Concluding comments by Peter Dwyer

After such comprehensive accounts by both presenters, there are only a couple of areas I wish to comment on. On the role of the subjects of the research, Professor Duff's expert report in the United Kingdom highlighted the paramount factors as always being the rights, safety and wellbeing of the volunteers, whether patients or healthy individuals, and the value of what can be learnt from such clinical trials. Human research ethics committees certainly regard the interests of the subjects of research as paramount.

The consent process

In the consent process with healthy volunteers, there is, of course, no room for the sort of therapeutic privilege whereby, in some rare instances, certain information can be withheld from a patient in a doctor/patient relationship as discussed in Rogers v Whittaker in the High Court. But there can be no room for therapeutic privilege in clinical trials.

The consent process, about which Arthur mentioned a United States comment about its being a contract (although I have certainly never regarded the information document as such) is crucial. In such a clinical trial, the document might be the 'patient information document' or the 'subject information document'. This takes up so much time, and correctly so - this is not a criticism - in the deliberations of human research ethics committees because the document must be able to be understood.

The value of documentation

Documents tend, therefore, to be elevated to the 'be all and the end all'. I frequently remind others that, although that document is important, it is really only evidentiary of the fact that the risks have been conveyed to the subject. The most crucial part of the informed consent process is the dialogue which must take place between the investigator (not some junior member of the team) and the subject. It is only then that the investigator can be assured, as best they can be, that that particular subject understands the risks of that research. In other words, paper is important, but it is often elevated to an undue level of importance; the dialogue is the crucial phase.

Suing ethics committees

On the subject of ethics committees or their members being sued, one of ours was the subject of an action in the Human Rights and Equal Opportunities Commission (HREOC) some years ago. The case was brought by a patient who did not meet the inclusion criteria for an HIV study. That went from the HREOC to the Federal Court, then to the Full Federal Court and then back down to the HREOC for deliberation. Then it just faded out; most of the case had been conducted by the estate of the patient who had been excluded from the trial.

Compensation

The compensation guidelines are crucially important, whether the subjects are healthy volunteers or patients with a particular disease. In the early 1990s, I had discussions with the Association of the British Pharmaceutical industry in London and with Lloyds of London regarding insurance being made available for so-called strict liability. On returning to Australia, and in participation with a couple of colleagues, I recommended, via the NH&MRC, that a similar system be brought in here. Shortly after that Medicines Australia (then the Australian Pharmaceutical Manufacturers

Association), introduced very useful guidelines. They also allow a subject of research to make a claim where there is a likely connection - it doesn't have to be proved on the balance of probabilities. The fact that it was not foreseeable does not prohibit the payment of compensation under the guidelines.

The bottom line really is that, if somebody is involved in research, whether a healthy volunteer or a patient, then, if they suffer adversely from their participation in the trial, it should be compensated. I am not sure about the facts of the case in the United Kingdom, but those guidelines are certainly very important in Australia.

Unpredictable outcomes

Also, the UK Medicines and Healthcare Products Regulatory Agency (MHRA) talked about this having been an unpredictable outcome. This immediately raises in my mind the question of whether or not it really was unpredictable - a crrucial issue.

The other thing that always comes to my mind is that Sir John Gaddum, acknowledged as the founder of the modern discipline of clinical pharmacology — a Scottish professor of clinical pharmacology — once said long ago, that each administration of every drug should be regarded as an experiment because no drug can be declared absolutely safe. I usually add to that and say that every drug is inherently unsafe and hence the need for 'learned intermediaries' in providing medication to patients.

One has only to look at aspirin, now in use for about 110 years. In the 1930s, advertisements in the United States reportedly carried in large capitals, the warning "UNDER NO CIRCUMSTANCES MUST ASPIRIN BE TAKEN BY ANYBODY SUFFERING FROM A CARDIOVASCULAR CONDITION". What is its greatest used today? The commonest cardiovascular condition – insufficient circulation within the heart muscle. Then, in the late 1980s, aspirin was found to be the cause of Reye's Syndrome in febrile infants who had been given aspirin. So even after 110 years, things are still being learnt about aspirin.

The media and the money

One final very important thing: about the media and payment. The following article from the UK *Guardian* appeared in the *Good Weekend* section of the *Sydney Morning Herald* in May 2007:

"*Grievous Bodily Harm*

It was supposed to be a routine clinical drug trial. Instead six health volunteers ended up fighting for their lives. Over the years since the catastrophic drug test in London ..... followed the men who had lost their health, their jobs and their hopes for justice."

Of course we have to get the facts and you don't get all the facts necessarily here, but on this payment aspect, this was said of one of the subjects who suffered the adverse effects:

"He was a solid sensible type who liked to work out the probability of things and to err on the side of caution. However, when he and his girlfriend found themselves strapped for cash after they had been travelling, he considered taking part in a medical trial as a human guinea pig."[ii]

That was not an isolated case. Others involved in that trial indicated to the reporter or to somebody that they had been in it for the money. That might be perfectly innocuous. On the other hand, it might not be. There are restrictions on the amount

which can be paid. Sometimes it can be excessive, which it shouldn't be. We want to avoid people being attracted, because of monetary gain, to participate in a trial, because people might think that the money is more important and forget about listening to what consent is all about.

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[i] The Guardian, 17 February 2007