February 5, 2024

The Honorable Monica M. Bertagnolli, M.D.
Director
National Institutes of Health
9000 Rockville Pike
Bethesda, MD 20892

Director Bertagnolli,

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce (the Committee) is investigating the National Institutes of Health’s (NIH) handling of sexual harassment complaints involving NIH employees, NIH appointees, and NIH grantees.

The Committee has been examining the NIH’s handling of sexual harassment complaints since August 2021.1 On March 14, 2023, Oversight and Investigations Subcommittee Chair Griffith and I wrote to the NIH requesting information about its handling of sexual harassment complaints.

Subsequently, given concerns over the last few years about the NIH’s responsiveness to sexual harassment in the workplace and the agency’s inadequate response to the March 14 letter, the Committee elected to expand its inquiry to include the NIH’s handling of sexual harassment complaints involving NIH scientists. On October 5, 2023, Subcommittee Chair Griffith and I sent a letter to the NIH requesting additional documents. We indicated that the NIH needed to make an adequate response by October 20, 2023.

Unfortunately, the NIH has failed to comply adequately with requests for information and documents related to its handling of sexual harassment complaints. The NIH’s course of conduct demonstrates a lack of good faith and an unwillingness to engage with the Committee voluntarily. Accordingly, the Committee must now issue a subpoena compelling production of these documents so that it can carry out its oversight responsibilities.

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1 In addition, while still in the Minority, we sent an August 9, 2021, letter to NIH with written questions. In response to this August 2021 letter, NIH provided a written response and a briefing with the staff of the NIH Office of Extramural Research in October 2021.
The NIH has had more than adequate time to produce the documents requested by the Committee. These documents are accessible to the NIH since they have generated statistical information based on these materials. The Department of Health and Human Services (HHS) and the NIH were on notice from the Committee’s October 5, 2023, document request letter that the Committee was prepared to use compulsory process to secure documents for this investigation, given the previous failure by HHS and the NIH to respond to the vast majority of written questions in the committee’s March 2023 oversight letter. Only one of the requested documents was produced in response to our October 5, 2023, letter. Given communications between staffs, HHS and the NIH have known for weeks that compulsory process would be pursued if HHS and the NIH continued to not comply with the document requests related to its handling of sexual harassment complaints.

On January 17, 2024, I met with you and alerted you to the non-compliance with the October 5, 2023, document requests. As a courtesy, I provided you with a copy of a draft letter justifying the subpoena. Finally, I informed you that the NIH would have one more week to comply with the requests and avoid a subpoena. HHS and the NIH failed to comply by the January 24th deadline. On January 26, 2024, I sent the letter justifying the subpoena to the NIH. During this week, the NIH was given until Friday, February 2nd, to comply with the requests. On February 2, 2024, the Committee received a letter from HHS documenting a proposal discussed with staff but producing no documents and offering no timeline for which such a proposal would be executed. This deadline was for HHS and the NIH to provide the committee with documents, not to propose an 11th-hour accommodation that fails to adequately fulfill the Committee’s request.

Over the last two weeks, Committee staff have provided reasonable proposals of in-camera viewing or virtual reading rooms to provide the committee with prompt access to documents and also accommodate HHS stated concerns with protecting privacy interests. It was not until February 1, 2024, that HHS finally articulated its position on responding to these requests. HHS proposes a vague, unworkable, and time-consuming data-element extraction process to provide limited information without providing the committee with access to documents.

The Committee has a legitimate oversight need to view direct evidence of actual complaints and how the NIH handled those complaints. No credible investigative process would rely on the organization whose program is under investigation to be entrusted with providing accurate and complete report summaries about that matter of concern. There is an ample predicate for this investigation and a need to look at the handling of individual cases, given various articles about NIH-funded researchers and an NIH institute official implicated in sexual misconduct charges. The raw number of incidents HHS and the NIH provided the Committee on sexual harassment cases at the NIH show on average two complaints a week for sexual

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2 Shikha Jain, *Sexual Harassers Should Face Consequences: As NIH Director, Bertagnolli Can Foster Change*, The Cancer Letter, (Jun. 2, 2023); Sexual harassers should face consequences: As NIH director, Bertagnolli can foster change - The Cancer Letter
harassment, with almost half of them substantiated. Further, there is established precedent for Congressional committees to have access to internal documents related to sexual misconduct.3

The NIH’s failure to provide documents or information by the February 2nd deadline has led us to the current impasse, necessitating the issuance of a subpoena by the Committee to obtain materials central to our legislative and oversight responsibilities.

Sincerely,

Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce

CC: The Honorable Frank Pallone, Ranking Member

Attachment