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# ■ NOCIRC OF MICHIGAN ■

# INFORMANT

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PREVENTING INFANT CIRCUMCISION — FOR THE WELL-BEING OF ALL

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VOLUME 7 — NUMBER 3 — JUNE 2004

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## *Is Circumcision Ethical?*

A Winning Entry in the 2004 NOCIRC Essay Contest

by Jessica Kelly-Shaieb  
Royal Oak, Michigan

In answering this question one could choose any viewpoint – medical, religious, philosophical – and reach a persuasive conclusion that it is not ethical to remove normal, healthy, functioning genital tissue of a non-consenting person.

Although compelling, medicine, religion, and philosophy have no enforceable way to change the way people behave. Law does. The law sets forth acceptable and unacceptable behaviors and then uses civil and criminal actions to punish those who violate the law. Among the variety of legal actions that potentially cover circumcision, the law provides two excellent opportunities under the doctrine of equal protection and the doctrine of informed consent to answer the question of whether circumcision is ethical. The answer under each doctrine is that it is not.

### **The Equal Protection Clause**

The Fourteenth Amendment of the United States Constitution provides that, “No state shall ... deny to any person within its jurisdiction the equal protection of the laws.” The amendment is rooted in the ethics of treating similarly situated people differently. Without a valid reason, it is not ethical to ban the barbaric cutting of a girl’s genitals while turning a blind eye to virtually the same practice committed upon boys. Because modern medicine has disproved any previously purported valid reason to perform circumcisions on boys, differential treatment of boys and girls is both unconstitutional and unethical.

However, a number of states have enacted laws that prohibit non-therapeutic cutting of female genitals without providing protection for males. North Dakota is one such state. It enacted the country’s first law against female genital mutilation (FGM) in 1995. North Dakota Century Code 12.1 36

states that: “(1) ... any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony. (2) ... any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration.” Caught up in the outrage over other cultures subjecting girls to this cruel practice, several other states and the federal government enacted FGM statutes of their own. Meanwhile, most people completely ignored the equivalent custom being performed on baby boys in their own neighborhoods.

To examine the ethics of prohibiting a ritual performed on one group but allowing it to be performed on another group, we can look to the precedent set by the United States Supreme Court in 1972 in the case of *Eisenstadt v. Baird*. Prior to 1972, only married people could legally purchase contraception in Massachusetts. The state law provided a maximum five year prison term for

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### DIRECTOR’S MESSAGE

The distinct sexual character of circumcision, its religious and cultural origins, and the alleged right of parents to make this permanent choice for their children are all potential hotbeds of debate. There will always be those who object to what we have to say, but we don’t publish this newsletter for our detractors. Nor do we have to win debates with the pro-circumcision crowd. We simply have to win the hearts and minds of those in the American majority who know little about circumcision but are willing to listen.

There are many who are innocently ignorant of the harm of circumcision. Their ignorance comes from a lack of any meaningful investigation of circumcision in a greater context of the human body and human experience.

**NOCIRC’s** mission is to close this knowledge gap about circumcision. **NOCIRC** must fight ignorance because the result of this ignorance is injury to children. We do so by giving everyone who will listen the rest of the story on circumcision.

*On behalf of all the children, thanks!*  
Norm Cohen, Director

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“whoever ... gives away ... any drug, medicine, instrument, or article whatever for the prevention of conception,” to an unmarried person. In meeting the standard of review for this case, the Supreme Court found that married people and unmarried people were similarly situated and that there existed no rational explanation for the different treatment of married and unmarried people. The court stated that “providing dissimilar treatment for [those] who are similarly situated ... violate[s] the Equal Protection Clause.” Therefore, the Massachusetts law was struck down as unconstitutional.

In following Eisenstadt’s rationale, modern laws that treat males and females with regard to circumcision are unconstitutional as written. Males and females, with respect to their genitalia, are similarly situated. Male and female external genitalia are developed from identical embryological structures consisting of similar cell and nerve tissues. In adulthood, the parts perform similar roles in sexual response. There exists no ground of difference that rationally explains the different treatment accorded to males and females. Non-consent, pain, sexual dysfunction, and gruesome or fatal complications are consistent with the cutting of the genitalia of either sex. Providing dissimilar treatment for those who are similarly situated violates the Equal Protection Clause and is unethical. Therefore, any state or federal statute that prohibits the non-therapeutic cutting of female genitalia must either 1.) be struck down, or 2.) also prohibit the non-therapeutic cutting of male genitalia.

The vast majority of people support the FGM laws. Neither the laws’ supporters nor I suggest that the laws should be repealed to satisfy the Equal Protection Clause or to be deemed ethical. Consequently, the laws must extend the protection of genital integrity to males in order to be constitutional and ethical.

### **The Informed Consent Doctrine**

Locating a potential plaintiff who has legal standing and willingness to challenge the FGM statutes with an equal protection claim may be difficult. Therefore, using the doctrine of informed consent may be a well-founded way to eradicate genital mutilation

performed upon either males or females. The doctrine of informed consent requires that when a person intends to undergo a medical procedure, his or her health care providers are under a duty to fully inform the person about the procedure and obtain his or her express consent to it. There are three basic legal elements to informed consent: disclosure, capacity, and voluntariness.

First, all relevant and material information must be disclosed to the person or that person’s guardian if he or she lacks capacity to make medical decisions. Relevant and material information typically includes an explanation of the procedure, the expected short and long term risks and consequences, the availability of any alternatives and their risks and benefits, and the consequences of declining or postponing the procedure. Factors such as pain, length of recovery period, possible complications, loss of functioning, restriction of activities and physical scarring should be disclosed before the person consents because they may affect whether he or she consents at all. The disclosures should be made in language that the person can understand and in a way that imparts the most knowledge, such as in writing.

In practice, parents are not provided with complete and accurate information about the circumcision procedure and its effects during disclosure in the hospital. Common myths of cleanliness and cancer risks are often cited while the many benefits of an intact foreskin are not discussed. Without the full and accurate disclosure of information, regardless of capacity or voluntariness of the parents, circumcision of a tiny newborn is not ethical nor is it technically legal.

Second, the health care provider must be certain that the person has the capacity to understand the disclosure and consent to it. Capacity is the person’s ability to understand information about the procedure and his or her ability to appreciate the consequences of consent or refusal. Understanding may be limited by the person’s inherent inabilities stemming from age or intelligence or by the health care provider’s method of disclosure. Infants certainly do not have the capacity to consent to circumcision. Whether parents have sufficient capacity can only be determined on a case by case basis. Regardless of the parents’ mental capacity to make

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## MISSION STATEMENT

# **NOCIRC of MICHIGAN**

**NOCIRC of Michigan** is a nonprofit, consumer rights advocacy group that educates people about circumcision and about the benefits of intact genitals.

**We** inform parents and health care providers in Michigan about the impact of circumcision and about the proper care of intact genitals. We protect consumers from fraudulent medical claims. We promote the benefits of normal genitals and foreskin restoration.

**We** know the removal of normal, healthy tissue from a child’s genitalia—in the name of medicine, religion or social custom—results in a loss of sexual function and is a violation of human rights.

**We** are a group of dedicated consumer activists and health care professionals. We are committed to effective education, advocacy and activism on behalf of children to protect them from harm. We are part of a worldwide movement to end all forms of male and female genital mutilation.

**INFORMANT** (ISSN 1092-020X) is published three times a year by **NOCIRC of Michigan**. It represents our commitment to provide educational information in this state and to activists everywhere. Articles, comments, and questions are always welcome.

## **NOCIRC of Michigan** Educating a New Generation

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# Intact from Iraq – Circumcised in America

## *What It's Like to be Circumcised as an Adult*

**S**imon came to the United States from Iraq with his family 13 years ago when he was 21. He savored the land of freedom and opportunity and made a better life here.

Then four years ago he walked into a surgeon's office in Oak Park, Michigan and had himself circumcised under general anesthesia. Simon didn't know then that he had become an unwitting victim in the study of the function of the foreskin. He says now that "getting circumcised was the biggest mistake of my life."

Despite having grown up in Iraq, Simon had remained intact (uncircumcised). He is a Chaldean Christian, and although circumcision is not required in the Chaldean Church, most Chaldean men in Iraq are circumcised anyway. They are a small minority among the Muslim population in Iraq and the practice of circumcision long ago passed from the Iraqi Muslims into the Chaldean culture.

According to Simon, his father refused to have his two sons circumcised because it is unnecessary. Simon's father followed his own personal opinion about circumcision, instead of the majority. So Simon arrived in the United States with an intact foreskin.

The American culture, however, proved to be a stronger influence than his father. All the information Simon encountered seemed to favor circumcision. Most of Simon's friends were circumcised. All of the men that he saw in American porn movies were circumcised. According to Simon, he thought that they enjoyed sex better. He began to believe that he would have a better penis if he too were circumcised.

His surgeon never told him that he would lose some sensitivity in his penis. His insurance company paid for his circumcision without any questions. "If I would have had to pay for it myself," he says, "I would not have done it."

After two weeks of being circumcised, Simon realized to his astonishment that something was very wrong. His penis had lost most of the wonderful sensations he had come to enjoy during sexual activities.

Orgasms became weak. Simon went back to his doctor suspecting that his circumcision had been performed wrong. The doctor could find nothing wrong with him.

When Simon had sexual intercourse a year later, he still did not enjoy it as before. In giving up his foreskin, he realized that something magical and vital had been cut away from him. "Sex went from a '10' to a '3'." The difference is like the distance between the earth and the sky." Something had died in his penis. He bitterly regretted allowing this terrible thing to happen.

Not all men who are circumcised feel a loss as deeply as Simon, but not all men are as keenly aware or felt the intensity that Simon once did. According to Simon, "Losing the foreskin is like losing the brain of the penis." Simon became very depressed. He continued to blame himself for his decision to get circumcised.

### **A Foreskin Restoration Support Group Now Meets in Ann Arbor**

Find out what you lost.

Find out what you can restore.

Find out what hundreds of men are doing.

Meetings are the first Sunday of every month, 4 - 6 pm. Contact Bill Malone at 734 330-8338 or BMalone@umich.edu.

Simon felt that his family and friends did not understand his misery and that no one ever would. He had trouble communicating the depth of his loss and his despair. He was told that the problem was all in his mind.

At this point, Simon was so sad that he just wanted to die. He was struggling in another world, the world between being circumcised and being intact, unable to accept his fate. He attempted suicide by taking an overdose of pills and in December of 2002 found himself in a mental hospital.

Simon told the psychiatrist there that it was his circumcision that made him so depressed. The doctor did not believe Simon; he said instead that it was depression that had clouded his beliefs about circumcision.

Most people in circumcising cultures like the United States don't want to believe that circumcision causes harm, and so they would rather blame the victim. Simon was blamed for making "such a big deal out of his circumcision."

Simon went back to work, still depressed. He called the employee-assistance program offered by his employer. Fortunately, the case worker on the phone took him seriously and did some research on the Internet. He called back with contact information for *NOCIRC of Michigan* and for the *National Organization of Restoring Men*.

Simon was able to learn about the process of foreskin restoration and this gave him hope. He bought the *Restore Yourself!* kit from [www.RestoreYourself.com](http://www.RestoreYourself.com), anxious to get back what he had given up. He read all about the function of the foreskin.

All Simon wanted to do now was to restore his foreskin, but the process is slow. He lived in constant fear that he was never going to get his foreskin back. This continued to make him depressed and he missed work, lying in bed for days at a time. He later tried other restoration products until he found the one that was right for him.

Simon's foreskin restoration process has continued slowly, but it is progressing. He now says, "You can't regrow a finger, but you can regrow a foreskin." Restoration represents something real that can make up for his loss. Although he knows he can't get everything back, he also knows that he is doing the best he can.

Simon is now moving on with his life. "If I have a son," he says, "I will never allow him to be circumcised." Simon did not set out to be an anti-circumcision advocate, but he realizes now that he has become one. "I warn everyone I can about the harm of circumcision. No one knows what the loss of a foreskin means better than I do."

*Simon lives in Sterling Heights, Michigan. He can be reached at [skarana2000@yahoo.com](mailto:skarana2000@yahoo.com) or 586 873-6035.*

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informed consent, courts should find that parents do not have the authority to consent to the cosmetic mutilation of their children.

Lastly, the decision must be voluntarily made. A decision made after manipulation or under undo influence is not voluntary. For parents, issues such as the stage of labor or recovery from childbirth when the decision is made, the pain medication's effect on the mother's ability to comprehend the gravity of her decision, and the underlying biases of the health care provider may border on manipulation or undo influence. For the infant himself, his screams during the procedure are evidence that he does not voluntarily consent. Performing an aesthetic medical procedure on a person who is noisily voicing his non-consent is not only unethical, it is criminal.

In considering the parent's right to consent on behalf of his or her son, it is true that parents traditionally make medical decisions for their children. However, no court has ever ruled that parents have constitutional rights to consent to unnecessary medical procedures on behalf of their children. Parents may authorize an unnecessary medical procedure only when it is clearly in the child's best interest. Neither the parents' right to religion nor their right to care and custody of their children can overcome the child's own interest in his bodily integrity. Therefore, even if all the elements of informed consent are met, it is still unethical, and arguably illegal, for the parents' consent to be adequate for the non-therapeutic circumcision of their child.

## How the Law May Be Used to End Circumcision

Plaintiffs, such as Donna Fishbeck in the North Dakota equal protection case and William Stowell in the New York informed consent case, are using these theories with success. If a plaintiff with adequate legal standing could challenge the federal FGM statute under an equal protection theory, he could possibly affect a change in the language of that statute to also prohibit the genital mutilation of males in the United States. If other circumcised men brought claims of lack of informed consent against their circumcisers, medical professionals would hesitate to perform them. If the payouts in such lawsuits became burdensome, the malpractice insurance companies would refuse to cover medical professionals who perform

circumcisions. The threat of losing malpractice coverage would immediately eliminate circumcisions performed by medical professionals while the threat of expensive lawsuits would do away with circumcisions performed by mohels or other religious leaders in religious ceremonies.

Additionally, when American culture develops a better understanding of the negative effects of circumcision, legal theories like child abuse, assault, battery, conspiracy to commit assault and battery, violation of willful cruelty statutes, violation of infliction of pain statutes, violation of mayhem statutes, and violation of false imprisonment/kidnapping statutes may also be viable means of ending circumcision. Under any legal or nonlegal theory, though, the cutting of normal, healthy, functioning genital tissue of a non-consenting person is simply unethical.

## CALENDAR

### NOCIRC Exhibit Dates

Volunteers are needed to help staff the NOCIRC information booths at the exhibitions listed below. Come and enjoy sharing our message with others! Training will be provided. Please call (248) 642-5703 to volunteer a couple hours of your time or to find out about events in your area.

#### ◆ Ann Arbor Art Fair

Wed, July 21st - Sat, July 24th, 2004  
West Liberty St, Ann Arbor, MI

#### ◆ Yeah Baby Family Expo

Fri, Sept 10th - Sat, Sept 11th, 2004  
Centerpointe Mall, Grand Rapids, MI

*Jessica Kelly-Shaieb won 3rd place nationally in the 2004 NOCIRC College Essay Contest. She lives in Royal Oak, Michigan and is pursuing a law degree at Wayne State University Law School while raising her daughter. She works as an advocate for women's and children's rights and can be reached at jllks29@comcast.net.*

The **2005 NOCIRC College Essay Contest: "Is Circumcision Ethical?"** has been announced for undergraduate students. The first prize is \$1,000. The deadline for entries is November 15th, 2004. For more information on this national contest, please visit [www.NOCIRC.org](http://www.NOCIRC.org). A book of essays submitted to the 2004 essay contest can be purchased for \$22 from NOCIRC headquarters, PO Box 2512, San Anselmo, CA 94979, 415 488-9883.

## BAD IDEAS FROM THE HISTORY OF MEDICINE

### Real Quotes From Real Doctors

*"Circumcision is an operation which should be done in early babyhood. Then the operation is borne well, giving the minimum of discomfort, no anesthesia is required, and usually no stitches. Up to 6 months of age, a healthy baby is very easily nursed, as it leads, more or less, the life of a vegetable: feeding and sleeping."*

Dr. E. M. Corner  
*Male Diseases in General Practice*  
Oxford University Press, London, 1910

## TELL THE TRUTH ABOUT CIRCUMCISION

### How to Become An Informant

- ◆ Help us to educate parents and health care providers! A *tax-deductible* membership fee of \$25 or more makes you a **NOCIRC of Michigan Informant**.
- ◆ Free pamphlets and newsletters are available in bulk to anyone wishing to distribute them to parents and care providers.
- ◆ We exhibit at many conferences and health fairs each year. Please call to volunteer to help staff our information tables.
- ◆ Please let us know about relevant conferences or fairs that **NOCIRC of Michigan** may exhibit at anywhere in the state.

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