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VIA HAND DELIVERY

Mr. Steven A. Masiello
Director, Office of Compliance and Biologics Quality
Center for Biologics Evaluation and Research
Food and Drug Administration
1401 Rockville Pike
Rockville, MD 20852-1448

Re: Docket 97N-484P: Public Health Jeopardized by the "Pooling" of Human Tissue -- Request for Enforcement Action

Dear Mr. Masiello:

As you are aware, despite the fact that the American Association of Tissue Banks ("AATB") opposes the "pooling" of human tissue by tissue banks, and despite FDA's stated health concerns regarding tissue "pooling," at least one company – Regeneration Technologies, Inc. ("RTI") – continues to engage in this practice. In order to safeguard public health, I am writing this letter to encourage the agency to immediately prohibit RTI, and any other companies, from engaging in this practice.

On May 3, 2001, the FDA sent a letter to RTI indicating that "the risks of pooling musculoskeletal tissues from multiple donors far outweigh the benefits" and that the agency has "concerns regarding the ability of the BioCleanse™ System [RTI's tissue processing system] to prevent infectious disease contamination or cross-contamination." The FDA expressed its concerns regarding potential exposure and cross-contamination of tissues by infectious disease agents such as viruses, bacteria, fungi, and prions.

FDA's letter provides the following:

> CBER does not agree with RTI's risk/benefit assessment of pooling tissues from multiple donors. The risks of pooling

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> musculoskeletal tissues from multiple donors far outweigh the benefits. These risks include exposure and possible cross-contamination from one tissue to another tissue of such infectious disease agents as viruses (enveloped and non-enveloped), bacteria, fungi, prions, and other emerging infectious agents. RTI has attempted to validate the BioCleanse system for certain viruses, bacteria, and fungi. As explained below, these validation studies do not appear to be adequate. To our knowledge, RTI has not attempted to validate the BioCleanse system for prions. Currently, there is no accepted method for validating a system for prevention of cross-contamination by prions. Consequently, if prion contamination were to occur, the risk to recipients would be significantly magnified and multiplied using a system that involved pooling ..... Therefore, in the absence of an acceptable level of evidence documenting the ability of the BioCleanse™ System to prevent the contamination or cross-contamination of tissue, we believe it prudent to immediately discontinue its use for processing of tissue in your facility[1].

FDA emphasized the risk of spreading Creutzfeldt-Jakob Disease ("CJD") through the practice of musculoskeletal tissue "pooling." In the May 3, 2001 letter to RTI, FDA acknowledged that "the use of pooling procedures for human tissue intended for transplantation. . . is inconsistent with FDA regulations" because RTI could not sufficiently validate the process as preventing potential cross-contamination of prions (the element believed to cause CJD), as required under 21 C.F.R. § 1270.31(d). FDA stated that "if prion contamination were to occur, the risk to recipients would be significantly magnified and multiplied using a system that involved pooling."

Despite the above-mentioned health concerns identified by the agency, it is my understanding that RTI continues to engage in the "pooling" of human tissue and continues to use the BioCleanse™ System. In fact, RTI's website continues to promote the efficacy of the BioCleanse™ System:

[1] Emphasis added.

> Our proprietary, patent-pending BioCleanse system safely processes tissue while killing or inactivating all classes of conventional pathogens, viruses, microbes, bacteria and fungi. The BioCleanse system also removes all blood, fats, lipids and cellular debris from the tissue. We are the only company in the industry using this system[2].

Based upon FDA's stated health concerns associated with the "pooling" of human tissue, I strongly urge FDA to take immediate enforcement action against RTI and any facility that engages in the "pooling" of human tissue. FDA itself has noted, in its May 3, 2001 letter to RTI, that "the use of pooling procedures for human tissue intended for transplantation is not only contrary to AATB's standards, but is inconsistent with FDA regulations." FDA should have the authority to take immediate enforcement action in this case in accordance with agency regulations 21 C.F.R. § 1270.31(d) [Written Procedures] and 21 C.F.R. § 1270.43 [Retention, Recall, and Destruction of Human Tissue].

Recent public events have drawn attention to the importance of protecting our citizens from infectious disease agents such as bacteria and viruses. While these events have not been related to tissue pooling, the events have made government officials aware of the need to take precautionary measures to protect our citizens from preventable harms; these preventable harms include those that can result from tissue "pooling" practices.

Based upon the health concerns identified by the FDA, public health continues to be jeopardized as long as the agency permits these "pooling" practices to continue. Accordingly, I strongly urge FDA to initiate immediate enforcement action against all companies that continue to engage in tissue "pooling." Thank you for your attention to this matter.

Sincerely,

Paul R

Paul D. Rubin

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[2] See http://www.regenerationtechnologies.com/rti/overview.