

Crisis deepens at the US Food and Drug Administration

Jeanne Lenzer *New York*

The US Food and Drug Administration, rocked by controversy in recent months, has now admitted that a senior management official secretly contacted a whistleblower group. That official attempted to discredit Dr David Graham, the FDA's scientist who criticised the agency during US Senate hearings, saying that the FDA failed to protect the public when it approved rofecoxib (Vioxx, Merck)—despite evidence suggesting that the drug caused heart attacks and strokes (*BMJ* 2004;329:1255, 27 Nov).

The FDA issued a statement on 26 November saying, "FDA had no prior knowledge of any employee's contact with the Government Accountability Project." In addition to acknowledging that the employee is "not anonymous" to the project, the FDA said the "employee has chosen to not divulge their identity, and FDA respects the right of any of its employees to protect their privacy in cases such as this."

Dr Graham's attorney, Tom Devine, legal director of the Government Accountability Project, said the FDA is "fudging on whether there was advance planning" to discredit Dr Graham. "There was more than one manager who contacted me."

Mr Devine also told the *BMJ* that Steven Galson, acting director of the FDA's Center for Drug Evaluation and Research, "engaged in the extraordinary move of personally contacting the *Lancet* editor, Richard Horton, to block publication of the Vioxx study."

According to an article in newspaper *USA Today*, Dr Horton wrote in an email to Dr Galson that his intervention was "very unusual indeed," and appeared to be intended to "delay or stop publication of research that was clearly of serious public interest."

The timing of the campaign to discredit Dr Graham and of the calls to the *Lancet* is significant, said Mr Devine, as they "both climaxed the weekend before Dr Graham's testimony in US Senate hearings."

Senator Chuck Grassley, chair of the Senate committee that held hearings on rofecoxib, Merck, and the FDA, has called for the Inspector General to investigate the FDA's involvement in the attempts to discredit Dr Graham.

Dr Graham told the *BMJ* that when another drug safety officer,

Dr Andrew Mosholder, concluded that selective serotonin reuptake inhibitor antidepressants caused increased suicidal tendency among teens, the FDA prevented him from presenting his findings at an advisory meeting and suppressed his report. When the report was leaked "the FDA's reaction was to do a criminal investigation into the leak. I was named as one of the targets of the investigation along with Dr Mosholder."

Calling the investigation a "plumbing operation," Dr Graham said a culture of intimidation and fear permeates the agency making it difficult for drug safety officers to protect the public.

The criminal investigation was also illegal, according to Mr Devine. He said, "The agency continued to try to catch the leaker even after the inquiry showed that Dr Mosholder's findings were correct. It's extraordinary. Presumably a scientific agency would pursue more civil practices. The FDA is in a class by itself for its almost obsessive intolerance of dissent. Other agencies fire their dissenters. The FDA launches criminal investigations."

Observers inside and outside the beleaguered agency say that the recent controversies point to systemic problems that go beyond any one drug or drug company—or even the FDA itself.

Speaking on condition of anonymity, an FDA drug safety

officer told the *BMJ* that the agency has been virtually paralysed since the scandals erupted. "We can't go on like this," said the officer, "Either David will go—or they [management] will have to go." Dr Graham is "somebody we greatly admire and support," he said, adding that whether or not Dr Graham stays at FDA "the problems will remain."

"The public is very vulnerable," said the officer, who called for provisional approvals of drugs with reviews two years after the release of a new drug.

The officer said that a planned investigation by the Government Accountability Office (*BMJ* 2004;329:935, 23 Oct) would help shed light on the ties between FDA and industry. He joined with other critics in calling for an end to the FDA being partially funded by fees paid by drug companies for drug reviews.

"That money needs to completely go. The NIH [National Institutes of Health] budget is enormous, but we get next to nothing. Maybe Congress could give us [funding]."

The FDA has declined to comment on questions regarding Dr Graham beyond their prepared statement. □

USA Today's article is available at www.usatoday.com/news/health/2004-11-28-fda-vioxx_x.htm

UK patients seek compensation after taking rofecoxib

Clare Dyer *legal correspondent, BMJ*

British lawyers are gearing up to launch a mass compensation claim in the British courts on behalf of hundreds of patients who had strokes or heart attacks after taking the arthritis drug rofecoxib (Vioxx).

Two law firms, Leigh, Day & Co and Irwin Mitchell, investigated the possibility of suing the manufacturer, Merck, in the United States, but have decided to sue in the British courts instead under the Consumer Protection Act, which covers defective products.

Merck withdrew the cyclooxygenase-2 (COX 2) inhibitor from the worldwide market on 30 September after a long term

study showed an increased risk of heart attack and stroke (*BMJ* 2004;329:816, 9 Oct).

So far, about 90 potential British claimants have contacted the two firms, but lawyers believe there could be many more among the 400 000 Britons who took the drug, which has been on the market in the United States and Britain since 1999.

More than 300 lawsuits have already been filed in the United States, where some predict the drug could give rise to the largest mass tort claim in history, with an estimated bill of up to \$18bn (£9.5bn; €13.6bn).

The Consumer Protection Act makes manufacturers strictly



At least 90 claimants will sue Merck in the British courts over the side effects of rofecoxib (Vioxx)

liable for harm caused by their products, without the need to prove that they were negligent, though makers of defective

products have a defence if they can show that they could not have been expected to know about the defect at the time. □