

January 16, 1963

Mr. Don G. Fowler
Project Manager
Lead Industries Association, Inc.
292 Madison Avenue
New York 17, New York

Your Reference: LC-75

Dear Don:

Your letter informing me of the action taken by your Board of Directors in relation to the support of our investigative program, arrived after my departure for a brief vacation in Florida, and, therefore, action on the matter has been delayed. I am sorry about this, and doubly so, because the action to be taken is not so simple as might be supposed. All agreements involving the Laboratory are executed by the only contractual authority of the University - namely, its Board of Directors. I could not execute the agreement at this end, therefore. I do, however, have to pass on such agreements and recommend appropriate action, and here is the rub. I cannot, of course, recommend to the Board any agreement which violates fundamental academic principles, or the Regulations of the Board, and in this respect your standard agreement is not acceptable in certain respects, some of which I will deal with in appropriate detail, and others in principle.

First, as to patent rights. As a public institution, which is tax-supported, patent rights related to the public interest have to be protected by the University. In addition, this University has patent regulations which protect the rights of the faculty and make the provisions of this agreement impossible of acceptance. These matters are of purely theoretical significance in this case, and since there are no patents of any kind in prospect in this work under any conditions, I hope your people will eliminate this item from this agreement. We can rephrase a patent agreement that would give Lead Industries Association non-exclusive patent rights in anything that might develop, but never, under any circumstances, can these be exclusive. In order to make even this limited gesture - and it is only a gesture - we would have to obtain agreements from certain members of our staff that would be binding upon them. We have never done this, nor do we intend to do so, except under the most unusual circumstances that might require us to protect the public against a potential patentee. The patent agreement, therefore, is out, and should be deleted entirely.

Second, the rights of publication of the University, as represented by this Laboratory, are never compromised. This is our work, based upon our ideas, in which your Association is willing to share, with

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other sponsors, the cost of obtaining certain items of physiologic and hygienic information. There can be no possible benefit except to human health, and this requires free and full dissemination of medical information in the public interest. (We are prepared to agree to hold confidential, all trade (or liability) information which is given to us in professional confidence.) Your Section V. is, however, a complete denial of this right. This cannot be agreed to in whole or in part. In this instance, which involves the acquisition of no commercial "know-how" or other marketable idea or equipment, Section V. is entirely irrelevant and should be eliminated.

The agreement is also quite out of order with respect to the detailed provision of Section VII, VIII, IX, X, and XI. A number of the provisions are irrelevant, as those of IX, and X, while others are unnecessary. These items relate to technological developments of commercial value to the industries in the Association. They are not only irrelevant but are actually vicious, as applied to medical research in the public interest. Any university that willingly accepts such terms in relation to medical research does so either cynically, in the theory that it would not comply with such conditions, or that the occasion to consider the matter would never arise. We cannot take such a view, and I will cite an incident that will explain why this is the case. (The argument is probably unnecessary, but it illustrates a point of some significance.) We have worked without fear or prejudice in controversial fields for many years. From time to time we have been accused of shading the truth to shield a sponsor - as in the leaded gasoline work, and that on fluorides, which bothered the antifuoridationists. Our agreements have been examined repeatedly in search of evidence that we conceal the facts by not publishing information relative to public or industrial health at the wish of a sponsor. I have been involved, indirectly, in one million-dollar suit for libel, based on information (allegedly false or prejudiced) given to the press. We live and work in the public eye, and, therefore, we must, so far as possible, be above reproach in the professional sense and in that of the public interest. The moment we qualify our complete honesty, we are, in effect, discredited, and therefore, our sponsors receive no benefit from our work or views.

It is this situation which makes it imperative to view such work as we do in a quite different manner than if you had engaged us to work out a technologic or manufacturing process.

I am enclosing our short form of agreement in which the provision of the Laboratory and the University, from the aspect of public policy are stated. This can be used as the framework for redrafting an agreement which I can recommend to the Board. I hope this can be done promptly, so that the work in which we are now engaged can have the benefit of this financial support from January first as the starting date.

Sincerely yours,

Robert A. Kehoe, M.D.

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Encl: copy of agreement

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