

August 9, 2004

To: Deputy Director, NIH
From: Senior Advisor to Director, NIH
Subject: Management Review

I have reviewed the very complete report of the investigation of Complaint Number-NIAID:2004-0004. I will leave to the Office of Equal Employment Opportunity and Diversity Management the determination as to whether there is substance to the complaint or not, particularly in regard to issues of age, sex and sexual harassment.

I have comments on the issue of reprisal and on issues related to management of the Division of Acquired Immunodeficiency Syndrome (DAIDS). It is clear that DAIDS is a troubled organization and that its most recent reorganization, which established the Office for Policy in Clinical Research Operations (OPCRO), attempted to solve at least some of the problems. But, as shown by the recent filing of an EEO complaint by the fairly new Director, of OPCRO, specifically recruited to head the new entity, the solution did not work.

The newest DAIDS organizational chart, dated October, 2003, indicated that OPCRO reports directly to the Office of the Director, DAIDS and, according to the complainant, he was recruited with the understanding that he would report to the Director, DAIDS. It is stated that the Deputy Director of DAIDS had considerable responsibility for the recruitment and believed, for sometime, that the recruit was very capable. It is also clear that, in the senior management of the entire Division of AIDS, there are physicians and Ph.Ds. in responsible positions and that many issues regarding broad understanding of how to go about doing studies on AIDS and HIV infection cause difficulties between the two.

As the investigative report indicates, the first few months after the complainant came to work, he did meet with the Director, DAIDS. However, even in the exchange of e-mails which occurred before the official start date; (July 16, 2003), the complainant communicated with both the Director and the Deputy Director of DAIDS, clearly indicating that he understood that they worked as a team.

As time progressed it also became clear that the Deputy Director, first very gently and politely (as the first email of July 18, 2003 shows) was suggesting and leading the

complainant to learn about the "culture of DAIDS" before moving in a hasty manner to change things. It was also clear, from e-mails from the incumbent to the Director and Deputy Director, and their responses, that the Deputy was trying to make the complainant go slow and gain the confidence of the staff, while the Director, DAIDS, was caught in between the struggle between the two. However, to his credit, the Deputy Director, in general, was very patient and was, at least seemingly, trying to help the employee inculcate himself into DAIDS. (It should be noted that in those early communications, there was almost no foul language nor any sexual innuendos.) Indeed, there were many statements about trying to help the complainant succeed and be effective.

After the complainant had been on the job for about 5-6 months, suggestions as to how he should carry out his activities and concerns about the work emanating from OPCRO grew more heated. By December, 2003, apparently, the Director and Deputy Director, DAIDS, decided that a more hands-on approach was needed and, in a face to face meeting and then a series of e-mails, began to be considerably more forceful regarding the complainant's performance. In late December, the complainant was asked, after also being informed verbally, to prepare a strategic plan for the operations of OPCRO and was reminded repeatedly over the next 2 months about the plan and asked why it was not ready for review. The language in the e-mails became more hostile and crude.

In February, 2004 the complainant told the Director, DAIDS that the Deputy Director was behaving in an inappropriate manner and then filed a complaint regarding sexual harassment by the Deputy, it was based on what he had observed and heard from others and shortly thereafter he presented a written complaint stating that the Deputy Director was creating a hostile working environment for him.

Following this, the complainant was informed by the Director, DAIDS that the Deputy Director was assuming the role of his supervisor and the EEO complaint charging reprisal ensued. In February, 2004 the Deputy Director prepared a mid-year performance review regarding the complainant which is extremely harsh and makes a case for termination at the end of the first, conditional, year. However, according to the affidavit of the Deputy Director, this was not given to the complainant, on the advice of a personnel specialist.

In his affidavit, the Deputy Director admits, as does the Director, DAIDS, that he uses sexually explicit and colorful language, saying that no one had ever complained until the complainant did and that the complainant also spoke that way. It was stated that if he has been told that it was offensive, he would have stopped.

The above is but a concise summary. It portrays what is clearly a sketch of a deeper issue:

In a very large division, with a large staff and budget and a very broad program dealing with a serious disease, to have the senior management, both of the office and the division behave in this manner, spend incredible amounts of time feuding, and writing numerous long e-mails, while seemingly being unaware of the need for appropriate behavior, decorum and enforcement of good management practices and the rules of supervision,

Attachment 3

concerns about appearance of reprisal clearly indicate a serious problem. Since 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, this is a management issue that needs correction. It does not appear on the surface to be an EEO matter but rather turf battles and rivalries between physicians and Ph. D. scientists, which have been rife for too long.

The overall management of this Division needs careful review. The members of the staff particularly those in the most senior positions, should be required to take sensitivity training. The senior staff should also be trained about inappropriate personnel procedures. A climate assessment of the entire division is needed. Finally, and most importantly, decisions regarding how it should carry out its activities must be thought through carefully, particularly in view of issues such as those raised by this controversy as well as by the scientific studies such as HIVNET 012, which are so important to the problem of AIDS in the U.S. and the world.