

MEMORANDUM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
NATIONAL INSTITUTES OF HEALTH

TO : Scientific Directors

DATE: January 21, 1981

FROM : Deputy Director for Science

JAN 21 1981

SUBJECT: Restrictive Agreement on Sharing of Cell Lines

It has recently come to my attention that at least one university, and possibly more, are requiring scientists from other institutions (including NIH) to sign restrictive agreements with the university before the university will allow its scientists to make available cell lines they have developed.

Among other things, the agreement requires a scientist requesting a cell line to agree on his/her own behalf and on behalf of his/her institution: (1) not to share the cell line with anyone; and (2) to waive all claims against the university and to defend and indemnify the university from all claims and damages asserted by third parties arising from the requester's use, storage, and handling of the cell line.

As you may already know, NIH intramural scientists do not have the authority to agree to these conditions. Many of our scientists have co-workers in the lab who are working on the project(s) for which the cell line is needed and must necessarily use the cell line along with the requester. In addition, no one at NIH has authority to waive any claim the Government may have against anyone or to agree on behalf of the Government to defend and indemnify any person or institution against damages arising out of the use, storage, or handling of a cell line. By signing an agreement to do so, an NIH scientist may leave himself/herself open to personal liability in the event that such claims and damages should in fact occur.

Whenever possible, therefore, NIH scientists in need of cell lines should obtain them from sources that do not impose formal restrictions on use of the lines.

In those cases in which the only source of a necessary cell line is an organization that asks first for a restrictive agreement, the NIH scientist should respond to that organization by indicating that: (1) the cell line will be used only for those projects on which that scientist's own laboratory is working, and any requests received by the scientist for the cell line will be referred to the original organization providing the line; and (2) because the Congress has not authorized

anyone at NIH to waive claims the Government may have or to defend and indemnify any person or institution against claims or damage, the scientist is unable to sign the waiver/indemnification agreement. Hopefully, such an approach will be sufficient to mollify organizations that initially request more restrictive agreements. If not, please let me know, and we will pursue the matter further.

Philip S. Chen, Jr.
for Robert Goldberger, M.D.