BRITISH MEDICAL JOURNAL

SATURDAY 7 NOVEMBER 1987

LEADING ARTICLES

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NEWS AND NOTES

SUPPLEMENT

NO 6607 BRITISH MEDICAL JOURNAL 1987 VOLUME 295 1157-1220
BRITISH MEDICAL ASSOCIATION TAVISTOCK SQUARE LONDON WC1H 9JR.

WEEKLY. ISSN 0267-0623
ASTM CODEN: BMJOAE 295 (6607) 1157-1220 (1987)

CORRESPONDENCE

- *All letters must be typed with double spacing and signed by all authors.*
- *No letter should be more than 400 words.*
- *For letters on scientific subjects we normally reserve our correspondence columns for those relating to issues discussed recently (within six weeks) in the BMJ.*
- *We do not routinely acknowledge letters. Please send a stamped addressed envelope if you would like an acknowledgment.*
- *Because we receive many more letters than we can publish we may shorten those we do print, particularly when we receive several on the same subject.*

HIV antibody testing

We have received many letters about the BMA council's decision that, despite the annual representative meeting's resolution to the contrary, doctors do need to obtain consent before testing for antibody to HIV and about the legal opinion on which that decision was based. We print a selection of them below together with a comment from Clare Dyer, our legal correspondent. Dr John Marks, the chairman of council, also replies to criticisms of the BMA's handling of the issue.—ED, *BMJ*.

SIR,—The legal opinion obtained by the British Medical Association on the requirement for informed consent before subjecting a blood sample to testing for antibody to human immunodeficiency virus (HIV) (10 October, p 911) is unlikely to find universal acceptance.

Thus it is confidently asserted that taking blood and subjecting it to a test to which the patient has not consented constitutes "an invasion of the patient's bodily integrity," which can give rise, inter alia, to an action for assault. Provided consent is obtained for the venepuncture, the physical act of taking blood—for whatever test—can never constitute an assault in law.

For the purposes of the law of assault the courts recognise a distinction between the type of fraud or deceit which induces consent that would not otherwise have been obtained, but which is none the less valid consent, and the type of fraud which prevents any real consent existing.[1] In other words, consent to the *act* of taking blood frees the doctor of criminal responsibility.[2,3]

The opinion is silent on the legal liability of medical practitioners who refer patients known to be—or reasonably suspected of being—seropositive for HIV (or any other contagious disease) to colleagues without informing them of their knowledge or reasonable suspicion. If, in those circumstances, anyone in the health team contracted a condition which could have been prevented if precautions appropriate to the condition had been taken I have no doubt that the referring practitioner would be liable for all the foreseeable consequences which flow from the omission to warn. Such liability arises under the ordinary principles of tort liability.[4] Confidentiality between doctor and patient is no defence against third parties. Dr Raanan Gillon's ethical considerations may have to be read in that context.[5]

P GERBER

Faculty of Medicine,
University of Queensland,
Herston 4006,
Australia

1 *R* v *Harms* 1944 2 DLR 61.
2 *R* v *Martin* 1840 9 C & P 213.
3 *R* v *Wollaston* 1872 12 Cox CC 180.
4 *Donoghue* v *Stevenson* [1932] AC 562.
5 Gillon R. AIDS and medical confidentiality. *Br Med J* 1987;294: 1975-7.

SIR,—If the opinion of Messrs Michael Sherrard and Ian Gatt (10 October, p 911) concerning testing for human immunodeficiency virus (HIV) antibody becomes accepted in law the practice of medicine will become effectively impossible. Almost everything contained within the argument of these two gentlemen could apply to any investigation performed on a patient. At only two points does their opinion suggest that an HIV antibody test is to be considered differently from other investigations, and then because the result has "far reaching implications" and "will not . . . lead to . . . life saving treatment." The same comments could be made of the diagnosis of rheumatoid disease, tertiary syphilis, malignancy, pregnancy, and a host of other conditions, depending on circumstances.

Their argument implies that the wise clinician should not only obtain the patient's permission for every investigation made but should also ensure that the patient is aware of the implications of all such investigations. In the case of a biochemical profile this might take hours to explain, as even a simple haemoglobin measurement might eventually lead to a diagnosis of carcinoma of the colon, something the patient might have preferred not to know. Perhaps the solution would be to give all patients a course of lectures in pathophysiology before beginning investigations, so that they could then prohibit those which might lead to unwanted diagnosis.

Sadly, the guidance we have been given takes us one more step down the road to defensive medicine.

S P BARRETT

Microbiology Department,
Southend Hospital,
Westcliff-on-Sea,
Essex SS0 0RY

SIR,—Mr Michael Sherrard QC and Mr Ian Gatt have used a false analogy as the basis for their opinion that testing for HIV antibodies without obtaining a patient's consent could be construed as assault.

The cases they cite have all to do with surgical treatment, which inevitably imposes some kind of permanent alteration, and consent to such alteration naturally requires safeguards. Of course, even the skin puncture that is necessary to withdraw blood could in some circumstances constitute an assault, but these barristers have failed to take account of the clinical circumstances in which doctors would mostly wish to test for HIV.

Patients who have developed, or are developing, pathological changes induced by the virus may display a variety of signs and symptoms. None of these manifestations is specific for the virus, and a differential diagnosis is therefore necessary. A battery of suitably chosen blood tests is normal in