

Scientist must pay university a slice of profits

Clare Dyer *legal correspondent, BMJ*

A leading British infertility specialist must pay his former university employers a substantial slice of the profits he earned from work abroad while employed by the university, a High Court judge ruled last week.

In a case with important implications for other academics who top up their earnings with private work, Mr Justice Elias held that Simon Fishel must account to Nottingham University for money he earned from clinics in Italy, South Africa, and the Middle East using the services of staff embryologists from the university.

Dr Fishel, aged 47, a clinical embryologist who is not medically qualified, had breached his fiduciary duty to the university by profiting from work done by other embryologists for whom he was responsible, the judge ruled.

He put himself where there was a "potential conflict between his specific duty to the university to direct the embryologists to work in the interests of the university and his own financial interests in directing them abroad."

But he rejected the university's argument that Dr Fishel should pay over the money he earned from his own work abroad, ruling that the clinics who used his services did so because of his personal reputation, not his university links.

Dr Fishel, who was scientific director of the university's "nurture in vitro fertilisation" unit, handed in his notice in 1997 after being forced to take a 25% cut in his 1996 salary of £138 000 (\$220 000), which had made him the university's highest paid employee.

After he left to set up a rival private clinic in Nottingham, the university sued him for £400 000. Dr Fishel estimates that as a result of the judgment he will be liable to pay less than £75 000, but this may have to be determined at another hearing.

The expensive battle, which culminated in a three week High



Dr Simon Fishel used his staff to earn money abroad

Court trial, will leave both parties facing substantial legal costs. How much each will have to pay will be decided later. The loser normally pays the winner's costs but in this case neither won a clear cut victory. Nottingham won on some issues and Dr Fishel on others, so the costs will have to be apportioned. □

Transgenic cell patent granted "in error"

Annette Tuffs *Heidelberg*

The European Patent Office in Munich, Germany, has admitted a mistake in recently granting a patent to a process that could potentially lead to the cloning of humans. Last week the environmental group Greenpeace issued a critical statement that was followed by a storm of public protest.

The patent EP 0695351 on the "isolation, selection, and propagation of animal transgenic stem cells" originally belonged to Edinburgh University and was licensed to the Australian biotechnology firm Stem Cell Sciences.

The patent office issued a statement expressing regret about its mistake. It explained that the error arose because in the terminology used in English ("transgenic animal") "animal" includes the notion of "human," whereas a direct German or French translation of "animal" does not. As the qualifier "non-human" is missing, the patent also covers the genetic manipulation of human stem cells.

In contrast with Greenpeace and other critics, however, the patent office points out that despite this missing restriction the cloning of humans is not possible on the basis of this patent. □

Full story in News Extra at www.bmj.com

Corrections

Donors and relatives must place no conditions on organ use
In this article (26 February, p 534) we unfortunately reported the wrong number of transplant operations for 1999. The figure should have been 2682 (not 212).

Clinic sued for unauthorised use of sperm

It was stated in this article (19 February, p 464) that the solicitors Withers acted for the London Gynaecology and Fertility Centre, London. We should have said that the firm acted for Michael von Schonburg, who sued the clinic. We apologise for this error.

Rise in preschool children receiving psychiatric drugs

Scott Gottlieb *New York*

The number of preschool children in the United States receiving methylphenidate (Ritalin), fluoxetine (Prozac), and other drugs for psychiatric disorders increased dramatically from 1991 to 1995, according to a new study. In the study, researchers reviewed outpatient prescription records from two state Medicaid programmes and one health maintenance organisation.

The investigators analysed these groups for the years 1991, 1993, and 1995. During the study period they found that the number of antidepressant prescriptions doubled in both of the Medicaid groups and increased in the health maintenance organisation's group too.

Ritalin was by far the most prescribed psychotropic drug, with prescriptions among children aged 2 to 4 years increasing substantially in all three study groups and tripling in two of

them (*JAMA* 2000;283:1025-30).

The use of clonidine, a blood pressure drug gaining popularity as a treatment for insomnia associated with attention disorders, also increased. The researchers said that, although clonidine was prescribed less frequently than stimulant drugs, its increased use was notable because no rigorous studies had shown its safety or effectiveness as a treatment.

The study found that 2.3 children per 1000 in the Midwestern Medicaid group received prescriptions for the drug in 1995, compared with 0.1 child per 1000 in 1991.

Among antidepressants, the older generation of tricyclic drugs remained the most commonly prescribed, though the number of children receiving newer drugs—such as fluoxetine and sertraline hydrochloride (Zoloft)—increased dramatically in the Medicaid programmes

over the five years. In the Midwestern Medicaid group, 3.2 per 1000 preschool children received prescriptions for antidepressants.

"Rapid expansion of medication use for a particular problem raises questions about appropriateness, effectiveness, and long term safety," said Dr Magno Zito, associate professor of pharmacy and medicine at the University of Maryland and lead author of the study.

Several factors may have contributed to the trend, Dr Zito said. These include a change in the criteria for diagnosing attention deficit hyperactivity disorder; a bigger role for schools in assessing children's emotional and behavioural needs; day care environments that may interfere with children's normal behavioural development; and a more favourable public attitude towards medical treatment of behavioural problems.

Although researchers have known for some time that such drugs are increasingly being prescribed for older children, the study is the first to document an increase among younger children. □