



Features

Chroniques

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‡ See related articles pages 59 and 89

There's more to Krever's report than the blood issue — much more

Karen Capen

In brief

ALTHOUGH COVERAGE OF THE RECENT RELEASE of the Krever commission's findings concentrated almost solely on recommendations concerning the safety of the blood-supply system, lawyer Karen Capen says physicians can take many lessons from this exhaustive report that extend far beyond blood. She describes it as "must reading" for physicians and says their organizations should use it as a teaching tool.

En bref

MÊME SI LA COUVERTURE DE LA PUBLICATION RÉCENTE du rapport de la commission Krever a porté presque seulement sur les recommandations relatives à la sûreté du système d'approvisionnement en sang, Karen Capen, avocate, déclare que les médecins peuvent tirer de nombreuses leçons de ce rapport détaillé qui va beaucoup plus loin que la seule question du sang. Elle le considère comme une lecture «obligatoire» pour les médecins et affirme que leurs organisations devraient s'en servir comme moyen d'enseignement.

The final report of the Commission of Inquiry on the Blood System in Canada that was issued in November should be required reading for all Canadian physicians. In fact, this report is so important that physicians' professional organizations and regulatory bodies could use its 3 volumes to create CME programs. These could provide not only a full accounting of what Justice Horace Krever describes as a "nationwide public health calamity" but also offer a refresher course that could cover the spectrum of ongoing practice-related concerns.

This report crosses territory far beyond the blood issue, for Krever's careful analysis touches on many other aspects of physicians' work. For instance, he recommends that their governing bodies actively ensure that members participate in surveillance activities required to maintain the public health system.

Careful reading suggests that if doctors want to ensure they are meeting professional standards they should review practice activities, both in terms of patient care and their involvement in administrative or other matters. A number of clinical-practice and administrative issues mentioned by Krever are bound to attract the attention of Canadian lawyers. This means physicians should be aware of them too.

Informed consent

The final report describes the case history of a patient who received a blood transfusion during elective surgery. No consent regarding the transfusion was sought before the surgery, the patient was not informed afterward, the information was not mentioned in his discharge summary and his family physician was not informed. Ten years later he learned that he had received tainted blood and was HIV positive. By that time, his wife was also infected.

In March 1995 the Krever inquiry released an interim report,¹ which contained a strong warning that the informed-consent requirement applies specifically to the administration of blood or blood products, and the routine consent form signed upon admission to hospital does not fulfil this requirement.

It also said physicians should prepare patients well in advance of scheduled



surgery to give them adequate time to consider reasonable alternatives. As well, doctors should provide information on these alternatives. The interim report said doctors must ensure that documentation occurs every time consent is provided, and that all treatments or procedures are recorded in the chart.

Acceptable standards of practice

Krever raises several issues surrounding standards of clinical practice. He discusses the need to maintain a reasonable understanding of current scientific and medical knowledge and to be able to incorporate new information into clinical practice, and says physicians must also be aware of scientifically acceptable alternative treatments.

The report dwells on what was known about the transmission of HIV and the viruses causing hepatitis, and when this information was known and acted upon in Canada and elsewhere. Many circumstances described by Krever suggest that physicians should pay attention to current and evolving public-health concerns and should follow closely all new developments in disease diagnosis and treatment.

Guidelines and clinical practice

Krever discusses the development of guidelines by different bodies but makes clear that these are not always disseminated adequately; even when there is wide distribution, physicians often fail to give them due consideration.

The report indicates that doctors should be aware of relevant clinical practice guidelines (CPGs) as they are developed and should remember that these will require regular review and possible updating. They should always be applied consistently in line with good clinical practice and according to the needs of individual patients. However, guidelines should never become a substitute for continuing medical education.

Duty to report

Physicians' public health duties received a lot of attention from Krever. He recommends that licensing bodies "enforce the standard of practice that requires physicians to report notifiable diseases" and that they make it mandatory to report adverse transfusion reactions to the national blood service. If there is an adverse reaction after blood products have been used, this should be reported to both the national service and the product manufacturer.

Physicians' statutory duties to report should be acted upon in the interests of public health, but patients should be advised when these reports are made so that they understand the need for physician-patient confidentiality is being overridden by public health needs.

Physician-patient communication

Good communication with patients should be considered part of the physician's general duty of care. Krever pointed to many instances where a failure to communicate or a lapse in adequate communication had tragic results.

In the context of blood transfusions, some of these problems involved notification of groups about possible risks, contact tracing of sexual partners and notification of patients as part of institutional look-back programs. In some cases the lack of communication between physician and patient had tragic consequences, up to and including death. The need for solid communication is one of the key messages in this report. The subtheme is that this can save both physicians and patients from disaster.

Therapeutic privilege

An account of the one family's experience with tainted blood received specific attention from Krever.² Kenneth Pittman received a blood transfusion during cardiac surgery in 1984. In April 1989 his physician was informed that Pittman may have received HIV-contaminated blood. The physician, Dr. Stanley Bain, did not tell the patient this, the court would learn, because he assumed his patient was no longer sexually active with his wife, Rochelle. He also worried that the information could jeopardize Pittman's mental health and cardiac condition. After Pittman died of an AIDS-related illness in 1990, his wife was told about his possible infection with HIV; later she learned that she had also contracted the virus. Rochelle Pittman has since died of AIDS.

In a subsequent civil action, a judge found that the physician's decision to withhold the information fell below the standard of care of a reasonable and prudent family physician. He concluded that the patient's circumstances did not bring him within the "therapeutic privilege" exception to the requirement of notification and disclosure, and that the physician's monitoring of the patient did not satisfy requirements concerning "watchful waiting."

Physicians considering using therapeutic privilege should remember this case, because the general rule is to disclose information concerning patients' health and treatment. When there is even a remote possibility a patient will be infected because of treatment another has person received, physicians should disclose the information and record this fact.

Participation in advisory committees

A consistent thread throughout the Krever report involves physicians' voluntary participation in advisory committees. In several cases cited by Krever, physicians



participated specifically in the development of protocols or CPGs and in the creation of public health education plans and materials.

This type of activity is an important aspect of physicians' professional responsibilities, and the report offers some useful advice for doctors.

- Physicians acting in a voluntary capacity should speak forcefully as advocates for patients, not as administrators or regulators or as participants concerned about business issues.
- Physicians should consider carefully the mandate of the organization or committee they are working with and ensure that tasks or activities undertaken on the group's behalf are reasonable and achievable.
- Physicians should consider the resources being made available to the organization or body they are advising and speak out forcefully if the resources are inadequate for the group's mandate or assignment.

- Physicians' contributions to the development of guidelines or public health materials should focus on the needs of individual patients, not on administrative or policy issues.

Although Krever raised these issues in the context of concerns over blood and blood products, physicians should remember that the issues raised by Canada's blood fiasco are analogous to many other conditions, treatments and aspects of clinical practice.

In other words, this report isn't just about blood. It is about medicine.

References

1. Capen K. Informed consent and blood transfusions: What does Krever's interim report mean to doctors? *Can Med Assoc J* 1995;152:1663-5.
2. Capen K. Keep facts from patients at your peril, Ontario court warns doctors. *Can Med Assoc J* 1994;150:1863-5.