Cancer researcher says anonymous online comments cost him a job

Submitted by Colleen Flaherty on November 3, 2014 - 3:00am

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PubPeer Pressure

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Some research (http://jama.jamanetwork.com/article.aspx?articleid=194989) suggests the same. Post-publication peer review sites also hope to make correcting research errors more simple and immediate; instead of commenting on the initial article in the specific journal in which it appeared -- if commenting is enabled, that is -- peers can comment on the article in one clearinghouse for maximum visibility. At the same time, post-publication peer review sites generally have terms of use that require professional discourse. To that end, some require users to post comments under their real names.

PubPeer (https://pubpeer.com), however, revels in anonymity. Its creators have identified themselves only as “a diverse team of early-stage scientists in collaboration with programmers who have collectively decided to remain anonymous,” in order to avoid “personalizing the website” and potential “negative effects on their scientific careers.” It also allows commenters, who must have an institutional email address, to post comments under monikers such as “Peer 1” or “Peer 2.”

It’s a model that’s worked since its inception about two years ago, with some success. Most notably, Cell said it was investigating a high-profile paper on stem cells last year after a PubPeer commenter noticed potential image duplications in the researchers’ work, Science Insider (http://news.sciencemag.org/people-events/2013/05/cell-investigating-breakthrough-stem-cell-paper) reporter. The scientists involved stood by their results, but did publish a correction based on the PubPeer observation.

But now PubPeer is facing what it says is its first legal battle related to its anonymity policy: Fazlul Sarkar, a cancer researcher at Wayne State University in Michigan, says he lost out on a job at the University of Mississippi due to anonymous comments posted on the site. So he’s suing the commenters for defamation and other alleged offenses, and subpoenaing PubPeer to get their names. Experts say that’s a relatively common legal tactic in cases involving user-generated review sites, since online platforms are protected from defamation claims against commenters by Section 230 of the Communications Decency Act. But the legal territory is still new for post-publication peer review sites, and Sarkar’s case already has attracted lots of attention.
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Sarkar, who is back at Wayne State working on a one-year contract without tenure, referred questions to his lawyer, Nicolas Roumel.

Roumel said he and his client are not advocating for censorship and “recognize there are many anonymous web sites and people enjoy free speech rights.” But when “when comments cross the line and become defamatory, a person should have the right to know who made the comments so that they may be held accountable,” he said. That’s why they’ve subpoenaed PubPeer for the names of the Sarkar’s biggest critics.

Anonymous websites “should exercise their screening processes with utmost caution and responsibility, given that an unproven allegation on the internet can affect people’s careers and lives so profoundly,” Roumel added. That’s especially true because an anonymous person commenting “may have a suspect motive or personal ax to grind.”

Roumel also said he was “looking into” the tenure issues involved in Sarkar’s case — namely that he had tenure at Mississippi and apparently lost it based on anonymous comments on a website. As for whether or not Wayne State ever investigated Sarkar for research misconduct is unclear; a spokesman for Wayne State said he couldn’t comment on a personnel matter with legal implications. Roumel said didn’t answer that question directly, either, but said research misconduct “is a legally precise term,” and inadvertently or “unintentionally using an incorrect illustration is not research misconduct.”

Tom Eppes, a spokesman for Mississippi, said that Sarkar was given the opportunity to explain the research-related allegations “before going forward with employment.” But Eppes said the professor “never responded or otherwise provided assistance in addressing the questions.”

Eppes said Sarkar was never employed by the university or conferred tenure, but minutes from the state Board of Trustees meeting on May 15 show that the board voted to approve his tenured appointment at an annual salary of $350,000.

Andrew Crocker, a legal fellow for the Electronic Frontier Foundation, said he couldn’t comment directly on the Sarkar case, as his organization was involved. But said EFF sees “a lot” of defamation cases in which plaintiffs sue anonymous commenters in order to ask the intermediary for their identities. Post-publication peer review is relatively new territory, though, he said, since many cases involve businesses objecting to posts on platforms such as Yelp.

Still, Crocker said there’s a well-developed body of the law that governs “how and when plaintiffs can get that information,” and the bar is high, especially for public figures. Anonymity is rooted in the free speech “tradition,” Crocker said, so a plaintiff must show that the comments are defamatory — generally untrue and harmful — and that there are “compelling” reasons to reveal the commenters’ names.

So while anonymity is a right that’s important to the foundation, it understands that it’s not “absolute,” Crocker said. Unfortunately, not everyone knows that it has limits — even on the internet.

In any case, Sarkar’s case is likely to prove instructive for post-publication peer review — which will continue to grow, said Michael Eisen, a professor of genetics and science blogger at the University of California at Berkeley.

“I definitely think we’ll see more of [sites like PubPeer], and I think this is a very good thing — we need more and robust systems for post-publication review so that we can get past the idea, prevalent today, that pre-publication peer review is an effective means to assess the validity and impact of the published literature,” he said via email.

But the future of anonymity on such sites is a “is a trickier question,” he said.

“Everything is cleaner if people engaging in post-publication review are not anonymous — it allows not only the original authors, but also readers of reviews to contextualize them more effectively, and it serves as a fairly obvious defense against certain forms of abuse,” Eisen said. “However, anonymity also affords people, especially younger, less well-established scientists and people who for other reasons feel less secure in their positions, the opportunity to be honest without fear of retribution or other negative effects on their careers.”

Sites that allow anonymous commenting have to make sure the system doesn’t “break down,” however, Eisen said. “The best and maybe only way to do this is to allow reviewers to be anonymous to people reading the reviews, but not anonymous to people organizing the review process — much as is done with anonymous peer review of papers and grants today.” Under that system, grant applicants don’t know who is reviewing them, but an editor or grants administrator does, “so some degree of trust in the process is maintained.”

John DuPuis, a science librarian and blogger at York University in Canada, also said post-publication review is here to stay. Still, he said, it remains “pretty controversial and it’s hard to know how things will fall out in terms of community norms around anonymity and such.” Sarkar’s case is “part of the process of feeling out the limits,” he guessed.
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