

## Beyond crawling

### From birth

The first issue of *SAJBL* was published in June 2008. The objectives of the journal included providing education for the professions in the important fields of bioethics, human rights and health law; serving as a vehicle for people working in the field to publish in a reputable and recognised journal; and providing continuing professional development (CPD) in Bioethics as required by the Health Professions Council of South Africa. Effective from January 2010, *SAJBL* has been included in the Higher Education and Training approved list of journals. This month, as we celebrate our third birthday, I would like to believe that we have been able to achieve the objectives envisaged at the conception of the journal.

### In this issue

This issue of *SAJBL* consists of an array of articles, letters and responses ranging from neonatal circumcision to social, cultural and ethical issues that emerge when the dead human body is used for teaching and research to medical malpractice. Some of the articles are briefly discussed below.

Vawda and Maqutu examine neonatal circumcision as a preventive strategy for HIV transmission. They consider the ethical, legal and public health issues in this regard, and analyse the complex debate of whether neonatal circumcision in this context is a violation of children's rights or a public health necessity. The impact of the practice on the rights of children to bodily integrity is reviewed and whether proxy consent by a parent or guardian on behalf of the child is appropriate and justifiable on the grounds of parental preference, religion, culture or public health policy is explored. They make a compelling argument that while the rights of neonates to bodily integrity deserve serious consideration, the severe public health hazard inflicted by the HIV/AIDS pandemic could justify performing this procedure on these individuals who lack capacity to make informed decisions.

D Gareth Jones examines the centrality of the dead human body for teaching and research purposes from a social, cultural and ethical perspective. For centuries cadavers have been used for study purposes. That the study of the cadaver is integral to education and research is without question. However, the question that begs an answer is: how is cadaveric material to be obtained in the world of the 21st century? It is not possible to draw from the historical precedents available to us, where bodies for study were obtained through unethical practices including body snatching and murder, and the challenge to the present-day discipline of anatomy is whether it is possible to shed all semblance of this unsavoury past. The argument is made that the manner in which cadavers are treated is of moral interest as these bodies although dead have intrinsic and instrumental value. Relying on the use of unclaimed bodies is therefore problematic, and it is preferable to use bodies that individuals have donated for study and research. However, the question that follows this recommendation is whether globally there exists a culture of donation of cadavers and body parts for study and research. Large-scale public exhibitions of plastinated bodies also pose a challenge to anatomists. While those exhibits with Renaissance allusions have most in common with an educational rationale, although lacking a research notion,



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the contemporary genre plastinates are far removed from any traditional anatomical approach and generally lack a teaching focus. In addition, the character of donation is changed in the context of these public exhibitions.

Mary De Haas starts off her paper with a quotation from the *Annual Review of Anthropology* (2000) which alludes to the commodification of body parts. The concern is expressed that the body is reduced to a saleable product and the global expansion of a human body shop is broached. Social and cultural issues in human tissue use in South Africa are the focus of this paper. There is substantive reference made to the role of history in this context. The term 'culture' in South Africa has been and continues to be badly abused, in the main for political purposes. It was used by the apartheid regime to disguise the racial basis of its homeland system. The ethos approach to culture and its ally Social Darwinism led to many southern African Bushmen (San) being exhibited in Europe during the 19th century. A well-known example is that of Sarah Baartman, whose preserved and mounted skeleton, brain and external genitalia were on display in a French museum until quite recently.

Pepper and Nöthling Slabbert enquire whether South Africa is verging on a medical malpractice litigation storm, where, as patients become increasingly aware of their rights, malpractice litigation intensifies at an alarming rate both in the public and private sectors. Most claims relate to obstetrics and gynaecology and orthopaedic surgery. The possible impact of the recently implemented Consumer Protection Act is highlighted in the context of additional and direct responsibility being placed on health care professionals for claims made by patients for which they may be held directly or indirectly responsible.

### Medical malpractice: yesterday and today

It is interesting to note that punitive action for medical malpractice and medical negligence is as old as the Code of Hammurabi. The practice of medicine was in the hands of priests in the kingdom of Hammurabi of Mesopotamia, 5 000 years ago. The Code contained medical ethical rules and legislation and provided specific penalties for medical negligence. According to the Code, a physician's hands should be amputated if he had caused the patient's death, or where the patient lost his sight as a result of surgery to the eyes.<sup>1</sup>

The oft-quoted example of punitive action for medical negligence from Ancient Greece is that of the physician Glaukos. Glaukos was crucified by Alexander the Great because he abandoned Hephaistion, a close friend of his. Hephaistion was seriously ill and in need of medical treatment. Glaukos, instead of treating him, went off to see a play in a nearby theatre.<sup>1</sup>

In today's biotechnology climate, enormous strides have been made in medicine from the perspective of both diagnostics and therapeutics. While these advances are beneficial, patients are also exposed to risks associated with this progress. These risks and problems with service delivery are just some of the factors that have resulted in the increasing number of cases of malpractice liability. The litigious climate in which we find ourselves has unfortunately led to a shift from a compassion-centric model of care to a defensive practice of medicine.

## The future

I sincerely hope that you enjoy this bumper issue of *SAJBL* and benefit from the diverse content of well-researched and interesting articles as much as I did. We hope to continue this rich cross-disciplinary, scholarly debate in critical issues in bioethics, human rights and health law in the fields of clinical practice, health policy and regulation and research.

1. Carstens P, Pearmain D. Foundational Principles of South African Medical Law. Durban: LexisNexis, 2007:609-610.