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ADMITTED IN NEW YORK

VIA EMAIL

November 21, 2023

David A. Shaneyfelt, Esq.
The Alvarez Firm

[REDACTED]
[REDACTED]

Re: Health Services Research and Managerial Epidemiology – Retraction Notice

Dear Mr. Shaneyfelt:

I represent Sage Publications, Inc. in connection with the above referenced matter. My client is in receipt of your letter dated November 16, 2023, and has directed me to respond on their behalf.

My client was surprised at the tone of your letter, which contains numerous misstatements of facts, baseless assumptions, and mischaracterizations. In addition, your letter recklessly and falsely suggests or accuses Sage of acts and conduct that are not only totally unfounded and professionally insulting but may also constitute a basis for a claim of commercial disparagement under California tort law. Sage will not tolerate unfounded attacks on its business and reputation, particularly those deemed intended to intimidate Sage's ethical actions and publishing decisions. Sage expects your representation of your clients to be professional and that you and your clients refrain from unfounded allegations, intimidation, suppositions, and insults.

In accordance with Sage's Complaints and Appeals policy addressing Appealing Corrective Action taken Post Publication, Sage will only consider appeals of a retraction decision if new evidence is provided and verified by Sage to be accurate and which impacts the underlying retraction decision. To date, neither the authors nor your letter of November 16 on their behalf have provided any such additional evidence, nor have they alleged that any statements in the Retraction Notice are not true. The post-publication review identified fundamental concerns that could not be adequately addressed without resulting in a materially different result and conclusion than originally put forth by the articles. Sage and the journal are members of the Committee on Publication Ethics ("COPE"), which establishes industry-accepted guidance for addressing publishing ethics concerns in scholarly publishing. Sage is confident in the findings of the investigation and that the careful and deliberative retraction process undertaken to date in accordance with COPE guidance has been fair. It is well established precedent that there are no grounds for legal action against a journal for retraction or an expression of concern if it follows a suitable investigation and proper procedures. Sage is confident that the investigation undertaken in this matter satisfies that standard.

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Nevertheless, Sage has agreed to extend an additional period through **Wednesday, November 29, 2023, 5PM Pacific Time** for your clients to respond with any new evidence that impacts the underlying retraction decision. Please direct any such materials to my attention at my email address indicated above. If no new evidence is received by this time, in accordance with its responsibility as publisher and a member of COPE, Sage will move forward with publication of the Retraction Notice previously shared with your clients.

To address your numerous misstatements and to clarify the record:

- Contrary to your assertions, Sage has not and does not concede that its concerns regarding the presentation of data in your clients' articles were unfounded, nor has Sage, in the Retraction Notice or otherwise, viewed (much less admitted) that the concerns were "wholly meritless." The Editor and Sage were alerted to potential issues regarding the representation of data in your clients' articles and, accordingly, Sage had a duty to thoroughly and diligently investigate and uncover such issues. Sage promptly advised the authors of this and that an investigation was being conducted. A statistical analysis expert undertook a review of the concerns raised by a reader and confirmed there were sufficient concerns about the composition of the cohort, as well as a lack of transparency in the presentation of the data.
- Foundational to COPE's guidance is the commitment to maintaining transparency and reliability of the scholarly record. As is Sage's policy, and in accordance with COPE guidance for investigations that require time to complete, Sage posted an "Expression of Concern" to alert readers of the issues regarding representation of data in the articles and of the authors' conflicts of interest, and to advise that an investigation was underway. Contrary to your assertions, under no circumstances did the publishing of an Expression of Concern, in accordance with Sage's professional policies and COPE guidance, constitute any "breach of confidentiality" that Sage has a duty to uphold.
- Sage rejects your characterization that the Retraction Notice is "procedurally improper" or that it "impugns the integrity" of your clients. In fact, communications from your clients regarding the investigatory procedure have seemingly attempted to dismiss the raised concerns without providing sufficient detail to appropriately assess them. In the ordinary course of conducting the investigation into the first article, additional concerns of conflicts of interest and affiliation were discovered regarding the reviewer, who, as it turns out, was also the reviewer of the two additional articles by the authors and who again failed to disclose their conflicts. The additional facts discovered during the investigation raised legitimate concerns and, obviously, are appropriate areas of investigation and not precluded from forming the basis of the retractions. The Retraction Notice clearly sets forth the facts and circumstances leading to the decision to retract the three articles and nowhere states an opinion or casts aspersions regarding your

clients' integrity. Sage in no way asserts that your clients had any part in the selection of that reviewer or their failure to disclose their conflicts of interest.

The so-called "new criticisms" simply extend the same concerns about the first article to the other two articles, as clearly revealed by the investigation. Two subject experts undertook a post-publication review of the three articles and, as more specifically described in the Retraction Notice, both reviewers expressed concerns about the study design, methodology, assumptions about healthcare indicators and analyses, such that the conclusions in the three articles may not be adequately supported by the results. Further, please be advised that the COPE Retraction Guidelines set forth the timing of publication of a retraction notice and go on to state that publication should not be delayed because the authors don't agree. All decisions made in arriving at the determination to retract were based solely on the findings from the investigation into the articles, undisclosed author conflicting interests, and the compromised peer-review process, and we reject your mischaracterization of the investigative process as "meritless" or "unlawful" or "baseless."

- Sage rejects your assertion that it breached any obligation of confidentiality owed to your clients or "prejudged" the matter regarding the Retraction Notice and the Editor's decision to terminate Dr. Studnicki's membership on the Editorial Board. You will note that the Retraction Notice is issued by both Sage and the Editor. As a matter of procedure and ethics, the Editor had no choice but to terminate Dr. Studnicki's membership on the Editorial Board as a result of the decision to retract the three articles, given the concerns the investigation uncovered. Sage marks pre-publication retraction notices "Confidential" to discourage dissemination, and Sage focuses on only disseminating said information to those with a need to know, and it is indisputable that in this instance the Editor clearly had a need to know. Sage did not "recklessly share confidential information in what appears to be an effort to malign and defame" anyone, and your assertion, with no proof, based solely on supposition, and failing to identify the basis of the claimed confidentiality, is offensive and is dismissed.
- Sage rejects as spurious your insinuation that the timing of the Retraction Notice was in any way related to a Supreme Court case. The retraction of the three articles is solely based on the results of the investigation, which was completed in good faith and which Sage had a responsibility to undertake as a COPE member and to fulfill its responsibility as publisher of the journal. Sage's primary goal and obligation is, as it has been for over 50 years, to maintain the highest integrity of the academic publishing process. Any suggestion that politics enters into this mission is without basis and is highly insulting.

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However, Sage does note that you, in your November 16 letter, have repeatedly set up the strawman argument of an imagined political motive in an effort to distract from the seriousness of this matter and the breach by your clients of integrity of the publishing process. Your projection of “ideological conflicts” and imagined “bias,” “discrimination,” and “inequitable treatment” appear intended to intimidate and corrupt the process and are no more than conjecture, unworthy of any response beyond that.

- The Sage Creative Commons Licenses the parties entered into, as well as the instructions to authors and published policies referenced in said Licenses, make clear Sage’s right to post-publication scrutiny, corrections, and retraction, especially in light of the circumstances that exist in this matter (see, “Publishing Ethics & Legal Adherence” section of License). To suggest Sage does not have such right is simply not credible and flies in the face of both the plain language of the License and long-standing widely adopted and accepted terms of academic publishing and Sage’s commitment and responsibility to ensure the integrity of the publishing process.
- The “Declaration of Conflicts” section of the License is not limited to conflicts of a commercial or financial nature (see, paragraphs 4 and 5 thereof), although receiving a salary or other remuneration from an organization with an interest in the subject matter does constitute a conflict of a commercial or financial nature requiring disclosure. Said paragraphs of the Declaration of Conflicts section specifically provide that authors “have checked in the manuscript submission guidelines... regarding conflicts of interests” and “have checked the instructions to authors.” Please be advised that the instructions to authors referred to in the License references the ICMJE definition of “conflict of interest,” which states: “all relationships and activities that might bias or be seen to bias their work.” Accordingly, your suggestion that a conflict of interest under the License is limited to a financial or commercial basis is misplaced and blatantly wrong, notwithstanding that it is believed several authors were, in fact, paid salaries by the organizations, which they undoubtedly should have disclosed. Similarly, you are also mistaken in claiming that violation of the terms of the License is the only ground on which Sage may retract publication (see, “Termination” section of the License).

It cannot be argued honestly that the authors’ affiliations with anti-abortion organizations do not present conflicts that “might bias or be seen to bias their work” on articles about abortion. The failure of both the authors and of the reviewer to disclose such blatant conflicts most assuredly undermined the objective editorial process. The deception was on the part of the authors and of the reviewer, not on Sage for discovering it in a thorough good faith, suitable investigation.

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Finally, your unsupported and defamatory assertions that Sage has a "consistent practice of publishing authors affiliated with pro-abortion advocacy groups with no disclosed conflicts" or that Sage has a "regrettable pattern of using scientific publications as a sword against unpopular findings - regardless of their objectivity" are summarily rejected as baseless and needlessly provocative, in keeping with your other strawman arguments that attempt to divert attention from the actual facts and circumstances discovered through the investigation and which form the only basis for the Retraction Notice. Investigations are often initiated from readers' complaints, as was the case in this matter regarding an issue of the presentation of data, and in the course of the investigation the undisclosed conflicts of interest became glaring; however, the substantive findings by the reviewers were most significant in the determination that retraction of the articles was necessary under COPE guidance. Sage stands by its mission to advance knowledge and maintain the integrity of effective and informed scientific discovery and the publishing process and will defend its well-earned reputation, as and when required to do so.

If your clients have any new evidence that impacts the underlying retraction decision, Sage will receive that by email to my attention no later than **Wednesday, November 29, 2023, 5pm Pacific Time**. If Sage does not receive any such new evidence, or if it receives only information that is verified by Sage as not impacting the retraction decision, it will proceed with publication of the Retraction Notice.

Sincerely,

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cc: [REDACTED] Global Vice President and General Counsel, Sage Publications, Inc.