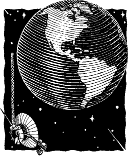


Features

Chroniques

Little-publicized Manitoba case holds crucial lesson for doctors

Karen Capen

Karen Capen is an Ottawa lawyer.

CMAJ 1998;158:1520-1

In brief

LAWYER KAREN CAPEN SAYS THAT A RECENT MANITOBA CASE involving the use of warfarin by a pregnant woman contains an important lesson for all physicians: communicate well and document everything.

En bref

L'AVOCATE KAREN CAPEN AFFIRME QU'UNE AFFAIRE PORTÉE RÉCEMMENT devant les tribunaux au Manitoba, relativement à la prescription de warfarine à une femme enceinte, contient une importante leçon pour les médecins sur l'importance de bien communiquer et de documenter toutes leurs interventions.

A recent Manitoba case demonstrates that splitting hairs over scientific evidence on a matter as sensitive as drug therapy during early pregnancy will not always succeed in protecting physicians from charges of negligence.[1] The final result contains an important message for Canada's doctors.

The suits facing the 2 physicians alleged negligence involving a patient who became pregnant while taking warfarin to treat pelvic thrombosis. The plaintiffs were the woman and her daughter, who was born with severe physical and mental disabilities. The 2 general practitioners involved worked in a clinic in a small town in rural Manitoba.

After giving birth in August 1983, the woman had been hospitalized because of pelvic septic thrombophlebitis. She was treated with warfarin and at the time of her discharge was advised to see her family physician, Dr. A, in order to have her blood monitored regularly. He saw her in October 1983 and recorded this as a normal postnatal examination. They discussed contraception and he recommended that she use an intrauterine device (IUD), which he inserted with her concurrence.

Two weeks later Dr. A called with her blood-test results and to adjust her warfarin therapy. She complained of abdominal pain and also reported, according to Dr. A, that her husband objected to her use of the IUD. It was removed at this time and Dr. A testified that he also advised against pregnancy because of her condition.

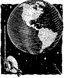
The woman's recollection of this visit, which the judge found unreliable, was different from Dr. A's. She said she became upset over the way he advised her against another pregnancy, and upon leaving the office made arrangements to switch to Dr. B, who also practised at the clinic. From late October 1983 Dr. B cared for the woman and monitored her warfarin therapy. However, unlike Dr. A he also represcribed the woman's drug treatment.

In early February 1984 the patient was due for another blood test but by this time suspected that she may be pregnant; she arranged for a pregnancy test at the lab where the clinic's blood work was done. The positive result was sent to Dr. B on Feb. 16 or 17, but he never saw it until Feb. 20.

He immediately arranged an appointment for Feb. 22 and, based on information supplied by the woman, estimated that she was about 11 weeks pregnant. Apparently Dr. B expressed concern that she had become pregnant while taking warfarin, but nonetheless he wrote a new prescription and instructed her to keep taking the drug. He also arranged for an ultrasound and for her to see an obstetrician.

After reviewing the ultrasound and examining the woman, the obstetrician as-

© 1998 Canadian Medical Association (text and abstract/résumé)



sessed her to be 11.5 weeks pregnant, not the 14 weeks that she would have been by that time according to the examination Dr. B had conducted. After consulting a hematologist, the obstetrician advised the woman to stop taking warfarin at once, which she did. The baby was born in August with severe congenital anomalies, including some affecting the central nervous system.

A 2-pronged lawsuit

The lawsuit had twin thrusts. It was alleged that Dr. A had breached the duty of care he owed the patient by not advising her of the risks posed to her fetus should she become pregnant while taking warfarin for her condition. It was also alleged that Dr. B had failed to act appropriately when a patient receiving warfarin for this condition is determined to be pregnant.

This case provides a sad reminder that communication with patients must be clear, repeated often and documented in the medical record.

The trial judge decided that the case did not involve informed consent and that Dr. A had not been negligent. He reasoned that Dr. A had not prescribed the drug in the first place, and that this GP had also advised his patient against becoming pregnant again while receiving treatment, and possibly for some time afterwards. He ruled that Dr. A had exercised the care required of a physician in these circumstances and that he was not bound to advise his patient of the risk to a fetus should she become pregnant while receiving warfarin therapy.

Dr. B was found to be negligent for failing to arrange a more timely consultation with a specialist about his patient's condition and for failing to advise his patient of the risks involved in continuing to take the drug. However, the trial judge also determined that this negligence did not cause the damage to the infant because the injury to the central nervous system of the developing fetus had occurred before the woman's consultation with Dr. B after she discovered she was pregnant.

The mother and daughter then appealed both decisions, and the Manitoba Court of Appeal allowed the appeal against Dr. B. In reviewing scientific evidence heard during the trial, that court emphasized that experts were unanimous that a pregnant women should not be treated with warfarin during the first trimester because of the risk of fetal abnormalities, and that the precise mechanism by which the drug would cause this harm was unknown.

The court pointed out that the trial judge had been compelled by the insistence of the parties to attempt to resolve the question of whether the actual damage occurred before or after Dr. B learned of the pregnancy. The judge's conclusion, according to the appeal court, was that a woman taking warfarin before the ninth week of pregnancy could by itself result in damage to the central nervous system of the fetus. He also stated that this woman's ingestion of the drug before the ninth week probably did cause the damage. The appeal court threw out this conclusion. It said the trial judge was not entitled to make it in the absence of supporting scientific evidence.

Instead, it ruled that the damage to the fetus was caused because the woman took the drug for a period that began before and continued after the 2 specific acts of negligence committed by Dr. B. It was seen to be a "matter of common sense" that the continued use of the drug as a result of the negligence materially increased the risk of damage.

The judgement stated: "It would be wrong to assume that anomalies always result from a single event. If the taking of Coumadin during the critical period is the cause of damage, as I think it must be found to be in the present state of medical knowledge, then the negligent administration of Coumadin during part of that period must, at a practical level, be seen as a materially contributing factor."

A message for MDs

What's the message for physicians? This case provides a sad reminder that communication with patients must be clear, repeated often and documented in the medical record. Assumptions should not be made about a patient's knowledge or understanding regarding issues such as risks associated with drug therapies. As well, information about any contraindications for drug therapy should not only refer in a general sense to nonuse during pregnancy. It should also be specific.

The lesson? An open and trusting relationship between physician and patient, especially in situations involving serious medical treatments, is a precondition to effective and safe medical care.

As for the Manitoba case, an appeal has not yet been ruled out.

Reference

1. *Webster* v. *Chapman* (1997) 155 DLR (4th) 82 (Man CA).