



Donald Kennedy is the Editor-in-Chief of *Science*.

Confidential Review—or Not?

AT *SCIENCE*, WE EDITORS LOVE OUR REVIEWERS AND KNOW THAT OUR EDITORIAL colleagues elsewhere do too. After all, the process of scientific publication depends on the volunteer services of thousands of experts all over the world who willingly provide, without compensation, confidential and candid evaluations of the work of others. Because all of us in scientific publishing depend on reviewers, we'd better try to keep them at it, happy, and secure. But the following case, involving a lawsuit, a drug company, and the company's assault on the confidential files of a journal, is a bad news story.

The drug company Pfizer is being sued in various jurisdictions on product liability grounds. Plaintiffs are claiming that its products Celebrex and Bextra cause cardiovascular and other injuries. Pfizer asserts that in some cases plaintiffs are making use of published papers from the *New England Journal of Medicine (NEJM)*. So it wants to dig through the confidential reviews of those papers in search of something to strengthen its defense. The company served *NEJM* with a series of subpoenas to which the journal replied, claiming several privileges in support of its refusal to comply.

Now Pfizer's lawyers have filed a motion to compel *NEJM* to produce the files, which will be heard by a U.S. District Court in Massachusetts. (Full disclosure: I have filed an affidavit with the court supporting *NEJM*.) The motion is interesting in terms of its revelations about what Pfizer knows about the process of scientific publication and what it regards as the "public interest." For example, the motion states: "The public has no interest in protecting the editorial process of a scientific journal . . ." Say what? Doesn't the public want access to credible biomedical science? If not, what was the open-access movement all about?

Do medical advocacy groups really have no use for knowledge that might help their members? Does confidentiality count for anything to the scientists who serve the journal? Well, if confidentiality is compromised, Pfizer's attorneys state with breezy assurance, that won't be a problem for authors: "It is unreasonable to conclude," they say in their motion to compel, "that scientists and academics will stop submitting manuscripts to *NEJM* if it complies with this subpoena." Perhaps. But what about reviewers, who are explicitly promised confidentiality? And what about other journals? If this motion succeeds, what journal will not then become an attractive target for a similar assault?

Viewed in the larger context, this is really a conflict between competing interests. One is the public's interest in a fair system of evaluating and publishing scientific work—one that offers high confidence in, though not an absolute guarantee of, the quality of the product. Pfizer dismisses this with a wave of the hand, a strangely inconsistent position given the enthusiasm with which it and other drug companies seek to have their own research validated by the very system of scientific publication that Pfizer's motion decries and would undermine. On the other side, there is a private interest in gaining information that might protect a corporate defendant against a plaintiff's attack. Without questioning the legitimacy of the latter, it is surely fair to ask whether fulfilling that need should trump the public interest.

An approach often taken in such cases would examine the prospective weight of what defendant Pfizer hopes to find; in other words, is it worth it? What Pfizer's motion says on that score is: "Scientific journals such as *NEJM* may have received manuscripts that contain exonerating data for Celebrex and Bextra which would be relevant for Pfizer's causation defense." That's a pretty frank admission that this is a fishing expedition in which Pfizer hopes it "may" find something to help its defense by exposing a reviewer's comment. Is that an adequate basis for justifying prospective damage to the public interest? We don't think so, and we suspect our prospective reviewers won't think so, either. But if efforts of this kind were to succeed, the sad day might come when *Science* would have to add a firm caveat emptor to its instructions for peer reviewers.

— Donald Kennedy

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