

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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September 29, 2015

The Honorable Francis Collins, M.D., Ph.D.
Director
National Institutes of Health
9000 Rockville Pike
Bethesda, MD 20892

Dear Dr. Collins:

Pursuant to Rules X and XI of the U.S. House of Representatives, the committee launched an investigation on July 31, 2015 relating to management concerns with the NIH Clinical Center Pharmaceutical Development Section (PDS). The committee continues this investigation. However, at the present time, the committee's specific focus is on questions related to the welfare of all the patients in NIH clinical trials affected by disruptions because of the suspension of PDS operations.

Our July 31, 2015 letter included six specific questions related to the status of all the patients in the studies that were suspended because of the PDS issues. On September 10, 2015, the NIH sent a letter to the committee with a narrative response to the committee's six questions and also attached charts with information on the affected protocols. NIH reported that there were 1,332 patients enrolled in 62 affected protocols. NIH's narrative response stated that most patients were not affected by the clinical holds because they were not scheduled to receive their study drug during the time of the suspension. Patients who were scheduled to receive their study drug were evaluated on a case by case basis by the FDA. In each case, FDA evaluated the risks and worked with NIH to allow continued administration of the study drug without putting the Investigational New Drug (IND) on hold. NIH also reported that alternative sources were found for two products. NIH's narrative response did not report on any negative impacts to affected patients.

However, information in the charts attached to the NIH's narrative response, and other information that has come to the attention of the committee, substantiate our grave concerns that patients in several protocols were and continue to be harmed by the disruption caused by the PDS problems. For example, the NIH attachments listed the following impacts:

- One NIH researcher reported that the protocol on hold was treating patients who do not have an alternative transplant option. Patients waiting for protocol enrollment were at high risk of disease progression of underlying malignancy resulting in death. The researcher stated: "We already lost three patients who died BEFORE the enrollment to our protocol while waiting for . . . [remainder of statement cut off on chart]." (Capitals in original).
- One NIH researcher, with two different clinical trials with six patients in each, reported negative impacts from delay in vaccine treatments.
- One protocol stated one patient's surgery and treatment was delayed.
- Another protocol had 6 patients already off the vaccination schedule by two months.
- For one protocol, NIH listed three patients impacted at this point and a fourth pending, but did not provide any further detail on the impacts.
- Another protocol listed five affected patients but without any other detail. Another protocol listed two affected patients with no detail.
- A protocol listed two patients currently delayed due to FDA clinical hold related to PDS issues, but did not detail whether any attempt had been made by the NIH researcher to get a waivers from FDA for each of the two patients.

It has also come to the attention of the committee that one patient had been receiving and benefitting from treatment that was discontinued because of the PDS issues. This patient with a grave illness received a form letter from the NIH which stated that the treatment was being withheld because of the PDS problems. There was no follow-up from NIH. The patient then contacted the NIH about when treatment would resume and what was the patient's status in the study. The NIH responded in early July that there was no real news "other than last week pharmacy [sic] said they would try to have everything in place by September." NIH is already investigating this matter, and is aware that this last statement is a fabrication. The patient has not heard any further from NIH for more than two months, and has not received any treatment from NIH. The NIH researcher¹ for this patient's study (or someone on his behalf) reported that there were 20 patients being treated, and that arrangements were being made through the NCI Pharmaceutical Resources Branch to produce vials through one of their contracts.² The NIH reported to majority committee staff that the researcher did not seek waivers with the FDA because the process was too bureaucratic, even though other NIH researchers had done so. To not follow up with these patients, to just leave them hanging, and with no compassion, falls into the definition of "patient abandonment" and cannot be tolerated.

Further, the NIH's response has not fully answered our concerns about the impacts on the patients. We appreciate that you contacted Chairman Upton, met with Subcommittee Chairman Murphy, and have reached out to Ranking Member Pallone and Subcommittee Ranking Member DeGette to brief the committee on the PDS matter. During the meeting with Subcommittee

¹ The same researcher (or someone on his behalf) also reported that another study with 45 patients was negatively affected, but no information was disclosed about the impact on the patients. However, the researcher reported arrangements were made through the NCI Pharmaceutical Resources Branch to produce vials through one of their contracts. This statement is in doubt since the NIH itself is currently evaluating this Branch's capacity to make drugs in lieu of the PDS, and NIH would also need to qualify and vet the outside contractor.

² The statement on alternative arrangements cannot be substantiated at this time, and the NIH reported to majority committee staff that the FDA told NIH it had no record of this researcher seeking a waiver for alternative sourcing.

Chairman Murphy, you acknowledged that the NIH needed to follow up with additional information about the status of the affected patients, over and above the response that the NIH had already sent to the committee.

We note that NIH has provided us details on the PDS problems, evaluations of the PDS facility and other issues, and on management concerns associated with the PDS problems. We appreciate that these problems require a thoughtful and prudent response. But we don't believe that the welfare of patients in experimental trials who are dependent upon drugs manufactured in the PDS should be compromised while responsibility for the problems with the PDS is being ascertained. It should be NIH's and your responsibility to ensure that every effort is made to provide for the continuing care of these patients, especially at this time when many may be harmed by the apparent suspension of treatment.

In light of the urgency of this situation and the need for full information about the status of all the patients in the studies that were suspended because of the PDS issues, please respond by Tuesday, October 6, 2015 to the following questions:

1. What is the status of each of the patients since the experimental treatments were stopped? Have any patients died since the treatments were stopped? If so, how many? What is the emotional status of all patients still alive?
2. How many patients are currently not getting their study treatment? How many patients had the study treatment withheld but have since been able to resume getting the treatment? Of those patients, how many were able to get the treatment because of a waiver from FDA and how many were able to get the treatment because alternative sources were found?
3. Have all patients been contacted about the status of their study?
4. What is the status of each patient's study? Are they in treatment? Were the studies they were enrolled in showing any positive signs of success? If there were positive results coming out of any studies for any patients, why are they not continuing in that treatment?
5. Please list the NIH researchers who sought and got waivers from FDA for their patients.
6. Please list the NIH researchers who did not seek and get waivers from FDA for their patients.
7. Please list the NIH researchers who sought and got alternative sources of treatment for their patients.
8. Please list the NIH researchers who did not seek and get alternative sources of treatment for their patients.

9. Is there anyone at NIH (and/or an NIH contractor) tasked with the responsibility of overseeing the status and care of all the patients in NIH studies disrupted by the PDS issues? If not, why not? If so, who?
10. Is the NIH internal task force that is reviewing PDS issues also examining the impacts and status of patients in NIH studies disrupted by the PDS issues? Why or why not?

We need answers immediately about every study, every patient, and what NIH intends to do about them. If you have any questions, please contact Alan Slobodin of the majority committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Tim Murphy
Chairman
Subcommittee on Oversight and
Investigations

cc: The Honorable Frank Pallone, Jr., Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations