

## Opinion

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### **RU486 TRIALS - CONTROVERSY IN AUSTRALIA**

By Melinda Tankard Reist

Earlier this year, an unidentified official with the Therapeutic Goods Administration (TGA) authorised the import of the banned abortion drug RU486. This set in train a series of events culminating in the suspension of an RU486 trial, the ordering of a review into the consent forms used in that trial and another review into the functions of Institutional Ethics Committees (IECs). The controversy surrounding the Australian trials has brought to light the inadequate system of ethical evaluation and trial monitoring in Australia. It has highlighted the unacceptable means by which hazardous drugs are allowed to be trialled on Australian subjects. The National Health & Medical Research Council (NHMRC) guidelines are unenforceable: there are no powers of investigation for suspected breaches and no sanctions for non-compliance.

Clinical trials are being conducted on 300 Australian women subjects by the Sydney Centre for Reproductive Health (SCRH) and by Monash University Department of Obstetrics and Gynaecology at the Family Planning Association of Victoria (FPV). One trial in Victoria and the trial in Sydney are being described as trials of RU486 as "emergency postcoital contraception" - or "morning after" pill trials. The suspended Victorian trial was for "termination of early pregnancy" and involved two combination regimens of RU486 and mifepristone (prostaglandin). The trials are part of a multi-country trial sponsored by the Special Programme of Research, Development and Research Training in Human Reproduction (HRP). The HRP is co-sponsored by the World Bank, United Nations Population Fund and the United Nations Development Program with the World Health Organisation as executing agency. The HRP is committed to perfecting existing abortion technology and developing new abortion drugs.

How did RU486, a prohibited import, get into Australia when previous attempts by Roussel-UCLAF and the Family Planning Federation to trial the drug had failed?

Prior to 1991, the Therapeutic Goods Administration (TGA) of the Department of Health was required to approve drugs for use in human experimentation. In 1991 the Clinical Trial Notification scheme (CTN) came into being, and ethical and legal evaluation and approval from Department was no longer required. Under the CTN all that was required was approval by private ethics committees operating under NHMRC guidelines. The TGA merely sends out a receipt after payment of the application fee for the trial to proceed. In effect, the Government knows nothing of the trials it clears - it trusts the IECs.

As an abortifacient, RU486 is a prohibited import unless exempted by the Department of Human Services and Health pursuant to the Customs (Prohibited Imports) Regulations. As a result of questions by Senator Brian Harradine (Independent, Tasmania) at the Estimates Committee Hearings, undertakings were given and policy adopted that no such exemption would be given unless the Minister was consulted.

Neither Health Minister, Dr Carmen Lawrence, nor the Minister for Family Services, Senator Crowley (the TGA comes under her portfolio), were consulted prior to the exemption by the Departmental delegate.

When concerns about the trials were first raised, officials responsible tried to assure those concerned that all was in order.

According to the Health Department of the state of New South Wales (NSW): "This procedure is in place to ensure adherence to strict ethical, legal and scientific standards....This research can not proceed unless approval is obtained, after rigorous scrutiny of the legal and ethical implications of the trial, by the relevant Institutional Ethics Committee and the Therapeutic Goods Administration (TGA)" (letter 7/4/94).

However during the Senate Estimates Committee hearing of May 25, Dr Malcolm Wright, head of the drug evaluation Branch of the TGA, said "We do not evaluate...(the) TGA has not carried out an assessment to the quality, safety and efficiency of this product in connection with this notification." Senator Brian Harradine then said: "In other words, it would be incorrect to say that the TGA has rigorously scrutinised the legal and ethical implications of the trial and approved it?" Wright replied: "The TGA is not required to and it certainly is not required to approve it because the approval is by the Ethics Committee. That is what the notification tells us."

There were more contradictions when Health Department Deputy Secretary Ian Lindenmayer, told the Canberra Times the Department was completely happy with the patient consent form. The forms "provide the information we believe they (the women) responsibly can be given, given the need to ensure the information is relayed in a straightforward and intelligible way." But the Health Minister, Dr Lawrence said the opposite: "Obviously the (department advice) is that it falls short of what's desirable and that's why they (FPV) were asked to do it again." (The Canberra Times, August 18 ).

Questions have been raised, too, about the composition and conduct of the IECs involved in approving the RU486 trials.

The approving committee in Melbourne was the Victorian Family Planning Ethics Committee and in Sydney, the NSW Family Planning Association (FPA) Ethics Committee. The membership of the latter includes Dr Edith Weisberg, who is Medical Director of the NSW FPA, and also State Manager of the SCRH which is conducting the NSW trials. Should people approving the trials be running the trials?

These committees and the RU486 researchers have shown great reluctance to submit themselves and their work to public scrutiny, complaining to the NHMRC that Parliament's demands for trial details and consent forms were a threat to academic freedom. However, Health Minister Lawrence has maintained that private ethics committees have "a very, very substantial responsibility, and we have to get past the time...where it's left to medical experts." ("Fearing light, forgetting purpose," Margo Kingston, *The Canberra Times*, August 17) "It is incumbent upon us all to ensure that women are fully informed about drugs they volunteer to trial", she said. (*The Canberra Times*, August 17)

Questions have also been raised as to whether the trials are actually legal. Are the trials being conducted in breach of the criminal law? Mr Justice Newman in *CES and another v Super Clinics Australian Pty Ltd and others* delivered a reserved judgement on April 18 in which he held that the plaintiff was not entitled to damages for doctors failing to diagnose her pregnancy because it would have been illegal for her to have an abortion.

Justice Newman said Dr Edith Weisberg, who gave evidence on the plaintiff's behalf, "used criteria in so determining which fell short of the test of unlawfulness stated in *Wald v Davidson*". Justice Newman found that Dr Weisberg applied a lesser standard than that imposed by the law. Abortions performed on Dr Weisberg's criteria are illegal. The defence of necessity cannot apply when it is too early in the pregnancy for a woman or doctor to form an opinion that continuance of the pregnancy would cause a serious risk to the life or health of the mother.

It might reasonably be concluded that the RU486 trials breach Section 83 of the Crimes Act 1900 (NSW) and Section 65 of the Crimes Act 1958 (Vic). According to Senator Harradine, by permitting the importation of RU486 for the trials and by allowing them to continue, the Commonwealth may be aiding the breach of these sections of the NSW Crimes Act and Victorian equivalents with potentially grave legal liability consequences for the Commonwealth and individual officers.

According to the TGA, "In the event that the Secretary becomes aware that to undertake or continue the clinical trial would be contrary to the public interest, he has the authority to direct that use of the drug product(s) for this clinical trial must cease." Mr Roche, the deputy secretary of the Department of Human Services and Health, agreed that the trial would be contrary to the public interest if it was conducted illegally. (Senate Estimates Committee, Hansard 21 June 1994).

Opposition to the trials was growing, with a strong statement from the Australian Catholic Bishops Conference, raising concerns about the way the drug was approved, and its abortifacient nature and threat to unborn children and women. Serious questions were also raised about the adequacy of the consent from by Dr Renate Klein and Dr Lynette Dumble.

Then came the revelation that the mandatory religious member of the Victorian Family Planning Ethics Committee had no involvement with the approval process. He resigned in May and a replacement has not been found. (Some "pro choice" women said "so what?" if the religious member wasn't involved, but as Margo Kingston pointed out, "What if in such a trial a woman was appointed who never attended and something went wrong? The cries of patriarchal double-speak and betrayal would be deafening.") ("Bungling all round on RU486 trials, The Canberra Times August 10, 1994).

Following close behind was the discovery that Professor David Healy, head of Obstetrics and Gynaecology at The Monash Medical Centre, conducting the RU486 experiments in Victoria, was one of those involved in the prescription of human pituitary hormone to women in the 1970's and 1980's. This hormone has been implicated in the incurable brain infection Creutzfeldt-Jakob Disease. The Allars report details the breaking of rules and regulations by prominent gynaecologists to approve injections of the hormone into women as a supposed infertility cure.

The debate over RU486 goes beyond the pro- and anti-abortion polarities. It concerns issues of public accountability, parliamentary scrutiny, issues of ethics, legality, monitoring procedures: weighty matters which need to be given due and proper treatment and consideration to ensure the protection of the lives and health of human subjects of experimental trials in this country. Procedures for approving experimentation on humans must be urgently overhauled.