

THE ALVAREZ FIRM
A L A W C O R P O R A T I O N

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November 16, 2023

By Email: [REDACTED]
and Regular Mail

Dr. Adya Misra
Sage Publications
2455 Teller Road
Thousand Oaks, CA 91320

Dear Dr. Misra,

We represent Dr. James Studnicki, Dr. Donna J. Harrison, Tessa Longbons, Dr. Ingrid Skop, Dr. David C. Reardon, Dr. John W. Fisher, Dr. Maka Tsulukidze, Christopher Craver, Dr. Christina Cirucci, and Dr. Sharon J. MacKinnon in relation to your sudden and unwarranted decision to unilaterally retract three articles that they authored—with only three days' notice. Your decision raises serious legal issues that command your immediate attention.

As a threshold issue, we ask you to, at the very least, extend the deadline until December 16 to provide them with an opportunity to respond fully to your November 13 Retraction Notice.

As you recall, on July 13, 2023, our clients responded in great detail to an anonymous concern regarding the presentation of their data published in a 2021 article—a concern which you now concede was unfounded and which was later publicly broadcast in violation of your stated confidentiality policies. For four months, the authors received no substantive response or apology. While the November 13 Retraction Notice rightly admits that the prior concern was wholly meritless, that notice raises for the first time new concerns about the 2021 article and two others—all of which relate to the topic of abortion.

The November 13 Retraction Notice is procedurally improper. You have given our clients only three days to respond—until close of business on November 16—to allegations impugning the integrity and transparency of these well-respected authors. This demand to respond to entirely new and vaguely worded criticisms in just three days is unreasonable, unrealistic, and highly prejudicial.

Worse yet, Dr. Studnicki was informed on November 14 that his membership on the Editorial Board at Health Services Research and Managerial Epidemiology must now be terminated “[i]n light of the decision to retract three research articles[.]” But the November 13 Retraction Notice is stamped “confidential,” and our clients have treated it as such. Sage has thus once again inappropriately shared confidential information without first allowing our clients any

opportunity to respond. By all accounts, it appears that Sage has prejudged this situation and doesn't care what the authors have to say. It also appears that Sage is recklessly sharing confidential information in what appears to be an effort to malign and defame our clients.

Also concerning is that the timing of your Retraction Notice to our clients' three abortion-related studies closely aligns with the U.S. Supreme Court's consideration of the Fifth Circuit's decision in *Alliance for Hippocratic Medicine v. FDA*, which restored FDA's previously withdrawn safeguards for chemical abortion drugs. The court below references the 2021 article in its analysis, as do respondents' briefs filed with the Supreme Court. Your website professes a commitment to "building bridges to knowledge" and "support[ing] the development of ideas through the research process." We expect a publication with these values to place scientific discovery over politics. If the timing of your decision to retract our clients' articles has no relation to the Supreme Court's consideration of this highly publicized case, then surely Sage can spare additional time to discuss and resolve the concerns raised in your November 13 Retraction Notice before taking premature and damaging action.

The allegations raised in support of retraction are not only procedurally flawed but meritless, and Sage's actions are unlawful. Though our clients have had only a few days to review your November 13 Retraction Notice, it was quickly apparent to us that Sage (and not the authors) is violating its contractual obligations. The parties' Creative Commons License "constitutes the entire agreement between the parties with respect to its subject matter," and thus a violation of the License is the only ground on which Sage may withdraw a publication. On even a cursory review, each of Sage's reasons for retracting the above articles violates the terms of that agreement.

First, the License does not permit post-hoc review of already peer-reviewed data. Yet one of your bases for retraction is "fundamental concerns with the study design, methodology, assumptions about healthcare indicators and analyses" raised in a "post-publication review of the three articles[.]" Your Notice already concedes that the methodological concerns previously raised against the 2021 study are baseless. Despite the impropriety of Sage's post-hoc review, we have no doubt we could prove your latest criticisms are also baseless—had we only a reasonable time to respond to them. For example, even if ER use data for the entire Medicaid population were added to the study, as your Notice suggests, it would have provided no useful information for the interpretation of the study results.

Second, our clients have at all times complied with the terms of the License. Sage wrongly suggests that a conflict of interest was not disclosed. Not so. The authors appropriately disclosed all affiliations and interests. Further, the conflict reporting requirements referenced in the License apply only to commercial and financial entanglements or signed agreements with sponsors that would prevent the authors from objectively reporting their results. Not only is an "ideological" conflict an illegitimate basis for retracting our clients' articles per the License, but it reeks of viewpoint discrimination against pro-life authors.

This bias becomes especially apparent through your consistent practice of publishing authors affiliated with pro-abortion advocacy groups with no disclosed conflicts. For example, Sage published the work of an author from the pro-abortion Guttmacher Institute who claimed to

have “no relevant affiliations or financial involvement with any organization or entity with a financial interest in or financial conflict with the subject matter or materials discussed in the manuscript.” The inequitable treatment of my clients cannot be more obvious. It also defies Sage’s pledge “to ensure [its] publishing processes are unencumbered by bias and prejudice” and “to uplift voices that represent diverse interests and perspectives.”

We also emphasize that neither Sage nor anyone else has identified any financial or commercial conflicts. And though the authors’ affiliation with pro-life organizations does not constitute a conflict of interest under the terms of the License, the authors nevertheless disclosed this in their biographical information.

Third, Sage appears to take issue with a supposed conflict involving one of the reviewers of the articles at issue. But Sage, by its own words, “operates double-anonymized peer-review for all research submissions[.]” Neither the authors nor the reviewers were aware of the others’ identity, and the responsibility for avoiding associational conflicts lies with Sage—not with my clients. Your assertion that the authors somehow “undermined the objective editorial assessment of the articles during the peer review process, violated [Sage’s] submission policy and ICMJE guidance[,] and potentially[] misled readers” is at best mistaken and at worst deceptive. To be clear, the authors had nothing to do with the peer-review process nor the identification or vetting of reviewers. That was your responsibility.

Your decision also reflects a regrettable pattern of using scientific publications as a sword against unpopular findings—regardless of their objectivity. This further undermines the public’s confidence in scientific bodies and does a disservice to your mission to “advance knowledge.”

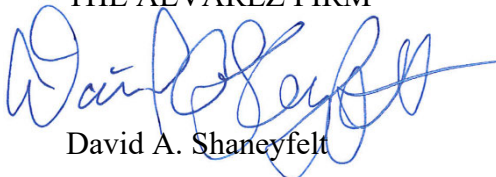
Our clients have spent their careers building credibility and engaging in objective scientific discovery. Your decision to retract their articles, your recurring breach of confidentiality, and your blatant breach of contract have already done palpable damage to their reputation. This alone forms a sound basis for recovery.

We need not detail the many causes of action that we could allege on the basis of the above facts, and the damages and injunctive relief that we could claim as well. But at this point, our hope is to obviate that need by seeking your cooperation here. If you would like to talk to any one of our clients directly, you are free to do so. Please be sure to copy us on all correspondence, though.

We look forward to hearing from you at your earliest opportunity.

Very truly yours,

THE ALVAREZ FIRM



David A. Shaneyfelt