

# Dealing with research misconduct allegations

- The size of the problem – local data
- Some key issues to consider
- Risk factors for misconduct
- Can prevention work?

\*NB My views are influenced by medical board experience

# The size of the problem

- Fraud in publications estimated at 0.1- 0.4% (1)
- There is evidence of gross under-reporting (2)
- Nordic experience suggests one to two cases of research misconduct per million of population per year (3)
- **Recent Australian study found a self reported incidence of 8.6%(4)**
- Recent survey from the US found an incidence of 28-38% (5)

**THIS IS NOT A PROBLEM WHICH WILL GO AWAY!**

(1)Lancet 1996;347:843 (2) J R College of Physicians 1997;31:90-4 (3)Br Med J 1998;316:1733 (4) Med J Aust 2005;182:557-560 (5) Nature 2005;435:737-8

# The key issues to be addressed\*

- The agency should be independent and must have adequate powers (including to secure the evidence)
- Processes must be agreed and published (including the definition of research misconduct)
- The inquiry needs to be prompt and fair (with investigation separate from adjudication)
- The accused needs the right of legal representation
- Due process and natural justice must be observed
- There must be an avenue of appeal
- The system must provide for correction of the scientific record
- The process ideally should be open to the public

\* Drawn from US and Nordic commentary – see *Int Med Jour*, 2003; 33:186-91

# Focus now only on

- Definition of research misconduct
- Due process and natural justice
- Penalties
- Protecting whistleblowers
- Prevention

# Defining misconduct (1)

- Required for formulating precise allegations (natural justice)
- Essential for both prevention and for handling allegations
- Crucial for consistency between institutions
- BUT – no international consensus

## Defining misconduct (2)

- USA and 1997 Australian definitions focus on fraud, fabrication and plagiarism
- MRC (UK) definition also encompasses “deliberate, dangerous or negligent deviations from accepted practice in carrying out research”
- Brennan inquiry identified the issue of when/if carelessness can be seen to be research misconduct

# Defining misconduct (3)

- Consultation draft code definition reads:

“Research misconduct includes any conduct that jeopardises research integrity and erodes the trust and confidence of the public in research. Research misconduct involves serious deviation from the *Australian Code for Conducting Research*. It includes fabrication, falsification, plagiarism, misleading ascription of authorship including the listing of authors without their permission, attributing work to others who have not in fact contributed to the research, the lack of appropriate acknowledgement of work primarily produced by a research student/trainee or associate, ignoring conflicts of interest and abusive supervision. It also includes deliberate, negligent or reckless deviation from accepted research practice or approved research protocols which endanger the welfare of research participants, animals or the environment.” (5)

# Defining misconduct (4)

UK “Consensus conference” in 1998

“Behaviour by a researcher, intentional or not, that falls short of good ethical and scientific standards” and added “*No definition can or should attempt to be exhaustive*”

NB. No agency seems to have addressed the important matter of trying to identify criteria for degrees of seriousness of any proven research misconduct

# Degrees of seriousness(1)

- Medical misconduct model in Australia
  - uses broad definitions of types of misconduct
  - provides for two levels of hearings, implying different degrees of seriousness and a different range of “penalties”
  - the allocation of degrees of seriousness are left to the tribunal or panel conducting the hearing
  - BUT the decision making is based on precedent which is heavily influenced by common law decisions at appeals to the courts

## Degrees of seriousness(2)

- Clarifying this issue will be very important if a centralised system is introduced, in order that institutions are consistent in when allegations are handled locally vs referred to the central agency
- Institutions thus will need clear guidelines

# Legal concept of natural justice

The concept of natural justice (or “procedural fairness”) encompasses:

“two things before a person’s rights or reasonable (‘legitimate’) expectations are removed, reduced or disappointed: (1) A right to be heard (an opportunity to show why an adverse action should not be taken); and (2) a hearing by a decision-maker whose mind is open to persuasion (free from bias).”\*

\* Forbes JRS, Disciplinary Tribunals, 2nd Edition 1996 Federation Press,  
Chapter 7, p 84

# Penalties

- Virtually no international literature
- Again, it may be wise to borrow from similar agencies experienced in assessing professional conduct and influenced by the common law
- The options (“menu”) will need careful consideration in relation to matters such as general deterrence, public protection, the good name of research, and actual punishment
- Common penalties include banning access to public funds but could include more innovative penalties such as a requirement for supervision for a number of years

# And protecting whistleblowers

- This includes both colleagues and journal editors
- Only Victoria and NSW have “whistleblower” legislation
- Legislation does not protect persons adequately, so institutions will need to examine their “research culture” and have processes in place to support whistleblowers

# Risk factors for misconduct

- Pressure on researchers
  - to publish
  - to bring in funding
  - to commercialise
- Increased risks for participants via:
  - poor research governance (inc. lack of researcher training and inadequate support for HRECs)
  - failures on the part of researchers

# Can prevention work? What might it entail?

- Researcher education
- Improved research governance
- Improved supervision of young researchers
- Deterrence ( eg transparent processes and adequate penalties)