

## Case 2 ♦ Paying for Bone Marrow

The National Organ Transplant Act of 1984 makes it illegal to buy and sell organs in the United States of America (and similar laws also ban the practice in Western Europe). The law has many purposes: it aims to prevent the formation of a black market in organs and to curb the possibility of obtaining organs without consent or against healthcare advice. Furthermore, allowing the sale of one's kidney or lung could also have bad effects on those in poverty, who may overestimate present gain and discount future well-being. Finally, the law prevents the development of a system where wealthier sick people (or their agents) could "buy" their way to the top of an organ transplant list, bypassing those of lesser means (even if they are more compatible with the organs or more deserving of them).

However, none of these factors sound significant when one's child is at stake. Doreen Flynn's daughters have a life-threatening blood disorder called Fanconi Anemia. This condition could only be treated by a bone marrow transplant; life expectancy is only 14-16 years without a transplant. With no match in the donor database, Flynn feared that no compatible match would be found in the near future. Thus, Flynn decided to challenge the National Organ Transplant Act in court so that people could be reimbursed for donating their bone marrow.

Her reasoning was that paying people to donate bone marrow would get much more bone marrow into the system and create a better chance for a match. Unlike lungs or kidneys or other solid organs, bone marrow replenishes itself after donation. The procedure for extracting it has also been greatly simplified over the years. Her daughters would be getting donations through methods that people of lesser means may not be able to employ. However, as many of her defenders point out, this is how the United States' healthcare system works in many cases without laws mandating equality. According to her lawyer, Jeff Rowes, "[b]one marrow is just like anything else in the world... it's valuable. And if you compensate people for it, you're going to get more of it, it's just that simple."<sup>1</sup>

However, some bioethicists reject the market reasoning at work here: "Just because you can sell something, just because you can do anything, doesn't mean you ought to," said bioethicist Kenneth Goodman.<sup>2</sup> Furthermore, there are major health risks<sup>3</sup> associated with marrow extraction, such as infection — although the likelihood of complications is not as high as with whole organ donations. And opening up paid donations may have bad effects on the system as a whole. Donors may tailor their family and behavioral history forms (which are necessary to making matches with those in need) in order to get paid. Also, if the United States shifts to paid donations, it may not be able to tap into donors overseas or provide bone marrow to patients overseas, according to the way the international system works.

Case from the 2013 Regional Ethics Bowl. Copyright, Association for Practical and Professional Ethics.

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<sup>1</sup> Ami Schmitz and Stacey Naggier, "Woman Challenges Bone Marrow Donation Law in Effort to Save Daughters' Lives," NBC News, June 13, 2012, [http://rockcenter.nbcnews.com/\\_news/2012/06/13/12190616-woman-challenges-bone-marrow-donation-law-in-effort-to-save-daughterslives?lite](http://rockcenter.nbcnews.com/_news/2012/06/13/12190616-woman-challenges-bone-marrow-donation-law-in-effort-to-save-daughterslives?lite)

<sup>2</sup> Denise Dador, "Should Bone Marrow Be for Sale? Mom Says Yes," ABC News, November 20, 2012, [http://abclocal.go.com/kabc/story?section=news/health/your\\_health&id=8893143](http://abclocal.go.com/kabc/story?section=news/health/your_health&id=8893143)

<sup>3</sup> D.L. Confer, et al., "Serious Complications Following Unrelated Donor Marrow Collection: Experiences of the National Marrow Donor Program," *Biology of Blood and Marrow Transplantation*, February 2004, 10(1): 13-14.

