United States Senate
Committee on Finance

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Statement of U.S. Senator Chuck Grassley of Iowa
The Adequacy of FDA Efforts to Assure the Safety of the Drug Supply
Subcommittee on Oversight and Investigations
House of Representatives Committee on Energy and Commerce
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Chairman Dingell, Chairman Stupak, Ranking Members Barton and Whitfield and distinguished colleagues, thank you for holding this important hearing on drug safety and the Food and Drug Administration. Thank you also for inviting me to speak today on this important subject.

During the last three years, I conducted extensive oversight of the Food and Drug Administration while I was Chairman of the Senate Finance Committee, which is responsible for Medicare and Medicaid. I view my role as working to ensure the safety and well-being of the more than 80 million Americans who are beneficiaries of these programs. The Medicare and Medicaid programs spend a lot of money on prescription drugs and medical devices, and that money should be spent on drugs and devices that are safe and effective.

In the course of my oversight of the federal bureaucracy, I have developed many good relationships with whistleblowers. And it was FDA whistleblowers and concerned FDA scientists who first drew my attention to problems at the Food and Drug Administration.

It started in early 2004 with an FDA psychiatrist named Dr. Andrew Mosholder, who realized through his work that there was a serious suicide risk for teenagers taking certain antidepressants. He wanted to make a presentation about his findings to an FDA advisory committee. But for some reason, FDA supervisors didn't want this information to get out. They canceled Dr. Mosholder's presentation and instructed him to write a script approved by his supervisors that he would use if anybody asked him why he was no longer presenting.

That fall, I held a hearing on drug safety in the aftermath of Vioxx - the blockbuster pain medication - being pulled from the market by its manufacturer, rather than the Food and Drug Administration. The testimony at my hearing turned a bright spotlight on problems with the FDA's postmarket surveillance effort. The FDA works tirelessly, as it should, to approve new life-saving and life-enhancing drugs. But it could do a lot better job of keeping track of

developments with these drugs after they're on the market. Reviewing what happened inside the FDA with Vioxx, and in working with a number of whistleblowers who bravely stuck their necks out and came to me after that landmark hearing, I've identified problems at the FDA that consistently fit into a few themes.

First, scientific dissent is discouraged, quashed, and sometimes muzzled inside the Food and Drug Administration. Second, the FDA's relationship with drug makers is too cozy. The FDA worries about smoothing things over with industry much more than it should with its regulatory responsibilities. Third, inside the FDA there's widespread fear of retaliation for speaking up about problems. And fourth, the public safety would be better served if the agency was more transparent and forthcoming about drug safety and drug risks.

These problems involve the culture of the Food and Drug Administration. They're not isolated but systemic. And they can be partly attributed to the organizational structure of the FDA.

My concerns are not isolated either. During the last year, they've been validated by the highly regarded Institute of Medicine, as well as the independent Government Accountability Office and respected medical journals. What's at stake is public safety and public confidence in our nation's world-renowned Food and Drug Administration.

My investigations of FDA issues have also revealed a deeply troubling disregard for Congress' responsibility to conduct oversight of the executive branch of government. The FDA and the Department of Health and Human Services have put up so much resistance to my effort to find out what happened inside the FDA with a relatively new antibiotic called Ketek that I can only wonder what there is to cover up.

Every excuse under the sun has been used to create roadblocks, even in the face of Congressional subpoenas requesting information and access to FDA employees.

In denying access to documents responsive to the subpoenas, the Department and FDA have claimed "prosecutorial deliberative process," "confidential communications," and "agency prerogative to determine who will be interviewed or testify before a jurisdictional committee." Yet, during my years in the Senate, my investigators have obtained access to every single one of these categories of so-called confidential information from HHS as well as other executive branch agencies.

Furthermore, I asked the Congressional Research Service to look into the Department's policies regarding this matter and CRS told me that there is "no legal basis" for the Department's executive branch assertions.

Nevertheless, the Department and FDA not only withheld documents that do not appear to be privileged, but they also won't say what has been withheld and why. The subpoenas compel a privilege log, but the Department and FDA will not provide one.

The Department and FDA say that they have been responsive to the Finance Committee's Ketek investigation because they made available millions of pages of documents to the Committee. But what they provided is quantity, not quality.

They delivered hundreds of pages simply marked, for example, "57 pages removed," or "43 pages removed." (see attachments 1-5) Other documents have whole pages, paragraphs or sentences redacted with no explanation for what has been withheld or redacted and why. In fact, the FDA redacted some of the same documents differently and even redacted one of my own letters to them on a different matter (see attachment 6)

When I point out the absurdities in the Department's responses to my requests for documents and interviews related to Ketek, the Department argues it could not provide access to information and individuals related to open criminal investigations. But I didn't ask for access to open criminal investigations; I don't want to jeopardize a criminal matter. The Department and the FDA know that, yet they keep using that excuse anyway.

Even so, what I've learned about what happened with Ketek troubles me. I've learned that:

- FDA gave its advisory committee questionable data on Ketek and did not tell them about problems with that data. I sent a letter to the FDA in December regarding my findings on this matter and am awaiting a response from the agency.
- FDA approved Ketek without much safety data from the U.S.; the agency relied almost exclusively on foreign, post-marketing safety data; and
- Ketek's sponsor in all likelihood was aware of the fact that it submitted some questionable data to the FDA regarding its large safety study; the sponsor was informed of problems with one of the study sites prior to data submission to the FDA. However, according to FDA reviewers, the sponsor never raised these problems to the FDA. FDA learned about them after its own investigators inspected the site.

I plan to continue my investigation of Ketek and issue more reports. But I am heartened to hear that FDA came to a decision yesterday that mirrors the recommendations of its internal scientists as well as its advisory committees.

During the last three years, I've also tried to work in a productive way with the Commissioners and Acting Commissioners of the FDA. It will take bold leadership to get on top of the FDA's troubles and turn the agency around. So far, the lip service has been fine. The reality a lot less so.

Last month, Senator Chris Dodd and I reintroduced two reform bills that we first proposed in 2005 to get at the safety shortcomings of the FDA. Our first bill would elevate and empower the office with the FDA that is responsible for monitoring FDA-approved drugs after they're on the market. It would make the "postmarket drug safety" function independent within the FDA, instead of under the thumb of the office and center that puts the drugs on the market in the first place, the way it is today.

Chairman Dingell, the Wall Street Journal has reported that you're intrigued by the idea of a drug safety center within the FDA. I appreciate that view. It doesn't make any sense that the FDA officials who are supposed to monitor the safety of a drug on the market serve only as consultants to the FDA officials who approved the drug in the first place. The officials who approved the drug would obviously be conflicted in making a judgment that approval is no longer appropriate or was a mistake in the first place. A separate center for drug safety within the FDA is a vital lynchpin when it comes to meaningful reform and improvement of the agency's postmarket surveillance work.

The second bill that Senator Dodd and I introduced would expand an existing public database by mandating the registry of all clinical trials and the results of those trials. This reform is key to establishing greater transparency regarding clinical trials, the good ones and the bad ones, and to holding drug makers and drug regulators accountable.

Both of these legislative initiatives would make drug information used by doctors and patients more complete and more accessible. American consumers should not have to second guess the safety of the pills in their medicine cabinets.

I appreciate the attention all of you are giving to this important national issue with this hearing. You will hear from some of the heroic whistleblowers who have helped my work, without whom my work wouldn't have been possible. Two of the whistleblowers have left the FDA. It's a tremendous loss for our country when an agency like the Food and Drug Administration gets so dysfunctional that specialists like these whistleblowers are forced to leave the agency to avoid retaliation. I want to work closely with you to make sure FDA whistleblowers can communicate to Congress without fear.

In addition, the existing agreement between the Inspector General for the Department of Health and Human Services and the Food and Drug Administration gives too much power to the FDA when it comes to how allegations of criminal misconduct by FDA employees are investigated. That agreement should be revisited by reform minded leaders in Congress. (see attachment 7)

I look forward to reform opportunities in the year ahead. There's no doubt that the FDA needs additional tools and resources to do its work. The FDA also needs an overhaul to make the agency more transparent, more forthcoming, and more independent-minded.

I look forward to working with this Committee and in particular with you, Chairmen Dingell and Stupak and Ranking Members Barton and Whitfield, as well as my colleagues in the Senate to enact reforms at the FDA. Thank you.