German doctors face new liabilities

Helmut L. Karcher, *Munich*

The German federal constitution court (Bundesverfassungsgericht) has ruled that doctors could be liable if a child is born after an unsuccessful sterilisation operation or with deformities because of a false diagnosis in genetic counselling.

The ruling followed appeals by two doctors. One had performed a vasectomy on a patient who fathered a child in 1984. The other doctor had advised parents

of a disabled child to go ahead with a pregnancy even though their first child had been born with the same deformity. Both doctors had been ordered to compensate the parents by lower courts and had appealed.

The decision has led to controversy between the two senates in the highest German court of justice. In 1993 the second senate decided that the birth of an unwanted or disabled child could not be defined as a "damage" in the legal sense. The first senate, however, commented that it was not the child that was the damage but the unforeseen financial burdens for the parents. This has caused deadlock as both senates are equal in status.

There have been critical comments from doctors, lawyers, and ethicists. Dr Jörg Dietrich Hoppe, vice president of the German federal chamber of physicians (Bundesärztekammer), said that unwanted or disabled children could be stigmatised as a damage to society. Professor Jan Murken, president of the Professional Association for Medical Genetics, pointed out that in many cases genetic counselling could not be specific and could only make recommendations. He feared that counsellors might adopt a more defensive strategy. He said that disablement was a part of life and that no doctor in the world could guarantee parents a perfect child. □

Doctors to face disciplinary action over Irish hepatitis C scandal

Doug Payne, *Dublin*

The Irish Medical Council's fitness to practice committee is to begin a disciplinary examination of the role of several doctors criticised by an official Tribunal of Inquiry into the country's hepatitis C scandal. More than 1000 mothers were infected through contaminated anti-D immunoglobulin in the mid-1970s.

The tribunal, which reported last March, put responsibility for the contamination squarely on the senior medical staff of the Blood Transfusion Service Board. The tribunal specifically named the then director of the board, Dr Jack O'Riordan, his successor Dr Terry Walsh, and a part time consultant, Dr James Kirrane. Dr O'Riordan died before the scandal broke, and Dr Kirrane has since launched a High Court challenge to the tribunal's findings, which he claims impugned his reputation.

The medical council's inquiry is separate from a police investigation instituted after the director of public prosecutions declined to initiate criminal charges against anyone after publication of the tribunal report.

Significantly, the government indicated last month that it is to change Irish criminal law, abolishing the centuries old common law "year and a day" rule. Under the rule, for the

purposes of offences involving death, an act was conclusively presumed not to have caused a person's demise if more than a year and a day had elapsed before the individual died. The change will also give additional force to new laws on syringe attacks recently introduced by the government and be applicable to a range of fatal infections with long incubation periods.

Although the tribunal dealt only with cases of contaminated anti-D immunoglobulin, several

hundred other patients were infected with hepatitis C after receiving contaminated blood products and transfusions. The Irish government set up a compensation tribunal for these patients and, late last year, agreed to pay a 20% premium over any agreed compensation in lieu of aggravated damages. Settlements to date, which have averaged £Ir330 000 (£380 000; \$608 000), amounted to a total last year of almost £Ir42m. The eventual total is expected to be over £Ir300m. The largest single award, made just before Christmas, has been to a man with haemophilia; he received £Ir770 000 plus 20% from the reparation fund, bringing his total compensation to £Ir924 000. □

Hundreds of patients received contaminated blood products

Expensive laxatives not necessarily best

Jacqui Wise, *BMJ*

Expensive danthron laxatives should not be used routinely for treating constipated elderly people as they are no more effective than cheaper preparations, concludes a systematic review.

The review, carried out as part of the health technology assessment programme, points out that the cost of treatment with laxatives varies widely and that some of the more expensive laxatives are becoming widely used without any evidence that they are more effective (*Health Technology Assessment* 1997;1(13)).

Researchers from the NHS Centre for Reviews and Dissemination at the University of York say that laxatives may not be appropriate for all constipated elderly people. They recommend a stepped care approach, with the first step (after exclusion of comorbidity) being advice about dietary improvement. If this does not work then patients should be prescribed the cheapest laxative, and if this also fails then alternative preparations can be tried.

Around a fifth of older people have symptoms of constipation. Yet despite the frequent use and cost of laxatives to the NHS, information on their effectiveness in elderly people is extremely limited. There have been so few comparative studies, and trials have been so small, that it is difficult to determine what constitutes effective treatment of constipation in elderly people. Most trials have been carried out in hospitals and nursing homes so there has been no adequate assessment of the effectiveness of laxatives in the community, where patients are likely to be younger and more mobile.

The review calls for more research to compare different classes of laxatives. The pharmaceutical industry has produced few new laxative products in recent years, and so there has been no incentive to evaluate older remedies. The lack of research in this area may also be due to the low priority given to the condition and to the patients it most affects. □