Unregulated herpes experiments expose ‘black hole’ of accountability

December 21, 2017

Recent revelations that a U.S. researcher injected Americans with his experimental herpes vaccine without routine safety oversight raised an uproar among scientists and ethicists.

Not only did Southern Illinois University researcher William Halford vaccinate Americans offshore, he injected other participants in U.S. hotel rooms without Food and Drug Administration oversight or even a medical license. Since then, several participants have complained of side effects.

But don’t expect the disclosures after Halford’s death in June to trigger significant institutional changes or government response, research experts say.

“A company, university or agency generally does not take responsibility or take action on their own to help participants, even if they’re hurt in the trial,” said Carl Elliott, a professor in the Center for Bioethics at the University of Minnesota. “These types of cases are really a black hole in terms of accountability.”

The federal government once scrutinized or even froze research at universities after learning of such controversies. Now, experts said, the oversight agencies tend to avoid action even in the face of the most outrageous abuses.

Experts said the U.S. regulatory agencies are especially unprepared to deal with off-the-grid experiments like Halford’s. He recruited subjects through Facebook and in some cases didn’t require signed consent forms, or informed

participants outright that the experiments flouted FDA oversight. These patients, many who struggle with chronic, painful herpes, proceeded anyway in their quest for a cure. After Halford's offshore trial, Peter Thiel, a libertarian and adviser to President Donald Trump, pitched in millions of dollars for future research.

"This is experimentation in the 21st century: heavily embedded in social media and combined with a hostility to regulatory oversight," said Arthur Caplan, director of the Division of Medical Ethics at New York University's School of Medicine. "How is the government going to manage subjects, researchers and investors who don't like regulations?"

SIU officials initially brushed off any questions about Halford's methods, saying the university did not have responsibility for the offshore vaccinations of the 20 participants in the trial because he formed an independent company to conduct the trial in St. Kitts and Nevis.

SIU eventually launched an inquiry last August, more than a month after Kaiser Health News began asking questions about Halford's methods. The investigation is ongoing, although a preliminary inquiry found Halford's methods to be in "serious noncompliance" with university rules and U.S. regulations.

Experts say the university should contact all participants who were injected with the vaccine and offer help to those who are suffering from side effects. But they point out that the university has potential conflicts of interest when scrutinizing its role in Halford's research. SIU shared in the vaccine patent with Halford's company, and medical school administration officials touted his work when Rational Vaccines benefited from Thiel's investment.

In ongoing reporting, KHN learned that Halford injected a group of people in two hotel rooms near his lab in Springfield, Ill., in 2013, three years before he began

experiments offshore. According to emails and one of the participants, many email exchanges with participants were sent from Halford's university email account. He used the university phone and referred to a graduate student as assisting in the experiment and using the lab.

One participant has told the FDA he believes he suffers from adverse effects from the vaccine.

Yet Rational Vaccines continues to assert the vaccine is safe and effective, even though Halford's data from his human subject experiments have not been published in a reputable scientific journal. Since the controversy, the company has taken down its website.

"This researcher basically violated all of the regulatory requirements and ethical principles guiding human subject research," said Michael Carome, a doctor who directs the health research group for the nonprofit advocacy group Public Citizen. "Unfortunately, it seems everyone is trying to distance themselves here to avoid legal liability and a public relations embarrassment."

The FDA, which has declined to comment on this case, could have jurisdiction, but it rarely takes aggressive action on behalf of human subjects, experts said. The FDA has had limited contact with two participants who have filed complaints alleging side effects from the vaccine.

"The FDA is just not set up to handle this," NYU's Caplan said.

The federal Office for Human Research Protections (OHRP), which monitors how human subjects are treated in trials, could choose to conduct an independent investigation. The agency would have jurisdiction because the university had pledged to follow human subject safety protocols for all research, even if it was funded privately.

Experts, however, remain skeptical that OHRP, an agency in the Department of Health and Human Services, would assume a prominent role in investigating the case based on the agency's track record.

OHRP asked the university for an explanation after KHN first reported that Halford didn't ask for routine safety oversight from an institutional review board.

OHRP once took on human subject violations that occurred during non-federally funded research and in cases where the FDA asserted jurisdiction, Carome said.

Now, the agency often chooses to stay out of non-federally funded trials and defers to the FDA, he said.

As a result, its public response to allegations of research abuse has plummeted, experts said.

The agency's public assessments of research misconduct peaked in 2002, when it issued more than 100 "determination letters." That number has steadily declined. This year, it has issued one.

"A single letter in one year is extraordinary," said Carome, who was the agency's associate director for regulatory affairs from 2002 to 2010. "OHRP's compliance oversight activities are moribund."

"The end result is the federal watchdog for human subject protections is ineffective in its role in investigating complaints" and preventing violations, he said.

OHRP maintains it has been using other "more efficient" approaches. Rather than automatically opening a case and issuing a determination letter, the agency is "working more closely with complainants and institutions to address some of the concerns raised about human subject research," said an HHS spokesperson, who declined to be named citing agency policy.

“But … in situations where something seriously wrong occurred, or subjects were harmed, OHRP does take action,” the spokesperson said.

OHRP hasn’t taken high-profile, aggressive action in years, said experts who pointed to the government’s suspension of federally funded research at Duke University and Johns Hopkins University more than a decade ago.

The federal government’s unresponsiveness in cases of privately funded research became more pronounced under the Obama administration, experts said.

In the waning days of the Obama administration, the federal government approved the first major overhaul of regulations surrounding human trials in 40 years. The resulting changes to federally funded trials included making consent forms more concise and clear.

Laura Stark, associate professor at Vanderbilt University’s Center for Medicine, Health and Society, said that in federally funded trials the measure “shifts the balance towards protecting research participants rather than protect[ing] institutions against liability.”

However, the rule does not address privately funded trials.

“If [the] organization and studies are privately funded, then they are not beholden to the law,” Stark said

As more universities began dropping their pledges to follow safety protocols for all research, it had already become difficult for the agency to assert jurisdiction. Meanwhile, OHRP’s compliance staff dwindled from six employees in 2008 to two in 2017. The lack of accountability for privately funded research is unlikely to change, experts say.

Stark called Halford’s research “a potential harbinger of the future of medical research given the increase in private

funding and the unlikely prospect of updating the regulations again anytime soon.”

Compounding the problem, the United States is the only developed nation that does not guarantee medical care for those injured in clinical trials, experts said.

When participants claim injury, they often are told to file claims with their insurance companies, an impossible endeavor, said NYU’s Caplan.

“We still haven’t figured out how to compensate people who say they are injured in research,” he said. “In cases like these, in which subjects are claiming harm from a cuckoo experiment, the system is set up to punish the institution rather than give redress to the subject. Their only route then is to sue.”

KHN’s coverage of these topics is supported by Gordon and Betty Moore Foundation and Laura and John Arnold Foundation

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