U.S. SENATE COMMITTEE ON
Finance
SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN
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For Immediate Release
Wed., Oct. 11, 2006

Grassley asks HHS Secretary to review ethics of FDA-approved research

WASHINGTON --- Sen. Chuck Grassley, Chairman of the Senate Committee on Finance, today urged the Secretary of Health and Human Services to review the ethics and science of human research that was approved by the Food and Drug Administration and conducted without the voluntary consent of its subjects.

Grassley made his request as the Food and Drug Administration held a public hearing to look prospectively at its policies on human research and consent.

"In order to get this right in the future, we need to know what happened in the very recent past with a blood substitute, where people were subjected to trials without giving consent," Grassley said. "The Department of Health and Human Services, where the FDA is housed, has an obligation to make certain that the federal government stands on solid ethical and scientific ground before sanctioning this kind of experimental human research. So far, the Department has failed to step forward on these questions and this particular case. We need the Department's leadership in order to hold the FDA accountable and guide its actions in the future."

The text of Grassley's letter follows here.

October 11, 2006

The Honorable Michael Leavitt
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Leavitt:

Today the Food and Drug Administration (FDA) held a public hearing to "[take] a close look at the implementation of its 1996 regulation, 21 CFR 50.24, which allows clinical emergency research when informed consent cannot be obtained [Emergency Research Consent Exception]." Unfortunately, both the public hearing and the FDA's draft guidance are long past due,[1] as is the Department of Health and Human Services (HHS/Department) response to the Committee on Finance (Committee), which is now more than 200 days over due, regarding an ethically questionable study conducted pursuant to the Emergency Research Consent Exception.

You may recall that I wrote you on March 13, to inform you that officials from the Office for Human Research Protections (OHRP), informed my Committee staff that it was the considered position of OHRP that a then ongoing, FDA-approved clinical trial was unethical.[2] Attached to this letter was a separate letter addressed to the Acting Commissioner, dated February 28, as well as correspondence showing that the FDA never fully addressed OHRP's urgent concerns regarding this emergency research or successfully scheduled a joint FDA-OHRP review of the Emergency Research Consent Exception.[3]

As the Secretary of HHS, which is the United States government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves, you have a sworn duty to all Americans and direct authority over all agencies within HHS, including but not limited to FDA, OHRP, and the National Institutes of Health (NIH).[4] Accordingly, I respectfully request that you exercise your authority to convene a meeting of the Secretary's Advisory Committee on Human Research Protections (Secretary's Advisory Committee).[5] The purpose of this meeting would be to address an ethical question that has a direct impact on the conduct of human subject research in the United States. Specifically, OHRP—the HHS office with direct responsibility for advising you on issues of human subject protections—is concerned that "informed consent cannot be waived under 21 C.F.R. 50.24 in the emergency room for experimental subjects to continue to receive [a blood substitute], because blood is available in the emergency room and is neither 'unproven or unsatisfactory.'"

After my Committee staff reviewed the correspondence between OHRP and FDA, and met with OHRP and FDA officials, it was undeniable that there was strong disagreement within HHS on whether or not blood is an "unproven or unsatisfactory" treatment. It appears there is also some disagreement within the wider medical and ethical community, particularly among medical institutions, institutional review boards, and trauma surgeons, as to whether or not it is ethical for an emergency room doctor to withhold blood from an unconscious, unconsenting patient in a hospital setting. Nevertheless, OHRP officials advised my Committee staff that blood transfusions remain the standard of care in hospitals. Accordingly, OHRP advised the FDA of OHRP's position that the transfusion of blood is not an "unproven or unsatisfactory" treatment and, therefore, FDA may have acted unethically in approving a clinical trial of a blood substitute.

It is of paramount importance that the United States government stands on solid ethical and scientific ground before sanctioning experimental research on its citizens without their consent. Here, the FDA sanctioned withholding blood from unconscious, unconsenting trauma victims, in numerous communities across the country, when life-saving blood was available at the hospital. Given that the FDA sanctioned this experimental research without convening a public advisory committee meeting, under 21 C.F.R. 14, and without satisfactorily addressing the concerns of OHRP, it is reasonable to question whether or not the FDA's decision rested on solid ethical and scientific ground. Accordingly, I request that the Secretary's Advisory Committee conduct a comprehensive ethical and science-based review and evaluation of this ethical question. If the Secretary's Advisory Committee reaches a consensus on whether or not blood is "unproven or unsatisfactory," it will go a long way toward justifying the FDA's decision to approve the experimental research in question.

The Secretary's Advisory Committee, formerly the National Human Research Protections Advisory Committee, was established in June 2000 along with OHRP, formerly the Office for Protection from Research Risks at the NIH, "to further strengthen protections of human research subjects in clinical trials . . . [and] to heighten government oversight of biomedical research and to reinforce to research institutions their responsibility to oversee their clinical researchers and institutional review boards (IRBs)."[6] The task of overseeing this ethical question appears to fit squarely within the charter of the Secretary's Advisory Committee.[7]

In closing, it is important to emphasize two key points. First and foremost, "[t]he voluntary consent of the human subject is absolutely essential . . . The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity."[8] Second, the potential benefit of a viable blood substitute is not an issue in dispute. It should go without saying, however, that the United States government cannot justify sanctioning experimental research on its citizens without their consent out of expediency.

Thank you in advance for your prompt attention to this urgent ethical question. I respectfully request a response by no later than two weeks from today, October 25, 2006. Please do not hesitate to call me if you would like to discuss these issues in more detail.

Sincerely,
Charles E. Grassley
Chairman

[1] http://www.fda.gov/OHRMS/DOCKETS/98fr/06d-0331-gdl0001.pdf
[2] http://finance.senate.gov/press/Gpress/2005/prg031306.pdf
[3] http://finance.senate.gov/press/Gpress/2005/prg031306attach%20.pdf
[4] http://www.hhs.gov/about/whatwedo.html/
[5] 42 U.S.C. 217a, Section 222 of the Public Health Service (PHS) Act, as amended. The Committee is governed by the provisions of Public Law 92-463, as amended (5 U.S. C. Appendix 2)
[6] http://www.hhs.gov/news/press/2000pres/20001214a.html
[7] http://www.hhs.gov/ohrp/sachrp/charter.htm
[8] http://www.hhs.gov/ohrp/references/nurcode.htm