

# Inspections, Compliance, Enforcement, and Criminal Investigations

## Florida Atlantic University IRB



Department of Health and Human Services

Public Health Service  
Food and Drug  
Administration  
10903 New Hampshire  
Avenue  
Silver Spring, MD 20993

DEC 17 2009

### **WARNING LETTER**

VIA FEDERAL EXPRESS

John Pritchett, Ph.D.  
Interim President  
Office of the President  
Florida Atlantic University  
Administration Bldg., Room #339  
777 Glades Road  
Boca Raton, FL 33431

Dear Dr. Pritchett:

This Warning Letter is to inform you of objectionable conditions observed during the Food and Drug Administration (FDA) inspection of your Institutional Review Board (IRB) from August 3 to August 14, 2009, by an investigator from the FDA Florida District Office and a Consumer Safety Officer from the Center for Devices and Radiological Health (CDRH). The purpose of this inspection was to determine whether your IRB is in compliance with applicable federal regulations. IRBs that review investigations of drugs and devices must comply with applicable provisions of Title 21, Code of Federal Regulations (21 CFR) Part 56-Institutional Review Boards, Part 50 Protection of Human Subjects, Part 312-Investigational New Drug

Applications, and Part 812-Investigational Device Exemptions. This letter also requests prompt corrective action to address the violations cited and discusses your written response, dated August 31, 2009, to the noted violations.

The inspection was conducted under a program designed to ensure that data and information contained in requests for Investigational Device Exemptions (IDE), Premarket Approval (PMA) applications, and Premarket Notification submissions (510(k)) are scientifically valid and accurate. Another objective of the program is to ensure that human subjects are protected from undue hazard or risk during the course of scientific investigations.

Our review of the inspection report prepared by the district office revealed serious violations of 21 CFR Part 50 -- Protection of Human Subjects, and Part 56 -- Institutional Review Boards. At the close of the inspection, the FDA investigator presented an inspectional observations form FDA 483 for review and discussed the observations listed on the form with Dr. Nancy Jones, IRB Chairperson and Dr. C. Michael Moriarty, Interim Vice President for Research. The deviations noted on the form FDA 483, your written response, and our subsequent review of the inspection report are discussed below:

**1. Failure to ensure that the information given to subjects as part of the informed consent is in accordance with 21 CFR 50.25. [21 CFR 56.109(b)].**

The IRB shall require that information given to subjects as part of informed consent is in accordance with 21 CFR 50.25 (21 CFR 56.109(b)). The IRB failed to ensure that the informed consent contained all the information required by 21 CFR 50.25 such as:

- A description of the procedures to be followed and identification of any procedures which are experimental (21 CFR 50.25(a)(1));
- A description of any reasonably foreseeable risks or discomforts to the patient (21 CFR 50.25(a)(2)); and
- A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject (21 CFR 50.25(a)(4)).

Examples of this failure include, but are not limited to, the following:

a. At the time of the inspection, **(b)(6)** was conducting five clinical trials that involved **(b)(4)** also referred to as **(b)(4)** with over 240 enrolled subjects with **(b)(4)**. The informed consent forms for these five studies did not contain all the required basic elements. Specifically:

1. The description of the procedures did not always include **(b)(4)** or **(b)(4)**

2. A statement that explained that this procedure was experimental. The procedures section of most of the studies' informed consent forms erroneously notes the (b)(4) has been used for decades.
3. All reasonably foreseeable risks of (b)(4) are not described; rather the only risk of (b)(4) listed in the consent is (b)(4) can also cause (b)(4) which may lead to (b)(4) and death. In addition, (b)(4) can also result in (b)(4) and (b)(4) as other possible risks.
4. There is no disclosure statement of appropriate alternative (b)(4) or (b)(4).

During the course of the FDA inspection of the IRB facilities the IRB suspended Dr. Tuller's studies and, according to your response letter, after further investigation, these studies were then terminated by the IRB. This response is adequate. In addition, you stated in your response that you are planning on providing intensive training and have developed tools to assist you in assessing studies and risks. Please provide a description of any completed training and a list of attendees or a projected timeline of planned training.

## **2. Failure to have written procedures governing the functions and operations of the IRB [21 CFR 56.108].**

FDA regulations require that an IRE must prepare, maintain, and follow written procedures that describe the IRB's functions and operations, including: conducting continuing review of research; for determining which projects require review more often than annually and which project needs verification from sources other than the investigator that no material changes have occurred since previous IRB review; ensuring that changes to approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval, except where necessary to eliminate apparent immediate hazards to human subjects; ensuring prompt reporting to the IRB, appropriate institution officials, and the FDA of any unanticipated problems involving risks to human subjects; and for reviewing proposed research at meetings in which the majority of members are present.

Your procedures currently only address the requirements of 45 CFR Part 46 for federally funded or supported research. These do not meet the requirements of 21 CFR 56.108.

In addition to the requirements for human subject protection (21 CFR part 50) and institutional review boards (21 CFR part 56), you should also be aware of potentially applicable requirements for clinical investigations of drugs and devices (21 CFR parts 312 and 812). Even though, according to your response letter, FDA regulated research makes up a small portion of the studies you review, you are

responsible for incorporating all applicable FDA requirements into your operating procedures in order to review FDA regulated research.

Your response letter notes that you are modifying your procedures to comply with 21 CFR Parts 50 and 56. Please provide a copy of these modified procedures or a timeline for their development. In addition, your response letter states you are reviewing your studies for FDA regulatory compliance and you plan on outsourcing all clinical trial studies involving FDA regulated research to Western IRB. Please provide the current list of studies being transferred and the status of the transfer of these studies.

The violations described above are not intended to be an all inclusive list of problems that may exist at the IRB. The IRB is responsible for ensuring compliance with the Act and applicable regulations.

Within fifteen (15) working days of receiving this letter, please provide written documentation of the additional actions you have taken or will take to correct these violations and prevent the recurrence of similar violations. Failure to respond to this letter and take appropriate corrective action could result in the FDA taking regulatory action without further notice to you. Send your response to: Attention: Anne Hawthorn, J.D., Food and Drug Administration, Center for Devices and Radiological Health, Office of Compliance, Division of Bioresearch Monitoring, W066-3504, 10903 New Hampshire Avenue, Silver Spring, Maryland 20993.

*A copy of this letter has been sent to the Florida District Office, 555 Winderley Place Suite 200. Maitland, FL 32751. Please send a copy of your response to that office.*

The Division of Bioresearch Monitoring has developed introductory training modules in FDA regulated device clinical research practices, which are available on the FDA website. The modules are for persons involved in FDA regulated device clinical research activities. These modules are located at the following website address: <http://www.fda.gov/Training/CDRHLearn/ucm162015.htm>. If you have any questions, please contact Catherine Parker, 301-796-5553, or [Catherine.Parker@fda.hhs.gov](mailto:Catherine.Parker@fda.hhs.gov).

Sincerely yours,

/S/

Timothy A. Ulatowski  
Director  
Office of Compliance

Center for Devices and  
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cc:

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