Simulation of Birth

Rodel V. Capule M.D., FPCP*

Crimes against the Civil Status of Persons—particularly that which pertains Article 347 of the Revised Penal Code: simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child—can be committed by physicians in their desire to help a childless couple, a financially challenged mother, and to protect the welfare of child.

Simulation of birth is the tampering of the civil registry making it appear in the birth records that a certain child was born to a person who is not his or her biological mother, causing such child to lose his or her true identity and status.1 Note that it refers to the record of birth, thus if the simulation is in any other document, the crime would already be falsification. If however, the birth certificate reflects the true parents but the simulation is in other documents, then Article 347 is not violated.2

In short, for the crime of simulation of birth to exist, it must be shown that the pretended parents have registered or caused the registration of the child as their own with the Registry of Births or that in so doing they were motivated by a desire to cause the loss of any trace as to the child’s true filiation to his prejudice.3

It also takes place when the woman pretends to be pregnant when in fact she is not, and on the day of the supposed delivery, takes the child of another as her own. In this case, the woman introduces a stranger in the family and defrauds the legitimate heirs. It must be noted that the woman who simulates birth and the one who furnishes the child are both responsible as principals4, thereby, making both of them primarily liable to serve six (6) years and one(l) day to twelve (12) years in prison. It is noteworthy to mention that the law specifically provides that if a physician or surgeon or public officer cooperates in the commission of the crime, such person can also be held liable for violation of the duties of his profession.

For a crime to fall as “substituting one child for another”, it is committed when for instance, X is born of parents Y and Z, while A is born of B and C, and the physician or offender, with intent to cause the loss of any trace of filiation, exchanges X and A without the knowledge of their respective parents. The crime is also committed if a person places a live child of a woman in place of a dead one of another woman5. The substitution of a child for another has the same penalty as simulation of birth, but if the offender is already engaged in trading and dealing children, including the act of buying and selling of a child, the crime of child trafficking is committed punishable with 12 years and one day to forty years in prison6. When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking such as if the parents agree to adoption of child for a consideration; or the physician made it appear in the record of birth that the supposed parents are the natural parents, the crime committed is Attempt at Child Trafficking7, which has a penalty two degrees lower than that of child trafficking8 or six (6) months and 1 day to six (6) years in prison.

The third act is “concealing or abandoning any legitimate child with intent to cause such child to lose civil status”. From the wordings of Article 347 itself, it can be culled that the requisites in order to commit the crime are: first, the child must be legitimate, second, the offender conceals or abandons such child; and third, the offender has the intent to cause such child to lose its civil status. It is a basic principle in Criminal Law that all the elements or requisites to commit a crime must be present to hold a person liable, otherwise, the crime is not committed. It was formerly so well known in Spain of the practice of abandoning new-born infants and very young children at the door of hospitals, churches and other religious institutions, and it is in this sense that the word abandon is also used in Article 347 of the Revised Penal Code9.

In summary, the commission of the three acts mentioned must have for its object, the creation of a false civil status or the purpose is to cause the loss of any trace as to the filiation of the child. As such, we ought to be cautious of the advice we give and actions we partake in dealing with our patients. We may have the best justification or defense for our action but the fact remains that circumvention of the laws has been made. We all know the existence of adoption proceedings. It is best that we leave the legal matters as to altering or providing information as to civil status of a child to the parents themselves or the proper authorities. Moreover, although we may have the knowledge and purest of intention that our participation is such acts will bring about a better status than the first legal status, the fact remains that the offense is made, and such supposed good deed bounces back risking our own reputation and sworn profession.

*Dr. R.V. Capule is an attorney specializing in medical malpractice, physical injuries and food torts. He is a law professor in Legal Medicine at Arellano University School of Law and a consultant in Legal Medicine at Manila Aventist Medical Center, Makati Medical Center
References

1. Section 3, Republic Act No. 8552 “Domestic Adoption Act of 1998”
7. Section 8, paragraph (1), sub-paragraph (d) of Republic Act No. 7610, known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act”
8. Section 8, paragraph (2), of Republic Act No. 7610, known as the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act”
9. Id.