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NIH Review Substantiates Fired Expert's Concerns

By John Solomon
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The government's AIDS research agency "is a troubled organization" and its managers have engaged in unnecessary feuding, sexually explicit language and other inappropriate conduct that hampers its global fight against the disease, an internal review found.

The review, for the National Institutes of Health director's office, substantiates many of the concerns that whistle-blower Jonathan Fishbein raised about the agency's AIDS research division and its senior managers.

The division suffers from "turf battles and rivalries between physicians and Ph.D scientists" and the situation has been "rife for too long," the report concluded.

NIH formally fired Fishbein on Friday, over the objections of several members of Congress. The top Republican and Democrat on the Senate Finance Committee are protesting, saying the firing is an example of whistle-blower punishment.

"Retaliation against an employee for reporting misconduct or voicing concerns is unacceptable, illegal and violates the Whistleblower Protection Act," Sens. Charles E. Grassley (R-Iowa) and Max Baucus (D-Mont.), wrote NIH late last week.

"Moreover, it would have a chilling effect on other NIH employees who might makes truthful but critical comments about the NIH," the senators said.

Citing personnel privacy, NIH officials declined to address the senators' letter or Fishbein's termination, except to say that his last day was Friday. In the past, NIH officials have said they were terminating Fishbein for poor job performance.

Fishbein, an accomplished private-sector safety expert, was hired by NIH in 2003 to improve the safety of its AIDS research. He says he was let go because he raised concerns about several studies and filed a formal complaint against one of the division's managers alleging sexual harassment and a hostile workplace.

An internal report, written on Aug. 9, 2004, by a special adviser to NIH Director Elias A. Zerhouni but never made public, said efforts to fire Fishbein gave the "appearance of reprisal."

The report says no documentation was 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, Jonathan Kagan, was acting unprofessionally with subordinates. After Fishbein complained, he was forced to begin reporting to Kagan, who then went ahead with efforts to fire Fishbein.

The report says Kagan and the division's director, Edmund Tramont, acknowledged that Kagan "uses sexually explicit and colorful language, saying that no one ever complained until" Fishbein did.

The report says NIH should require sensitivity training for its senior managers and provide instruction about "inappropriate personnel procedures."

The report also criticizes Fishbein, citing some of his supervisors' statements that he did not take enough time to adapt to the "culture" of the AIDS division before making changes to improve the agency's research safety.

"It seems apparent that both sides behaved badly, that a new senior employee did not orient himself about the division and that the most senior people engaged in inappropriate behavior," the report says.

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