Preserving Confidentiality in the Peer Review Process

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For the past year or so, JAMA and the Archives of Internal Medicine have been involved in litigation that significantly threatened the integrity of our peer review process. We now inform our reviewers, authors, and readers about the results of this litigation that preserve the confidentiality of our peer review process.

Pfizer Inc is a defendant in more than 3000 lawsuits across the country alleging that Pfizer advertised and marketed the cyclooxygenase 2 inhibitors celecoxib and valdecoxib as likely to provide pain relief without the adverse effects that had accompanied earlier anti-inflammatory medications. The plaintiffs contend that false representations were made to drive demand for these higher-priced prescription drugs, when lower-cost nonsteroidal anti-inflammatory drugs would have been as safe or safer for most patients. The plaintiffs include consumers, health plan providers such as unions, and third-party payers that manage formularies and reimburse claims.

The defense attorneys for Pfizer issued subpoenas to a host of journals, but it appears the first 2 were directed at JAMA and the Archives of Internal Medicine (AIM). On May 9, 2007, Pfizer served federal court subpoenas on JAMA and AIM seeking 4 broad categories of documents and information. In response, JAMA and AIM provided copies of hundreds of pages of published articles regarding celecoxib and valdecoxib. However, the subpoenas sought all documents regarding the decision to accept or reject manuscripts, copies of rejected manuscripts, the identities of peer reviewers and the manuscripts they reviewed, and the comments by and among peer reviewers and editors regarding manuscripts, revisions, and publication decisions.

For months JAMA and AIM consistently argued that the sanctity of the confidential peer review process should not be violated. We asserted privileges and public policy reasons against production, including the Federal Rules of Civil Procedure, which protect nonparties like JAMA and AIM from unreasonable litigation burdens and abuses.

On January 17, 2008, JAMA and AIM were served with a Motion to Compel production of confidential editorial judgments, unpublished manuscripts, and unpublished peer review comments. Among other things, JAMA and AIM argued that this unpublished and privileged material could not have been known to Pfizer or played any role in its advertising and marketing decisions. Likewise, the plaintiffs could not have known and relied on them in making purchasing decisions.

We asked the federal district court in Chicago to deny the Motion to Compel, essentially quashing the Pfizer subpoenas, and that is precisely what Magistrate Judge Arlander Keys did.

In a ruling issued March 14, 2008,1 the Court agreed with JAMA and AIM that information kept confidential from Pfizer, the general public, and the medical community at large was irrelevant to the pending claims. Magistrate Judge Keys observed that the published articles themselves would satisfy the lawyers' needs. When pondering Pfizer's involvement in and responses to scientific publications, Magistrate Judge Keys remarked that “this evidence would seem to be just as easily accessible from Pfizer as from the Journals.” 1 He concluded that “Especially given the strong policy behind preserving confidentiality in the peer review process, the Court finds any probative value would be outweighed by the burden imposed on the Journals in invading the sanctity of that process.”

We firmly believe that ensured confidentiality of reviews allows reviewers to provide professional critiques of manuscripts without fearing potential repercussions from authors.

To that end, JAMA and our Archives Journals have historically and deliberately kept unpublished manuscripts and peer reviewer comments confidential. This promise to reviewers and authors allows the peer review process to work in an unrestrained environment. Producing any of these documents, with or without names, would seriously compromise the process and the trusting relationship among the editors, authors, and reviewers.

The subpoenas attempted to invade the peer review process, and we are delighted that Magistrate Judge Keys said so when he ruled they could not be enforced against us.

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