



PRESIDENTS COUNCIL ON BIOETHICS DECISION MEMORANDUM

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I. PURPOSE

The purpose of this Memorandum is to document a plan of action to revoke Federal Executive Order 13237, and propose a new Federal Executive Order to replace the Presidents Council on Bioethics.

II. BACKGROUND OF THE ISSUE

The current *Presidents Council on Bioethics* was created under Federal Executive Order 13237, by George W. Bush. It replaced the National Bioethics Advisory Commission (NBAC, as amended) by William J. Clinton. There are a number of problems with E.O. 13237.

- (1) The Council does not reflect in its mission the current and recurring issues in Bioethics, including issues important to and part of campaign promises made by the Obama-Biden Administration.
- (2) The Council does not contain a balanced and stakeholder appropriate membership as delineated in the E.O. 13237 that created it.
- (3) The current Council does not have appropriate reporting structures needed to reduce operational and management concerns.
- (4) The Council does not contain linkages to the Executive Office of the President for the purposes of receiving the resources it needs to coordinate and ensure completion of its work.

III. STATUTORY AND REGULATORY AUTHORITIES

Under Executive Order 13237 signed on November 28th, 2001, the President created the Presidents Council on Bioethics. The delegated powers in 13237 include authority to perform investigations, to explore specific ethical and policy questions that are bioethical in nature, to provide a forum for national discussion, to facilitate greater understanding of bioethical issues, and to explore the possibility of international collaboration on bioethical issues.

The Bush order is more narrowly focused than Federal Executive Order 12975, signed on October 3rd, 1995. This order created the National Bioethics Advisory Commission (NBAC), and was tasked with looking at the appropriateness of departmental, agency, or other governmental programs, policies, assignments, missions, guidelines, and regulations as they relate to bioethical issues arising from research on human biology and behavior; and applications, including the clinical applications, of that research. However, this order was geared, in some greater part, towards the protection of human subjects in research.

In both orders, the Secretary of Health and Human Services is solely delegated the President's authority to provide staffing and space, making this largely beholden to one Department and therefore competing for funding internally as opposed to other councils which at times are linked to the Director of the Office of Management and Budget to assist in staffing and space issues. The only other groups specified in the previous orders is the National Science and Technology Council (NSTC),



IV. PROPOSED ACTION

Revoke Federal Executive Order 13237 and replace it with a new, strengthened, Federal Executive Order to create the “*Presidents Bioethics Commission*.”

A draft Federal Executive Order has been created by Jeremy N. Block, who has spent time at OMB and is familiar with both the process and structure of Executive Orders, as well as familiar with bioethical issues. The draft has been reviewed by career civil-servants at OMB for completeness and consistency with other Federal Executive Orders.

The new draft order reflects a more consensus way of creating the commission; takes a best-parts-approach using 13237 and 12975 orders as starting points; was created with the purpose of making the process more accountable, transparent, and responsive; and most importantly seeks to ensure the long-term viability regardless of the political climate for the commission to perform this important work.

The new draft accomplishes the following:

1. Adds current and recurring issues in bioethics in order to be more forward thinking and involved in a national discussion on bioethical issues.
2. Modifies the Commission membership to make it more balanced across disciplines and stakeholders.
3. Adds the appropriate commission structure - as gleaned from multiple previous orders for this type of commission - to enhance the operational, management, and reporting structure.
4. Improves the reporting process and President delegation of authority (for both the Sec. of HHS and Dir. of OMB) to reduce potential implementation problems.
5. Explicitly links the Executive Office of the President and the Office of Management and Budget to ensure that appropriate assistance for fiscal and space resources will be provided.

V. DECISION

This memorandum documents the potential decision to authorize the revocation of Federal Executive Order 13237 and the replacement with a new Federal Executive Order to create the “*Presidents Bioethics Commission*.” This new order described in a draft order that can be obtained and reviewed by the Office of Management and Budget, as well as the incoming Obama-Biden Administration.