Resolution CFM 1957/2010: significant changes in the practice of assisted human reproduction

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Abstract

As of 1978 the techniques of assisted reproduction have become clinical realities in the treatment of infertility. In order to minimize ethical conflicts and mix the use of such techniques, the Brazilian Resolution No. 1358/1992 of CFM (Federal Medicine Board) came into force. After eighteen years, this resolution was revoked by Resolution No. 1957/2010 CFM, entering into force on January 6, 2011. The new resolution was revised and updated, obtaining huge acceptance among the professionals involved. The article points out the main achievements and the issues that still need adjustment, to effectively respond to the multiplicity of cases presented in the services. It concludes that the resolution and the Brazilian Civil Code do not solve all ethical conflicts generated in the practice of assisted reproduction.

Key words: Assisted reproduction. Ethics. Law.

Resumo

Resolução CFM 1957/10: principais mudanças na prática da reprodução humana assistida

A partir de 1978 as técnicas de reprodução assistida se tornaram realidade clínica no tratamento da infertilidade. Para minimizar os conflitos éticos e homogeneizar a utilização dessas técnicas entrou em vigor no Brasil a Resolução CFM nº 1358/1992. Após dezoito anos, esta Resolução foi revogada pela Resolução CFM nº 1957/2010 que entrou em vigor em 6 de janeiro de 2011. A nova Resolução, revista e atualizada, obteve grande aceitação entre os profissionais envolvidos. O artigo aponta os principais avanços e os pontos que ainda necessitam adequação para efetivamente responder à multiplicidade dos casos que se apresentam aos serviços. Considera ao final que a Resolução e o Código Civil brasileiro ainda não solucionam todos os conflitos éticos gerados na prática da reprodução assistida.

Palavras-chave: Reprodução assistida. Ética. Lei.

Resumen

Resolución CFM 1957/2010: cambios principales en la práctica de la reproducción humana asistida

Desde 1978 las técnicas de reproducción asistida se han convertido en una realidad clínica en el tratamiento de la infertilidad. Para reducir al mínimo los conflictos éticos y homogeneizar el uso de estas técnicas entró en vigor en Brasil, la Resolución N º 1358/1992 CFM. Después de dieciocho años, esta Resolución fue revocada por la Resolución N º 1957/2010 CFM que entró en vigor el 6 de enero de 2011. La nueva Resolución, revisada y actualizada, ha obtenido una amplia aceptación entre los profesionales involucrados. El artículo señala los principales logros y los puntos que aún necesitan ajustes para responder con eficacia a la multiplicidad de los casos que se presentan a los servicios. Considera al final que la resolución y el Código Civil brasileño todavía no resuelven todos los conflictos éticos que se generan en la práctica de la reproducción asistida.

Palabras-clave: Reproducción asistida. La ética. La ley.

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They declare that there was no conflict of interest.

In our culture the wish to have children is seen as a natural feeling. Fertility is associated to personal accomplishment and being unable to breed shows a flaw in fulfilling our biological destiny and is considered a social stigma [1] – a problem that is estimated to affect around 15% of the population in childbearing age [2].Due to such considerable percentage, infertility should be treated as a public health problem. However, despite its amplitude and magnitude, it's still neglected.

In 1978, after the birth of Louise Brown, the first baby born using in vitro fertilization (IVF) [3], a new sub-area of medicine was created: assisted human reproduction. All clinical and laboratory procedures aiming to achieve pregnancies, replacing the natural reproductive process or making it easier for those with deficiencies are understood as assisted reproduction techniques (ART). The advances in this technology were fast and progressive, creating many variables that caused unimaginable ethical conflicts for the natural conception.

It is necessary to highlight that there is not enough time in thirty years to properly evaluate the new and challenging realities and to develop ethical stands on it and make them widely accepted. Themes such as the moral status of the embryo, discarding and abandoning of embryos, gamete and embryo donations, cryopreservation, sex selection, embryo transfer, embryo reduction, surrogacy, post-mortem conception, reproductive cloning, PGD (preimplantation genetic diagnosis), among others, were raised as of the moment assisted reproduction became a clinical reality.

Resolution CFM 1957/10

In 1992, since unanimity could not be achieved regarding the ethics of the aforementioned matters and acknowledging the need to reconcile the use of assisted reproduction techniques with the principles of medical ethics, the Federal Council of Medicine (CFM) issued Resolution CFM 1358/92 – the first in Brazil to specify the ethical standards for using assisted reproduction techniques. After eighteen years, it was revoked by Resolution CFM 1957/10, which is in force since January 6, 2011.

The new resolution, undoubtedly the most current, is the same in regard to the following: anonymous donation of gametes and embryos, forbiddance of embryo reduction, forbiddance of embryo sexing (procedure that makes it possible to choose the sex of the embryo) – as well as standards for using PGD and surrogacy. Finally, it also kept the forbiddance of monetary payments for gamete and embryo donation and surrogacy [4]. However, four items were changed: 1) all people desiring the treatment are allowed to use assisted reproduction; 2) the number of embryos transferred is limited according to the patient's age; 3) post mortem reproduction is regulated; and 4) only healthy embryos are allowed to be cryopreserved [4].

The use of ART by all people desiring the treatment implies that it is allowed the use of assisted reproduction techniques by any person that is legally capable, subject to rights and obligations: single, married, widowed, divorced, in a common-law marriage, homosexual, heterosexual, or bisexual. That is, regardless of marital status and sexual orientation. In truth, such change is especially important to same-sex couples, many of whom wish to create a family.

The access was easier to lesbian couples even before the resolution was in force, since, in such cases, despite the fact that the woman needs a semen donation, she would be the one receiving the embryo. In most cases, these women presented themselves as unmarried to avoid sexual orientation discrimination and to avoid possible ethical conflicts. In the case of gay men, that was not a choice. To have the treatment, the couple would need an egg donor and a surrogate. So, it was not possible to remain unnoticed during the treatment.

The limitation of the number of embryos transferred according to the patient's age follows the world trend of transferring less and less embryos in order to avoid multiple pregnancies and perinatal complications [5]. It even acts as a legal resource for the doctor not to be forced by a patient to transfer a higher number of embryos in order to achieve a multiple pregnancy, which is now a common desire among couples. The resolution *indicates the transfer of two embryos at most for women aged 35 and under; three embryos at most for women aged between 36 and 39; and four embryos at most for women aged 40 and over* [4].

The possibility of cryopreservation only for healthy embryos justifies the destruction of surplus embryos, which was already happening in most assisted reproduction centers. The main reasons for the destruction of embryos are: altered embryos and patient's lack of interest and resources to keep the preservation.

The resolution made legal the post mortem reproduction – which was, without a doubt, the greatest news. However, for that to be possible, the donating spouse must provide an informed consent, previously signed and validated in a registry, authorizing the use of his/her genetic material even after his/her death [4].

The work experience in this professional field allowed the observation that the new resolution was widely accepted among professionals of the area and is, in fact, being used. However, this resolution, as well as the Brazilian Civil Code, still neglect some matters: aspects of the treatment for same-sex couples, filiation, inheritance, and the fate of surplus embryos are not well defined as of yet.

Despite the fact that the resolution clearly allows the use of ART for all people, including homosexuals, it does not regulate many consequences of this new possibility. For instance, lesbian couples, in their majority, wish to go through the treatment *together*: one donates the eggs and the other receives the embryos. As a couple, at first, that should not pose a problem. However, the resolution neglects this particular case. On the other hand, it clearly states that all donation of gametes and embryos should be anonymous [4], establishing a paradox between the two demands. Gay male couples are also finding difficulties due to the need for surrogacy. The resolution is not clear on who should receive the embryos in such case.

Regarding filiation, the Brazilian Civil Code provides three situations related to assisted reproduction in a its Article 1,.597: *The children considered born in wedlock are those: III – born due to homologous artificial insemination, even if the spouse is deceased; IV – concerning surplus embryos, born, at any time, due to homologous artificial insemination; V – born due to heterologous artificial insemination, as long as previously authorized by the spouse* [5]. However, surrogacy and post mortem reproduction, due to the use of cryopreserved gametes, are not mentioned.

Furthermore, it should be considered that surrogacy is a different case. Due to this procedure, for the first time in human history maternity can be challenged [6]. According to Article 1,603 of the Civil Code - *Filiation is proved by the birth certificate registered in a Civil Registry Office* [5]. That means that the woman who gives birth is automatically considered the mother of the child. Therefore, the biological mother (owner of the genetic material) cannot be declared in the birth certificate – such cases are currently solved in court.

There are two types of post mortem reproduction: when the deceased is the male spouse and when the deceased is the female spouse. Both present problems when defining filiation. The Civil Code, in Article 1,597, states: *The children considered born in wedlock are those: II – born within three hundred days after the dissolution of marriage, death, judicial separation, nullity, and annulment of marriage* [5]. Hence, if the baby is born through post mortem reproduction after the 300 day deadline from the death of the male spouse, there is no paternal filiation established at first.

In case the female spouse dies, the establishment of filiation is even more complicated, since the surviving partner will need to use a surrogate, with its aforementioned problems, added to the difficulties arising from the biological mother's death.

The post mortem reproduction also presents a problem related to right of inheritance. According to Article dispositions of Article 1,845 of the Civil Code: *the offspring, ancestors and the spouse are forced heirs* [5]. However, Article 1,798 warns: *The inheritance for those born or already conceived at the moment the inheritance proceedings begin is legitimate* [5]. Therefore, the offspring born through post mortem reproduction appear to be excluded from the settlement [7].

For surplus and viable embryos, Resolution CFM 1957/10 provides that cryopreservation for undetermined time is possible and that, at the moment of the cryopreservation, the spouses or partners must express their wishes, in writing, for the fate of the cryopreserved pre-embryos in case of divorce, serious illness, or death of one or both of them, and when they wish to donate them [4]. However, it does not discuss the possibility of a patient not wanting to cryopreserve embryos for lack of interest or financial conditions – a fact that is not uncommon. It also neglects the case of what to do when the frozen embryos are abandoned, mainly in cases where the patient stops paying the maintenance fee for the freezing or when the institution cannot contact the patient at all.

The fate and the discard of surplus embryos is a polemic subject. The Catholic Church believes that an embryo is a human life and so it should not be subject to harmful procedures such as deep freezing and destruction [8]. This opinion is so strong that in Italy, for example, cryopreservation is not allowed, much less discarding embryos. In other countries, such as England and the United States, the embryos are cryopreserved and discarded according to the interests of the patient [9].

Final remarks

The demand for assisted reproduction has been growing over the years. In Latin America, Brazil is the country that performs more ART procedures [10].

This fact shows the importance of constant updates and reviews of the resolution that provides the ethical standards for its operation.

Resolution CFM 157/10 is more current and its changes were widely accepted. However, the last update does not consider all the consequences of the procedure and some deficiencies can be observed. In this sense, it should be said that the constant updates, including those of the Civil Code, should be performed with the intention of solving the issues that are still unsolved, as well as adapting other aspects that could become necessary to keep up with the fast scientific development. Regarding such pressing need, it is worth reflecting that Resolution CFM 1358/92 was in force for 18 years; one hopes that the same does not occur with the current standard, Resolution CFM 1358/92, and that new evaluations be periodically performed. In this regard, it is highlighted that the Federal Council of Medicine does not know when new updates of the document will take place.

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Authors' participation in writing the article

Tatiana Henriques wrote the article, an integral part of her monograph for her specialization on Assisted Human Reproduction. Rodrigo Holanda helped with the research on legal subjects and theoretical background.

Received: 11.25.2011
Reviewed: 11.21.2012
Approved: 11.27.2012