



KOHN, KOHN & COLAPINTO, LLP

November 13, 2012

Joseph Gow, Chancellor
The University of Wisconsin-La Crosse
1725 State St, 135 GMH
La Crosse, WI 54601

RE: Brian Deer's comments concerning Dr. David Lewis

Dear Chancellor Gow:

Brian Deer, as you may know, gave a series of lectures at the University of Wisconsin-La Crosse (UW-L) on October 4-5 concerning the 1998 *Lancet* study published by Dr. Andrew Wakefield and others at the University College London (UCL). According to an audiotape of one of Mr. Deer's lectures posted on the Internet, and postings he placed on his personal website, Mr. Deer appears to be using his UW-L lectures to defame Dr. David Lewis¹, whom I have represented for the past 16 years in a number of environmental whistleblower cases. Mr. Deer's attacks appear to be motivated by a report Dr. Lewis submitted to the U.K. Research Integrity Office (UKRIO) in 2011. The report, which contained unpublished documents Dr. Lewis obtained from Dr. Wakefield's files, raise serious concerns about Deer's handling of the evidence he gathered during his reporting on the *Lancet* study.

Among the documents Dr. Lewis recovered was an expert report prepared in 2006 by one of the General Medical Council's (GMC's) witnesses, Professor Ian Booth. Surprisingly, it matches the analysis of patient records Deer published four years later as his own original work. Booth's report is a perfect intellectual template for Deer's articles published in the BMJ. Perhaps most shocking of all, Dr. Lewis obtained a copy of a document showing that, in 2004, the U.K. Freedom of Information office provided Mr. Deer copies of ethics approvals for the research component of the *Lancet* study, which he apparently never passed on to the GMC. A number of Mr. Deer's allegations of research misconduct rest upon the absence of any evidence that Dr. Wakefield and his coauthors ever obtained the necessary ethics approvals to cover the research component of the *Lancet* study.

Dr. Lewis's report also included copies of letters exchanged between *Lancet* editor Richard Horton and Attorney Richard Barr. Deer accuses Dr. Wakefield of not disclosing his expert witness work for Mr. Barr to *Lancet*'s editors. These letters predate publication of the *Lancet* article by approximately nine months. Dr. Lewis's report also contained copies of many of the original biopsy grading sheets upon which the *Lancet*

article was based, as well as photomicrographs of missing biopsy slides for most of the children who participated in the study. In one of his articles published in the BMJ, Deer alleged that Dr. Wakefield used these grading sheets to fabricate the diagnosis of colitis reported for most of the children in the *Lancet* study.

Brian Deer's fabrications at UW-L

On his website (<http://briandeer.com/solved/vanderhorst-larson.htm>), Deer chastised an activist, Jennifer VanDerHorst-Larson, for criticizing his lectures in an email she sent to UW-L faculty. Deer writes of himself:

In October 2012, investigative reporter Brian Deer (left) lectured at the University of Wisconsin-La Crosse, triggering a new round of abuse from individuals such as Jennifer VanDerHorst-Larson...

Under this heading, Deer responds to VanDerHorst-Larson's support for Dr. Lewis and the NWC Research Misconduct Project:

The "National Whistleblowers Center" is a front for the Washington employment law firm Kohn Kohn and Colapinto, which unsuccessfully represented Lewis after he was fired by the Environmental Protection Agency in 2003 following unresolved allegations of research misconduct. Lewis (an authority on sewage sludge) has no qualifications in medicine or pathology, was manifestly incompetent to evaluate bowel histopathology, and took up working with Wakefield at an anti-vaccine conference in Jamaica in January 2011. As I said at my talk at La Crosse, Wisconsin ...

As Executive Director of the National Whistleblowers Center, and Dr. Lewis's attorney who represented him in his whistleblowers cases, I address Mr. Deer's various fabrications as follows:¹

(1) Deer's false statements that U.S. Environmental Protection Agency (EPA) fired Dr. Lewis over research misconduct

According to an audiotape of Mr. Deer's presentation at UW-L on October 4, Mr. Deer said that Dr. Lewis *was fired by the Environmental Protection Agency for, uh after, very serious allegations of misconduct*. Similarly, on his personal website where he rebukes Jennifer VanDerHorst-Larson for speaking highly of Dr. Lewis, Deer repeats this fabrication, stating Dr. Lewis *was fired by the Environmental Protection Agency in 2003 following unresolved allegations of research misconduct*.

The allegations to which Mr. Deer alludes appear in a biosolids industry white paper distributed by an EPA employee in 2001. The company later converted its white

¹ Mr. Deer's statement that the National Whistleblower Center is a "front" for a law firm is not true. However, this letter is intended to address the slander against Dr. Lewis.

paper into a petition to investigate scientific misconduct and submitted it to the University of Georgia (UGA) where Dr. Lewis was temporarily assigned as a visiting scientist. The following timeline summarizes the subsequent course of events at EPA and UGA.

- March 4, 2003 Assistant General Counsel David P. Guerrero of the EPA Office of General Counsel informed the U.S. Department of Labor, Office of Administrative Law Judges in writing that none of the company's allegations had any basis in any facts, and did not represent EPA's views. (Copy attached.) Based on the results of an investigation by EPA's Inspector General, the EPA employee who distributed the company's false allegations was officially reprimanded. He subsequently apologized to the Court, explaining that he did not read the white paper before forwarding it to others.
- April 8, 2003 UGA forwarded the company's misconduct petition to Dr. Lewis's local EPA laboratory for processing consistent with EPA misconduct policies governing its employees.
- April 22, 2003 Frank Stancil, Chief of the Ecosystems Assessment Branch where Dr. Lewis was assigned, reported the results of an internal investigation concerning the company's allegations and concluded "there is no basis to warrant investigation of Dr. Lewis for research misconduct." (Copy attached.)
- December 10, 2004 The company formally withdrew its misconduct petition from UGA.

On May 28, 2003, EPA Headquarters processed Dr. Lewis's retirement before he could fulfill the terms of an Intergovernmental Personnel Act (IPA) appointment he had at UGA, which required that he work an amount of time at EPA equivalent to his time spent at UGA. This action, which was based on EPA's interpretation of a settlement agreement in one of Dr. Lewis's whistleblower cases, was taken by EPA Headquarters officials as part of its ongoing retaliation for two articles Dr. Lewis published in *Nature*, which were critical of some of EPA's science policies. It had nothing whatsoever to do with the scientific misconduct petition filed by the biosolids company, which was rejected by EPA and subsequently withdrawn by the company from UGA.

Mr. Deer's claims that EPA fired Dr. Lewis over unresolved allegations of research misconduct are fabricated, defamatory and malicious. They have no basis in any facts, are completely without merit, and stand to cause irreparable harm to Dr. Lewis's reputation.

(2) Deer's false statements that Dr. Lewis "works with Dr. Wakefield"

In January 2011, Dr. Lewis traveled with me to a vaccine safety conference in Jamaica where I gave a presentation on whistleblower rights. Neither Dr. Lewis nor I had

ever heard of Dr. Wakefield prior to CNN's coverage of Mr. Deer's allegations at the end of the conference in Jamaica. When the news stories broke, Dr. Lewis introduced himself to Dr. Wakefield and asked about Deer's allegations published in the BMJ. Dr. Wakefield denied all of the allegations and mailed Dr. Lewis a copy of his book, *Callous Disregard*. Dr. Lewis followed up by requesting permission from Dr. Wakefield to review the files he and his attorneys had gathered during proceedings held by the GMC from 2006-2010 concerning Mr. Deer's allegations, which were first published in the *Sunday Times* of London in 2004.

Dr. Lewis devoted much of his time in 2011 to reviewing Dr. Wakefield's files and interviewing Dr. Wakefield. Dr. Lewis did not allow Dr. Wakefield to see or comment on any draft versions of his report to UKRIO, or the commentaries he submitted to the BMJ and other publications. On rare occasions, Dr. Lewis continues to contact Dr. Wakefield to obtain additional documents related to the GMC hearings or answer questions related to the allegations published by Deer and the BMJ's editors. Dr. Wakefield has never been involved in any manner with Dr. Lewis's scientific research; and Dr. Lewis is not involved in any way with Dr. Wakefield's current litigation in Texas in which Dr. Wakefield is suing Mr. Deer, Dr. Godlee and the BMJ for publishing false allegations of research fraud.

(3) Deer's false statements that Dr. Lewis "has no credentials in medicine"

Mr. Deer's claim that Dr. Lewis "has no credentials in medicine" are false and fabricated. Even Dr. Fiona Godlee recognized Dr. Lewis as an expert in clinical studies involving colonic biopsies. She wrote to Dr. Lewis: "given the account of your relevant qualifications that you sent us last week, we're happy to reinstate your original [qualifications as] an expert in clinical studies involving the collection and examination of colonic biopsy samples..." (E-mail dated Nov. 2, 2011). Again, Mr. Deer fabricated these untruths simply as an attempt to undermine the credibility of Dr. Lewis's findings reported to the UKRIO.

(4) Deer's mischaracterization of Dr. Lewis's whistleblower cases as unsuccessful.

Dr. Lewis filed four whistleblower cases to deal with retaliations from Henry Longest, EPA's Acting Assistant Administrator for the Office of Research & Development (ORD), who developed the Agency's sewage sludge biosolids regulations when he was a deputy assistant administrator in the Office of Water. Mr. Longest's adverse actions were prompted by a 2-page commentary Dr. Lewis published in 1996 in *Nature* titled "EPA Science: Casualty of Election Politics" (Lewis, *Nature* 381:731-2), followed by a second *Nature* article in 1999, which contained data linking biosolids to potential environmental problems (Lewis et al., *Nature* 401:898-901). The retaliations included removing the authority of Dr. Lewis's local supervisors to fund Dr. Lewis's research and approve his promotions and other personnel actions. Longest also attempted to have Dr. Lewis's local laboratory director transferred for approving his second *Nature* article; and he prohibited Dr. Lewis from collaborating with any other EPA scientists.

The U.S. Department of Labor ruled that Mr. Longest violated federal environmental whistleblower statutes; and EPA settled three of Dr. Lewis's cases out of court.

In his last case, the Labor Department ruled that Dr. John Walker, a federal employee Longest had supervised in the Office of Water, retaliated against Dr. Lewis by publicly distributing the industry white paper containing false allegations of research misconduct against Dr. Lewis. In that case, the Labor Department ruled that Walker acted on his own and that EPA, therefore, could not be held responsible. Mr. Deer could argue that Dr. Walker won. But, by analogy, that would be like Deer saying that if the Court in Texas rules that he alone is responsible for publishing false allegations of research misconduct against Dr. Wakefield, and the Court lets Godlee and the BMJ off the hook, then he wins.

National impact of Dr. Lewis's EPA whistleblower cases

Dr. Lewis's whistleblower cases prompted two congressional hearings by the Committee on Science in the House of Representatives in 2000, an EPA Office of Inspector General report, and the passage by Congress of the No Fear Act of 2002 to better protect federal whistleblowers against retaliation. Dr. Lewis went on to be promoted to GS-15; his letters of recommendations included one from EPA's Assistant Administrator for ORD under President Reagan who invited Dr. Lewis to give a talk at a United Nations Conference. Dr. Lewis had his own research laboratory at EPA and was the only EPA scientist ever to publish first-authored research articles in *Nature* and *Lancet*. He also served on the Graduate Faculty at UGA and occupied an office in the Department of Marine Sciences, which was working toward getting him a tenured faculty position as a full professor. Dr. Lewis gave up all of that security, prestige and income to hold EPA and UGA accountable for publishing false, misleading and fabricated data in a 2003 peer-reviewed journal article that EPA used to cover up human health and environmental problems caused by land application of processed sewage sludge (biosolids).

Using his own personal savings to fund his 6-year research project on biosolids, Dr. Lewis became the first scientist to document illnesses and deaths linked to biosolids in the peer-reviewed scientific literature. In an editorial and two-page news article published in 2008, *Nature* covered the conclusions of a U.S. District Court in Georgia, which found that data published by EPA and UGA to support EPA's policies on biosolids were fabricated and invented (*Nature*, 453:258, 262-3). The article and editorial pointed out that a multi-university study in Ohio had independently confirmed Dr. Lewis's research findings. *Nature's* editors commended the National Academy of Sciences for citing Dr. Lewis's research, and called EPA's biosolids program a failure of three presidential administrations. Arguably, he has clearly had more success than Mr. Deer in getting the judicial system to punish acts of research misconduct, and elected bodies of government to enact laws aimed at preventing it. And, in contrast to Mr. Deer, Dr. Lewis has never been sued for libel or slander.

Genesis of Dr. Lewis's UKRIO report, and its impact in the UK

In May 2011, *Nature* reporter Eugenie Reich attended a presentation Dr. Lewis gave at Harvard University in which he discussed the documents he found in Dr. Wakefield's files. Six months later, she covered the BMJ's publication of a *Rapid Response* by Dr. Lewis and some of the biopsy grading sheets he had discovered. To address the grading sheets, the BMJ published an editorial by Dr. Godlee titled "Institutional Research Misconduct," along with a feature article by Brian Deer titled "Pathology reports solve 'new bowel disease' riddle." Godlee also published two commentaries she solicited from expert histologists Ingvar Bjarnason and Karel Geboe.

The two expert histologists concluded that most of the grading sheets Dr. Lewis had provided indicated that the colonic biopsy samples collected in the *Lancet* study were "normal." In his feature article, Deer argued that these conclusions confirmed his allegations that Dr. Wakefield had fabricated the diagnosis of colitis in the *Lancet* article. Dr. Godlee used her editorial to call upon Parliament to conduct an inquiry into Dr. Wakefield's alleged fraud, and the role UCL administrators and others may have played in covering it up. Hence, she titled her editorial "Institutional Research Misconduct," a term she borrowed from Dr. Lewis's website referenced in his *Rapid Response* (www.researchmisconduct.org).

Dr. Lewis, in turn, submitted a 167-page report to UKRIO containing key documents that Dr. Godlee and Mr. Deer omitted in their coverage of Dr. Lewis's investigation. According to Dr. Lewis, these documents clearly contradicted Godlee's and Deer's allegations of research fraud. Moreover, even expert histologists disagree on the pathological significance of mild cases of chronic inflammation of the colon, and what constitutes colitis. In the article by Eugenie Reich, she quotes Ingvar Bjarnason saying that the grading sheets "don't clearly support charges that Wakefield deliberately misinterpreted the records." UCL President Malcolm Grant and UKRIO Chair Sir Ian Kennedy communicated directly with Dr. Lewis regarding his analysis of the documents, and the manner in which they were handled by Mr. Deer and Dr. Godlee. Then, in September 2012, UCL announced that it would not pursue the allegations of research fraud against Dr. Wakefield published by Mr. Deer and Dr. Godlee. Among the reasons given, UCL cited UKRIO's advice that such an investigation would likely be "inconclusive."

In March 2012, the High Court of Justice for England and Wales has dismissed all of the GMC's findings regarding Professor John Walker-Smith, in which the GMC had concurred with Deer's allegations. This includes Deer's allegations that patients in the *Lancet* study were not consecutively referred, and that medical procedures involving endoscopic biopsies, lumbar punctures, and the collection of blood samples were not clinically indicated. The High Court also noted that at least one patient benefited from Dr. Walker-Smith administering an experimental measles transfer factor, which was developed by Dr. Wakefield and coworkers. Unfortunately, the scandal generated by Mr. Deer's allegations of research fraud made it impossible for UCL to conduct further clinical trials and make the transfer factor a commercially viable option for treating immunocompromized children suffering from chronic measles infections.

During his lectures at UW-L, Mr. Deer claimed that the High Court overturned the GMC's findings only because the GMC failed to fully document the reasoning behind its conclusions. This is not what the Ruling rendered by the High Court states. The Ruling states that the GMC panel inappropriately rejected evidence and relied upon "flawed" and "wrong" reasoning. It described the GMC's findings as "not legitimate," "perverse," "odd," "unsustainable," "incurable," and "untenable."

Actions we are requesting of UW-L

We are confident that UW-L never intended its Distinguished Lecture series to be used to smear Dr. Lewis's reputation with false allegations of research fraud that were dismissed by EPA almost ten years ago and subsequently withdrawn from UGA. Therefore, I respectfully request that you issue the following formal statement: "Mr. Deer's comments concerning Dr. Lewis made during his lectures at the University of Wisconsin - La Crosse are not supported by the facts and do not represent the views of this University."

Dr. Lewis has decided to present a series of free lectures entitled *Institutional Research Misconduct*. When addressing Dr. Lewis's 2011 *Rapid Response* in an editorial, a feature article by Brian Deer, and two invited commentaries, Editor-in-Chief Fiona Godlee acknowledged: "The BMJ Group receives advertising and sponsorship revenue from vaccine manufacturers, and specifically from Merck and GSK, which both manufacture MMR vaccines." In other words, Dr. Godlee and the BMJ unabashedly - and falsely - accused Dr. Wakefield of failing to disclose his alleged conflicts of interest while hiding her own financial relationship with manufacturers of MMR vaccines. In his presentations, Dr. Lewis will discuss the documents he submitted to UKRIO and explain how the BMJ's publication of Deer's allegations may be the first time a scientific journal has engaged in institutional research misconduct to protect its sponsors' commercial products. Appearing before Parliament in 2011, even Dr. Godlee testified that peer-reviewed journals have become "the marketing arm of the pharmaceutical industry."

The presentation on institutional research misconduct Dr. Lewis gave at Harvard University was enthusiastically received by a standing-room-only audience of faculty from Harvard, MIT and other universities in the Boston area. Institutional research misconduct is a term Dr. Lewis coined for the presentation. It refers to research-related misconduct that is carried out or supported by institutions, usually government agencies and universities, to protect government policies and industry practices. In his presentation, Dr. Lewis raised the possibility that the BMJ's promotion of Deer's allegations of research misconduct against Dr. Wakefield and his coauthors may be the first time a major scientific journal has engaged in institutional research misconduct. Using false allegations of research misconduct, either knowingly or out of a willful disregard for the truth, is in and of itself a form of research misconduct.

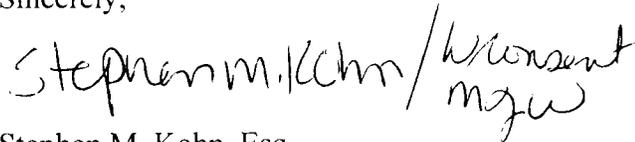
The other two panel members presenting with Dr. Lewis were Harvard's Vice Provost for Research and a visiting professor at Harvard's School of Medicine and Petrie-

Flom Center for Health Law Policy, Biotechnology, and Bioethics. During a break, the Vice Provost searched out Dr. Lewis to tell him that he had heard of him before and wanted him to know that he was "enormously impressed by all that he has accomplished." Another speaker from Tufts University, who spoke on a different panel, commented to Dr. Lewis: "If there were a Nobel Prize for ethics, you should get it."

In October 2011, Dr. Lewis replicated this presentation at Virginia Tech, where he was invited by Professor Marc Edwards to speak to students on the Blacksburg campus. Seeing what lies ahead for scientists whose work threatens government policies, industry practices and the financial interests of scientific journals had a profound effect on the audience. Afterward, several students who attended decided against pursuing a career in science. Since then, Dr. Lewis has been invited to give his presentation at Washington University's School of Public Health. I believe it would serve your student body well to invite Dr. Lewis to include UW-L in his lecture tour, and broaden the students' perspective of the ongoing public health controversy that erupted after the publication of the *Lancet* study. More importantly, Dr. Lewis can discuss his first-hand experiences with institutional research misconduct, and suggest ways for researchers to deal with it.

In closing, I want to thank you for your attention to my concerns and requests. Please feel free to call me at (202) 342 6980 if you wish to discuss the issues addressed in this letter by telephone.

Sincerely,

Handwritten signature of Stephen M. Kohn, Esq. The signature is written in black ink and includes the name "Stephen M. Kohn" followed by a slash and the word "W/consent" above "mgw".

Stephen M. Kohn, Esq.

¹ Until his premature retirement from the USEPA in May 2003, Dr. David Lewis was a senior-level research microbiologist who is internationally recognized as an expert in biodegradation, transport and fate of environmental pollutants. Among his many accomplishments, he was the first scientist to document gastrointestinal and respiratory illnesses linked to land application of sewage sludge ("biosolids"). He received EPA's highest award presented by EPA Administrator Carol Browner in 2000 for his research paper published in *Nature*, which linked biosolids to environmental health problems. In 2008, *Nature* reported that a multi-university study in Ohio had independently confirmed Dr. Lewis's findings. *Nature* accompanied this report with an editorial applauding Dr. Lewis for his research.

Dr. Lewis is also internationally recognized as an expert in infection control. He served on the graduate faculty at UGA, where he published groundbreaking research in *Lancet* and *Nature Medicine* concerning HIV infections associated with dental and endoscopic procedures. In 1993, this work prompted public health organizations worldwide to stop recommending high-level disinfection for drills and other dental devices and adopt the current heat-sterilization standard for dentistry. In 1998, EPA transferred Dr. Lewis to UGA for four years to continue his

dental and medical research. There, he organized an epidemiological study of the transmission of hepatitis C in Egypt via endoscopic procedures used to collect colonic and upper GI biopsies. He served as Principal Investigator of the project in collaboration with the University of Maryland's Department of Epidemiology. In 2010, editors at *Annals of Internal Medicine* ranked Dr. Lewis in the top 10% of its reviewers.

Currently, Dr. Lewis collaborates with Professor Christopher Shaw on vaccine safety research at the University of British Columbia in Vancouver. Professor Shaw is the recipient of a \$500,000 private estate grant, which will be used to fund research Dr. Lewis proposed. Specifically, Dr. Lewis proposed cell-culture and animal model (rat, fish) studies to determine whether aluminum adjuvants in vaccines may increase risks associated with exposures to environmental pollutants linked to autism and other environmentally triggered disorders.

Dr. Lewis's research accomplishments have been widely covered in news articles, editorials and documentaries in *Nature*, *Science*, *Lancet*, *JAMA*, *National Geographic*, *Reader's Digest*, *Voice of America*, *Paul Harvey News*, *Time*, *Newsweek*, *U.S. News & World Report*, *Forbes*, *NY Times*, *USA Today*, *Washington Post*, *London Times*, NPR's *All Things Considered*, *PBS Healthweek*, *PBS Technopolitics*, *CBS Evening News*, *ABC's Primetime Live*, *BBC Panorama* and others.

In 1995, Dr. Rella Christensen, co-founder of Clinical Research Associates, and Dr. Lewis were the first Americans elected to the European Panel on Infection Control in Dentistry. In 1998, he received the Accuracy in Media Award in Washington, DC; and, in 2000, the Washington, DC-based Lexington Institute held a dinner in his honor at the Hay Adams Hotel to recognize his contributions to public policy in environmental science.