

Can you afford an expert witness?

■ It is not an uncommon practice in the USA, where malpractice suits are common, for certain physicians testify as "expert" witnesses - often against other physicians - for a fee. These "experts" have often testified to whatever their lawyer has requested. Blatantly wrong opinions have been offered on ECGs, treadmill test results, surgical procedures, in spite of compelling evidence to the contrary.

In response to this practice, the author offers his review services - at no fee - in cardiology. While he advises counsel to settle if there is evidence of negligence, where the case has no merit he has testified for the defense. This has led to huge savings in legal fees - and, we would imagine, in time. He also suggests setting up a national panel of acknowledged experts in each field, as objective expert witnesses.

Phibbs B. Unpaid expert witnesses.
New England Journal of Medicine, 1997,337:1477-1478

Attitudes towards xenotransplantation

■ We have already had a case of xenotransplantation done in India. The poor science and ethics have already been discussed in an editorial in a previous issue (*IME*, April 1997). As the rest of the world discusses the pros and cons of the issue, Mohacsi et al attempted to find out the views of the Australians on xenotransplantation.

One would expect, they state, that patients with end stage organ failure would be enthusiastic about the procedure. In a previous study they learnt that two out of every three acute-care nurses were opposed to xenotransplantation (*Nature*, 1995, 378:434). Here, they investigated whether xenotransplantation was acceptable to patients with renal failure who were potential or actual transplant patients. Of 113 patients surveyed, the majority were in favour of cadaveric organ donation (81%), as well as from living donors (61%). However, only 42

% would have been willing to undergo transplantation with an animal organ.

The authors conclude that it is essential to be aware of patients' attitudes towards new procedures.

Mohacsi PJ, Thompson JF, Nicholson JK, Tiller DJ. Patients' attitudes to xenotransplantation. *Lancet* 349,1:1031, 1997

The slow code

■ The past two decades have witnessed dramatic changes in professional values, social expectations regarding medical care and decision making at the end of life. Increased emphasis on patients' autonomy and participation have made open discussion, both in the medical and popular literature and at the bedside, the new norm. The seemingly final taboo, the use of a moral consensus to stop extraordinary care for certain patients, is discussed in this series of articles

The Slow Code — Should Anyone Rush to Its Defense? Sounding board: *The New England Journal of Medicine*, 1998; 7 (338)

Principled clinical pragmatism

■ Principled clinical pragmatism is a method to resolve conflicts arising among clinicians, or between clinicians and patients or surrogate decision makers.

The steps involved in this collaborative process are: (1) assess the patient's medical condition; (2) determine and clarify the diagnosis; (3) assess the patient's ability to make decisions (which would include an evaluation of the patient's beliefs, values, preferences and needs); (4) consider institutional arrangements and other social norms that may affect the patient's care; (5) identify the range of moral considerations that may be relevant to the patient's case; (6) suggest provisional goals of care; (7) negotiate an ethically acceptable plan of action; (8) implement the agreed-upon plan; (9) evaluate the results of intervention and, finally (10)

undertake periodic reviews and modify the course of action as the case evolves.

The technique is illustrated through a case study of a 91-year-old male with Parkinson's disease with severe aspiration pneumonia requiring assisted ventilation.

Fins Joseph J, Bacchetta Matthew D, Miller Franklin G: Clinical pragmatism: a method of moral problem solving. *Kennedy Institute of Ethics Journal*.1997;7:129-145

American landmark legal cases in bioethics

■ "A legal case becomes a landmark in bioethics because of its historical or precedential value to the field. Historical cases reflect judicial reasoning or rationalisation that lays the conceptual foundation for a bioethical principle."

Poland lists landmark civil cases in America and provide summary quotes from the judgement. Some examples:

Schloendorff v. Society of New York Hospital (1914) established the doctrine of patient autonomy. "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages." (Justice Benjamin Cardozo).

Salgo v. Leland Stanford Jr. University Board of Trustees (1957) established informed consent. Martin Salgo, 55, was advised diagnostic aortography under general anaesthesia. He awakened to find himself paraplegic. The court noted that a physician violates his duty to his patient if he withholds any facts necessary to form the basis of an intelligent consent by the patient to the proposed treatment. The court also noted that when discussing risk, the physician has discretion "consistent with the full disclosure of facts necessary to an informed consent". Canterbury v. Spence (1972) established an objective standard for

the scope of disclosure to obtain informed consent: the 'prudent patient test'. "Disclosure should cover the inherent and potential hazards of the proposed treatment, the alternatives to the treatment, if any, and the results likely if the patient remains untreated.")

Judicial decisions on the right to privacy, the right to refuse treatment, assisted suicide and other thorny problems are provided in this very informative Scope Note.

Poland Susan Cartier: Landmark legal cases in bioethics. *Kennedy Institute of Ethics Journal*. 1997;7:191-209

Doctors and hymenoplasty

■ This group of articles discusses the practice of doing hymenoplasty on the request of a woman before marriage.

There is a wide range of responses to a report on 20 cases in second-generation immigrant women in the Netherlands. The report's authors hold that hymen reconstruction is the "fulfilment of a person's need rather than a response to their medical condition," with ethics comparable to those of cosmetic surgery.

Some of the other views: it amounts to conspiring to deceive; it confirms sexual inequality and may not help the women psychologically; it is more important to dispel myths about virginity and intact hymens; concern that at least half the women studied report sexual abuse; it helps women to function as symbols of female denigration, so while surgery may be ethically correct the true solution lies in promoting greater gender equality in social norms and customs.

Ethical dilemma: Should doctors reconstruct the vaginal introitus of adolescent girls to mimic the virginal state? Education and debate. *British Medical Journal*, February 7, 1998

Evaluating prescribing practices

■ Good prescribing should be

'appropriate, safe, effective and economic'. The author suggests an improved definition to maximise effectiveness, minimise risks and costs, and take into consideration the patient's preferences. Conflicts do occur when trying to attain all these objectives simultaneously, most commonly between effectiveness and risk, but also between cost-effectiveness and patient's choice. These therapeutic dichotomies have resulted in long-standing debates. Resolving such situations has been at the heart of judging the quality of prescribing. It is ironic that complying with the patient's choice of treatment has been highlighted as a characteristic of 'poor prescribers'.

Moharana Ashok K: What is good prescribing? *National medical journal of India*. 1997; 10(6): 305

Diseases of development

■ Why are countries with a higher per capita income called 'developed' and other 'developing', and the prevalent diseases accordingly labelled? The health budget of a European country of 2-4 million is more than the total budgetary allocation for all sectors of an Indian state of 30-40 million. The letter-writer argues that no amount of 'integration', 'empowering', 'advocacy' or 'sustainable models' can bridge this huge gap. Agencies provide peanuts to the millions in the 'Third World', comparable to the curry in a dish without the meat. "Spices can give flavour and attract customers, but chunks (of meat) are needed to fill the stomach."

Spices instead of meat. *National Medical Journal of India* 1997; 10 (6): 305

Human cloning: international responses

■ The department of philosophy at Oregon state university was asked by the US national bioethics advisory commission to help develop a study on a multi-religion response to the issues raised by human cloning. This issue

of *Reflections* carries the thoughts of scholars from a range of religious traditions.

Human cloning: fact, fiction and faith. *Reflections*, newsletter of the program for ethics, science and the environment, department of philosophy, Oregon state university. Special edition, May 1997

Research with vulnerable populations

■ Ethical issues regarding research involving vulnerable populations — including research where there is a compassionate supply of drugs and research on populations needing palliative care — are analysed, with reference to the events leading up to the Nuremberg trial of Nazi physicians in 1947; the Tuskegee experiment (1932-1972) in which African-American men with syphilis were denied treatment without their knowledge, even after the development of penicillin, in order to observe the natural course of the disease, and the National Women's experiment (1966-87) in which New Zealand women were monitored, again, without their knowledge, for the untreated consequences of carcinoma *in situ*. Each led to public debate and institutional response. Scientific progress should not compromise the person's integrity.

Douglass A, McCabe M: Ethical issues in research with vulnerable populations. *Otago Bioethics Report*. 1997; 6 (3): 14-16

Organ donation: who decides?

■ The current shortage of donor organs means that some people die or continue to have a miserable quality of life. The author argues that the shortage would be less serious if health care workers used signed donor cards as proof of consent instead of asking permission of next-of-kin. This not only violates the ethics of informed donor consent but also costs lives.

Kluge Eike-Henner: *Monash Bioethics Review*. 1998; 17 (1); 10-12