The American Journal of Bioethics, 7(2): 82–94, 2007

ISSN: 1526-5161 print / 1536-0075 online
DOI: 10.1080/15265160601111834

Open Peer Commentaries

Risk, Judgment and Fairness in Research Incentives

Benjamin Hale, University of Colorado

Emanuel and Miller argue that "by themselves the payment and profit status of [TeGenero] do not make the [TGN1412] trail ethically suspect" (2007, 76). I think that they are right to argue that there is nothing *necessarily* incriminating about for-profit companies conducting medical research, but that this conclusion is irrelevant to the moral status of incentives in the TeGenero trial. Not only do Emanuel and Miller miss the point of the objection that pecuniary incentives distort judgment, but they also employ too strong a standard to establish that there is nothing ethically suspect.

On the first issue, Emmanuel and Miller (2007) suggest that monetary inducements do not distort judgment in a morally problematic way because monetary incentives are a matter of course for almost all professions in which risks are involved. But not all incentives are equivalent.

Suppose two hypothetical incentive structures by which I might be paid for participation in a medical trial:

> Compensation: I am offered a sum equivalent to the expected value (to me) of my participation.
> Enticement: I am offered a sum less than the expected value (to me) of my participation.

Incentives for participation in medical trials, we might stipulate, ought to pay a sum equivalent to or greater than the expected value of one's time, effort, and risk (Emanuel 2005; Grady 2001; London 2005). Compensation incentives do just this: they provide the participant with the appropriate level of remuneration, such that it can be said with near certainty that one has made a rational decision if one chooses to partake in such a trail. Enticement incentives, in contrast, ring in at lower than the expected value of participation. Such incentives offer *irrational* prospects to the volunteer. Few rational souls, for instance, would accept an incentive that promises to remunerate a pittance for a life-threatening trial. Few, it would appear, except those who are either: a) selflessly altruistic; b) irrationally risk-prone; c) uninformed; or d) desperate. Any of these dispositional proclivities might explain why someone would volunteer for a trial in which an enticement incentive was in place.

Volunteers in the TeGenero trial were offered £2,000 (approximately $3,700) for their time and risks to their health. By many people's standards, £2,000 is a sizable chunk of change. In some medical trials, it may even be enough to offset the costs and risks of participating. It is also true that by standards of some very rich people, Michael Jordan and Adam Sandler for instance, £2,000 is a niggling sum, hardly worth the paper it is written on. The very rich, we might assume, would have little time or interest in participating in a medical trial that offered such insignificant incentives. By still other people's standards, however, £2,000 is the difference between providing for oneself and one's family and depending on others. These people, we might further assume, could be willing to take substantial risks to acquire such money. The familiar observation here relates to the diminishing marginal utility of wealth because the value of a dollar to a poor man is greater than the value of a dollar to a rich man.

Given the diminishing marginal utility of wealth, consider also the Rawlsian claim that to be just a practice must be fair. Rawls' second principle of justice proposes that social and economic inequalities should be arranged so that they are to the greatest benefit of the least well off. The central idea is that the rights of all individuals must be respected, and that the surest way to guarantee that the rights of each are respected is to endorse principles that are sensitive to the proclivities of the least well off. If enticement incentives function in the manner explained previously, such that they entice wayward souls into accepting them even when it is against their self-interest, then such incentives can be said to be not only irrational and unreasonable, but unfair, unjust, and undue.

Taken together, these principles suggest that the problem with money in the TeGenero trial might not be that participants did not have all of the facts, nor that all of the human subjects protection procedures were not followed properly, nor even that coercion was somehow involved, but that some participants were probably more willing to engage in a risky trial precisely because a reward was offered, *despite the facts and despite the procedures*. The participants in the trial were arguably members of an economically vulnerable population; members who, presumably, would have made a different decision had they been

Address correspondence to Benjamin Hale, Center for Values and Social Policy/Philosophy Dept., University of Colorado, Boulder, 232 Hellems Hall, Boulder, CO 80302. E-mail: bhale@colorado.edu

in a position in which their personal valuations of the incentive were not clouded by their economic standing.

The important point here is not that the TeGenero trial did or did not offer an incentive out of balance with the benefits or costs to the participants, but that some incentives are fair and some incentives are unfair. More than this, the unfairness of an incentive depends both on whether it offers just compensation and also whether an individual accepts it "for the right reasons."

This raises the second issue: that the standard that Emanuel and Miller (2007) employ to establish that the trial was not ethically suspect is inappropriate and too strong. They employ a standard of entailment — they say, for instance, "*by themselves* the payment and profit status of the company do not make the trial ethically suspect" (2007, 76; emphasis added) — and suggest from this standard that money is "irrelevant." This simply does not follow. The appropriate standard would evaluate the degree to which payment for participation *has the potential to* and *does* cloud judgment in individuals who might be swayed to act against their self-interest. Although Emanuel and Miller are correct to point out that pecuniary incentives for participation in medical trials are not objectionable in themselves, they are wrong to suggest that one can draw the further conclusion that *in this case* the remuneration was not objectionable. Incentives for medical trials should be in place to offset actual costs and risks to every person, not to buy potential participants out of their trepidation.

The question one must ask of the participants in the TeGenero trial is this: why did *they* participate? This question was asked by several reporters covering the aftermath of the clinical trial. It was reported that one of the most severely afflicted volunteers, 28-year-old Mohammed Abdalla, intended to use his money "to make his family in Egypt financially secure [. . .] to set up his brother Mahmood in business and look after his father, an imam, and desperately ill mother" (English 2006, n.p.). Raste Khan, one of two lucky recipients of the placebo, became a trial participant because he needed the money to pay for school (Evans 2006).

The jury is still out on whether these are permissible reasons. But the important observation is that, even given the nightmarish results of the TeGenero trial, *there are probably still some people who would be willing to take a similar £2,000 gamble, where pre-trial risks and costs to each person are presented in the same manner*. Why might they do this? To many with knowledge of the TGN1412 trial, such a decision seems crazy. Here's why: sometimes the least well off people will accept odds that no rational person would accept . . . *because they need to*, or because they *want to*, even though they also know that it will be bad for them. This fact cannot be captured by the procedural concerns and the emphasis on outcomes that Emanuel and Miller (2007) lay out. Why not? Because even if a fair compensation incentive is offered, there will always be people who can be bought by the money; there will always be people who sell out their self-interest to get ahead.

Even if the trial volunteers clearly understood the risks to them, and even if they were willing to "take the chance" that everything would turn out for the best, there is still reason to be concerned that such a trial could be manifestly unjust. The reason for this is precisely that there are times when the ethical appropriateness of an incentive should not and cannot be understood in absolute terms (£2,000) or in terms of willingness to pay (as more appealing to those with stronger desires to participate), but must be understood in terms of fairness (whether expected value to the participant aligns with the compensation offered) and individual justification (whether one has acted for the right reasons).

People make foolish bets all the time. They play the lottery, for instance; or they take risky jobs, as Emanuel likes to point out (Emanuel 2004; Emanuel 2005; Emanuel and Miller 2007). We generally permit such gambling on grounds that competent adults can make their own decisions and understand their own risks. But people also play ethically suspect lotteries and accept ethically suspect jobs, buying into Ponzi schemes or working for pennies on the hour. We try, when possible, to protect such people from being taken advantage of. For this reason, it is not enough to argue that a medical trial is free of all ethical questions regardless of the incentives offered. Medical trials ought not to be structured like con games or exploitative job markets. At least, *fair and just* medical trials ought not to take a house rake at the expense of a participant. If anything, a trial should seek to compensate participants for the expected harm that they might incur. Better yet, it should seek to ensure that participants are acting for the right reasons, and not out of desperation or need or wild-eyed excitement about money.

REFERENCES

Emanuel, E. 2004. Ending concerns about undue inducement. *Journal of Law, Medicine and Ethics* 32: 100–105.

Emanuel, E. 2005. Undue inducement: Nonsense on stilts? *American Journal of Bioethics* 5(5): 9–13.

Emanuel, E., and F. Miller. 2007. Money and distorted ethical judgments about research: Ethical assessment of the TeGenero TGN1412 Trial. *American Journal of Bioethics* 7(2): 76–81.

English, R. 2006. Elephant man couldn't resist drug test money. Daily Mail. March 20, 2006. Available at http://www.dailymail.co.uk/pages/live/articles/news/news.html?in_article_id=380395&in_page_id=1770 (accessed on November 23, 2006).

Evans, D. 2006. Parexel misled subjects sickened in London study, ethicists say. Bloomberg.com. April 10, 2006. Available at http://www.bloomberg.com/apps/news?pid=20601186&refer=special_report&sid=aG3sg1rIkL4U (accessed on November 23, 2006).

Grady, C. 2001. Money for research participation: Does it jeopardize informed consent? *American Journal of Bioethics* 1(2): 40–44.

London, A.J. 2005. Undue inducements and reasonable risks: Will the dismal science lead to dismal research ethics? *American Journal of Bioethics* 5(5): 29–32.