



February 26, 2018

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your January 4, 2018, letter regarding recent investigative news reports about possible violations of the requirements of the Common Rule. Secretary Azar has asked me to respond to you directly.

The following is our response to your inquiry:

1. Has HHS, OHRP, or the FDA performed a formal investigation and review into the reported research? If so, what were the results? If not, why not?

The Department of Health and Human Services (HHS) Office for Human Research Protections (OHRP) first became aware of this research when it came to our attention through the news in August 2017. OHRP's Division of Compliance Oversight, contacted Southern Illinois University (SIU) on September 7, 2017, and requested a report detailing SIU's involvement in the trial, along with documentation to support SIU's findings. At this time, OHRP has not opened a formal investigation because it is unclear whether OHRP has jurisdiction over this research, which was not funded by HHS. OHRP expects that SIU's forthcoming report will provide sufficient information for OHRP to determine whether the office has jurisdiction over the study.

The Food and Drug Administration (FDA) has not performed a formal regulatory investigation of SIU. In two previous inspections of SIU's Institutional Review Board (IRB), 2007 and 2011, no Form FDA 483 was issued and the inspections were classified as No Action Indicated (NAI). A routine unrelated inspection is scheduled to occur this fiscal year.

To the extent that the FDA's Office of Criminal Investigations (OCI) is conducting a criminal investigation into this matter, it is our policy not to comment on specific, ongoing criminal matters.

2. Has HHS, OHRP, or the FDA found SIU to be culpable for Professor Halford's reported research? If so, what steps were taken to make sure SIU properly oversees its research professors? If not, why not?

We are not yet in a position to answer this question. As noted in our response to the first question, it is still unclear whether OHRP has jurisdiction over this trial.

3. Did HHS, OHRP, or the FDA find SIU's response to Professor Halford's work to be adequate? Please explain.

We are not yet in a position to answer this question. The office will continue to review the matter and update you when possible.

4. Since SIU found "serious noncompliance with regulatory requirements..." what corrective action did HHS, OHRP, or the FDA take to ensure that noncompliance does not occur again?

OHRP is not yet in a position to answer this question. If corrective action is necessary we will update you when possible.

FDA has a routine unrelated inspection planned for this fiscal year. During the inspection, FDA will review the IRB procedures and documents to determine if federal regulations were followed.

5. Has HHS or the FDA ever reported research malpractice to federal or state law enforcement for potential prosecution?

HHS has reported research misconduct to federal or state law enforcement for potential prosecution.

FDA's OCI, receives referrals from other components of FDA, regarding possible criminal violations pertaining to clinical trials.

Since FY 2013, OCI has initiated 83 criminal investigations involving clinical trials of which 35 cases were referred to federal prosecutors (U.S. Attorney's Offices) and one to state prosecutors. Several of the 83 investigations are new and not yet far enough into the investigation to be referred to a prosecutor.

6. Please explain, in detail, the process OHRP follows once a complaint about potentially unapproved research is received.

When OHRP receives an allegation or indication of noncompliance, OHRP proceeds in accordance with its standard compliance oversight procedures, provided in the OHRP document titled "Compliance Oversight Procedures for Evaluating Institutions." This document is available on the OHRP website at <https://www.hhs.gov/ohrp/compliance-and-reporting/evaluating-institutions/index.html>.

7. How many reports of unapproved clinical trials have been received by OHRP in the past 5 years?

OHRP does not have the specific data requested. OHRP's compliance activities tracking system (CATS) does not separate data about clinical trials from other human subjects research activities. CATS does capture whether incidents of non-compliance involve the conduct of research without IRB approval. However, this category includes 1) research conducted without initial IRB approval; 2) research conducted when continuing review IRB approval did not occur as required; and 3) research activities where changes were made to research without IRB approval.

HHS regulations require that institutions have written procedures to ensure that the following types of incidents pertaining to research are promptly reported to OHRP: (1) any unanticipated problems involving risks to subjects or others; (2) any serious or continuing noncompliance; and (3) any suspension or termination of IRB approval. Since January 1, 2012, OHRP received 6,376 incident reports from assurance holding institutions. Clinical trials initiated without IRB approval would be a very small fraction of those incidents.

8. Of the reported cases, how many resulted in an internal review by the institution in question?

As described above, reports of noncompliance involve internal review of the noncompliance by the institution, the development and implementation of a corrective action plan as appropriate, and review of the report by OHRP to evaluate the adequacy of the plan.

9. Of the reported cases, how many resulted in referral to federal or state law enforcement?

None of the reported cases resulted in referral to federal or state law enforcement.

Thank you again for your letter. Please contact me if you have any further thoughts or questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew D. Bassett", with a stylized flourish extending to the right.

Matthew D. Bassett
Assistant Secretary for Legislation