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## Should sperm donors have parental duties?

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**By Pia Gadkari**  
BBC News, Washington

**As more women become pregnant using sperm donated by men they know, the law must establish what role, if any, these men should play in their biological children's lives.**

When William Marotta answered a Craigslist ad seeking a sperm donor, he was just trying to help two women start a family.

Over a few days in 2009, he gave the couple several donations in plastic cups and signed an agreement giving up all his parental rights. He thought he would never see them again.

But in October he got an alarming letter: though the women did not want him to be part of the child's life, the state of Kansas was suing him for child support.

Mr Marotta, 45, discovered that the women raising his biological daughter had separated and the child's mother, facing financial difficulties, had enrolled the girl in Medicaid, a government healthcare programme for the poor.

The state asked her for the name of the girl's father, who officials said was financially responsible for the medical expenses incurred.

### 'Clearly outdated'

Experts say they are seeing an increase in legal disputes over the relationships sperm donors have with recipient families in cases where the donor's identity is known.

In some cases, like Mr Marotta's, donors do not want to be recognised as legal parents. But lawyers are also seeing more cases in which donors seek contact with their biological children.

In the UK, the High Court recently handed down a landmark ruling giving two gay men in a civil partnership the right to apply for contact with their three biological children, who are being raised by lesbian couples with whom the men are friendly.

The men could even win the right to play a role in rearing the children.

In the US, analysts like Charles Kindregan, professor of family law at Suffolk University in Boston, say Mr Marotta's case demonstrates why the law is so "clearly outdated".

The law protecting sperm donors from parental liability was passed in the 1970s, when most women seeking fertility treatment were married. Because treatment was new and cumbersome it had to be administered by a doctor.

But medical advances now offer cheaper, easier alternatives to treatment in a clinic.

Single mothers now make up as many as 49% of the women who receive donor conception treatment, says Wendy Kramer, director of the Donor Sibling Registry.

#### **Zero legal protection**

Lesbian, gay, bisexual and transgender families account for another third of recipients, with heterosexual couples making up the balance, she says.

"That's a huge difference from when I became pregnant 22 years ago," she says. "At that time most of the women were like me - married, infertile couples."

Ms Kramer emphasises that because donor recipients have not been required to report live births back to sperm banks, healthcare practitioners, regulators and legislators have been unable accurately to track the changing landscape.

She adds that there is "zero" tracking for sperm donors who do not go through clinics.

And in these casual arrangements, there is also zero legal protection for the biological mother and father.

Nearly all the current litigation involving sperm donors stems from complications arising out of private donations.

Under the Uniform Parentage Act of 1973, the law on the books in most US states, a physician's involvement ensures the donor has no parental liability.

In Mr Marotta's case, this rule made all the difference. Because the women used a home insemination kit instead of a doctor, he could be on the hook for about \$6,000 in child support, his lawyer Ben Swinnen says.

But Prof Kindregan sees "no rational connection" between the use of a doctor in the procedure and the assignment of legal responsibility for the child.

A physician "may hopefully ensure the procedure is done correctly, but is irrelevant as to the potential parentage - or support - liability of either the sperm donor or the husband, if the woman is married," he says.

Other analysts say the requirement's original purpose was to protect children: Doctors can test the donation for sexually transmitted infection before clearing it for insemination.

#### **Proof**

"The philosophy of the legislators is [doctors] will do the mandatory testing against diseases such as HIV and hepatitis," says Steven Snyder, chairman of the American Bar Association's assisted reproductive technology group.

"Using a licensed physician also creates a 'proof platform'" protecting the state from couples claiming the father is in fact a donor in order to claim public benefits, he says.

But analysts agree the law needs to catch up with changing times and to enable courts to rule according to the wishes of the parties.

"As to intention, this is increasingly important in family law matters as the concept of family evolves into new forms," Prof Kindregan says.

New model parentage laws, including one written by the American Bar Association, propose dropping the physician requirement.

Mr Snyder says courts would be allowed to undertake fact finding to resolve disputes on a case-by-case basis.

Updated parentage bills are being considered in at least eight states, he says.

Mr Marotta's lawyer says that although his client did not know - and did not ask - whether the women would use a doctor, he did

sign a contract giving up parental rights to a child born of his donation.

"Unlike what the state says, donor agreements are not void as a matter of law and should be enforced," Mr Swinnen argues.

An evidentiary hearing in Mr Marotta's case is scheduled for 10 April, and oral arguments will be heard on 18 June.

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