March 10, 2005

Dr. Lester Crawford  
Acting Commissioner  
Food and Drug Administration  
Room 1471  
Rockville, MD  20857  

Dear Dr. Crawford:

At the outset of the Feb. 16-18, 2005 joint Arthritis Drug and Drug Safety Advisory Committee that evaluated three Cox-2 inhibitors, the Food and Drug Administration staff announced a blanket waiver for all conflicts of interest that might exist among the 32 committee members. The names of panelists with conflicts of interest and the nature of those conflicts were not revealed. The FDA stated a blanket waiver was appropriate and consistent with past FDA practice because the topic of the meeting was general in nature. Yet at the conclusion of the meeting, responding to questions prepared by FDA staff, the advisory committee held separate and specific votes on each of the three approved drugs in the class.

We believe the failure to disclose conflicts of interest among some panel members violated both the letter and the spirit of the Federal Advisory Committee Act (FACA). FACA prohibits scientists with conflicts of interest from serving on advisory panels. It allows an agency to grant conflict of interest waivers if it believes the expertise of the conflicted scientist is needed and cannot be obtained elsewhere.

This is not the first time FDA has used the waiver process in a way that undermined the intent of FACA. When the General and Plastic Surgery Advisory Panel met in 2003 to consider an application from Inamed for approval of a silicone gel breast implant, FDA allowed a panel member to participate despite his previous consulting contract with Inamed. That member remains on the panel which will be considering an application from the same company in April.

To comply with the law at advisory committee meetings where specific drugs are discussed, the FDA usually announces the names of all committee members with relevant conflicts of interest (relevant is usually defined as having a financial relationship with the company or one of its competitors). The agency usually reveals the nature and monetary range of those conflicts and the FDA’s reason for granting the waiver. However, the waiver statement is not distributed to the members of the committee and is only available through a freedom of information act request.

The blanket waiver at the February Cox-2 meeting sidestepped this procedure, even though specific votes on specific drugs took place at the end of the meeting. Only later did it come to light through investigative research by the New York Times and the Center for Science in the Public Interest that at least 10 of 32 members of this panel had direct conflicts of interest with manufacturers of these drugs or competitor drugs in the
pipeline. If these conflicted votes were excluded from the total, two of the three drugs under review would have received negative recommendations from the panel.

The FDA’s failure to follow the letter and spirit of FACA calls into question the validity of the panel’s recommendations. It undermines the public’s faith in the fairness and credibility of the panel’s work. No matter what the agency’s final decision about the continued marketing or labeling of these drugs, it will leave doubts in physicians’ and patients’ minds about their safety. The FDA’s actions in this case can only serve to undermine the public’s confidence in the agency.

That’s why we’re recommending that the FDA immediately reform the process of choosing members of advisory committees for all of its divisions: food, drugs, biologics, medical devices and veterinary medicine. It must put an end to its promiscuous use of scientists with conflicts of interest and expand the public’s opportunities to participate in the process. The following suggestions are aimed at restoring public faith in the credibility of the advisory process. We believe that by adopting these reforms, the FDA will improve the quality of advice it receives from the outside scientific community.

Toward those ends, the FDA should immediately:

- Prohibit scientists, physicians and clinicians with relevant conflicts of interest from serving on advisory committees and end the practice of granting waivers so that conflicted experts can serve;
- Limit the number of panel members with any industry ties to no more than half the committee, thus ensuring the overall committee meets the balance test that also is part of FACA;
- Post a tentative list of all proposed advisory panel members with short biographies on the FDA website no less than 30 calendar days before the meeting, not within the last 72 hours as is presently the case; the biographies should contain full disclosure of the proposed panel members conflicts of interest so the public can evaluate if the committee is appropriately balanced;
- Give the public 20 days to comment on the proposed roster;
- Consider the public comments on the proposed roster to determine whether any adjustments are necessary to ensure that the committee will be qualified, independent and balanced; and
- Post the final roster and the questions to be discussed at the meeting on an FDA website at least 72 hours before the start of the meeting.

The final four suggestions will make the process more transparent and allow for more public participation, positive outcomes in their own right. They will also bring the FDA more in line with processes now in place at both the Environmental Protection Agency and the National Academies.

We are not calling for a blanket prohibition that will keep scientists with any industry ties from serving on committees. The prohibition should apply only when there is a specific product or group of products under review (as at the February 16-18
meeting). And it would only apply to scientists who have a financial or working relationship with the specific sponsor or its competitors. Sponsors routinely employ expert consultants to make the case for the products under review. Fairness dictates that people currently or recently employed by these same firms should not be allowed to serve on the jury.

Some have argued that waivers are necessary because industry-sponsored medical research is so widespread that it is not possible to convene a qualified committee without conflicts of interest. It defies credulity to suggest that this large country does not contain enough highly qualified scientists and clinicians to serve as totally independent arbiters of the scientific questions posed to advisory panels. The U.S. has hundreds of university departments and at least 125 medical schools that house thousands of scientists with the skills needed to serve on its advisory panels. There may be some instances – in rare disease categories, for instance – where the number of experts is limited. But these are the exceptions, not the rule.

The principle is simple: The FDA is the ultimate arbiter of the safety and efficacy of industry products. It relies on its advisory committees for guidance. No one financially connected to the firms whose products are up for consideration should be allowed to vote on what that guidance should be.

By eliminating scientists with relevant conflicts of interest from all of its panels and ensuring that industry-funded scientists are balanced by independent scientists, the FDA will be taking a large step toward restoring the public’s faith in its advisory process, which has been badly tarnished by the recent Cox-2 hearings. We believe it will improve the quality of the advice the agency receives and bolster the agency’s confidence in its own decisions. And it will have the positive side effect of encouraging more researchers to remain independent so they can serve the public.

We look forward to your response.

Sincerely,

Center for Science in the Public Interest
National Women’s Health Network
Breast Cancer Action
Center for Medical Consumers
National Autism Association
National Consumers League
National Research Center for Women’s and Families
Our Bodies, Ourselves
Reproductive Health Technologies Project
SafeMinds
The Annie Applesseed Project
U.S. Cochrane Center Consumer Coalition
For correspondence purposes, please contact:
Merrill Goozner
Center for Science in the Public Interest
1875 Connecticut Ave. NW
Suite 300
Washington, DC 20009

Cc:

Steven K. Galson, M.D., M.P.H., Acting Director, Center for Drug Evaluation & Research
Daniel Schott, M.D., Director, Center for Devices & Radiological Health
Jesse L. Goodman, M.D., M.P.H., Director, Center for Biologics Evaluation & Research
Robert E. Brackett, Ph.D., Director, Center for Food Safety & Applied Nutrition
Stephen F. Sundlof, Director, Center for Veterinary Medicine

Marilyn Glynn, Director, Office of Government Ethics

Senator Charles Grassley (Chairman, Finance Committee)
Senator Max Baucus (Ranking Member, Finance Committee)
Senator Michael Enzi (Chairman, Health, Education, Labor and Pensions Committee)
Senator Edward Kennedy (Ranking Member, Health, Education, Labor and Pensions Committee)
Representative Tom Davis (Chairman, Government Reform Committee)
Representative Henry Waxman (Ranking Member, Government Reform Committee)
Representative Sherwood Boehlert (Chairman, Science Committee)
Representative Bart Gordon (Ranking Member, Science Committee)
Representative Nathan Deal (Chairman, Subcommittee on Health, Energy and Commerce Committee)
Representative Sherrod Brown (Ranking Member, Subcommittee on Health, Energy and Commerce Committee)