

The Age: <http://theage.com.au/articles/2005/07/17/1121538863176.html>

Zealotry trumps humanity in pursuit of dubious cause

By Leslie Cannold, July 18, 2005

There is no end in sight to the painful saga of the long-ago termination of a woman with a foetus diagnosed with dwarfism in 2000. Feeling it has no choice but to defend the principle of patient confidentiality, the Royal Women's Hospital has decided to seek leave to appeal against the Victorian magistrate's ruling at the end of last month. The ruling compels the hospital to hand over the medical records of the woman known to the public as Mrs X, despite that women's persistent refusal to consent to their release.

The board needs the records to investigate the professional conduct of the treating doctor. Should they find against him, he could be suspended, or lose his registration.

Meanwhile, a woman continues to have one of the most private and painful episodes of her life - one that drove her to the brink of suicide - splashed across the pages of the newspapers to be discussed and dissected by strangers.

The driver behind this tragic state of affairs is anti-choice National Party Senator Julian McGauran. McGauran's zealous pursuit of the issue, first through the Coroner's Court and now the Medical Practitioners Board, appears to be driven by a number of agendas.

One is to raise public awareness of the dog's breakfast of Victorian laws and court judgements that on the one hand defines abortion providers and aborting women as criminals, but on the other enable doctors to lawfully provide the procedure if they deem it "necessary" to preserve the woman's physical or mental health.

At the same time, the Crimes Act suggest the possibility that even "necessary" abortions may be illicit if they are done on a viable foetus. Such "child destruction" laws have never been tested in court. This means that the gestational age at which a foetus is considered to be capable of being born alive, or the conditions under which a viable foetus may be lawfully aborted is simply not known. When the mother's life is at risk? Her physical or mental health in peril?

The senator may hope that if he succeeds in having the Medical Practitioners Board sanction the doctor who did the abortion, he will be one step closer to the anti-choice dream of turning Victoria back to a state where the legislative view of abortion as a crime prevails over the judicial understanding of the procedure as a sometimes necessary health intervention.

Indeed, McGauran may already have achieved this end - and more - no matter what decision the board ultimately makes. Since that fateful day in 2000, when a kind-hearted deeply ethical man with a long history of commitment to women's health and autonomy decided - in consultation with colleagues, including a qualified psychiatrist who judged the woman acutely suicidal - to perform the abortion, his life has been hell, his job threatened, his career in tatters, his ability to defend himself impeded.

There wouldn't be an abortion service provider in the state, probably the country, unaware of his story and the lesson it holds for them: toe whatever line the anti-choice groups draw in the sand or pay the price. Indeed, since that termination in 2000, an increasingly defensive medical practice has left many Victorian women stranded at precisely the moment when they most need support: upon learning their foetus is stricken with a serious or lethal disorder. Having made the difficult decision to terminate, many are shocked to discover that the hospital that offered - may even have urged them to have - the ante-natal test that revealed the problem, won't extend themselves to provide a timely abortion, or any abortion at all.

McGauran isn't the only one with a case to answer. The State Coroner is also to blame. Graeme Johnstone gave Mrs X's records to the anti-choice senator before - seemingly realising his error - sealing them to all future petitioners, including the doctors trying to defend themselves against McGauran's charges. Because one thing is clear. Without those records, the senator would never have been able to put the sort of complaint before the Medical Practitioners Board that it felt bound to investigate.

But this doesn't put the board in the clear. *The Medical Practices Act* makes clear that the board may dismiss complaints it judges to be "frivolous" or "vexatious", as those words are ordinarily understood. The Merriam-Webster's *Dictionary of Law* defines vexatious as "lacking a sufficient ground and serving only to annoy or harass when viewed objectively". Whether or not this was his intent, McGauran's determination to see this case investigated, first by the coroner and then the Medical Practitioner's Board, has harassed - not to mention distressed - not just the aborting woman and her doctor, but women and doctors who provide abortions more generally.

If such behaviour doesn't qualify as vexatious, I don't know what does. It's certainly highly unethical. What moral person uses others, particularly vulnerable others, solely as a means to their own ends?

Dr Leslie Cannold is a fellow at the Centre for Applied Philosophy and Public Ethics.