

Termination of Pregnancy for Fetal Abnormality

Ethical, Legal and Professional Matters for Midwives

Abortion has been under a great deal of discussion recently, both in the media and by the government. According to Skene (2004), each year in Australia there are more than a hundred thousand abortions performed, with New South Wales having the highest rate of abortion.

Abortion or termination of pregnancy is defined as inducing a pregnancy before 20 weeks gestation. Midwives working in maternity units are more likely to be involved in the care of a woman terminating pregnancy for fetal abnormality. This paper will examine the ethical, legal and professional issues associated with the midwifery care surrounding termination of pregnancy for fetal abnormality. Termination of pregnancy due to a fetal abnormality such as Down Syndrome, can be undertaken after 20 weeks, but is classified by law as a stillbirth (NSW Health Department, 1997).

Over the last ten years the number of terminations of pregnancy for fetal abnormality has remained fairly steady in New South Wales, at about 140 to 150 per year. However, from 1998 birth defects became notifiable, which resulted in an increase in reporting of defects. Termination of pregnancy is most commonly associated with a chromosomal abnormality. (NSW Health Department, 2002).

Ethical Issues

When examining the area of ethical issues, it can be difficult to

distinguish between ethical issues and professional issues. Jones (2000) assists by describing ethics as:

... the application of the processes and theories of moral philosophy to a real situation. It is concerned with the basic principles and concepts that guide human beings in thought and action, and which underlie their values. (Jones, 2000, p. 8)

Cignacco (2002) describes an ethical dilemma as being a situation of choosing between two unsatisfactory options, or involving incompatible principals. Cignacco (2002) conducted a study of midwives' experiences regarding termination of pregnancy for fetal abnormality. The midwives in this study (n=13) supported the woman's rights rather than their own professional obligations to preserve life.

The midwives' found it difficult to take as much responsibility as the doctor for carrying out the procedure and having a minimum of information. They felt uneasy about not being involved in any of the decision making process, and met the parents for the first time when they came to hospital for the procedure to be per-

formed. Midwives then carried out all of the doctor's orders and felt they had performed the abortion. However, despite all of the negative comments most of the midwives also felt it was part of their professional role, that it was a birth and within the midwives' competencies (Cignacco, 2002).

Huntington (2002) discusses the emotional effect of termination of pregnancy. The author describes how often women feel totally unprepared for the experience requiring the midwife to give an enormous amount of support. The procedure requires psychological, physical and clinical expertise. The midwife needs to draw on all of these skills and provide care in a supportive and sensitive manner, so as not to cause further trauma to the woman. The midwife also, is the one that has to deal with and dispose of the baby.

Marshall and Raynor (2002) suggests that midwives need to clarify their position and decide on the course of action they will take. The authors suggest using a framework of moral reasoning to assist in making decisions.

This framework suggests using intuition, reflection and various

documents, such as: those developed by the Australian College of Midwives Incorporated, policies ratified by the NSW Health Department, Area Health Services and local hospital policies. The framework describes ethical principles in relation to termination of pregnancy. The principles are: autonomy (the woman has a right to freedom of action and choice), beneficence (providing care that is in the best interest of the woman), non-maleficence (minimising harm) and justice (the woman is not judged and is treated equally by qualified personnel). The framework also describes various ethical theories.

In the clinical setting, the support of colleagues is vital. Sharing positive and negative experiences with peers can be a useful, in putting the situation into the right perspective. It can also ensure that the same staff are not being burdened with caring for every woman choosing termination of pregnancy (Raynor & Marshall, 2002). Other staff that may be of assistance include mentors, clinical midwifery consultants, the department head and hospital based counsellors.

Legal issues

The legal issues surrounding termination of pregnancy differ in the different states and territories within Australia. With the exception of the Australian Capital Territory, abortion is the subject of criminal law (Australian abortion law and practices, No date; Skene, 2004). The legislation surrounding abortion in New South Wales is the Crimes Act 1900, Sections 82, 83 and 84. This Act describes how abortion is a crime when it is performed unlawfully,

and those involved with an unlawful abortion are liable for ten years imprisonment (Crimes Act 1900, No date). The Crimes Act does not define when an abortion is lawful.

Although unlawful abortion is a criminal offence, doctors are not likely to be prosecuted (Australian abortion law and practices, No date; Skene, 2004). Due to a lack of definition within the Act there has been interpretation made by the New South Wales courts. The principle is that for abortion to be lawful:

The doctor honestly believes,

on reasonable grounds that the act is necessary to preserve the woman from serious danger to her life or her physical or mental health (not being merely the normal dangers of pregnancy and childbirth) which the continuance of the pregnancy would entail; and in the circumstances, not out of proportion to the danger be averted (Skene, 2004, p.351).

These rules for a lawful abortion were extended in a further case in 1971 where the judge ruled that economic, social and medical grounds or reasons should be considered when

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PREGNANCY matters

determining the danger to the woman's physical and mental health. Judge Levine said more specifically that this danger to health may not be evident at the time but could be foreseen during the pregnancy. This ruling was changed again in a later case to say that the danger to health could be extended even further, to after the birth (Skene, 2004). These changes are reflected in the framework described by NSW Health Department (2000).

Skene (2004) discusses the dilemma that may be associated with antenatal screening for abnormalities. The purpose of conducting these tests is to determine early in a pregnancy if there is a fetal abnormality. There have been actions of wrongful birth in Australia brought against doctors who do not carry out the genetic testing. The medical officers have been found to be negligent in preventing the pregnancy or not detecting the abnormality in time to allow a termination. However, in New South Wales there are no grounds for lawful termination of pregnancy for a fetus with abnormalities. To terminate a pregnancy lawfully in the case of fetal abnormality, the doctor must believe that the woman's physical and mental health would be in danger by giving birth to and raising a child with a disability.

In America and England there are time limits imposed on the grounds of lawful termination of pregnancy (Dimond, 2004; Frith & Draper, 2004; Skene, 2004). Whilst laws in Australia differ, in New South Wales there is no time limit imposed on the termination of pregnancy, once it has met the conditions for being lawful (Huntington, 2002; Skene, 2004).

Professional issues

The "Competency Standards for Midwives" is a document prepared by midwives for midwives. It is a document that describes core standards that a midwife must meet. The document describes performance criteria that are of a minimum standard. The midwife's professional responsibilities should include: respecting the woman's rights, needs and decisions; providing accurate information; fostering communication; protecting the woman's privacy and dignity; and promoting health (Australian College of Midwives Incorporated, 2002). This document does not guide the midwife professionally when in the situation of caring for a woman undergoing termination of pregnancy, when the midwife does not want to participate.

Conscientious objection to participating in termination of pregnancy is a challenge to the midwives professional responsibilities. Raynor et al. (2002) believe that midwives should be able to work within the legislative requirements, and ensure that their own beliefs do not take over their duty of care.

Midwives need to be clear about how much participation in the procedure they are willing to have. Is the midwife refusing to participate in giving the abortifacient or surgical procedure? Or is the midwife objecting to provide any care to the woman (Raynor et al., 2002)? In an emergency situation this may be a breach of duty of care. The authors suggest that staff should take advantage of the services provided in the workplace that provide counselling, guidance and support. These services may enable the midwife to maintain

good professional practice (Raynor et al., 2002).

The NSW Health Department Framework for Termination of Pregnancy policy (2000) has a section dedicated to allowing staff to conscientiously object to participating in the care of a woman undergoing termination of pregnancy. The reference for these policies is a circular published in 1983. This earlier circular advised that staff should be made aware at interview that the facility performed procedures that may cause conflict (such as abortion), to enable staff to make an informed decision about working in that facility (NSW Health Department, 1983).

The policies of today appear to be more supportive of staff suggesting that if staff do not want to participate in the termination of pregnancy, they should advise their department head.

Midwives during their career are very likely to be faced with this professional dilemma. To assist in making a decision surrounding whether or not to be involved and how much involvement that will be, midwives should use the various resources available to them. A framework for moral reasoning was suggested as assisting the midwife.

Midwives have the necessary attributes required to care for the woman through the very emotional event of a termination of pregnancy for fetal abnormality. Valuing midwives and recognising the areas in work that cause trauma could alleviate a considerable amount of stress for midwives and ensure that the woman is cared for in a supportive and sensitive manner.

Sandra Ferguson – Clinical Midwifery Specialist, Auburn Hospital Birth Unit.