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Refer to Date: April 17, 2003

FACSIMILE to 213-387-4745 AND FIRST CLASS MAIL

Robert E. Ragland, Senior Deputy County Counsel
County of Los Angeles, Office of the County Counsel
500 West Temple Street, Room 648
Los Angeles, California 90012-2713

Re: Varicella Active Surveillance Report: Our Client Gary S. Goldman, Ph.D.

Dear Mr. Ragland:

This office has been retained to represent Gary S. Goldman, Ph.D., in the matter now pending in your office respecting his right to publish certain materials in the *New England Journal of Medicine* or elsewhere. He acknowledges your letter of April 10, 2003, in which your client communicated its notice that he cease and desist any efforts to publish or disseminate. Dr. Goldman has no intention to cease or to desist his efforts to communicate facts openly to the public and in the fundamental interest of public safety. Any attempted action on the part of your client to exercise any prior restraint is legally objectionable and will be vigorously defended.

In addition I have counseled Dr. Goldman that (a) if your client persists in its efforts to restrain his findings, (b) if his findings enhance the public health, safety, and welfare, (c) if by seeking to restrain him from imparting valuable information concerning the lack of safety and effectiveness of the pharmaceutical being reported upon, and (d) if the County of Los Angeles has in any way been enriched by its participation in any study the results of which it seeks to restrain in this manner or any other manner whatsoever, then he should consider litigation under the state and federal False Claims Acts.

In his letter dated April 12, 2003, my client informed you that

“When research data concerning a vaccine used in human populations is being suppressed and/or misrepresented, this is very disturbing and goes against all scientific norms and compromises professional ethics.”

In the same letter to you Dr. Goldman attributed the following statement to Dr. Philip R. Krause, Head Research Scientist of the FDA Biologics Laboratory, a gentleman whom I would week to call as an expert for Dr. Goldman:

“However, even if they have full legal control of the data, I would hope the CDC does not want to be in a position where they are preventing Publication without even reading the manuscript. Some pharmaceutical companies have been severely criticized for over-enforcing these types of agreements. This would create the impression that they are trying to manipulate the scientific data to prevent publication of data that could adversely influence immunization rates, regardless of the potential public health consequences.”
(Emphasis supplied.)

Furthermore, Dr. Goldman contests the assertion that the County is the owner of the data or that he is bound by the Simpson & Simpson confidentiality form in the manner you suggest. The data clearly belong to the public: funded by the public, contributed by the public, for the benefit of the public, and gained by your client, a public agency. Public data are ascertainable through the exercise of any citizen’s rights under the Freedom of Information Act.

In addition the restrictions suggested upon Dr. Goldman by your letter are so vague, overbroad, and ambiguous as to be unenforceable.

For at least the forgoing reasons, your client’s position at this time in this matter is not well taken and would be soundly rebutted by Dr. Goldman if necessary.

Dr. Goldman requests that your response to this reply be in writing and be delivered in the same expeditious manner as this letter.

Sincerely,

ASKREN LAW FIRM
M. Gayle Askren, Esq.

Copy: Gary S. Goldman, Ph.D.