How Journals and Institutions Can Work Together to Promote Responsible Conduct

Eric C. Mah  
Interim Chief Ethics & Compliance Officer, Research Integrity Officer, and Senior Director, Research Compliance, University of California, San Francisco

There is limited formal guidance on how institutions and academic journals collaborate to promote responsible conduct of research. Since the issuance of the Committee on Publication Ethics (COPE) guiding document, “Cooperation between research institutions and journals on integrity cases” (4), little else has been published on the topic. As a result, institutions are left to interpret—with varying levels of consistency among them—federal regulations governing research misconduct. Furthermore, in working with or informing journals, institutions may follow informal practices that are predominantly guided by institutional culture, habits, or ad-hoc decision-making.

In this brief article, I shall focus on the following areas:

- Some reasons why institutions are reluctant to inform journals about potential research misconduct prior to the federal Office of Research Integrity’s official findings of misconduct. This includes delayed reporting to journals.
- What journals do which may inadvertently harm institutional processes in research misconduct allegations, responses, and investigations.
- Some ideas on what journals and institutions may do to address research misconduct collaboratively.

Institutional aversions to risk and litigation

42 Code of Federal Regulations (CFR) Part 93 establishes the key regulatory framework pertaining to research misconduct for institutions receiving Public Health Service (PHS) support. Some particular sections of 42 CFR 93 may cause confusion and frustration for institutional officials and journal editors. These problematic areas involve confidentiality, timing, and due process to ensure the rights of the informant-complainant and respondent to research misconduct allegations are protected.

Institutions predominantly rely on federal regulations to guide their written policies and procedures for when to inform journals of research misconduct, defined as fabrication, falsification, or plagiarism. The regulations explicitly prohibit informing those without a need to know in order to conduct a fair and objective research misconduct proceeding. Consequently, we face our first challenge: while a journal editor may wish to be informed at the first possible sign of research misconduct, the institution is prohibited from warning the journal of potential problems too early. The journal is not typically a direct party to the research misconduct proceeding or investigation. Thus, institutions often dismiss the journal as among those who are initially informed.

Furthermore, too early a notification to the journal of an allegation of research misconduct could prematurely and inappropriately harm the reputation of the accused (also known as the respondent). In addition, disclosing the names of the accused to journals—or even that an investigation has been opened—could expose the institution to litigation for failing to follow 45 CFR 93. Still, some journal editors may prefer notification of potential research misconduct as soon as possible to evaluate the issuance of a retraction, an official statement of concern, or equivalent.

a For the purposes of this discussion, I shall focus only on the U.S. Code of Federal Regulations pertaining to research integrity, which applies to PHS-supported institutions.

b See specifically:
- §93.108 “Disclosure of the identity of respondents and complainants in research misconduct proceedings is limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective and fair research misconduct proceeding, and as allowed by law.” In addition, “Disclosure is limited to those who have a need to know to carry out a research misconduct proceeding” (45 CFR §93.108).
- §93.300(d) “Institutions [must]… take all reasonable and practical steps to protect the positions and reputations of good faith complainants, witnesses and committee members and protect them from retaliation by respondents and other institutional members” (45 CFR §93.300(d)).
- §93.411 “When a final HHS action results in a settlement or research misconduct finding, ORI may: …(b) Identify publications which require correction or retraction and prepare and send a notice to the relevant journal. (c) Publish notice of the research misconduct findings” (45 CFR §93.411).
Editors may agree that immediate notification to the journals upon initial allegations of misconduct is usually not appropriate. Surely respondents are afforded due process and a presumption of innocence. Can institutions and journals reach a middle ground? Perhaps when a finding of impropriety is deemed likely, notification is then justified? Regardless, journals still do not seem to qualify as parties with a need-to-know in the performance of the investigation. Would editors suggest that institutions notify the journal when the investigation enters the inquiry stage (i.e., after the allegation is substantiated to some extent)? Perhaps the journal is notified only after the investigation is concluded but prior to the institution’s official findings? Drawing a clear line in this murky area is difficult. Furthermore, there is a legal concern associated with failing to keep the proceedings confidential.

Journal efforts to address misconduct: well-intended but harmful?

Journals may often be the first to detect potential research misconduct without realizing it. For example, when reviewing manuscripts, journal reviewers commonly scrutinize, challenge, or question data or images. Often these questions are part and parcel to the peer review process. But if the data or images were in actuality fabricated or falsified, the journal may have unintentionally warned the wrongdoers that their bad deeds are detectable.

Sequestration is the act of securing and preserving all evidence in a research misconduct case. The timing and method of sequestration are critical to preparing a case and proving misconduct. The sooner sequestration occurs by the institution, generally speaking, the better for the process. When journal reviewers call attention to potentially fabricated or falsified data, it provides an opportunity for original source material to be destroyed or data or images to be further manipulated, which could negatively impact a future investigation by the institution.

How, then, do we balance the long-standing tradition of peer-review, which sometimes includes questioning data, with the need to inform the institution so that it may sequester data quickly and properly? What are the standards journals have in place with respect to notifying the home institutions of the authors of suspected misconduct? COPE provides some guidance in this regard (4), but it remains a difficult question to answer. When is it appropriate for journals to inform institutions when the questions could indicate research misconduct?

I recall a case where a formal institutional inquiry began and the respondent remarked that they thought the issue had been resolved by the journal already. Apparently, there were concerns about the data during the manuscript review process. Yet here we were years later. The institution then initiated a formal investigation on the same issues initially raised during the manuscript review process. If the respondent had wanted to, they could have destroyed vital evidence or further manipulated data to obfuscate the misconduct.

Editors would reasonably object to a suggestion that all questions asked of authors about the data or images be preceded with a notification to the institution to allow it sufficient time to consider data sequestration. Indeed, institutions likely could not allocate the resources to review and investigate each time a journal posed a question to an author during the manuscript review process. However, addressing this challenge of journal editors unintentionally warning research misconduct violators is a potential concern for institutions and regulators. If journals establish a consistent standard for institutional notification, we will be one step closer to better institution-journal collaboration. Further discussions would be helpful to find the balance between the collegial peer review process and protecting the investigatory process in actual cases of research misconduct.

It is noteworthy that some larger publishing organizations have some forensic tools and dedicated internal resources to identify research misconduct. These tools and resources can serve as a first line of research misconduct detection, including when data or images are fabricated or falsified. Care must be taken to immediately notify the institution when the editors find that research misconduct may have occurred. Determining the appropriate level of evidence required and triggering institutional notification are also important.

In addition, there are untold manuscript submissions that are rejected by editors and journals because the data or images “didn’t quite match up right,” or some other similar reason provided. These trends by the same author could be an indicator of a pattern of misconduct, but rejections and reasons for not accepting a given manuscript are not typically tracked or shared with other journals or the institution—potentially allowing a bad scientist to shop a manuscript with fabricated or falsified work undetected.

An optimistic future ahead

Despite these challenges, there is growing awareness of the risk and costs of research misconduct (1, 2, 3). Furthermore, there is improving collaboration among journals, institutions, and regulators.

Technology offers new opportunities for early identification of potential research misconduct. Plagiarism detection and forensic software have become much more sophisticated, advanced, and utilized, over the last decade. The national conversation must continue among journals, institutions, and regulators to identify common goals and methods and strategies to achieve those goals. Some consensus in objectives probably exists already to ensure: 1) the scientific record maintains its integrity, 2) the research misconduct investigation is proper and public record is accurate, 3) good faith informants are protected from retaliation, and 4) respondents’ due process rights are respected. These are not mutually exclusive goals. Developing more detailed procedures and guidance will take further discussion, likely in professional conferences, workshops, or other formal gatherings.
Journals also have an opportunity to improve collaborations with one another. Journals can share best practices in research misconduct detection and standard operating procedures for institutional notification of misconduct. Furthermore, when research misconduct is discovered, perhaps journals can share this through a formal notification practice to other journals. This could be achieved by establishing a community standards agreement that states the authors permit the journal and the institution to share any and all information with others to ensure the highest ethical standards and the public record is accurate. Such a community standards agreement may provide institutions justification for faster journal notification despite perceived restrictive regulations.

While we suspect research misconduct is rare, we also believe it is under-reported and under-detected. By improving communication and mutual understanding among journals, institutions, and regulators, we can establish better deterrents and detection methods, thereby preventing research misconduct in the first place.

ACKNOWLEDGMENTS

The author declares that there are no conflicts of interest.

REFERENCES