

Ethical Challenges Remain in The World of Private Adoptions

The Imprint 3/18/2021 7:00PM

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Adoption practices continue to challenge the ethics of social workers due to myriad conflicting interests which have [existed](#) since the practice began. Dangerous informal child care arrangements in the early to mid 1900s have been replaced by a patchwork of state and federal laws, regulations and child care practices meant to serve the best interests of everyone associated with adoption, but we continue to allow for ethically concerning “wrongful” adoptions. The transition to formal adoption practices was initiated in the early 1980s, with adoption case law establishing best legal practices for improving positive outcomes for children and families. Starting in 1981, the National Association of Social Workers (NASW) followed suit by formalizing standards for child welfare with the publication of the [NASW Standards for Social Work Practice in Child Protection](#).

Over the last two decades, the NASW *Code of Ethics* and the child welfare practices have evolved and stronger assessment practices related to approval of adoptive parents have been established. Despite these advances, social workers have found themselves observing or being caught up in ethically challenging adoption practices that have continued to lead to unethical family disruptions and poorly implemented adoption policies, all of which have created more “wrongful adoptions” and a continued mistrust of the profession.

Disrupting family structures for the so-called “best interest” of the child is the most ethically challenging aspect of adoption and child welfare practices. The rescuing of “orphan” children from “Third World” countries has led to an increase in human trafficking and is the most blatant form of family disruptions for the sake of making money through the guise of a legal adoption. In 2019, an Arizona private attorney was [arrested and found guilty](#) of bringing children from the Marshall Islands who were not in need of families.

This practice, one of several that have occurred over the last 20 years, is not uncommon and is the main disrupter that makes legitimate international

adoptions lengthier and costlier for the children in need of homes. Typically, social workers are not engaged in these types of “wrongful adoptions” until after the child is already “identified” as available for adoption or they were already placed in a planned adoptive home.

NASW standards of practice clearly state that all social workers will operate to promote social justice, the dignity of the person and to call out dishonesty and fraud. Ethical social work practice demands significant improvement in private adoption practices as they focus on the rights of children and families to determine their own future, and advocating for transparent legislative oversight, protections for “whistleblowers” and increased education and social justice activism to eliminate this practice.

Another important aspect of adoption that demands increased ethical re-consideration is the typically rushed adoption placement practice that occurs in many private infant adoptions. Failed adoptions and malpractice lawsuits occur following the discovery that there was an incomplete collection or sharing of medical or social background information during the “matching” and placement process. In its current format, placements occur at the time of birth and can impede the social worker’s ability to fully meet the ethical standard of informed consent. Incomplete assessments and/or limited staffing at the time of placement fail to provide potential adopters with appropriate current and anticipated developmental functioning of a child.

Courts have long recognized a duty to disclose known material health information about a child to prospective adoptive parents. The Ohio Supreme Court, in *Burr v. Board of County Commissioners*, recognized a right of action and a right to damages against an adoption agency for misrepresenting a child’s medical history to prospective adoptive parents. But the court cautioned: “In no way do we imply that adoption agencies are guarantors of their placements. Such a view would be tantamount to imposing an untenable contract of insurance that each child adopted would mature to be healthy and happy. Such matters are solely in the hands of a higher authority. Adoptive parents are in the same position as, and confront risks comparable to, those of natural parents relative to their child’s future.”

Shortly after the Ohio decision, many other states followed suit. A California court ruled that in an adoption “there must be a good faith full disclosure of material facts concerning existing or past conditions of the child’s health.”

Should this duty be breached, agencies and other parties can be liable. Such liability can be determined if agencies deliberately or fraudulently withhold information, intentionally or negligently misrepresent a child's background, or mischaracterize information that may affect the prospective adoptive parent's decision to adopt.

Adoption practices today continue to focus on the desired outcome of placement, especially in private non-agency adoptions and continue to create poor matches and/or "wrongful" adoptions. Improved ethical practice in this area would include requiring the extended family to be researched and appropriately included in the pregnancy planning process, ensuring that any potential biological father is engaged in and informed about the existence of the child, and ensuring the completion of a thorough medical and developmental assessment.

Another area of adoption practice that needs ethical reconsideration is the placement of a child with adoptive parents prior to all birth parents' full consent being granted. In the [Matter of Baby Girl XX](#), the New York based biological mother and father both completed extra-judicial surrenders for the placement of the child with the adoptive parents, with full knowledge that they had 45 days to change their minds and have the child returned to them. In this particular example, the biological mother did change her mind, but the adoptive parents contested her ability to change her mind.

This triggered a court-ordered "best interests hearing." The hearing resulted in a review which concluded that, based on the adoptive parents current functioning, the adoptive parents were the better option for the child.

This case highlights the need for ethical reconsideration of self-determination of biological parents. Adoption social work professionals can significantly improve on this area of practice by ethically advocating for consistent implementation of the best interests practices as outlined in a [recent report](#) from the U.S. Department of Health and Human Services.

Two other important "wrongful adoption" practices that need ethical reconsideration include the use of "Safe Haven Baby Drops" and child "[Rehoming](#)." Both practices are created out of adversarial relationships with courts, agencies and social workers. Rehoming specifically creates an "adoption" without any professionals involved and "Safe Haven" baby drops create a situation where the self-determination and best interests of the child are not

considered. Ethical reconsideration includes creating opportunities for positive planning for “unplanned” pregnancies and for adoptive placements that do not have enough support or are mismatches.

The adoption social work profession has an ethical obligation to continue to consistently re-evaluate child welfare practices to ensure it meets the self-determination needs of clients and avoids fraud and discrimination with proper education and worker competence.

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