DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Office of Public Health and Science

Office for Human Research Protections
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March 3, 2006

Judy Matuk
Director, Research Compliance
State University of New York
at Stony Brook
Stony Brook, NY 11794-3368

RE: Human Research Subject Protections Under Federalwide Assurance FWA-125

Research Activities: **Human Tissue Research**
Principal Investigator: **Dr. Arthur Grollman**

Dear Ms. Matuk:

The Office for Human Research Protections (OHRP) has reviewed the State University of New York at Stony Brook's (SUNYSB) July 14, 2005 report responding to allegations of noncompliance with Department of Health and Human Services (HHS) regulations for the protection of human research subjects (45 CFR part 46).

Based on its review, OHRP makes the following determinations:

(1) It was alleged that Dr. Grollman conducted human subjects research without obtaining appropriate institutional review board (IRB) approval, as required by HHS regulations at 45 CFR 46.103(b) and 46.109(a). In specific, the complainant alleged that the investigator conducted research involving kidney biopsy samples without IRB review and approval. The complainant also alleged that the donor of the biopsy had an adverse outcome due to an error in the results of the research.

OHRP notes the following from your July 14, 2005 report: regarding the allegation of research involving kidney biopsy samples: "It is believed that Dr. Grollman served as an expert in his personal capacity for an attorney representing a kidney transplant patient in a legal matter not involving this University....it is the position of this Institution that the activity addressed in [this allegation] does not constitute research involving human subjects."

OHRP finds that this allegation cannot be substantiated.

(2) In addition, the complainant alleged that the investigator conducted research involving human tissue samples obtained in Croatia without IRB review and approval. OHRP acknowledges SUNYSB's statement in your July 14, 2005 report that the research was exempt from HHS regulations at 45 CFR part 46 under the exemption at 45 CFR 46.101(b)(4). However, it appears that the samples did not exist at the time the research was proposed, and therefore would not be eligible for exemption under 45 CFR 46.101(b)(4). Several lines of evidence support this conclusion:

(a) An August 29, 2003 letter from the research collaborators at the University of Zagreb to Dr. Grollman stated, "It is likely that hundreds of samples will ultimately be involved in this research." This implies that the sample collection was not complete at that time. Dr. Grollman requested an exemption for the research on September 3, 2003.

(b) The ID number of the samples appeared to include the date collected; and many of the samples appeared to have been collected in 2004, after Dr. Grollman had requested an exemption.

(c) An August 29, 2003 letter from Dr. Jelakovic to Dr. Mustajbegovic stated, "All patients will be full [sic] informed regarding the epidemiological facts and relation to diet and asked to sign an informed consent. In addition, informed consent will be obtained from patients from whom blood samples will be drawn or who will undergo procedures from which a portion of the tissues removed will be analyzed...." " This also implies that the sample collection was not complete at that time.

However, OHRP notes that SUNYSB does not appear to be engaged in the research. As a result, review and approval of the research by an IRB designated under the SUNYSB FWA was not required. Therefore, OHRP finds that this allegation cannot be substantiated. OHRP notes that Dr. Grollman has a pending grant application with Fogarty International Center. If this grant is funded and the research involves any human subjects activity in Croatia, then SUNYSB will likely be engaged in HHS-supported human subjects research and an IRB designated under the SUNYSB FWA will need to review and approve the research. This is because institutions receiving a direct HHS award to conduct human subjects research are considered engaged in the research, even where all activities involving human subjects are carried out by a subcontractor or collaborator (see http://www.hhs.gov/ohrp/humansubjects/assurance/engage.htm)

As a result of these determinations, OHRP anticipates no further involvement in this matter.

OHRP has the following additional guidance:

(3) OHRP notes that the request for exemption determination submitted by Dr. Grollman included very little information about the circumstances, including dates, of the sample collection. It is not clear that SUNYSB received sufficient information to determine whether or not the research proposed was exempt from the HHS regulations at 45 CFR part 46. OHRP recommends that the form for exemption request be changed to solicit information about whether or not samples are existing at the time the request is made.

(4) OHRP notes that the institution does not have operational details for written IRB procedures that adequately describe the following activities, as required by HHS regulations at 45 CFR 46.103(b)(4):

(a) The procedures which the IRB will follow for conducting its continuing review of research.

(b) The procedures which the IRB will follow for determining which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review.

OHRP recommends that the IRB develop operational details for these written procedures.

(5) The June 7, 2004 document titled, "Important Updates on SBU's Human Subjects Protection (HSP) Program" states, "QA/QI activities, which are considered systematic investigations, are not considered research (or under the jurisdiction of [the SUNYSB IRBs]) if the QA/QI data are not presented or published outside of the University (i.e., not contributing to generalizable knowledge)." OHRP notes that even in the absence of the intention to publish, QA/QI activities could be considered research.

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.
Director
Division of Compliance Oversight

cc: Ms. Mary Johnson, Coordinator, Research Compliance, SUNY-SB
Dr. Harold Carlson, Chair, SUNY-SB IRB #1
Dr. Michael Pearl, Chair, SUNY-SB IRB #2
Dr. Arthur Grollman, SUNY-SB
Dr. Bernard Schwetz, OHRP
Dr. Melody H. Lin, OHRP
Dr. Michael Carome, OHRP
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