Parents wrongfully accused of child abuse cannot sue doctors

Clare Dyer *legal correspondent, BMJ*

Parents who have been wrongly accused of harming their children cannot sue doctors or social workers for negligence in carrying out investigations into child abuse, the United Kingdom's highest court ruled last week. The law lords dismissed appeals by parents in three test cases from earlier judgments that had struck out their claims.

In a judgment anxiously awaited by paediatricians, the lords ruled by a majority of four to one that child protection professionals owe a duty of care to the child alone and not to the parents who may suffer as a result of an investigation that is negligent.

The senior law lord, Lord Bingham, was the sole dissenter. He said he would have allowed the three test cases to go to trial so the facts could be fully explored.

He believed that the law should evolve and that a total ban on suing "in this sensitive area" could lead to serious breaches of the European Convention on Human Rights, for which the law should afford a

remedy if the facts were grave enough, he said.

But the majority ruled that parents should be owed no duty of care, because such a duty could conflict with the duty to the child.

Lord Nicholls said that when the doctor was considering the possibility of abuse the interests of parent and child were "diametrically opposed."

He added: "The interests of the child are that the doctor should report any suspicions he may have and that he should carry out further investigation in consultation with other child care professionals. The interests of the parents do not favour either of these steps."

Lord Brown said that if the parents' allegations were well founded "the doctors appear to have displayed an egregious overconfidence in their own opinions and a marked reluctance to test them."

But he cited evidence from Alan Craft, president of the Royal College of Paediatrics and Child Health, who argued, "In order to discharge their obliga-

tions to the child, to protect it from further harm, and to protect siblings, a doctor must be allowed to raise what sometimes may be no more than a suspicion with the relevant authorities without fear of litigation from the child's parents."

The three test cases involved allegations of Munchausen syndrome by proxy in the case of a 5 year old boy, sex abuse of a 9 year old girl by her father, and an inflicted injury on a 2 month old baby. All were named in the judgment only by their initials.

The boy was eventually found to be severely allergic, the girl to have the skin condition Schamberg's disease and injuries from her bicycle, and the baby to have brittle bone disease.

The boy's mother, the girl's father, and the parents of the baby, who was taken into care and only reunited with them eight months later, sued for damages for psychiatric injury. But the NHS trusts and local authorities applied to strike out the claims, arguing that they owed the parents no duty of care.

KIRSTY WIGGLESWORTH/PAEMPHICS

Professor Alan Craft said that a doctor must be allowed to raise a suspicion with the relevant authorities without fear of litigation

The law firm Hempsons, which acted for the NHS trusts, said: "This is a vital and timely decision for the medical profession, which has faced a systematic campaign of criticism and complaint to the General Medical Council, which has driven many paediatricians from the field of child protection." □

Drug for heart failure increases mortality

David Spurgeon *Quebec*

Patients with heart failure who were treated with the drug nesiritide to help them survive a crisis were 80% more likely to die in the month after treatment than were patients who had received traditional drugs for symptoms of acute heart failure. This was the finding of a US study published last week in *JAMA* (2005;293:1900-5).

The drug's manufacturer Scios, which is part of Johnson & Johnson, released a statement a

day after the *JAMA* study appeared, saying "labelling has been revised to include an expanded analysis of the mortality rates seen in pivotal trials of the congestive heart failure agent."

The company maintains that "a review of Scios' full clinical study data set does not show a statistically significant difference in mortality," but adds that an external review is under way.

The study analysed clinical trial data obtained from the

manufacturer of the drug, which is marketed in the United States, Israel, and Switzerland as Natrecor, and from the US Food and Drug Administration. The meta-analysis showed that 35 of 485 patients (7.2%) treated with an infusion of nesiritide died within 30 days, compared with 15 of 377 patients (4%) who were given standard control treatment (hazard ratio 1.8 (95% confidence ratio 0.98 to 3.31)). All the clinical trials on the drug that had been done earlier than those in the meta-analysis had been conducted by Scios.

Two of the study's authors, Dr Jonathan Sackner-Bernstein, from North Shore University Hospital in Manhasset, New York,

and Dr Keith Aaronson, from the University of Michigan, Ann Arbor, also published findings in March showing that nesiritide was associated with an increased risk of kidney dysfunction (*Circulation* 2005;111:1487-97).

Dr Sackner-Bernstein said that the study published last week, which was based on data from three clinical trials involving 862 heart failure patients who needed urgent treatment, showed that the risk from the drug was much higher than that previously estimated by the FDA. He thought a randomized controlled clinical trial was needed to define the risks before the drug was widely used. (See p 989.) □