some level of infertility treatment. Eight of those states have an insurance mandate that requires qualified employers to include IVF coverage in their plans offered to their employees. "Insurance Coverage in Your State." *RESOLVE*, n.d. Web. 10 Dec., 2015.

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With a partial or complete absence of financial risk protection, the majority of infertility health care costs are paid with out-of-pocket payments [OoPP] by consumers. “...The high price of IVF cycles (\$12,000 for each cycle, and frequently multiple cycles), plus drugs, exams and tests deters many. The total price tag can top \$50,000 or more ...” (Marketdata Enterprises, Inc., Research Director, John LaRosa, 2013). While OoPP may be seen as a severe infringement to a right to reproductive health, OoPP absolutely impacts the current and future wellbeing of the Intended Parent(s) as a financial stressor.

Third Party Reproduction Services

As stated above, ART is collaboration of various licensed professionals, including psychologists, physicians, and attorneys. Each is guided and regulated by the rules of their professional organization and their licensing requirements.

When we speak of resolving infertility through “third party” reproduction, we expand the collaboration to include unlicensed persons, as well as ART agencies that help to match Intended Parents with the necessary third parties (gamete donor or gestational carrier) to resolve their infertility. The third party is never licensed, rather, she or he only operate through the authority of the medical consent forms signed at a fertility clinic and/or contracts entered into with the intended parents.

Commonly, ART agencies will provide fee-based services to match their intended parents with gamete donors and/or surrogates recruited by the ART agency. The fees are typically nonrefundable and range from \$4,000 for a gamete donor to \$20,000 for a gestational carrier. Yet, ART agencies can be owned and operated by anyone without professional training or affiliation. While many ART agency owners were themselves infertile, provided eggs or acted as gestational carrier, most do not have any form of education addressing medicine, ethics or law related to ART.

ART Regulation in the United States

There are few laws which address commercialization within third party reproduction; two states outlaw ART agencies; one state requires the use of escrow accounts. There are no Federal code sections on the provision of ART through Agencies.

The two largest professional medical organizations for reproductive medicine, American Society for Reproductive Medicine (“ASRM”) and the Society for Assisted Reproductive Technology (“SART”), have issued practice and ethical guidelines for their members. However, membership in the organizations is voluntary and the guidelines are self-regulated.

Thus, there is no national regulation of surrogacy and the states provide a mere patchwork quilt of policies and laws. This lack of law or regulation of third party reproduction is cast against a backdrop of rising reliance on such medical services. This lack of law and regulation has permitted ART agencies to take advantage of their clients to the extent of delayed or lost reproductive cycles, and, in some of the most egregious cases where

fraud is involved, theft of millions of dollars. To be fair, there is not an epidemic of abuse by ART agencies. However, the impact of abuse within any family building scenario is very devastating and infects all aspects of the aggrieved Intended Parents' lives.

Thus, we see the event horizon for abuse of an Intended Parent operating under an intellectual disability arising from an infertility diagnosis. First, the Intended Parent is under psychosocial stress resulting from his or her reproductive failures. Second, the Intended Parent is under financial stress because of expensive OoPPs, most often without insurance support. Third, the Intended Parent is under stress because of an inability to predict a positive outcome. Certainly, licensed professionals can provide the client security through their personal skill sets and licensure. The unlicensed ART agency, however, can offer nothing more than their most recent endorsement.

If an ART cycle fails because of an unlicensed or unregulated ART agency, everyone is harmed. The Intended Parent is harmed; e.g., loss of money and opportunity. The donor or carrier is harmed; e.g., unnecessary medical treatment. The institute of family is harmed; e.g., disincentive toward unique ways to address infertility. In addition, the moral fabric of society is harmed; e.g., no ability to rectify the injury to the Parties participating in the ART cycle in a productive manner. Lewin, Tamar. "The Surrogacy Agency that Delivered Heartache." New York Times. 25 Jul. 2014. Web.; Press Release. "Surrogacy Scam." FBI. 13 Sept. 2011. Web.

To this end, this Resolution, is designed to reduce the possibility of harm and abuse by providing the Intended Parents and other ART participants a basis upon which to predict performance of an ART agency, by promoting professionalism and best practices for ART agencies through licensing. Through this Resolution, Intended Parents and other ART participants can become better-informed consumers as a result of the implementation of objective standards required for the licensure of an ART agency.

Licensure of ART Agencies

Under the Resolution, ART agencies shall be required to apply for licensure within the jurisdiction it resides or expects to do business. Licensure, first of all, is the mark of a professional. The licensure process is intensive and demands an extra showing of competence and dedication. This reflects a general view that licensed professionals are more dedicated, with enhanced education, leadership and management skills.

Licensure is an indicator of dedication to integrity, hard work, and creativity, and an assurance that the ART agency has competence, even if at a minimal level. This Resolution proscribes an application process that requires detailed information and a demonstration of competency to be eligible for licensure within the relevant jurisdiction. Requested information includes, but is not limited to, a lack of a criminal background, a description of all ART related education in which the Agency has participated, and a minimum ongoing education requirement to maintain such license. The Resolution also addresses the consequences of failure of ART agencies to maintain minimum competency such as discipline, loss of license, and sanctions including fines by the licensing body.

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Licensure becomes a basis upon which to predict competence. The Resolution describes certain affirmative duties due to an ART agency's clients. Such duties include freedom from coercion and refraining from providing medical and/or legal advice. The Resolution also requires ART agencies to provide their clients clear, written documentation describing the duties to be performed by the agency, the fees charged for such services and conditions for rebating fees paid.

Through the Resolution, licensure is also recognized as a starting point for professional growth and development of ART agencies, and participation in professional activities such as education programs is part of the ongoing activities of a true professional service entity.

Finally, the Resolution supports the concept that through licensure ART agencies must meet certain ethical and financial responsibility standards, including requirements for holding client funds in an escrow account with appropriate bonding and insurances.

Conclusion

Through the adoption of this Resolution, the ABA voices its support and understanding of: 1) the vulnerability of Intended Parents who rely upon third party reproduction to treat their infertility; and 2) the importance of creating and fostering a licensing structure for third party reproduction ART agencies that match gamete donors and surrogates with Intended Parents who must rely on them to help build their families through assisted reproduction.

An ART agency licensing structure will provide assurances to the infertile population that ART agencies are providing professional support in a fashion that is predictable and accountable. Through the adoption of this Resolution, the ABA will provide a model licensing structure from which a jurisdiction can establish its own licensing paradigm and will help establish ethical and best practices for ART agencies, for the benefit of all ART participants.

Respectfully submitted,

Greg J. Ortiz, Chair
Section of Family Law
February 2016

GENERAL INFORMATION FORM

Submitting Entity: Section of Family Law

Submitted By: Greg J. Ortiz, Chair, Section of Family Law

1. Summary of Resolution(s). The Resolution recommends consideration and adoption of the Model Act Governing ART Agencies by appropriate governmental agencies and legislatures.
2. Approval by Submitting Entity. The ABA Section of Family Law approved submission of this Resolution on November 9, 2015.
3. Has this or a similar resolution been submitted to the House or Board previously?
No.
4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? The ABA Model Act Governing Assisted Reproduction Technologies was adopted by the ABA House of Delegates in 2008 (“Resolution 107”). Resolution 107, adopted by the House of Delegates in February 2008, established for intended parents and licensed professionals a single baseline legal standard from which to foster predictability within the Intended Parent-Licensed Professional relationship. This is especially important given the tendency in ART for intended parents to seek professional support beyond the geographic boundaries typically seen in medical, psychological and legal sub-specialties. Resolution 107, adopted in 2008, did not address regulation or licensing of assisted reproduction agencies. The Model Act Governing ART Agencies will supplement Resolution 107 and will act to provide further predictability and accountability for Intended Parents and all ART participants with respect to the services provided by currently unlicensed third party ART agencies.
5. If this is a late report, what urgency exists which requires action at this meeting of the House? This is not a late report, but some urgency exists in that third party ART agencies are currently unregulated and the reliance upon and use of assisted reproduction as a method of family formation continues to increase every year. This lack of law and regulation increases the potential for exploitation of vulnerable intended parents, surrogates and gamete donors as more unlicensed and unregulated third party ART agencies enter the industry and provide third party ART services. Acting now demonstrates the ABA’s leadership in protecting the participants in third party reproduction and fostering a licensing structure for third party ART agencies.
6. Status of Legislation. (If applicable). Not Applicable.
7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. Submission to the states for adoption.

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8. Cost to the Association. (Both direct and indirect costs). None
9. Disclosure of Interest. (If applicable). Not Applicable.
10. Referrals. The Section of Family Law circulated the substantive draft documents in 2013 and 2014 to the following entities, who were also invited to take part in a Working Group session on May 9, 2015: Business Law; Health Law; Individual Rights and Responsibilities; International Law; Litigation; Real Property, Trust and Estate Law; Science and Technology Law; Young Lawyers Division. A second Working Group session was held on August 2, 2015, and the following entities were invited to participate: Business Law; Health Law; Individual Rights and Responsibilities; International Law; Litigation; Real Property, Trust and Estate Law; Science and Technology Law; Young Lawyers Division; Solo, Small Firm & General Practice Law; Tort Trial & Insurance Practice Law. The Section of Health Law has provided substantive comments, resulting in revisions to the underlying documents which are the subject of this Resolution. The Section of Science and Technology and the Section of Real Property, Trusts and Estates have also provided substantive input and have actively participated in the drafting of the documents which are the subject of this Resolution.
11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address).

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution recommends consideration and adoption by appropriate governmental agencies and legislatures of the Model Act Governing ART Agencies, which provides model licensing legislation governing ART agencies.

2. Summary of the Issue that the Resolution Addresses

Assisted Reproductive Technologies (ART) is the intersection of various professions all synchronized to resolve infertility visited upon an Intended Parent. Certain aspects of infertility are respectively addressed by licensed professionals including psychologists, physicians, and attorneys. Each of these professions is guided and regulated to some extent by the substantive and ethical rules of their various professional organizations and their licensing requirements.

When assisted reproduction requires collaboration with persons outside of the intended parent – professional relationship, this is referred to as third party ART. Third party ART (gamete or embryo donation and surrogacy) is impacted by the services provided by certain recruiting and matching agencies (“ART agencies”). ART agencies receive and manage prospective intended parents’ funds for the purpose of matching them with desirable donors/surrogates as well as administering various aspects of their ongoing fertility program. ART agencies can be owned and operated by anyone without the professional training, licensing or regulation that governs most other aspects of the ART process.

The reliance upon and use of assisted reproduction as a method of family formation continues to increase every year. The lack of law and regulation of third party ART agencies increases the potential for exploitation of vulnerable intended parents, surrogates and gamete donors as more unlicensed and unregulated third party ART agencies enter the industry and provide third party ART services.

3. Please Explain How the Proposed Policy Position will address the issue

The Model Act Governing Assisted Reproductive Technology Agencies will provide states a model licensing structure which will promote predictability and accountability for the benefit of Intended Parents and all ART participants with respect to the services provided by currently unlicensed third party ART agencies. Such a licensing structure will also help to minimize exploitation of the ART participants, foster professionalism and provide a mechanism for dispute resolution.

4. Summary of Minority Views

At the time of the writing of this Resolution with Report and summary, we are not aware of any formal reported direct opposition to the approval of the Model Act Governing ART Agencies.