Interim Statement CAUT Committee of Inquiry Regarding Allegations of Lack of Informed Consent in Research Conducted by Dr. Anne Duffy and Dr. Paul Grof (January 19, 2011)

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On March 23, 2005, three employees of the Royal Ottawa Hospital and the Institute of Mental Health Research entered the office of Dr. Anne Duffy at the Institute of Mental Health Research in Ottawa after office hours and without Dr. Duffy or any of her research staff present. They seized research and clinical files, computer files, and some personal documents and left a notice on the door which suggested that the removal had been ordered by the ROH administration, the IMHR administration and the Research Ethics Board (REB). (The note stated literally: "PLEASE BE ADVISED THAT ALL CLINICAL RECORDS AND RESEARCH RECORDS HAVE BEEN REMOVED FROM THIS AREA" and contained further, without signatures, "ROH ADMINISTRATION RESEARCH ETHICS BOARDS IMHR ADMINISTRATION"). Although an administrative support person of the REB participated in the seizure, it appears that the REB had not discussed this matter prior to the seizure and that without explicit mandate from the REB, this support person had no authority to act on behalf of the REB.

Three months after the seizure, the Canadian Association of University Teachers appointed the authors of this Interim Statement as members of an Independent Inquiry (*The Committee of Inquiry Regarding Allegations of Lack of Informed Consent in Research Conducted by Dr. Anne Duffy and Dr. Paul Grof* ("the Committee") to investigate the circumstances surrounding the seizure and to make any relevant recommendations deemed necessary. The final report of the Committee has not yet been released. The delay in the submission of the report was first due to ongoing legal disputes between the IMHR, the University of Ottawa, and Dr. Duffy and Dr. Grof, and more recently due to personal circumstances of members of the Committee of Inquiry that are

beyond their control. The Committee expects to release its final report in the coming months.

According to information we have received thus far neither Dr. Duffy nor any of her research staff or colleagues involved in her research projects had received 1) prior notice of this seizure, or 2) clear information at an earlier stage about problems that could be at the basis of the seizure. The Committee has been advised that the clinical files pertained to patients treated by Dr. Duffy in her capacity as psychiatrist at the Royal Ottawa Hospital. The research files seized included research files of ongoing research projects in which Dr. Duffy was one of the principal investigators or co-investigator, as well as allegedly research files on the historical cohorts of lithium research, which contained data of several decades of multicenter collaboration in lithium research by Dr. Grof, Dr. Duffy's co-investigator. Dr. Duffy's research records also related to long-term cohort studies and several files contained research reports and clinical information gathered over a long period of time, including data of other research projects undertaken outside of the University of Ottawa.

The research records were identified with separate codes for each individual research participant and contained consent forms, reports of research interviews, clinical data obtained in the course of research or copied from clinical records, and other relevant research information. All records contained readily identifiable personal information on research participants and their families. The research participants were either people suffering from mental illness or healthy research subjects who participated as controls. Many of the research participants had a long-standing relation with Dr. Duffy and had participated in several studies.

In the absence of clearly defined procedure to whom to turn to get access to the seized files, the seizure sparked various court proceedings between Dr. Duffy and Dr. Grof on the one hand, and the administration of the Royal Ottawa Hospital, the Institute for Mental Health Research, and the University of Ottawa on the other hand.

The Committee has recently been informed that the significant delay in submitting its report has resulted in speculations about the findings of the Committee. With this interim statement, the committee wants to dispel unwarranted interpretations for the delay that inadvertently could harm the reputation of some of the people involved in this dispute. More particularly, the Committee wants to make public with this interim statement its preliminary findings of a limited subsidiary inquiry it has conducted in connection with allegations about lack of appropriate informed consent for research conducted by Dr. Grof and Dr. Duffy. These allegations were allegedly at the basis of the seizure and have become the subject of another dispute between the parties. While the Committee's work has not yet been completed for the reasons set out above the Committee concluded that, in the interests of fairness, this preliminary interim report, which is subject to change if new information comes to its attention, should be released prior to the final report being issued.

The following constitutes an analysis of some of the information the Committee has received to date.

The administrators responsible for the seizure informed Dr. Duffy and Dr. Grof following the seizure and following explicit requests for explanation by Dr. Duffy that the drastic action of seizure without any prior warning of wrongdoing was taken on the basis of allegations of a former research coordinator of Dr. Duffy. The allegations were that Dr Duffy had mandated research staff to copy clinical files for research purposes without proper authorization from the Research Ethics Board; and that research had been undertaken by Dr. Duffy without proper informed consent.

In the days following the seizure, and following an investigation by the then Clinical Director of the Royal Ottawa Hospital (Dr. Paul Dagg), the allegation of improper copying of clinical files was found to be without basis and has not been the object of any further dispute. We will not discuss this any further in this statement.

The allegations about lack of proper informed consent for research were, however, not withdrawn. On the contrary, they became the focus of an additional dispute, which has diverted attention from the central issue, the seizure of files without prior warning and the allegation made by Dr. Duffy and Dr. Grof that this seizure was illegal and violated the confidentiality of the research and clinical information about research participants.

Dr. Duffy and Dr. Grof strongly maintained that they always did obtain proper informed consent of all research subjects who participated in their various research projects

Following the seizure, Dr. Duffy and Dr. Grof initiated legal proceedings, among other things to obtain the immediate return of their records, to prevent the review of the seized materials except for a possible review by an independent party, and to seek a declaration that the seizure was unauthorized and illegal. In the course of these proceedings and in the month following the seizure, the original research records were returned to Dr. Duffy and Dr. Grof after copies had been made by the ROH administration of the research files. On October 19, 2005, the parties involved in the dispute concluded a settlement according to which the parties acknowledged that the IMHR had the right to investigate allegations of missing consents, and that the chair of the REB could request a third party to investigate the allegations about informed consent in relation to the seized research records. Both parties came to an agreement with respect to the identity of the examiner. Dr. Duffy claims that she only consented to this settlement with the understanding that no one had at that point reviewed the research records, and that the third party examiner would be the first to analyze the files.

Apparently this was not the case, since the REB administrative support person involved in the seizure had already conducted spot-checks on some of the files and allegedly found that several of them lacked consent forms. It should be noted here that it appears that neither before, nor at the time of the seizure or immediately after the seizure, were Dr. Duffy or Dr. Grof advised about the absence of informed consent forms in the research files. The first allegations that some research files may not include properly documented patient consent apparently only surfaced 8 days after the seizure in a letter to Dr. Duffy

by the President of the IMHR, whereas information about the findings of the spot-checks allegedly only surfaced after the Settlement. In the course of the court proceedings, more information became available about the initial allegations related to informed consent. These allegations had been made by a former research coordinator of Dr. Duffy, who had alleged, among other things, that some children involved in a school-based study had been interviewed without proper informed consent of a parent. Dr. Duffy explained in a sworn affidavit that it had occasionally occurred that a parent had not yet co-signed a consent form immediately preceding the first interview of a child in this particular study, but that in all these cases, Dr. Duffy had already discussed with a parent the study and the parent had given explicit permission to the child to meet with Dr. Duffy during school hours for the purpose of participation in the study. In those rare instances, Dr. Duffy alleges, the child provided his/her assent on the consent form, and took the consent form home for co-signature. According to Dr. Duffy, a co-signed consent form was always added to the file subsequently. The signature of the parent was thus seen as a confirmation of the initial verbal parental consent that preceded the first meeting with the child.

Following the Settlement, an analysis of the allegations about lack of evidence of informed consent was conducted based entirely on the review of the copied research records ("the Third Party Analysis"). The Third Party Analysis concluded that "77 out of 252 (30.5 %) of research records did not contain a written and signed consent/assent form." The author of the Third Party Analysis clearly admitted that he "cannot state that consent (in these records) was not obtained" but he noted that the absence of a high number of consent forms was "of considerable concern."

Dr. Duffy and Dr. Grof strongly objected to the findings of the Third Party Analysis. They commenced legal proceedings to block the further use and publication of the Third Party Analysis. On a procedural level, Dr. Grof and Duffy criticized the Third Party Analysis, alleging that it was based exclusively on a review of the copied materials, not the original files, and that it did not involve any personal interviews with research subjects. Dr. Duffy and Dr. Grof further alleged they were not provided with an

opportunity to discuss in detail the findings, or to provide further evidence of proper informed consent prior to the issuance of the Third Party Analysis. They allege they did submit a brief to the author of the analysis outlining what they perceived to be the context in which the review of consent forms was taking place but that this was not sufficiently taken into consideration. They also alleged that the Third Party Analysis had gone beyond what the Settlement stipulated as its potential mandate.

The original files, it has to be noted, were at the time of the Third Party Analysis again in the possession of Dr. Duffy and Dr. Grof. Dr. Duffy and Dr. Grof also challenged the report on the grounds that some specified consent forms that were identified as absent in the Third Party Analysis report were allegedly available in the original returned files. Dr. Duffy and Dr. Grof admitted that many consent forms were indeed also missing in the returned original files, but they claimed that all forms should have been there prior to the seizure. The Third Party Analysis fairly conceded that it was "possible that some consent forms were mislaid in the process of being photocopied." The author of the Third Party Analysis stated, however, that he was "impressed by the meticulous way in which the [copied] files were kept" and that it was "unlikely that a significant number of the consent forms were mislaid." Dr. Duffy and Dr. Grof objected very strongly to this conclusion.

Although our Inquiry focuses primarily on the seizure of the research records and the context in which this seizure took place, the Committee felt obliged to conduct a basic investigation into the allegations related to the alleged lack of informed consent. The allegations of lack of informed consent are obviously a part of the context surrounding the seizure and are invoked as an important, albeit alleged largely post-factum justification of the seizure. The Committee felt that a review of the potential problems with informed consent was important for a full understanding of what was going on. Informed consent is a cornerstone of ethical research practice. If there was a lack of basic respect for informed consent, it was important for the Committee to be aware of this.

The Committee conducted what it considers to be a limited investigation into informed consent procedures undertaken by Drs. Duffy and Dr. Grof. While our investigation was limited, it is fair to state that it was able to go further than the investigation leading to the Third Party Analysis Report.

Prior to accessing research records and any of the records of the Third Party Analysis containing names of research subjects, the Committee obtained authorization of the Chair of the Institutional Review Board of the Faculty of Medicine of McGill University to access the research records of Dr. Duffy containing personal information of research subjects. At the time of the Committee's Investigation, Dr. Duffy was an Associate Professor at McGill University, and the research conducted by Dr. Duffy fell under the authority of this Research Ethics Board. The Committee reviewed all the relevant documents that were used in the legal proceedings surrounding the consent issue, including the Third Party Analysis Report, a preliminary brief of Dr. Duff and Dr. Grof to the author of this analysis and affidavits of all the parties. The Committee also reviewed the original research files of Dr. Duffy (not the copies that were used for the Third Party Analysis) with the goal of verifying the presence of informed consent forms and of comparing the findings of the Third Party Analysis with its own findings. The Committee also interviewed Dr. Duffy and Dr. Grof and was able to ask questions for clarifications after reviewing the research files.

The Chair of the Committee of Inquiry (Dr. Lemmens) further conducted interviews with a number of research subjects or parents of children who participated in research conducted by Dr. Duffy and whose original informed consent forms were missing in the research records. It has to be noted that all research subjects whose original consent forms were missing had at the time of the Committee's investigation already signed a new consent form that expressed an agreement to be involved in the ongoing research. The research subjects who were interviewed by the Chair of the Committee were first contacted by Dr. Duffy's research coordinator and provided written informed consent for the purpose of this interview prior to the interview. Most of the interviews took place over the phone. Interviews were conducted with 12 people, including 2 parents of 2

research participants. While this constitutes only a sample of the research subjects whose consents were missing, the Committee is confident that these interviews provided the Committee with a sufficiently clear picture of potentially serious problems associated with the consent. The Committee felt that reliance solely on the review of the research files for determining whether there was informed consent may be problematic for two reasons. First of all, the alleged procedural problems associated with the seizure could affect the reliability of the evidence obtained in this seizure. We will discuss this issue in more detail in our final report. It suffices here to state that relying on copies of documents obtained and copied in questionable and highly contested circumstances raises issues of procedural fairness. Secondly, the Committee felt that the review of the various consent forms in the research files of Dr. Duffy was cumbersome and confusing. This is in part due to the longitudinal and mixed nature of the research files. Many research files contained documents on different research projects, several of which originated in other institutions. One of the explanations provided by Dr. Duffy and Dr. Grof is that some of the allegedly missing consent forms identified as such in the Third Party Analysis related to documents for which consent forms were available at Dalhousie University, at the research site of the co-investigator on one of their research projects, Dr. Martin Alda. The Committee did not pursue this further, but rather focused on obtaining direct information from an indicative number of research participants. The Committee felt that this would provide a more meaningful picture on the absence or presence of informed consent.

On the basis of the review of the documents and the interviews, the Committee is confident to make the following observations:

- The assessment in the Third Party Analysis of the number and the identity of the missing informed consent forms in the copied research files does not correspond with the Committee's findings based on a review of the original research files in possession of Dr. Duffy. The Committee found original consent forms in some research files that the Third Party Analysis identified as files missing consent forms. In other research files, we noted original consent forms were missing while these were not identified as such in the Third Party Analysis. The Committee has no firm explanation for this discrepancy in findings. Apart from the fact that the

Third Party Analysis was based on copies of the files we have no reason to question the quality of the Third Party Analysis and the integrity of its findings. We can only conclude that, based on what we have seen so far, the Third Party Analysis may not provide an accurate picture of the original consent forms that are missing in the original research files that the Committee reviewed.

- The Committee also found that original consent forms were missing in some of the research records. In all the research files where original consent forms were absent, new signed "re-consent forms" were present that provided information about the research and indicated to research subjects that these consent forms replaced older consent forms that went missing. A signed consent form is obviously only a beginning of evidence of informed consent. The signing of these new consent forms by research subjects at least creates a presumption that the research subjects understood that they were participating in a research project and that they had been informed all along that that they were participating in a research project.

- All of the interviewed research subjects/parents whose original consent forms were missing declared that they had always been fully aware of the fact that they or their children were participating in one or more research projects directed by Dr. Duffy. Only three clearly remembered signing consent forms at the beginning of the research study. For six of the missing consent forms, research subjects or parents stated that they 'thought' or 'believed' that they signed consent forms. Six stated they did not remember whether or not they signed a consent form, while one stated not to be sure about it. Many emphasized that too much time went by to remember with certainty (one subject pointed out that he/she started participating 12 years prior to the interview). None of them stated that they were certain that they did not sign a consent form prior to participating in research conducted by Dr. Duffy. In fact, all of them were fully aware that they had been participating in research projects. On the basis of the interviews, the Committee realized that due to the long-term nature of the research in which these research

subjects are involved, it is impossible to verify with certainty if all of these research subjects signed a consent form or not. What can be verified, and what the Committee has done with 15 of the missing consents, is whether research subjects knew that they participated in research and whether they had a good understanding of the nature of the research. This seemed clearly the case for all of the research subjects we interviewed.

- The interviewed subjects all had a very good understanding of the nature and the purpose of the research in which they were involved. They also expressed a strong confidence in the integrity of Dr. Duffy and in the importance of the research she conducted.

The Committee cannot provide an explanation as to why, following the seizure, several original consent forms were apparently missing in the research files of Dr. Duffy. It is, however, satisfied, based on its limited inquiry, that the absence of original consent forms is not a clear sign of absence of informed consent. The research subjects of Dr. Duffy the Committee interviewed knew very clearly that they were enrolled in research and they had a good understanding of the nature of the research. The absence of the original consent forms seems a procedural issue which, in this case, does not, according to what the Committee has learned so far, reflect a substantial problem of lack of informed consent. The procedure followed in some instances with respect to the school-based interviews can also be qualified as a procedural issue. Although the Committee is of the opinion that it would have been a more proper procedure to always obtain the co-signature of parents prior to interviewing children, it does, in the opinion of the Committee, not amount to conducting research without informed consent.

Obtaining a signed informed consent form from research subjects is obviously an important requirement for researchers and is in general the norm. The absence of these consent forms in the research files is, in the Committee's opinion, in the circumstances of this case not convincing evidence of the fact that the research subjects did not sign a consent form. The way in which the research records were seized and the apparent

inconsistencies between the copied materials and the original research files, have led the Committee to the opinion that it is inappropriate to draw any conclusions with respect to the reasons why these consent forms were absent and cannot be considered as potential evidence of negligence by Dr. Duffy and Dr. Groff. In light of 1) evidence that appears to support Dr. Duffy and Dr. Groff's overall claim of proper informed consent procedures; 2) possible serious procedural problems associated with the seizure of the research records (which will be elaborated on in the final report); and 3) in the absence of any conclusive evidence of absence of informed consent, it is in the Committee's opinion inappropriate to allege on the basis of the Third Party Analysis that Dr. Duffy and Dr. Groff's committed serious violations of research ethics norms or good clinical research practices, unless further information come to light prior to the Committee issuing its final report. The occasional interviews with children in the school setting without prior co-signature of parents, as described by Dr. Duffy, is in the opinion of the Committee not an instance of lack of informed consent but a procedural issue which the Committee recommends to be addressed in future research projects.

The Committee will elaborate in more detail on the procedural problems associated with the seizure and on the conclusions we draw from this in our final report.