

**Briefing Note
October 24, 2006**

Title: Retesting of Breast Cancer Patients (ER/PR)

Background:

- In May 2005, the laboratory at the Health Sciences Centre discovered inconsistent results in breast tumour samples. This happened when a patient who had tested ER (estrogen) and PR (progesterone) negative in 2002 on a DAKO system was retested on a new VANTANA system in 2005 and the test results were positive. The tests examine hormone receptors in breast cancer cells for ER and PR and help physicians determine what course of treatment to follow for each patient.
- Eastern Health sent 939 collected tissue samples for patients who had negative ER and PR results from 1997 to 2005 to Mount Sinai for retesting. This number represents about 27% of the patients tested for breast cancer. All retesting has been completed. Eastern Health did not advise patients of the retesting and many learned of it from the media.
- Last Spring, the family of the late Michelle Hanlon filed a claim against Eastern Health. Ms. Hanlon tested negative on a breast tumour sample in 2000 but on retesting was found to be positive. The family claim that if the correct test result was known earlier, the appropriate treatment would have been started which would have prevented the spread of her disease, and possibly her death. Eastern has filed a statement of defence asking that the case be dismissed.

Current Status:

- Eastern has not publicly released the results of the retesting at this time except confidentially to individual patients. The Authority is currently reviewing all charts to ensure that all individuals have been contacted. The full review should be completed by the end of November.
- CBC News reported on October 19 that forty-one women join class action bid on faulty breast cancer tests. The Independent, in an article on October 20, reported that at least 39 cancer patients have filed papers with Ches Crosbie, a St. John's lawyer, to bring forward a class action suit against Eastern Health.
- A claim has been filed, named Verna Doucette vs. Eastern Regional Health Authority (ERHA), with the Newfoundland Supreme Court, Trial Division. Government is not named as party to the action. Ches Crosbie is representing the plaintiffs; Dan Boone is representing Eastern Health and Judge Carl Thompson is assigned as case management judge.

- The claim alleges faulty ER and PR testing by Eastern Health, resulting in the administration of inappropriate treatment to some cancer patients. The claim has not yet been certified as a class action. It is still in the early stages of litigation.
- Eastern Health has to file an affidavit in court by December 15, 2006. The lawyers have to file documents and case law with the court by February 9, 2007 at which time a request can be made for the court date for the hearing of the certification application.

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