PATIENTS' RIGHTS

Tissues not for sale

Washington

A CONTROVERSIAL 1988 California court decision that granted patients ownership of samples of tissues and bodily fluids taken from them was overturned last week in the state Supreme Court.

Had the lower court's decision been upheld, a patient (or a patient's heir) could have sued a researcher, institution or company for profits from any products created from the use of the patient's tissues; among them would have been many of the human cell lines in use in laboratories across the United States. In making its decision, the California Supreme Court abided by the tradition in Anglo-American law that maintains that an individual cannot sell his or her body parts. A person can, however, be reimbursed for the "service" of providing replaceable tissue, such as blood and semen.

The case began in 1984 when John Moore, who had cells taken from his spleen during treatment for hairy cell leukaemia, sued his doctor, a technician in the doctor's laboratory, the University of California at Los Angeles (UCLA), Sandoz Pharmaceuticals and the biotechnology company Genetics Institute, for profits derived from a cell line developed from the cells. The cells produce granulocyte-macrophage colony stimulating factor and other cytokines. The doctor and his technican had obtained a patent on the cell line and transferred it to UCLA, which in turn had granted licences to the two companies. For the transaction, the doctor received 75,000 shares now estimated to be worth $3 million in Genetics Institute and UCLA received $440,000 in research grants from the two companies. The companies have so far made no profits from selling the cell line.

The court decision will not end legal action in the case. Although the notion that patients can own their tissues was rejected, the court set legal precedent by ruling that a doctor, when seeking consent for a medical procedure, must "disclose personal interests unrelated to the patient's health, whether research or economic, that may affect his medical judgment". If a doctor fails to obtain proper consent, the doctor and others party to this breach of conduct may be sued for damages. Moore's attorney is now suing the defendants for not properly informing the patient of possible commercial use of his cells.

Despite the continuing action, the defendants view the court's decision as a victory because it would have been easier for Moore to collect damages on a property claim than on a claim based on lack of informed consent. "We would only have had to prove taking of property", said Moore's attorney, Sanford Gage. Now he must show wrongful intent on the part of the doctor, when he failed to tell the patient of his interests, and show complicity on the part of the codefendants. The case is not expected to go to trial for another two years.

Gage may try to appeal against the property ruling in the US Supreme Court. But from now on, doctors in the United States will have to be more careful to inform their patients of their research or economic interests and ensure that their consent forms state that a patient has no claims on what happens to discarded tissues. **Robin Elsner**

DNA FINGERPRINTING

No escape with snake DNA

New Delhi

INDIA'S first judgement in a paternity case made on the basis of DNA fingerprinting evidence has set a major precedent. Since the case was disposed of in April, even small courts in remote corners of the country have begun to rely on the technique in paternity disputes.

In India, paternity disputes make up a significant percentage of court cases. Many of the cases are now being referred to the Center for Cellular and Molecular Biology (CCMB) in Hyderabad where scientists have developed their own DNA probes. A test costs only Rs 3,600, about one-tenth of the cost in Europe or the United States.

The historic judgement was given by the chief judicial magistrate of Tellichery Town in Kerala State in a dispute between an unwed mother and her lover who denied having fathered her child. The judge ordered the man to pay for the maintenance of the child after hearing evidence from Lalji Singh of CCMB.

The judge dismissed attempts by the defendant to argue, on the basis of cases in the United States, that DNA fingerprint tests could go wrong. There is no specific Indian legislation on the admissibility of DNA fingerprinting evidence but 'expert' opinion is valid in court under existing law.

The CCMB probe, which is being patented, consists of a repetitive GATA sequence isolated from the DNA of the banded krait, a poisonous Indian snake.

K. S. Jayaraman

NEW ENGLAND JOURNAL OF MEDICINE

Editorial position vacant

Washington

ARNOLD Relman, editor-in-chief of *The New England Journal of Medicine* (NEJM), last week announced that he will retire next June.

Relman has been a controversial figure, often criticized by medical and hospital associations for his opinion that the profit motive in medicine has altered professional judgement and hurt patient care. The journal's strict policy of refusing to publish material that has been released to the press has also engendered harsh comment from the news media.

Reflecting upon his 14-year tenure, during which the journal's circulation rose by one third to 225,000, Relman said his greatest accomplishments were demanding greater originality in the manuscripts published by the 178-year-old journal, and making the journal a forum for discussion of the social, economic, political and ethical implications of medicine and medical research.

He thinks he also helped to "sharpen" standards of ethical behaviour in medical publishing. The journal was the first to demand that authors reveal "any commercial associations that might pose a conflict of interest with the submitted article". NEJM asks that funding sources, stock ownership and patent licensing arrangements be disclosed. Although a commercial interest does not disqualify a research manuscript from publication, Relman instituted a new policy last July that prohibits an author of a review article or opinion piece from having a significant commercial connection with the ideas he or she is writing about.

To criticism of his strict rule of refusing publication of material that has been released to the press, Relman says that doctors cannot make decisions about patient care based on newspaper reports. "Doctors need to see the original data in the article", he said. Critics contend that the policy delays the release of information vital to the public. But Relman says that the journal makes an exception when a finding has been described in the press on the advice of a respected agency. Such cases include the release of information concerning the link between tampon use and toxic shock syndrome (on the advice of the Public Health Service), and of the value of prophylactic chemotherapy for women who had received surgery for localized breast cancer (on the advice of the National Cancer Institute).

On retiring, Relman says he will have time to develop his ideas and write books. He says he wants to tackle the issue of cost control in the "inflated" US health-care budget and what to do about the uninsured. Another subject is the dissemination of medical information in the media and its impact on the general public, with particular emphasis on the role of the peer-reviewed journal. **Robin Elsner**