

November 13, 2012

VIA HAND DELIVERY

The Honorable Fred Upton
Chairman

The Honorable Henry A. Waxman
Ranking Member

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight &
Investigations

The Honorable Diana DeGette
Ranking Member
Subcommittee on Oversight &
Investigations

Committee on Energy & Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Re: Testimony of Barry Cadden

Dear Chairman Upton, Chairman Stearns, Ranking Member Waxman, and Ranking Member DeGette:

On behalf of Barry Cadden, I write in response to your subpoena dated November 6, 2012 compelling Mr. Cadden to appear before the Energy & Commerce Committee, Oversight and Investigations Subcommittee (the "Committee") on November 14, 2012. That hearing is scheduled to address questions exploring what might have caused any contamination of the injectable steroid compound at the NECC facility, and what steps can be taken to ensure that any such contamination of compounded drugs, and any fungal meningitis that may be associated with it, can be prevented in the future.

These are the precise questions that have anguished my client since the terrible news broke about the tragic deaths and illnesses that have been imputed to the drug compounded at NECC. I understand that in order to try to answer those questions, he has devoted himself to cooperating with the FDA and CDC in assuring the quickest and most complete possible recall of all relevant product. He has done so in the hope that his efforts may minimize any further potential risk to the public health.

Mr. Cadden strongly desires to answer all of the Committee's questions, fully and truthfully, at your Committee's hearing. However, in light of the federal and state investigations surrounding these events, I have a responsibility to Mr. Cadden as his attorney, to assure that he be permitted to exercise and preserve the rights conferred on him by the United States Constitution. In the context of the pending investigations, I would be derelict in the discharge of that responsibility were I not to advise him to exercise his Fifth Amendment privilege.

Chairman Upton
Ranking Member Waxman, et al.
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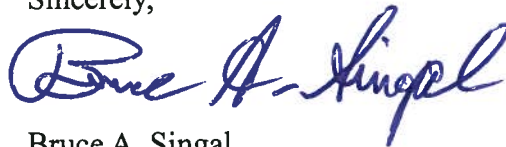
It is with great reluctance that Mr. Cadden is accepting my advice. Accordingly, and as Committee Counsel has previously been informed, on advice of counsel, Mr. Cadden will invoke his Fifth Amendment rights and respectfully decline to provide testimony or answer any questions at the Committee's hearing.

Mr. Cadden's assertion of his Fifth Amendment rights on my advice directly relates to the existence of ongoing state and federal investigations. No inference should otherwise be drawn from Mr. Cadden's invocation of his Constitutional rights.

As you are well aware, the Committee possesses the statutory authority to obtain Mr. Cadden's testimony in a manner consistent with the preservation of his Constitutional rights. If the Committee determines to proceed in that fashion, we stand ready to facilitate Mr. Cadden's truthful and complete testimony, and to work cooperatively with the Committee to achieve that objective.

Thank you for your consideration.

Sincerely,



Bruce A. Singal

cc: The Honorable Joe Barton
The Honorable Joseph R. Pitts
The Honorable John D. Dingell
The Honorable Frank Pallone, Jr.