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The Boston Globe

Patent nonsense on avian flu

By Alec van Gelder | October 31, 2005

WITH ALL the hysteria surrounding the possible mutation of the Avian flu virus into a form that puts humans at risk, policymakers have subjected us to everything -- except common sense. There are no easy solutions to the outbreak that is predicted, and more deaths are likely. Misleading the public and ignoring the outcome of myopic actions is simply not acceptable with millions of lives at stake.

At least 65 people have already perished from a strain of Avian flu called H5N1, contracted from close contact with poultry. A further 100 are believed to be infected. The virus has spread west from Southeast Asia to Turkey and Russia, carried by migrating birds. Those most at risk are people who work closely with poultry in unsanitary, cramped conditions: By definition, these people are poor.

So far, there is no proof that a strand of H5N1 can spread between humans, nor that it will. Yet the hysteria surrounding Avian flu far surpasses that which accompanies the yearly arrival of a new flu strand, which regularly kills hundreds of people. And it far surpasses the attention given to other diseases, such as diarrhea, which claim at least 3 million lives a year in poor countries.

The reason for this hysteria is the prediction that, if this virus mutates into a form transmissible between humans, tens of millions will be at risk -- as in the 1918 pandemic that killed 50 million to 100 million people. But what is the rational response to such predictions?

We know that viruses mutate and strike in unpredictable ways. It is plausible that this virus might mutate as has been predicted and that an epidemic -- or even a pandemic -- might result. Since we cannot predict exactly how, where, or when the virus might mutate, we need a response that is both preventative and adaptive.

Preventative measures might include vaccinating those likely to become infected with both H5N1 and conventional influenza viruses. This would reduce the chances that H5N1 could acquire genes that would enable it to be transmitted between humans.

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Adaptive measures might include identifying potential vaccines and treatments for H5N1 and ensuring that these are available for use when necessary.

So far only one medicine has proved effective in treating human cases of H5N1. That medicine, Tamiflu, was developed by the Switzerland-based pharmaceutical company Roche, which owns the patent. Because of the pressure to "do something," politicians are considering breaking Roche's patent on the populist premise that this will increase the availability of Tamiflu.

While it makes sense to build government stockpiles of Tamiflu in preparation for a possible outbreak of H5N1, it is far from clear that breaking the patent would be helpful -- indeed the opposite is more likely to be the case for several reasons.

First, the raw ingredients for Tamiflu come from a Chinese herb which is in short supply. Unless production of the herb is increased, it will be impossible to increase production of Tamiflu. In this case, breaking the patent would have no impact on availability of the drug.

Second, Tamiflu is difficult to manufacture. Since Roche has developed the manufacturing expertise, it seems sensible to encourage Roche to increase production and/or to help other companies produce the drug under a voluntary license. Breaking the patent through a compulsory license would actively discourage Roche from either producing the drug or lending its expertise, which would be directly counterproductive.

Third, given that scientists have only a vague idea of what a human strain of H5N1 might look like, there is no certainty that Tamiflu will be effective. Even if Tamiflu does work on some people, widespread use would inevitably result in the development of resistant strains. So, either way, alternatives are clearly needed.

Yet if governments break the patent on Tamiflu, no pharmaceutical company is going to want to develop a new antiviral for fear that their expensively developed innovative medicine will simply be stolen without adequate compensation for the tens or hundreds of millions of dollars invested.

In light of the potential threat posed by a human strain of H5N1 or other similarly deadly viruses, there are constructive things that governments could do. First, they could offer to purchase large quantities of vaccines or antivirals that meet clearly defined criteria. Second, they might also offer tax breaks to companies that choose to invest in the development of relevant drugs.

But the most important role for government is to uphold private property rights and ensure that the rule of law applies -- which means protecting rather than breaking patents. The alternative -- the rule of the mob -- would truly be devastating.

Alec van Gelder is a research fellow specializing in technology issues at the International Policy Network in London. ■

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