

# UK doctors that are injured while treating unconscious patients cannot test them for HIV due to lack of legal protection

June 2 2013

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Doctors and nurses in the UK that are injured in the course of treating injured patients cannot currently test that patient for HIV without their consent. In emergency situations where the patient is unconscious, such consent cannot be given, putting healthcare staff at risk of subsequent legal action if they test the unconscious patient. In a session taking place at Euroanaesthesia (the annual congress of the European Society of Anaesthesiology [ESA]), senior UK anaesthetists will discuss the need for a change in the law to protect both patients and healthcare workers.

When a doctor or nurse treating an unconscious patient in hospital is injured, for example by a needle-stick injury, they are at risk of contracting HIV and/or [hepatitis B](#) and C. In such circumstances, it is vital to determine whether or not the unconscious patient is HIV positive\*, so that the injured healthcare worker can immediately begin post-exposure prophylaxis (PEP) treatment to prevent any [HIV infection](#) taking hold. It's probably as important for staff to know that they don't need to take PEP, which can have unpleasant physical side-effects. Additionally, the [psychological impact](#) of not knowing if the patient is infected with HIV places staff under considerable stress, which in some cases leads to significant health issues. Staff who may be pregnant face a particularly stressful dilemma.

Until 2005, UK doctors were able to use their judgement about whether an unconscious patient should be tested for HIV in these circumstances,

taking into account their age and risk profile. But when the 2005 Mental Capacity Act took effect in 2007, it enshrined patients' rights in this difficult area and led to the UK's [General Medical Council](#) issuing guidelines that meant doctors were not legally able to [test](#) for HIV in the unconscious patient since it did not perceive testing to be 'in the best interests of that patient', but instead in the interests of the healthcare worker.

Thus, any HIV test would therefore have to wait until the patient regained consciousness to give consent, often days or weeks later. "This is an issue that is coming up every day in hospitals across the UK," says Dr Andrew Hartle, Consultant Anaesthetist and Immediate Past Honorary Secretary of the Association of Anaesthetists of Great Britain and Ireland (AAGBI). "It happens five or six times a year in my hospital alone. It can leave the injured doctor or nurse in an extremely distressed state, not only because they must immediately begin PEP, but there is a high psychological impact on the doctor or nurse's personal life, including the stress of not knowing, and how to broach the subject with their partners, and what precautions they should take including safer sex."

Hartle says that if the patient is conscious, then 99% of the time they will consent to a [HIV test](#) to help the injured doctor or nurse plan their next steps. He adds that the UK's former Labour Government, who brought in the new law, was warned by senior anaesthetists, surgeons, and the British Medical Association that the new law would put [healthcare staff](#) at risk of legal action and make things extremely difficult when the patient was unconscious. "The government promised us an exemption for these circumstances," say Hartle, "But when the new code of conduct came into law, there was no exemption to be seen. Colleagues in many other European countries, including France, Spain, and Norway can test the patient for HIV in these awkward scenarios without fear of retribution. It's not the Human Rights Act that's

preventing us doing so here in the UK, it's the Mental Capacity Act."

Hartle gives the example of a senior orthopaedic surgeon injured by a drill while performing emergency surgery on a known intravenous drug user who had been injured in a car accident. The surgeon ended up in tears, feeling let down by the system. His colleagues decided to test the patient for HIV, and the result was negative. "We should not be worrying about the law during these distressing events," says Hartle. He believes the law should be changed, to give doctors the go ahead to test when they feel it appropriate to do so. Alternatively, he says a policy can be enacted whereby all intensive care units (where these events occur most often) should test all incoming patients for HIV for the direct benefit of the patients themselves (so covered by the Act) while also acting as a protective measure for healthcare staff.

Dr Kate McCombe, Consultant Anaesthetist, Frimley Park Hospital, Surrey, UK, is also taking part in the discussion. "I would argue that it is in the patient's medical best interests to know if they are HIV positive so that they can be treated appropriately whilst they are incapacitated on ICU and begin timely medical therapy, " says McCombe. "It is in their social, emotional, cultural and often religious best interests to be tested so that they can alleviate the anxiety of the injured healthcare worker and if necessary, affect behavioural change to avoid further HIV transmission. I believe that the GMC has adopted a very blinkered view of the meaning of best interests in the 2005 Mental Capacity Act, and that their advice should be revised to allow testing of unconscious patients for HIV to occur."

Provided by European Society of Anaesthesiology

Citation: UK doctors that are injured while treating unconscious patients cannot test them for HIV due to lack of legal protection (2013, June 2) retrieved 24 April 2024 from

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