2 N. Cascade Ave., Suite 1430
Colorado Springs, CO 80903
www.nussbaumspeir.com

NSG
Nussbaum Speir Gleason

L. Martin Nussbaum
Direct: (719) 428-1919
martin@nussbaumspeir.com

February 27, 2020

VIA EMAIL and MAIL (ocrmail@hhs.gov)

Roger Severino
Director, Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F, HHH Building
Washington, D.C. 20201

U.S. Department of Health and Human Services
Office for Civil Rights
Centralized Case Management Operations
200 Independence Avenue., S.W.
Suite 515f, HHH Building
Washington, D.C. 20201

Dear Director Severino,

Thank you for your courtesies during our meeting on February 4.

As you will recall, on August 24, 2018, the Catholic Benefits Association (CBA) brought to your attention the issue of the Affordable Care Act's clinical trial mandate codified at 42 U.S.C. § 300gg-8 that requires employers with health plans to cover the costs of clinical trials even when they utilize human embryonic stem cells (hESCs) or fetal tissue harvested from aborted fetuses. In that letter, we identified nine hESC clinical trials and twenty-two fetal tissue clinical trials and requested exemption from such trials for CBA member employers along with their third-party administrators and group insurers.

After our meeting, we have identified four additional hESC clinical trials and one additional fetal tissue clinical trial. This brings the total to thirteen identified hESC clinical trials and twenty-three fetal tissue clinical trials.

This growing number of clinical trials, based on the destruction of human lives seriously violates both the conscience and free exercise rights of over 1,000 Catholic employers represented by the CBA. The CBA requests that the Office of Civil Rights act promptly to provide CBA member employers along with their insurers and third-party administrators RFRA exemption from the ACA-

mandated clinical trials when they involve either human embryonic stem cells or tissue from aborted fetuses. Please treat this letter as an amendment to our August 24, 2018 letter.

I describe the additional morally-problematic clinical trials in the paragraphs that follow.

Clinical Trials Completed Since 2018

a. *hESC Trial.* Sponsored by Astellas Institute for Regenerative Medicine (AIRM), this trial was conducted after a follow up of a previous trial where individuals received a transfer of the hESCs, MA09-hRPE, for poor vision associated with Stargardt's Macular Dystrophy. MA09-hRPE is the use of human embryonic stem cells that have the capacity to aid in the regeneration of vision[1]. The AIRM has been using these human embryonic stem cells for research on macular degeneration since 2011[2]. This study was conducted in California, Florida, and Pennsylvania for the purpose of seeing the long-term effects of stem cell transplant from the study that was originally conducted. The study began in 2012 and finished in July of 2019[3].

b. *hESC Trial.* Another study was also sponsored by the Astellas Institute for Regenerative Medicine (AIRM), and began in July of 2012 and ended seven years later in July of 2019. The purpose of this study was conducted as a follow up in patients who had received a transfer of hESCs, MA09-RPE[4], in relation to macular degenerative disease in older individuals (55+). The study took place in several states in the US including California, Florida, Massachusetts, and Pennsylvania. The purpose of the trial was to investigate any long-term effects following the transplant of MA09-RPE for the treatment of macular degenerative disorders associated with age[5].

---

[1] MA09-HRPE, Embryonic Retinal Pigmented Epithelial Cells for Degenerative Macular Diseases." LifeMap Discovery®, December 12, 2013. https://discovery.lifemapsc.com/regenerative-medicine/cell-therapy-applications/eye-ma09-hrpe-human-embryonic-retinal-pigmented-epithelial-cells-for-degenerative-macular-diseases.

[2] Qiu, Tina Guanting. "Transplantation of Human Embryonic Stem Cell-Derived Retinal Pigment Epithelial Cells (MA09-HRPE) in Macular Degeneration." NPJ Regenerative medicine. Nature Publishing Group UK, August 27, 2019. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6712006/.

[3] Astellas Pharma, Inc. "Long Term Follow Up of Sub-Retinal Transplantation of HESC Derived RPE Cells in Stargardt Macular Dystrophy Patients - Full Text View." Full Text View - ClinicalTrials.gov. U.S. National Library of Medicine, Last updated: November 27, 2019. https://clinicaltrials.gov/ct2/show/NCT02445612?term=hESCs&cntry=US&draw=2&rank=4.

[4] Qiu, Tina Guanting. "Transplantation of Human Embryonic Stem Cell-Derived Retinal Pigment Epithelial Cells (MA09-HRPE) in Macular Degeneration." NPJ Regenerative medicine. Nature Publishing Group UK, August 27, 2019. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6712006/.

[5] Astellas Pharma Inc. "Long Term Follow Up of Sub-Retinal Transplantation of HESC Derived RPE Cells in Patients With AMD - Full Text View." Full Text View - ClinicalTrials.gov. U.S. National Library of Medicine, Last Updated: November 27, 2019. https://clinicaltrials.gov/ct2/show/NCT02463344?term=hESCs&cntry=US&draw=2&rank=6.

2. Clinical Trials Set to End Post-2020

a. *Fetal Tissue Trial.* The purpose of this clinical trial is to study the efficacy of stem cells ASP7317 in preventing further damage from macular degeneration. ASP7317 comes from "pluripotent human stem cells"[6]. These cells are derived from human embryos and have the ability to transform into any type of tissue in the body[7]. The study is being conducted across several states in the United States in which participants with age-related macular degeneration will be introduced to gradually increasing amounts of hESCs to measure any improvements or regression in sight or health for individuals participating in the study[8]. This study began in July 2018 and should finish in April 2021.

b. *hESC Trial.* This clinical trial is sponsored by Regenerative Patch Technologies, LLC for a macular degenerative disease using a transplant of hESCs (specifically: CPCB-RPE1) in one eye of the subject in order to measure the success of the stem cells in preventing continuing vision loss. Regenerative Patch Technologies, LLC stated that the source of CPCB-RPE1 comes from human embryonic stem cells from "a single embryo that was intended to be discarded but eventually donated for medical research"[9]. The study began in October 2015 and is estimated to be completed in June 2023. The study is conducted in phases for the purpose of measuring the success and ability of the transplant in ensuring that no negative effects occur as a result of the study. The study is being conducted in Phoenix, Arizona, and in various locations across California[10].

c. *hESC Trial.* Lineage Cell Therapeutics, LLC is in the process of conducting a study that uses OpRegen, an FDA approved product, in order to see what positive effects OpRegen may have on aiding in the prevention of macular degeneration[11]. The studies are being conducted across several locations in California, in Ohio, and in various locations in Israel. The trial began in

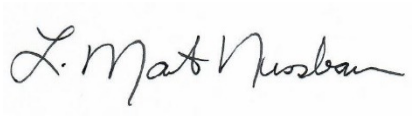
---

[6] "About Astellas: Astellas Pharma US, Inc." Astellas Pharma US, Inc. | News Room. Astellas Pharma US, Inc., April 10, 2019. https://newsroom.astellas.us/the-astellas-way?item=1103.
[7] Romito, Antonio, and Gilda Cobellis. "Pluripotent Stem Cells: Current Understanding and Future Directions." Stem cells international. Hindawi Publishing Corporation, December 20, 2015. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4699068/.
[8] Astellas Pharma, Inc. "A Phase 1b Dose Escalation Evaluation of Safety and Tolerability and a Phase 2 Proof of Concept Investigation of Efficacy and Safety of ASP7317 for Atrophy Secondary to Age-Related Macular Degeneration - Full Text View." Full Text View - ClinicalTrials.gov. U.S National Library of Medicine, Last Updated: January 18, 2020. https://clinicaltrials.gov/ct2/show/NCT03178149.
[9] Regenerative Patch Technologies, Inc. "The Implant." Regenerative Patch Technologies, Inc. Regenerative Patch Technologies, LLC. Accessed February 25, 2020. https://regenerativepatch.com/the-implant.
[10] Regenerative Patch Technologies, LLC. "Study of Subretinal Implantation of Human Embryonic Stem Cell-Derived RPE Cells in Advanced Dry AMD - Full Text View." Full Text View - ClinicalTrials.gov. U.S. National Library of Medicine, Last Updated: September 11, 2019. https://clinicaltrials.gov/ct2/show/NCT02590692?term=hESCs&cntry=US&draw=1&rank=7.
[11] Lineage Cell Therapeutics. "OpRegen®." Lineage Cell Therapeutics. Lineage Cell Therapeutics, LLC. Accessed February 25, 2020. https://lineagecell.com/products-pipeline/opregen/.

November 2015 and has an estimated study completion date of December 2024. OpRegen uses retinal pigment endothelium cells, derived from embryonic stem cells, in order to prevent further degeneration and promote better vision. The purpose of the study is to determine the efficacy of OpRegen for use in future medicinal practices for age-related macular dystrophy[12].

Thank you for your prompt attention to this request.

Sincerely yours,



L. Martin Nussbaum

cc: Douglas G. Wilson, Jr.
Chief Executive Officer
Catholic Benefits Association

[12] Lineage Cell Therapeutics, Inc. "Safety and Efficacy Study of OpRegen for Treatment of Advanced Dry-Form Age-Related Macular Degeneration - Full Text View." Full Text View - ClinicalTrials.gov. U.S. National Library of Medicine, Last Updated: February 11, 2020. https://clinicaltrials.gov/ct2/show/NCT02286089?term=hESCs&cntry=US&draw=1&rank=9.