Analysis and Recommendations in the Case of Mr. Thomas Ray Lippert

University of Utah Health Sciences Center
Special Review Committee
4/21/2014
Primary Recommendations

1) The University of Utah should apologize to the Branum family for the switch in samples in 1991. Such a sample switch is unacceptable, whether caused by the unethical or irresponsible conduct of Mr. Thomas Lippert or any other employee of the University.

2) The University of Utah should continue to offer paternity testing to determine whether Mr. Lippert is the biological father of children born to parents who were clients of the University of Utah 3900 South Community Laboratory during the time that Mr. Lippert was a Community Laboratory employee. This offer should continue for a reasonable period of time (such as 1 - 2 years).

3) The University should not attempt to contact patients who were clients of the Community Laboratory during the time Mr. Lippert was an employee of the Community Laboratory. It is the Committee’s assessment that contact from the University regarding this matter is more likely to cause harm to these families than to provide benefit.

Committee Process

See Appendix A

The Special Review Committee (“Committee”) was convened by the University of Utah Health Sciences Center in January 2014 to review the case and provide recommendations for an institutional response. This report is an ethical analysis of the case and does not represent a legal analysis of the issues.

The Committee process included an extended conversation between one of the Committee members (TM) and Pamela and John Branum. The Committee understands that the Branums are requesting a response by the University to three issues: 1) why Tom Lippert was employed by the University given his legal history, 2) whether Tom Lippert was a sperm donor at the time the Branums received services in the Community Lab/RMTI, and 3) whether the University will contact former patients served during Mr. Lippert’s period of employment to warn them of a possible switch in donor sample.

Facts of the Case

This case came to the attention of the University and the general public through paternity testing conducted by the Branum family, including the mother, Pamela, father, John, and adult daughter, Annie. Genetic testing was initially conducted through a commercial company, 23andMe, the results of which revealed that Annie was not the biological offspring of her father, John. Further testing through Ancestry.com revealed that Annie was biologically related to an individual in the Lippert family. (The University has not conducted its own paternity testing of the Branum family but this report assumes that the testing

* The current approach is for paternity testing to be paid for by the University for patients who used husband donor sperm. In addition, the University is paying for such paternity testing for patients who used anonymous donor sperm so long as: (a) the University has medical records indicating which donor patients selected; and (b) the University has the ability to confirm parentage for the family requesting testing; and (c) all relevant members of the family consent. The University should not provide the identity of any anonymous donor nor confirm nor deny that the anonymous donor was a particular individual, only that the child is genetically linked to the intended anonymous donor.

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performed through 23andMe and Ancestry.com is accurate.) Through contact with this individual, it was learned that a relative, Thomas Ray Lippert, was a former employee at the Community Laboratory and the co-located RMTI andrology laboratory.

Pamela and John Branum had been patients of the Community Lab in the summer of 1991 for purposes of collection and preparation of a semen sample and it was their plan and understanding that Mr. Branum’s sample was used by their private physician, resulting in the birth of Annie in May, 1992. The presumption is that Mr. Lippert switched his own semen sample for Mr. Branum’s, either intentionally or accidently, or that another employee of the Community Laboratory intentionally or accidently switched a sample of Mr. Branum’s for that of Mr. Lippert.

The University of Utah Community Laboratory was founded in the early 1980s to provide andrology services. While the Community Laboratory closed in the late 1990s, the University of Utah Hospitals & Clinics operates an andrology laboratory that continues to provide services, although it has not operated an anonymous donor sperm bank for many years. The University of Utah retains medical records from its primary Hospital-based location and has incomplete records from the Community Laboratory location.

RMTI was organized in 1984 as a corporate entity separate from the University of Utah but founded by University faculty, specifically Dr. Ron Urry and Dr. Richard Middleton. The purpose of RMTI was to provide andrology services including shipment of samples to customers across the country, and to design and market medical equipment and supplies. Following the death of Dr. Urry in 1997, RMTI was dissolved. RMTI records were destroyed by RMTI officials in approximately 2007 in the normal course of dissolving the business. A few RMTI records that were intermingled with Community Laboratory records survive and are in the possession of the University of Utah.

Tom Lippert was a part-time employee of both the Community Lab and RMTI. He was hired by the University in August of 1988 and was employed by the University until July 1993, working approximately 20 - 25 hours per week. The reasons for his separation from the Community Lab in 1993 are unknown. The purpose of the Community Lab was to provide a more convenient location for collection of donor samples, store patient and donor sperm, and manage shipments of semen samples. There is no evidence that Tom Lippert worked at the University Hospital andrology location or any other University location.

** For the sake of completeness, the Committee notes that two additional potential explanations for “misattributed paternity” are conceivable in circumstances in which the husband’s sample was intended for an insemination. The mother of the child could have been involved in a sexual relationship with a third party at about the same time the insemination was performed. Alternatively, the Committee heard testimony that in the andrology field of the 1980s and early 1990s (on a national scale), on rare occasion, a husband would quietly encourage the andrology service to mix his sample with a donor sample without informing his wife, thereby increasing the probability of a pregnancy. The Committee certainly has no evidence or suspicion that either of these alternative explanations is relevant to the Branum case. Moreover, the Committee has no evidence that the practice of mixing the husband’s sample with a donor sample without the knowledge and consent of the wife ever occurred at the University of Utah.

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His employment relationship with RMTI is less clear. The RMTI facility was adjacent to the Community Lab in a shared office suite at 1121 East 3900 South, Salt Lake City. In documents filed with the State, RMTI is classified as a "reproductive medical laboratory," a "fertility lab," and a "medical products laboratory." Records indicate that Mr. Lippert sent and received correspondence in an RMTI capacity and Pamela Branum recalls that Lippert worked for RMTI. Correspondence suggests that Lippert may have worked at RMTI until 1994. As noted, RMTI records were destroyed by RMTI officials in 2007 and only scant RMTI records have been identified as remaining within the University's records.

Mr. Lippert was a laboratory technician with responsibilities to manage and analyze the semen samples in the laboratory. Apparently he had some responsibilities to deal directly with patients being served by the clinic and sperm donors. Recent interviews with colleagues who knew Mr. Lippert at the time indicate that he was considered a conscientious employee. He was described as having a somewhat odd personality but generally was effective in his job. One record from the clinic in 1990 indicates that he was an excellent employee, while a note from 1993 indicates unspecified problems with Mr. Lippert. Mr. Lippert left employment at the University in 1993 and he died of complications of alcoholism in 1999.

Mr. Lippert had a troubled history prior to his employment at the University/RMTI. He graduated from St. Cloud College and Notre Dame Law School and subsequently obtained a faculty position at Southwest State College in Marshall, Minnesota. In 1974/1975, he, along with an accomplice, were involved in the kidnapping of an undergraduate student who they subjected to what some news reports describe as "love experiments" in an apparent attempt to foster a romantic relationship with Mr. Lippert. The "experiments" apparently involved putting the young woman in a black box and subjecting her to electric shocks, although other reports suggest that the black box was a photography dark room and there were no electric shocks used. Mr. Lippert pled guilty to a conspiracy charge for the crime and was required to undergo 90 days of psychiatric treatment and to serve two years in prison.

In 1988 when Mr. Lippert was hired by the University, the University did not conduct criminal background checks on applicants nor were such criminal background checks customary at other hospitals in the U.S. Therefore, Mr. Lippert did not undergo a criminal background check prior to, or during, his employment. The University Hospital began routine background checks on applicants between 1999 and 2003. Utah's law regarding criminal background checks in higher education was enacted in April 2007 and adopted by the Board of Regents in July 2007. In 2014, a criminal record like Mr. Lippert's would preclude employment at the University. Current interviews suggest that Dr. Urry and other employees may have been aware of Mr. Lippert's prison term during his employment, although they apparently assumed that his crime related in some way to his role as an attorney, that is, a "white collar" crime.

Prior to and during the time he was an employee at the University, Mr. Lippert was also a frequent sperm donor in the clinic in which he worked. The University has a document signed by Mr. Lippert in connection with his role as sperm donor that stipulates that his anonymity as a sperm donor will be maintained by the University. Normally the University would respect this agreement even when the donor is deceased. In this case, the Committee hereby acknowledges Mr. Lippert's role as a sperm donor at the Community Laboratory. The Committee does so for several reasons. First, in at least two separate accounts, his status as a donor was recently communicated to the press by his

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surviving wife. Second, a University employee inadvertently acknowledged his status as a donor to the Branum family when this case initially arose in 2013."

Third, it would be difficult for the University to fully address this widely publicized case without acknowledging to the public that Mr. Lippert was both an employee in the clinic and a frequent donor in the same program. Our recommendation to the University has been to limit the disclosure of facts about Mr. Lippert’s donor status to those necessary to address the issues raised by this case.

The disclosure of information about Mr. Lippert’s donor status represents a conflict between the University’s obligation to maintain the confidentiality of donors and an obligation to adequately address this case in the interests of other patients who were served by the University during his employment. We believe this ethical conflict is best addressed by acknowledging his donor status and by providing limited information about his donor status that is essential to understanding what might have gone wrong in this case. Under normal circumstances, the University would respect the confidentiality of all donors. But given the strange circumstances of this case, the University should err on the side of helping potentially affected families understand their situation. At the same time, the University should attempt to prevent unnecessary emotional distress to these families. Therefore we believe it is important for some confidential facts to be disclosed, including the duration of his status as a donor and the fact that his donations were frequent. But additional information is unlikely to be helpful to families and might cause unnecessary concern and distress. Therefore we do not recommend disclosing information about the number or specific frequency of donations, the known number of children of Mr. Lippert from his legitimate donations, or the geographic locations of clinics around the country that purchased his samples.

Contemporary standards would no longer permit gamete donors to work in the facility through which donations were processed. In addition, as noted above, the University has not operated an anonymous sperm donor bank for many years.

Mr. Lippert was a frequent donor between 1983 and 1993. His donor profile includes information about his physical characteristics, his (good) health, his family health history, and his law degree. He denied alcohol or drug use. His samples were used by the clinic and were sent to several dozen other fertility clinics around the country, when requested by patients or physicians at those clinics.

Experience in the fertility field indicates that it is common for a small number of donors to be selected by multiple couples. Based on this experience, concerns have been raised in the fertility field about the possibility of offspring of the same donor meeting and possibly becoming reproductive partners. According to Dr. Douglas Carrell, standards existed in the 1980’s and 1990’s that limited the number of samples used from a single donor in a particular area. The population of the area in which a single donor’s samples might be used determines the number of samples permitted by that donor. That is, fewer donations would be acceptable in a smaller community compared to a larger community.

At the time Mr. Lippert was a donor, records indicate that Dr. Urry and his team limited the number of pregnancies from a particular donor to 10 within

"The Committee is aware that other current or former University employees may have acknowledged Lippert’s status as a donor as well.

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the Wasatch Front area. Because donor samples were typically provided to private clinicians outside of the University of Utah who performed the actual inseminations (inseminations were not done in the Community Lab or RMITI), Dr. Urry’s team would have relied on feedback from those outside physicians in keeping track of how many successful pregnancies had resulted in a particular geographic region from a particular donor. In general, artificial insemination at the time of Mr. Lippert’s employment at the University led to a successful pregnancy in approximately 10 - 12% of women per attempt. The number of known children of Mr. Lippert along the Wasatch front is substantially less than 10. The Community Lab/RMITI did not track the number of successful pregnancies from donor samples sent to other clinics around the country.

This case arose because the Branums had the expectation that John Branum was the biological father of Annie Branum. The Branums did not intend to use donor sperm to achieve a pregnancy. Therefore, Tom Lippert’s sample could have been used by the Branums only if there was an intentional switch of samples, presumably by Tom Lippert, or an accidental switch of samples by Tom Lippert or another technician in the laboratory. An accidental switch might have occurred because Mr. Lippert’s samples were being processed in the same laboratory where he worked. Records indicate that Mr. Lippert often completed the lab work on his own donations and filled out the shipping records on his own donations.

Dr. Carrell described quality assurance mechanisms being used in the laboratory at the time to prevent sample switches. The procedure is as follows: the donor/patient would label the specimen container, then the technician would hand label the tubes and syringes used for the processing with the donor identification. The tubes would be labeled with the donor’s name, date, and procedure performed. Then the technician would verify that the name on the specimen container matched the labeling he or she performed and proceed with the processing. Each donor sample and the associated tubes also were color coded to further reduce the possibility that a sample could be mislabeled as it was processed. The system was improved in about 1993 with the addition of another unique identifier to the label. Interviews indicate that it was uncommon for two or more sperm preparations to be performed simultaneously in the laboratory. Despite these measures, lab memoranda in reference to other cases indicate that samples were sometimes mislabeled or mishandled, lab paperwork contained errors, and other irregularities occurred.

Based on this information, the Committee cannot exclude the possibility that an accidental sample switch occurred in the laboratory resulting in Mr. Lippert’s sample being used by the Branums.

The University clinic served an estimated 1500 couples during the five years that Mr. Lippert worked at the University of Utah. At the time of this report, the Branum case is the only identified case in which a possible intentional sample switch occurred. Based on the available information, the Committee is unable to determine whether other cases exist or to estimate how many other cases might exist. At the time of this report, several couples who had received andrology services during Mr. Lippert’s employment have requested paternity testing. The Branum case remains the only case identified in which Mr. Lippert’s sample was switched with another donor’s sample.

The Branums have publicly requested that the University notify other couples who received fertility services during the time Mr. Lippert was an employee, as there may have been other sample switches that occurred. A specific concern is that Lippert’s offspring might unknowingly become
reproductive partners, leading to an increased risk of congenital problems in their offspring.

There is no question that the Branum family has an interest in every aspect of the case that might bear on how they were the victims of a switch, and that if other families have been similarly wronged, that they too would have such an interest. The University should work to address their concerns and allay their worries. But at the same time, the University has certain obligations to sperm donors who were promised confidentiality. Whatever the suspicions, it is not certain that Mr. Lippert acted intentionally or even carelessly, and therefore the University cannot completely ignore its obligations to him, especially with respect to information that offers little concrete benefit to the families.

Analysis

The Committee is unable to determine whether the sample switch in the Branum case was due to an intentional or an accidental sample switch. As noted, the University is aware of problems at the time with measures to prevent such switches. The University should assure current patients that quality measures have improved dramatically since the 1980’s and early 1990’s. In the intervening years, FDA oversight of andrology laboratories was implemented nationwide. The FDA specifically excluded reproductive tissue from its regulatory oversight until 2001, the year in which the FDA proposed that it would implement screening, testing, inspection, and other requirements applicable to andrology laboratories. These FDA requirements became effective in 2005 and our interviews indicate that the University of Utah has closely adhered to these requirements since their implementation. FDA regulations and accreditation require stringent sample management systems to prevent accidental sample switches. Second, the University and the andrology field in general, no longer permit employees to donate samples. Third, the University no longer accepts anonymous semen donations. Finally, the University has implemented routine criminal background checks for all potential employees. In the aftermath of this case, the University may wish to take measures to reassure current patients that contemporary care at the University meets or exceeds all professional standards for andrology services.

The Branum case raises serious concerns for a number of individuals that the Committee will address in turn. First, there are couples who selected Mr. Lippert as an anonymous donor and the children who resulted from these inseminations. Second, there are couples who may have unwillingly had Mr. Lippert as a donor due to a sample switch and the children who resulted from any such inseminations. We will address these issues in turn.

In our analysis, we make a distinction between being “harmed,” a term that suggests a tangible, negative impact such as a cost or a physical injury, and a “wrong” that suggests being a victim of unethical behavior that does not cause tangible harm. For example, we might say that a patient who has been misled by a surgeon about the risk of a procedure was wronged but not harmed if the procedure provides the expected benefit. This distinction is not meant to minimize the serious ethical concerns over wrongful behavior, but to emphasize how complex this case is in terms of the potential impacts on affected individuals and families.

Children of Couples Who Chose Mr. Lippert as a Donor

Fertility problems are common, affecting an estimated 10 - 12% of couples of reproductive age. Artificial insemination with donor sperm is one of several

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options for couples with infertility when male factors are the apparent cause of the infertility. In these circumstances, couples may choose one or several donors based on descriptions of the donors, including physical characteristics, demographics (e.g., race or ethnic background), educational attainment, personal health history and family health history and other personal factors such as religion and occupation. Couples often seek to choose a donor who is similar to the social father in many respects. Donors are typically paid a modest fee for each sample provided. Services like the no longer operational University Community Lab and RMF assist couples by identifying and screening donors, obtaining the semen sample, analyzing and processing the sample, and delivering the sample to a clinician who will perform the insemination.

The literature demonstrates that couples and their children from gamete donations function in the same way as other families. Parents may or may not decide to communicate the circumstances of a child’s conception to the child, but increasingly, open communication about these issues is preferred and supported by many professionals and policy makers in the field. The literature indicates that younger children generally cope well with the disclosure that they are the product of insemination by donor. Learning this information for the first time at an older age is associated with somewhat greater shock and confusion. Children in these families are often curious about their biological fathers and may seek to meet them, typically in their adolescent or adult years. Open communication about these issues and the ability to learn about their biological father and his health and family history can provide psychological and medical benefits to the child.

A family medical history is a useful tool in healthcare planning; therefore it is helpful for individuals to have an accurate knowledge of their biological parentage. For both psychological and healthcare-related reasons, the field of fertility services is moving away from anonymous semen donation and increasingly children from these services have the ability to know the identity of their biological fathers and contact these individuals. Nevertheless, many children resulting from anonymous donations in past years will not have the ability to know the identity of their biological fathers or benefit from a more complete family history. The literature indicates that many of these children will not have been told by their parents that they were produced through fertility services with use of an anonymous donor.

Any children who resulted from parents who requested donations from Mr. Lippert would find themselves in the same situation as other children who were conceived through use of an anonymous donor. That is, they will not know the identity of their biological father and will not be able to benefit from a medical family history from their father’s side. A question addressed by the Committee was whether children of couples who selected Mr. Lippert as a donor were harmed or disadvantaged in a unique way by virtue of having Mr. Lippert as their biological father.

Mr. Lippert has two traits that deserve comment in this regard. He was an alcoholic and died of complications from his alcoholism. Research strongly suggests that there are genetic factors in alcoholism, meaning that biological children of alcoholics have a somewhat increased risk of alcoholism themselves. However, the genetics of alcoholism are complex and there are no single genes or even a number of genes in combination that have been identified to be clearly linked to risk for alcoholism. Presumably there are many genes that work in concert along with environmental triggers that lead to this disease. Many children of alcoholics do not become alcoholics and many children of parents
without alcoholism suffer from this condition. Therefore the Committee does not believe that knowledge of Mr. Lippert’s alcoholism would provide any substantial benefit to his biological children. Further, alcoholism is relatively common and we cannot know how many other donors that the couple might have chosen suffered from alcoholism at the time or developed alcoholism in their later years. So the Committee does not believe that the children of couples who chose Mr. Lippert as a donor are uniquely worse off than children of other anonymous donors by virtue of his alcoholism.

A similar analysis follows for considerations about Mr. Lippert’s criminal history. “Criminality” is complex and whether there are any genetic contributions to criminal behavior is highly controversial. It is certain that “criminality” is not a simple hereditary trait. Criminal behavior takes many forms from shoplifting to financial fraud to murder so it would not be reasonable to expect a simple genetic or environmental cause for such a wide range of behaviors. Consequently, there is no health or welfare reason to be concerned about Mr. Lippert’s children due to their biological father’s criminal history. Further, we have no information about the potential criminal histories of other anonymous donors.

The Committee does not believe that biological children of couples who chose Mr. Lippert as a donor were harmed, wronged, or disadvantaged compared to children of other anonymous donors by virtue of his medical or criminal histories.

Couples Who Chose Mr. Lippert as a Donor

As noted, the evidence suggests that Tom Lippert was selected as a donor by a number of couples locally and nationally. The information available to couples about Mr. Lippert did not include information about his alcoholism or his criminal record. However, the Committee cannot determine whether he was an alcoholic at the time he signed as a donor, nor would individuals likely reveal alcoholism as a condition in the donor health history form. Donor forms do not ask about criminal history and, as noted above, this is not considered a heritable condition. The donor selection process also involves in-person interviews to get a subjective sense of the person’s personality. However, to the Committee’s knowledge, these interviews did not involve questions about criminal history. Further, it is possible that some other donors had histories of criminal or other antisocial behavior in their pasts that were not revealed. Therefore the Committee cannot determine whether there was any deception by Mr. Lippert in his activity as a donor by not disclosing his complete personal history.

The practice of anonymous sperm donation necessarily entails a degree of uncertainty about the nature and history of the individual chosen by couples as a donor. Had Mr. Lippert been forthright about the full details of his personal history, no doubt he would have not been an acceptable donor to the program or to couples looking for a gamete donor. But the process of donor selection at the time did not permit donors to be excluded based on the particular traits of concern with Mr. Lippert. This also means that other donors probably had undesirable traits that were not revealed during the donor selection process. Although standards both on the donation side and the employment side have become more rigorous in recent decades, there is no evidence that the laboratory performed below acceptable standards at the time with respect to accepting Mr. Lippert as a donor or that he behaved differently than other donors in the system at that time. Therefore the Committee does not believe that couples who chose
Mr. Lippert were necessarily deceived or harmed by Mr. Lippert in the donation process compared to other couples that chose an anonymous donor.

Finding 1: The Committee does not recommend contacting couples and their children who chose Mr. Lippert as a donor. Such contact would provide no significant benefit to the couples or the children that resulted from those services and might create unwarranted concerns as well as disruption to families of those couples, if any, who chose not to share the circumstances of the conception with their children.

As described above, donors to this fertility service signed agreements with the University that commit the University to maintaining their anonymity. The Committee supported an acknowledgement of Mr. Lippert’s donor status for several reasons described above. However, we do not support the release of his donor number that would enable couples who chose him as a donor to identify their donor as Tom Lippert. In the absence of a substantial benefit to those couples, this breach of privacy would be unethical and a poor precedent for other cases. Further, the University seeks to maintain trust of other donors to the program who believe the University has made a commitment to maintain their privacy.

Finding 2: The Committee recommends that Mr. Lippert’s donor number remain confidential and that it not be publicly released unless new information emerges that supports a compelling justification for release.

Children of Couples Who Unwillingly Had Mr. Lippert as a Donor

As discussed above, the Branums did not choose Mr. Lippert as a donor and received his sample through what was an intentional or accidental sample switch by Mr. Lippert or another Community Laboratory or RMTI employee. Annie Branum is the biological child of Tom Lippert and Pamela Branum. Based on media accounts, Ms. Branum is a healthy, bright, and talented young woman. Of course, had the samples not been switched she might well be a healthy, bright, and talented young woman, but she would be a different young woman. In that respect, had the samples not been switched, and as Annie Branum has indicated to the media, she might well have different skills, traits, and interests than those she now has. In her public comments on this case, Ms. Branum has not claimed that she was harmed by virtue of her conception through Mr. Lippert’s actions, although there may be some psychological harm from the realization of her parenthood. Therefore, in the absence of a sample switch, Ms. Branum would be a different person and it is impossible to determine in what ways she might be different from the person she is.

At the time of this report, there is no evidence that any intentional or accidental switching of a Lippert donation occurred beyond the Branum family. However, even if other cases did exist, the same conclusions would follow. While these children (now adults) might wish that they had a biological relationship with their social fathers, and they might be shocked and disappointed to learn the facts around their conception, they are unique individuals who are the product of their upbringing and their life experiences, in addition to their genetic heritage. We cannot know who they would be as persons with a different biological father and, of course, there is no remedy for their current circumstances. Therefore even if other children resulted from a Lippert sample switch, the Committee does not conclude that these children have been harmed or wronged despite the possibility of the unethical or irresponsible conduct by
Mr. Lippert (or another employee of the clinic). However, we fully acknowledge the profound impact that learning this shocking information would have on individuals who have lived their lives with a mistaken understanding of their history. If there is harm in these circumstances to the child, it might result from learning this surprising information, not from their genetic origins per se.

Couples That Unwillingly Had Mr. Lippert as a Donor

The Committee cannot determine whether the sample switch in the case of the Branums represents an accidental switch by Mr. Lippert or another laboratory technician, or a deliberate switch by Mr. Lippert or another technician. Either explanation is unacceptable from the perspective of the Committee and, presumably, the Branums and any other couples who might be similarly affected.

An accidental switch would represent a serious breakdown in laboratory procedures that are designed to maintain quality of the samples and to prevent exactly this type of error. Records, including incident reports, from that era suggest that the laboratory had occasional problems with sample switches despite what was a carefully designed set of procedures to prevent such problems. Since that era, as noted previously, the procedures have been substantially strengthened to reduce the possibility of sample errors. Nevertheless, with a matter of this importance to patients, accidental sample switches are unacceptable. An accidental sample switch may be a possible explanation for what happened to the Branums, but it is not an excuse.

Even more concerning is the possibility that the samples were intentionally switched by Mr. Lippert. Couples who use artificial insemination with the husband’s sample desire to have a child who is biologically related to both parents. This is a powerful interest for many couples. This interest is strong despite the fact that families who adopt children or who have children through gamete donors (eggs or sperm) are largely indistinguishable from families who have children that are biologically related to both parents. Having a child biologically related to both parents is the usual choice by most heterosexual couples unless there are problems with heritable diseases or infertility that might lead couples to pursue different options.

When fertility problems arise, couples often choose to use the husband’s sample for one or more inseminations before turning to a sperm donor (assuming clinicians believe the husband’s sperm might be effective in achieving pregnancy). Therefore, an intentional switch of a husband’s sample with another donor without the full knowledge and agreement of the couple would be highly unethical.

Couples in this circumstance are wronged from the deception and from the thwarting of their intentions in building their family. In the case at hand, Annie Branum by all accounts is a healthy, talented individual with good family relationships. Her life is positive to herself and her parents rather than a harm. Few, if any, other interests in life are as important as building a family so an intentional deception at the core of this effort represents a serious breach of trust. Couples would be wronged through such a deception even if the child that resulted proves to be a healthy, talented individual who is deeply loved by his or her family.

If Mr. Lippert intentionally switched the samples, Mr. Lippert would be responsible for this unethical conduct. The University would share in responsibility to the extent that Mr. Lippert was an employee of the University. The University has significant responsibilities to maintain high standards for the quality and safety of its services. The University may have failed in this regard if
the sample switch was accidental. However, it is difficult if not impossible for institutions to prevent deliberate misconduct by employees. Standard operating procedures are not designed to prevent employees who are knowledgeable about their work domains from circumventing protective measures. If his co-workers at the time had reason to believe that Mr. Lippert was engaged in unethical behavior, then a failure to respond to this information would confer substantial responsibility on the University. In this case, the evidence from the Community Lab indicates that Mr. Lippert was considered an effective employee. There is no evidence that indicates there was any suspicion that he might be behaving in such a plainly unethical fashion as to deliberately switch donor samples.

Mr. Lippert’s criminal behavior in 1974-1975 was bizarre and adds a twist to this analysis. Some of the employees of the Community Lab were apparently aware of some type of past, unspecified legal troubles involving Mr. Lippert but his legal problems were believed to be related to his former training as a lawyer or potentially something involving the IRS, rather than any allegations of sexual crimes or crimes of violence. The records indicate that Mr. Lippert was considered a capable employee who was observed in that capacity for 5 years. Therefore the Committee does not conclude that other employees should have had reason to believe Mr. Lippert was at risk for the misconduct suggested by the facts of this case.

A central question is whether couples that used the services of the Community Lab/RMTI between 1988 and 1993 should be contacted and informed about this case. Presumably the purpose of such contact would be to inform those couples that there is a possibility that an intentional or unintentional switch in samples involving Mr. Lippert occurred. The University estimates that approximately 1500 couples used the andrology services during that time period.

A first consideration is whether the University should support simple transparency as the ethically appropriate approach to this case. That is, it can be argued that the most ethical approach is usually to be transparent with patients about errors or other adverse outcomes and that such transparency requires notification of anyone who might be affected. However, the circumstances of this case weigh against simple transparency as the guiding principle for several reasons. As a starting point, not all inseminations lead to pregnancies, and the University does not have records of which patients actually became pregnant from inseminations. Next, there is only one case to date in which a sample switch involving gametes from Mr. Lippert has occurred. It is possible that this is the only case of its kind. If so, the University would be informing couples about a risk that does not exist. Third, there are real possibilities that notification of some couples will cause harm. Further, this is not a circumstance in which these couples can take action to reduce the possibility of future harms or to ameliorate the situation. Because there are potential benefits and substantial harms that might result from notification, the Committee believes it is most appropriate to weigh those potential benefits and harms in coming to its recommendations.

As noted, the Committee concludes that any couples that were a victim of an intentional sample switch were deceived and thus wronged by virtue of a switch. The question at hand is whether contacting all of these couples at this time would be most appropriate from an ethical perspective. The interests of any couples who were victimized in this fashion are a first consideration. These couples and their children might benefit from an accurate family history on the father's side. This could assist these individuals in making more informed decisions and eliminate the risk that the children would make healthcare
decisions based on a false assumption that their social father was their biological father. In this case, the potential health benefits of notification would be greater if Mr. Lippert had a medical condition that was hereditary or a strong family history of a hereditary condition. If, for example, Mr. Lippert's children were at 50% risk of inheriting a gene associated with a high risk of, say, colon cancer, a potentially preventable condition, then alerting his children to this risk could provide substantial benefit. But we have no evidence of a hereditary condition of this type in Mr. Lippert's family. To the Committee's knowledge, there is no strong family history of disease in the Lippert family that would indicate particular medical management for his children.

In contrast, information that the social father is not the biological father could be disruptive to many families. These children would be in their 20s or 30s at this point. Family relationships are varied and complex so it is very difficult to predict how this information would be received. As noted, younger children tend to cope well with learning information about their conception by donor but older children tend to experience a greater level of shock and confusion.

The Committee believes that the identification of "misattributed paternity" in cases secondary to a sample switch that occurred two to three decades before the notification is likely to have a negative impact on many families. Without question, this information would come as an enormous shock. Basic assumptions on which the family functioned for decades could be undermined. Relationships between father and child could be strained in some families. Further, it is hard to see how this information would commonly result in improved relationships between members of a family. This belief in the likely negative impact of misattributed paternity is based on our intuition or common sense as fathers, children, and family members ourselves rather than on evidence from other similar cases in the literature. (We are not aware of any literature on this type of unusual situation in which both parents and an adult child learn about misattributed paternity.) The concern for the potentially negative impact on many families weighs heavily against a decision to find and inform families of this information.

Another consideration is the response of families to such a notification if they pursue paternity testing and find that there was not a sample switch. This scenario would represent the vast majority of couples. These couples might be relieved but they would only be relieved because the notification itself caused them distress. That is, there is no net benefit for couples who are falsely alarmed and then relieved through further testing. Indeed, the considerable time, effort and anxiety associated with the testing would confer a net burden on these individuals. Further, testing of the child would be necessary to determine whether a sample switch occurred. Therefore the child would need to be informed of the circumstances of his or her conception. Many couples may not have informed their children of the circumstances of their conception, particularly if they assumed that the social father was the biological father. This information might be sensitive within the family and is unlikely to confer any benefit when no sample switch occurred. The Committee determines that notification would not serve the interests of couples who were not victimized by a sample switch, nor would the interests of their children be served.

The Branum family raised the concern that children of Mr. Lippert might unwittingly become reproductive partners. This is a potential problem in the field in general due to the popularity of a small number of donors whose offspring may live in the same geographic area. As noted above, Dr. Douglas Carrell believes that the number of children born through the legitimate
donation activities of Mr. Lippert would have been limited to 10 or fewer in the Salt Lake City area. The Committee has no way to confirm whether this standard was met in this case but documentation supports that Dr. Urry and his team were committed to this practice. If Mr. Lippert intentionally switched other samples in addition to the Branum's, there could be children from Mr. Lippert in the Salt Lake City area from both his legitimate donations and from illicit sample switches. As noted, the known number of children of Mr. Lippert from legitimate donations is substantially less than 10.

If two children of Mr. Lippert were to meet, they would share the same father but not the same mother. They would be half siblings, sharing, on average, one-quarter of their genes. Reproduction by half-siblings carries a significant risk to their offspring. Population studies indicate that the children of half-siblings carry a tenfold increased risk of child mortality. While this risk is substantial, the large majority of children from such unions will be healthy.‡‡

Regarding a decision to notify former patients about this risk, presumably we would focus on couples that might have been victimized by Mr. Lippert, not those who chose him as a donor. Given the fact that other donors may have a number of children in the local population, there is no reason to single out recipients of Mr. Lippert's samples for special notification due to the risk under discussion. If only couples that were potentially victimized by Mr. Lippert are notified, then this would not solve the problem of sibling marriages because a child of a victimized couple might become a partner with a child from a legitimate donation by Mr. Lippert. The only way for new reproductive partners in the Salt Lake City area or elsewhere to assure that they are not half siblings from Mr. Lippert or another donor would be for all couples who know they each were conceived through artificial insemination to undergo genetic testing to evaluate whether they are genetically related. The Committee does not support such a recommendation.

The Committee does not believe that notifying couples that might have been victimized by Mr. Lippert is ethically appropriate due to the risks associated with this information and the limited value of this information for constructive responses. This justification stands on its own. However, a further element to consider is the difficulty of identifying and communicating with these individuals. The University has names and addresses for many of these individuals that were accurate at the time of their service between 1988 and 1993. Therefore these records are 20 to 25 years old. It would be an enormous undertaking to try to locate 1500 couples after this period of time. Many people move frequently, both locally and to other communities. Couples commonly divorce, separate, and perhaps remarry. Their children, now adults, would need to be tested to determine paternity and these adult children will commonly be leading separate lives from their parents. Further, many names are similar so a notification process would require a high level of assurance that it is the correct couple who received services from the Community Lab/RMTI. Sending a notification to the wrong couple could be confusing and disturbing. Accordingly,

‡‡ In 2010, overall mortality for infants under 1 year of age was 6.15 deaths per 1000 live births. For children ages 1 – 4, the death rate was 26.5 deaths per 100,000 children, and for children ages 5 – 14, the death rate was 12.9 deaths per 100,000 children. A tenfold increase in mortality in these age groups would still mean that the large majority of children would be unaffected.

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a letter from the University would have to be cautiously worded, perhaps reducing the ability of couples to recognize the implications of the notification. If there were clear benefits and limited risk to couples from such a notification, then the challenges of locating these individuals would be justified. In this case however, these challenges further support a decision not to attempt notification of those who might have been victimized by Mr. Lippert decades ago.

**Finding #3:** The Committee does not recommend contacting couples that received fertility services by the Community Lab/RMTI during Mr. Lippert’s employment in order to warn them of a possible sample switch. The justification for this recommendation is that the risk of having been victimized by Mr. Lippert might be very low, the burdens of this information are likely to outweigh the benefits to families, and the challenges of accurately identifying and informing hundreds of couples after two to three decades are enormous.

Jeffrey R. Botkin, MD, MPH  

Date: 4/21/14

Thomas L. Miller, MD  

Date: 4/21/14

John J. Bohnsack, MD  

Date: 4/21/14
Appendix A

Summary of Factfinding in Lippert/Branum Case

a. University of Utah has reviewed the following records:

i. Generally
   1. 371 boxes of hard copy documents plus approximately 170,000 sheets of microfilm reviewed in total (Total Record Review). Generally the 371 boxes relate to University Hospital andrology laboratory and the microfilm relates to the Community Laboratory operation.
   2. Limitations
      a. There are significant overlaps in the two document sets. For instance, Community Laboratory records can be found in both the microfilm and at times in the hard copies. Similarly, what few RMTI records were identified can be found in either document set. Records from the relevant time period (1988-93) and pertinent to the case can be found in either location with little predictability as to which box or which microfilm cassette.
      b. The records are kept in neither chronological nor alphabetical order. Business records may be intermingled with donor records. The records of a donor from 1991 may be found for instance among other files from 1991 or from a much later time period.
      c. The microfilm that pertains to the Community Laboratory location lacks meaningful indexing either by date or by name.
      d. The hard copy boxes (largely University Hospital andrology records) do have some donor indexing especially for more recent records but generally are not directly pertinent to the case.

ii. Key medical/donor records found within the Total Record Review
   1. [Redacted]
   2. [Redacted]
   3. Pamela Branum initial incident report 2013, including DNA/genealogical records submitted by her
   4. Thomas Lippert University of Utah Community Lab (3900 South) donor file and donation history

iii. University of Utah personnel files
   1. Thomas Lippert

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2. Dr. Ronald Urry
3. Dr. Richard Middleton
4. Linda Bury (fka Linda McReynolds)
5. Jane Jeremeinko
6. Pulled from the Total Record Review: Miscellaneous and voluminous administrative records touching at times on various personnel issues at Community Laboratory

iv. Community Lab business records—brief summary of those records taken from the Total Record Review
   1. University of Utah Community Lab (3900 South) business/administrative records include shipping records, donor files, financial records, and facility records (such as location of samples in storage)

v. Miscellaneous Andrology Administrative Documents extracted from the Total Record Review

vi. Scant RMTI business records pulled from the Total Record Review
   1. RMTI articles of incorporation and related documents filed with State of Utah
   2. Handful of other miscellaneous RMTI other documents

vii. Media records
   1. Pamela Branum media statements
   2. Jean Lippert media statements
   3. Your Genetic Genealogist blog post

b. University of Utah has interviewed and/or received information from the following individuals in connection with this investigation:

   i. Sam Finlayson, M.D., Chair, Department of Surgery, University of Utah
   ii. Pat Cartwright, Chief, Division of Urology, University of Utah
   iii. Doug Carrell, Ph.D., Director of Andrology Laboratories, University of Utah
   iv. C. Matthew Peterson, Chair, Department of Ob-Gyn, University of Utah
   v. Blake Hamilton, Associate Professor, Urology, University of Utah
   vi. Lawrence Mauck, Financial Manager, Department of Surgery, University of Utah
   vii. Erika Lindley, Financial Manager, Department of Ob-Gyn, University of Utah
   viii. Colin Thomas, Manager, Utah Center for Reproductive Medicine
   ix. Lynda Faldmo, R.N., Director University of Utah Hospitals & Clinics Risk Management
x. Rick Smith, Director, Health Sciences Human Resources, University of Utah
xi. Joan Gines, Associate Vice President Human Resources, University of Utah
xii. Andrea Brown, Director Employee Services, University of Utah
xiii. Heidi Thompson, Director Medical Staff Services Office, University of Utah Hospitals & Clinics
xiv. Linda Bury, R.N., University of Utah Hospitals & Clinics
xv. Dick Middleton, M.D., Professor Emeritus, Urology, University of Utah
xvi. Pam Urry, spouse of Dr. Ron Urry (Dr. Urry is deceased)
xvii. Benjamin Emery, Andrology Laboratory Manager, University of Utah
xviii. Lori Barnard, Urology
xix. Debbie Foster, Urology
xx. Aaron Wilcox, Urology

c. University of Utah is unable to review certain documents or talk to certain key individuals because they are not available
   i. RMTI business records. Scant RMTI records remain (except corporate records filed with State of Utah and handful of other RMTI records which were maintained by University.
      1. Following the death of Dr. Urry, RMTI records were in the possession of his surviving spouse Pam Urry and also Linda Bury. They reported that all RMTI records were destroyed between 2005 and 2007.
   iii. Thomas Lippert, former University of Utah employee and medical technologist at University Community Laboratory (3900 South) and RMTI. Deceased 1999.

d. University of Utah has received confirmation from the following individuals or University business units that all relevant records have been made available for investigation:

   i. University of Utah Department of Surgery confirmed it has no files regarding RMTI and that it has no files regarding Dr. Urry or Dr. Middleton other than personnel files already produced.
   ii. University of Utah Division of Urology. Pat Cartwright and Blake Hamilton indicated that all relevant files have been produced for review.
   iii. University of Utah Department of OB/GYN has verified that all pertinent Department of OB/GYN and UCRM records have been produced for review.
   iv. University of Utah Hospitals & Clinics Health Information. Lynda Faldmo, working with Health Information, confirmed that all hospital medical records regarding Branums have been produced.
v. Dr. Richard Middleton, Professor Emeritus of Urology, and an incorporator, director and officer of RMTI, confirmed he has no relevant documents.

vi. Benjamin Emery, current Andrology lab manager, confirmed he is not aware of any records other than those already produced.

vii. Debbie Foster, Andrology, confirmed all pertinent records have been made available for review.

viii. Lori Barnard, Andrology, confirmed that all relevant records have been made available for review.

ix. Linda Bury (fka Linda McReynolds) indicated to Blake Hamilton that she destroyed all RMTI records between 2005 and 2007.

x. Linda Bury (fka Linda McReynolds) indicated to Blake Hamilton that she had spoken to Pam Urry (widow of Dr. Ron Urry) and that Pam said she had no records from that time period.