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Barbara Van Gelder
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[redacted]

November 4, 2009

VIA E-MAIL AND FIRST CLASS MAIL

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Building
Washington, D.C. 20510-6200
Attn: Mr. Brian Downey
Brian.Downey@finance-rep.senate.gov

Re: Letter of September 30, 2009 to Northwestern University

Dear Senator Grassley:

On behalf of Northwestern University ("Northwestern" or "the University"), undersigned counsel is responding to your letter of September 30, 2009 to Dr. Henry S. Bienen, former President of Northwestern University. The University responds as follows:

Request 1: Did Dr. McCarthy, Northwestern and/or the Hospital request confirmation from the company that the Myxo ETlogix 5100 Ring was cleared by the FDA before Dr. McCarthy first implanted the device? If so, on what date was the request(s) made, by whom, to whom at Edwards, and on what date was the assurance(s) received?

Response 1: Northwestern is not involved in clinical activities as described above and; therefore, does not have any documents responsive to this request.

Request 2: Please provide the Committee with a copy of emails, letters, memoranda, or any other documentation of Edwards' assurance to Dr. McCarthy, Northwestern, and the Hospital that the Myxo ETlogix 5100 Ring was cleared by the FDA prior to use in the cardiac surgery outcomes registry. This request covers the period of August 1, 2005 through April 30, 2006.

Response 2: To clarify, the Myxo ETlogix 5100 Ring was not "use[d] in the cardiac surgery outcomes registry." The registry was not aimed at a particular device; rather it was a registry of subjects with cardiovascular disease requiring surgical intervention. In any event, Northwestern has previously provided the Committee with all responsive emails, letters, memoranda or any

other documentation on January 5, 2009 and January 16, 2009, see generally NWU00002, NWU00003, NWU00008, NWU00009, NWU00012, and NWU00013.

Request 3: If written assurance or confirmation was not requested and/or provided, please explain why not and on what basis Dr. McCarthy, the Hospital and/or Northwestern determined that the device had been cleared for use.

Response 3: See response 2.

Request 4: The Hospital stated, "At no time did any surgeon at the Hospital believe themselves to be implanting an investigational or experimental device." Other than Dr. McCarthy, how many other surgeons at the Hospital implanted the device during the period March 1, 2006 and August 30, 2007? Did any of these surgeons inquire about the approval status of the device before they first used the device? If not, on what basis did they determine that they were implanting a cleared device?

Response 4: The University does not have any information that is responsive to this question.

Request 5: What policies and protocols do Northwestern and the Hospital have in place to ensure that the appropriate assurances are obtained regarding the status of a device before it is first used by a faculty member and/or Hospital physician?

Response 5: When a researcher submits a proposal to conduct a study on a medical device, Northwestern University's Office for the Protection of Research Subject (OPRS) requires that Section 19 of the "New Project Submission Form" (see the attached screen shots from Section 19 at NWU000289-293) be completed. Section 19 requires researchers to provide information on all medical devices to be used in proposed studies, including:

- if it is an FDA-approved device being used for an approved use, the device name and brochure;
- if it is an FDA-approved device being used for an unapproved use, the device name, IDE number and brochure; and
- if it is a non-FDA-approved device, the device name, IDE number and brochure.

If the proposed research study will use an FDA-approved device for an unapproved use, or a non-FDA-approved device, there are additional questions regarding whether the device is exempt from FDA IDE requirements, a non-significant risk device or significant risk device, and the justifications for those determinations. OPRS presents the information provided by the researcher to the IRB, which must determine that the information provided is satisfactory before approving the research study.

OPRS publishes the Human Subject Protection Policy Manual ("HSPPM"), available at http://www.research.northwestern.edu/oprs/irb/policies/documents/Northwestern.HSPP.Policy.v

5.0_May3.1.2007.pdf, (NWU000181-288) which sets forth information on the University's policy relating to human subject research. Section X.M. of the HSPPM provides specific guidance regarding research on investigational medical devices and compliance with IDE regulations (NWU000268-270).

Request 6: What policies and protocols do Northwestern and the Hospital have in place to respond to instances where the university and/or the hospital realize after the fact that a device being used in the hospital for treatment or research has not been appropriately cleared by the FDA? How many times has such an occurrence taken place in the last 5 years? What measures were taken by Northwestern and/or the Hospital to address the matter? Were the patients subsequently informed or re-consented? If not, why not?

Response 6: When the IRB becomes aware that a previously approved research study may be using an unapproved device, OPRS will immediately notify the OPRS Director and an IRB Chair or the Chair for Administrative Review. One of the Chairs will make a determination as to whether the alleged practices appear to have caused injury or any other unanticipated problems involving risks to subjects or others. The IRB Chair may suspend the study procedures or place a "partial clinical hold" on some aspect of the study (e.g. the enrollment of new subjects, or one arm of a clinical study), taking into consideration the welfare of currently enrolled subjects pending further investigation and review of the allegation. (See HSPPM Section XI at Bates Number NWU000185-188.)

An audit of the study will be performed to confirm or refute the allegation. Once the audit has been completed, the findings will then be reviewed by a convened IRB panel and/or subsequent IRB Chairs meetings. The IRB Panel will then determine the next steps to be taken and who, both internally and externally, needs to be notified. Depending on the findings, further action will be taken per the HSPPM. OPRS staff has no record of such an occurrence in the past five years.

If you or your staff has additional questions or concerns regarding this matter, please do not hesitate to contact me.

Sincerely,

Barbara Van Gelder
Counsel for Northwestern University

Enclosures

From: Susan Katz [[redacted]]
Sent: Tuesday, August 28, 2007 4:03 PM
To: Susan Katz; McCarthy, Patrick M.D.
Subject: RE:

Dear Dr. McCarthy-
In response to your question -

> The model 5100 McCarthy Myxo ETlogix Annuloplasty Ring is not an investigational device. According to the FDA guidance document dated January 10, 1997, *Deciding When to Submit a 510(k) for a Change to an Existing Device*, model 5100 is a minor modification of model 4200, GeoForm Annuloplasty Ring, cleared under K032250. The applicable 510(k) number for model 5100 is K032250.

Let me know if this sufficiently answers your question?
Regards,
Susan

From: Susan Katz [redacted]
Sent: Monday, September 10, 2007 11:11 AM
To: Lynch, Julia
Cc: Susan Katz
Subject: RE: Model 5100 McCarthy Myxo

Dear Julia-

It appears you are looking for information about authority to market the product. It has been marketed in the US since March 2006 pursuant to the FDA's 510k clearance process. That process does not involve issuance of documentation by the FDA.

Please let me know if you have further questions.

Regards,
Susan Katz
Director of Marketing, Mitral
Edwards Lifesciences
[redacted]

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Sent: Tuesday, August 28, 2007 4:03 PM
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