



# **MHPG Symposium - How Far is too Far? The Medical, Embryological, Psychological and Legal Aspects of Sex Selection. Just Because We Can...**

**Melissa B. Brisman, Esq**

# SEX SELECTION

---

- Legal opinions often take on the current moral views of the country

# WHAT IS ETHICAL?

---

- **Dictionary definition:**
  - Being in accordance with the accepted principles of right and wrong that govern the conduct of a profession.
  - Pertaining to or dealing with morals or the principles of morality; pertaining to ethics.

# ETHICS CHANGE OVER TIME

---

- What people consider right and wrong change over time and so will the ethics of sex selection

# TYPES OF SEX SELECTION

---

- **Abortion**
- **PGD**
- **Sperm sorting**

# PERCEIVED CONCERNS

---

- Too many of one sex will be present in society
- Abortions will be performed solely on the basis of gender



# REASONS FOR SEX SELECTION

---

- **Family balancing**
- **Cultural preference for a certain sex**
- **Sex linked disorders**
- **Emotional issues**
- **Parental preference for one sex over the other**

# IS IT ETHICAL TO SELECT THE GENDER OF YOUR FUTURE CHILD?

---

- Cultural norms will dictate whether this type of technology will be accepted



# LAWS IN FOREIGN COUNTRIES

---

- **Four countries explicitly prohibit sex selective abortion:**
  - China
  - Kosovo
  - Nepal
  - Vietnam

# **LAWS IN FOREIGN COUNTRIES**

---

- **Sweden explicitly permits the termination of a pregnancy based on the sex of the fetus**

# MEDICAL RESTRICTIONS

---

- China, India, and Nepal prohibit medical professionals from revealing the sex of the fetus to the parents

# OTHER MEDICAL RESTRICTIONS

---

- Many countries prohibit the use of technology to sex select prior to pregnancy

# LAWS IN THE UNITED STATES

---

- Eight states have laws prohibiting sex selective abortion:
  - Arizona
  - Illinois
  - Kansas
  - North Carolina
  - North Dakota
  - Oklahoma
  - Pennsylvania
  - South Dakota

# ABORTION LAWS

---

- Reason given for the laws on abortion are to hasten the growing trend of sex selection



# **JUNE 2014 JOINT STUDY (See Bibliography)**

---

- **Illinois (1984) and Pennsylvania (1989) ban sex selection**
- **A study was done looking five years back and five years forward (after the ban was enacted)**
- **The study concluded that there was no change in the birth rate of girls vs. boys in both the community as a whole and in the subset of Asian American community.**

# ADDITIONAL STUDY POINT

---

- Looks at the perceived notion that foreign-born Chinese, Korean, and Indian families do not accept females

# STUDY CONTINUED – THE FACTS

---

- Foreign-born Chinese, Indian, and Korean families have a female based sex ratio at birth (.64) after they have had two previous boys
- The sex ratio at birth for children born to white families with two prior boys is 1.07

# STUDY CONTINUED – THE CONCLUSION

---

- This means that foreign born Chinese, Indian, and Korean families have almost twice as many girls than boys after having boys and considerably more girls than white families at the same birth parity.
- This proves that the study point is not accurate - these families do accept females.

# MOTIVATION FOR LAWS

---

- **Restricting access to abortion is the primary motivation for sex selective abortion bans**

# EFFECTIVENESS

---

- **None of the laws that ban sex-selection abortion in the US prohibit other methods of sex selection prior to pregnancy**



# CHANGING CULTURAL NORMS

---

- From 1985 to 2003, the proportion of South Korean women reporting that they must have a son dropped from 48% to 17%

# CONSEQUENCES OF A BAN ON ABORTION BASED ON SEX

---

- **Sex selection bans perpetuates discrimination**
- **Economically disadvantaged women will not have access to abortions they need if the doctor believes the abortion is gender/sex based**

# PROOF FOR AN ABORTION

---

- Requires a doctor to determine a reason for the termination which is not easy to prove
- Doctors may err on the side of caution for fear of liability

# ACCESS TO HEALTH CARE

---

- Sex selective abortion bans are more likely to lead to the denial of services or health care to those who need it
- Wealthier couples will always find a way to access these services
- Insurance companies may scrutinize payments

# EMPIRICAL DIFFERENCES

---

- The difference between changes in sex ratios before and after the bans show no difference in birth rate changes from bordering states
- Findings suggest that abortion bans have no impact on sex ratios

# CONSEQUENCES OF PROHIBITION

---

- Prohibiting abortion won't do any good if PGD or sperm sorting is used



# IMPACT

---

- **Sex selective abortion bans have not been shown to impact sex ratios in the United States**

# SEX SELECTION AND PHYSICIAN LIABILITY

---

- Physicians need to protect themselves from liability
- Parents who are doing sex selection for social reasons may believe they are buying a product with 100% guarantee

# COUNSELING

---

- Recommend both genetic and psychological counseling
- Make sure the genetic counselor; psychological counselor; and physician clearly document how the risks and benefits were explained to the patient(s)

# CONSENT FORMS

---

- **Make sure consent forms indicate that sex selection in any form is not 100% effective**
- **There is no guarantee that the desired sex will be born**
- **There is no guarantee that the baby will be healthy**

# CONSENT FORMS

---

- Have doctor initial next to each point
- Have patients initial next to each point

# IMPORTANCE OF DOCUMENTATION

---

- If it isn't documented it didn't happen.



# CONCLUSION/THOUGHTS

---

- Is it worth all this trouble to regulate sex preferences?
- Can we regulate ethics?

# TAKE HOME MESSAGE

---

- **Make sure your patients understand that sex selection is not 100% effective and that as a medical professional you cannot guarantee their child's gender**
- **Regulating sex selection may not accomplish the desired goals and hence the costs may outweigh the benefits**

# BIBLIOGRAPHY

---

- The Free Dictionary,  
<http://www.thefreedictionary.com/>
- Replacing Myths with Facts: Sex-Selection Abortion Laws in the United States; June 2014; Authors: Brian Citro, Jeff Gilson, Sital Kalantry, Kelsey Stricker

# CONTACT INFORMATION

**Melissa B. Brisman, Esq.**

**Melissa B. Brisman, Esq., LLC**

**One Paragon Drive, Suite 158**

**Montvale, NJ 07645**

**201-505-0099**

**201-505-0097 Fax**

**[www.reproductivelawyer.com](http://www.reproductivelawyer.com)**

**[info@reproductivelawyer.com](mailto:info@reproductivelawyer.com)**

**Reproductive Possibilities, LLC and**

**Surrogate Fund Management, LLC**

**One Paragon Drive, Suite 160**

**Montvale, NJ 07645**

**Phone: 201-505-0078**

**Fax: 201-505-0994**

**[www.reproductivepossibilities.com](http://www.reproductivepossibilities.com)**

**[www.surrogatefundmanagement.com](http://www.surrogatefundmanagement.com)**

**[info@reproductivepossibilities.com](mailto:info@reproductivepossibilities.com)**