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 8, 2005

Fred Rothstein, M.D.
President and CEO
University Hospitals of Cleveland
11100 Euclid Avenue
Cleveland, OH 44106

RE: Human Research Subject Protections Under Federalwide Assurance FWA-3937 and Multiple Project Assurance MPA-1521

Research Project: Protection Against Adverse Effects of UV Radiation on Human Skin
Principal Investigator: Dr. Seth Stevens and Dr. Elma Baron
Project Number: 03-99-16

Dear Dr. Rothstein:

The Office for Human Research Protections (OHRP) has reviewed University Hospitals of Cleveland's (UHC) June 29, 2004 report in response to allegations of noncompliance with Department of Health and Human Services (HHS) regulations for the protection of human research subjects (45 CFR part 46) in the above-referenced research.

In its January 7, 2005 letter, OHRP made the following determination, among others:

> (1) HHS regulations at 45 CFR 46.109(e) require that continuing review be conducted at intervals appropriate to the degree of risk, and not less than once per year. OHRP **n**oted that the UHC IRB policy described in the June 29, 2004 report permits research protocols to remain open up to sixty days beyond the date on which IRB approval expires.
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> OHRP found that the UHC IRB policy permitting research to continue for up to sixty days after IRB approval has expired, and before the next continuing review and approval have occurred, does not meet the requirements of HHS at 45 CFR 46.109(e).
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> **Corrective Action:** OHRP acknowledges that the UHC IRB has developed written procedures to ensure that continuing review of research is conducted not less than once per year, and that research is suspended if it has not been reviewed and approved by the

IRB by the date on which IRB approval expires, in accordance with HHS regulations and OHRP guidance. OHRP also acknowledges that UHC's interpretation of OHRP's guidance is correct that adopting the date of approval with minor conditions at a convened IRB meeting as the date of approval is appropriate, rather than setting the approval date as the date of determining that minor conditions have been met.

OHRP makes the following additional determination:

(2) HHS regulations at 45 CFR 46.103(b) and 46.109(a) require the IRB to review and approve all nonexempt human subject research covered by an assurance. In OHRP's May 17, 2004 letter to UHC, OHRP requested clarification regarding the publication of a recruitment notice stating that eligible participants in the above-referenced research study would be paid $100. According to UHC's June 29, 2004 report, a notice mentioning payment of $100 was reviewed by the UHC IRB before the research study received IRB approval, and the notice was not approved by the IRB. UHC's report stated that the notice was returned to the investigator, who was asked to remove mention of a specific cash payment of $100. OHRP finds that at least one recruitment notice referring to a payment of $100 was published in the *Cleveland Sun Messenger* in December 2001 without IRB review and approval.

Corrective Action: OHRP acknowledges that UHC's policy treats advertisements for potential study subjects as part of the informed consent process and requires review of content and mode of communication prior to use. OHRP also acknowledges that the investigator and research coordinator who published the unapproved advertisement are no longer at UHC, and that current research staff have not published any unapproved advertisements.

OHRP finds that these corrective actions adequately address the above findings and are appropriate under the UHC FWA. As a result, OHRP anticipates no need for further involvement in this matter.

OHRP appreciates UHC's commitment 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: Mr. Philip A. Cola, IRB Administrator, UHC
Dr. William Dahms, Chair, UHC IRB

Dr. Seth Stevens, UHC
Dr. Elma Baron, UHC
Commissioner, FDA
Dr. David Lepay, FDA
Dr. Bernard Schwetz, OHRP
Dr. Melody H. Lin, OHRP
Dr. Michael Carome, OHRP
Dr. Kristina Borror, OHRP
Ms. Shirley Hicks, OHRP
Ms. Patricia El-Hinnawy, OHRP
Ms. Janet Fant, OHRP