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March 9, 2016

The Honorable Karen B. DeSalvo
Acting Assistant Secretary for Health
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Individualized Comparative Effectiveness of Models Optimizing Patient Safety and Resident Education (iCOMPARE) Trial

Dear Dr. DeSalvo:

As you are aware, on November 19, 2015,¹ and February 11, 2016,² Public Citizen and the American Medical Student Association (AMSA) wrote letters to the Office for Human Research Protections (OHRP) that called on the agency to immediately launch a compliance oversight investigation into the National Institutes of Health-funded iCOMPARE trial, which is highly unethical and fails to materially comply with key requirements of the Department of Health and Human Services (HHS) regulations for the protection of human subjects at 45 C.F.R. Part 46. Public Citizen and AMSA also urged OHRP to invoke its authority under the OHRP-approved Federalwide Assurance (FWA) for each institution engaged in the iCOMPARE trial by immediately suspending the conduct of the trial. To our dismay, OHRP has not yet taken either action.

Today, we wrote a third letter to OHRP (copy enclosed) discussing recently obtained additional documents related to the iCOMPARE trial. These documents provide further evidence that the trial — as designed, reviewed, and currently being conducted and overseen — violates basic ethical principles and federal regulatory requirements related to the protection of human subjects.

As we note in the conclusion of today's letter to OHRP, each successive disclosure of information regarding the iCOMPARE trial, including the most recent information obtained by Public Citizen, has provided further overwhelming evidence of egregious ethical and regulatory lapses regarding the design, conduct, and institutional review board oversight of the trial. The trial, as designed and conducted, clearly fails to minimize risks to both the resident and patient subjects and violates ethical and regulatory requirements related to informed consent.

Moreover, the review and oversight of the iCOMPARE trial, as well as the similarly designed Flexibility in Duty Hour Requirements for Surgical Trainees (FIRST) trial, epitomize a human subjects protection system that has failed dismally at all levels, including at the level of OHRP.

¹ Public Citizen and the American Medical Student Association. Letter to the Office for Human Research Protections regarding the iCOMPARE trial. November 19, 2015. <http://www.citizen.org/documents/2283.pdf>. Accessed March 7, 2016.

² Public Citizen and the American Medical Student Association. Follow-up Letter to OHRP regarding the iCompare trial. February 11, 2016. <http://www.citizen.org/hrg2302>. Accessed March 7, 2016.

The office was alerted to the serious ethical and regulatory lapses regarding the iCOMPARE and FIRST trials more than three months ago, but has yet to take meaningful action to intervene to protect human subjects. Because of OHRP's inaction, resident and unwitting patient subjects continue to be forced to participate in greater-than-minimal-risk research without their voluntary informed consent.

We are aware that OHRP's current policy titled *Compliance Oversight Procedures for Evaluating Institutions*³ indicates that OHRP has discretion regarding whether to initiate a for-cause compliance oversight evaluation of substantive written allegations or indications of non-compliance with the HHS regulations for the protection of human subjects. However, in light of the increasingly overwhelming evidence of widespread, serious ethical and regulatory violations involving the iCOMPARE trial, a decision by OHRP to not initiate a formal for-cause compliance oversight evaluation of all institutions participating in this unethical trial would constitute an unacceptable abuse of the agency's discretion and an abrogation of its fundamental responsibility to protect human subjects.

We respectfully request an urgent meeting with you — as the senior official in the HHS chain of command immediately above OHRP — and OHRP Director Dr. Jerry Menikoff to discuss this untenable situation. We will follow up with your scheduler to identify a mutually convenient time to meet, preferably within the next week.

Thank you for your prompt attention to this urgent matter. Please contact us if you have any questions or need additional information.

Sincerely,



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Enclosure

³ Office for Human Research Protections. Compliance oversight procedures for evaluating institutions. October 14, 2009. <http://www.hhs.gov/ohrp/compliance/evaluation/index.html>. Accessed March 7, 2016.