Guidelines

for the

Storage, Use, and Disposal

of Sperm

from a Deceased Man

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Prepared by the

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BACKGROUND

On several occasions since its establishment, the National Ethics Committee on Assisted Human Reproduction (NECAHR) has received requests from providers for advice about the storage, use and disposal of sperm which they hold on behalf of a man who dies some time after the sperm has been retrieved. It is also technically possible to retrieve sperm from a comatose man or within 24 hours of death[1], although advice on this aspect has not *yet* been requested.

The Committee also acknowledges that technological advances may in the future allow the efficient freezing and thawing of ova and grafting of ovarian tissues, so that ultimately pregnancies may be achieved. This may extend the options for posthumous reproduction to include use of cryopreserved ova. It is beyond the scope of these initial guidelines to address these possibilities. The Committee endeavours to regularly review these Guidelines to reflect the likely advances in treatment and technology.

The Committee has considered these requests within the broader framework of the collection, storage, use and disposal of human gametes, and has identified a number of issues which are grouped here according to their main focus. Some of these issues apply to living as well as deceased persons.

[1] Kerr, S. and Kaplan, A. *Postmortem Sperm Procurement*, The Journal of Urology, June 1997; 157, pp 2154-58

1.0 Cultural focus

NECAHR acknowledges that a bi-cultural approach to addressing issues such as the possible use of gametes can accommodate diversity of opinion within and between cultures. The Committee considers these issues to be important[2]:

- the values and tikanga inherent in whanau, hapu and iwi
- the need for a process that is culturally supportive and safe
- the need to protect whakapapa
- the need to protect fertility[3]
- the need to protect individual and informed choice.

It is important that the partnership principles of the Treaty of Waitangi be encompassed within the guidelines. NECAHR emphasises the importance of the following:

- protection of Whakapapa Maori, confidentiality and privacy
- respect for Tikanga Maori and kaumatua counselling. Whanau assistance at the initial interview. Recognition that the donor has the right to refuse or accept this support
- a record of Maori donors be maintained with the following:
  - name
  - address
  - date and place of birth
  - name of marae to which donor is affiliated, if applicable, and tribal affiliations
  - the names and aliases of an individual's parents and tribal affiliations
  - birthplace (if known), tribal/hapu contact
- all information provided by Maori be safeguarded and protected within the health system or as directed by the donor or whanau [4].
  - (The Assisted Human Reproduction Bill (currently before Parliament) will legally require providers to record information about donors and children born using assisted human reproductive technology.)

[2] Manatu Maori Guidelines for the Use of Assisted Reproductive Technology, Wellington, 1991

[3] NECAHR understands this to mean the need to avoid actions that may lead to infertility.

[4] Smith, R. Draft Guidelines prepared for NECAHR on the Collection, Storage. Use and Disposal of Gametes, Waitaatea, July 1997

1.1 Ethical focus

The Committee acknowledges that there are wide social implications if children are conceived from donated gametes. Some of the implications and issues relate to[5]:

- the concept of family and relatedness of family members, *including issues surrounding intergenerational donation*
- the special status of gametes once they have been collected and stored because of their potential to become a human being
- issues of consumerism, commodification and technology in relation to reproduction.

Particularly in relation to deceased persons there is the issue of:

- the acknowledgement of finiteness and mortality in relation to human life and reproduction.

The Committee considers key ethical principles including:

- the balancing of benefits and risks for all parties and prioritising of needs
- the benefits and risks for children specifically, eg if they know they have been conceived using gametes from a person deceased at the time of conception
- issues of consent in relation to information, non-coercion and autonomy, eg the limits of personal autonomy when considering the use of a deceased person's gametes
- vulnerability of participants, eg individuals undergoing chemotherapy or individuals grieving following the death of a partner
- privacy considerations, eg confidentiality of the collection of information, sensitivity of the information and how it is safeguarded, balanced against the resulting child's right to know his/her origins
- cultural appropriateness.

[5] Douglass. A. Assisted Human Reproduction: Posthumous Use of Gametes, A thesis completed for the degree of Master of Bioethics and Health Law, University of Otago, December 1998

1.2 Legal focus

Issues considered by NECAHR include[6]:

- the *potential child's interests should be considered* in any decision made about the use of gametes
- whether gametes can be "owned" and what form of property they might constitute
- inheritance rights for children conceived posthumously
- the significance of consent or direction given before death in relation to the posthumous use of gametes
- the lawfulness of decisions to retrieve gametes for posthumous use without the prior
- consent of the deceased person
- the application of overseas common law cases to New Zealand, and in particular: R v Human Fertilisation and Embryology Authority ex parte Blood (1997) 2 All ER 687
- the human rights legislation in New Zealand, eg in relation to marital status, age, and access to services.

[6] Douglass, A. Assisted Human Reproduction: Posthumous Use of Gametes , A thesis completed for the degree of Master of Bioethics and Health Law, University of Otago, December 1998

2.0 GUIDELINES

Against the background outlined in the previous section, the Committee proposes the following guidelines for the use of sperm.

Consent forms must include specifications as to what is to happen should the sperm donor die leaving sperm in storage at a clinic/service. All donors should be expected to discuss related issues with partners and family. For Maori, there should be the opportunity to discuss the use or disposal of sperm with partner and whanau. Iwi/hapu/kaumatua may provide support counselling and whakaritenga.

2.1 Sperm provided for use by a non-specified person/couple (donor insemination)

Options for what should happen on the death of a sperm provider must be:

a. that sperm be available for use by a person/couple who have already produced a child/children by donor insemination using that sperm
b. that sperm be disposed of in a culturally appropriate manner, eg in the case of a Maori donor, returned to whanau.

Appropriate counselling is mandatory for men donating sperm [7].

Donors should be encouraged to designate two or more people who will inform the clinic/service in the event of the donor's death.

In relation to donors who were recruited prior to these guidelines, clinics/services are required to consult with NECAHR if there is potential or actual conflict over the decision making.

In situations where further ethical guidance is necessary, NECAHR should be consulted.

2.2 Sperm placed in storage prior to medical intervention, eg chemotherapy, IVF

Options on the consent form for what should happen on the death of a sperm provider:

a. that sperm should be disposed of in a culturally appropriate and respectful manner as specified, eg in the case of a Maori donor, the donor should seek whanau advice on the disposal

[7] Draft Code of Practice for Centres using Assisted Reproductive Technology, Reproductive Technology Accreditation Committee, revised March 1997

b. that sperm be available for use only by a specified person within a specified timeframe; if that person dies, (a) applies. All donors or partners of the deceased should be encouraged to inform the wider family/whanau.

If the option selected in the consent form leads to a request for insemination by the partner of the deceased, then clinics/services must provide appropriate implications counselling which would include, for example, the advisability of a suitable time lapse before making use of the sperm, to allow for considered decision making.

When consent has not been and cannot be obtained or when there is a request for a variation to these requirements, an application for ethical review *must* be submitted to NECAHR. A counselling report should be included, as part of this application.

Clinics/services should undertake an annual review of the storage arrangements, either with the person whose sperm is being stored or, in the event of his death, a designated person. When renewing the consent for storage, the clinic should also ask the person to renew consent for the use and disposal of the sperm. It is expected that sperm collected in these circumstances would be stored for a maximum period specified by the clinics.

2.3 Sperm collection from a comatose person or recently deceased person without his prior consent

The Committee considers that collection of sperm from a comatose or recently deceased person without that person's prior written consent is ethically unacceptable.