

§ 19-4-106. Assisted reproduction.

Colorado Statutes

Title 19. CHILDREN'S CODE

Article 4. Uniform Parentage Act

Current through 2012 First Extraordinary Session

§ 19-4-106. Assisted reproduction

- (1) If, under the supervision of a licensed physician or advanced practice nurse and with the consent of her husband, a wife consents to assisted reproduction with sperm donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. If, under the supervision of a licensed physician or advanced practice nurse and with the consent of her husband, a wife consents to assisted reproduction with an egg donated by another woman, to conceive a child for herself, not as a surrogate, the wife is treated in law as if she were the natural mother of a child thereby conceived. Both the husband's and the wife's consent must be in writing and signed by each of them. The physician or advanced practice nurse shall certify their signatures and the date of the assisted reproduction and shall file the consents with the department of public health and environment, where they shall be kept confidential and in a sealed file; however, the physician's failure to do so does not affect the father and child relationship or the mother and child relationship. All papers and records pertaining to the assisted reproduction, whether part of the permanent record of a court or of a file held by the supervising physician or advanced practice nurse or elsewhere, are subject to inspection only upon an order of the court for good cause shown.
- (2) A donor is not a parent of a child conceived by means of assisted reproduction, except as provided in subsection (3) of this section.
- (3) If a husband provides sperm for, or consents to, assisted reproduction by his wife as provided in subsection (1) of this section, he is the father of the resulting child.
- (4) The requirement for consent set forth in subsection (1) of this section does not apply to the donation of eggs by a married woman for assisted reproduction by another woman or to the donation of sperm by a married man for assisted reproduction by a woman who is not his wife.
- (5) Failure of the husband to sign a consent required by subsection (1) of this section before or after the birth of the child does not preclude a finding that the husband is the father of a child born to his wife pursuant to section 19-4-105(2) (a).

- (6) If there is no signed consent form, the nonexistence of the father-child relationship shall be determined pursuant to section 19-4-107(1) (b).
- (7)(a) If a marriage is dissolved before placement of eggs, sperm, or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a record that if assisted reproduction were to occur after a dissolution of marriage, the former spouse would be a parent of the child.
- (b) The consent of a former spouse to assisted reproduction may be withdrawn by that individual in a record at any time before placement of eggs, sperm, or embryos.
- (8) If a spouse dies before placement of eggs, sperm, or embryos, the deceased spouse is not a parent of the resulting child unless the deceased spouse consented in a record that if assisted reproduction were to occur after death, the deceased spouse would be a parent of the child.
- (9) This section does not apply to the birth of a child conceived by means of sexual intercourse.
- (10) For purposes of this section, "donor" is defined in section 19-1-103 (44.5).

Cite as C.R.S § 19-4-106

History. L. 87: Entire title R&RE, p. 794, § 1, effective October 1. L. 94: (1) amended, p. 2737, § 366, effective July 1. L. 2003: Entire section amended, p.1269, § 60, effective July 1. L. 2008: (1) amended, p. 128, § 9, effective January 1, 2009.

Editor's Note:

This section was contained in a title that was repealed and reenacted in 1987. Provisions of this section, as it existed in 1987, are similar to those contained in § 19-6-106 as said section existed in 1986, the year prior to the repeal and reenactment of this title.

Case Notes:

ANNOTATION

Law reviews. For comment, "In the Interest of R.C., Minor Child: The Colorado Artificial Insemination by Donor Statute and the Non-Traditional Family", see 67 Den. U. L. Rev. 79 (1990). For article, "Assisted Reproduction in Colorado: Legal Aspects and Recent Legislation", see 33 Colo. Law. 77 (June 2004). For article, "Assisted Reproduction and Colorado Law: Unanswered Questions and Future Challenges", see 35 Colo. Law. 39 (November 2006). For article, "Frozen in Time: Planning for the Posthumously Conceived Child", see 37 Colo. Law. 45 (June 2008).

In cases in which paternity is disputed, whether in a proceeding under this article or article 6, paternity must be determined according to the procedures outlined under this article before the legal obligation for support can be imposed. *People in Interest of R.T.L.*, 780 P.2d 508 (Colo. 1989).

An interpretation of § 19-4-107(1)(b) that would deny the right of a presumptive father to defend against a child support action by asserting the nonexistence of a father and child relationship runs counter to principles of statutory construction and would produce results not consistent with the welfare of the affected children and the best interests of society. In a child support action under article 6 of this title, the defense of nonpaternity may be asserted by a man presumed to be the father pursuant to subsection (1)(a) of this section notwithstanding that the man would have been precluded by § 19-4-107(1)(b) from bringing an action under this article to declare the nonexistence of the father and child relationship because of the passage of time. *People in Interest of R.T.L.*, 780 P.2d 508 (Colo. 1989).

The primary purpose of this section is to provide a legal mechanism for married and unmarried women to obtain a supply of semen for use in artificial insemination and, in the case of married recipients, to make clear that legal rights and duties of fatherhood are borne by the recipient's husband rather than by the donor. *In the Interest of R.C.*, 775 P.2d 27 (Colo. 1989).

The provisions of this section do not apply when the known semen donor and the unmarried recipient agree that the known donor would have parental rights and expressly agree at the time of insemination that the donor would be treated as the natural father of any child so conceived. *In the Interest of R.C.*, 775 P.2d 27 (Colo. 1989).

Where issue of consent to artificial insemination was adjudicated and conclusively determined in dissolution of marriage action, doctrine of collateral estoppel bars relitigation of consent issue in subsequent suit against physician who performed procedure without plaintiff's written consent. *Hill v. Hulet*, 881 P.2d 460 (Colo. App. 1994).