Science, Discrimination, and the Blood Supply: San José State University’s Blood Drive Ban

San José State University Suspends Campus Blood Drives

On January 29, 2008, Don W. Kassing, President of San José State University (SJSU), announced that he was suspending indefinitely all blood drives taking place on the SJSU campus, plus any drives taking place elsewhere that were arranged by employees representing the University or by official student organizations. In a letter to the campus community, Kassing explained that the ban was a result of the U.S. Food and Drug Administration (FDA)’s lifetime blood donor deferral policy for homosexual men. The policy disallows men who have engaged in sexual activity with another man since 1977 from contributing to the blood supply. Following an investigation prompted by concerns about the fairness of the policy brought to the campus Office for Equal Opportunity by a University employee, Kassing and his administrative staff determined that holding campus blood drives that denied participation to men who engage in sexual activity with other men violated the public University’s non-discrimination policy, which explicitly prohibits discrimination on the basis of sexual orientation (see Exhibit A).

In justifying the decision, Kassing’s letter to the campus community noted that the FDA’s policy was enacted in 1983 when the risks of AIDS transmission via blood transfusion were first recognized but argued that the policy had never been relaxed even as blood testing technology reduced current risks to levels so low that experts could no longer measure them directly. In fact, he pointed out that AABB (formerly known as the American Association of Blood Banks), America’s Blood Centers and the American Red Cross all had reviewed data on the risks and taken the position that the lifetime ban was unwarranted. Yet the FDA had made no move to undertake additional research nor disclosed when an FDA committee might vote again on the deferral policy. While acknowledging that a university the size of SJSU (32,000 students and 5,700 employees) constituted a potentially important supply of blood donations, Kassing felt a blood drive suspension was warranted. “Our purpose is to respect our policy of non-discrimination and the climate that the policy is intended to create on our campus,” the letter explained. “I have also asked the FDA to contact me so we can discuss this issue further. Specifically, I’d like to discuss timing for additional studies and the next FDA committee vote on the matter.”

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Response to Kassing’s decision was both immediate and national in scope. The story was covered by major media outlets nationwide after being picked up by the Associated Press. Many students and university staff cheered the University’s move, and Kassing reported receiving numerous telephone calls and e-mails from the campus community voicing strong support for the decision (1). “He [Kassing] was sending a clear message—not that saving lives is unimportant to this university but that saving lives is just as important to this university as is the civilized, equal treatment of the gay community. Support Kassing. Gay blood is not bad blood,” wrote an opinion columnist for the Spartan Daily, the campus newspaper (2). Proponents believed that SJSU’s decision could effectively raise awareness of policy discrimination against gay men without posing major obstacles to potential donors since other outlets for blood donations were still available off-campus. As a San José Mercury News columnist put it, “Symbolism—loudly saying no more until the rule changes—can have an important impact. It makes people face the ugliness of discrimination” (3).

However, support for the blood drive suspension was far from universal. Some students and blood collecting organizations thought Kassing’s move would preclude many students from donating blood and that what the University ought to do was facilitate blood donations rather than create a hindrance. A recent alumnus quoted in a Spartan Daily story summed up the way many members of the community felt: “The University shouldn’t take it out on people who need blood and have nothing to do with this decision” (4). Rather than exerting positive influence on national policy, representatives from the nearby Stanford Blood Center suggested that SJSU’s tactics “could have a devastating impact on the blood supply” (5). “We feel that this was a terribly misguided decision,” said Lisa Bloch, spokeswoman for the Blood Center of the Pacific (6).

While it was estimated that that the approximately 1,000 pints of blood collected at SJSU each year made up only 1 percent of total blood donations in the San Francisco Bay Area, blood collection organizations worried that a dangerous precedent was being set. AABB noted that SJSU’s action had stimulated “concern among blood collectors who fear that more widespread adoption of this policy by other institutions could have a negative

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impact on blood collection” (7). Furthermore, suspending on-campus blood donations might risk “losing out on a generation of blood donors,” said Michele Hyndman, Stanford Blood Center’s public relations manager, who noted that “donating blood at a school blood drive is often the first time somebody is exposed to donating blood. It becomes a platform from which they become lifelong blood donors” (8).

Officials at the university were not persuaded. “What San José State has done is to take an institutional position based on principles, based on values,” said Larry Carr, the University’s associate vice president for public affairs (9).

The Blood Supply in the United States

According to American Red Cross, “every two seconds someone in the U.S. needs blood. More than 38,000 blood donations are needed every day. One out of every 10 people admitted in a hospital needs blood. As of 2001, the volume of blood transfused to patients is increasing the rate of 6% per year, and the demand is growing faster than the supply. A single donation can help save the lives of up to 3 people” (10). “Every day in our country, blood is required in hospitals and emergency treatment facilities to save the lives of accident victims, patients with cancer and other diseases, as well as those undergoing routine surgeries. Our goal is to ensure that blood is available to patients whenever and wherever it is needed because it is the blood on the shelves that saves lives,” said Karen Shoos Lipton, AABB’s chief executive officer (11).

Blood supplies in the U.S. vary depending on both region and time of year. For example, because of the impacts on blood donation frequency of holiday travel schedules, inclement weather and illness, blood is left in especially short supply during the winter months, particularly in January. To highlight this seasonal variation, January 2008 had been identified by the American Red Cross as National Blood Donor Month. Stricter donor qualifications and a graying donor population combine with seasonal and regional fluctuations to make low blood supplies a frequent concern in many cities, who often find themselves holding less than a one-day supply (12).

Blood drives are a primary vehicle for increasing supplies of blood. Because convenience is the deciding factor for many people in choosing whether or not to give blood, working

12 Ibid.
with sponsor organizations, such as companies, churches and universities, who can help
target donors where they live and work is a primary strategy blood banks use for
increasing donations. In fact, the American Red Cross reports that 80% of blood
donations they receive are made at blood drives rather than fixed donor centers (13).

Besides its size and stability, the other main concern surrounding the blood supply is its
safety. While the U.S. blood supply is among the safest in the world, the potential exists
for transfusion recipients to contract harmful or even fatal diseases should they receive
tainted blood. As a result, each unit of donated blood is tested for the presence of such
diseases as syphilis, hepatitis and Human T-Cell Lymphotropic Virus (HTLV), which can
cause various cancers. Of particular concern is transmission of HIV/AIDS, which has
been screened for in tests of donated blood since March 1985. The Centers for Disease
Control and Prevention (CDC) reports that virtually all patients infected with HIV by
transfusion received those transfusions prior to the start of testing. The current risk of
infection with HIV in the United States via transfusion is extremely low, even in places
where HIV prevalence rates are high (14). According to the FDA, the probability of being
infected by undetected HIV in a transfusion is less than 1 in two million (15). In
comparison, the National Weather Service estimates that the chances of being struck by
lightning in a given year are about 1 in 700,000 (16).

The FDA’s Policy on Blood Donations from the MSM Population

One reason given for the high degree of safety that characterizes the U.S. blood supply is
the stringency of rules governing who can donate. In particular, the FDA’s policy on
blood donations from men who have sex with other men (called the “MSM” population)
defers donations from any man who has had sexual contact with another male, even once,
since 1977, the year that marks the beginning of the AIDS epidemic in the U.S. The
MSM status of potential donors is obtained via a questionnaire that is administered prior
to blood donation.

While several categories of individuals face blood donation deferrals, including people
who have gotten tattoos or piercings in the last six months or who have recently traveled
to a malarial country, the MSM deferral differs in that it is a lifetime ban. A similar
lifetime ban applies to anyone who has ever been paid for sex or used intravenous drugs.
An FDA fact sheet explaining the MSM blood ban gives several justifications (17):

14 Centers for Disease Control and Prevention. How Safe is the Blood Supply in the United States? Retrieved from
16 Source: National Oceanic and Atmospheric Administration. Retrieved from
17 Food and Drug Administration. “FDA Policy on Blood Donations from Men Who Have Sex with Other Men.” Retrieved
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- Men who have had sex with men since 1977 have an HIV prevalence that is 60 times higher than that of the general population.
- Men who have had sex with men account for the largest single group of blood donors who are found HIV positive by blood donor testing.
- There are over 20 million transfusions of blood, red cell concentrates, plasma or platelets in the U.S. every year; therefore, even a failure rate of 1 in a million can be significant if there is an increased risk of undetected HIV in the blood donor population.
- Detection of HIV infection is particularly challenging when very low levels of virus are present in the blood, especially during the so-called "window period" between initial HIV infection and the point at which an HIV test can detect the virus in an infected person. The FDA's MSM policy reduces the likelihood that an infected gay man would unknowingly donate blood during this window period.

In short, the FDA’s position is that while tests for HIV applied to donated blood are highly accurate, they are not foolproof, and the deferral process adds an additional level of protection by disallowing donation from individuals who identify themselves as members of groups known to have higher risks of carrying the disease. They conclude that “several scientific models show there would be a small but definite increased risk to people who receive blood transfusions if FDA's MSM policy were changed and that preventable transfusion transmission of HIV could occur as a result.” A similar lifetime deferral policy for donations from the MSM population exists in many other developed nations, including Canada, Denmark, Finland, France, Germany, Holland, Hong Kong, Iceland, Norway, Sweden, Switzerland and the United Kingdom.

While the MSM ban was first enacted in 1983 and has existed in its current form since 1992, the agency periodically has reviewed the policy in the intervening years. For example, in September 2000, the FDA Blood Products Advisory Committee (BPAC) met to consider a proposal to modify the lifetime ban to a deferral only for those men who had had sex with another man within the last five years. FDA medical officer Andrew Dayton, MD, estimated that a worst-case scenario would see 1 in 750,000 blood units slipping through as a result of a move to a five-year deferral. He also testified that the release of donated blood known to be tainted to hospitals because of outdated, non-automated handling systems constituted a much more pressing danger that dwarfed risks associated with allowing gay men to give blood. Representatives of AABB advocated for going further, lowering the MSM deferral period to 12 months to bring it into line with policies for other “high-risk sexual exposures.” However, the American Red Cross, the nation’s largest blood supplier, did not support a change in the policy at that time, and the BPAC voted 7-6 not to alter the existing policy, with five members of the committee absent (18).

By 2006, the American Red Cross had changed its position, and in March of that year it joined with the AABB and America’s Blood Centers to again propose a move to a one-

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year deferral. The groups argued that longer deferrals were unnecessary given the sophistication of testing technology that can detect HIV antibodies in blood within 3 weeks of infection, making the lifetime ban “medically and scientifically unwarranted.” Nevertheless, on May 23, 2007, the FDA reaffirmed its lifetime deferral policy, noting on its web site that while current HIV tests were indeed highly accurate, they could not detect the presence of HIV in donated blood 100% of the time (19). According to a message on the FDA web site, the “FDA would change this policy only if supported by scientific data showing that a change in policy would not present a significant and preventable risk to blood recipients. Scientific evidence has not yet been provided to FDA that shows that blood donated by MSM or a subgroup of these potential donors is as safe as blood from currently accepted donors” (20).

The Debate over the FDA’s MSM Policy

The FDA’s stance that it had not been provided with convincing scientific evidence did not mean that scientists had not evaluated the MSM deferral policy. For example, a 2003 study conducted by researchers at the University of Toronto and published in the journal Transfusion estimated that moving to a 12-month deferral policy would result in one HIV-contaminated unit for every 136,000 additional donations, increasing overall HIV risk by 8%. The study predicted the number of donations would increase by 1.3% (21). A 2005 study by a different research team, also published in Transfusion, found that donations from male blood donors who had not reported sex with men in the last five years were no riskier than donations from all men who reported not having sex with another man since 1977, though donations from men who engaged in homosexual sex within the last five years were riskier. The authors concluded that a five-year MSM deferral was just as effective as a lifetime deferral (22).

Advocates have relied on these and other studies in making the case that the lifetime deferral policy is outdated and potentially harmful, since excluding healthy members of the MSM population prevents them from helping to meet the nation’s blood demands. Other arguments against the ban are less tangible. For example, the FDA’s policy has been criticized for stigmatizing gay men as tainted or unhealthy. According to Charlene Galarneau, a health ethicist at Wellesley College: “[N]ot only does the deferral of MSM donors unnecessarily restrict the donor pool; it stigmatizes MSM and excludes them from participating in this ‘gift relationship.’ Blood is a gift of altruism: there is no right or civic obligation to give blood. Nonetheless, blood donation is a symbolically rich and materially important way of participating in and contributing to society” (23).

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Reactions to the SJSU Blood Drive Ban Decision

SJSU’s suspension ignited a chain of reactions to FDA’s policy. Many of these reactions were from the local community. In February, the Board of Supervisors for Santa Clara County, where San José is located, formally opposed and condemned FDA’s lifetime ban on blood donations from gay men, saying the policy was inconsistent with its stance of “opposing discrimination in any form.” But the Board did not suspend blood drives throughout the county because of concerns about inadequate blood volume and the “detrimental effect on the county’s ability to provide medical care for county residents.” The county would not “create any artificial barriers for potential donors,” said Supervisor Liz Kniss, Chair of the Board’s Health and Hospital Committee (24).

In another example, the Council of Churches of Santa Clara County voted unanimously on February 29, 2008, that “medical policy should be driven by science, not superstition.” The Council noted that its stance was similar to that of the American Red Cross—that the FDA policy is outdated—and applauded Don Kassing and San José State University for their “bold stance on this issue” (25).

However, not everyone in Santa Clara County was supportive. Soon after President Kassing’s decision, Stanford Blood Center officials said that while they agreed that a lifetime ban on donations from men who have sex with men was overly restrictive, Kassing’s decision was “a terribly misguided tactic that could have a devastating impact on the blood supply, and therefore, patients in our community” (26).

Other blood center officials concurred. “Their cause is a just one, but the action is inappropriate,” said Dr. Celso Bianco, executive vice president of America’s Blood Centers. Dr. Louis M. Katz, executive vice president of the Mississippi Valley Regional Blood Center in Davenport, Iowa, and a member of the FDA’s Blood Products Advisory Committee, went further. “For a university president, of all people, to allege discrimination over a scientific disagreement and regulatory imperative is very disappointing. I must have transfused hundreds of AIDS patients. The irony is that a compromised blood supply caused by these kinds of boycotts has the potential to injure those whom the president of San José State University is trying to protect” (27).

24 County of Santa Clara, CA. (26 February 2008). “County Opposes FDA Ban of Lifetime Donations of Blood from Gay Men.” Retrieved from http://www.sccgov.org/portal/site/scc/fusionSp?path=%252Fv7%252FPublic%2520Affairs%252C%2520Office%2520of%2520Public%2520Health%2520%26%2520Emergency%2520Services%2520-%2520%2520Public%2520Affairs%252C%2520Office%2520of%2520Public%2520Health%2520%26%2520Emergency%2520Services&contentId=582154cebe39110VgnVCM10000048dc4a92.


There was some evidence that the blood drive ban had an impact on donations. According to the Stanford Blood Center, between January and March of 2007, the center collected 11,302 units, while in the same period in 2008, it collected only 10,453 units, a decrease of 7.5%. Representatives from the Center claimed that during this time period, “we would have collected blood from over 300 donors on San José State's campus that we are now missing out on” (28). There was also worry that the controversy following the blood ban would discourage other potential donors from giving blood.

The SJSU blood ban resulted in a ripple effect through other universities. On February 24, 2008, the Blood Donor Discrimination Proposal was passed by a margin of 17 to 9 at the Undergraduate Assembly of University of Pennsylvania to “urge the University to examine whether the presence of on-campus blood collectors who are bound by an FDA policy banning certain blood donors violates Penn's non-discrimination policy” (29). On March 11, 2008, The San José/Evergreen Community College District became the second educational entity to prohibit blood drives when its board of trustees voted unanimously to enforce an immediate ban on both subsidiary campuses (30). The ban affected 25,000 students (31). Students at the University of California-Berkeley similarly voiced complaints about the MSM deferral policy, though they took a different direction in organizing their protest. To avoid taking blood out of the supply, students instead organized a drive that encouraged gay men to recruit blood donors in their place (32). In May, Sonoma State University’s Faculty Senate approved a resolution urging its administration to ban blood banks from operating on campus, but President Rubin Arminana refused, saying “there was no legal ruling that a federal policy banning blood donations from homosexual men violated anti-discrimination policies” and that the ban had not been “determined unlawful by any court in this country” (33).

Meanwhile, FDA officials met with Kassing and associate vice president Larry Carr in March to discuss SJSU’s concerns about the MSM policy. In particular, Kassing and Carr hoped to hear from the FDA that they were establishing a timeline for a review process. After the meeting, Carr reported that the FDA had no such plans. Instead, Carr said the message seemed to be that the agency was a mechanism of regulation, not research. The FDA believed that current medical science justified the protocols and that it was not the


organization’s responsibility to look for new science or technology, which they said they left to a private market. The FDA would not change the policy until presented with scientific evidence that doing so was warranted (34). Regardless, the university administrators left the meeting with no reason to reinstate blood drives on campus. “The FDA’s policy, whether backed by science or not, is in conflict with our non-discrimination policy,” Carr reiterated (35).

Some student groups were disappointed that the University did not lift its ban. On March 17, students from fraternity Tau Delta Phi organized a blood drive off campus and not as Tau Delta Phi but as individual citizens so they could avoid violating the University’s policy. “They have good intentions,” Tau Delta Phi President Dominic Fass said in the student-run Spartan Daily about the administration’s decision to suspend blood drives on campus. “I just don’t feel like they should be making people who have no say in this unwanted participants of this protest, because in the end the people who are suffering are those who need [blood] daily” (36). Asked about the Tau Delta Phi blood drive at a press conference addressing the University’s continued blood drive suspension, President Kassing responded that it was “a good thing” to donate blood off-campus (37).

On March 11, 2008, at a meeting of AABB’s FDA Liaison Committee (which included representatives from AABB, the American Red Cross, American’s Blood Centers, Advanced Medical Technology Association, the College of American Pathologists and the U.S. Department of Defense), AABB again raised the issue of the FDA’s MSM blood donation policy in light of SJSU’s blood drive suspension. The FDA responded by repeating its concern about “the possibility of an erroneous release of a product from an infected donor” in spite of the more sophisticated donor questioning and screening tests (38).

Members of Congress also moved to address the FDA policy. On April 2, U.S. Representative Sam Farr (D-CA) requested that the fiscal year 2009 agriculture spending


bill include language to require FDA to re-evaluate its “discriminatory” policy regarding MSM blood donation lifetime deferral (39). At a House Appropriations Committee hearing, Jesse Goodman, director of FDA’s Center for Biologics Evaluation and Research, said the policy is not discriminatory but buttressed by science showing that allowing MSM to donate blood would lead to a “real risk” of increased HIV and hepatitis cases and by the fact that several other groups of people are banned from giving blood. Nonetheless, U.S. Representatives Mike Honda (D-CA), Zoe Lofgren (D-CA) and Farr issued a letter to the FDA asking the agency to detail its efforts to update its 16-year-old and out-of-pace ban on blood donations from gay men (40). “I am confident FDA officials have the public’s well-being first and foremost in their mind, but they should also realize their decisions have moral implications as well. I strongly encourage the FDA to re-evaluate the technologies available to them so we can expand the pool of eligible blood donors, increase our available blood supply, and continue to save people’s lives in a morally and scientifically responsible manner,” said Mr. Farr (41).

Don Kassing retired from his role as University President on July 1, 2008, after four years of service. As of March, 2009, the FDA has no immediate plans to reevaluate the MSM blood deferral policy. San José State University’s ban on campus blood drives remains in effect.


40 Ibid.

41 Ibid.
Attachment 1 - San José State University’s Non-Discrimination Policy

San José State University does not discriminate on the basis of accent, age, ancestry, citizenship status, color, creed, disability, ethnicity, gender, marital status, medical condition, national origin, race, religion or lack thereof, sex, sexual orientation, transgender, or veteran's status. This policy applies to all SJSU student, faculty and staff programs and activities.

Source: http://info.sjsu.edu