

# Florida Society of Reproductive Endocrinology and Infertility

July 12, 2000

5729 '00 JUL 14 A9:05

Dockets Management Branch (HFA\_305)  
Food & Drug Administration  
5360 Fishers Lane, Room 1061  
Rockville, MD 20852

Tim Yeko, M.D.  
President  
4 Columbia Drive  
Suite 529  
Tampa, FL 33606  
Ph: 813-254-7774  
Fx: 813-254-0940

RE: Docket #97N-484S  
Suitability Determination for Donors of Human Cellular and Tissue-Based Products

To whom it may concern:

I am writing on behalf of the Florida Society of Reproductive Endocrinology and Infertility ("FSREI"), to comment on the Food and Drug Administration's ("FDA") proposed rule regarding *Suitability Determination for Donors of Human Cellular and Tissue-Based Products*, published in the *Federal Registry* on September 30, 1999.

FSREI is a non-profit organization, chartered in the state of Florida, dedicated to advancing knowledge and education in the field of reproductive medicine and biology to better serve patients in the state of Florida who suffer from all varieties of reproductive disorders that cause infertility. FSREI membership is limited to the 47 physicians in the state of Florida, who in addition to their four year Obstetrics and Gynecology Residency training, have also successfully completed a two or three year Reproductive Endocrinology and Infertility Fellowship Training Program. The FSREI's membership also includes others involved in reproductive medicine, such as doctoral level embryologists, nurses and technicians.

The medical practices of our members are actively engaged in performing assisted reproductive technology ("ART") procedures and, as such, FSREI members provided 100% of the ART treatment cycles performed in Florida that were reported in the most recent CDC report entitled *1997 National Summary and Fertility Clinic Reports*.

FSREI members performing ART procedures involving donor semen, washed sperm, donor oocytes and embryos are appreciative and support the FDA's concern about reducing the risk of disease transmission. We are also very keen that any future FDA rules be informed by the following facts:

1. The uniqueness of reproductive tissue apart from non-reproductive tissues
2. Present scientific knowledge pertaining to not only theoretic but, real risks to patients
3. Consequences in terms of, increased costs, decreased effectiveness and embryo wastage that will be incurred if the FDA proposal that requires that all embryos from egg donation or gestational surrogacy be cryopreserved and placed in quarantine for six months.
4. The important recognition of an already excellent track record for patient safety in the area of Donor ART in the United States

## Balancing Risks and Benefits of Proposed Regulation

### Risk of Infectious Disease Transmission via Donor Oocytes in the United States

In 1996, 3,822 donor oocyte ART cycles were performed. Despite this annual volume of procedures, there is absolutely no data of even a single case of a recipient contracting a sexually transmitted disease ("STD") from an ART procedure involving donor oocytes and embryos. This is to be expected since the laboratory techniques involved in the creation of embryos involve washing away extraneous cells and fluid from the donor oocytes, sperm and embryos. Furthermore, ASRM has also clearly documented to the FDA in a 12/29/99 letter, that there is no scientific evidence for any association

ASREI

97N-484S

C485

between human gametes and embryos and the following STD's: CMV, Hepatitis B and C, HIV-1&2, HTLV-1&2, Gonorrhea and Chlamydia. In fact, one HIV-1 spiking study showed that HIV-1 does not even bind to Human oocytes (J Acquired Immune Defic Syndro 1999 15:21(5):355-61). This leaves the magnitude of any theoretical risk as minuscule and consistent with the absence of any known STD transmission to date.

The overall theoretical risk is further reduced through the use of screening oocyte donors as outlined in the American Society of Reproductive Medicine's ("ASRM") *Guidelines for Gamete and Embryo Donation*. Given these facts, the FDA proposal to mandate a quarantine period which would require cryopreservation of donor oocytes or embryos obtained from a low risk screened population is unwarranted.

### Clinical Consequences of a Six-Month Quarantine Period

By making it mandatory that all egg donation recipients and gestational surrogacy commissioning couples are to have their embryos quarantined, an estimated loss of 30-40% of normal embryos will occur, the normal loss rate that occurs with the freezing and thawing of cryopreservation of human embryos. Life is far too precious to require this unnecessary destruction of human embryos.

The most recent ART clinic summary, as reported by the CDC, demonstrated much higher success rates for fresh donor cycles at 39% (live births/transfer) than the 20% for frozen donor cycles. Given this lesser cycle efficiency for cryopreserved-thawed embryos, ASRM has estimated that the actual annual costs in the United States to achieve a similar pregnancy rate with frozen transfer will be in excess of \$100,000,000 (ASRM letter to FDA 12/29/99). It is important to emphasize that all increased costs will be shouldered by the recipient couples. In exchange for this additional burden, the couples will realize very little benefit, if any.

Finally, the FDA proposal interferes with a patient's reproductive choice without scientific justification or a demonstration of any public health risk. The idea of protecting the patient through these proposed regulations may result in greater harm, in terms of increased costs, decreased effectiveness and embryo wastage, which does not even take into account the emotional distress of delaying the embryo transfer.

### Summary

The FSREI proposes that the six-month quarantine not be a requirement, but instead be purely optional. Further, the patient couple should be given informed consent explaining the potential risks and be given the option to freeze/quarantine embryos, if they wish. The FDA could assist in drafting language and a standard informed consent document that could be used by all ART clinics in the United States.

Sincerely,

  
Timothy Yeko, M.D.  
President,  
Florida Society of Reproductive Endocrinologists

  
Simon Kipersztok, M.D.  
President Elect,

ASREI

99

100

**FedEx** USA Airbill FedEx Tracking Number 8219 6497 2570

Form FD 700 **0215** Recipient's Copy

RECIPIENT: PEEL HERE

**1 From** This portion can be removed for Recipient's records.

Date 7/13/00 FedEx Tracking Number 821964972570

Sender's Name Tim Yetko Phone 813 259-8585

Company USF/DEPT OF OB/GYN

Address 4 COLUMBIA DR STE 527 Dept./Floor/Suite/Room

City TAMPA State FL ZIP 33606

**2 Your Internal Billing Reference**

**3 To** Recipient's Name Doctors mgmt + Branch (H FA-305) Phone

Company FOOD & DRUG ADMINISTRATION

Address 3030 FISHERS LANE ROOM 1061 We cannot deliver to P.O. boxes or P.O. ZIP codes.

City ROCKVILLE State MD ZIP 20852 Dept./Floor/Suite/Room



**4a Express Package Service** *Packages up to 150 lbs. Delivery commitment may be later in some areas.*

FedEx Priority Overnight Next business morning  FedEx Standard Overnight Next business afternoon  FedEx First Overnight Earliest next business morning delivery to select locations

FedEx 2Day\* Second business day  FedEx Express Saver\* Third business day \*FedEx Envelope/Letter Rate not available. Minimum charge: One-pound rate.

**4b Express Freight Service** *Packages over 150 lbs. Delivery commitment may be later in some areas.*

FedEx 1Day Freight\* Next business day  FedEx 2Day Freight Second business day  FedEx 3Day Freight Third business day

\* Call for Confirmation: \_\_\_\_\_

**5 Packaging** \* Declared value limit \$500

FedEx Envelope/Letter\*  FedEx Pak\*  Other Pkg. Includes FedEx Box, FedEx Tube, and customer pkg.

**6 Special Handling** Include FedEx address in Section 3.

SATURDAY Delivery Available for FedEx Priority Overnight and FedEx 2Day to select ZIP codes  SUNDAY Delivery Available for FedEx Priority Overnight to select ZIP codes  HOLD Weekday at FedEx Location Not available with FedEx First Overnight  HOLD Saturday at FedEx Location Available for FedEx Priority Overnight and FedEx 2Day to select locations

Does this shipment contain dangerous goods? One box must be checked.

No  Yes As per attached Shipper's Declaration  Yes Shipper's Declaration not required  Dry Ice Dry Ice, 3 UN 1845 x \_\_\_\_\_ kg  Cargo Aircraft Only

**7 Payment Bill to:** Enter FedEx Acct. No. or Credit Card No. below.  Obtain Recip. Acct. No.

Sender Acct. No. in Section 1 will be billed.  Recipient  Third Party  Credit Card  Cash/Check

Total Packages \_\_\_\_\_ Total Weight \_\_\_\_\_ Total Charges \_\_\_\_\_

\*Our liability is limited to \$100 unless you declare a higher value. See the FedEx Service Guide for details.

**8 Release Signature** Sign to authorize delivery without obtaining signature.

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.  
Questions? Call 1-800-Go-FedEx (800-463-3339)  
Visit our Web site at www.fedex.com  
SRS 400 • Rev. Date 3/00 • Part #1559125 • ©1994-2000 FedEx • PRINTED IN U.S.A.

402

0147722560