Widow's fight for husband's sperm

Intervention by BMA's ethics committee was ill judged

EDITOR,—The involvement of the BMA's ethics committee in the recent decision by the Human Fertilisation and Embryology Authority to refuse to allow Mrs Diane Blood to be inseminated with sperm obtained from her husband after his death was ill judged.¹ In a letter to the authority Dr Stuart Horner, the chairman of the ethics committee, said, "ethically, whether the consent is in writing or given orally is irrelevant. The essential issue is the quality of that consent." No reasonable person would be likely to disagree with that sensible statement. However, he went on to say, "From the information portrayed in the media there is no evidence that Mr Blood had clearly thought through the issue."

Many people are extremely concerned that the ethics committee made representations to the authority on the basis of evidence purely derived from the media. As it happens, there is ample evidence that both Mr and Mrs Blood had considered this issue extremely seriously before Mr Blood's sudden death.

It is unfortunate and highly inappropriate for an ethics committee to arrive at its conclusions in a particular case in this way. It was unethical to have done so, particularly as this was an attempt to influence the outcome on the basis of hearsay evidence. Apart from doing a serious injustice to both Mr and Mrs Blood, actions such as this can serve only to reduce the BMA's standing in the community at large.

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1 Dyer C. Widow's case raises issues of informed consent. *BMJ* 1996;313:1351. (30 November.)

Reply from chairman of BMA's medical ethics committee

EDITOR,—The issue on which the BMA has focused in the recent controversy is the principle of informed and considered consent. We looked beyond the case in hand to its potential impact on one of the cornerstones of medical practice, being profoundly aware that the final result may set precedents regarding the extraction and use of genetic material from dying or dead people. A letter was sent to the Human Fertilisation and Embryology Authority because aspects of the case under its consideration (and on which it alone could adjudicate) have implications for the fundamental principle of the individual's rights over his or her own body.

The BMA has consistently emphasised that informed consent is a central principle of medical practice. The special nature of genetic material, which is used to create new life, makes it particularly important that genuine and explicit consent is obtained for its use. Expert committees have consistently emphasised the special nature of genetic material and the need for additional measures to safeguard its use.

When such material is intended for use after the donor's death the donor should ideally have had the opportunity to have expert advice and counselling and a chance to consider such factors as how the material will be obtained, the welfare of the future child, and the possibility of insemination failing. Individuals may waive their entitlement to advice, but we expect the adjudicating body to require reasonable evidence that genuine informed consent has been obtained. This was the BMA's central concern.

We did not seek details of the couple's private life precisely because our concerns were about the principle. Naturally, we expected that those who had additional information would present it to the Human Fertilisation and Embryology Authority. We note that, having considered all the relevant facts, the authority reaffirmed its earlier decision. The BMA has not sought to intervene in the authority's adjudication process, but it has a responsibility to speak out on issues of principle that will affect future decisions about the extraction and use of genetic material from men and women who are comatose or dying. Society currently requires unambiguous consent for all procedures that do not prolong life, prevent deterioration, or promote health in such vulnerable patients. The BMA wishes to ensure that this safeguard is not inadvertently or unadvisedly relaxed.

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No one can give consent on behalf of an incompetent adult patient

EDITOR,—The case of the widow who was refused permission to use her dead husband's sperm continues to be the subject of passionate debate in the press.¹ The husband did not consent in writing to the use of his sperm after his death, and this is a specified requirement under the Human Fertilisation and Embryology Act 1990. The Human Fertilisation and Embryology Authority had no option but to act according to the statute, and this was confirmed by the High Court. What about the doctors who obtained the sperm from the husband when he was unconscious and on a life support machine? There is no doubt that they acted in good faith and with compassion, but did they act lawfully or wisely?

The legal position was determined in the case of *Re F* in 1990, when it was stated that in the case of unconscious or incompetent adults a doctor will not be acting unlawfully if he or she acts in the patient's best interests.² "Best interests" was defined in that case by Lord Brandon: "The operation or other treatment will be in their best interests if, but only if, it is carried out in order to save their lives, or to ensure improvement or prevent deterioration in their physical or mental health."

No one, not even a court, can give consent on behalf of an incompetent adult patient, and this, by definition, includes the wife in this case. It seems from the press reports that the doctors complied with the wife's request that a sample of sperm be taken with a view to posthumous

insemination. This may have been in the best interests of the wife but was hardly in the best interests of the patient.

Did the doctors act wisely in this case? I personally would hesitate to take semen from a patient dying of meningococcal septicaemia. Is there not a risk of the semen being infected or the sperm being damaged as a result of the infection or treatment? This is a case in which scientific progress clashes with human rights and which lends itself to ethical debate, with a wide range of professional and lay interests being represented.

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1 Dyer C. Widow's case raises issues of informed consent. *BMJ* 1996;313:1351. (30 November.)
2 *Re F* [1990] 2 AC 1.

Allergy to peanut, nuts, and sesame seed in Australian children

EDITOR,—Pamela W Ewan's study of nut allergy and Hugh A Sampson's accompanying editorial focus on an important public health issue.^{1,2} We have reviewed our database of the results of allergen skin tests undertaken by the department of allergy, Royal Children's Hospital, Melbourne, Australia. This is the main paediatric tertiary referral service for the state of Victoria (population 4.4 million, including 943 000 children under the age of 14 years). The range of clinical problems consisted essentially of atopic eczema in infants and anaphylaxis to food in

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When deciding which letters to publish we favour originality, assertions supported by data or by citation, and a clear prose style. Wit, passion, and personal experience also have their place.

Letters should have fewer than 400 words (please give a word count) and no more than five references (including one to the *BMJ* article to which they relate); references should be in the Vancouver style. We welcome pictures.

Letters should be typed and signed by each author, and each author's current appointment and address should be stated. We encourage you to declare any conflict of interest.

Please enclose a stamped addressed envelope if you would like to know whether your letter has been accepted or rejected.

Letters will be edited and may be shortened.