Women and Infanticide: Where Mental Health and the Law Intersect

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Infanticide, the act of killing a baby who is older than one day but younger than a year, is a subject that is difficult for people to hear about, and even more difficult to find compassion for the mother. While occurrence of infanticide is rare (7 out of 100,000 births, according to 2016 Department of U.S. Health & Human Services data), it is possible that those who work in legal and mental health professions will encounter a situation that requires specialized knowledge of the role that mental health plays in infanticide.

MENTAL HEALTH

The early postpartum days are a very vulnerable time for women, especially for those who are at higher risk of experiencing a psychotic episode. The risk of a psychotic episode is approximately 1 out of 1,000 births. Onset of symptoms is usually rapid, within the first few hours or days after birth, with the largest window of risk being the first 3-4 weeks postpartum. The risk is 30 percent higher for a mom who has bipolar disorder, and 74 percent higher if there is a first-degree relative who has ever experienced a psychotic episode. The majority of these women recover and return to a baseline level of functioning (Burgerhout, 2017). Approximately 5 percent will die by suicide, and 4 percent will commit infanticide.

Identifying risk for these disorders is complicated. Often, mothers have never experienced a manic or psychotic episode until pregnancy or postpartum. Many mothers are unaware of their family history, often due to shame and stigma, but also due to lack of an adequate diagnosis. Complicating further is the waxing and waning of symptoms, so there are times where the mother will appear to be functioning "normally," and other times where behavior appears agitated, manic, and in some cases, bizarre.

Both the American College of Gynecology (ACOG) and the American Academy of Pediatrics (AAP) have made formal recommendations regarding screening new moms. Screening rates remain inconsistent and low (Long, 2018; Waldrop, 2018; Yu, 2019). Lack of time, training in mental health, and lack of or knowledge about community resources are cited as reasons for not screening. In 2018, ACOG recommended the postpartum follow up appointment to be within the first three weeks, rather than six weeks. This could help identify earlier women who are at a high risk, but that is only if providers are asking the right questions.

INTERSECTION WITH THE LAW

The public became more aware of postpartum psychosis and infanticide in 2001 when Andrea Yates drowned her five children. Andrea's initial insanity defense was rejected, resulting in incarceration for murder. The verdict was overturned on appeal in 2006, and Andrea was moved to a state hospital, where she still resides.

When it comes to infanticide, states are allowed to make their own laws. Much of the country operates under archaic rules, with over 50 percent of states in the U.S. using the M'Naughten Rule, which was developed in 1843. There are over 20 countries around the world that have enacted infanticide laws that limit sentencing and provide appropriate psychiatric care, rather than incarcerating moms (Spinelli, 2018).

Attempts to pass new laws recognizing that, in some cases, infanticide can be connected to postpartum mental illness have been rare. In 2009, Texas presented the first bill in the U.S. to this effect, but it did not pass. It wasn't until 2018, when the state of Illinois successfully signed PA100-0574 into law. This law recognizes perinatal mental illnesses as a mitigating factor in cases and sentencing. In addition, it affords an opportunity to those who have been convicted previously to have their case re-evaluated and, potentially, their sentences reduced.

WHY IS IT SO DIFFICULT?

Postpartum psychosis, and mental illness in general, is difficult to "prove." There are no blood tests or x-rays that can definitively demonstrate mental illness. Mental health professionals use the Diagnostic and Statistical Manual (DSM) for reference when assessing patients.

DSM-5, the most recent release of the manual, made a beneficial change by amending the postpartum specifier (added on to depressive or bipolar episodes) from "postpartum" to "peripartum" onset, recognizing that symptoms may begin during pregnancy. However, writers then defined the period of onset to end at four weeks postpartum. While most episodes occur during this time, it is still possible for psychotic symptoms to occur after four weeks postpartum. Experts have made recommendations to change this period to six months or longer.

Although there has been progress understanding, recognizing, and de-stigmatizing mental illness, shame and judgment prevail. Combine that with a mother who has murdered her child, a jury that doesn't understand perinatal mental illness, and the limitations of the law, and it is difficult to demonstrate that mothers need psychiatric treatment, not incarceration.

WHAT NEEDS TO CHANGE? A CALL TO ACTION

This problem is systemic, and we cannot be quick to point the finger at any one person or problem. To see positive change, there must be a collaborative and proactive approach. We need change our goal from emergency response and legal reaction to prevention.

Health care providers who work with pregnant and postpartum families need more perinatal mental health education and to be equipped to recognize risk factors and establish a protocol for identifying and addressing perinatal mental illness. Providers, including pediatrics and those who work in emergency departments, are an important piece of the equation and often the first points of contact with new and expectant mothers. Improvements in assessment and documentation, which provide key pieces of information, require further training in interviewing strategies.

Involving a family member or partner as part of perinatal care, and offering information about risk factors and warning signs, could prevent suicides and infanticides. When tragedy happens, loved ones are the ones left with strong emotions and guilt about not preventing what happened.

Mental health professionals who work with clients in the childbearing years need continuing education about mental health issues that can arise during this time of life. Also important is an understanding that forensic psychologists may not be the best assessors of infanticide cases, as few of them have training and experience in infanticide. This past year, Postpartum Support International (PSI) created a certification for perinatal mental health, giving this area of mental health recognition as a unique specialty that requires advanced training (look for providers with the credentials PMH-C).

Legal professionals, law enforcement, and courts need more training about perinatal mental health and the unique factors that can arise with it. Training about how to appropriately interview mothers, ideally using audio and video equipment, is necessary to gather evidence that would demonstrate perinatal mental illness. Attorneys having knowledge about the most qualified professionals to assess the mother (see above) may benefit the outcome of the case.

In courts, additional knowledge about how infanticide impacts jury selection as well as how jury members make decisions is critical. Expecting juries and judges to make fair decisions without eliminating biases and not giving the jury important information is unfair to all parties involved.

Author Biography:

Crystal Clancy is a licensed marriage and family therapist and owns a group private practice in Burnsville, Minnesota specializing in perinatal mental health, infertility, pregnancy complications, loss, attachment, and trauma. Exploring this specialty came out of her personal struggles with both infertility and postpartum depression. She is certified in accelerated resolution therapy (ART) and aromatherapy. She is a founding member and director of Pregnancy and Postpartum Support MN (2006), which became the fifth state chapter in the U.S. of Postpartum Support International (2016). She has been the state co-coordinator for PSI since 2010 and is part of PSI's Justice & Legal Advocacy Committee.

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