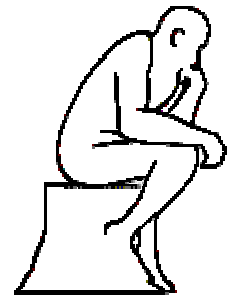


BIOETHICS NOTES

a newsletter from the Bioethics Review & Advisory Committee



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"I'm not upset that you lied to me, I'm upset that from now on I can't believe you."

Friedrich Nietzsche (1844-1900)

Justice and Clinical Research

By Robert Shabanowitz

How do we balance the needs of scientific progress through clinical trials with the conflicts of interest inherent with institutions, mega-bucks, and vulnerable populations?

In a recently released report (The FDA's Oversight of Clinical Trials), Daniel R. Levinson, the inspector general of the Department of Health and Human Services, left little doubt that the FDA does little to ensure the safety of millions of people enrolled in clinical trials. In typical Caplanesque style, without sugar-coating, ethicist Arthur L. Caplan remarked, "In many ways, rats and mice get greater protection as research subjects in the United States than do humans." In short, the FDA is ill equipped to oversee the thousands of clinical trials in any meaningful fashion. Coupled with recent reports on the financial relationships between institutional review boards and industry, it seems that we have good reason to be concerned.

Public trust in the clinical trial arena is essential for continued participation in the research process. Otherwise, our system for development of new medical knowledge and the benefits to society are at risk. This requires both vigilance and transparency in the process that allows us to continue the clinical research enterprise, the very elements that seem to be missing according to Levinson's report.

The advancement of medical science often requires the participation of humans to serve the role as research subjects in order for us to empirically evaluate the effectiveness of new therapies. The

use of humans as subjects, however, requires those in research to commit themselves to appropriate conduct. Three ethical requirements are demanded from research on human subjects, 1) an accurate assessment of the benefits, risks and harms 2) respect for persons as autonomous agents, and 3) justice in the distribution of the burdens and benefits of the proposed research. All research should be governed by a principle of respect for human beings and the importance for self-determination and autonomous decision making. Historically, there is little doubt that vulnerable groups were exploited and the weaker members of society taken advantage of as an ends to someone else's means. The Tuskegee experiment was not performed on the rich white folks of Manhattan's upper East side nor the atrocities of Hitler's concentration camps committed on the blue-eyed, blonde darlings of the Third Reich. There exists, therefore, valid concern for affording protection to the most vulnerable in our society. The vulnerable in society have diverse representation, based upon gender, economic class, religious affiliation, education, political affiliation, ethnicity, cultural mores, or sexual orientation. There are some that would even claim that anyone entering a research trial is vulnerable due to their underlying illness.

What aspects of scientific research place the disadvantaged at risk? One central problem lies with the process of informed consent. Informed consent is a prerequisite for research involving human subjects. The Belmont Report of 1979, established in the aftermath of the Nuremberg trials, espoused the principles of biomedical ethics we are all familiar with today, respect for persons (autonomy), beneficence and justice. Its principles emphasize a profound respect for the voluntary

nature of research participation, the idea of true informed consent, and the personal ethical responsibilities of the investigator to ensure human welfare.

Let us examine the elements of informed consent to see where problems may arise. Informed consent requires autonomous people to act in their best interests. The ideal of informed consent can only be accomplished by an intentional act, performed after rational and meaningful deliberation. The decision must be based upon truthful, relevant facts that may have direct and indirect impact on the decision making process, and the decision must be entirely volitional, without undue influence or coercion. The disadvantaged may often be at risk because of this process. Understanding and comprehending the nature and purpose of complicated scientific research is often a difficult task, even for the most highly educated individuals. Illiterate, poorly educated or foreign speaking people are at greater risk in this process because they may not have the requisite skills to adequately understand and evaluate the risks and harms. Although it is incumbent upon the physician to explain these issues in a manner consistent with the patient's ability to understand, this responsibility may either be neglected or the physician may fail to recognize or evaluate a patient's failure to comprehend. Without full comprehension, there can be no true consent.

Another aspect of informed consent is that it be performed without influence or coercion. The disadvantaged are also at risk because they are in a position more vulnerable to intimidation or subjugation. Exploitation is more likely to occur when there is a greater disparity in power between the two players. Fear or deference to authority may compel individuals to act, not according to their own best interests, but to become victimized by appeals to their non-rational preferences. Therefore, the disadvantaged may be less likely to voice concerns or assert their rights.

A final aspect regarding the process of informed consent and the risks of the disadvantaged is one of undue influence in the form of compensation. There is greater risk for those in need to fall victim to enticements of monetary compensation or subtle inducements such as free transportation, free health

care during the course of the experimentation or other forms of compensation that are used as enticements to participate. One might argue that any form of compensation, aside from compensating people for their time and discomfort represents a form of manipulation or coercion. For example, why should free health care be linked to research needs? These two should remain independent, mutually exclusive considerations. If health care is required, it should be given as a matter of fact, not as part of an inducement.

New technologies in medicine are problematic when one societal group bears the majority of risks in bringing these new therapies to market yet share few, if any, of the benefits. We have already seen why the disadvantaged are at risk because of the informed consent process. Although not all new therapies are subject to concern, many of the technologies becoming available place the disadvantaged at risk simply because they will not be able to afford to use these technologies themselves once they have come to market. Most new technologies are very expensive and beyond the means of all but a few individuals. In addition, newer technologies may not serve the health needs of large segments of our population, but offer therapies to only a limited number of affected individuals with rare or uncommon diseases. This makes such therapies very expensive, and once again, available only to those who can afford them. Many would argue that money is better spent on providing universal access to health care in order to help level the playing field. New technologies may also serve no therapeutic purpose whatsoever, and only represent therapies for enhancement. Many times these enhancements are nothing more than cosmetic. New technologies using a genetic approach to treatment are especially prone to this problem. Genetic engineering to produce "designer babies", for example, would be limited to very few individuals in our society. However, even where treatments may help many afflicted individuals, for example, those suffering from cancer, unless people can pay out of pocket or through insurance, these treatments will remain inaccessible. Therefore, every precaution should be made to insure that the disadvantaged are protected from becoming the means to everyone else's ends.