Testimony

STATEMENT OF
THE AMERICAN ASSOCIATION OF TISSUE BANKS (AATB)
BEFORE A HEARING OF
THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
MAY 24, 2001

Senator Collins and Members of the Subcommittee,

My name is Bob Rigney. I am the Chief Executive Officer of the American Association of Tissue Banks, more commonly referred to as the "AATB." I am accompanied here today by our President, Dr. Richard Kagan. Dr. Kagan is the Medical Director of the Ohio Valley Tissue and Skin Center. He is also Assistant Chief of Staff at the Shriners Burns Hospital in Cincinnati and the Director of The University Hospital's Burn Special Care Unit.

On behalf of our members and the people we serve, I want to thank you for the invitation to appear here today. We welcome this opportunity to testify about this rapidly changing and critically important field of tissue banking and tissue transplantation.

As we begin our discussion, we need to recognize that tissue banking is only one element, indeed the first segment on the entire spectrum of tissue transplantation. Simply put, tissue banking involves the retrieval of life-enhancing, and sometimes life-saving, human tissues from living or cadaveric donors; the processing and storage of those tissues; and their distribution for transplantation into patients who need them.

Today, human tissues are used in a host of medical procedures, and new clinical applications are being developed. Musculoskeletal tissues are utilized in spinal procedures, such as cervical fusions, to support the spinal column. Musculoskeletal grafts are also used in ligament and sports medicine procedures,

in total joint replacement procedures, and in fracture management and general orthopaedics.

Cardiovascular tissue is employed to replace and repair heart valves and arteries. Soft and hard tissue grafts are used to correct periodontal defects and in craniofacial reconstruction. Soft tissue grafts are also used in reconstructive urological procedures, and human skin is utilized as a wound covering for burn and trauma victims.

In the past two decades, human cellular and tissue-based products have improved and/or saved the lives of millions of our fellow citizens. Not too long ago, only animal or synthetic valves were available to treat children with certain cardiovascular defects. Today, those children are transplanted with human heart valves. Those valves grow with the child, negating the need for any additional operations to replace the valves.

Not many years ago, men, women and children with bone tumors faced amputation of their limbs to remove those cancers. Today, surgeons can remove the affected bone and replace it with a human bone. Many of these patients go on to resume normal lives.

There are a multitude of other examples that I could cite where human tissue transplants have helped change and even save the lives of our neighbors, friends and loved ones. We need to be certain, therefore, to first do no harm, to do nothing that discourages Americans from donating their organs and tissues.

Let me now turn to and address the items on which you asked us to comment.

1. The role of the American Association of Tissue Banks (AATB) in the tissue banking industry.

The AATB is a voluntary, professional, nonprofit, scientific and educational organization. The Association was founded in 1976 and is organized under Section 501(c)(3) of the Internal Revenue Code. We are not affiliated with, supported by, or chartered by the Government. We are not a trade association, and we do not employ a lobbying staff.

The AATB's mission is public health. We are dedicated to ensuring that human tissues intended for transplantation are safe and free of infectious disease, of uniform high quality, and available in quantities sufficient to meet national needs.

To further our mission, we publish the only private *Standards* for tissue banks, the AATB's *Standards for Tissue Banking*. This document is the recognized authoritative source for the industry. For more than 15 years, we have also operated our own voluntary Accreditation Program to ensure that tissue

banking activities are being performed in a professional manner in compliance with these *Standards*. All of our institutional members must be re-accredited every three years. Accreditation includes, among other requirements, an on-site inspection by independent inspectors, most of whom are former Food and Drug Administration (FDA) compliance officers, and none of whom are affiliated with any tissue facility. In addition, we offer a certification program for tissue bank personnel.

AATB members also adhere to the Association's *Ethical Principles* (adopted in 1994), our *Ethical Guidelines for Commercial Activities and Advertising* (adopted in 1996), and the *Guidelines on Tissue and Cell Resource Sharing* (adopted in 1996 and amended in 2000).

The Association's membership currently includes nearly 1,200 individual members and 74 accredited tissue banks engaged in the recovery, processing, storage and distribution of human tissue. Not every tissue bank is a member of the AATB, but most of the major tissue banks in the United States have obtained AATB accreditation. In fact, we believe that at least a majority of the tissue banks in the U.S. are AATB accredited.

With the exception of ocular tissue, we also believe that AATB members provide most of the commonly used structural tissues for clinical use in the United States. In 1999, for example, the year for which the most recent data is available, the number of bone allografts distributed by AATB accredited tissue banks totaled 523,197, more than double what was distributed five years ago.

In addition, tissue donations are increasing significantly. AATB accredited banks recovered tissue from 17,010 donors in 1999. This represents about a 274% increase in donations in the past five years.

It is important to recognize that for nearly a decade following the publication of our first edition of *Standards* in 1984, the AATB was the only organization overseeing tissue banking in the United States. Today, 17 years later, our *Standards* are still the most comprehensive and authoritative source in tissue banking. Over those years, we have compiled a remarkable record of donor service and patient safety.

All of our programs and activities focus on respecting and honoring the tissue donor and his or her family and the safety of the recipient patients. That is why we are constantly reviewing and improving our *Standards*, programs and operations. AATB's response has always been to be open-minded and to adapt in response to changing circumstances.

2. Instances in which AATB has denied accreditation to tissue banks.

At the outset, it is important to recognize that the AATB's Accreditation Program is an educational program, not a regulatory enforcement program. Our goal is to bring tissue banks into compliance with the *Standards*, not to penalize them for being out of compliance. We process approximately 20-25 accreditation applications annually.

The accreditation process takes about one year for a tissue bank to complete. The applicant for accreditation or re-accreditation must complete and file a formal application along with a pre-inspection checklist, which is nearly 120 pages long. The tissue bank must also submit a complete copy of its Standard Operating Procedures (SOPs), which are reviewed by the Accreditation Program staff for compliance with the *Standards*.

If the documentation is determined to be in order, an on-site inspection by one of our independent inspectors is arranged. After the inspection, the inspector files a written report. That report is reviewed, blinded, and suggested recommendations, if any, are prepared and presented to the Accreditation Committee.

The committee can recommend that accreditation be approved or denied. If corrective action is necessary, the committee can also recommend that the bank be given a Level A (no re-inspection necessary), or a Level B (re-inspection necessary), and the bank has 60 days to take the necessary corrective action(s). The committee can also recommend that a tissue bank's accreditation be suspended for 90 days while the corrective action is being taken. The Board of Governors makes the final decision on every accreditation application.

Since the AATB's Accreditation Program began in 1986, a total of 116 tissue banks have been accredited. Of that number, 43 tissue banks are no longer accredited. Approximately 23 of the 43 banks no longer accredited have either closed, merged with other banks, or have not sought re-accreditation.

The remaining 20 tissue banks, failed to demonstrate compliance with AATB's *Standards*. Of these 20 tissue banks, 14 were denied accreditation following re-inspections. Inspections of four banks were aborted because of obvious non-compliance at the time of inspection, and these banks withdrew from the accreditation process. Two additional banks would have been recommended for denial, but because their current accreditation was about to expire, they withdrew from the process and let their accreditation lapse.

There has also been approximately 10 other tissue banks that applied for their initial accreditation, but were denied or dropped out of the process.

3. Views on the roles of for-profit and not-for-profit tissue banks.

AATB accreditation is open to any tissue bank that: (1) voluntarily agrees to abide by the policies and procedures of the Association; and (2) demonstrates adherence to the *Standards* by successfully completing AATB's Accreditation Program. To comply with our nation's antitrust laws, we do not now, nor have we ever differentiated between for-profit and not-for-profit tissue banks. Indeed, the current list of AATB accredited tissue banks includes both for-profit and not-for-profit entities.

In addition, the collection, processing or dissemination of financial information from our members has never been a goal or activity of the AATB. We have never collected detailed financial data from our accredited tissue banks, nor do we have any plans to do so. In fact, our attorneys have long cautioned us against soliciting or gathering this information since such activity may implicate federal or state antitrust laws. Our mission is to establish and promulgate standards, to foster education and research, and to promote the quality, safety and availability of tissues and cells for transplantation. Our focus is the donor, the donor's family and the patients who receive the transplanted tissue.

4. Opinion regarding pooling tissue.

In 1984, the AATB published the first edition of its *Standards for Tissue Banking*. These *Standards* set rigorous performance requirements to prevent the transmission of communicable diseases. Our *Standards* are reviewed annually and amended as necessary. In January, 2001, we published the ninth edition of the *Standards for Tissue Banking*.

Over the years, the *Standards* have been revised to incorporate increasingly more stringent donor screening protocols. In addition, the *Standards* have been amended to require the use of additional FDA-licensed laboratory testing procedures for various markers of potentially transmissible diseases as they became available. Failure to comply with the standards designed to prevent infectious disease contamination and cross-contamination constitutes a material violation of AATB's *Standards.* Such a violation can result in the withdrawal of, or the refusal to renew a facility's accreditation. All tissue banks accredited by the Association are charged with knowledge of and compliance with all standards of the Association.

In all the public and private reporting about tissue banking and tissue transplantation, the greatest untold story is safety. During the past seven years, for example, tissue banks accredited by the AATB have distributed more than two million allografts to surgeons without a single reported

case of disease transmission from donor to recipient.

Safety is the basis for Section E1.200 of the *Standards,* which states that: “Cells and/or tissue from multiple donors shall not be pooled during retrieval, processing, preservation, or storage.” The *Standards* (Section E1.210) also require that accredited tissue banks prepare, validate and follow written procedures to prevent “infectious disease contamination or cross-contamination by cells and/or tissue during processing.”

For the past 12 years, AATB’s *Standards* have prohibited the pooling or commingling of tissues to prevent infectious disease contamination and cross-contamination. This requirement was adopted after reports in the 1980’s that linked the transmission of Creutzfeld-Jacob Disease (CJD) in Japan to human tissue that had been processed in batches in Germany. Since the prohibition on pooling was added to our *Standards*, there has never been a case of CJD transmission from tissue processed in the United States.

Advances in medical science and technology may soon unlock the answers that will allow for the pooling of tissues and prevent infectious disease contamination and cross-contamination. Until that time, the AATB will continue to work closely with the FDA to ensure that this exemplary record of safety is maintained.

5. Assessment of current regulatory oversight of the tissue banking industry.

Despite some media reports to the contrary, the FDA currently regulates human tissue intended for transplantation. In addition, the agency has exercised its considerable regulatory authority over tissue banks. Over the past several years, we understand that the FDA has regularly conducted more than 50 tissue bank inspections annually. In each of the past two years, the FDA has inspected approximately one-third to one-half of the AATB accredited facilities.

Tissue banks and tissue banking have been regulated by the FDA since the agency issued interim regulations that became effective immediately on December 14, 1993 (21 CFR 1270). This initial regulation required certain infectious disease testing, donor screening and record keeping to prevent the transmission of HIV and the hepatitis viruses from human tissue used in transplantation.

On July 29, 1997, the FDA issued its final regulations (21 CFR 1270) that were broader in scope. The final regulations cover all facilities that are engaged in the recovery, screening, testing, processing, storage or distribution of human tissues. They required that specified minimum medical screening and infectious disease testing be performed. Records documenting

such screening and testing for each human tissue must be available for inspection by the FDA. The regulations also contain provisions for the inspection of tissue banking facilities and for the retention, recall or destruction of human tissue for which appropriate documentation is not available.

The FDA's authority for this regulation is based on Section 361 of the Public Health Service (PHS) Act to control communicable diseases and, in particular, to "provide for such inspection…as in (the agency's) judgment may be necessary." A tissue bank that refuses to allow FDA inspection may be prosecuted under Section 368 of the PHS Act.

FDA has not extended its regulation to Organ Procurement Organizations (OPOs), nor has it covered hospitals or other clinical facilities that only receive and store human tissue for transplantation within the same facility. However, OPOs, hospitals or clinics that participate in recovery, screening, testing, processing, or distribution of human tissue in addition to storage for transplantation are covered by the regulations. FDA rules extend to all human tissue, imported and domestic.

The 1997 final rule requires tissue banks to permit inspection by authorized FDA inspectors of its facilities, equipment, processes, products and all records necessary to determine compliance with the regulation. These inspections can be made without notice; the frequency of the inspections is left to the agency's discretion. For human tissue that is imported, the importer must notify the director of the FDA district that has jurisdiction over the port of entry through which the tissue is imported or offered for import. All imported tissue must be quarantined until the FDA releases it.

Upon finding that human tissue may be in violation of the FDA's regulations, the agency may serve the tissue bank with an order for recall and/or destruction, or it may take possession of and/or destroy the tissue in question.

The 1997 regulation gives the FDA authority to inspect a tissue bank's facilities, equipment, processes, the screening and testing of donors, medical records, and products. The agency also possesses the police power to sanction tissue banks found in violation of the FDA regulations.

6. Opinion of the Food and Drug Administration's proposed rules to expand its oversight of the tissue bank industry.

The AATB has a long-standing history of support for the FDA's goal of developing an effective and reasoned program of tissue regulation. We have long advocated, and we continue to support balanced and reasonable FDA regulation of tissue banking. That support began with the FDA's first regulatory initiative, the 1993 promulgation of the Interim Rule for human tissue intended for transplantation (58 *Federal Register* 65514), whose content closely tracked our own *Standards*.

Over the years, we have provided useful information to assist the agency in addressing its public health challenges such as disease transmission. We have worked with the FDA to develop an appropriate regulatory scheme in this evolving field of medicine. We intend to continue that collegial and cooperative spirit. We also intend to continue to provide constructive criticism and recommendations for regulatory changes where we believe they are warranted.

We continue to support the FDA's concept for regulating human tissues that was published four years ago, shortly before the agency issued its final regulation. This 1997 publication was entitled, "A Proposed Approach to the Regulation of Cellular and Tissue-Based Products" (62 *Federal Register* 9721, March 4, 1997). The document outlined a regulatory framework to provide "a unified approach to the regulation of both traditional and new products."

The new FDA regulatory framework was based on "a tiered approach to cell and tissue regulation." The framework provided:

> "…only the degree of government oversight necessary to protect the public health. For products with limited public health concerns, the new framework allowed flexibility and innovation without an application review process."

The FDA's new approach to the regulation of human cellular and tissue-based products was designed to provide "more appropriate oversight," improve safety, "increase public confidence in these new technologies," and permit "significant innovation to go forward unfettered by unnecessary regulatory requirements." Cells and tissues that were extensively manipulated, combined with non-tissues, or intended to be used for other than their normal functions would be regulated as biologics or devices under Section 351 of the PHS Act (42 U.S.C. 262).

Tissue Action Plan. To implement this proposed approach and new regulatory framework, the FDA published its "Tissue Action Plan." The principal components of the FDA's Tissue Action Plan were the publication and implementation of three separate regulations covering registration, donor suitability and good tissue practices.

A. Establishment Registration. The FDA published its first proposed rule entitled, "Establishment Registration and Listing for Manufacturers of Human Cellular and Tissue-Based Products," on May 14, 1998 (63 *Federal Register* 26744). The final rule was published on January 18, 2001 and became effective April 4, 2001. Tissue banks had 30 days to register with the FDA, so we

should soon know the approximate size of the tissue banking community.

B. *Donor Suitability*. The second proposed rule entitled, "Suitability Determination for Donors of Human Cellular and Tissue-Based Products," was published on September 30, 1999 (64 *Federal Register* 52696). The initial comment period closed on December 29, 1999, but it was later re-opened for an additional 90 days. The FDA received more than 500 written and electronic comments on the donor suitability rule during the first comment period. A final rule has not yet been published.

C. *Current Good Tissue Practices (CGTPs)*. The FDA's proposed rule on "Current Good Tissue Practices" was published on January 8, 2001 (66 *Federal Register* 1508). The comment period closed on May 8, 2001.

As we have noted previously, the AATB supports, in the main, the concepts presented by the FDA in the *Proposed Approach* documents. This document sets out a risk-based, tiered approach that applies regulation in direct proportion to the perceived or likely risks to patients. Human tissues are not drugs, biologics or devices, and they should not be regulated as such.

In addition, since its first publication, the AATB has always supported the FDA's registration of tissue banks. We are pleased that registration and product listing are now a reality.

The AATB has also strongly supported mandatory donor screening and testing to prevent disease transmission as outlined in the FDA's proposed donor suitability rule. Since 1979, the AATB has had published guidelines on donor selection criteria, and donor suitability requirements have been included in every edition of our *Standards* since they were first published in 1984.

In addition, the AATB has generally endorsed the provisions of FDA's currently proposed CGTP rule that are specifically and directly designed to address the risk of disease transmission to patients. We do, however, have significant reservations about some of the provisions of the proposed rule. We have, therefore, filed extensive comments with the FDA that included recommendations for changes in this regulatory proposal.

The AATB believes that the FDA has adequate regulatory authority at this time. The agency has proposed a regulatory framework for human cellular and tissue-based products that is in keeping with the unique characteristics of human tissue. Once all three proposed rules are final, we believe that sound public policy dictates that the new

regulations be given sufficient time to work before their effectiveness is evaluated.

In conclusion, let me simply reiterate that the principal focus of the AATB is the tissue donor, his or her family and the recipient patients. We respect and honor our donors and their families for helping to ensure that patients receive their life-enhancing and sometimes life-saving gifts. We are the stewards of their gifts, and we take that responsibility very seriously. We serve patients by helping to ensure the quality, safety and availability of tissues and cells for transplantation. This is our public health mission, and we are constantly reviewing and improving our *Standards*, programs and operations to address that mission.

I thank the Subcommittee for its time and attention. I will be happy to answer any questions that the Senators might have.

Committee Members | Subcommittees | Hearings | Key Legislation | Jurisdiction
Press Statements | Current Issues | 1997 Special Investigation | Video of Select Hearings | Sites of Interest