DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Office of Public Health and Science

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November 21, 2002

Thomas R. Frieden, M.D., M.P.H.
New York City Department of Health and Mental Hygiene
225 Broadway, 23rd Floor
New York, NY 10007

RE: Human Research Protections Under Multiple Project Assurance (MPA) M-1541

Dear Dr. Frieden:

The Office for Human Research Protections (OHRP) has reviewed your November 15, 2002 report regarding the above-referenced research conducted at the New York City Department of Health and Mental Hygiene (NYCDOH) that was submitted in response to OHRP's October 10, 2002 letter.

Based on its review of your February 21, 2002 and June 5, 2002 reports, OHRP made the following determinations:

(1) Department of Health and Human Services (HHS) regulations at 45 CFR 46.103(f) require that an institution with an approved assurance shall certify that each *application* for research has been reviewed and approved by the Institutional Review Board (IRB). In its July 1, 2002 letter, OHRP found that the NYCDOH IRB failed to review grant applications.

Corrective Actions: OHRP acknowledges that the IRB has established a procedure and a grants management database to log in, review, and track the disposition of all grant applications prior to submission. In addition, a "Notice to Investigators" will be sent to research personnel announcing that all grant applications must be reviewed and receive an IRB Grants Log number prior to submission to the funding agency. OHRP finds that these corrective actions adequately address the above finding and are appropriate under the NYCDOH MPA. However, as OHRP noted before, not all grant applications need to be reviewed by the IRB prior to submission to the funding agency. For example, some applications are submitted to departments or agencies with the knowledge that human subjects may be involved within the period of support, but definite plans are not set forth in the application or proposal. In addition, under "just-in-time" procedures used by the National Institutes of Health, the certification of IRB approval may be deferred until just prior to funding. These applications need not be

reviewed by an IRB before a grant application is submitted. However, except for research exempted or waived under §46.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted by the institution to the supporting Department or Agency.

(5) In its October 10, 2002 letter, OHRP found that the institution did not appear to have written IRB policies and procedures that adequately describe the following activities, as required by HHS regulations at 45 CFR 46.103(a) and 46.103(b)(4) and (5):

> (a) The procedures which the IRB will follow (i) for determining which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (ii) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.
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> (b) The procedures for ensuring prompt reporting to appropriate institutional officials and OHRP of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with 45 CFR Part 46 or the requirements or determinations of the IRB; and (ii) any suspension or termination of IRB approval.

Corrective Actions: OHRP acknowledges that the revised NYCDOH IRB Policies and Procedures now include operational details for these procedures. OHRP finds that this corrective action adequately addresses the above finding and is appropriate under the NYCDOH MPA. OHRP recommends that the procedures include the title(s) of the appropriate institutional officials to whom such reporting is to be directed.

As a result, there should be no need for further involvement of OHRP in this matter. Of course, OHRP must be notified should new information be identified which might alter this determination.

OHRP appreciates the continued commitment of your institution to the protection of human research subjects. Please do not hesitate to contact me should you have any questions.

Sincerely,

Kristina C. Borror, Ph.D.
Compliance Oversight Coordinator
Division of Human Subject Protections

cc: Dr. Benjamin Mojica, Deputy Commissioner, NYCDOH
Dr. Lucia Torian, NYCDOH IRB Chair
Mr. Wilfredo Lopez, NYCDOH, OGC
Commissioner, FDA
Dr. David Lepay, FDA
Dr. Melody Lin, OHRP
Dr. Michael Carome, OHRP
Dr. Jeff Cohen, OHRP
Mr. George Gasparis, OHRP
Ms. Yvonne Higgins, OHRP
Mr. Barry Bowman, OHRP