

# Marriage Law Digest

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## **CARE AND PROTECTION OF SHARLENE SJC-09629**

**Massachusetts Supreme Judicial Court  
January 17, 2006**

A child, born to a sixteen-year-old unmarried girl lived with her aunt because she had been sexually abused by her mother's boyfriend. The aunt eventually adopted the girl while she was living with a man whom she later married. In September 2005, the child was admitted to the hospital with injuries consistent with serious abuse (there had been numerous reports of abuse involving the girl since early 2001). The state took custody of the child and sought a "do not resuscitate" order. Meanwhile, the adoptive mother and stepfather were arraigned on abuse charges and the mother died as a result of murder or suicide. The stepfather sought a declaration that he was a de facto parent so he could be party to the proceedings over the request for a DNR order. The stepfather testified that he had done his best with the child but invoked the Fifth Amendment when asked about the abuse charges. The trial court denied the stepfather's motion and ordered the proceedings sealed. It also granted the motion for a DNR order because the evidence suggested that the girl's condition left no hope of recovery.

On appeal, the supreme judicial court held that there was no evidence that the stepfather is a de facto parent since there was no evidence that he had a loving relationship with the child. The court also saw no reason to overturn the DNR order. While the court believed that it was

questionable that the stepfather had standing to challenge the closed nature of the trial court proceeding, it still ruled on the issue holding that the relevant statute clearly makes child welfare cases closed hearings. The court saw no reason to change that in this case.

Two justices concurred separately suggesting that the legislature might reexamine the statute to allow open proceedings in cases where withdrawal of life support is at issue even if the case is a child welfare matter.

## **DEANE V. CONAWAY**

**Case No. 24-C-04-005390**

**Maryland Circuit Court for Baltimore City  
January 20, 2006**

Nine couples and one individual challenged Maryland's definition of marriage. On cross-motions for summary judgement, the trial court found in favor of plaintiffs.

Plaintiffs alleged (1) sex discrimination, (2) sexual orientation discrimination and (3) deprivation of the fundamental right to marry. The judge addressed only the sex discrimination, holding that the use of a "sex-based classification" in the statute triggers strict scrutiny under the state Equal Rights Amendment and the marriage law is not narrowly tailored to serve a compelling government interest. The court rejected the argument that the statute treated men and women equally, saying that it disadvantaged both sexes (by not allowing them to marry someone of the same-sex) because of their sex. The court relied on two previous decisions in reaching this result.

The court rejected four proposed state interests. First, it concluded that there was no rational basis for the discrimination in the statute much less a compelling reason. Specifically, she held that the statute is not related to the goals of promoting procreation and child-rearing by married couples or of promoting the best interest of children because (1) there is no evidence that the legislature actually believes that opposite-sex marriage is the optimal setting for children and (2) the ideas that opposite-sex married couples are more stable or better parents are “broad unsupported generalizations.” Second, the court held that the state interest in “ensuring constitutional activity within its borders” outweighed its’ interest in uniformity with other jurisdictions. Third, the judge decided that treatment of same-sex couples as “essentially equivalent with respect to the effects of marriage” in other areas of the law undercuts the policy of not allowing them to marry. Finally, she held that “[t]radition and societal values alone cannot sustain an otherwise unconstitutional classification.”

The court stayed its decision pending appeal.

**AYOTTE V. PLANNED PARENTHOOD  
OF NEW ENGLAND  
546 U.S. \_\_\_ (2006)  
Supreme Court of the United States  
January 18, 2006**

In a challenge to a statute which required parental notice of a minor’s abortion, the Court addressed the question of the appropriate remedy if the statute was found to effect situations where the abortion was sought because of a medical emergency. The statute at issue provided exemptions from notification where there was imminent danger of death or where a judge ruled that the notification was not in the best interests

of the minor but it contained no explicit exception for “medical emergencies.” The statute was challenged by abortion providers and the district court enjoined enforcement, holding that the law was facially unconstitutional because it lacked a health exception. The First Circuit affirmed, holding that all abortion regulations must include a health exception and that judicial bypass is not a substitute for such an exception.

The Supreme Court held that there was no need to invalidate the law since only a few applications of the law might create a constitutional problem. The question of whether the legislature intended to have the law apply in all situations including medical emergencies is unclear, so the case should be remanded to the district court for a determination of legislative intent.

**LOLLIPOP’S GENTLEMEN’S CLUB V.  
CITY OF DAYTONA BEACH  
Case No. 6:02-cv-1469-Orl-28KRS  
U.S. District Court, Middle District of  
Florida  
January 20, 2006**

A “nude dancing” club challenged a city ordinance prohibiting such dancing in establishments which serve alcohol. A trial was held to determine if the city had an appropriate rationale for the ordinance. The club brought in experts to dispute assertions made by the city of the secondary effects of adult businesses. The city, in turn, attacked this testimony. The court concluded that while the club had “submitted a sophisticated and detailed expert study that both critiques the City’s pre-enactment evidence and empirically examines the relationship between adult businesses and crime in Daytona Beach” the city had no similar studies or experts to offer. Since the evidence so strongly favored the club, the

ordinance was found not to be justified by any substantial interest and was therefore unconstitutional.

**AXON V. SECRETARY OF STATE FOR  
HEALTH**

**[2006] EWHC 37 (Admin)**

**England & Wales High Court of Justice,  
Queen's Bench Division Administrative  
Court**

**January 23, 2006**

A mother sought a ruling that parents need to be notified before medical officials provide access to information about abortion, contraception and other sexual matters to minors. She challenged Department of Health guidelines which allow medical professional to advise underage youth on these matters without notifying parents.

The court noted that precedent indicated that a doctor can treat a child in regard to sexual matters without knowledge of the treatment by the parents. The court believed that the duty of confidentiality owed by the doctor to the minor outweighed other interest because of the provisions of the Convention on the Rights of the Child (CRC) and a concern that parental notice might dissuade minors from seeking sexual advice from medical personnel. There was no parental right to notification because the child's rights are paramount under the CRC.

Thus, notification was not required if (1) the minor can understand the medical advice, (2) the minor can't be persuaded to notify their parents, (3) the child is likely to engage in intercourse, (4) the child's physical or mental health would likely suffer if notification was required, and (5) failure to notify would be in the best interest of the child.