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A serious threat to Evidence Based Resuscitation within the European Union

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A recent European Union Directive seems likely to halt all research on human beings who are incapable of giving legal consent to clinical trials [1,2]. The Directive makes no exception for emergency situations and therefore threatens to prevent all trials that have direct relevance to the management of victims of cardiac arrest. The cost in unnecessary failures to abort cardiac arrest cannot be measured but would nevertheless be large and irrecoverable. Only prompt and concerted action can mitigate a development that is likely to stop progress in an area now showing great promise. It is unlikely that the Directive itself can now be modified, but we have a brief window of opportunity to influence enabling legislation within member states of the European Union. All of those reading this editorial may wish to take appropriate and immediate action that might influence how the Directive is applied in their own countries.

Informed consent is a decision by persons to take part in a clinical trial, which must be written, dated and signed. Informed consent has to be given freely after being duly informed of the nature, significance, implications and risks of the trial. According to Article 3 (*Protection of Clinical Trial Subjects*) and 5 (*Clinical trials on incapacitated adults not able to give informed legal consent*) a clinical trial may be undertaken only if the trial subject or, when the person is not able to give informed consent, his legal representative, has had the opportunity in a prior interview with the investigator, to understand the objectives, risks and inconveniences of the trial [2]. A 'legal representative', in relation to any treatment, may mean a person who is exercising a right of audience, or a right to conduct litigation, on behalf of any party to the proceedings. No'legal representative', who is empowered to act for a patient either to give consent or in relation to a claim, would be available in an acute medical situation.

It is very regrettable that the Directive in its present form does not fully accept the recommendations of the World Medical Association Declaration of Helsinki [3], which states clearly that medical progress is based on research that ultimately rests in part on experimentation involving human subjects. The Declaration outlines in its provision 26 the conditions under which research can be done on individuals who cannot give consent for themselves, and in whom it is not possible to obtain consent, including proxy or advance consent. In this group of patients research without consent may be undertaken only if the physical/mental condition that prevents obtaining informed consent is an integral characteristic of the research population. The specific reasons for involving research subjects with a condition that renders them unable to give informed consent should be stated in the experimental protocol for consideration and approval of the review committee. The protocol should state that consent to remain in the research should be obtained as soon as possible from the individual or a legally authorized surrogate. Such arrangements have been practiced in Europe for several years and are generally regarded as satisfactory in safeguarding the interests of the patients who are the subjects of the research as well as those who will benefit subsequently from any progress that is made.

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This deficiency of the EU Directive, which makes no allowance for the inevitable absence of a legal representative or legally authorized surrogate in a life threatening situation where seconds (not minutes) count, is surely itself unethical. It is likely to have arisen, however, from lack of foresight rather than from lack of concern, which no doubt explains why national or international bodies with a responsibility for resuscitation were not consulted at a stage when appropriate exemptions might have been made to a proposition that has much to commend it in the wider field of clinical research.

The deficiency of the Directive has already been recognised in several countries and much concern has been expressed even by those not directly involved in research. Negotiations continue between the competent authorities for medicines legislation within a working group of all member states with a view to transposition into national laws during 2003 with implementation by 1st May 2004. In due course a consultation document relating to the proposed legislation will be released in at least some countries (certainly for England and Wales), but the precise legal position may differ within Europe depending on the details of the laws that will be drafted-though all will follow a template drawn from the Directive itself. We understand, however, that there the Directive permits (but does not require) individual States to introduce variations-and these could impact on emergency research. Procedures vary greatly from country to country, and we suggest that all who seek to influence developments should make appropriate enquiries through their own health ministries on how best to make representation on national implementation of the Directive. In the meantime-before May 2004-any research that has obtained ethics approval and is within existing national legislation may proceed.

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