

NIH reinstates specialist who alleged misconduct in federal AIDS research

Whistle-blower raised questions about safety, sexual harassment

By John Solomon, Associated Press | December 24, 2005

WASHINGTON -- The government's premier health research agency has reinstated a medical safety specialist who was fired after made allegations of scientific misconduct and sexual harassment in federal AIDS research, his lawyer said yesterday.

The National Institutes of Health's reinstatement of Dr. Jonathan Fishbein settles a two-year battle that prompted congressional and federal investigations. It also drew attention to an entire class of researchers and safety specialists the government initially argued did not deserve whistle-blower protections.

Fishbein alleged he was fired for raising safety concerns in government AIDS research. NIH said he was fired for poor performance even though he had been recommended for a cash performance bonus just weeks before he was notified of his termination.

He was one of a few NIH whistle-blowers whose plight was highlighted in Associated Press stories over the last year that examined allegations of safety problems with federal AIDS research in the United States and Africa, sexual harassment of female NIH workers, and the use of foster children to test AIDS drugs.

Fishbein was formally reinstated to a position of special assistant to the deputy director of NIH's National Institute of Allergy and Infectious Diseases, but he is unlikely to ever return directly to that office.

Fishbein has been returned to the federal payroll but is expected to look for a new assignment in government, according to government officials.

Fishbein's lawyer confirmed the rehiring.

"I can confirm that effective Dec. 12, 2005, that Jonathan Fishbein is reinstated and is now special assistant to the deputy director of NIAID," attorney Stephen Kohn said.

"The medical community owes a debt to Dr. Fishbein for his integrity and courageous efforts to ensure that humans are protected when they participate in drug trials."

Numerous members of Congress, Republicans and Democrats alike, urged NIH not to fire Fishbein, saying he had raised important issues about the way patients are protected in government experiments.

Fishbein, an accomplished safety specialist in the private sector, was hired by NIH in 2003 to improve the safety of its AIDS research.

He alleged that he was fired because he raised concerns about several studies and filed a formal complaint against one of the division's managers, alleging sexual harassment of subordinates and a hostile workplace.

An administrative law judge originally ruled that Fishbein and hundreds of other doctors and medical safety specialists like him had no whistle-blower protections, as normal federal workers do, because they

were hired outside the civil service system as special employees at a higher salary.

The government subsequently reversed course and argued such workers should have some protections if they blow the whistle. NIH still proceeded to fire Fishbein.

An internal report to NIH chief Elias A. Zerhouni substantiated many of Fishbein's allegations, calling the agency's AIDS research division "a troubled organization" whose managers engaged in unnecessary feuding, used sexually explicit language, and were guilty of other inappropriate conduct that hampered its global fight against the disease.

The review also concluded NIH's efforts to fire Fishbein gave the "appearance of reprisal."

The report says no documentation was ever provided to Fishbein suggesting poor performance until after he complained about the safety in one sensitive AIDS study and filed a formal complaint alleging that the division's deputy director was acting unprofessionally with subordinates.

In addition, the NIH chief of AIDS research testified in a deposition this summer that the agency originally planned to transfer Fishbein to a different job in transplant and immunology research but decided instead to fire him when Fishbein filed an Equal Employment Opportunity Commission complaint.

Fishbein's immediate supervisor "actually had a job for Dr. Fishbein lined up with [the Division of Allergy, Immunology, and Transplantation] if he hadn't gone the route he had," Dr. Edmund Tramont testified.

"What do you mean, hadn't gone the route he had?" Fishbein's lawyer asked.

"When this all began, EEO complaints and all this other stuff, right? But we -- you know, that got known. And so the directing potential to move into these other positions didn't happen," he said.

In its stories over the last year, AP reported:

- One of NIH's AIDS study in Africa violated federal safety regulations.
- Senior NIH managers engaged in sexually explicit pranks and sent expletive-laced e-mails to subordinates.
- NIH-funded researchers used foster children to test AIDS drugs since the late 1980s, many times not providing a basic protection afforded by federal law and required by some states. A subsequent federal investigation concluded that at least one of the research institutions in those studies failed to comply with federal safety regulations. □

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