

Ethical Editor: Wait for a Federal Misconduct Finding before Correction?

Debra M Parrish

At a recent meeting for university and college attorneys, Kathy Partin, PhD, the current director of the U.S. Office of Research Integrity (ORI; ori.hhs.gov), indicated universities and journals should correct the scientific literature before ORI completes its review, regardless of whether the ORI makes a finding of research misconduct. Partin conceded that ORI sometimes declines to pursue cases in which an institution found research misconduct simply because ORI lacks the resources to prove a case.

Partin's comments were at odds with ORI's long-standing policy that journals "do not have a need to know about allegations of research misconduct." Historically, ORI has told institutions that ORI will not deem it a breach of the confidentiality required under federal regulations if an institution notifies a journal it has made a finding of research misconduct under the institution's research-misconduct policy. However, ORI has not indicated that institutions are entitled to provide such notice and maintains its position that ORI's review of the institution's findings are confidential.

Attorneys representing respondents often allege an institution's notice to a journal is a breach of the confidentiality required under federal regulations, they are confident the institution's flawed investigation will not support a federal finding of research misconduct, and any corrective action taken by the journal based on the flawed institutional investigation will be a regulatory breach that exposes the journal to significant legal liability. Based on these threats, some journals have deferred taking corrective action until after ORI completes its review. Such deferral, however, is inconsistent with the Committee on Publication Ethics (COPE; publicationethics.org) guidelines and ignores the distinction between a federal research-misconduct finding and a journal's right and obligation to maintain the integrity of its publication after it has published a paper it has reason to believe is flawed.

First, as noted above, many institutional findings do not result in a federal finding—often for reasons that have nothing

to do with the merits of the investigation and finding. Last year, ORI made the smallest number of research-misconduct findings in more than a decade. The popular press has reported ORI is in disarray, with the resignation of senior investigators and the director of one of the two divisions; the lack of a leader for greater than two years after the very public, excoriating resignation of the former director; the redirection of ORI to focus on plagiarism cases that can be opened and closed in short order; and the perceived modest sanctions imposed for cases involving significant research fraud.

Second, COPE guidelines indicate journals should take action after an institutional investigation, not after a governmental body decides whether certain conduct meets the federal definition of research misconduct. Many countries have only a nascent infrastructure for national oversight of such cases. Thus, deferring action until a national body has reviewed an institutional investigation is inconsistent with timely correction in most cases.

Finally, a significant distinction exists between ensuring the integrity of a journal's publication and a finding of research misconduct. Research misconduct typically includes an evaluation of a scientist's intent. However, whether an error is intentional or accidental is a secondary concern for a journal—the more significant issue is whether an article is factually correct. Thus, whether a federal authority finds research misconduct or that process is complete is not as relevant as whether an article is accurate.

ORI's current position—that journals should correct the literature before ORI completes its review—is not facilitated by ORI, which will neither confirm nor deny its review of a case. Although counsel for respondents (i.e., individuals accused of research misconduct) disclose ORI's ongoing review in an effort to forestall journal action, ORI typically neither confirms its review nor provides a timeline for its completion.

If ORI wants journals to take corrective action, it should tell institutions they can report their findings to journals, including sharing their institutional reports. Such clear instruction would provide journals with the information necessary to take action pending what is often lengthy agency review. ORI can facilitate a better partnership with journals, thereby enabling early correction of the literature, by acknowledging journals' need to know about research-misconduct allegations and investigations before agency review is complete.

DEBRA M PARRISH is an attorney specializing in issues of research integrity. Parrish Law Offices are located in Pittsburgh, PA, and Washington, DC.