NOTICE: This document contains correspondence generated during peer review and subsequent revisions but before transmittal to production for composition and copyediting:

- Comments from the reviewers and editors (email to author requesting revisions)
- Response from the author (cover letter submitted with revised manuscript)*

*The corresponding author has opted to make this information publicly available.

Personal or nonessential information may be redacted at the editor’s discretion.

Questions about these materials may be directed to the Obstetrics & Gynecology editorial office: obgyn@greenjournal.org.
RE: Manuscript Number ONG-19-2031

Surrogacy laws in the United States: What the general obstetrician-gynecologist needs to know

Dear Dr. Tsai:

Your manuscript has been reviewed by the Editorial Board and by special expert referees. Although it is judged not acceptable for publication in Obstetrics & Gynecology in its present form, we would be willing to give further consideration to a revised version.

If you wish to consider revising your manuscript, you will first need to study carefully the enclosed reports submitted by the referees and editors. Each point raised requires a response, by either revising your manuscript or making a clear and convincing argument as to why no revision is needed. To facilitate our review, we prefer that the cover letter include the comments made by the reviewers and the editor followed by your response. The revised manuscript should indicate the position of all changes made. We suggest that you use the “track changes” feature in your word processing software to do so (rather than strikethrough or underline formatting).

Your paper will be maintained in active status for 14 days from the date of this letter. If we have not heard from you by Dec 04, 2019, we will assume you wish to withdraw the manuscript from further consideration.

REVIEWER COMMENTS:

Reviewer #1: No comments to the author.

Reviewer #2: This is a clinical commentary regarding care for gestational surrogates with a review of the legal landscape. The commentary is well written.

Some comments below:
1. Lines 64-70: Can you add a line here about whether surrogate compensation is legal or depends on the state? Can surrogates ever use their own health insurance to provide the prenatal care/delivery care or do the intended parents always have to pay out of pocket for this care?

2. Line 91-92, I don't really understand what this quote from the CA Supreme Court means....is the conclusion that the intended parents won the case? Please clarify.

3. Table 1 is a great addition to the paper. But in this section from 100 to 110, can you elaborate on which states are the best for surrogacy? I thought people went to certain states that had the most permissive laws? In the states where there is no state laws on the books (N/S in the table), is it advisable to use these states?

4. Line 146-150, what was the outcome of this case? The surrogate was compensated for the damage caused by the CMV?

5. In the informed consent section, can you address here, that I assume the surrogate herself will sign informed consent for prenatal care and delivery and the other parties are not involved.

Reviewer #3: This is a well written manuscript summarizing the medical, legal, and psychosocial considerations surrounding the use of surrogacy in the United States. This publication would provide meaningful information, definitions,
and recommendations for the general Ob/Gyn readership of Obstetrics & Gynecology. Very minor suggestions for consideration:

- consider use of a more formal/less colloquial phrase in place of the word "hodgepodge" in the abstract (line 32)

- consider addition of a supplemental table with links to state specific resources for providers describing the specific legal nuances relevant to surrogacy in that state

EDITOR’S COMMENTS:

Line 24. We no longer require that authors adhere to the Green Journal format with the first submission of their papers. However, any revisions must do so. I strongly encourage you to read the instructions for authors (the general bits as well as those specific to the feature-type you are submitting). The instructions provide guidance regarding formatting, word and reference limits, authorship issues, and other things. Adherence to these requirements with your revision will avoid delays during the revision process, as well as avoid re-revisions on your part in order to comply with the formatting.

Line 27: The name is the Centers for Disease Control and Prevention. Note plural Centers.

Line 57: ACOG’s preferred term is “specialist obstetrician-gynecologist” rather than generalists. REI, MFM, etc are sub-specialists. Sentence starting on 57 might read better moved up to 46 since they both have to do w/ frequency of gestational surrogacy.

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Line 176: By “each party” do you mean that if there are two intended parents that each of them should get their own legal counsel or the couple should get legal counsel?

Line 191: General Ob GYN...

Line 193: Single sentence paragraph

Line 222 and others: Ob/Gyn physicians should be “obsetetrician-gynecologists”

EDITORIAL OFFICE COMMENTS:

1. The Editors of Obstetrics & Gynecology are seeking to increase transparency around its peer-review process, in line with efforts to do so in international biomedical peer review publishing. If your article is accepted, we will be posting this revision letter as supplemental digital content to the published article online. Additionally, unless you choose to opt out, we will also be including your point-by-point response to the revision letter. If you opt out of including your response, only the revision letter will be posted. Please reply to this letter with one of two responses:

A. OPT-IN: Yes, please publish my point-by-point response letter.

B. OPT-OUT: No, please do not publish my point-by-point response letter.

2. As of December 17, 2018, Obstetrics & Gynecology has implemented an "electronic Copyright Transfer Agreement" (eCTA) and will no longer be collecting author agreement forms. When you are ready to revise your manuscript, you will be prompted in Editorial Manager (EM) to click on "Revise Submission." Doing so will launch the resubmission process, and you will be walked through the various questions that comprise the eCTA. Each of your coauthors will receive an email from the system requesting that they review and electronically sign the eCTA.

Please check with your coauthors to confirm that the disclosures listed in their eCTA forms are correctly disclosed on the manuscript's title page.
3. Standard obstetric and gynecology data definitions have been developed through the reVITALize initiative, which was convened by the American College of Obstetricians and Gynecologists and the members of the Women's Health Registry Alliance. Obstetrics & Gynecology has adopted the use of the reVITALize definitions. Please access the obstetric and gynecology data definitions at https://www.acog.org/About-ACOG/ACOG-Departments/Patient-Safety-and-Quality-Improvement/reVITALize. If use of the reVITALize definitions is problematic, please discuss this in your point-by-point response to this letter.

4. Because of space limitations, it is important that your revised manuscript adhere to the following length restrictions by manuscript type: Current Commentary articles should not exceed 12 typed, double-spaced pages (3,000 words). Stated page limits include all numbered pages in a manuscript (i.e., title page, précis, abstract, text, references, tables, boxes, figure legends, and print appendixes) but exclude references.

5. Titles in Obstetrics & Gynecology are limited to 100 characters (including spaces). Do not structure the title as a declarative statement or a question. Introductory phrases such as "A study of..." or "Comprehensive investigations into..." or "A discussion of..." should be avoided in titles. Abbreviations, jargon, trade names, formulas, and obsolete terminology also should not be used in the title. Titles should include "A Randomized Controlled Trial," "A Meta-Analysis," or "A Systematic Review," as appropriate, in a subtitle. Otherwise, do not specify the type of manuscript in the title.

6. Specific rules govern the use of acknowledgments in the journal. Please note the following guidelines:

* All financial support of the study must be acknowledged.
* Any and all manuscript preparation assistance, including but not limited to topic development, data collection, analysis, writing, or editorial assistance, must be disclosed in the acknowledgments. Such acknowledgments must identify the entities that provided and paid for this assistance, whether directly or indirectly.
* All persons who contributed to the work reported in the manuscript, but not sufficiently to be authors, must be acknowledged. Written permission must be obtained from all individuals named in the acknowledgments, as readers may infer their endorsement of the data and conclusions. Please note that your response in the journal's electronic author form verifies that permission has been obtained from all named persons.
* If all or part of the paper was presented at the Annual Clinical and Scientific Meeting of the American College of Obstetricians and Gynecologists or at any other organizational meeting, that presentation should be noted (include the exact dates and location of the meeting).

7. The most common deficiency in revised manuscripts involves the abstract. Be sure there are no inconsistencies between the Abstract and the manuscript, and that the Abstract has a clear conclusion statement based on the results found in the paper. Make sure that the abstract does not contain information that does not appear in the body text. If you submit a revision, please check the abstract carefully.

In addition, the abstract length should follow journal guidelines. The word limits for different article types are as follows: Current Commentary articles, 250 words. Please provide a word count.

8. Only standard abbreviations and acronyms are allowed. A selected list is available online at http://edmgr.ovid.com/ong/accounts/abbreviations.pdf. Abbreviations and acronyms cannot be used in the title or précis. Abbreviations and acronyms must be spelled out the first time they are used in the abstract and again in the body of the manuscript.

9. The journal does not use the virgule symbol (/) in sentences with words. Please rephrase your text to avoid using "and/or," or similar constructions throughout the text. You may retain this symbol if you are using it to express data or a measurement.

10. Please review the journal's Table Checklist to make sure that your tables conform to journal style. The Table Checklist is available online here: http://edmgr.ovid.com/ong/accounts/table_checklist.pdf.

11. Authors whose manuscripts have been accepted for publication have the option to pay an article processing charge and publish open access. With this choice, articles are made freely available online immediately upon publication. An information sheet is available at http://links.lww.com/LWW-ES/A48. The cost for publishing an article as open access can be found at http://edmgr.ovid.com/acid/accounts/ifauth.htm.

Please note that if your article is accepted, you will receive an email from the editorial office asking you to choose a publication route (traditional or open access). Please keep an eye out for that future email and be sure to respond to it promptly.

12. If you choose to revise your manuscript, please submit your revision through Editorial Manager at http://ong.editorialmanager.com. Your manuscript should be uploaded in a word processing format such as Microsoft Word. Your revision's cover letter should include the following:

* A confirmation that you have read the Instructions for Authors (http://edmgr.ovid.com/ong/accounts/authors.pdf), and
* A point-by-point response to each of the received comments in this letter.
If you submit a revision, we will assume that it has been developed in consultation with your co-authors and that each author has given approval to the final form of the revision.

Again, your paper will be maintained in active status for 14 days from the date of this letter. If we have not heard from you by Dec 04, 2019, we will assume you wish to withdraw the manuscript from further consideration.

Sincerely,

Nancy C. Chescheir, MD
Editor-in-Chief

2018 IMPACT FACTOR: 4.965
2018 IMPACT FACTOR RANKING: 7th out of 83 ob/gyn journals

In compliance with data protection regulations, you may request that we remove your personal registration details at any time. (Use the following URL: https://www.editorialmanager.com/ong/login.asp?a=r). Please contact the publication office if you have any questions.
Dear Editors of Obstetrics & Gynecology,

We are submitting a revision to our manuscript entitled “Surrogacy laws in the United States: What obstetrician-gynecologists need to know”. We have read the Instructions for Authors document and confirm that the article conforms to and meets the requirements of the Current Commentary format. The manuscript has been read and approved for submission by all authors. This review topic was submitted to Dr. Nancy Chescheir, who granted us permission to submit this general review article.

In this article, we review legal aspects of surrogacy in the United States including select landmark court cases, states’ approaches to surrogacy legislation, and unique components of informed consent. We also provide clinical recommendations for working with gestational surrogates and intended parents in the United States.

We intend to submit solely to Obstetrics & Gynecology. This manuscript has not been submitted elsewhere nor has it been presented at any meetings. We will not be submitting it elsewhere unless a final negative decision is made by the Editors. We have no financial relationships or disclosures for this study. As the lead author, I affirm that this manuscript is an honest, accurate, and transparent account of the study being reported; that no important aspects of the study have been omitted; and that any discrepancies from the study as planned have been explained.

Below are the comments made by the reviewers and editor followed by our response. The line numbers in our responses refer to the line numbers in the marked and edited manuscript, not the clean manuscript version:

Reviewer #1: No comments to the author.

Reviewer #2: This is a clinical commentary regarding care for gestational surrogates with a review of the legal landscape. The commentary is well written.

Some comments below:
1. Lines 64-70: Can you add a line here about whether surrogate compensation is legal or depends on the state? Can surrogates ever use their own health insurance to provide the prenatal care/delivery care or do the intended parents always have to pay out of pocket for this care?

   Response: On Line 67, we added that legality of compensation varies by state. On Line 71, we added that medical fees includes health insurance coverage. Most insurance companies have exclusions for gestational carrier pregnancies so intended parents routinely purchase supplemental health insurance to cover the gestational carrier pregnancy.
2. Line 91-92, I don't really understand what this quote from the CA Supreme Court means....is the conclusion that the intended parents won the case? Please clarify.

   Response: The CA Supreme Court ruling granted maternity/paternity based on intention, thus the intended parents won the case. The manuscript was updated with this clarification on Line 93-95.

3. Table 1 is a great addition to the paper. But in this section from 100 to 110, can you elaborate on which states are the best for surrogacy? I thought people went to certain states that had the most permissive laws? In the states where there is no state laws on the books (N/S in the table), is it advisable to use these states?

   Response: It is true that people will travel to certain states with the most permissive laws, and California is probably the state that currently has the most permissive laws. In line 102-103, we do mention New York and its continued ban on compensated surrogacy as well as California’s permissive surrogacy laws. As for the states without specific laws, whether to use each state depends on a number of factors including prior case law and which regulatory body makes final parentage determinations. In addition, state laws are constantly changing and specific legal nuances may apply to each case. We therefore wanted to avoid more specific legal recommendations as physicians should not interpret legal information themselves and should always obtain legal counsel for clarification of individual cases. We did add in Line 116-117 that nuances in state laws apply and that legal counsel is recommended for each case.

4. Line 146-150, what was the outcome of this case? The surrogate was compensated for the damage caused by the CMV?

   Response: The main purpose of discussing Stiver v. Parker in this paper is to emphasize the Court of Appeals ruling that a “special relationship” between the physician and surrogate that necessitates additional steps be taken to protect the surrogate and resultant child from harm. Because of this ruling, the outcome of the case was that the surrogate was allowed to go forward with her claims, and this would involve further proceedings with a jury. It did not rule on the person responsible for causing the injury nor whether the physicians were actually negligent. (Only the main point was included as the details of the subsequent case are complicated. During the same month of the artificial insemination, the surrogate also had intercourse with her husband and the resultant child was actually genetically related to her husband, not the intended father. Ultimately, the Stivers were not able to successfully show that the CMV infection was due to the intended father’s semen).

5. In the informed consent section, can you address here, that I assume the surrogate herself will sign informed consent for prenatal care and delivery and the other parties are not involved.

   Response: This is addressed in the “Handling misconduct” section (Line 209-215). While there typically not an informed consent signed for prenatal care and delivery, the surrogate’s consent is necessary for release of information to other parties.

Reviewer #3: This is a well written manuscript summarizing the medical, legal, and psychosocial considerations surrounding the use of surrogacy in the United States. This publication would provide meaningful information, definitions, and recommendations for the general Ob/Gyn readership of Obstetrics & Gynecology. Very minor suggestions for consideration:
- consider use of a more formal/less colloquial phrase in place of the word "hodgepodge" in the abstract (line 32)
  
  Response: “Hodgepodge” in line 33 was changed to “variety”,

- consider addition of a supplemental table with links to state specific resources for providers describing the specific legal nuances relevant to surrogacy in that state
  
  Response: Unfortunately there are no links that are directed at providers. There also are no links that are guaranteed to have the most updated information on state laws. Additionally, because there are specific legal nuances that apply to each case, we do not recommend that physicians interpret this information themselves. Legal counsel is advised in all cases. We therefore did not include an additional supplemental table.

EDITOR’S COMMENTS:

Line 24. We no longer require that authors adhere to the Green Journal format with the first submission of their papers. However, any revisions must do so. I strongly encourage you to read the instructions for authors (the general bits as well as those specific to the feature-type you are submitting). The instructions provide guidance regarding formatting, word and reference limits, authorship issues, and other things. Adherence to these requirements with your revision will avoid delays during the revision process, as well as avoid re-revisions on your part in order to comply with the formatting.
  
  Response: The article conforms to and meets the requirements of the Current Commentary format.

Line 27: The name is the Centers for Disease Control and Prevention. Note plural Centers.
  
  Response: Line 28 was updated to “Centers for Disease Control”.

Line 57: ACOG’s preferred term is “specialist obstetrician-gynecologist” rather than generalists. REI, MFM, etc are sub-specialists. Sentence starting on 57 might read better moved up to 46 since they both have to do w/ frequency of gestational surrogacy.
  
  Response: The manuscript has been updated to use the preferred “specialist obstetrician-gynecologist” terminology. Line 59 addressing frequency of gestational surrogacy was not changed to avoid confusion with the terminology, but it was removed to reduce redundant information.

Line 96: It is an idiosyncratic fact that at the Journal we tend to avoid the use of the word impact to imply the result of a change, preferring to limit "impact" to mean a physical blow. Also, please try to edit to avoid a single-sentence paragraph.
  
  Response: Line 101 was changed from “impact” to “influence.” Single-sentence paragraphs throughout the manuscript were removed.

Line 136: Journal style precludes use of the virgule (/ ) and/or phrase. Please edit.
  
  Response: The manuscript was updated to exclude “/”.
137: for clarity, the ASRM and FDA recommendations are specifically about surrogacy or for IVF or gamete donations?

Response: Line 144 updated to clarify that these recommendations are specific gamete donations.

Line 147: to be clear, the thinking is that the father may have been CMV + and the sperm insemination was the method of infecting of the woman?

Response: Correct, the manuscript at line 156 was updated with this clarification. (While the intended father’s semen was indeed CMV positive, in the final jury decision the Stivers were not able to successfully show that the CMV infection was definitely due to the intended father’s semen).

Line 159: Social media specifically mentioning the pregnancy? What about discussions with the surrogates older children, if any, or partner?

Response: Line 167 about social media was updated to specifically refer to pregnancy details and ultrasound photos. Line 162 addresses that surrogate partners should also meet with the mental health professionals. Line 164 mentions how the mental health professional should address the impact of surrogacy on each party’s respective family and community, which broadly includes children and partners. Line 169 was updated to include family in the conversation about disclosure of a surrogate pregnancy.

Line 176: By “each party” do you mean that if there are two intended parents that each of them should get their own legal counsel or the couple should get legal counsel?

Response: Line 185 was updated to clarify that the intended parent as a couple should get legal counsel, not that each intended parent should obtain separate legal counsels.

Line 191: General Ob GYN…

Response: Line 200 updated to “specialist obstetrician-gynecologist”

Line 193: Single sentence paragraph

Response: Line 203 was added to the previous paragraph to avoid a single sentence paragraph.

Line 222 and others: Ob/Gyn physicians should be “obstetrician-gynecologists”

Response: All “Ob/Gyn physicians” in the article were changed to “obstetrician-gynecologists”.


Thank you for reviewing this submission. We appreciate the time and thought put into evaluating our manuscript.

Sincerely,

Shelun Tsai, M.D.