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## Legal Trends in Bioethics

*Sigrid Fry-Revere and Sheeba Koshy*

**Sigrid Fry-Revere, PhD, JD**, is Director of Bioethics Studies at the Cato Institute, Washington, D.C., [sfryrevere@cato.org](mailto:sfryrevere@cato.org). **Sheeba Koshy** is a JD Candidate at the Washington University in St. Louis, School of Law, St. Louis, Missouri. ©2007 by *The Journal of Clinical Ethics*. All rights reserved.

**Readers who learn of cases, laws, or regulations that they would like reported in this column are encouraged to e-mail Sigrid Fry-Revere at [sfryrevere@cato.org](mailto:sfryrevere@cato.org).**

### GENERAL INTRODUCTION

The laws governing bioethics issues are confusing and sometimes contradictory because of several types of tensions inherent in our legal system. Legislatures and courts work in different time frames and with different priorities. The U.S. constitutional guarantees of separation of church and state and individual rights make bioethics issues involving personal, moral, or religious convictions particularly contentious.

Each state also has its own constitutional protections, some of which clearly mirror those in the federal Constitution, but others don't.

Legislatures and courts play different roles in our constitutional republic. Legislatures are by nature democratic and can react relatively quickly to changes in the political climate. Courts, on the other hand, are inherently anti-democratic. As a matter of fact, their main constitutional function is to protect the rights established by our various constitutions from violation by legislative action. Courts are also inherently conservative in their reaction to events because they are bound by precedents and procedural processes that are designed to assure that major philosophical changes happen gradually.

Legislatures and courts, in the area of bioethics, also act under the existence of two contrary presumptions. Legislatures tend to act with a presumption in favor of prevailing moral beliefs. The courts, on the other hand, have the structural and theoretical obligation to protect individuals from majoritarian decisions that unnecessarily violate their constitutionally protected freedoms. They also have an obligation to uphold the separation of church and state. So, in bioethics cases, courts often have to deal with preventing governments, either through legislation or other state action, from imposing moral or religious preferences on individuals who might not agree. Thus courts tend to show greater deference to individual choice than legislatures do, and tend to become more cautious the more divisive the issue.

An understanding of these inherent tensions between legislative and judicial action and the various individual interests being balanced by the courts will make it easier to understand legal trends in bioethics.

It is also important when considering trends to watch how far bills that are introduced advance even if they do not pass. For example, a bill that is introduced and quickly moves through several committees and is voted on by one chamber but not the other before the legislative session ends has a better chance of passing

if reintroduced at the next session than a bill that was introduced but never even voted on in committee. If a bill is listed as having died or failed, that means it was voted down either in committee or by one of the legislative chambers. The success of such a bill is not likely even if it is reintroduced in the following legislative session unless there is an election that sufficiently changes the composition of the legislature or some other intervening event rejuvenates the bill's chances. If the session ends without a bill being voted on by both chambers, it has failed; but it has a better chance if it is reintroduced in a later session than if it is voted down. A bill that is reintroduced also probably has a better chance than a bill that is never even voted on in committee. The reason that some bills are listed as having died due to the end of the session, while other bills are still listed as active, is that some states have one-year legislative session cycles and other states have two-year cycles.

Please note that cases, laws, and regulations listed in earlier columns will not be repeated unless there has been a change in status since the last reporting period. Updates on previously reported cases, laws, and regulations are marked with an asterisk (\*).

Subject headings are not listed alphabetically. Sections are listed in descending order with those subjects with the most activity or the most significant activity listed first. It is important to note that the order of subject headings can vary from one issue of "Legal Trends" to the next depending on what subjects have the most legal activity in any given quarter.

## **INTRODUCTION TO "LEGAL TRENDS IN BIOETHICS" FALL 2007**

The most troubling development in this quarter is the extent to which legislators continue to intervene in the patient/physician relationship by trying to regulate the relationship down to the smallest specifics of what is said and done. These developments are a great threat to both physicians' and patients' autonomy, but while there have been many attempts to pass such invasive legislation, at this point few of such bills have actually made it into law. It will be important to watch the next two issues of "Legal Trends" if someone is interested in seeing how many of such bills actually do end up as laws.

The issue of medical tourism is not new to bioethics, but it is on the brink of attracting more attention in U.S. courts and legislatures. There is no separate heading in "Legal Trends" for "medical tourism," but it is important for anyone interested in the subject to regularly check the "Legal Trends" subheading dealing with interesting developments in other countries. In this issue, for example, some Canadians are seeking a police investigation into an assisted suicide in Switzerland. Physician-assisted suicide is legal in Switzerland, but illegal in Canada. At issue is whether Canadians have a legal right, under Canadian law, to travel to Switzerland to avail themselves of a practice that is illegal in their own country. In the United States there is a constitutional right to travel, which would make it legal for the patient seeking physician-assisted suicide to go to Switzerland (there is no case directly on point, but the basic principle is well-established in U.S. constitutional jurisprudence), but even in the U.S., as in Canada, it may be possible to prosecute someone who assists that person in getting to Switzerland. This could be considered aiding and abetting a suicide. The Canadian suit has not even been filed yet, and no such case exists in the U.S., but it is an interesting issue to watch. It may come up as it did in Canada with respect to traveling to Switzerland, where it is legal for physicians to assist foreigners in committing suicide (this is not true in the Netherlands); it is also likely to come up in connection with people suffering from kidney disease traveling to Iran, the only country where it is legal to purchase kidneys, and in other situations in which the legality of the activity is not the issue but the price of medical treatment.

## **THE RIGHTS OF MATURING INDIVIDUALS AND THEIR PARENTS**

### **PRE-BIRTH (SEX, FERTILITY, CONTRACEPTION, ABORTION, FETUSES, EMBRYOS, AND STEM CELLS)**

The abortion debate continues to be waged on several fronts, including "informed-consent," "parental notification," "whether fetuses are recognized under the law as persons with respect to certain crimes,"

"conscientious objections," and "access to abortion procedures, medications, and information." Of noted interest is a Texas court case that has the potential of deciding that frozen embryos are persons with a right to life. Currently, all states except Louisiana consider frozen embryos to be property and prohibit the implantation of such embryos unless both parties that contracted for the creation of the embryo agree. If the embryo is recognized as a person, the standard changes to what is in the best interest of the embryo, and most would agree that implantation is in the embryo's best interest.

It is also interesting to note that, while in the U.S. the trend is toward restricting abortions, in foreign countries the trend is to loosen restrictions.

The stem-cell research debate is still being waged mostly on the funding front, with several states having voted to financially support one form or another of stem-cell research, but few having as yet distributed the promised funds. For a detailed analysis of stem-cell research laws and stem-cell research funding, see the Cato Institute Policy Analysis by Sigrid Fry-Revere and Molly Elgin entitled "Stem Cell Research Funding: Boon or Boondoggle," (anticipated publication date October 2007).

Another interesting development in the stem-cell debate sheds some light on the interplay between politics and law in the U.S. Usually when a constitutional right is at issue, one would think that once the right has been confirmed or denied, that would end the discussion, but that is not necessarily so, particularly not in situations in which the constitution is easily amended. For example, in Missouri last November, a constitutional amendment was passed that guaranteed the right of scientists to pursue any stem-cell research legal under federal law. A ballot drive is currently under way and gaining momentum to pass a constitutional amendment to do exactly the opposite, that is, to prohibit anyone in the state of Missouri from engaging in stem-cell research. It is important to ask oneself whether laws that rise to the level of constitutional importance have any value beyond everyday legislatively promulgated laws if they can be so easily changed.

### Recent Cases, April - June 2007

**\*Federal.** On 18 April 2007, the U.S. Supreme Court handed down its ruling in the combined cases of *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood*. They are cited only by the name of the first case. The Court overturned two circuit court decisions and found the Partial-Birth Abortion Ban Act of 2003 constitutional. The federal act in question is now the law of the land. No state can allow partial-birth abortions unless it is to save the life of the woman having the procedure. See the Summer 2007 issue of "Legal Trends in Bioethics" for a more detailed discussion of the Court's findings.

The U.S. District Court for the Southern District of Ohio ruled on 21 June 2007 that an Ohio law that only allows members of religions with "historically held conscientious objections" to opt out of paying union dues. The plaintiff had refused to pay union dues to the National Education Association because she said the union supported abortion rights. *Katter v. Ohio Employment Relations Board*, U.S. Dist. Ct., S.D. Ohio, No 2L07-CV-43 (21 June 2007).

**\*Kansas.** Kansas Attorney General Paul Morrison announced on 27 June 2007 that he has reviewed all the charges against Dr. George Tiller's clinic filed by Phill Kline during Kline's tenure as state attorney and found no reason for prosecution. He has also reviewed half the charges filed against Tiller personally and finds most of these unjustified. Kline twice tried to file charges against Dr. Tiller for allegedly performing 15 illegal late-term abortions in 2003. Each time, the criminal charges were thrown out by Sedgwick County, Kansas, District Judge Paul Clark on jurisdictional grounds — that is, Kline didn't have the authority to file such charges. Kline promises to continue to investigate. Kline lost the Kansas attorney general race in November 2006 to the Democrat Paul Morrison, a vehement supporter of abortion. "Kansas AG Morrison Ends Investigation of Planned Parenthood Affiliate Accused of Illegal Late-Term Abortions, Drops Half of Tiller Charges," 28 June 2007, *Kaiser Daily Women's Health Policy Report*, [http://www.kaisernetwork.org/daily\\_reports/rep\\_index.cfm?DR\\_ID=45890&dr\\_cat=2](http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=45890&dr_cat=2), accessed 14 August 2007. See related legislation under Kansas below.

**Texas.** On 5 July 2006 a petition for review of a state court of appeals decision in *Roman v. Roman* was filed. The state supreme court is expected to decide shortly whether or not it will hear the case. At issue is the

proper disposition of three frozen embryos never implanted because the couple divorced. The husband did not want the embryos implanted and won at the lower court level. The wife is appealing. This is a case of first impression in Texas, and is seen as a case that could lead to considering embryos as persons with a right to life. *Roman v. Roman*. Tex. Sup. Ct. (no. 06-0554).

### Recent Laws and Regulations, April - June 2007

\***Alabama.** The session ended without further action on H.B. 128, H.B. 329, and S.B. 59, which were introduced in the state legislature to restrict abortions. Three bills were introduced in the state legislature to restrict abortions. One bill was introduced that defines personhood as beginning at fertilization. A second bill, also in the state house, criminalizes abortions with the exception of cases in which the woman's life is in danger or cases of rape or incest. A third, introduced in the state senate, would prohibit abortions except for the "extreme case where the pregnancy threatens the life of the mother." H.B. 128, H.B. 329, S.B. 59, 2007 Gen. Assem., Reg. Sess. (Ala. 2007).

The session ended without further action on H.B. 28, which was introduced in the state house to prohibit the cloning of human beings. The Regenerative Medicine Enhancement Act would also provide for penalties and civil fines for violations. H.B. 28, 2007 Leg., Reg. Sess. (Ala. 2007).

The session ended without further action on H.B. 530 that was introduced in the state house to establish the Umbilical Cord Blood Banking Act. The act provides for the dissemination of information to pregnant women regarding umbilical cord blood donation. H.B. 530, 2007 Leg., Reg. Sess. (Ala. 2007).

\***Arizona.** The session ended without further action on H.B. 2770 that was introduced in the state house making appropriations to the Department of Health Services for a regenerative tissue repository and for research in regenerative medicine involving non-embryonic stem-cell research. H.B. 2770, 48th Leg., 1st Reg. Sess. (Ariz. 2007).

\***Arkansas.** The session ended without further action on H.B. 2806, which was introduced in the state house. The bill protects embryonic stem-cell research, including somatic cell nuclear transfer. The Regenerative Medicine Enhancement Act also bans human reproductive cloning. H.B. 2806, 86th Gen. Assem., Reg. Sess. (Ark. 2007).

**California.** A.B. 34 is in committee. The bill involves significant ongoing funding from the California General Fund in the form of grants to umbilical cord blood banks. A.B. 34, 2007-2008 Leg., Reg. Sess. (Cal. 2007). This bill is similar to A.B. 40, A.B. 482, 2007-2008 Leg., Reg. Sess. (Cal. 2007).

**Colorado.** The session has ended without movement on two bills introduced in the state senate dealing with the personhood status of a fetus. One would make abortions criminal unless necessary to prevent the death of the mother. The other amends the state criminal code to define the fetus as a separate victim apart from its mother in homicide cases. S.B. 143, S.B. 71, 66th Gen. Assem., Reg. Sess. (Colo. 2007).

**Connecticut.** The session has ended without movement on a bill introduced in the state house to amend the state criminal code to include "unborn person" as a person under the code. H.B. 6067, Gen. Assem., Jan. Sess. (Conn. 2007).

There has been no further action on two bills related to stem-cell research. One bill bans human cloning by whatever means. More specifically, it prohibits human cloning through the use of somatic cell nuclear transfer. H.B. 6918, Gen. Assem., Jan. Sess. (Conn. 2007). The second bill establishes an umbilical cord blood bank for the collection, processing, and storage of cord blood units. H.B. 7158, Gen. Assem., Jan. Sess. (Conn. 2007).

**Delaware.** The session ended without movement on a bill introduced in the state house to encourage certain stem-cell research within ethical guidelines. The bill would allow research on donated embryos under 14 weeks old, ban human reproductive cloning, and establish a committee to develop and adopt guidelines for publicly funded research involving the derivation or use of human embryonic stem cells. H.B. 76, 144th Gen. Assem., Reg. Sess. (Del. 2007). A similar senate bill that focuses on banning human reproductive cloning has been withdrawn. H.B. 76, S.B. 5, 144th Gen. Assem., Reg. Sess. (Del. 2007).

**Florida.** The session ended with the defeat of two virtually identical bills to amend the state criminal code to define an "unborn child" as a separate victim from the pregnant woman carrying the child. H.B. 71, S.B. 234, 109th Gen. Assem., Reg. Sess. (Fla. 2007).

Two virtually identical bills were introduced in the state legislature to establish the Stem Cell Research and Ethics Advisory Council. The Florida Hope Offered through Principled, Ethically Sound Stem Cell Research Act provides for both a donated funds program and a research grant program from the Biomedical Research Trust Fund. Funding is limited to adult stem cells, amniotic, cord blood, and placental stem cells and does not include embryonic stem cells. The house bill died in the house while the senate bill died in committee. H.B. 1065, S.B. 2496, 2007 Leg., Reg. Sess. (Fla. 2007).

There was no further action at the close of the session in a house bill to allow funds from the Biomedical Research Trust Fund to be used on embryonic stem cells. A similar senate bill died. H.B. 555, S.B. 0750, 2007 Leg., Reg. Sess. (Fla. 2007).

A bill died without any action being taken; the bill attempted to establish the Biomedical Research Advisory Council as the exclusive source of certain biomedical research grant and fellowship awards; it prohibits use of funds for research with certain human embryonic stem cells or human cloning. H.B. 7079, 2007 Leg., Reg. Sess. (Fla. 2007).

**Georgia.** The session ended without movement on a bill to place on the November 2008 ballot an initiative that would define personhood as beginning at fertilization. There is no language in the bill indicating exceptions when an abortion might be permitted. H.R. 536, 149th Gen. Assem., Reg. Sess. (Ga. 2007).

There was no further action on a bill that would impose a near total criminal ban on abortion. The bill provides for an exception if a physician makes a medically justified effort to save the lives of both the mother and the fetus and the fetus does not survive. The bill also provides for a penalty of life in prison or the death penalty for both women and doctors found in violation of the law. H.B. 1, 149th Gen. Assem., Reg. Sess. (Ga. 2007).

On 24 May 2007, the governor signed a law that established the Newborn Umbilical Cord Blood Bank to encourage non-embryonic stem-cell research. Ga. Act. 247 (2007).

**Hawaii.** The session ended without movement on two virtually identical bills that would ban partial-birth abortions. H.B. 787, S.B. 129, S.B. 129, H.B. 787, 24th Leg., Reg. Sess. (Haw. 2007). (The bills are no longer necessary since the U.S. Supreme Court in *Gonzales v. Carhart* upheld the federal ban on partial-birth abortions.)

There was no further action on two bills introduced in the state senate to amend the state criminal code to consider the "unborn child" as a separate victim in an assault against a pregnant woman. S.B. 206, S.B. 1903, 24th Leg., Reg. Sess. (Haw. 2007).

There was no action on two bills that would permit all forms of stem-cell research. The state house version has been referred to committee. The senate version has been deferred until next year's session. H.B. 364, H.B. 1261, 24th Leg., Reg. Sess. (Haw. 2007).

\***Illinois.** Two bills involving stem-cell research were defeated. The first would allocate \$25 million annually for the next five years to stem-cell research, including embryonic stem-cell research. The second would ban human cloning and the sale of human embryos. These bills died at the end of the session. H.B. 1039, H.B. 1038, 94th Gen. Assem., Reg. Sess. (Ill. 2006).

There has been no further action on a bill introduced in the state senate that would ban abortions as early as 12 weeks. There is no exception for protecting the mother's life or health after the 12th week of pregnancy. S.B. 100, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

There has been no further action on a bill to allow pharmacies to dispense emergency contraceptives to women without a prescription. H.B. 1077, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

There has been no further action on two bills introduced in the state house and the senate creating the Stem Cell Research and Human Cloning Prohibition Act. It permits research involving the derivation and use of human embryonic stem cells and human adult stem cells from any source, including somatic cell nuclear transplantation. H.B. 138 and S 1324, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

There has been no action on a bill introduced in the state house and the senate appropriating \$25,000,000 from the Tobacco Settlement Recovery Fund to the Illinois Regenerative Medicine Institute for the purpose of awarding grants for stem-cell research. H.B. 139 and S.B. 1136, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

Both houses passed a bill to direct the Department of Health to establish a statewide network of cord blood stem-cell banks. The bill is currently awaiting approval from the governor. S.B. 19, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

**Indiana.** The session ended without further action on S.B. 203. The bill was introduced in the state senate allowing for the adoption of an abandoned embryo. Also, it criminalizes the intentional destruction or discarding of an abandoned human embryo and the trafficking of an embryo, ovum, zygote, or fetus. Exceptions to this rule include adult or fetal stem-cell research. S.B. 203, 2007 Gen. Assem., Reg. Sess. (Ind. 2007).

**Kansas.** The governor vetoed a bill on 22 May 2007 that would have required physicians who perform late-term abortions to provide the state with information about the women undergoing the procedure. S.B. 357, 82nd Leg., Reg. Sess. (Kan. 2007).

The session ended without further action on two bills that were introduced in the state legislature to amend the definition of person for purposes of the criminal code to include "unborn child." H.B. 2006, S.B. 2, 82nd Leg., Reg. Sess. (Kan. 2007).

The Kansas House Federal and State Affairs Committee voted to approve a resolution that would force Attorney General Paul Morrison to reinstate the criminal charges against physician George Tiller for allegedly performing illegal late-term abortions. See original legal action reported above. H.R. 6018, 82nd Leg., Reg. Sess. (Kan. 2007).

The session ended without further action on five bills that were introduced in the state and house that relate to stem-cell research: the first would ban somatic cell nuclear transfer; the second would ban the funding of embryonic stem-cell research. The third would ban the creation of chimeras; the fourth encourages non-embryonic stem-cell research by offering a 50 percent tax credit for donations to the adult stem-cell research fund; the fifth would ban cloning. H.B. 2252, H.B. 2255, H.B. 2403, H.B. 2291, H.B. 2098, 82nd Leg., Reg. Sess. (Kan. 2007).

**Kentucky.** The session ended without further action on two abortion-related bills that were introduced in the state legislature. A house bill would "ban state constitutional protection for a woman's right to choose." A senate bill would amend existing abortion waiting requirements to require a 24-hour period between when a woman receives state-mandated information and performance of the abortion procedure. H.B. 251, S.B. 179, 2007 Leg., Reg. Sess. (Ky. 2007).

**Louisiana.** The governor signed into law bills on 12 July 2007 that would ban "partial-birth" abortion in the state and create criminal penalties for physicians who perform the procedure. H.B. 614, S.B. 161, 2007 Leg. Reg. Sess. (La. 2007).

The session ended without further action on a bill that was introduced in the state house that would prohibit the use of public funds for human cloning. H.B. 881, 2007 Leg. Reg. Sess. (La. 2007)

**Maine.** The Senate refused to act on a bill introduced in the state house to create a \$20,000,000 stem-cell research bond. Had the bill survived, the bond was to be used to expand research in adult stem cells and embryonic stem cells, establish a public umbilical cord blood bank, aid in the development of umbilical cord blood banks, and establish an umbilical cord advisory council. H.P. 985, 123rd Leg., Reg. Sess. (Maine 2007).

**Maryland.** The session ended without further action on a bill that was introduced in the state house prohibiting the creation of an embryo with a predominantly or partially human genetic constitution. H.B. 871, 423rd Gen. Assem., Reg. Sess. (Md. 2007).

The session ended with an unfavorable report by the finance committee concerning a bill that was introduced in the senate prohibiting a person from performing or attempting to perform human cloning. S.B. 362, 423rd Gen. Assem., Reg. Sess. (Md. 2007).

**Massachusetts.** There has been no action on two bills that were introduced in the state legislature to

repeal a pre-*Roe v. Wade* criminal ban on abortion. H.B. 173, S.B. 831, 185th Gen. Assem., Reg. Sess. (Mass. 2007).

**\*Michigan.** There has been no action on four bills introduced in the state legislature to codify the Michigan Civil Rights Commission's declaratory ruling into law. H.B. 4295, H.B. 4296, S.B. 41, S.B. 42, 94th Leg., Reg. Sess. (Mich. 2007).

There has been no action on a bill introduced in the state senate that would allow for embryonic stem-cell research by amending the current state code to allow the use of human embryos for non-therapeutic research. S.B. 52, 94th Leg., Reg. Sess. (Mich. 2007).

There has been no action on a bill introduced in the state house to increase the penalty for human cloning. However, scientific research or cell-based therapies are exempt from the penalty. H.B. 4617, 94th Leg., Reg. Sess. (Mich. 2007).

**Minnesota.** The session ended without further action on three bills introduced in the state legislature to place an initiative on the ballot for November 2008 to amend the state constitutional provision protecting a woman's right to choose an abortion. S.B. 1235, S.B. 1234, H.B. 2378, 85th Gen. Assem., Reg. Sess. (Minn. 2007).

The session ended without further action on similar bills proposed by the state house and the senate establishing criminal penalties and appropriations in a state policy for stem-cell research. S.B. 100, H.B. 34, 85th Gen. Assem., Reg. Sess. (Minn. 2007).

**Mississippi.** The governor signed a bill that would implement a near total ban on abortions in Mississippi in the event that *Roe v. Wade* is ever overturned by the U.S. Supreme Court. The law would only allow abortions in the case of rape, incest, or to prevent the mother's death. S.B. 2391, 2007 Reg. Sess. (Miss. 2007).

**Missouri.** The state senate passed a bill on 18 May 2007 that would designate facilities performing second or third trimester abortions as "ambulatory surgical centers." Such a designation gives the Department of Health and Senior Services increased regulatory control over such facilities. S.B. 370, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

The session ended without further action on a bill that was introduced in the state house to ban abortions in all cases except when the woman is in danger of death. H.B. 990, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

The session ended without further action on a bill that was introduced in the state house establishing the Umbilical Cord Blood Bank Program to collect and provide researchers with umbilical cord blood for scientific research on human stem cells. H.B. 216, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

The session ended without further action on a bill that was proposed, modifying the state constitution to forbid engaging in human cloning. H.J.P. 23, S.J.R. 10, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

**Nevada.** The session ended without further action on a bill that was introduced in the state senate to amend the state criminal code to include "unborn child" as a separate victim apart from the pregnant woman. S.B. 299, 74th Gen. Assem., Reg. Sess. (Nev. 2007).

The session ended without further action on a bill that was introduced by the senate authorizing the Nevada Institutional Review Board to engage in various activities related to non-embryonic stem cells. S.B. 361, 74th Gen. Assem., Reg. Sess. (Nev. 2007).

**New Hampshire.** There has been no action on a bill that was introduced in the state house to amend the state homicide code to include "unborn child" as a possible victim. H.B. 177, 160th Gen. Assem., Reg. Sess. (N.H. 2007).

**New Jersey.** There has been no action on a bill authorized by the house requiring hospitals to notify pregnant women of their option to donate umbilical cord blood. H.B. 312, 2007 Gen. Assem., Reg. Sess. (N.J. 2007). This bill is similar to A.B. 2591, S.B. 2736, and S.B. 1091, 2007 Gen. Assem., Reg. Sess. (N.J. 2007).

The state legislature passed a bill on 20 June 2007 that authorizes a referendum for the November election to ask voters to approve borrowing \$450 million over 10 years to fund stem-cell research. A.B.

2828, S.B. 1471, 2007 Gen. Assem., Reg. Sess. (N.J. 2007).

There has been no further action on two bills introduced in the house prohibiting the use of public funds for stem-cell research and repealing the statute setting forth public policy on stem-cell research. A.B. 3950, A.B. 3949, 2007 Gen. Assem., Reg. Sess. (N.J. 2007).

**New Mexico.** The session ended without further action on a bill introduced by the state senate permitting biomedical research on limited categories of human embryonic stem cells, prohibiting human cloning, and amending the Maternal, Fetal and Infant Experimentation Act. S.B. 894, 48th Leg., Gen. Assem., Reg. Sess. (N.M. 2007). This bill is similar to S.B. 1232, 48th Leg., Gen. Assem., Reg. Sess. (N.M. 2007).

**New York.** There has been no action on two bills introduced in the state legislature to amend the criminal code to include "unborn child at any stage of gestation" in the definition of person. S.B. 3117, A.B. 5777, 230th Gen. Assem., Reg. Sess. (N.Y. 2007).

There has been no further action on three bills introduced in the state legislature that would allow nurses and pharmacists to dispense emergency contraceptives without a prescription. S.B. 3579, S.B. 1940, A.B. 5569, 230th Gen. Assem., Reg. Sess. (N.Y. 2007).

There has been no further action on a bill introduced in the state senate authorizing stem-cell research, requiring informed-consent, and prohibiting human reproductive cloning. S.B. 01257, 230th Reg. Sess. (N.Y. 2007).

There has been no further action on a bill introduced in the state senate to create the New York Stem Cell Research Institute. S.B. 02923, 230th Reg. Sess. (N.Y. 2007).

There has been no further action on a bill introduced in the state house allowing the department of health to review research regarding the donation of umbilical cord blood and advising healthcare practitioners to inform pregnant women of their option to donate umbilical cord blood. A.B. 1365, 230th Reg. Sess. (N.Y. 2007). This bill is similar to A.B. 155, A.B. 2915, and S.B. 1265, 230th Reg. Sess. (N.Y. 2007).

There has been no further action on a bill introduced creating a public umbilical cord blood banking program within the state Department of Health to promote public awareness of the potential benefits of umbilical cord donation. A.B. 5081, 230th Reg. Sess. (N.Y. 2007).

There has been no further action on a bill creating the Human Cloning Prohibition Act that makes it unlawful to perform or attempt to perform human cloning and imposes penalties for violations. A.B. 5393, 230th Reg. Sess. (N.Y. 2007). This bill is similar to S.B. 2032, 230th Reg. Sess. (N.Y. 2007).

There has been no further action on a bill that was proposed in the state senate that would authorize stem-cell research, requires informed-consent, prohibits the sale of embryonic tissue, and authorizes state funds for such research. S.B. 1257, 230th Reg. Sess. (N.Y. 2007). This bill is similar to S.B. 268, 230th Reg. Sess. (N.Y. 2007).

There has been no further action on a bill proposed in the state house that would provide a limit on the use of state funds for stem-cell projects or research to those that have the greatest potential for near-term clinical benefit. A.B. 8428, 230th Reg. Sess. (N.Y. 2007).

There has been no further action on a bill proposed in the state house that would create the New York Stem Cell Research Institute and provide for the appointment of the New York State Stem Cell Board. S.B. 2923, 230th Reg. Sess. (N.Y. 2007).

**North Carolina.** The session ended with no action on two bills that were introduced in the state legislature to amend the criminal code of North Carolina to include "unborn child" as a victim that is separate from the pregnant woman carrying the child. H.B. 263, S.B. 295, 148th Gen. Assem., 2007 Sess. (N.C. 2007).

There has been no action on a bill introduced in the state senate that would appropriate \$8 million to the Wake Forest Soldier Regenerative Medicine Institute for stem-cell research. S.B. 715, 148th Gen. Assem., 2007 Sess. (N.C. 2007).

There has been no action on a bill proposed in the state house that would prohibit human cloning. H.B. 572, 148th Gen. Assem., 2007 Sess. (N.C. 2007). This bill is similar to S.B. 896, 148th Gen. Assem., 2007 Sess. (N.C. 2007).

There has not been any action on a bill proposed in the state house enacting the Stem Cell Research

Health and Wellness Act to permit stem-cell research under limited circumstances and appropriate funds to the Health and Wellness Trust Fund for allocation of the grants. H.B. 1837, 148th Gen. Assem., 2007 Sess. (N.C. 2007).

**North Dakota.** A bill introduced in the state house to impose a total ban on abortions did not pass out of committee. H.B. 1489, 61st Gen. Assem., Reg. Sess. (N.D. 2007). A similar bill was introduced that would impose a similar ban but allows an exception if the woman's life is in danger. H.B. 1466, 61st Gen. Assem., Reg. Sess. (N.D. 2007).

The session ended without further action on a bill introduced in the state senate that defines personhood as beginning at fertilization. S.B. 2400, 61st Gen. Assem., Reg. Sess. (N.D. 2007).

On 27 April 2007, the governor signed into law a ban on abortions, except if the woman's life is in danger, in the event that *Roe v. Wade* is overturned by the U.S. Supreme Court. N.D. Cent. Code 12.1-31 (N.D. 2007).

**Ohio.** There has been no action on a bill proposed in the state senate allowing for stem-cell research and establishing an institutional review board to review research involving the derivation and use of human embryonic stem cells. S.B. 63, 127th Gen. Assem., Reg. Sess. (Oh. 2007).

There has been no action on a bill proposed in the state senate prohibiting human cloning. S.B. 174, 127th Gen. Assem., Reg. Sess. (Oh. 2007).

**Oklahoma.** A bill was passed by the state senate on 16 May 2007 that would prohibit the use of state or federal funds for abortions. S.B. 714, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

The session ended without further action on a bill introduced in the state house that would make the state's pre-*Roe v. Wade* abortion ban enforceable if the case is overturned. In the meantime it would ban all abortions unless the mother's life is in danger. H.B. 1014, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

There has been no action on two bills introduced in the state legislature that prohibit the distribution of mifepristone, a medical abortion pill. S.B. 715, H.B. 2181, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

There has been no action on a bill introduced in the state senate to allow government officials to search offices and medical files of abortion providers without cause, warrant, or announcement. S.B. 617, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

The session ended without further action on a bill introduced in the senate directing the University of Oklahoma Health Sciences Center in collaboration with the Commissioner of Health to establish and maintain a public umbilical cord blood bank. S.B. 139, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

There has been no action on a joint resolution introduced in the state legislature that would allow researchers to perform any stem-cell research permitted under federal law, but the measure also bans cloning. H.J.R. 1010, 51st Leg., 1st Sess. (Okla. 2007).

**Oregon.** The state house passed a bill on 21 June 2007 that would authorize the state to spend \$160,000 over the next 18 months to examine the issue of using public funds for stem-cell research. H.B. 1801B, 74th Leg. Assem., Reg. Sess. (Or. 2007).

The session ended without further action on three bills introduced in the state house to amend the state criminal code definition of a human being to include "unborn child." H.B. 3272, H.B. 3240, H.B. 2802, 74th Leg. Assem., Reg. Sess. (Or. 2007).

The state house passed a bill amending existing emergency room law to allow dispensing emergency contraceptives to women older than 18 without a prescription. H.B. 2154, 74th Leg. Assem., Reg. Sess. (Or. 2007).

The session ended without further action on a bill introduced to establish the Human Stem Cell Research Committee and the Human Stem Cell Research Fund. The committee would create guidelines for stem-cell research, while the fund would obtain public and private funds for the purpose of dispensing grants. H.B. 2801, 74th Leg. Assem., Reg. Sess. (Or. 2007).

The session ended without further action on two bills introduced in the state house that would make human cloning a crime. H.B. 2662, H.B. 2929, 74th Leg. Assem., Reg. Sess. (Or. 2007).

The session ended without further action on a bill introduced in the state house establishing the Human

Stem Cell Research Committee in the Department of Human Services. H.B. 2801, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

**Pennsylvania.** There has been no action on a bill introduced in the state senate to amend the state criminal code to include "unborn child" as part of the definition of person. S.B. 589, 191st Gen. Assem., Reg. Sess. (Pa. 2007).

There has been no action on a bill introduced by the state house providing for umbilical cord blood banking. It also requires healthcare practitioners to give pregnant patients information regarding umbilical cord donation. H.B. 874, 191st Gen. Assem., Reg. Sess. (Pa. 2007).

**Rhode Island.** The session ended without further action on two bills introduced in the state house to amend the state criminal code to include "unborn child" in the definition of "another." H.B. 5261, H.B. 5234, Gen. Assem., Jan. Sess. (R.I. 2007).

The session ended without movement on two bills introduced in the state legislature that would make the protections under *Roe v. Wade* permanent. S.B. 119, H.B. 5462, Gen. Assem., Reg. Sess. (R.I. 2007).

The session ended without further action on identical bills introduced in the house and the senate that would provide protection from discrimination to all healthcare providers who choose not to participate in a healthcare service that violates the conscience of the healthcare provider. H.B. 5274, S.B. 452, Gen. Assem., Reg. Sess. (R.I. 2007).

The session ended without movement on a bill introduced in the house that would permit stem-cell research to be conducted in this state with informed written consent from both parties involved in the creation of the embryos. H.B. 6082, S.B. 452, Gen. Assem., Reg. Sess. (R.I. 2007).

The session ended without further action on a bill introduced in the senate that would require health professionals to inform their patients of the option of donating umbilical cord blood to umbilical cord blood banks. H.B. 634, S.B. 452, Gen. Assem., Reg. Sess. (R.I. 2007).

**South Carolina.** The state senate passed on 16 May 2007 a law that would allow, but not require, pregnant women seeking an abortion to view an ultrasound image of their fetus. S. 84, 117th Gen. Assem., 1st Reg. Sess. (S.C. 2007).

The session ended without further action on four bills introduced in the state legislature defining personhood as beginning at fertilization. H.B. 3284, H.B. 3697, S.B. 313, S.B. 3815, 117th Gen. Assem., 1st Reg. Sess. (S.C. 2007).

The session ended with no action on two bills introduced in the state house that would define person to include "unborn child" under the state's civil and criminal codes. H.B. 3019 (civil), H.B. 3171 (criminal), 117th Gen. Assem., 1st Reg. Sess. (S.C. 2007).

There was no further action on S.B. 0173. The bill was introduced in the state senate to allow embryonic stem-cell research, but also bans the buying and selling of pre-implantation embryos. The Biotechnology Act of 2008 would also ban human cloning. S.B. 0173, 117th Gen. Assem., 1st Reg. Sess. (S.C. 2007). A related bill enacted the Human Cloning Prohibition Act to make it unlawful for a person to perform or participate in human cloning and engage in commerce related to human cloning. H.B. 3299, 117th Gen. Assem., 1st Reg. Sess. (S.C. 2007).

**South Dakota.** The session ended without further action. A bill passed the state house that would impose a ban on abortions except when the mother's life is in danger or in cases of incest or rape. If enacted by the state senate and signed by the governor, the measure will be automatically included on the 2008 general election ballot. H.B. 1293, 82nd Leg. Sess. (S.D. 2007).

**Tennessee.** The session ended without further action on two identical bills that were proposed in both the house and the senate. The bills require licensed hospitals to offer pregnant patients the option to donate umbilical cord blood to a certified cord blood bank if the donation can be made at no expense to the patient or hospital. S.B. 1350, H.B. 1339, 105th Gen. Assem., Leg. Sess. (Tenn. 2007).

There has been no action on two bills proposed in both the house and the senate enacting the Newborn Umbilical Cord Blood Initiative Act of 2007. H.B. 1326 and S.B. 760, 105th Gen. Assem., Leg. Sess. (Tenn. 2007).

**Texas.** The session ended without further action on a bill introduced in the senate that would ban abortions unless it is necessary to prevent a woman from dying. This law would take effect if *Roe v. Wade* is overturned by the Supreme Court. S.B. 186, 80th Leg. (Tex. 2007). A similar bill that was introduced in the house did not have enough votes to be voted out of committee. H.B. 175, 80th Leg. (Tex. 2007).

There has been no action on five bills and a resolution introduced in the state legislature relating to stem-cell research. Two identical bills ban human cloning and other uses of human tissue by institutes of higher education, but do not restrict nuclear transplantation to develop therapies. Another also bans cloning more generally. A fourth bill would create a program to provide grants and loans to institutions of higher education and advanced medical research facilities to conduct stem-cell research. And a house bill would establish the Texas Institute of Regenerative Medicine, authorize the issuance of bonds for the purposes of the institute, and prohibit the legislature from prohibiting stem-cell research. H.B. 1829, S.B. 56, H.B. 2704, H.B. 1486, H.B. 537, H.J.R. 43, 80th Leg. (Tex. 2007).

On 17 May 2007, the governor signed into law a bill regarding umbilical cord blood options. Ch. 104 80th R.S. (2007).

The session ended without further action on a H.B. 1533. The bill has been proposed by the house relating to the ban on human cloning and providing penalties. H.B. 1533, 80th Leg. (Tex. 2007). Similar bills include H.B. 2704, S.B. 646, H.B. 1829, and S.B. 413, 80th Leg. (Tex. 2007).

**Utah.** H.B. 235 was not voted out of committee. The bill was introduced in the state house and, had it survived, it would ban all abortions except if: the woman's life is in danger, under certain limited health circumstances, and if the pregnancy is a result of rape or incest. The law would have become effective if *Roe v. Wade* were overruled. H.B. 235, 57th Leg., Gen. Sess. (Utah 2007).

**Virginia.** The session ended without action on H.B. 2124. The bill was introduced in the state house and would ban abortions except to prevent the death of the mother. The law would go into effect if the U.S. Supreme Court overturns *Roe v. Wade*. H.B. 2124, 2007 Gen. Assem., Reg. Sess. (Va. 2007).

A bill that defines personhood as beginning at fertilization was not voted out of committee. H.B. 2797, 2007 Gen. Assem., Reg. Sess. (Va. 2007).

There has been no further action on five bills introduced in the state house regarding stem-cell research. Two would allow embryonic stem-cell research within the guidelines established by an oversight committee established by the bills. A third would assure returns on venture capital investments in biotechnology. A fourth provides funding for stem-cell research. A fifth offers a tax credit for contributions to stem-cell research. H.B. 2857, H.B. 1768, H.B. 1697, H.B. 1939, H.B. 2820, 2007 Gen. Assem., Reg. Sess. (Va. 2007).

**Washington.** There has been no further action on H.B. 1163 and H.B. 173. These two bills were introduced in the state house relating to stem-cell research. One creates a human stem-cell research advisory committee and establishes funding for stem-cell research. Another would restrict funding to research not involving somatic cell nuclear transfer. H.B. 1163, H.B. 173, 60th Leg., Reg. Sess. (Wash. 2007).

There was no further action on H.B. 1336. The bill was proposed in the state house and allows for research involving human embryonic stem cells, germ cells, and adult stem cells from any source, including somatic nuclear transplantation after the ethical implications are considered. H.B. 1336, 60th Leg., Reg. Sess. (Wash. 2007). This bill is similar to H.B. 1732, 60th Leg., Reg. Sess. (Wash. 2007).

The session ended without further action on H.B. 1730. The bill was proposed in the state house and concerned the use of state funds for human stem-cell research. It declares that individuals may donate human embryonic stem cells for research if the human embryonic stem cells are obtained from blastocysts that are generated by *in vitro* fertilization and the donors have given informed-consent. H.B. 1730, 60th Leg., Reg. Sess. (Wash. 2007).

**West Virginia.** The session ended without further action on three bills, H.B. 2036, H.B. 3058, and S.B. 695. The bills were introduced in the state legislature to ban abortions. One would ban all abortions with no health exception. The other two would ban abortions as early as 12 weeks with no exceptions. H.B. 2036 (general ban), H.B. 3058, S.B. 695 (after 12 weeks), 78th Leg., Reg. Sess. (W. Va. 2007).

There was no further action on H.B. 2140. The bill was introduced in the state house to include "unborn

child" as part of the definition of "human being" for purpose of the state homicide laws. H.B. 2140, 78th Leg., Reg. Sess. (W. Va. 2007).

**Wyoming.** The session ended without further action on S.B. 118. The bill was introduced in the state senate that would amend state homicide laws to include an "unborn child" as a separate victim from the pregnant woman carrying the child. S.B. 118, 59th Leg., Reg. Sess. (Wyo. 2007).

### Interesting Developments in Other Countries

**People's Republic of China.** The PRC's policies for enforcing its one-child policy is raising eyebrows. Recently in the southwest of the People's Republic, enforcement raids resulted in women being forced to have abortions as late as nine months into their pregnancies. Also the fines for violating the law can be as high as \$9,000, and when a family cannot afford to pay the "social child-raising fee," government officials destroy homes and seize belongings as punishment, even as soon as three days after the fine was assessed. Unrest resulted in attacks on family planning officials and the torching of government buildings. Riot police were sent into four different towns in Guangxi Province to quell the violence. Officials report that their one-child-per-family policy will not change, but that some enforcement measures will be reconsidered. "Clashes in Southwest China Over One-Child Policy Prompts Officials to Ease Penalties," 23 May 2007, *Kaiser Daily Women's Health Policy Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=45092&dr\\_cat=2](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=45092&dr_cat=2), accessed 14 August 2007.

**Egypt.** In July the government announced a complete ban on female circumcision after a 12-year-old died during the operation. While technically a ban has existed for 10 years, an exception in the law allowed the operation to be performed by qualified doctors in exceptional circumstances. The new ban is absolute and no exceptions will be allowed. It is estimated that currently 90 percent of all Egyptian women are circumcised, whether Muslim or Christian. Magdi Abdelhadi, "Egypt forbids female circumcision," *BBC NEWS*, 2 July 2007, [http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle\\_east/6251426.stm](http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/middle_east/6251426.stm), accessed 2 July 2007.

**India.** The Minister for Women and Child Development announced a government plan to create a national registry of all pregnancies and abortions performed in the country as a means of curbing sex-selective abortions and infant mortality. "India to Create National Registry of Pregnancies, Abortions to Reduce Sex-Selective Abortion, Infant Mortality," 16 July 2007, *Kaiser Daily Women's Health Policy Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=46231&dr\\_cat=2](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=46231&dr_cat=2), accessed 13 August 2007.

\***Mexico.** On 24 April 2007 lawmakers in Mexico City overwhelmingly voted to legalize abortion within the first three months of pregnancy. This is the first time abortion has been legal in Mexico City's history. Manuel Roig-Franzia, "Mexico City's Legislature Votes to Legalize Abortion," *Washington Post*, 25 April 2007, p. A11.

**Mozambique.** The government is considering lifting or at least loosen its ban on abortions because more than 40 percent of serious pregnancy complications treated at the central hospital in Maputa are a result of illegal abortions, and abortions account for 11 percent of maternal deaths in the country. "Mozambican Government Reviewing Abortion Ban, Justice Minister Says," 11 June 2007, *Kaiser Daily Women's Health Policy Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=45474&dr\\_cat=2](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=45474&dr_cat=2), accessed 14 August 2007.

**Poland.** Government officials are appealing a European Court of Human Rights ruling that ordered the government to award damages to a Polish woman who was denied an abortion despite warning from her physicians that she would become blind if she continued the pregnancy. "Polish Government to Appeal European Court of Human Rights Ruling that Rights of Polish Woman Allegedly Denied Abortion Were Violated," 21 June 2007, *Kaiser Daily Women's Health Policy Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=45724&dr\\_cat=2](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=45724&dr_cat=2), accessed 14 August 2007.

**Portugal.** A law legalizing abortions in the first 10 weeks of pregnancy went into effect on 15 July 2007. "Portugal Law that Loosens Abortion Restrictions Comes Into Effect," 17 July 2007, *Kaiser Daily Women's*

*Health Policy Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=46263 &dr\\_cat=2](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=46263&dr_cat=2), accessed 13 August 2007.

Representatives from 10 African Countries called for legalization of safe abortions at a conference of women leaders in Nairobi, Kenya, on 26 June 2007. "Leaders of 10 African Countries Call for Legalization of Safe Abortion to Help Reduce Maternal Mortality Rate," 28 June 2007, *Kaiser Daily Women's Health Policy Report*, [http://www.kaiser\\_network.org/daily\\_report.cfm?DR\\_ID=45892&dr\\_cat=2](http://www.kaiser_network.org/daily_report.cfm?DR_ID=45892&dr_cat=2), accessed 14 August 2007.

### **AFTER BIRTH (PREMATURE INFANTS, NEWBORNS, AND CHILDREN)**

The battle over abortion continues to cause fluctuations in the specific requirements for parental consent and notification laws. It is worth asking whether these debates adequately consider the best interests of the young women affected. More than half of the U.S. states require parental consent before a minor can get a tattoo or a body piercing. In some of those states, no such consent is required for an abortion. Is there, or can there be, any consistent criteria for determining when a minor is old enough to make decisions on his or her own? Should the seriousness, the inherent health risk, or the permanence of the decision play a role in determining whether notice or consent is required? If yes, then do these factors make notice and consent requirements more or less reasonable?

One non-abortion related law that deserves special attention is "Abraham's Law," passed in Virginia in March 2007, which was accidentally left out of the last column of "Legal Trends." In Virginia, child abuse laws were amended to exclude from the definition of neglect a situation in which parents and their child of at least 14 years agree to refuse treatment when the child is suffering from a life-threatening situation. The legislature found that a child who is 14 or older is "sufficiently mature to have an informed opinion on the subject of his medical treatment." See the "Life-and-Death Decisions" section below.

Also see the "Unconventional Treatment" section below, in which a Missouri law allowing midwives to deliver infants at home is discussed.

### **Recent Cases, April - June 2007**

\***Illinois.** Status unchanged. The Illinois Supreme Court issued rules necessary to implement the state Parental Notice of Abortion Act, Ill. S. Ct. M.R. 21173, in January. But the act still remains unenforceable. The state's attorney general has filed a motion to have those rules put in place, but the matter is still pending.

\***Missouri.** The state supreme court decided in *Planned Parenthood of Kansas and Mid-Missouri, Inc., et al. v. Jeremiah W. (Jay) Nixon, et al.* The court upheld the Missouri parental consent law that gives parents and prosecutors the right to sue adults who help minors get an abortion without complying with state parental consent laws, which require either direct parental consent or court approval. The court held that the "aid and assist" language in the law must be narrowly construed not to include providing information and counseling so it does not violate the First Amendment right to free speech. *Planned Parenthood of Kansas and Mid-Missouri, Inc., et al. v. Jeremiah W. (Jay) Nixon, et al.*, No. Missouri S. Ct., No. SC87321 (1 May 2007).

### **Recent Laws and Regulations, April - June 2007**

**Connecticut.** The session ended without further action on H.B. 5807. The bill was introduced in the state house and mandates parental notice prior to a minor obtaining an abortion. H.B. 5807, Gen. Assem., Jan. Sess. (Conn. 2007).

**Georgia.** The session ended without action on H.B. 526. The bill was introduced in the state house and would require parental notice before minors could receive contraception. H.B. 526, 149th Gen. Assem., Reg. Sess. (Ga. 2007).

**Hawaii.** The session ended without further action on three bills: H.B. 786, S.B. 1904, S.B. 205. They were introduced in the state legislature requiring parental notice. A fourth, H.B. 788, required parental con-

sent before a minor can obtain an abortion. H.B. 786, S.B. 1904, S.B. 205, H.B. 788, 24th Leg., Reg. Sess. (Haw. 2007).

**Missouri.** The session ended with no action on H.B. 617. The bill was introduced in the state house to require parental consent for access to contraceptives. H.B. 617, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

**New Hampshire.** On 29 June 2007, the state legislature repealed existing parental notification laws, and the governor signed the repeal into law. NH Ch. 265 (2007), <http://www.gencourt.state.nh.us/legislation/2007/HB0184.html>.

**New York.** There has been no action on A.B. 2560 and A.B. 3217. The bills are two abortion consent-related bills. One would require parental notice and the other parental consent prior to a minor receiving an abortion. A.B. 2560, A.B. 3217, 2007-2008 Gen. Assem., Reg. Sess. (N.Y. 2007).

**North Carolina.** The session ended without further action on two abortion consent-related bills introduced in the state legislature. The house bill would require parental notice when minors were granted access to contraceptives. The senate bill would require that parental consent to an abortion be either personally signed or notarized. H.B. 103, S.B. 481, 148th Gen. Assem., Reg. Sess. (N.C. 2007).

**Oregon.** The session ended with no action on H.B. 3234. The bill was introduced in the state house to require parental notice prior to a minor receiving an abortion. H.B. 3234, 74th Gen. Assem., Reg. Sess. (Ore. 2007).

**Tennessee.** The session ended without further action on H.B. 1441 and S.B. 1795. These two bills were introduced in the state legislature to require parental notification when a minor seeks an abortion. H.B. 1441, S.B. 1795, 105th Gen. Assem., Reg. Sess. (Tenn. 2007).

**Vermont.** The session ended with no action on H.B. 473. The bill was introduced in the state house to mandate parental notice before a minor receives an abortion. H.B. 473, 69th Leg., Reg. Sess. (Vt. 2007).

**Washington.** The session ended without further action on H.B. 1321. The bill was introduced in the state house and would mandate parental notice before a minor could receive an abortion. H.B. 1321, 60th Leg., Reg. Sess. (Wash. 2007).

**West Virginia.** The session ended with no action on seven bills introduced to modify parental notice laws. Two eliminate the option that parental notice can be given by phone and increase the waiting period between notice and the abortion procedure to 48 hours. A third requires that parental notice be notarized. A fourth requires written parental consent. A fifth allows a physician bypass provision, but requires 48-hour notice. And two eliminate the physician bypass option and modify the time in which a judge must rule if a minor seeks waiver of the notice requirement — one lengthens the period from 24 hours to three days, the other lengthens the period to five days. H.B. 3128, S.B. 544 (48-hour prior notice; no phone notice); H.B. 3187 (notarized parental notice); H.B. 2219 (written parental consent); H.B. 2037 (allows a physician bypass 48-hour notice); H.B. 2151 (three days), S.B. 72 (five days), 2416 78th Leg., Reg. Sess. (W. Va. 2007).

### Interesting Developments in Other Countries

**United Kingdom.** In Britain, a Human Tissue and Embryos Bill is being considered, which, among other things, would require birth certificates to identify whether a donor egg or sperm or both were used to conceive the child. Backers of the bill suggest that not to require such information on a birth certificate makes the government complacent in a lie. Mark Henderson, "Birth certificates 'should tell donor children who their real parents are,'" *TimesOnline*, 1 August 2007, <http://business.timesonline.co.uk/tol/business/law/article2176357>.

### VACCINES

Mandatory childhood vaccine is one of those issues where the rights of parents and the state sometimes collide. There is a growing general mistrust of both pharmaceutical companies and the government, leading some parents to question their motives when issues involving mandatory childhood vaccine are raised. Some

parents object on religious grounds, some on moral grounds, some because they see the specific vaccination program under discussion as a waste of money, some because they believe the drug hasn't been tested enough, and others because they simply feel it is their prerogative as parents to decide. All these issues are being raised with respect to mandating the HPV (human papillomavirus) vaccine, and many legislators who originally rushed to introduce bills to mandate the vaccine now have second thoughts.

### Recent Laws and Regulations, April - June 2007

**\*Federal.** The session ended without any action on H.R. 1153. The bill was introduced in the U.S. House of Representatives and would prohibit federal funds to be used by states who make the HPV vaccine mandatory. H.R. 1153, 110th Cong. (1st Sess. 2007). However, a similar provision passed on 18 July 2007 as part of the House Labor, Health and Human Services, Education Appropriations bill. The amendment prohibits federal funds from being used by states to implement requirements that a student be vaccinated for human papillomavirus (HPV), as a condition of school admittance. Press Release of Rep. Phil Gingrey, "House passes Gingrey amendment to keep HPV vaccination a family decision," 19 July 2007.

Gardasil, Merck's HPV vaccine, has been adopted by all 55 of the CDC's Vaccines for Children Program immunization projects. This is a program that provides vaccines at no cost to children ages nine to 18 covered by Medicaid, the Alaska native and American Indian Children program, and some other uninsured children programs. *Kaiser Daily Women's Health Policy Report*, [http://www.kaiser.network.org/daily\\_report.cfm?DR\\_ID=46298&dr\\_cat=2](http://www.kaiser.network.org/daily_report.cfm?DR_ID=46298&dr_cat=2), accessed 18 July 2007.

**Arkansas.** The state senate committee voted down a bill that would have restricted the amount of mercury allowed in vaccines. S.B. 911, 86th Gen. Assem., Reg. Sess. (Ark 2007).

**California.** There has been no action on A.B. 16. The bill was introduced in the state assembly and would require all girls entering the sixth grade to receive the HPV vaccine. The bill includes an opt-out provision. A.B. 16, 2007-2008 Leg., Reg. Sess. (Cal. 2007).

**Colorado.** On 29 May 2007, the governor signed into law a bill that would require middle school girls to receive the HPV vaccine. The bill includes an opt-out provision and requires health insurers to cover the cost of HPV vaccines. 25 Col. Rev. Stat. 4 (2007).

**Connecticut.** The session ended without action on three HPV-related bills. The bills were introduced in the state legislature. One would require all 12-year-old girls to be vaccinated. A second would require the state's insurance program to cover HPV vaccines for low-income families. And a third would require the health department to develop HPV immunization standards. H.B. 6085, H.B. 5485, S.B. 86, 2007 Gen. Assem., Jan. Sess. (Conn. 2007).

**District of Columbia.** Congress approved a city council bill that would require girls entering the sixth grade to receive the HPV vaccine. The provision has an opt-out provision. D.C. ST. §7-1651.04.

**Florida.** A bill concerning the HPV vaccine failed in committee. The bill was introduced in the state house to require all girls entering the sixth grade to receive the HPV vaccine. There is an opt-out provision. H.B. 561, 2007 Leg., Reg. Sess. (Fla. 2007).

**Georgia.** The session closed without movement on S.B. 155. The bill was introduced in the state house to require all girls entering the sixth grade to receive the HPV vaccine. There is an opt-out provision. S.B. 155, 149th Gen. Assem., Reg. Sess. (Ga. 2007).

**Illinois.** There has been no action on H.B. 115. The bill was introduced in the state house and would create an awareness campaign concerning HPV and cervical cancer; provide parents with information; and require the HPV vaccine for girls entering sixth grade unless their parents choose to exempt them. H.B. 115, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

A similar piece of legislation regarding the HPV vaccine was approved by both houses and is awaiting the governor's signature. If not signed by August 27, 2007, the bill is considered vetoed. The bill was introduced in the state senate and would require the HPV vaccine for girls ages 11 through 12, but allows

parents to opt out. It would also require the school to track the number of immunized children attending the school. S.B. 937, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

**Kansas.** There has been no movement on H.B. 2227. The bill was introduced in the state house and would require all girls entering the sixth grade in the state's public schools to receive an HPV vaccine. The bill includes an opt-out provision. H.B. 2227, 82nd Leg., Reg. Sess. (Kan. 2007).

**Kentucky.** The session ended without movement on H.B. 345. The bill would require middle school girls to receive the HPV vaccine. The bill includes an opt-out provision. H.B. 345, 2007 Leg., Reg. Sess. (Ky. 2007).

**Maryland.** On 24 April 2007, the governor signed a bill that would establish an HPV vaccine subcommittee in the Cervical Cancer Committee of the Maryland Comprehensive Cancer Control Plan. It would also provide for the membership and duties of the HPV vaccine subcommittee and require this subcommittee to submit an annual report to the Cervical Cancer Committee by 1 September 2007. Md. Ch. 191 (2007).

**Massachusetts.** There has been no movement on S.B. 102. This bill was introduced in the senate and would require sixth grade girls to be vaccinated against HPV before entering school; those with medical conditions would be exempted. The bill would also provide for universal coverage of the vaccine. S.B. 102, 185th Gen. Assem., Reg. Sess. (Mass. 2007).

**Michigan.** There has been no movement on two bills introduced in the state house dealing with HPV vaccines. One would require parents to provide school officials with a statement from a physician indicating whether or not a sixth grade girl has received an HPV vaccine. The other would mandate the vaccine, but also includes an opt-out provision. H.B. 4164, H.B. 4104, 94th Leg., Reg. Sess. (Mich. 2007). Similar bills were introduced in the senate, S.B. 132 and S.B. 133, 185th Gen. Assem., Reg. Sess. (Mich. 2007).

**Minnesota.** The session ended without movement on H.B. 530 and S.B. 243. Lawmakers in both chambers introduced bills to mandate the HPV vaccine for all girls aged 12 and older. Both bills have opt-out provisions. H.B. 530, S.B. 243, 85th Leg., Reg. Sess. (Minn. 2007).

**Missouri.** The session ended without movement on H.B. 802. The bill was introduced in the state legislature and mandates that girls entering the sixth grade prove that they have had the HPV vaccine or begun the immunization series (with intent to complete the three-dose vaccination). It allows parents to decline the vaccine for their daughters on medical or religious grounds, but they must sign an informed-consent form and receive information on the relationship between HPV and cervical cancer. H.B. 802, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

The session ended without movement on a similar bill, S.B. 514. The bill was introduced in the senate and would provide parents with information on HPV, cervical cancer, and the HPV vaccine. Also, it would require sixth grade girls to be vaccinated against HPV with an exception for religious and medical exemptions. S.B. 514, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

**Nevada.** On 15 June 2007, the governor signed into law a bill that would require insurance companies to cover the cost of HPV vaccinations. Nev. Ch. 527 (2007).

**New Jersey.** S.B. 2286/A.B. 3920 passed both houses and is awaiting the governor's signature. The identical bills were introduced in the house and the senate and would mandate the distribution of information regarding HPV to parents and guardians and require vaccination of seventh to twelfth graders. It also proposes a public awareness campaign. S.B. 2286, A.B. 3920, 2007 Gen. Assem., Reg. Sess. (N.J. 2007).

**New York.** There has been no movement on S.B. 4394. The bill was introduced in the state senate and would require the HPV vaccine for females born after 1 January 1996. The bill includes an opt-out provision. S.B. 4394, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

There has been no movement on a similar bill introduced in the state house that would require the HPV vaccine but allows for religious exemptions. A.B. 5810, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

**Ohio.** There has been no movement on a bill that was introduced in the state house that would require girls entering sixth grade to be vaccinated against HPV. The bill is currently in committee in the house. The bill has an opt-out provision. H.B. 81, 127th Gen. Assem., Reg. Sess. (Ohio 2007).

**Oklahoma.** There has been no movement on S.B. 487. A bill was introduced in the state senate that

would require the HPV vaccine for all girls before entering the sixth grade. S.B. 487, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

**South Dakota.** The governor signed into law a bill that provides \$9.2 million to voluntarily vaccinate at no cost to South Dakota's females between the ages of 11 and 18. H.B. 1061, 82nd Leg. Sess. (S.D. 2007); act of 26 March 2007, Ch. 201, 2007 S.D. Laws (to offer an HPV vaccine initiative, transfer funds, and declare an emergency).

**Texas.** The governor mandated by executive order that all girls entering the sixth grade receive the HPV vaccine, but that order is being challenged by the legislature and the Texas Attorney General. Tex. Exec. Order RP65, 2 February, <http://www.governor.state.tx.us/divisions/press/exorders/rp65>, accessed 27 April 2007.

**Vermont.** The session ended with no movement on H.B. 256. This bill was introduced in the state house and would require girls entering the sixth grade to be vaccinated against HPV. The bill does include an opt-out provision. H.B. 256, 69th Leg., 2007 Sess. (Vt. 2007). A similar bill was enacted in the state senate, S.B. 139, 69th Leg., 2007 Sess. (Vt. 2007).

**Virginia.** On 11 April 2007, the governor signed into law a bill requiring all sixth grade girls to be vaccinated against HPV. The bill includes an opt-out provision. Va. Ch. 858 (2007).

### Interesting Developments in Other Countries

**Canada.** Several Canadian provinces are considering providing Gardasil at government expense to sixth-grade girls. Kerry Gillespie, "Girls to get cancer vaccine," *Toronto Star*, 2 August 2007, p. A 1, A18.

**United Kingdom.** The U.K. Department of Health's Joint Committee on Vaccination and Immunisation has advised the British government to mandate HPV vaccines for 12- and 13-year-old girls starting in 2008. Ian Sample, "Girls could be offered cervical cancer jab by autumn 2008," *Guardian*, 21 June 2007.

### INFORMED CONSENT

*Informed consent* is a legal principle that can be understood as shifting some of the risks for treatment from the provider to the patient who has "assumed the risk" after being fully informed. What constitutes being fully informed from the patient's perspective is clearly the essence of informed-consent, but, from a legal perspective, what a reasonable person would want to know creates certain specific disclosure requirements. These requirements can come from standard medical practice, reasonable expectations on the part of patients, and from government standards for disclosure. When disclosure requirements are clear, the question arises whether a provider who complies with those requirements can be held liable if a patient suffers an unanticipated adverse event or one the government established standard did not require the provider to disclose. Of specific interest is that the U.S. Supreme Court has granted *certiorari* in a case in which a medical device manufacturer's defense is that it should not be held liable for the plaintiff's injuries because it complied with all of the labeling requirements of the U.S. Food and Drug Administration (FDA). The Court is also considering granting *certiorari* on a similar case involving a drug manufacturer.

### Recent Cases, April - June 2007

**Federal.** The U.S. Supreme Court granted certiorari on 25 June 2007 in *Charles R. Riegel, et ux v. Medtronic, Inc.* The case involves an angioplasty procedure in which the catheter balloon reportedly burst, causing complications for the patient. Medtronic claims it should not be susceptible to suit under state law because the device was already subject to federal regulations with which it complied to receive FDA approval. *Charles R. Riegel, et ux v. Medtronic, Inc.* S. Ct. (U.S. No. 04-0412).

The U.S. Supreme Court is also considering certiorari in the case of *Wyeth v. Levine*. In this case, Diana Levine suffered the amputation of her arm as a result of being injected with the Wyeth anti-nausea drug

Phenergan. Levine argued and won at the state level (Vermont) that Wyeth was negligent in its failure to provide adequate warnings of a known danger of injecting Phenergan directly into a patient's vein. Wyeth's position is that the jury should not have been allowed to consider Levine's claim because Wyeth's label for Phenergan complied with FDA regulations for prescription drug labeling. The Court's decision as to whether or not it will hear the case is expected within the next two months. *Wyeth v. Levine*. S. Ct. (U.S. no. 06-1249).

\***Louisiana.** In *Brown v. Louisiana, State of*, the Louisiana Court of Appeals reversed and remanded a trial court's summary judgment. The court found that a failure to inform a patient of more conservative medical approaches to a hysterectomy could be a violation of informed-consent, justifying damages for negligence. The issue needs to go to a jury and cannot be decided by summary judgment. The case was returned to the district court for jury selection and awarding of damages. A hearing is scheduled for 29 June 2007. No. 06-709 (La. Ct. App. 2 November 2006).

\*A lawsuit was filed alleging that Governor Rick Perry violated state law by exceeding his authority when he mandated that Texas sixth graders be vaccinated against the HPV vaccine. *John and Jane Does 1-3 v. Rick Perry*, 1d. No. 07-000-553 (Travis County, Texas; filed 22 February 2007). Case is moot because governor Perry said he would not veto a legislative bill blocking state officials from carrying out his executive order. Associated Press, "Texas governor backs down on HPV vaccine bill," MSNBC, 9 May 2007, <http://www.msnbc.msn.com/id/18575675>. The bill to block the governor's executive order mandating the vaccine was passed 25 April 2007.

### Recent Laws and Regulations, April - June 2007

**Connecticut.** The session ended without action on an abortion-related bill introduced in the state legislature, H.B. 6108. The house bill would require that, prior to the performance of an abortion, a physician or counselor must provide the woman seeking an abortion with an ultrasound photograph of the fetus for the purpose of helping women make informed decisions about abortion. H.B. 6108, Gen. Assem., Jan. Sess. (Conn. 2007).

On 16 May 2007, the governor signed into law a bill that would assure that sexual assault victims receive information about and access to emergency contraception. Conn. Pub. Act. 07-24 (2007).

**Florida.** Two virtually identical bills failed in committee, H.B. 1191, S.B. 1156. The bills were introduced in the state legislature to assure that sexual assault victims receive information about and access to emergency contraception. H.B. 1191, S.B. 1156, 109th Gen. Assem., Reg. Sess. (Fla. 2007).

**Georgia.** The governor signed into law Act 207. The law requires every woman seeking an abortion to undergo and review a voluntary ultrasound of her fetus before an abortion may be performed. The attending physician must either offer to perform one or provide the patient with a list of providers, facilities, and clinics that can perform the procedure. The senate is insisting upon its version, which the house is now considering. GA. Act. 207 (2007).

**Hawaii.** The session ended without movement on H.B. 762, H.B. 466, S.B. 1110, and H.B. 1067. The four bills were introduced in the state legislature to assure that victims of sexual assault receive information and access to emergency contraceptives. H.B. 762, H.B. 466, S.B. 1110, H.B. 1067, 24th Leg., Reg. Sess. (Haw. 2007).

**Indiana.** The session ended without movement on S.B. 172 and S.B. 135. The two bills were introduced in the state senate to amend the language of current abortion-informed-consent requirements. Both laws also require an 18-hour mandatory waiting period between the time when the woman receives such information and the actual abortion procedure. S.B. 172, S.B. 135, 115th Gen. Assem., Reg. Sess. (Ind. 2007).

**Kentucky.** The session ended without movement on S.B. 80. The bill requires physicians to provide a patient with information pertaining to fetal pain at various stages of an abortion procedure. Specifically, the bill would require physicians to administer anesthetic to a fetus of 20 weeks gestational age or older prior to performing an abortion and include fetal pain information as part of the informed-consent process. Under the

bill, any violation of these requirements is a Class D felony. S.B. 80, 2007 Leg., Reg. Sess. (Ky. 2007).

**Maine.** On 12 June 2007, the governor signed into law a bill to increase awareness about cervical cancer and the HPV vaccine. Maine Ch. 73 (2007).

**Massachusetts.** There has been no movement on H.B. 1687 so far. The bill was introduced in the state house to amend existing pre-abortion requirements to require a 24-hour period between when a woman receives state-mandated information and performance of the abortion procedure. H.B. 1687, Gen. Assem., Reg. Sess. (Mass. 2007).

**Minnesota.** On 4 May 2007, the governor signed into law a bill that would assure that sexual assault victims receive information and have access to emergency contraceptives. Minn. Ch. 42 (2007) The session has ended and a similar bill, H.B. 1442, was not acted upon. H.B. 1442, 85th Gen. Assem., Reg. Sess. (Minn. 2007).

**Missouri.** The session ended without movement on H.B. 1225. The bill was introduced in the state house and would require women to view an ultrasound as part of the informed-consent process prior to an abortion. H.B. 1225, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

**New Hampshire.** There has been no movement on H.B. 744. The bill was introduced in the state house and requires specific content for informed-consent disclosure prior to an abortion and a 24-hour waiting period between when the woman receives such information and the procedure. H.B. 744, 160th Gen. Assem., Reg. Sess. (N.H. 2007).

**New York.** There has been no movement on A.B. 2531. The bill was introduced in the state assembly to create provisions for advance directives concerning the disposition of cryopreserved embryos and gametes. A.B. 2531, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

There has been no movement on A.B. 5720. The bill was introduced in the state assembly and requires specific informed consent and a 20-hour waiting period between when a woman receives the required information and the abortion procedure. A.B. 5720, 230th Gen. Assem., Reg. Sess. (N.Y. 2007).

**North Carolina.** On 31 May 2007, the governor signed into law a bill that requires school officials to provide the parents and guardians of children in grades five through 12 information about the HPV vaccine. Ch. SL 2007-59 (2007).

The session ended without movement on H.B. 961 and S.B. 968. The two bills were introduced in the state legislature to assure that victims of sexual assault receive information and access to emergency contraception. H.B. 961, S.B. 968, 148th Gen. Assem., 2007 Sess. (N.C. 2007).

**Oklahoma.** The session ended without movement on S.B. 105. The bill was introduced in the state senate and would assure that victims of sexual assault receive information and access to emergency contraceptives. S.B. 105, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

**Oregon.** The session ended without movement on H.B. 3415. The bill was introduced in the state house and dictates the content of informed consent and requires that there be a 24-hour waiting period between when information is disclosed and an abortion procedure. H.B. 3415, 74th Leg. Assem., Reg. Sess. (Or. 2007).

**Pennsylvania.** There has been no movement on H.B. 288 and S.B. 730. The two bills were introduced in the state legislature to assure that victims of sexual assault receive information about and access to emergency contraceptives. H.B. 288, S.B. 730, 191st Gen. Assem., Reg. Sess. (Pa. 2007).

**Rhode Island.** The session ended without movement on H.B. 5849 and S.B. 472. The two bills were introduced in the state legislature and would require specific information to be disclosed during the informed-consent process and a 24-hour waiting period between such disclosure and the abortion procedure. H.B. 5849, S.B. 472, Gen. Assem., Jan. Sess. (R.I. 2007).

**South Carolina.** The session ended without movement on H.B. 3766. The bill was introduced in the state house requiring a 24-hour waiting period between required informed-consent disclosure and the abortion procedure. H.B. 3766, 117th Gen. Assem., 1st Reg. Sess. (S.C. 2007).

The session ended without movement on another pair of bills that would require women who are seeking abortions to view an ultrasound of their baby as part of the informed-consent process. S.B. 84, H.B. 3355, 117th Gen. Assem., 1st Reg. Sess. (S.C. 2007).

**South Dakota.** The session ended without movement on S.B. 187. The bill allows a healthcare facility to refrain from providing emergency contraception or even information about emergency contraception. S.B. 187, 82nd Leg. Sess. (S.D. 2007).

**Tennessee.** The session ended without movement on H.B. 1989 and S.B. 2073. The two bills were introduced in the state legislature to ensure that sexual assault victims receive information about emergency contraceptives, but the bill does not require the provision of emergency contraceptives, and it includes exemptions from the rule for certain hospitals. H.B. 1989, S.B. 2073, 105th Gen. Assem., Reg. Sess. (Tenn. 2007).

**Texas.** The session ended without movement on S.B. 1567. The bill was introduced in the state senate and would require doctors to tell women seeking an abortion that the state will pay them \$500 if they choose to put their child up for adoption instead of having an abortion. S.B. 1567, 80th Leg. (Tex. 2007).

There has been no movement on H.B. 2161. The bill was introduced in the state house to ensure that sexual assault victims receive information and access to emergency contraceptives. H.B. 2161, 80th Leg. (Tex. 2007).

**Virginia.** The session ended without movement on H.B. 2301. The bill was introduced in the state house and requires specific disclosure as part of informed consent and a 24-hour waiting period between disclosure and an abortion procedure. H.B. 2301, 2007 Gen. Assem., Reg. Sess. (Va. 2007).

There was also no movement on H.B. 2808. The bill passed the state house and requires all women considering an abortion to undergo an ultrasound. H.B. 2808, 2007 Gen. Assem., Reg. Sess. (Va. 2007).

**West Virginia.** The session ended without movement on H.B. 2439. This bill was introduced in the state house to modify existing informed-consent requirements and require a 24-hour waiting period between disclosure and an abortion procedure. H.B. 2439, 78th Leg., Reg. Sess. (W. Va. 2007).

The session ended with no movement on H.B. 2031. The bill was introduced in the state house and requires all women seeking an abortion to undergo an ultrasound procedure, whether medically indicated or not. H.B. 2031, 78th Leg., Reg. Sess. (W. Va. 2007).

There has been no movement on a similar bill, H.B. 2134. This bill was introduced in the state house to assure that sexual assault victims receive information and have access to emergency contraceptives. H.B. 2134, 78th Leg., Reg. Sess. (W. Va. 2007).

**Wisconsin.** The state senate passed a bill on 16 May 2007 that would require hospitals to inform rape survivors that emergency contraception is a highly effective way to prevent pregnancy and provide the medication if requested. S.B. 129, 2007 Reg. Sess. (Wis. 2007).

**Wyoming.** The session ended without movement on H.B. 144. A bill was introduced in the state house that would require specific informed consent and a 24-hour waiting period between disclosure and an abortion procedure. H.B. 144, 59th Leg., Reg. Sess. (Wyo. 2007).

## ORGAN AND TISSUE PROCUREMENT

### Recent Cases, April - June 2007

\***Federal.** Ongoing case. The Eighth U.S. Circuit Court of Appeals (Minnesota, Nebraska, North Dakota, South Dakota, Eastern and Western Districts of Arkansas, Northern and Southern Districts of Iowa, Eastern and Western District of Missouri) in *Wash. U. v. Catalona* is reviewing the lower court's ruling that Washington University in St. Louis owned the tissue samples that William J. Catalona, MD, had collected for prostate cancer research while at the university. The U.S. District Court for the Eastern District of Missouri held that the informed-consent documents signed by Catalona's patients, which specifically gave the doctor the patients' tissue samples and included the patients' right to withdraw from the study and request that their tissue samples be destroyed, were "inconsequential" in its decision to grant full property rights to the university. Appeal No. 06-2286 (8th Cir. 15 May 2006). The case was argued 13 December 2006. A decision should be forthcoming shortly. Appeal No. 06-2286 (8th Cir. 13 December 2006).

### Recent Laws and Regulations, April - June 2007

**Federal.** The Charlie Norwood Living Organ Donation Act clarifies that "paired donations" do not violate the National Organ Procurement Act's prohibition against receiving "valuable consideration" for organs. The house version, H.R. 710, has passed the House and the Senate while the senate version, S. 487, has passed the Senate and is in the House Committee on Energy and Commerce. H.R. 710, S. 487, 110th Cong. (1st Sess. 2007). The act was never sent to the President for his signature, but the U.S. Justice Department issued an opinion to the General Counsel of the U.S. Department of Health and Human Services (DHHS), clarifying that paired donation does not constitute "valuable consideration" and thus does not violate the National Organ Transplant Act prohibition on selling organs. UNOS News Release, "Justice Department Finds Paired Donation Consistent with Federal Law," 28 March 2007, [http://www.unos.org/SharedContentDocuments/Organ\\_Donation\\_Memo.pdf](http://www.unos.org/SharedContentDocuments/Organ_Donation_Memo.pdf).

**Arkansas.** On 29 March 2007, the governor signed into law the 2006 Revised Uniform Anatomical Gift Act. Ark. Stat. tit. 12, §§ 12-325 (2007).

**Idaho.** On 23 February 2007, the governor signed into law the 2006 Revised Uniform Anatomical Gift Act. Idaho. Stat. tit. 39, § 3703 (2007).

**Iowa.** On 5 April 2007, the governor signed into law the 2006 Revised Uniform Anatomical Gift Act. Iowa Stat. tit. 4, § 142(c).

**\*New Jersey.** On 4 May 2007, the governor signed into law a bill that would require the New Jersey Motor Vehicle Commission to share organ donor information with federally designated organ procurement organizations. The governor has indicated that he will sign the bill. N.J. Ch. 80 (2007).

Also in New Jersey, a bill was withdrawn from further consideration that would have amended the New Jersey Anatomical Gift Act to require that those involved in organ procurement not ask for an anatomical gift if they have reason to believe that the gift would be contrary to the decedent's wishes or religious beliefs. The amendment further would have barred the anatomical gift if a person who is listed in the state list of potential surrogates indicates that such a gift would be contrary to the decedent's wishes or religious beliefs. S.B. 2378, 211th Leg., Reg. Sess. (N.J. 2007).

**New Mexico.** On 3 April 2007, the 2006 Revised Uniform Anatomical Gift Act became law. N.M. Stat. tit. 7, § 7242 (2007).

**North Dakota.** On 9 April 2007, the governor signed into law the 2006 Revised Uniform Anatomical Gift Act. N.D. Stat. tit. 23, § 0601 (2007).

**\*South Carolina.** The session has ended without movement on S.B. 131. The bill was introduced in the state senate and would require all patients to indicate, at the time of admission to a hospital, whether or not they are an organ or tissue donor, or both, and, if not, whether the patient or the patient's family would be willing to discuss organ or tissue donation, or both, should the patient become a potential donor during his or her stay in the hospital. S.B. 131, 117th Gen. Assem., Reg. Sess. (S.C. 2007).

There also was no movement on S.B. 417. The bill was introduced in the state senate and would allow prison inmates to donate organs and bone marrow in exchange for commuted sentences. S.B. 417, 117th Gen. Assem., Reg. Sess. (S.C. 2007).

**South Dakota.** On 26 March 2007, the governor signed into law the 2006 Revised Uniform Anatomical Gift Act. S.D. Stat. tit. 34, § 2640 (2007).

**Utah.** On 7 March 2007, the governor signed into law the 2006 Revised Uniform Anatomical Gift Act. Utah Stat. tit. 26, § 2800 (2007).

**Virginia.** On 11 April 2007, the governor signed into law the 2006 Revised Uniform Anatomical Gift Act. Vir. Stat. tit. 32, §§ 1-290.

### UNCONVENTIONAL TREATMENT

The most important development for this section, and perhaps one of the most important in the "Legal Trends" column for this issue of *The Journal of Clinical Ethics*, is the District of Columbia U.S. District

Court of Appeals decision in *Abigail Alliance v. Von Eschenbach* (described below). Technically, this decision should not be reported until the next issue of "Legal Trends," but because of its significance, it is included here. The D.C. Circuit Court's decision is a blow to personal autonomy, but the court's decision was not unexpected. If the court had ruled otherwise, the whole FDA drug approval system would be in jeopardy, as would the existing system for determining drug manufacturers' liability for adverse events.

The failings of informed consent and our tendency to turn to government to protect us from unanticipated dangers made the *Abigail Alliance* decision all but inevitable. For those who are pro-autonomy, it is easy to say, "If informed consent is real, and not just a legal fiction, then patients should be allowed to assume the risk of taking unproven drugs, particularly if the patient is terminally ill and all other avenues of hope have been exhausted." Unfortunately, however, the informed-consent process is often flawed, and, as a result, the government has taken on the role of performing preliminary risk assessments to help prevent the most dangerous risks from being taken, not only out of a paternalistic interest in protecting patients from their own erroneous risk assessments, but also because the system for disclosing risks and patients' expectations when taking experimental treatments are flawed. This has created an understandable tension between those who want to exercise their autonomy in a way that requires high-risk medical treatment (the *Abigail Alliance* case) and those who want to be protected from even being offered high-risk medical options. (Consider the case of Jolee Mohre, who was offered an experimental arthritis treatment which may have killed her. Sigrid Fry-Revere, "When It's Life or Death, Who Makes the Call?" *Los Angeles Times*, 16 August 2007) The FDA drug approval process tries to balance these interests. In theory, the more testing before a drug is made readily available, the safer and more effective it will be, but also, the later it will become available to those who may benefit.

If the D.C. Circuit had recognized the right of terminally ill patients to use highly experimental and unproven drugs outside the strict controls of FDA-regulated clinical trials, drug companies would be under constant pressure to sell drugs to patients before product testing is complete; they would lose the little bit of control they have under the existing clinical trial system for assuring informed consent and the corresponding legal protection afforded them by providing experimental treatment under government-sanctioned conditions. Imagine the nightmare of possible informed-consent violations and the ensuing cascade of lawsuits if pharmaceutical companies sold drugs that hadn't been fully tested, and allowed private physicians with no experience dealing with the drugs in question to monitor their administration. To protect themselves against such liability, drug companies would have to become the "bad guys" and say "no" to selling drugs before they had been fully tested, or go ahead and sell the drugs but risk unprecedented levels of product liability litigation. Given the litigiousness nature of our society, it is understandable that drug companies would be hesitant to open themselves up to such potential lawsuits, regardless of whether they would eventually win, because patients would assume the risk of unexpected outcomes when they purchase an unapproved medication. Under the current system, drug companies are shielded from being pressured into selling drugs to desperate patients before they are fully tested because, simply put, it is the government, and not the drug companies, who says "no."

For these reasons, it was predictable that the U.S. Court of Appeals for the D.C. Circuit would decide against the *Abigail Alliance* and the interests of the terminally ill patients it represented. Furthermore, if the U.S. Supreme Court agrees to hear the case, which it is not likely to do, the same outcome can be expected. Before patients' rights to take risks can be expanded, the informed-consent process needs to be improved. Then, and only then, is there a chance that such cases might succeed.

### Recent Cases, April - June 2007

**Federal.** On 7 August 2007, the U.S. Court of Appeals for the District of Columbia Circuit decided in *Abigail Alliance v. Von Eschenbach* that terminally ill patients do not have a constitutional right to access medications that have not been approved by the FDA. The *Abigail Alliance* and the Washington Legal Foundation argued that terminally ill patients who did not qualify for participation in ongoing clinical trials

or otherwise qualify to obtain experimental drugs through existing FDA access programs should have a right to purchase those drugs directly from pharmaceutical companies and take them under the supervision of their own physicians. The U.S. District of Columbia Court of Appeals did not recognize this "other right to life" argument, and the Alliance has decided to appeal to the U.S. Supreme Court. U.S. Ct. App. D.C., 7 August 2007 (Case no. 04-5350).

\*On 21 February 2007, a suit was filed by the Americans for Safe Access against the DHHS and the U.S. Food and Drug Administration (FDA) in an Oakland, California federal district court for allegedly violating the federal Administrative Procedure Act by publicly releasing "false and misleading statements" about the benefits of the use of medical marijuana. The suit is calling for the DHHS and the FDA to retract and correct statements that there are no sound scientific studies supporting the medical use of marijuana. The government filed its response on 25 May 2007, and the case is now pending before Judge William Alsup for his decision. *Americans for Safe Access v. Department of Health and Human Services and Food and Drug Administration*, No. 007-01049 (C.D. Ca., Filed 21 February 2007).

**Colorado.** On 22 June 2007, a private citizen, Damien LaGoy, filed suit against the Colorado Department of Health and Environment claiming its five-patient per marijuana provider rule was arbitrary and unfair. On 3 July 2007, the Denver District Judge granted a temporary injunction preventing the state from enforcing its five-patient rule. As yet, no date has been set for a trial on the merits. D. Montero, "Pot law on hold," *Rocky Mountain News*, 4 July 2007.

**Missouri.** The Missouri State Medical Association filed suit in June 2007 to enjoin implementation of a law allowing midwives to deliver infants without supervision by a trained nurse or doctor. The midwife provision of an insurance law was challenged on grounds that it was passed without adequate opportunity for discussion; it was added to an insurance-related bill without notifying legislators of the change in the bill. Cole County Circuit Court placed a temporary injunction on the law in June and a permanent injunction on implementing the midwifery portion on 7 August 2007. The group Missouri Midwifery Supporters plans to appeal the case to the state supreme court. "Missouri Judge Issues Permanent Injunction Against State Law That Would Allow Midwives to Deliver Infants at Home," 10 August 2007, *Kaiser Daily Women's Health Policy Report*, [www.kaiser-network.org/daily\\_report.cfm?DR\\_ID=46799&dr\\_cat=2](http://www.kaiser-network.org/daily_report.cfm?DR_ID=46799&dr_cat=2), accessed 11 August 2007.

### Recent Laws and Regulations, April - June 2007

\***Federal.** The FDA is still considering regulations to expand its current Compassionate-Use Programs that make experimental drugs available to individuals or groups under certain circumstances. The rules make drugs available during all stages of development, including during Phase I testing, and allow manufacturers to charge the cost of making and providing the drugs, but not to make a profit. Such regulations would allow patients to use drugs before safety trials have been completed (Phase I) and before testing for efficacy has even begun (Phase II). "Expanded Access to Investigational Drugs for Treatment Use," 71 *Fed. Reg.* 75147 (14 December 2006).

**California.** On 11 April 2007, the Palm Desert Public Safety Commission voted unanimously to adopt a permanent ban on the licensing of medical marijuana dispensaries, even though the city attorney had presented the commission with a draft law to allow such dispensaries. K. Kaufmann, "Palm Desert commission votes for ban on medical marijuana dispensaries," *Desert Sun*, 12 April 2007, <http://www.thedesertsun.com>, accessed 13 April 2007.

**Missouri.** A bill signed into law by the governor on 1 June 2007 includes a provision that allows midwives to deliver infants without a trained nurse or physician's supervision. H.B. 818, 94th Gen. Assem., Reg. Sess. (Mo. 2007). See discussion of judicial injunction of law above.

**Rhode Island.** On 21 June 2007, the state legislature overrode the governor's veto of H.B. 6005. This new law will permanently legalize medical marijuana use in the state. Such use was already legal under a law passed in January 2006, but that law was set to expire on 30 June 2007 unless the legislature acted. Ch. 72 (R.I. 2007).

**Washington.** The session ended without movement on H.B. 1395. The bill requires the state department of health to determine the quantity of marijuana that could be considered a reasonable 60-day supply. The existing law, Initiative 692, passed with 59 percent voter approval in 1998. It allows doctors to recommend but not prescribe marijuana for people suffering from intractable pain, but only allows a 60-day supply to be possessed by any individual at one time. This bill is intended to create a clear line for law enforcement and individual patients. H.B. 1395, 60th Leg., Reg. Sess. (Wash. 2007).

## LIFE-AND-DEATH DECISIONS

There are three interesting events related to life-and-death decisions in this edition of "Legal Trends." For the most important one, please see the discussion of the *Abigail Alliance* case above. The second involves medial tourism and Canadian — not U.S. — law. See the discussion below under "Interesting Developments in Other Countries." The third is reported in this section: Virginia law allows children as young as 14 to refuse life-saving treatment if their parents agree. See the "Virginia" section below.

There is considerable overlap between life-and-death decisions and the discussion of unconventional treatment. Please check the "Unconventional Treatment" section above for possible life-and-death-related cases and laws.

### Recent Laws and Regulations, April - June 2007

**California.** There has been no movement on the California Compassionate Choice Act. The act would allow adults to request that medication be prescribed to provide comfort and to assure a peaceful death if suffering becomes unbearable. The act would also establish procedures by which to implement such requests. A.B. 374, 2007-2008 Leg., Reg. Sess. (Cal. 2007).

**\*Georgia.** The governor signed an act effective 1 July 2007 that revises Georgia's advance directive laws. Among other things, the law combines Georgia's living will and durable power of attorney provisions into one form. It also provides for the creation of a website for the purpose of providing consumers information on the cost and quality of healthcare in Georgia. Ga. Act. 48 (2007).

**Hawaii.** The session ended without movement on H.B. 675. The bill was introduced in the state house to allow aid in dying. H.B. 675, 24th Leg., Reg. Sess. (Haw. 2007).

**Kansas.** The session ended without movement on A.B. 2176. The bill was introduced in the state assembly, and sought to create a presumption that all state residents would want artificial nutrition and hydration even if there are known desires to the contrary, unless there is clear and convincing evidence of an express, informed wish to withdraw nutrition and hydration in the "applicable circumstances." A.B. 2176, 82nd Leg., Reg. Sess. (Kan. 2007).

**New Hampshire.** There has been no movement on H.B. 244. The bill was introduced in the state house and prohibits life-saving treatment from being withdrawn from developmentally disabled persons or persons who once were mentally competent but have lost that competency. Life-sustaining treatment could not be withdrawn even if the patient had previously indicated such wishes while competent. H.B. 244, 160th Gen. Court, Reg. Sess. (N.H. 2007).

**\*New Jersey.** There has been no movement on virtually identical bills introduced in the state legislature that would require surrogate decision makers to make healthcare decisions in accordance with a patient's religious beliefs. A.B. 3514, S.B. 2380, 212th Leg., Reg. Sess. (N.J. 2006).

**\*Texas.** The session ended without movement on S.B. 28. This bill was introduced in the state senate and would, among other things, provide for transferable physicians' orders and prohibit healthcare providers or insurance companies from requiring advance directives as a condition for receiving healthcare services. S.B. 28, 80th Leg. (Tex. 2007).

There was also no movement on a bill introduced in the state house that clarifies that advance directives can be used to request continuation of life-sustaining treatment. H.B. 1094, 80th Leg. (Tex. 2007).

**Vermont.** The session ended without movement on the Patient Control at the End of Life Act. The act

would have decriminalized aid in dying. The house bill failed to be voted out of the house. H.B. 44, S.B. 63, 69th Leg., Reg. Sess. (Vt. 2007).

**Virginia.** This important law is included here because it was accidentally left out of the last "Legal Trends." On 22 March 2007, the governor signed into law a bill that allows for an exception to the state social services regulations dealing with parental child abuse and neglect. This law, commonly known as "Abraham's Law," amended the state code to allow parents who wish to withhold life-saving treatment from their child to do so without risking medical neglect charges if the child is at least 14 years of age and has given an informed "opinion" with which the child's parents agree. Va. Code Ann. §§ 63.2 -100.

**Wisconsin.** There has been no movement on S.B. 151. The bill was introduced in the state senate and permits an individual, of sound mind and over 18 years of age, to request, in writing, medication from a physician for the purpose of ending his or her life. S.B. 151, 2007 Reg. Sess. (Wis. 2007).

### Interesting Developments in Other Countries

**Canada.** Ramesh Sharma, MD, of Vernon, British Columbia, has pleaded guilty to counseling or aiding suicide under Sec. 241 of the Criminal Code of Canada. He could be imprisoned for up to 14 years. He will be sentenced on 11 June 2007. H. White, "Canadian Doctor Pleads Guilty to Attempted Assisted Suicide Charge," *LifeSiteNews.com*, 4 April 2007.

An anti-euthanasia group is calling for a police investigation of the death in **Switzerland** of Canadian citizen Elizabeth MacDonald, who traveled to Switzerland to die in accordance with Swiss physician-assisted suicide laws. There is no claim that any Swiss laws were broken, but that the Right to Die Society of Canada, which counseled MacDonald on her option to go to Switzerland, and the person who accompanied her there might be guilty under Canadian law of assisting a suicide. L. Fraser, "Probe into assisted death sought," *ChronicleHerald*, 25 June 2007, [http://thechronicleherald.ca/print\\_article.html?story=843395](http://thechronicleherald.ca/print_article.html?story=843395).

**United Kingdom.** The Mental Capacity Act of 2005 will incrementally go into effect between April and October 2007. Under this act, patients are permitted to write advance directives that specifically refuse treatment if their illness meets statutorily specified conditions or to appoint what the British call "lasting powers of attorney," that is, durable powers of attorney or healthcare proxies. Patients can refuse and request the withdrawal of life-saving/life-sustaining treatment including the withdrawal of nutrition and hydration. Under the law, if physicians or nurses refuse to comply with qualifying patients' directives, they could be prosecuted for "willfully neglecting" an incapacitated patient or for assault. A copy of the act can be found at <http://www.dca.gov.uk/menincap/legis.htm>.

### THE RIGHT TO ACCESS AND CONTROL MEDICAL INFORMATION (INCLUDING MEDICAL TESTING, PRIVACY, AND DISCRIMINATION BASED ON TEST RESULTS)

Concerns about the disclosure of genetic testing and the effect of such disclosures has prompted several lawmakers to introduce legislation to prevent genetic discrimination. (Testing-related developments are reported in the HIV section of this column.)

### Recent Cases, April - June 2007

**\*California.** Ongoing litigation. *Taus v. Loftus, et al.* is a case in which a child abuse victim gave permission (at age 17) — and so did her father — to be interviewed, and for the taped interview to be shown for "educational purposes." A case study was published that referenced "Jane Doe," but other identifying information was disclosed about the young woman when the researcher gave presentations about the case, including videotaped interviews with the subject in which the subject's first name was used by the researcher, and the city where the subject lived as a child was disclosed. Based on this information, in conjunction with

information disclosed in the researcher's published case study, reporters discovered more about the case and published allegedly defamatory remarks about the subject and the researcher's claims regarding her recovery of repressed memories. 2005 Cal. App. Unpub. LEXIS 3048, 22 media L. Rep. 1545. *Taus v. Loftus, et al.*, 2006 CA S. Ct. S133805. On appeal, the opinion was affirmed in part and reversed in part, and the matter is remanded to the court of appeals for further proceedings. 2007 Cal. LEXIS 2340 (26 February 2007) (Case # S133805).

### Recent Laws and Regulations, April - June 2007

**\*Federal.** There has been no action on a bill that was introduced in the House that, among other things, will encourage the use of electronic health records. The bill was referred to the House Ways and Means Committee Subcommittee on Health on 25 April 2007. S.B. 1952, 110th Cong. (1st Sess. 2007). Colby Itkowitz, "Clinton to Reintroduce Health IT, Respite Care Proposals," *Congressional Quarterly*, 17 February 2007, Health-Beat.

The FDA, however, is working on a proposed rule to regulate the electronic health records that are transferred directly from a medical device to a database. The justification for such regulation is that such records are part of the device itself. Jason Miller, "FDA to propose rule on e-health records," *Government Health IT*, 5 June 2007, <http://govhealth.it.com/article102901-06-05-07-Web&printLayout>, accessed 6 June 2007.

There were two bills introduced in Congress that would make it illegal for an employer or health insurer to access genetic information and then make either insurance coverage or decisions regarding the hiring, firing, or promotion of an employee based on such information. The house version of the Genetic Information Nondiscrimination Act was passed and the senate version is still in the senate committee. H.B. 493, S.B. 358, 110th Cong. (1st Sess. 2007).

**Connecticut.** The session ended without movement on H.B. 5743. The bill was introduced in the state house and would require that newborns be given a deoxyribonucleic acid (DNA) test and that the results be entered upon the birth record and shared with the child's parents. H.B. 5743, 2007 Gen. Assem., Jan. Sess. (Conn. 2007).

The state plans to use a \$5 million grant to develop and implement an electronic health records system for 35,000 Medicaid beneficiaries. The bill is currently in the joint committee on public health. S.B. 88, 2007 Gen. Assem., Jan. Sess. (Conn. 2007).

**\*Iowa.** A bill to implement electronic health records systems incrementally throughout the state died in committee. H.B. 2637, 81st Gen. Assem., 2nd Sess. (Iowa 2005).

**New York.** There has been no movement on A.B. 03284 and S.B. 01633. The two bills were introduced in the state legislature and would create a genetics advisory council. The council would be charged with advising the governor and legislature on issues relating to genetic tests, access to information, privacy, and counseling. A.B. 03284, S.B. 01633, 2007 Leg., 230th Reg. Sess. (N.Y. 2007).

**\*Ohio.** There has been no action on H.B. 692. The bill was introduced in the state house and would limit the liability of hospitals, among other things, for the genetic screening of newborns. The bill died at the end of the last general assembly. H.B. 692, 162nd Gen. Assem., Reg. Sess. (Ohio 2006).

**Oklahoma.** The session ended without movement on S.B. 617. The bill was introduced to allow government officials to search offices and medical files of abortion providers without cause, warrant, or announcement. S.B. 617, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

**Vermont.** The Vermont Department of Health has established an electronic registry for advance directives. The Vermont Advance Directive Registry can only be accessed by authorized healthcare providers, funeral directors, and crematory operators. Any information sent over the internet will be encrypted. Vt. Stat. Ann. tit. 18, § 231 (2007).

## OVERSIGHT: PATIENT TRUST

### Recent Laws and Regulations, April - June 2007

**Federal.** The Prescription Drug User Fee Amendments of 2007 have passed both houses of Congress, but in different versions. They are currently under consideration by a joint conference committee in which differences will be reconciled. Action is expected in the fall. Funding under the current Prescription Drug User Fee Act expires on 30 September 2007. Currently, user fees compose approximately half of the FDA's budget for its drug review oversight. Some new measures included in these bills are new authority for the FDA to require pharmaceutical companies to conduct post-market safety studies, to create a computerized network for tracking adverse events, and to regulate pharmaceutical marketing. Both bills place new restrictions on the financial interests FDA advisory committee members may have in pharmaceutical companies. The House version also included new authority for the FDA to approve generic versions of biotechnology medications (the Senate is considering a separate bill to do the same thing S. 1695). H.R. 2900, S. 1082, 110th Leg., Reg. Sess. (2007).

**Alabama.** The Hospital Infections Disclosure Act failed in the state legislature. The bill was introduced to require the reporting and disclosure of hospital infection rates. S.B. 409, 2007 Leg., Reg. Sess. (Ala. 2007).

**Arkansas.** The Health Facility Infection Disclosure Act of 2007, which requires the reporting and disclosure of hospital infection rates, was signed by the governor on 3 April 2007. Ark. Law Act 845 (2007).

**\*California.** There has been no movement on a bill that was introduced in the California Assembly to establish an Office of Patient Advocate in the State Department of Public Health. The bill passed out of the Health Committee on 7 March 2007 and was re-referred to the Appropriations Committee. 2007 Text A.B. 52 (4 December 2006); A.B. 52, 2007-2008 Gen. Assem., Reg. Sess. (Calif. 2007).

**Delaware.** A bill requiring the reporting and disclosure of hospital infection rates has passed both houses of the state legislature and is awaiting the governor's signature. H.B. 47 substituted by HS 1, 144th Gen. Assem., Reg. Sess. (Del. 2007).

**Massachusetts.** There has been no movement on S.B. 1269. The bill was introduced in the state senate to require the reporting and disclosure of hospital infection rates. S.B. 1269, 185th Gen. Court, Reg. Sess. (Mass 2007).

**Michigan.** There has been no movement on H.B. 4158. The bill was introduced in the state house to require the reporting and disclosure of hospital infection rates. H.B. 4158, 2007 Leg., Reg. Sess. (Mich. 2007).

**Minnesota.** The session ended without movement on S.F. 755. The bill was introduced in the state house to require the reporting and disclosure of hospital infection rates. H.F. 1076, S.F. 755, 85th Leg., Reg. Sess. (Minn. 2007).

**Oregon.** On 27 July 2007, the governor signed a law that would require the reporting and disclosure of hospital infection rates. Or. Ch. 838 (2007).

**Pennsylvania.** The state legislature unanimously passed a bill on 14 July 2007 that would require more stringent reporting requirements for patient infections to state authorities. S.B. 968, 191st Gen. Assem., Reg. Sess. (Pa. 2007).

**Texas.** The session ended without movement on two virtually identical bills, H.B. 1398 and S.B. 288. The bills were introduced in the state legislature and would require the reporting and disclosure of hospital infection rates. H.B. 1398, S.B. 288, 80th Leg. (Tex. 2007).

**Washington.** The governor signed a law, effective 22 July 2007, that would require the reporting and disclosure of hospital infection rates. Wa. Ch. 261 (2007).

## HIV

There have been two important developments this quarter. The first is a loosening of informed-consent requirements in some states. The second is that more states are requiring HIV testing in a larger variety of situations.

### Recent Laws and Regulations, April - June 2007

**Federal.** There has been no movement on a resolution introduced in January in the U.S. House to allow the distribution of condoms in prisons. H.R. 178, 110th Leg., Reg. Sess. (2007).

By the end of 2007, all states and D.C. will be required to report their HIV cases by name, not anonymously, if they wish to receive funding from the DHHS under the federal Ryan White Grant Program. 42 U.S.C. § 201.

\*The FDA is considering changing its policy that prohibits men who have sex with men from ever donating blood. The American Red Cross, the American Association of Blood Banks, and America's Blood Centers believe it would be more reasonable to prohibit such men from donating only if they have had sex with another man within 12 months instead of ever in their lifetime. FDA Workshop on Behavior-Based Donor Deferrals in the NAT Era, Wednesday, 8 March 2006, Lister Hill Auditorium, National Institutes of Health, Bethesda, Maryland.

**Arkansas.** On 9 March 2007, the governor signed a bill that would require state prison inmates to receive an HIV test before being released. Ark. Act. 271 (2007).

**California.** There has been no movement on S.B. 443. The bill was introduced in the California Senate and would allow HIV-positive men to use their own sperm in fertility treatments (note: there is a process by which the sperm can be washed). S.B. 443, 2007-2008 Leg., Reg. Sess. (Calif. 2007).

A bill that would eliminate requiring written informed consent for an HIV test passed the state assembly on 6 June 2007 and is currently working its way through the state senate. A.B. 682, 2007-2008 Leg., Reg. Sess. (Calif. 2007).

**District of Columbia.** Congress is considering lifting the ban on city funding for needle-exchange in Washington, D.C. "House Committee Approves Appropriations Bill That Would Remove Ban on City Funding for Needle-Exchange Programs in Washington, D.C.," *Kaiser Daily HIV/AIDS Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=45534&dr\\_cat=1](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=45534&dr_cat=1), accessed 18 June 2007.

**Georgia.** The governor signed a bill that would require doctors to offer all pregnant women an HIV test effective 1 July 2007. Women can opt out of the test, but such refusal becomes part of their medical record. GA. Act. 60 (2007).

**Illinois.** A bill to allow condom distribution in prisons died in committee. H.B. 686, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

The governor signed on 27 June 2007 a bill that drops the requirement that patients sign a written informed-consent form before receiving an HIV test. S.B. 929, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

**Maine.** The session ended without movement on S.P. 180. The bill was introduced to amend the state's HIV testing laws to bring them in line with the September 2006 recommendations of the U.S. Centers for Disease Control and Prevention (CDC), which suggest that HIV testing become a part of routine medical care. The bill drops the requirements for written consent and pre-test counseling that now exist under state law. The bill has an opt-out provision. S.P. 180, 123rd Maine Senate, Reg. Sess. (ME 2007).

**New Jersey.** A bill passed the state legislature on 21 June 2007 that would require pregnant women and some infants to receive HIV testing. S.B. 2704, 95th Gen. Assem., Reg. Sess. (N.J. 2007).

**New York.** The state legislature passed a bill on 22 June 2007 that requires suspects indicted for rape to be tested for HIV. A. 40-A, 230th Gen. Assem., Reg. Sess. (N.Y. 2007).

**Tennessee.** On 12 June 2007, the governor signed a bill that requires convicted sex promoters to be tested for HIV. H.B. 1775, 105th Gen. Assem., Leg. Sess. (Tenn. 2007).

### **Interesting Developments in Other Countries**

**\*Kazakhstan.** On 27 June 2007, 21 doctors were convicted of criminal negligence because they provided HIV-tainted blood transfusions to 100 children at a children's hospital, who subsequently tested positive for HIV. "Doctors in Kazakhstan Convicted for Criminal Negligence Following HIV Outbreak Among Children Who Received Blood Transfusions," *Kaiser Daily HIV/AIDS Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=43062&dr\\_cat=1](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=43062&dr_cat=1), accessed 14 August 2007.

**\*Libya.** On 16 July 2007, the Supreme Council commuted the death sentences of five Bulgarian nurses and a Palestinian doctor who had been convicted of intentionally infecting 426 children at Al Fateh Children's Hospital in Benghazi, Libya with HIV-contaminated blood products, after a \$460 million compensation package for the families of the HIV-positive children was arranged through an international fund supported by several countries including Bulgaria and other Balkan nations. "Libya's Judicial Council Commutes Death Sentence for Medical Workers in HIV Infection Case," *Kaiser Daily HIV/AIDS Report*, [http://www.kaisernetwork.org/daily\\_report.cfm?DR\\_ID=46290&dr\\_cat=1](http://www.kaisernetwork.org/daily_report.cfm?DR_ID=46290&dr_cat=1), accessed 13 August 2007.

### **CONSCIENTIOUS OBJECTIONS (HEALTHCARE PROVIDERS AND RELATED PROFESSIONS)**

U.S. conscientious objector laws have their roots in the U.S. Bill of Rights First Amendment Free Exercise Clause and variations thereon that exist in the states. The basic rule is that governments can't force individuals to do things (including saying things) that they believe to be against their religion or to be otherwise immoral. Generally, an accommodation for those who raise a conscientious objection must be made unless their exercise of that freedom would directly put someone else at risk. This is why conscientious objection, rarely a problem in most contexts, can quickly become problematic in healthcare, in which a person's access to care may be affected.

It is important to note that the First Amendment prohibition is against governments, not private individuals, and perhaps the best first step toward dealing with such issues is through contract and notice. Healthcare providers can contract to have their moral views on certain issues respected by not requiring that they perform certain procedures or discuss certain medical options, but then patients need to be given notice of that particular healthcare provider's position and, if appropriate, be provided information on how to find a non-objecting healthcare provider.

### **Recent Cases, April - June 2007**

**California.** The state supreme court has agreed to hear a case involving two physicians who refused to provide IVF treatment to a lesbian couple. The state supreme court granted review on 14 June 2006, but is accepting briefs until October 2007. After that the court will set a date to hear the case. *North Coast Women's Care Medical Group, et al. v. Superior Court of San Diego County, Guadalupe T. Benitez (Real Party in Interest)*. Cal. Supreme Ct. Case. No. S142892.

### **Recent Laws and Regulations, April - June 2007**

**Missouri.** The session ended without movement on four bills dealing with conscientious objections. The first two bills would allow pharmacists and related professionals to refuse to provide or dispense contraceptives in most circumstances. But the other two bills would require a pharmacist to fill any valid prescription. H.B. 412, S.B. 285, H.B. 156, S.B. 72, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

There has been no movement on a bill introduced in the state house to allow for conscientious objection to participation in any medical services in most circumstances. The Missouri bill also allows insurance companies to refuse to provide coverage for any service that conflicts with the entity's policies. H.B. 434, 94th Gen. Assem., Reg. Sess. (Mo. 2007).

**New York.** There has been no movement on S.B. 2317 or S.B. 2344 yet. The two bills were introduced in the state senate and would prohibit pharmacists from refusing to provide or dispense contraceptives in most circumstances. S.B. 2317, S.B. 2344, 230th Gen. Assem., Reg. Sess. (N.Y. 2007).

**Oklahoma.** The session has ended with no movement on S.B. 555. The bill was introduced in the state senate and would require pharmacies and pharmacists to fill all valid prescriptions. S.B. 555, 51st Gen. Assem., Reg. Sess. (Okla. 2007).

**Pennsylvania.** There has been no movement on two bills introduced in the state legislature that would require a pharmacy or pharmacists to fill valid prescriptions. H.B. 730, H.B. 316, 191st Gen. Assem., Reg. Sess. (Pa. 2007).

**Rhode Island.** The session ended with no movement on S.B. 452. The bill was introduced in the state senate and would allow healthcare providers to refuse to perform abortions or sterilizations on moral grounds. S.B. 452, Gen. Assem., Jan. Sess. (R.I. 2007).

There was no further action on two bills introduced in the state legislature that would allow certain individuals to refuse to perform any medical services in most circumstances. S.B. 452, H.B. 5274, Gen. Assem., Jan. Sess. (R.I. 2007).

**South Carolina.** The session ended without further action on two bills that would allow certain individuals to refuse to participate in medical services in most circumstances and to allow pharmacists and related professionals to refuse to dispense contraceptives. H.B. 3283 (general), S.B. 126 (pharmacy related), 117th Gen. Assem., Reg. Sess. (S.C. 2007).

**Vermont.** The session ended without further action on H.B. 315. The bill was introduced in the state house and would allow certain individuals and entities to refuse to perform medical services under most circumstances. It also allows insurance companies to refuse to cover any services that conflict with the entity's conscience or religious beliefs. H.B. 315, 69th Gen. Assem., Reg. Sess. (Vt. 2007).

**Virginia.** A bill that would require pharmacies to fill valid prescriptions failed in committee. H.B. 2842, 2007 Gen. Assem., Reg. Sess. (Va. 2007).

**West Virginia.** There has been no movement on five bills dealing with conscientious objections. The first four bills would allow hospitals, pharmacists, and related professionals to refuse, under most circumstances, to dispense substances that could be used as part of an abortion-related procedure. The last bill would prohibit the same from refusing to provide or dispense contraceptives. H.B. 2903, S.B. 639 (hospitals), H.B. 2092, S.B. 743 (pharmacists), H.B. 2416, 78th Leg., Reg. Sess. (W. Va. 2007).

## HEALTHCARE COVERAGE

Many of the sections in "Legal Trends" deal with healthcare funding. Those listed here deal specifically with those judicial and legislative actions attempting to create equity in healthcare coverage or some form of "universal" healthcare.

### Recent Laws and Regulations, April - June 2007

\***Federal.** A resolution was introduced in the U.S. House that would require insurers to cover mental illness at the same level as they cover physical illness. The bill has been referred to House Ways and Means committee Subcommittee on Health. H.R. 1424, S.B. 558, 1101th Leg., Reg. Sess. (2007).

\*A bill was introduced in the U.S. House that would provide universal health insurance to all U.S. residents. The AmeriCare Health Care Act would create AmeriCare, a program that would use Medicare to provide health insurance to U.S. citizens who don't receive coverage through their employers and whose

annual income falls below 300 percent of the federal poverty level. The bill has been referred to the Subcommittee on Health, Employment, Labor, and Pensions. H.R. 1841, 110th Leg., Reg. Sess. (2007).

**Colorado.** The governor signed into law on 15 May 2007 a bill that would establish an Office of Health Disparities and two councils to work on eliminating health disparities in the state. S.B. 242, 66th Gen. Assem., Reg. Sess. (Colo. 2007).

**Connecticut.** The session ended without further movement on a bill introduced in the state house to implement universal healthcare coverage in the state. H.B. 6655, 2007 Gen. Assem., Reg. Sess. (Conn. 2007).

**Illinois.** There has been no action on a bill called the Illinois Healthcare For All Act. The bill's objective is to expand the state insurance plan. S.B. 5, 95th Gen. Assem., Reg. Sess. (Ill. 2007).

**Kansas.** The governor signed into law on 10 May 2007 a bill that subsidizes health insurance premiums for families with incomes up to the federal poverty level. S.B. 11, 82nd Leg., Reg. Sess. (Kan. 2007).

**Louisiana.** The governor signed on 27 June 2007 legislation to redesign the state-funded healthcare system. The new system would include electronic tracking of patients and medical networks of care. S.B. 238, 2007 Leg. Reg. Sess. (La. 2007).

**Massachusetts.** On 1 July 2007, "An Act Providing Access to Affordable, Quality, Accountable Health Care" went into effect. The law requires all state residents to obtain health insurance, provides residents who have an annual income below the federal poverty level with free care, and provides residents who have an annual income of up to three times the federal poverty level with state subsidized healthcare. Mass. Gen. Laws Ann. Ch. 58, §§ 1-147 (Mass. 2006).

**Minnesota.** The session ended without further movement on H.F. 1856. The bill was introduced in the state house and would provide universal health coverage by 2011. H.F. 1856, Leg. 85, Reg. Sess. (Minn. 2007).

**North Carolina.** On 27 July 2007, the governor signed into law the Mental Health Equitable Coverage Act, formerly HB 973, which would require health insurers to provide the same level of coverage for treatment of severe depression, schizophrenia, or other mental illnesses as they do for physical illnesses. N.C. Sess. Laws Ch. 268 (N.C. 2007).

**Rhode Island.** Regulations took effect on 1 April 2007 that would require state hospitals to provide care free of charge to any uninsured resident with an income at or below 200 percent of the federal poverty line. R.I. Gen. Laws, Ch. 23, §17.14 (R.I., 2007).

The governor signed into law on 27 June 2007 a bill that requires businesses with 25 or more employees to offer workers the opportunity to purchase health insurance with pre-tax income. Regulations will be promulgated by the state Department of Labor and Training. The law goes into effect in 2009. S.B. 448, Gen. Assem., Jan. Sess. (R.I. 2007).

**Texas.** The state senate passed on 10 May 2007 a requirement that insurers provide coverage for mental healthcare at the same level as physical healthcare. S.B. 558, 80th Leg. (Tex. 2007).

**Virginia.** The session ended without further movement on a bill introduced in the state senate that would require health insurers to cover the cost of stem-cell transplants. S.B. 991, 2007 Gen. Assem., Reg. Sess. (Va. 2007). Senate: Pursuant to Section 2.2-2504 of the Code of Virginia.

**Washington.** The session ended without further action on H.B. 2098 and S.B. 5930. The two bills were introduced in the state legislature to phase in universal health coverage over a five-year period. S.B. 5930, H.B. 2098, 60th Leg., Reg. Sess. (Wash. 2007).

## MENTAL ILLNESS

There are no specific cases or laws to report at this time, but it is worth noting that there has been a concerted effort on the part of the U.S. Department of Justice to divert mentally ill individuals away from the criminal justice system and into treatment programs. In the last 10 years, the number of special courts

specifically designed to handle cases involving the mentally ill have grown in number from four to 120. This is clearly an indication that society's understanding of the role mental illness plays in criminal behavior and how best to deal with mentally ill criminals is changing. This shift in attitude could have a significant affect both on the criminal justice system and the mental healthcare system. Estimates are that one-third to one-half of all prison inmates suffer from some form of mental illness. See Bridget Kuehn, "Mental Health Courts Show Promise," *Journal of the American Medical Association*, 297, no. 15 (18 April 2007): 1641-43. Also see mental health parity laws reported in the above "Healthcare Coverage" section.

### **NEW TECHNOLOGIES (NANOTECHNOLOGY AND MORE)**

This is a new section in this issue of "Legal Trends." Bioethics and science journals are replete with discussions of nanotechnology, but there has been relatively little discussion of any government action concerning such new technologies and how they should be regulated — if at all.

#### **Recent Laws and Regulations, April - June 2007**

**Federal.** The FDA Nanotechnology Task Force issued its report on 25 July 2007. The report essentially concluded that there was no need for the FDA to rush to regulate the advertising of nanotechnology. The FDA should consider each product using nanotechnology on a case-by-case basis, since there is nothing inherent about nanotechnology that warrants a special form of labeling or special warnings to consumers. FDA, "Nanotechnology: A Report of the U.S. Food and Drug Administration Nanotechnology Task Force," 25 July 2007, <http://www.fda.gov/nanotechnology/taskforce/report2007.html>.

### **DECISION-MAKING CAPACITY/COMPETENCY**

Please also see the discussion above, under the "Life-and-Death Decisions" section, of "Abraham's Law."

#### **Recent Laws and Regulations, April - June 2007**

**Arizona.** A bill failed in the state senate on 20 June 2007 that was passed by the state house on 8 March 2007. The bill spells out specifically what constitutes the conditions under which a minor is mature enough to terminate a pregnancy without parental consent. Current judicial practice is to consider two types of factors: is the young woman mature enough to make the decision and/or would terminating the pregnancy be in the young woman's best interest. This bill would eliminate the second option from the states "judicial bypass" provisions for allowing minors to have abortions without parental consent. H.B. 2641, 48th Leg., Reg. Sess. (Ariz. 2007).