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Suzanne Johnson-DeLeon (VIScomments@cdc.gov; msj1@cdc.gov)
National Center for Immunization and Respiratory Diseases
Centers for Disease Control and Prevention
1600 Clifton Road NE, Mailstop A-19
Atlanta, Georgia 30329.

Re: Improper Redactions, Docket CDC-2016-0094

Cc: Skip Wolfe (CRW4@CDC.GOV)

I write on behalf of my clients, Dr. James Lyons-Weiler and Bernadette Pajer, to request that you post complete unredacted copies of their comments, Balance of Ethics (Attachment 1) and Rebuttal to Reiss Comment (Attachment 2), on the regulations.gov website and that you confirm that all CDC decisionmaking staff have access to and will review and consider the complete unredacted comments.

You made two improper redactions in the Balance of Ethics (Attachment 3). The first, consisting of most of one paragraph below the middle of page one, concerns factual information from a False Claims Act lawsuit now pending in the Eastern District of Pennsylvania. See U.S. ex rel Krahling v. Merck, No. 10-4374 (E.D. Pa., filed Aug. 27, 2010). The redacted information is found in the amended complaint which is in the public domain at Docket No. 12 (filed Apr. 27, 2012) and in numerous news reports.

The second redaction concerns CDC whistleblower Dr. William Thompson. The factual material is taken from Dr. Thompson's statement posted on his counsel's website on August 27, 2014 [http://morganverkamp.com/statement-of-william-w-thompson-ph-d-regarding-the-2004-article-examining-the-possibility-of-a-relationship-between-mmr-vaccine-and-autism/], from a statement made by Rep. Chaffetz on Sept. 23, 2016 [https://www.youtube.com/watch?v=Uozk0EXKzMg&feature=youtu.be], and from a July 29, 2015 statement by Rep. Posey [https://www.c-span.org/video/?327309-1/us-house-morning-hour&live at 1:02:24]. See 161 Cong. Rec. H5602 (July 29, 2015).

You made two improper redactions to the Rebuttal to Reiss Comment (Attachment 4). The first (second paragraph on page one) concerns facts and opinions about Ms. Reiss's public stance on vaccine exemptions. The facts are taken from her numerous articles and from her faculty biography where she prominently displays her opposition to religious exemption. See http://sites.uchastings.edu/lawandvaccines/. My clients' implication that Ms. Reiss is biased and has a conflict of interest is a matter of protected opinion.

The second redaction (middle of page 7) concerns accusations of scientific fraud in connection with the DeStefano study noted above. These comments are taken from the public statements of Dr. Thompson, and Reps. Posey and Chaffetz noted above and should not have been deleted here.

The government has created a public forum by publishing comments on regulations.gov and may not discriminate against, exclude, or censor content that it may find displeasing. See, e.g., Boos v. Barry, 485 U.S. 312 (1988). Your redactions violate my clients' rights protected by the First Amendment. Moreover, CDC is required to respond in its final decision on the VIS to issues raised during the comment period, even if redactions on regulations.gov were somehow justified. See, e.g., Bus. Roundtable v. SEC, 647 F.3d 1144 (D.C. Cir. 2011); Competitive Enterprise Inst. v. National Highway Traffic Safety Admin., 956 F.2d 321 (D.C. Cir. 1992).

I also note that several dozen comments that were filed do not yet appear on the regulations.gov website. All commenters have a right to see their comments displayed to the general public so that the full range of views presented to CDC can be assessed for purposes of the ongoing debate over vaccine safety and informed consent and for the purpose of holding CDC accountable for producing compliant VISs.

Please contact me if I can be of further information.

Sincerely,

/s/ James A. Moody

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