

# Op-Ed: Sperm Donor Industry Needs More Regulation

Medical advances can prevent the U.S. from being the 'Wild West' of reproductive technology.

*Alan C. Milstein, The National Law Journal*

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A Canadian couple recently filed a complaint in Georgia aiming to shake up the \$2 billion American infertility industry. Angela Collins and Margaret Hanson claim Xytex Corp. failed to investigate whether one of its sperm donors — a euphemistic term for "seller" — had misrepresented his "qualifications." The couple allege they were told the genetic material they were purchasing was from a doctorate candidate in neuroscience engineering "mature beyond his years" and one of the company's "best donors."

Seven years after Collins gave birth to their son, the couple say they discovered the donor had no fancy academic degree, but instead had a criminal record and a history of mental illness. Although the child at present seems healthy, the lawsuit seeks medical-monitoring damages because they allege he has an increased risk of developing hereditary schizophrenia. The lawsuit further claims the donor's sperm was used to produce more than 30 additional offspring.

In an email to the Toronto Star, the mothers said: "We love our son dearly and we want to provide him with the best possible outcome, which is why we hope to establish a ... fund for all the children to help prevent psychosis. We would also like to initiate improvements within the fertility industry (i.e. improved accountability, better screening and higher standards)."

On Xytex's Facebook Page (yes, a sperm bank has a Facebook page), the company advertises itself as "Helping Families Realize Their Dreams Since 1975." And in an "Open Letter" on its website, the company denies any wrongdoing, claiming it told the couple that the information and representations the donor provided as to his personal history "were not verified by Xytex."

The international flavor of the lawsuit arose because Canada forbids payment not just to organ donors but to sperm and egg donors as well, resulting, as you might imagine,

in a shortage of available material. So the couple engaged in what has come to be called "reproductive tourism," traveling to countries whose fertility industry is less regulated than one's own for the purpose of producing a child.

## LIMITED SCREENING

Sadly, sperm banks in the United States are one such industry. The operation of such facilities fall under federal regulations as "Human Cells, Tissues, and Cellular and Tissue Based Products." But such regulations only require these private companies to maintain careful records and to screen applicants for HIV, hepatitis and various sexually transmitted diseases.

Such limited screening leaves a huge gap in the health profile of the donor and creates serious potential risks to the human fruits of this particular artificial reproductive technology, particularly at a time when DNA testing is available for a slew of genetic diseases. In one occurrence reported in the Journal of the American Medical Association, a donor passed on a heart condition that could have been detected by genetic screening, to at least eight babies, including one who died of heart-related problems.

Currently, no federal or state agency regulates or even monitors how many times an individual may donate his sperm, how such material may be distributed and, perhaps most disturbingly, how many children an individual can father by such distribution. Tales are legion of the living, breathing children of such technology discovering they have 70 or, in one case, 150 siblings. What does that do to our concepts of family, consanguinity and personhood? And, of course, there is the risk posed by such siblings unknowingly finding each other in love.

As to the lawsuit filed against Xytex, the question is what duty it had to investigate the background of one of its suppliers. The plaintiffs learned of the donor's name when the company mistakenly included it on some follow-up correspondence sent years after their purchase. They say it took them just minutes of an Internet search to find out that the representations made by the donor were false. Certainly, a reasonably prudent company could have conducted the same inquiry, much like employers do to screen potential applicants.

The tough question, both from a legal and bioethical perspective, is whether any injury has occurred. The parents say they love their child and presumably would not

wish that different genetic material had produced a different human being. In any event, genetic markers typically mean the individual only has a predisposition to developing a particular disease or condition. We do not know the extent to which environmental or other factors play a part in what makes us who we are and what we suffer from. Moreover, no admissible evidence could demonstrate that a doctorate holder's sperm would produce a smarter kid than a high school dropout's.

As New York University bioethicist Arthur Caplan told me, "The way in which sellers of sperm are vetted is farcically inadequate and the kind of advertising used to encourage customers to utilize services that hint at likely geniuses, athletes and prodigies makes it clear that an unregulated free market in gametes is not the best way to make babies or families."

America should not be the wild frontier of this brave new world of reproductive technology. A law like Canada's requiring sperm donors to be altruists willing to assist infertile couples would deprive thousands of couples desperate to start a family. But sensible regulations might limit the hereditary risks to babies produced by artificial reproductive technologies, and temper the idea that the right purchase may produce the next Nobel Prize winner.

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