ETHICS AND LAWS RELATING TO ALCOHOL USE DURING PREGNANCY

Emilie Cattrell, CDC I
Arctic FASD Regional Training Center
Road Map for Presentation

• Describe:
  • Ethical challenges relating to continued drinking during pregnancy
  • Laws in AK relating to fetal alcohol exposure

• Discuss:
  • Fetal rights and the maternal-fetal relationship

• Demonstrate:
  • Ability to evaluate how ethical principles interact with current legal and policy issues in Alaska and the US.
CASE EXAMPLE
Cornelia Whitner
Whitner vs. State of SC (1992)

Cornelia Whitner was charged with criminal child endangerment

- Baby tests + for cocaine metabolites at birth
- State recognizes viable fetus as a “person” (the only state to interpret statutes thus, to date).

Adapted from Carey Szetela, PhD., Southeast FASD Regional Training Center, Meharry Medical College
Cornelia Whitner: Demographics

- Age 14, her mother died
- Father not involved in her life
- Quit school & became a mother at age 16
- Struggled with drug dependence
- Children were placed with family members
- Exchanged sex for favors, sometimes left kids with others and disappeared for short times
- 3rd child, Tevin Dashuan Whitner, taken when 3 days old and placed with her great aunt

Adapted from Carey Szetela, PhD., Southeast FASD Regional Training Center, Meharry Medical College
WHAT DO YOU THINK?
Judge Eppes

• Sentenced Whitner to 8 years

• At time of Whitner’s guilty plea, she was in drug counseling and baby showed no harmful effects

• He said,

“Is this a crack baby? Why wouldn’t you just take a pistol and put it in your mouth and blow your head off? You wouldn’t do that, would you?”

Adapted from Carey Szetela, PhD., Southeast FASD Regional Training Center, Meharry Medical College
Cornelia: Letter to the Governor

• “...Even though my son was healthy and it was not a law in the state of South Carolina, I was thrown in prison. I feel like I was made an example of because I am poor and black.”

• “...At the time of my arrest I told Judge Epps that I had a very bad addiction to crack cocaine, and I asked him to help me get treatment but instead I got 8 years in prison.”

• “I have 3 beautiful healthy boys...Everyday and night I pray, not ceasing asking the Lord to please let me go home to my boys.”
Cornelia

- 19 months, won appeal and was released in 1993
- 6 years later, arrested again for same crime (now illegal, law was passed in S. Carolina)
- Required to serve rest of 8 year sentence
- Completed drug treatment, clean and sober
- Denied Parole

“It wasn’t like I refused treatment, I could not even get help from the sentencing Judge and I did ask and what’s worse is that it was not a law in 1992 when all of this destroyed my life.”
ETHICS
Ethical Issues

- Basic Principles
  - Autonomy
  - Beneficence
  - Nonmaleficence
  - Justice

- “Respect for Persons”

- Confidentiality
Autonomy

*auto- "self"+ νόμος - "law": one who gives oneself their own law*

- Consider a person’s right to making their own decisions about health care.
- “every human being of adult years and sound mind has a right to determine what shall be done with his body” (Supreme Court, 1914)

- This faith in autonomy is the central premise of the concept of informed consent and shared decision making.
- It can conflict with a competing ethical principle, *beneficence*. 
Beneficence

- **Beneficence** asks professionals to seek the benefit for their patient/client foremost.

- These four concepts often arise in discussions about beneficence:
  - One should not practice evil or do harm
  - one should prevent evil or harm
  - one should remove evil or harm
  - one should practice good
Non-maleficence

Primum non nocere is a Latin phrase that means "first, do no harm".

- Nonmaleficence emphasizes the responsibility to avoid causing harm and to minimize undue harm to others.

- It reminds providers that they must consider the possible harm that any intervention might do.

- “Given an existing problem, it may be better not to do something, or even to do nothing, than to risk causing more harm than good"
Justice

1. Distributive justice: distribute both social benefits and burdens fairly
2. Procedural justice: know, share, and follow laws in the same manner (fairly) for all people.

The ethics of justice deals with *moral* choices through a measure of rights of the people involved

Responsibility to choose the solution that seems to damage the least number of people
Confidentiality

- Designed to protect personal information and develop a trusting relationship between provider and patient/client.
  - Ensure client is aware of limitations of confidentiality BEFORE treatment/care is provided.

- Ethical obligation to maintain confidentiality, except…
  - Serious bodily harm to the patient or others (AMA, 2006)

Care providers must stay informed of local, state, & federal laws impacting confidentiality.
Personhood

• When does a person become a person?

“Personhood is a concept conferred upon an individual by its possession of select morally relevant characteristics that make it the proper recipient of human rights and obligations.” (Edwards & Graber, 1988)
Well-being of Mother and Fetus

Although a pregnant woman and her fetus can be considered separately in some ethical and legal respects, a woman and her fetus are ordinarily affected by the well-being of each other, possibly for as long as each lives.
CASE EXAMPLE
Law and Order
Law and Order

- Married couple in process of separating
- Wife (Jennifer) is pregnant, found to drink in her early pregnancy
- She seeks abortion; husband seeks injunction against abortion to raise the child himself; court finds for wife’s right to seek abortion
- Jennifer wants baby but continues to drink
- Court order given for mandatory outpatient treatment but she violates the order
- Now court order sought for mandatory inpatient treatment

Your task as a jury will be:
Should Jennifer be sentenced to mandatory inpatient treatment for her alcohol use during pregnancy?
Your task as a jury will be:

To decide: Should Jennifer be sentenced to mandatory inpatient treatment for her alcohol use during pregnancy?
THE VERDICT IS IN...
ALASKA STATUTES AND LEGISLATION
Legal Perspective

• The legal status of fetuses is addressed by federal and state laws. In the United States, fetuses are not given the legal status of “persons” (with rare exception).

• The legal status of fetuses is generally subordinate to that of a pregnant women. A fetus’ legal status might also increase over time with its continuing development in utero.
Statutes Relating to Fetal Health

AS 04.21.065: Posting of Warning Signs.

“WARNING: Drinking alcoholic beverages such as beer, wine, wine coolers, and distilled spirits or smoking cigarettes during pregnancy can cause birth defects.”

AS 18.05.037: Fetal Health Effects Information.

AS 25.05.111: Issuance of License (Marriage).
# FASD-Related State Legislation

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<thead>
<tr>
<th>Bill</th>
<th>Category</th>
<th>Brief Description</th>
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<tbody>
<tr>
<td>SB151</td>
<td>Criminalization</td>
<td>Mitigate sentencing for defendant w/an FASD</td>
<td>2012</td>
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<tr>
<td>SCR 7 SB 127</td>
<td>Prevention</td>
<td>Sept. 9 is FASD Awareness Day</td>
<td>2011</td>
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<td>HB 300 SB267 SB252</td>
<td>Requirements for Professionals</td>
<td>Changes to State Medical Board: Health care professionals to document an infant’s prenatal exposure to alcohol.</td>
<td>2008</td>
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<td>HB 239</td>
<td>Prevention</td>
<td>Priority for substance abuse treatment for pregnant women</td>
<td>2007</td>
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<td>HB 312</td>
<td>Involuntary Commitment</td>
<td>Required distribution of materials on FASDs, involuntary commitment for pregnant women drinking; fund for prevention/treatment of FAS &amp; FAE; fine for selling alcohol to pregnant women</td>
<td>2006</td>
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<td>HJR 31</td>
<td>Prevention</td>
<td>Resolve to observe FASD Awareness Day on Sept. 9, 2006 with “moment of reflection” during ninth hour of day.</td>
<td>2006</td>
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<tr>
<td>HB 408</td>
<td>Criminalization</td>
<td>Practitioner of healing arts involved with delivery of infant suspected of alcohol exposure/withdrawing from alcohol must immediately report this information.</td>
<td>2006</td>
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<tr>
<td>HB 67</td>
<td>Funding</td>
<td>The Department of Health and Social Services will establish “evidence based” prevention programs a the community level.</td>
<td>2005</td>
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Alaska Fetal Homicide Law - 2005

Offenses against unborn children.

“The law provides that a defendant convicted of murder in the second degree or murder of an unborn child shall be sentenced to a definite term of imprisonment of at least 10 years but no more than 99 years. The law does not apply to acts that cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented or a person authorized by law to act on her behalf consented, or for which such consent is implied by law.”


http://www.legis.state.ak.us/basis/folio.asp
What Can You Do?

• Know local policies, laws
• Education
  • For Yourself: know risks, screening, intervention options
  • For Health Providers: consider respectful prevention messages, screening, intervention
  • For Society: raise and discuss issues
• Promote alcohol/drug screening
• Help eradicate the “just an occasional drink” during pregnancy myth
• Recognize your own biases
• Listen and empathize with at-risk women

Adapted from Carey Szetela, PhD., Southeast FASD Regional Training Center, Meharry Medical College