Newborn Drug and Alcohol Screening: The Case for Policy Development and Law Reform

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Outline

- Relevance – A Clinical Ethics Perspective
- Case: *R. v. K.M.*
- Case: *CAS (Halton) v. C.(C.L.)*
- Ethical Implications
- Legal Implications
- Conclusions
Research Questions

- What methods are available to screen for prenatal exposure to drugs and alcohol? Of these methods, which are currently implemented in the Canadian studies and which have been considered by the Canadian courts?

- What are the medical-legal and ethical-legal considerations in screening for prenatal exposure to drugs and alcohol? What information must stakeholders, policy-makers and the judiciary have regarding screening?

- Are there legal cases that we can learn from regarding screening? How might the cases inform screening policy?
Methods

- Literature Review
  - Medical / Scientific Literature
  - Legal Literature
  - Ethics Literature
  - Social Work Literature

- Case Law Review
  - Family Law
  - Child Protection
  - Criminal Law
  - Constitutional Law

- Interviews
  - Calgary, Edmonton, Hawaii, Vancouver, PEI
Principles of Ethics

- Autonomy
  - Respect for patient autonomy; informed consent a common thread

- Beneficence
  - Obligation to ‘do good’; act in a way that is likely to benefit the patient; proceeding with a beneficent plan of care, using clinical judgment

- Nonmaleficence
  - Ethical obligation not to harm or cause injury; to prevent foreseeable harm

- Justice
  - Issues involving fundamental justice, distributive justice; allocation of resources; organizational ethics; availability of a service
Results

- Extensive Literature Review
- Case Law Review – 20 Cases
  - 16 Ontario
    - 1 Criminal
    - 1 Family Law
    - 14 Child Protection
  - 2 British Columbia
    - Adoption / Child Protection
  - 1 Nova Scotia
    - Child Protection
  - 1 Manitoba
    - Criminal

- Interviews
  - 8 face to face interviews
  - Numerous informal interviews and discussions at scholarly meetings
  - Not all prospective participants agreed to be interviewed

November 22, 2012
R. v. K.M.

Shaken Baby Syndrome:
Meconium Screening Evidence Admitted

- Baby boy born (premature, 4.4 lbs) in 2003
- Readmitted at 30 days old, transported to HSC
- Mother charged with aggravated assault
- Guilty plea under Criminal Code
- Baby girl born 2004, mother on judicial interim release
- Positive drug metabolite screen
- Baby girl apprehended
- Drug screen results admitted on sentencing
Interim Care and Custody:
- Young, high-risk family
- Previous involvement with CAS
- Previous premature delivery (34 wks); SIDS death
- Ontario Works; CAS family service worker
- Prenatal care
- Alerts to various hospitals
- CAS requests screens
- Term baby, 6.6 lbs, Apgars 9, 9
- Same day meeting with CAS; police
- Parents decline help from CAS
- CAS apprehends child
Cases

- Canadian Family Physician / CAS Newsletter
- Ontario, British Columbia, Nova Scotia, PEI
- Garrity v. Garrity, 2008 CanLII 29594 (ONSC)
- Children’s Aid Society of Hamilton v. E.O., 2009 CanLII 72087 (ONSC)
- R. v. H.P.H., 2010 MBQB 8
- British Columbia Birth Registry No. 2006-59-039985 (Re), 2010 BCCA 137
Ethics Policy Consultation

- Increasing requests for meconium screening in some centers
- Number and types of cases surprising to clinicians
- Clinical ethics analysis requested
- Decision not to screen meconium until policy / clinical practice guidelines are in place
- Anonymous samples (prevalence data) in some jurisdictions
- Fiduciary duty; therapeutic relationship
Conclusions and Recommendations

Drug metabolite screening technology was developed by researchers to facilitate early interventions and supports for exposed children, not as a punitive measure for women who abuse substances during pregnancy.

In the USA, maternal drug metabolite screening absent a clinical indication has been characterised as an “unreasonable search and seizure” contrary to the fourth amendment (Ferguson v. City of Charleston, 308 F.3d 380 at 388 n.4 (4th Cir. 2002)).

Until clinical practice guidelines are in place, a consent protocol for neonatal hair and meconium screening should be in place for cases where information is sought absent a clinical indication. Privacy considerations should be addressed. Resource questions need to be addressed.

Until clear policy is written on the use and purpose of screening, with the rights of both children and mothers in mind, the Canadian Courts should be wary of using results as evidence in criminal justice proceedings.
Conclusions

- Individualized care
- Utilizing resources
- Increasing knowledge
- Language
- Creative solutions
- Honest, compassionate, competent communication
- Patient-centred care / Family-centred care
- Team approach
- Ethical decision-making
The ethical dilemma faced by the physician involves the conflict between a duty to promote care for the baby and mother together and a duty to prevent latent harms ... Specific clinical situations in newborns will require drug metabolite testing but should remain the exception to the rule. Protection of these newborns from neglect or abuse after birth is best achieved by comprehensive care planning to ensure a safe nurturing environment.”

--- Dr. Paul Byrne,
Staff Neonatologist, Stollery Children’s Hospital, Edmonton.
Questions?