Circumcision Is Unethical and Unlawful

J. Steven Svoboda, Peter W. Adler, and Robert S. Van Howe

"A remedy which is almost always successful in small boys is circumcision... The operation should be performed by a surgeon without administering an anesthetic, as the brief pain attending the operation will have a salutary effect upon the mind, especially if it be connected with the idea of punishment..."

—John Harvey Kellogg, M.D. (1888)[1]

"Medically, it doesn't make sense...I don't like doing the procedure. But I do it well. I've performed thousands of circumcisions."

—Helain Landy, M.D., Head of Obstetrics, Georgetown University Hospital[2]

"I have some good friends who are obstetricians outside the military, and they look at a foreskin and almost see a $125 price tag on it. Each one is that much money. Heck, if you do 10 a week, that's over $1,000 a week, and they don't take that much time."

—Dr. Thomas Wiswell, co-author of the latest defense[3] of the American Academy of Pediatrics' (AAP's) circumcision policy.[4]

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Introduction

This article is being published in connection with a debate between Attorneys for the Rights of the Child (ARC) and the American Academy of Pediatrics (AAP) regarding the ethical and legal status of non-therapeutic circumcision of male infants and boys. According to the AAP, physicians should ask the parents of every newborn boy whether they want their son circumcised.[5] Parents should be informed, as set out in the AAP's 2012 circumcision policy statement[6] and accompanying technical report,[7] that circumcision has many benefits which outweigh the associated risks, and that parents have the right to make "the circumcision decision," taking into consideration their religious, cultural, and personal beliefs. In addition, according to the AAP, third parties such as Medicaid should reimburse physicians for performing the procedure. While some have argued that the 2012 AAP Task Force on Circumcision and its members have undisclosed financial, religious, cultural, and personal conflicts of interest and actual or potential biases,[8] this article focuses on the AAP's scientific claims and finds them to be false and misleading.

As discussed below, the AAP's position is out of step with prevailing medical opinion in the rest of the Western world. There is no valid medical basis for circumcision; it is prohibited by the rules of medical ethics; and it violates the legal rights of the child.

In December 2014, following the acceptance of this paper for publication, the Centers for Disease Prevention and Control (CDC) issued draft circumcision guidelines that recycle many of the errors present in the AAP policy statement and technical report. As Adler has documented in detail, the CDC draft guidelines are medically, legally, and ethically unsound for reasons similar to the flaws in the AAP position, and also violated important procedural requirements such as not allowing the legally required sixty-day public comment period.[9] Adler shows that the CDC draft guidelines are "not medically correct, ethically sound, legally permissible, or procedurally valid. Accordingly, they should not be implemented and would be legally invalid if they are."[10] They provide erroneous and misleading advice to physicians that exposes them to the threat of lawsuits by men and parents. At the CDC's request, Van Howe assembled a peer review of each CDC claim and each citation, critiquing the CDC in detail.[11] ARC and Intact America (IA) jointly posted comments calling the CDC to account for ignoring "the considerable and reputable literature from the fields of medicine, medical ethics, law, and human rights that calls into question the legitimacy of foreskin removal (circumcision) as a health care measure."[12] ARC and IA stated, "In sum, the CDC exaggerates the benefits of circumcision, minimizes its risks, utterly ignores the function and benefits of the foreskin, and blithely disregards critical ethical and legal questions regarding the rights of all children to enjoy their normal, natural sex organs."[13]

In September 2015, the Canadian Paediatric Society (CPS) issued its first policy statement regarding male circumcision in nearly two decades.[14] The CPS statement could be described as unsatisfactorily attempting to split the difference between the procedure's curious persistence and continued justification by the AAP and CDC in Canada's southern neighbor, and the overwhelming opposition to the procedure throughout other developed countries.

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I. The Facts

A. Normal Bodies and Customary Medical Practice

The male and female genitalia have evolved over 65 to 100 million years to function together in sexual intercourse; in early gestation, they are identical in both sexes.[15] The female counterpart of the male foreskin is the clitoral hood.[16] Needless to say, every normal boy is born with a complete penis, not a surgically altered one. As the AAP concedes, men rarely volunteer to be circumcised;[17] and increasing numbers of men are angry that they were.[18]

Removing any body part would prevent it from becoming diseased. Ordinarily, and mercifully, physicians only operate on children after a diagnosis, a recommendation, and as a last resort when conservative remedies have failed. Thus, the circumcision of healthy boys occupies an anomalous position that is inconsistent with the norms of medical practice.

B. Origins: Barbarism and Medical Quackery

For thousands of years, boys have been circumcised for reasons having nothing to do with their health.

Historians believe that — before it became a ritual for Jews and Muslims — it began as a sacrificial religious ritual and painful rite of passage.[19] Beginning in about 1870, doctors in Britain and America began to circumcise boys in an unsuccessful attempt to prevent masturbation.[20] For the next century, American physicians demonized the male foreskin, suggesting that it is the cause of a long list of diseases including epilepsy, insanity, homosexuality, and deafness.[21] Although these early medical claims have been relegated to the dustbin of history, circumcision nevertheless became embedded as a widely accepted cultural norm.[22]

C. The Foreskin

The AAP does not discuss the anatomy or functions of the foreskin in its 2012 policy statement and technical report. Dr. Michael Brady, who represented the AAP at the 20th Pitts Lectureship in Medical Ethics, twice stated, in slightly different words, "Nobody knows the functions of the foreskin."[23] In fact, existing medical literature amply documents the foreskin's anatomy and various functions,[24] which the AAP Task Force should take have taken the time to learn before discussing the merits of cutting it off. The foreskin is a complex structure with multiple parts that function together with the rest of the penis.[25] The foreskin is not simply skin, but is a specialized junctional tissue with five distinct layers, which, like the lips and eyelids, has a moist mucous membrane on the inside and dry epithelium on the outside.[26] It is replete with nerves, blood vessels, and muscle fibers,[27] with a total adult surface area of approximately 30-50 cm^2.[28] The enclosed muscle fibers of the foreskin help to keep contaminants out,[29] while the mucosal surface provides an immunological defense barrier.[30] The foreskin protects the glans against dryness and abrasion, and allows for a unique gliding action that may facilitate comfortable sexual intercourse.[31] Circumcision removes one-third to one-half of the penile covering and the vast majority of the penis's specialized erotogenic nerve endings.[32]

D. The "Cons"

Circumcision has many serious disadvantages.

1. Trauma and pain. American medical associations once made the false and counter-intuitive claim that babies do not feel pain.[33] They now acknowledge that circumcision is painful.[34] The AAP recently stated in a new policy statement that exposure to repeated painful stimuli early in life can create changes in a child's brain development and stress response systems that can last into childhood.[35] Accordingly, the policy statement recommends that "every health care facility caring for neonates should implement… a pain-prevention program that includes strategies for minimizing the number of painful procedures performed."[36] Neonatal circumcision causes a change in vital signs and other reactions that are indicators of stress, which can cause boys to experience "infant shutdown."[37] As the American Medical Association stated in its 1999 report about circumcision:

> Clinical and biochemical evidence indicates that newborn infants exhibit physiological, autonomic, and behavioral responses to noxious stimuli. Acute responses of neonates to painful stimuli include large increases in heart rate, increased blood pressure, decreased transcutaneous pO2 values, decreased vagal tone, crying, breath holding, gagging, behavioral changes, and increases in serum cortisol.[38]

Circumcision and chest tube insertion are considered the most painful procedures faced by patients in the neonatal intensive care unit.[39] Topical and local anesthesia do not eliminate circumcision pain.[40] General anesthetics should not be used during elective procedures on infants; they are contraindicated because the risks are too high.[41] Injecting local anesthetics into the base of the penis is also painful, and can cause complications such as skin irritation, bleeding, bruising, choking, and spitting up.[42] Lander found that "every newborn in the placebo group (and thus not receiving anesthesia) exhibited extreme distress during and following circumcision."[43] Circumcision also interferes with boys' sleep cycles,[44] feeding,[45] maternal bonding,[46] and has a long-lasting effect on pain sensitivity.[47] Numerous studies confirm that early trauma has a deep and potentially lifelong negative impact,[48] which may explain why a significant association was found between the rate of infant circumcision and the prevalence of autism within populations.[49]

2. Risks. The AAP implies that circumcision is "safe" when performed in a sterile setting, but this is untrue. The Royal Dutch Medical Association (KNMG) notes that many complications of the procedure are known, including "infections, bleeding, sepsis, necrosis, fibrosis of the skin, urinary tract infections, meningitis, herpes infections, meatitis, meatal stenosis, necrosis and necrotizing complications, all of which have led to the complete amputation of the penis."[50] Krill provided a more comprehensive discussion of complications of circumcisions performed in a sterile setting:

> [P]ostcircumcision bleeding in patients with coagulation disorders can be significant and sometimes even fatal. Other serious early com-

> plications include chordee, iatrogenic hypospadias, glanular necrosis, and glanular amputation. The latter, of course, requires prompt surgical intervention. *Late complications* include epidermal inclusion cysts, suture sinus tracts, chordee, inadequate skin removal resulting in redundant foreskin, penile adhesions, phimosis, buried penis, urethrocutaneous fistulae, meatitis, and meatal stenosis.[51]

Complications may be greater with circumcisions done neonatally because the organ is diminutive and the prepuce is adhered to the head of the penis, requiring forcible separation (not needed in adult circumcision).[52] Although circumcision in the newborn period is less costly, such dollar savings are attained at the ethically impermissible cost of sacrificing humane treatment, since it is not possible to provide adequate pain control for infants (which any consenting adult would demand).[53] Legal costs to compensate for damages are sometimes required as a sequel to the procedure. Attorneys for the Rights of the Child has published a list of all known judgments and settlements arising from negligently performed circumcisions, with the highest award being $32 million.[54] There almost certainly have been many more settlements than these, as the parties to legal settlements often agree as part of the settlement not to disclose its terms.[55]

In a recent study, 315 boys circumcised at ages from 3 weeks to 16 years (median age five years) were evaluated. Sixteen of the boys or 5.1% of them had significant complications.[56] Joudi recently found a complication rate of 20% from meatal stenosis alone.[57] Krill states, "[c]omplications of circumcision…represent a significant percentage of cases seen by pediatric urologists…Often they require surgical correction."[58] In fact, 7.4% of all visits to a pediatric urologist at Massachusetts General Hospital over a period of five years were attributed to circumcision.[59] Pediatric urologist David Gibbons comments on the large scale of the problem:

> [I]n a two year period, I was referred 275 newborns and toddlers with complications of neonatal circumcision. None of these were "revisions" because of appearance, which I do not do. 45% required corrective surgery.... Complications of this unnecessary procedure are often not reported, but of 300 pediatric urologists in this country who have practices similar to mine… well, one can do the math, to understand the scope of this problem…let alone, to understand the adverse cost-benefit aspect of complications (>$750,000) in this unfortunate group of infants and young children.[60]

Moreover, circumcision can be fatal even when performed in a sterile hospital setting; one study suggests more than 100 deaths per year in the United States alone. Revealingly, none of the AAP's circumcision reports since 1971 has suggested researching how often circumcision results in serious injury and death; the 2012 report calls instead for more research into its benefits. Injuries and fatalities are no surprise. A recent Canadian study investigated whether physicians performing neonatal circumcisions are well-trained and concluded that they are not.

Moreover, circumcision can be fatal even when performed in a sterile hospital setting; one study suggests more than 100 deaths per year in the United States alone.[61] Revealingly, none of the AAP's circumcision reports since 1971 has suggested researching how often circumcision results in serious injury and death;[62] the 2012 report calls instead for more research into its benefits.[63] Injuries and fatalities are no surprise. A recent Canadian study investigated whether physicians performing neonatal circumcisions are well-trained and concluded that they are not.[64]

As the AAP acknowledges in its technical report, "*The true incidence of complications after newborn circumcision is unknown*" [emphasis added]. The AAP goes on to state: "Adding to the confusion is the commingling of 'early' complications, such as bleeding or infection, with 'late' complications such as adhesions and meatal stenosis."[65] The AAP later admitted that its main conclusion was based not on science but rather on a *feeling*: "These benefits were felt to outweigh the risks of the procedure."[66] As Garber comments, "It is inconceivable that the AAP could have objectively concluded that the benefits of the procedure outweigh

the risks when the 'true incidence of complications' isn't known."[67] Furthermore, the risk/benefit structure the AAP invokes is inapplicable to male circumcision as it was created for therapeutic procedures.[68]

3. Harm

a. Physical Harm. Medical associations outside the United States agree that circumcision harms all boys and men.[69] In April 2010, the AAP implicitly acknowledged that male circumcision involves extensive genital cutting, stating that the ritual nick on a girl's clitoris "is not physically harmful and is much less extensive than routine newborn male genital cutting."[70] In May 2010, the AAP withdrew its policy on female genital cutting following a storm of public protest.[71]

b. Sexual Harm to Men. Does circumcision impair men's sex lives? The AAP says no,[72] but as circumcision removes between one-third and one-half of the highly enervated penile covering, common sense suggests otherwise. As European physicians stated in a response to the AAP's 2012 policy statement and technical report, the foreskin "plays an important role in the mechanical function of the penis during sexual acts."[73] Circumcision prevents these functions, such as the folding and unfolding of the foreskin over the glans in a characteristic "gliding action."[74] Solinis and Yiannaki (2007) studied couples and reported, "There was a decrease in [a] couple's sexual life after circumcision indicating that adult circumcision adversely affects sexual function in many men or/and their partners, possibly because of complications of surgery and loss of nerve endings."[75] A 2011 study by Frisch et al.[76] reported:

> Circumcision was associated with frequent orgasm difficulties in Danish men and with a range of frequent sexual difficulties in women, notably orgasm difficulties, dyspareunia and a sense of incomplete sexual needs fulfillment. Thorough examination of these matters in areas where male circumcision is more common is warranted.[77]

Dias found in 2013 that erectile dysfunction and orgasm delay substantially increased in circumcised men.[78] A 2007 study showed that the foreskin removed by circumcision is the most sensitive part of the penis.[79] A 2013 study from Belgium of a large cohort shows the importance of the foreskin for penile sensitivity, overall sexual satisfaction, and penile functioning, finding that a higher percentage of circumcised men experience discomfort or pain as compared with the genitally intact population.[80] Some studies[81] have claimed, in the words of Morris et al.,[82] to find "no difference" in sexual experience between intact and circumcised men; however, Frisch explained the lack of validity of these findings:

> The questionnaires used to assess potential sexual problems in the two [studies] cited [by Morris et al.] were not presented in detail in the original publications…. Having obtained the questionnaires from the authors, I am not surprised that these studies provided little evidence of a link between circumcision and various sexual difficulties. Several questions were too vague to capture possible differences between circumcised and not-yet circumcised participants (e.g. lack of a clear distinction between intercourse and masturbation-related sexual problems and no distinction between premature ejaculation and trouble or inability to reach orgasm).[83]

c. Sexual Harm to Women. The gliding action of the normal, moist penis, a sheath within a sheath, reduces friction[84] and vaginal dryness in women.[85] The 2011 Danish study mentioned above by Frisch and colleagues found that circumcision causes frequent sexual difficulties in women, including difficult or painful sexual intercourse and orgasm difficulties.[86]

d. Psychological Harm. The AAP does not mention even the possibility of psychological harm, while the 38 mostly European medical experts replying to the report note that "circumcision can lead to psychological [and other] problems."[87] Goldman writes that "preliminary reports appear to be consistent with the symptom pattern of post-traumatic stress disorder [PTSD],"[88] while Rhinehart strongly states that circumcision can cause PTSD:

> The feelings and behaviors my clients experienced fit precisely unto what Herman (1992) called complex posttraumatic stress reaction (p. 121). They are no different from the experience of rape victims, combat veterans, female circumcision victims, and survivors of natural disasters. She also indicated that the common factor underlying the effects of trauma is the experience of violence and powerlessness (p. 33)—made worse if it is inflicted by other human beings in contrast to a natural disaster. Both are dramatically present in the procedure of neonatal circumcision.[89]

Men also frequently describe their unhappiness at having been circumcised.[90]

E. The "Pros"

When male circumcision was first introduced as a medical procedure in the 19th century, the pervading medical paradigm was that by preventing masturbation, circumcision would cure and/or prevent a long list of maladies including hydrocephalus, idiocy, heart disease, dumbness, and criminality.[91] During the past century, many other justifications have been devised and in turn discredited, with new rationales being invented once the previous ones had been disproven. More recently, physicians have associated the absence of a foreskin with a partial reduction of risk (not "prevention" as is frequently claimed) of acquiring: urinary tract infections, penile cancer, cervical cancer in female partners of circumcised men, some sexually transmitted diseases, and, most recently, HIV infection.[92] The important questions here are: (1) whether there is reliable evidence that these claimed health benefits do in fact exist; (2) whether, if the health benefits do exist, they are outweighed by the combined impact of risks, complications, drawbacks, and harms; and (3) if they are not so outweighed, whether there are not safer, more reliable, less invasive, more autonomy-respecting means of achieving the same health ends. So let us review the claimed benefits.

1. Urinary Tract Infections. As noted by Germany's official pediatric association, the Berufsverband der Kinder- und Jugendärtze (BVKJ),[93] as well as the 38 primarily European physicians who criticized the AAP's new statement,[94] the only possible benefit of circumcision in infancy (as opposed to waiting until the individual can make his own informed decision) is a reduction in the risk of contracting a urinary tract infection (UTI). A recent Cochrane Review concluded, however, that no reliable evidence exists from randomized-controlled clinical trials (RCTs) or otherwise proving that circumcision does in fact reduce the incidence of UTIs.[95] Even if such evidence existed, it would be far from sufficient to justify the practice. These infections are rare (approximately 1%) in boys, limited primarily to the first six months of life, can be easily and effectively treated with oral antibiotics,[96] and very rarely result in hypertension or long-term kidney disease.[97] Furthermore, Chessare showed that even if the claims about UTIs were correct, the complications from circumcision exceed the benefits from the prevention of UTIs.[98] Evidence from Israel suggests that UTIs may be *caused* by circumcision.[99] European experts also note that performing 100 circumcisions in an effort to prevent one UTI will cause two "cases of hemorrhage, infection, or in rare instances, more severe outcomes such as death."[100]

2. Penile Cancer. Penile cancer occurs in old age, so boys are not at risk of it. It is one of the rarest forms of cancer in the Western world.[101] American men are about as likely to be struck by lightning as by penile cancer.[101] Two recent studies that controlled for phimosis found that infant circumcision alone did not significantly impact cancer rates.[103] The AAP also cannot explain why the rates of penile cancer in the United States exceed those in Denmark,[104] Norway,[105] Finland,[106] and Japan,[107] where infant circumcision is rare.

In any event, according to the AAP in 2012, between 909 and 322,000 circumcisions would be needed to prevent a single case of penile cancer.[108] In 1996, the American Cancer Society asked the AAP to stop promoting circumcision as a preventative measure for penile cancer so as not to divert attention from other measures proven to be protective:

> The American Cancer Society does not consider routine circumcision to be a valid or effective measure to prevent such cancers....Portraying routine circumcision as an effective means of prevention distracts the public from the task of avoiding the behaviors proven to contribute to penile and cervical cancer: especially cigarette smoking and unprotected sexual relations with multiple partners. Perpetuating the mistaken belief that circumcision prevents cancer is inappropriate.[109]

3. Cervical Cancer. Of the 16 epidemiological studies that have looked for an association between the risk of cervical cancer and the circumcisions status of male sexual partners, only one reported a statistically significant association; however, when a Fisher's exact test is calculated using the numbers from this one study, the association is not statistically significant.[110] Consequently, there is no evidence to support that claim that circumcision prevents cervical cancer.

4. Out of Africa: Circumcision and HIV. The AAP rests much of its case for "new" health benefits of circumcision on the backs of three RCTs conducted in Africa between 2005 and 2007.[111] Unfortunately, an extensive review reveals that the facts stubbornly refuse to cooperate with the claims of the circumcision advocates. They suggest that the three RCTs demonstrate that male circumcision results in a 38-66% *relative* risk reduction in female-to-male heterosexual transmission of HIV in areas with very high base-rates of HIV transmission of this kind, such as in sub-Saharan Africa where the trials were carried out.[112] The *absolute* risk reduction, however, is only 1.31%,[113] and only for two years. The Rakai RCT also showed that circumcision resulted in a 61.9% relative increase (calculated as (21.7-13.4)/13.4 = 61.9%) in male to female

transmission of HIV with an absolute risk increase of 8.3%.[114] Therefore, any reduced risk of women infecting men with HIV may be offset by a greater risk of men infecting women with HIV. Moreover, none of the studies made any effort to determine the source of the infections they identified (such as male-to-male sexual transmission, intravenous drug use, or iatrogenic transmission), and the data from these studies suggest that nearly half of the infections noted in the trial may have been acquired through non-sexual modes of transmission.[115]

As demonstrated in multiple critiques, the African RCTs suffer as well from such problems as selection bias, randomization bias, experimenter bias, inadequate blinding, participant expectation bias, lack of placebo control, inadequate equipoise, excessive attrition of subjects, failure to investigate lead time bias, and time-out discrepancy.[116] Additionally, these experimental findings lack external validity as they do not comport with data from national surveys of general African populations. In fact, in several countries circumcised men had a significantly higher prevalence of HIV than men who were not circumcised.[117]

Further, as the AAP admits, "key studies to date have been performed in poverty-stricken African populations with HIV burdens that are epidemiologically different from HIV [burdens] in the United States."[118] Thus — despite claims to the contrary [119] — any conclusions to be drawn about African adult sexual behavior, sexual hygiene, and sanitation are irrelevant to infants and boys in North America, who will have access, at the time of their sexual debut, to clean water and proper hygiene. As many commentators have pointed out, HIV infections in the West primarily occur in men who have sex with men (MSM), and no evidence exists showing that circumcision protects against acquisition of HIV by these men.[120] A Cochrane Review of HIV transmission among men who have sex with men concludes that "there is not enough evidence to recommend male circumcision for HIV prevention among MSM at present."[121] Michel Garenne et al. find the protection provided by circumcision to be "negligible or nil."[122] Not a single study has shown a significant positive association between *infant* circumcision and a lower risk of heterosexually transmitted HIV.[123]

Garenne and co-authors draw an illuminating analogy between circumcision for protection from HIV and two other measures — the cholera vaccine and the rhythm method of birth control — that provide "about 50 percent reduction in short-term… incidence in trials, but no long-term impact on prevalence under intense, repeated exposure."[124]

In any event, as Frisch and colleagues note, "sexually transmitted HIV infection is not a relevant threat to children."[125]

> [C]ircumcision can wait until boys are old enough to engage in sexual relationships. Boys can decide for themselves, therefore, whether they want to get circumcised to obtain, at best, partial protection against HIV or rather remain genitally intact and adopt safe-sex practices that are far more effective.[126]

What is most telling is that in their discussion of STDs, Frisch et al. note, "The authors of the AAP report forget to stress that responsible use of condoms, regardless of circumcision status, will provide close to 100% reduction in risk for any STD" and naturally without the loss of a functional body part.[127] Prominent AIDS/HIV researchers no longer consider circumcision an important part of the effort in eradicating HIV infections. In a recent opinion piece, Susan Buchbinder, who has previously explored the role of circumcision in HIV infections,[128] lists the best forms of prevention as "condoms, treatment for HIV infected individuals, or clean injection equipment."[129] Circumcision is no longer on the list.

In conclusion, even circumcision advocates such as Brady concede, "If health benefits including lower complication rates were not lost by deferring [the procedure] to a later age, the decision would clearly be to defer."[130] Since no such justification given by the AAP — which itself states that the risks are unknown — has been shown to be valid in light of the foregoing discussion, the procedure should be deferred.

In conclusion, even circumcision advocates such as Brady concede, "If health benefits including lower complication rates were not lost by deferring [the procedure] to a later age, the decision would clearly be to defer." Since no such justification given by the AAP — which itself states that the risks are unknown — has been shown to be valid in light of the foregoing discussion, the procedure should be deferred.

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II. Is Non-Therapeutic Circumcision Ethical?

Even if the circumcision of healthy girls — including "minor" procedures that are less invasive than male circumcision — were legal and offered an array of medical benefits, physicians would not so much as consider performing it due to serious ethical concerns. Medical ethics bars proxy consent to surgery that is not medically necessary, especially if the proposed operation is on a healthy child and would permanently change normal anatomy and affect the functions of a non-diseased organ.[131] Thus, a fundamental question, as Dekkers asks, is whether it can ever be morally acceptable for physicians to circumcise healthy boys.[132] The practice is prohibited by the four cardinal ethical rules as well as by specific ethical rules including rules of ethical preventive medicine.

A. The Cardinal Ethical Rules

1. Autonomy. Autonomy has long been viewed as perhaps the paramount ethical principle.[133] Circumcision at an early age deprives the child without his consent of a body part that he may come to see as important.[134] As the AAP's own Committee on Bioethics wrote in 1995, "parents and physicians should not exclude children and adolescents from decision-making without persuasive reasons."[135]

2. Non-Maleficence ("Do No Harm"). The principle of non-maleficence prohibits the infliction of unnecessary harm to the patient. Since as discussed above, despite the AAP's claims to the contrary, no substantial benefits for the procedure have been proven, neonatal circumcision is ethically impermissible as a violation of the principle of non-maleficence. As AAP ethicist (and Circumcision Task Force member) Douglas Diekema writes, under the rule of proportionality, benefits must be proportional to risks and losses. "If other less risky but equally beneficial treatment options are available, they should be considered instead of surgery. The physician's duty is to always consider primarily the welfare of the child."[136] Circumcision fails to satisfy the rule of proportionality as it has great disadvantages (e.g., pain and permanent loss of a functional, sexually significant body part) with little likelihood of significant benefit later. Thus, circumcision fails the requirement embodied in the Hippocratic Oath, "First, do no harm."[137]

3. Beneficence ("Do Good"). Diekema has summarized the principle of beneficence follows:

> PRINCIPLE OF BENEFICENCE—To conform to the standard of care, all surgical or other inventions must be in the best interests of the patient, and have some reasonable prospect of providing a tangible benefit to him. In general, parents cannot subject a child to medical procedures that place the child at significant risk of serious harm unless there is a corresponding benefit that is likely to outweigh the potential harms. Non-therapeutic procedures that involve excessive risk should be avoided.[138]

There are no medical indications for male circumcision in the neonatal period.[139] Even if circumcision conferred all of the benefits claimed for it, it does not have a reasonable prospect of benefiting the health of each boy and man. Circumcision fails the test of beneficence.

4. Justice. Physicians have an ethical duty to treat patients justly and fairly. It is patently unjust to remove healthy, functional "private parts" from infants before they can defend themselves. It is also unjust that boys are not protected, like girls, from unnecessary genital cutting. Justice requires leaving boys genitally intact, thereby preserving their right to an open future[140] and a normal, intact penis.

B. Specific Ethical Rules

1. No Unnecessary Surgery. Circumcision is expressly prohibited under AMA Ethics Opinion 2.19, "Unnecessary Medical Services," which states, "Physicians should not provide, prescribe, or seek compensation for medical services that they know are unnecessary."[141]

2. Equality. The AMA's long-standing Policy H-65.990 states that no human being shall be denied equal rights due to an individual's sex, gender, religion, or origin,[142] and the AMA's Policy H-65.992 says "to oppose any discrimination based on an individual's sex." Thus, it is unethical for American physicians to circumcise boys when they do not circumcise girls.

3. A Physician's Duty Is to the Patient. In its circumcision policy statement, the AAP states that it "is reasonable to take these non-medical benefits and harms for an individual into consideration when making a decision about circumcision."[143] In fact, few things are less reasonable than for physicians to make medical decisions as to *whether* a procedure will be performed on the basis of non-medical factors such as the religion, culture, or personal beliefs of their patients' parents. The physician's ethical duty is to protect and promote each patient's health, while refraining from promoting practices not soundly based in evidence-based medicine and in medical ethics.[144] As the AAP stated in 1995, "[T]he pediatrician's responsibilities to his or her patient exist independent of parental desires or proxy

consent."[145] No ethical basis exists for Brady's statement, "One of the most popular reasons why parents have their child circumcised is because they want their son to look like their father."[146] No other procedure is performed so a child can look like his or her parent.[147]

4. Ethical Preventive Medicine. As we have argued elsewhere, non-therapeutic infant circumcision is inconsistent with ethical rules regarding preventive medicine involving minors.[148] A non-therapeutic procedure must satisfy stringent requirements: a substantial danger to public health must exist; transmission of the condition must have serious consequences; the effectiveness of the proposed intervention must be well established; the intervention must be the most appropriate, least invasive, and most conservative way to achieve the public health objective; and the patient must thereby receive an appreciable benefit that is not based on speculation about his or her future behavior. If the intervention is to be performed on a child unable to give consent, the level of scrutiny must be further increased.[149] Since a healthy foreskin poses no threat to personal or to public health (any more than any other part of the body that might *one day* fall prey to disease), any asserted "treatment" is both illogical and ethically impermissible.

Furthermore, the risk/benefit calculation used by the AAP to try to justify the practice is irrelevant, as it was devised for therapeutic procedures.[150] Such a computation is inapplicable to a non-therapeutic procedure that removes functional tissue. This is all the more true when the child cannot give consent and may come to resent the intrusion and alteration.[151] Thus, parents have no power to grant permission for such a procedure. Even if they did, the rules of medical ethics prohibit physicians from operating on healthy children.

In conclusion, neonatal circumcision violates the four cardinal ethical rules, including the first rule explicitly prohibiting unnecessary surgery, and also runs afoul of several more specific ethical rules including rules of ethical preventive medicine.

III. Is Non-Therapeutic Circumcision Already Unlawful?

A. Recent International Recognition of the Unlawfulness of Circumcision

With the exception of a recent law passed in Germany to protect circumcision considered specifically as a religious rite[152] — which may in any event be vulnerable to being overturned as unconstitutional[153] — the discussion in Europe has moved away from whether infant circumcision is potentially justifiable, to whether circumcision is in fact a violation of boys' basic rights. On numerous recent occasions, European medical organizations have called circumcision medically indefensible and unlawful, and courts have handed down decisions finding that it contravenes the law.

1. Medical Associations. Medical associations in other Western countries agree that there is no medical basis for circumcision and are calling for the regulation, restriction, and even prohibition of circumcision in order to defend boys' rights to physical integrity. In 2012, the BVKJ opposed the bill that later became law in Germany, supporting instead alternative legislation that would uphold boys' right to bodily integrity; it strongly criticized the AAP's technical report and policy statement.[154] On September 28, 2013, Sweden's Ombudsman for Children and representatives of four leading Swedish physicians' organizations stated, "To circumcise a child without medical reasons and without the child's consent, runs contrary… to the child's human rights and the fundamental principles of medical ethics."[155] The Royal Dutch Medical Association[156] and the South African Medical Association[157] also have concluded that male circumcision constitutes a human rights violation and should be legally restricted in most cases—and at the very least, strictly regulated. The Swedish Medical Association, which includes 85% of the country's doctors, recommends setting a minimum age of twelve for the procedure and requiring the boy's consent. The Danish College of General Practitioners issued a statement that ritual circumcision of boys is tantamount to abuse and mutilation.[158] The Finnish Medical Association has stated, "child circumcisions are in conflict with medical ethics."[159] The Swedish Paediatric Society has called infant male circumcision an "assault on boys."[160]

2. Legislative and Judicial Bodies. A similar consensus is emerging among legislators, courts, and similar bodies outside the United States that circumcision violates the rights of the child.[161] Two decades ago, the Queensland Law Reform Commission concluded that circumcision was unlawful under common law and specific laws regarding assault and injury.[162] More recently, the Tasmania Law Reform Institute recommended strict regulation of the practice and legal prohibition in most cases with limited exemptions for religious and cultural observance.[163] As an appellate court in Cologne, Germany ruled in June 2012 in a landmark criminal case, non-therapeutic circumcision of boys constitutes an irreversible bodily injury and violates the child's right to physical integrity and self-determination. Moreover, the court held that doctors performing the surgery can be criminally prosecuted under the [German] Non-Medical Practitioners Act, and that the procedure can and should be safely delayed until an age at which the boy can choose

for himself whether or not to have it performed.[164] Although European medical associations argued that circumcision should be banned, the German legislature passed a law that same year allowing circumcision by physicians and mohels.[165] The legislation was politically motivated and appears to be invalid on constitutional and other grounds.[166]

On July 4, 2013, the United Nations' Committee on the Rights of the Child, which oversees nation states' compliance with the Convention on the Rights of the Child, issued a document in which it "expressed concern about reported short and long-term complications arising from some traditional male circumcision practices."[167] On September 24, 2013, Swedish legislators introduced a bill that would outlaw circumcision of males younger than 18 years of age for non-medical reasons.[168] On October 1, 2013, the Council of Europe passed a recommendation endorsing a child's right to physical integrity, and passed a resolution discussing the right to physical integrity in more detail and specifically supporting genital autonomy for children by opposing several practices including male circumcision, female genital cutting (FGC), and "early childhood medical interventions in the case of intersexual children."[169] As of April 3, 2014, a draft law aimed at banning circumcision had received substantial support from Finnish legislators, the majority of whom supported either banning or limiting circumcision.[170]

Several other European cases besides the Cologne decision have upheld a boy's right to bodily integrity. In July 2007, an Austrian court held that circumcision is irreversible, not medically necessary, and not in the best interests of the child (in this case, a foster child whose mother sought the procedure for hygienic reasons over the opposition of both foster parents).[171] In September 2007 a German appeals court found that the circumcision by a physician of an 11-year-old boy without his approval constitutes an unlawful personal injury.[172] In 2013, another German court held that a German-born woman of Kenyan descent could not authorize doctors to circumcise a six-year-old child of whom she had custody, because she had not taken into account the psychological damage that it could cause him.[173]

B. Children's Legal Rights in the United States

In the United States, every person — including every boy, girl, man, and woman — has inviolable legal rights to equal protection, bodily integrity, autonomy or self-determination, and freedom of religion. Human rights law also safeguards these guarantees.[174]

1. Equal Protection. A constitutional right to equal protection of males and females exists under the Fifth and Fourteenth Amendments to the U.S. Constitution as well as under international human rights principles. As Bond argues,[175] governmental tolerance of male circumcision violates the Equal Protection Clause of the federal and state constitutions (and international law). However, it is evident that the AAP treats male and female genital cutting completely differently. The primary focus of the AAP's statement on circumcision is the "health benefits" allegedly conferred by the procedure (most notably partial protection against heterosexually transmitted female-to-male HIV). By contrast, neither of the AAP's earlier 2010 statements on FGC — including its mildest forms that are less invasive than male circumcision — even entertains the possibility of health benefits (indeed it would be illegal to perform the relevant research in Western countries). The AAP calls non-therapeutic FGC potentially fatal, and acknowledges that even a pinprick of a girl's genitals is "forbidden under federal law."[176] Of course, male circumcision is also potentially fatal; and at least some forms of FGC may convey health benefits (if performed in sterile conditions) such as preventing vulvar cancer by removing the labia. The manner in which the medical community treats FGC is the manner in which it should treat all genital cutting. The AAP's failure to apply this basic ethical reasoning to male circumcision reflects a deep cultural bias.[177] This double standard, which has drawn comments from Dena Davis[178] and numerous other authors,[179] led Svoboda to ask at the 20th Pitts Lectureship in Medical Ethics whether our (American) view of circumcision may be conditioned by the fact that it is familiar in our culture.[180]

In banning non-therapeutic FGC in 1997, Congress stated that it "infringes upon the guarantees of rights secured by Federal and State law, both statutory and constitutional."[181] That is to say, female genital cutting *was already unlawful*. The same laws, discussed below, also *already* prohibit the cutting of boys' genitals.

2. Personal Security or Bodily Integrity. Every individual of any age has a right to personal security or bodily integrity. In 1944 in *Prince v. Massachusetts*, the United States Supreme Court considered whether a Massachusetts law prohibiting children from distributing religious pamphlets on highways violated the parents' religious rights under the First Amendment and other parental rights under the Fourteenth Amendment. The court held, "The [parents'] right to practice religion does not include the right to expose… the child…to ill-health or death."[182] Over 20 years ago, in 1993, Newell wrote, "[T]he right to physical integrity is an absolute right, one which neither culture nor religion, tradition or material circumstances should limit."[183] In 1999, Christopher Price wrote that lawyers in four common law jurisdictions (the United States, England, Canada, and Australia) agree that non-ther-

apeutic circumcision violates criminal law and constitutes *criminal assault*.[184] Boyle et al.[185] and Somerville reached the same conclusion the following year.[186]

Although male circumcision is not commonly understood to constitute child abuse, when assessed objectively it is evident that it violates child abuse statutes, as was first argued nearly three decades ago.[187] In California, for example, cutting a girl's genitals — no matter how superficially — is listed as an example of felony child abuse.[188] Male circumcision seems to meet California's legal definitions of child abuse,[189] as well as assault[190] and battery, and sexual abuse and sexual assault, the latter being defined as, "[a]ny intrusion by one person into the genitals…of another person… [except] for a valid medical purpose").[191] Since circumcision lacks a valid medical purpose, physicians who circumcise in the US appear to commit criminal child abuse and thereby subject themselves to the applicable fines and imprisonment.

A peculiar phenomenon representative of the unique status of non-therapeutic circumcision can be discerned in the explicit statutory and regulatory exceptions that have been carved out to protect this peculiar practice in no fewer than ten U.S. states, with two of the states providing multiple different exceptions. In Idaho,[192] Illinois,[193] and Mississippi,[194] statutes forbidding "ritual abuse" specifically exempt circumcision. California[195] is a fourth state that had such an exception until statutory changes rendered it irrelevant. Svoboda noted about this oddity, "The need to mention circumcision and circumcisers in such statutes… suggest[s] that the legislators tacitly recognized the reasonableness — in the absence of the statutory loophole — of classifying circumcision as abusive, unethical, and/or inhuman."[196] In four other states, Delaware,[197] Minnesota,[198] Montana,[199] and Wisconsin,[200] specific exemptions permit ritual circumcisers to practice medicine without a license. In yet another state, New Jersey,[201] regulations provide that lay circumcisers need no religious affiliation but need merely complete a course in circumcision technique.

3. Autonomy. The right to autonomy has enjoyed a long and hallowed history in U.S. jurisprudence. As the Supreme Court stated in 1891 in *Union Pacific Railway Company v. Botsford*:

> No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.[202]

Christyne L. Neff writes of the deep integration of autonomy into American law:

> American constitutional and common law principles incorporate these concepts of physical liberty and bodily integrity in a wide array of legal principles, each of which affirms the central importance of a citizen's bodily integrity…. In addition to its common law roots, the right to be free from an invasion of bodily integrity by the state has found support in the First, Fourth, Fifth, and Fourteenth Amendments of the Constitution.[203]

American boys have the inalienable constitutional right to legal protection of their bodily integrity and autonomy.

4. Freedom of Religion. In holding a physician liable for a ritual circumcision, the court in Cologne, Germany reasoned in part that boys have the right to choose their own religion or no religion when they reach the age of maturity. Boys in the United States also have a constitutional right to freedom of religion, to choose their parents' religion, another religion, or no religion. Although having been circumcised does not prevent one from converting to a non-circumcising religion, circumcision permanently brands one's genitals with a mark of one's *parents'* religious commitments.

While this article was in final preparation for publication, two important legal cases occurred in the UK bearing on male circumcision. In January 2015, in a case involving FGC, a UK judge for the first time stated, "In my judgment, if FGM Type IV [the least harmful form of FGC] amounts to significant harm, as in my judgment it does, then the same must be so of male circumcision."[204] A leading authority commented, "The importance of this conclusion cannot be overstated: this is the first time in the history of British law that the non-therapeutic circumcision of male children has been described as a 'significant harm.'"[205]

Subsequently, in April 2016, an important new legal decision was handed down by the UK's High Court of Justice (Family Division) upholding children's best interests and right to personal autonomy and protecting two boys from circumcisions sought by the father for purely religious reasons. The court refused to permit the procedures to be performed, making specific findings that circumcision carries real risks and that nothing in Islam requires circumcision before an age when the boys could make the decision for themselves (15-16 years old). The Court found that the boys, while remaining genitally intact, could fully participate in

their father's Muslim community and culture, and would not suffer exclusion.[206]

5. Children's Human Rights. A 2012 report by the International NGO Council on Violence Against Children discusses circumcision at length. It states that "a children's rights analysis suggests that non-consensual, non-therapeutic circumcision of boys, whatever the circumstances, constitutes a gross violation of their rights, including the right to physical integrity, to freedom of thought and religion and to protection from physical and mental violence."[207]

International treaties are, along with the Constitution itself and federal statutes, the supreme law of the land.[208] Such international treaties include, for example, the Universal Declaration of Human Rights (UDHR),196 the International Covenant on Civil and Political Rights (ICCPR),[209] and the Convention on the Rights of the Child (CRC).[210] The ICCPR is particularly relevant to the U.S. given that it has been ratified and — unlike for example the CRC — has an enforcement mechanism, the Human Rights Committee.

Among the many human rights violated by non-therapeutic circumcision, as argued below, are the rights to privacy, to liberty, to life, to security of person and to physical integrity guaranteed by the Articles 6, 9 and 17 of the ICCPR,[211] the UDHR (Articles 3, 12 and 29),[212] and Articles 6 and 16 of the CRC.[213] UDHR Article 2,[214] ICCPR Article 24.1.[215] CRC Article 2[216] also ensures the child's right to all appropriate protection without regard to sex. Male circumcision, as is clear from its terminology, discriminates on the basis of sex. Circumcision violates the human rights of the child to privacy and physical integrity.

Under CRC Article 19.1, states must take all measures to ensure that no violence, injury, or abuse occurs while the child is under the care of a parent or legal guardian. The United States not only fails to take "all" such measures, but effectively promotes and condones any violence, injury, or abuse caused by circumcision. Under Article 37(b) of the CRC, "No child shall be deprived of his or her liberty unlawfully or arbitrarily."[217]

One of the CRC's most widely discussed sections, Article 24(3), obliges states to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. CRC article 37(a) forbids states from allowing any child to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.[218] International human rights courts have found the forcible removal of any part of the body (even if painless) to amount to cruel and inhuman treatment.[219]

The United States has signed but — along with only Somalia and South Sudan — has not ratified the CRC. Nonetheless, the United States is subject to the CRC based on customary law.[220] Customary law applies to all states regardless of whether they have themselves ratified the document or principle in question,[221] and—like other obligations under international law—does not require a treaty or legislation to be binding domestically.[222] No human rights agreement more clearly qualifies for customary law status than the CRC, since as Carpenter observes, the CRC is in fact "the most widely ratified human rights instrument in history,"[223] and is therefore fully binding on the United States.[224]

C. Parents' Legal Obligations

1. No Religious Right to Circumcise. Many doctors and parents in the U.S. have a view of the extent of parental rights that is greatly expanded relative to the views elsewhere, almost as if parents "owned" their children like so much chattel. In 2012, the court in Cologne, Germany reasoned that parents' religious rights are subordinate to the constitutional rights of their children.[225] Put simply, as Merkel and Putzke summarize the Cologne court's ruling, one person's constitutional rights end at the boundaries of another person's body.[226] In the United States, unlike Germany, parental rights of custody are not part of our constitutional system, as constitutional rights accrue to individuals and are inalienable and absolute.[227] As stated above, in 1944 in *Prince v. Massachusetts*, the United States Supreme Court barred parents from harming their children or placing them at risk of harm for religious reasons.[228] To rule otherwise, as the Supreme Court stated in *Reynolds vs. United States*, would be to "make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself."[229] The AAP seems to agree since its Committee on Bioethics stated, "Constitutional guarantees of freedom of religion do not permit children to be harmed through religious practices, nor do they allow religion to be a valid legal defense when an individual harms or neglects a child."[230]

2. Parental "Consent" to Unnecessary Circumcision Is Invalid. Based on the lack of compelling medical justification, parental proxy permission for newborn circumcision is legally invalid.[231] Parents may authorize a non-medically indicated procedure only if it is clearly in the child's best interests.[232] According to the AAP Committee on Bioethics, parental permission for medical intervention can substitute for the child's consent only in situations of clear and immediate medical necessity, such as disease, trauma, or deformity. As the AAP Committee directs, "when the proposed intervention is not essential to his or her welfare and/or can be deferred without substantial risk," the physi-

cian and family must wait until the child's consent can be obtained.[233]

D. Physicians' and the AAP's Legal Obligations

Physicians' legal obligations parallel their obligations under the rules of medical ethics, and they risk being held liable for every non-therapeutic circumcision.

1. Physicians Cannot Take Orders From Parents. The AAP concedes that it is a legal as well as an ethical rule that a physician's duty is to his or her patient alone.[234] Pediatricians "have legal and ethical duties to their child patients to render competent medical care based on what the patient needs, not what someone else expresses."[235] The AAP even advocates legal intervention whenever children are endangered or might be harmed due to a parent's religious beliefs, and acknowledges that the law prohibits physicians and parents from harming children for religious reasons.[236] This principle applies to male circumcision.

2. Physicians Cannot Operate on Healthy Children. In 2010, the Royal Dutch Medical Association wrote, "The rule is, do not operate on healthy children."[237] The same rule applies in the United States. In *Tortorella v. Castro*, for example, a California Appeals Court stated, "[I]t seems self-evident that unnecessary surgery is injurious and causes harm to a patient. Even if a surgery is executed flawlessly, if the surgery were unnecessary, *the surgery in and of itself constitutes harm* ..."[238] Florida medical guidelines prohibit "a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition."[239]

3. Liability For Misleading Parents. Even if physicians had the right to operate on healthy children, the operation would be legally invalid absent fully informed parental consent. The physician-patient relationship is based on trust, and as fiduciaries for their patients and proxies, physicians have a duty to act in good faith, openly, fairly, and with complete honesty. Physicians risk liability for negligent and intentional misrepresentations and, under the doctrine of constructive fraud, even for unintentionally false statements and omissions that give the physicians an unfair advantage over a patient or his proxy.[240]

In 2000, Giannetti argued that the AAP's 1999 circumcision guidelines exaggerated the benefits of circumcision while understating the risks, and perhaps let monetary incentives determine its recommendations.[241] He concluded, "[P]arents who feel they were misled by information supplied by the AAP and physicians should explore causes of action [against them] based on lack of informed consent, negligent misrepresentation, and possibly even fraudulent misrepresentation."[242]

As mentioned in the introduction, while it has been contended that the task force and its members may have conflicts of interest that have not been disclosed, this article focuses on the AAP's medical claims and finds them to be scientifically inaccurate and potentially misleading. As discussed above, the AAP's position is out of step with prevailing medical opinion. In 2012, the AAP has made even more extravagant claims about circumcision including, as discussed above, unproven claims and omissions. Effectively, the 2012 AAP statement, which the AAP urges its member physicians to follow, functions as a "sales pitch," claiming that circumcision has many medical benefits that exceed the risks, while ignoring the inherent harms such as loss of functional tissue. The task force portrays circumcision as a relatively painless, harmless removal of a useless body part prone to disease.[243] The facts are the opposite: circumcision is unlikely to benefit most boys and men; it is painful and risky, eliminates any sexual function involving manipulation of the foreskin, and eliminates any sexual pleasure obtained from the stimulation of the foreskin itself. If parents were fully informed about circumcision as the law requires — that it painful, is associated with an increased risk for autism, risks many minor and serious injuries and death, removes highly innervated and erogenous tissue, and might cause psychological harm — perhaps few parents would agree to it. As Giannetti argued, parents who would not have given their permission had they been fully informed have claims against physicians (and also the AAP if relied upon).[244]

There is no legal basis for the AAP's claim (since 1971) that parents have the right to make the circumcision decision for religious, cultural, and personal reasons, which have nothing to do with medicine. This false claim, sharply contrasting with the AAP's approach to FGC, helps persuade parents to give permission for circumcision and further misleads them.

4. Unlawful Claims For Medicaid Reimbursement. Even though the AAP has never recommended circumcision, and leaves the decision to parents, it argued for the first time in 2012 that Medicaid should reimburse physicians for performing the surgery.[245] The fundamental rule of federal and state Medicaid law, however, in effect since 1965, is that Medicaid only covers medical services that are medically necessary, not unnecessary elective surgery such as non-therapeutic circumcision.[246] Medicaid also only covers medical services that are likely to be effective, whereas — as discussed in detail above — circumcision has not been proven effective in preventing any disease. Thus, the AAP is advocating breaking the law (as it did in 2010 regarding FGC248).[247] Physicians and hospitals that charge Medicaid for circumcision are subject to

severe penalties for each operation.[248] Presumably based on these considerations, since 1982, at least eighteen US states have ended Medicaid coverage of circumcision.[249]

IV. Conclusion

Part I of this article showed that non-therapeutic circumcision of male minors is not medically justified. Part II showed that circumcision violates the cardinal rules of medical ethics, including a patient's right to autonomy and the Hippocratic Oath, and many specific ethical rules, including the fiduciary duty to one's patient, the prohibition against unnecessary surgery, discrimination against boys, and the obligation to defer all pediatric procedures that can be deferred. Part III showed that, as a German court recently held, circumcision is already illegal under numerous provisions of American and international law. Even in the far from proven case that circumcision benefits a small percentage of men, as the Royal Dutch Medical Association notes, "it is reasonable to put off circumcision until the age at which such a risk is relevant and the boy himself can decide about the intervention, or can opt for any available alternatives."[250] With near uniformity, the rules of medical ethics and the law indicate that circumcision already violates many rights of the child, that parental permission given for it is invalid, and that physicians do not have the legal right to operate on healthy children.

Court decisions are naturally influenced by the culture in which they are made.[251] Circumcision has gradually but steadily been losing support in the United States; courts in Europe have held physicians liable for "properly performed" circumcisions; and many European medical organizations are calling for legislation to end it. No national medical association anywhere recommends the procedure.[252] As the balance of expert and popular opinion moves toward firmly opposing this procedure, courts will inevitably find themselves unable to overlook the inconsistency of circumcision with medical professionals' ethical and legal duties to the child. Soon the ancient Hippocratic Oath, "First, do no harm" will be applied to male circumcision.[253] In the meantime, we would urge physicians to consider that they are licensed and ethically required to respect the autonomy and privacy of their patients and to leave their healthy genitals alone until the patients themselves reach an age of consent.

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