

Winnipeg inquest recommendation could leave young MDs in lurch, expert warns

A long-awaited report into the deaths of 12 infant cardiac patients in Winnipeg recommends new standards for disclosure for informed consent that could set a legal precedent.

The 516-page report (www.pediatriccardiacinquest.mb.ca) found that in most of the cases parents had not been given enough information — particularly about the surgeon's relative inexperience — to provide fully informed consent. As a result, Manitoba's Ministry of Health is now considering an inquest recommendation that all hospitals provide patients with information about physicians' experience. However, 2 medicolegal experts say the recommendation flies in the face of a long-standing Supreme Court of Canada ruling (*Hopp v. Lepp*) and is simply impractical.

Since patients will want an experienced surgeon, argues University of Toronto law professor Bernard Dickens, "how would [trainees] get that first case? Eventually, you'd just have old, experienced doctors — and experience could mean a lifetime of repeating the same mistake."

Lawyer Margaret Ross, general counsel for the Canadian Medical Protective Association, points to another potential problem. "We have a physician shortage already and this will back up the experienced ones even more," she says. "The number of cases will grind the system to a complete halt. It's unworkable."

The inquest report could be used in court, and Manitoba could legislate the

disclosure requirement. "I'll be interested to see where they take this," says Dickens.

The inquest stemmed from events during 1994 when the Pediatric Cardiac Surgery Program at Winnipeg's Health Sciences Centre was relaunched. High hopes were pinned on a new surgeon, American Jonah Odum, who was assuming his first staff appointment, but nursing staff were soon alarmed by incidents in the OR and the program was temporarily slowed by the reluctance of concerned anesthetists to participate in Odum's procedures. By year's end 12 babies had died — a mortality rate of 29%; in Toronto, the normal rate was 11% (*CMAJ* 1998;159:1285-7).

Associate Chief Judge Murray Sinclair, who led the 3-year inquest from 1995 to 1998, issued 36 recommendations in December. He found that:

- the program was inadequately supervised and restarted too quickly, with no phase-in plan;
- there was a quality-assurance and monitoring failure at the hospital;
- nurses' legitimate concerns were not taken seriously;
- the hospital did not provide the standard of care that the parents "believed — and had a right to expect — that their children would receive."

Sinclair ruled that 5 of the deaths at the Winnipeg Health Sciences Centre in 1994 involved some form of mismanagement, surgical error or misadventure, and were at least possibly preventable. He also



Barbara Sibbald

Dr. Jonah Odum: "poor surgical results"

ruled that another 3 infants might have lived had they been referred to a larger hospital for treatment, that 3 deaths could not be explained and that only 1 death had an acceptable explanation.

Sinclair said the program continually undertook cases that were beyond the skill and experience of Odum and his team. "Neither Dr. Odum nor [referring cardiologist] Dr. [Niels] Giddins carried out their responsibilities to monitor and respond suitably to the poor surgical results in the program," Sinclair concluded.

The College of Physicians and Surgeons of Manitoba is considering disciplinary action against 17 physicians named in the report, including Odum, who now has a fellowship at the University of California in Los Angeles.

Crown Attorney Don Slough told *CMAJ* that the inquest report contains "no basis for criminal charges" but added: "The report is fairly strong for something not commenting on culpability." Five civil suits are pending.

Winnipeg's Pediatric Cardiac Surgery Program was terminated in February 1995. Manitoba infants requiring cardiac surgery are now referred to Vancouver or Edmonton for treatment.

— Barbara Sibbald, *CMAJ*

MD a "fascist" for leading antismoking drive

A physician is the driving force behind an antismoking bylaw that observers say is the toughest in the US. Dr. Alfred Muller, an internist who serves as mayor of Friendship Heights, Maryland, says he has an obligation to do all he can to achieve a smoke-free society. The tobacco industry is not pleased with his efforts. "[He is] proselytizing, trying to impose his own views on the people of Friendship Heights in an autocratic, dictatorial way," tobacco lobbyist Bruce Bereano told the *New York Times*.

Muller, who has been called a "fascist" for his actions, says he expected this type of reaction: "We are trying to change the social norm and that's why it has stirred so much controversy." Under the policy, anyone who smokes or discards tobacco products on "sidewalks, lawns or other areas" owned by Friendship Heights will be issued a warning; a second offence will bring a \$100 fine.