



School of Medicine  
Office of the Dean

David A. Kessler, M.D.  
Dean  
513 Parnassus Avenue  
Room S-224, Box 0410  
San Francisco, CA  
94143-0410  
tel: 415/476-2342  
fax: 415/476-0689  
kesslerd@medsch.ucsf.edu

March 29, 2007

Richard Blum  
Chairman, Board of Regents  
University of California  
909 Montgomery St., Suite 400  
San Francisco, CA 94133

To the Board of Regents:

The Regents are presently considering a policy to address an important ethical question: Under what circumstances is it appropriate for the University of California to accept funds from the tobacco industry to pursue research and educational activities? The proposed policy, under which the Regents would decline funding of research activities from the tobacco industry, is both reasonable and grounded in factual determinations directly relevant to research issues. To ignore the current and ongoing activities of the tobacco industry would compromise the integrity of the University and its researchers, as it would call into question the independence of their work.

Recent factual findings made by a federal district court, following a nine-month trial in which the tobacco industry was fully represented, reveal the ethical challenges presented. The district court found that the defendant tobacco companies violated the Racketeer Influenced and Corrupt Organizations Act (RICO). In so doing, the court determined that the companies had engaged in a wide-reaching scheme – through the creation of an “enterprise” – designed to deceive the American public with a fraud so pervasive and well-organized, the court found that it continues to this day. Of particular relevance to the proposal before the Regents, the court found that the tobacco industry concealed and suppressed research findings that were harmful to the companies’ economic interests, with utter disregard for human health. An important element of this effort was the “myth of independent research,” in which the industry claimed to support independent, peer-reviewed research, when, in fact, some of the projects were carefully selected and managed by industry lawyers and executives to obtain results that would confuse scientists, the public, and public policy makers, in order to “keep the controversy alive” about the effects of smoking and secondhand smoke. Most important in terms of the Regents’ current deliberations, the court found that this conduct is likely to continue into the future.

The misconduct of the tobacco industry, insofar as research is concerned, has long been both alleged and documented; however, the determination by a neutral fact-finder, who made her findings of conspiratorial conduct objectively on a full and fair record, provide a compelling rationale for the Regents to decline money from

these companies. Stated simply, the tobacco industry's highly unethical conduct is *sui generis*, and singling it out for exclusion on the basis of this conduct does not affect other industries. As a RICO enterprise, the conduct of the tobacco industry stands alone regarding its aggressive manipulation of the scientific process through selective funding of research, reason enough to impose the restrictions proposed.

Some have suggested that the University should wait until appeals are exhausted before it relies upon the district court's findings. There is no good reason to wait years for appeals to run their course, because the findings of fact, which form a basis for imposition of this policy, are not likely to be overturned. It is a well-settled principle of appellate practice that findings of fact will not be overturned unless clearly erroneous. This is a very high standard and not one that likely will be met given the substantial record evidence that supports the court's findings. In the unlikely event that the D.C. Circuit or the U.S. Supreme Court would reverse the findings on research, the policy could be revisited. It is impractical, though, to ignore these findings at the present time.

While a significant number of other leading academic institutions have adopted policies restricting the acceptance of research funding by tobacco companies, the University of California has uncharacteristically lagged behind in confronting this ethical issue. Some opponents of the proposed policy suggest that it infringes upon academic freedom, yet we are aware of no evidence of encroachment upon academic freedom at universities where similar policies have been put in place.

That academic freedom is essential to the existence of the University is clear beyond argument. With those opponents of the policy who contend that the policy improperly intrudes upon academic freedom, perhaps it is the meaning of "academic freedom" upon which we disagree. Academic freedom is the freedom to study any subject or body of material without unreasonable interference. Albert Einstein put it best when he expressed his understanding of academic freedom to include an obligation: "By academic freedom, I understand the right to search for the truth and to publish and teach what one holds to be true. This right also implies a duty; one must not conceal any part of what one has recognized to be true."

There is nothing in the proposed policy that would restrict the ability of any researcher to study and investigate fully and publish any and all findings. Accepting funding from tobacco companies, who have a history of distorting science and were found to have engaged in fraudulent conduct through their research activities, is antithetical to the concept of academic freedom. We strongly believe that academic freedom, by whatever definition, must coexist with academic responsibility. The University has an obligation, indeed, it has a responsibility, to adopt a policy that protects both.



In response to those who contend that suppression of research results is not a problem because the University does not accept prior restraints on publications, we respectfully believe that misses the mark. The controlling conduct of the tobacco industry over research findings rarely was placed in writing and almost never was openly agreed upon. Because of this, its influence is nearly impossible to detect and eliminate by applying standard University policies.

It is important to emphasize that nothing in the proposed policy would in any way restrict the subjects or the content of research even of faculty (and others) advocating pro-tobacco industry positions. It only ensures that adopting such positions is not financed by the tobacco industry. By declining money from the tobacco industry, the Regents would protect the reputation and integrity of the University by ensuring that there would not even be the appearance that University of California faculty who advocate pro-tobacco positions are doing so because of tobacco industry financing.

A number of well-regarded academicians have suggested that imposing the proposed policy places the University on a "slippery slope," opening the door and easing the way to other more controversial restrictions. We believe this fear is ill-founded. To begin with, tobacco is a unique product, one that when used as intended causes illness and death; no other industry sells a similar product and markets it for alleged "pleasure". The policy on tobacco industry funding is not an arbitrary limitation; it is narrowly tailored to address a unique and compelling situation. It seems highly unlikely that adoption of this policy could be used as a basis for any restrictions in the future, and it seems to us shortsighted to use arguments of a slippery slope as an excuse not to take action. Indeed, adoption of such policies at other universities has not led to farther restrictions.

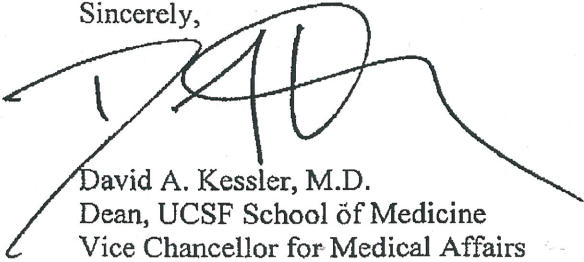
Without the adoption of a policy prohibiting certain tobacco company funding, partnership with the tobacco industry through the grant process is inevitable. By accepting research funds at this stage, the University gives the tobacco industry undeserved respectability and legitimacy by association. The University becomes a *de facto* partner with the industry. Such an apparent partnership needlessly endangers the status and reputation of the University.

This is an ethical issue. The question of adoption of the policy proposed is not a dilemma for the University; rather, it is an opportunity. Many times, because of a failure to recognize ethical problems as such, important ethical considerations are dismissed or ignored. Attempting to make this a debate regarding "academic freedom" or threats of moving down a slippery slope is such an error.

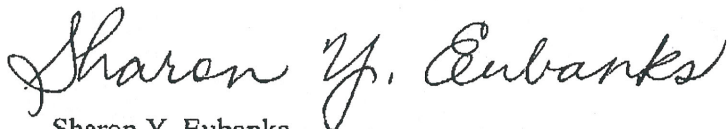
Having personally observed the conduct of this industry and the documentary evidence from the companies' own files, it is difficult to be completely dispassionate about these issues. That said, there exists an objective analysis available to the Regents which should not be ignored, dismissed, or minimized. We urge the Regents to review the factual findings of the United States District Court for the District of Columbia. When doing so, bear in mind that

full due process led to the court's decision. This decision should serve as a mandate for the proposed policy, adoption of which will protect the reputation of the University of California.

Sincerely,



David A. Kessler, M.D.  
Dean, UCSF School of Medicine  
Vice Chancellor for Medical Affairs



Sharon Y. Eubanks  
Former Director and Lead Counsel for the United States Tobacco Litigation Team  
U.S. Department of Justice