



## When hospital files get in media hands

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This spring a disturbing event unfolded in Calgary that had broad implications for the privacy of patients and caregivers across Canada. A member or members of staff at a hospital operated by the Calgary Regional Health Authority (CRHA) released documents related to the termination of pregnancies involving fetuses with severe genetic abnormalities or other serious health conditions.

The information was released to *Alberta Report*, a weekly newsmagazine that pays close attention to abortion-related issues,<sup>1-3</sup> and published in both print and online versions. The documents included minutes from meetings and memoranda from nursing managers, the names of nurses and some of the physicians involved, and clinical details about the patients involved. A member of Parliament subsequently used the published articles to initiate a criminal investigation into one of the infant deaths. The police have recently closed this investigation and concluded that the allegations were without substance.<sup>3</sup>

The clinical practice in question involves the difficult and troubling issue of terminating pregnancies in which a serious condition affects the fetus. In September 1991 the College of Physicians and Surgeons of Alberta established a policy related to pregnancy termination.<sup>4</sup> Under the policy a woman whose pregnancy has reached 20 to 24 weeks' gestation can choose to terminate the pregnancy if the fetus has a serious genetic or congenital disorder, or if there is a significantly increased risk of bearing a child with a serious disorder for which the precise diagnosis is not available. After 24 weeks a pregnancy can be terminated if prenatal assessment confidently confirms a fetal condition that would be lethal within 30 days of birth. (In fiscal year 1998/99, 3 women underwent pregnancy termination for such indications after 24 weeks' gestation. These represented 0.06% of all pregnancy terminations in the Calgary region for that period.) A developmental clinic staffed by obstetricians, neonatologists, social workers, geneticists and nurses was established in 1995 to provide comprehensive care to these patients. A recent review of this area of medical practice detailed the complexity of the care issues involved.<sup>5</sup>

Once the information had been released to the newsmagazine and it became clear that the legal and ethical rights of individuals had been breached, the CRHA was obliged to pursue the matter in court. The health and safety of staff and patients was an important consideration. The CRHA sought a court injunction based on its obliga-

tion to protect privacy in accordance with Alberta's Freedom of Information and Protection of Privacy Act<sup>6</sup> and Hospitals Act. The former requires the custodian of the record to ensure that personal and private information is not released inappropriately.

Through this court process, the CRHA learned that the information contained in the documents given to *Alberta Report* had been sent to approximately 95 individuals and organizations throughout Western Canada. Although no staff or patient names were mentioned in the magazine articles, our concerns were that the circulated documents and information did identify specific individuals.

Our decision to seek a court injunction has led to media allegations that we were interfering with freedom of the press and the public's right to know. We do acknowledge that there is a need for broad discussion of these important issues, but many patients and staff at the CRHA, as well as members of the public, were troubled by media insistence that their right to publish overrides the duty to protect personal privacy. Throughout, we maintained that an individual's decision to terminate a pregnancy is deeply personal and private and should never be the subject of media probing and public curiosity.

In the end, the CRHA action was supported by the court, with the judge awarding costs to the authority.<sup>7</sup> The court ordered a prohibition against the disclosure of the names of the staff and of the patient concerned. In addition — and this is relevant to both clinicians and the media — there was a prohibition against the release of information that could enable a third party to identify a patient or caregiver. The decision included the following statement: "The issue in this matter is whether a patient's and a doctor's rights to privacy and dignity are set aside in favour of the right of the public to know anything and everything that goes on in a hospital. The answer is no."<sup>8</sup>

This case raised several important issues for clinicians. First, although the CRHA undertook this action because of the Freedom of Information and Protection of Privacy Act, the judge's ruling was based on Alberta's Hospitals Act<sup>9</sup> and the duties of people employed by or affiliated with hospitals. This means that existing legislation provides a substantial degree of privacy protection. Second, there is a requirement not to release information that will identify individuals.

Those of us who are involved in discussions with the media need to keep these court findings in mind. The im-

pact of leaking this type of material has always been understood by clinicians. Following this decision, the response to such actions has been spelled out in law, not only for clinicians but also for the media.

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