

## Report on Research Compliance Volume 17, Number 6. May 21, 2020 In This Month's E-News: June 2020

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By Theresa Defino

◆ **A former assistant veterinary medicine professor at the University of Maryland will retract or correct seven papers published from 2013 to 2016 that contained reused or fabricated and falsified “Western blot images, microscopy fields, and data of viral titers and mouse immune response” the HHS Office of Research Integrity (ORI) announced May 11.** Shin-Hee Kim also inserted false or fabricated information into two NIH grant applications, ORI said in its second misconduct finding of 2020.

ORI said Kim “intentionally, knowingly, and/or recklessly falsifying and/or fabricating data” included in the papers and applications. Kim entered into a settlement agreement with ORI that requires any a supervisory plan for any Public Health Service-funded research in which she is involved for a three-year-period beginning March 27. (5/14/20)

◆ **The U.S. Attorney’s Office for the Northern District of Georgia announced May 11 that Xiao-Jiang Li, a former Emory University professor, pleaded guilty to filing a false tax return and was sentenced to one-year probation.** “Li simultaneously worked for Emory University and two Chinese Universities from 2012 to 2018...conducting similar large animal model research” on Huntington’s disease, the government said, earning “at least \$500,000 in foreign income that he never reported on his federal income tax returns.” (5/14/20)

◆ **Pennsylvania State University (PSU) agreed to pay the federal government \$151,000 to settle allegations that it violated the False Claims Act (FCA) by making “mischarges to various grants and contracts from the National Science Foundation [NSF], the Department of the Navy, the National Aeronautics and Space Administration, and the Air Force,”** the U.S. Attorney’s Office for the Middle District of Pennsylvania announced May 11. “The grants and contracts were awarded to Penn State in 2012-2017 and the isolated alleged mischarges identified occurred in 2013-2016,” the office said. PSU did not admit liability and cooperated with the investigation, and “implemented policy changes to prevent mischarges in the future.”

PSU’s agreement comes on the heels of a recent \$3.75 million FCA settlement involving Rice University that included more specifics. The U.S. Attorney’s Office for the Southern District of Texas alleged Rice “budgeted for graduate student stipends in its research grant proposals but then used a portion of the money to pay the students to perform teaching duties unrelated to the NSF awards.” According to the government, from November 2006 through September 2018, “Rice knowingly engaged in a pattern and practice of improperly charging graduate students’ stipends, tuition remission and related facilities and administrative charges to NSF awards. These charges were actually used in part for time the graduate students spent performing teaching duties unrelated to Rice’s NSF research and development awards.” The payment of \$3,754,186 is “double the loss to the United States,” the government alleged. However, Rice said in a statement to RRC that it “strongly believes it complied with the law” and agreed to the settlement “to avoid the delay, uncertainty, inconvenience and expense of protracted litigation with the federal government.” Like PSU, Rice officials would not comment beyond their statement. (5/14/20)

◆ **Johns Hopkins University (JHU) should not have claimed a total of \$91,048 in costs among 21 NSF awards from Feb. 1, 2016, to Jan. 31, 2019, an amount that should be repaid, according to a new audit by NSF’s Office of**

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**Inspector General.** Auditors reviewed “more than \$1.8 million of the \$116.8 million claimed to NSF during the period,” and tested “250 judgmentally selected transactions,” ultimately questioning a total of 32 transactions. Specifically, auditors questioned “1) \$68,984 in purchases near award expiration; 2) \$13,373 in unallocable or unreasonable travel; 3) \$6,075 in unallocable fringe benefit; and 4) \$2,616 in inadequately supported transactions.” Auditors said “improved oversight is needed” in these four categories of costs to “ensure costs claimed are reasonable, necessary, and in accordance with Federal and NSF award requirements.”

The questioned travel costs included \$2,737 for 15 days of travel expenses for one principal investigator, who also apparently gave \$325 as a “gift” to friends he or she stayed with. “However, the support provided by JHU was insufficient to support the reasonableness and allocability to the NSF award. There was no mention of international travel or international collaboration in the final report,” according to the auditors. They also questioned “\$918 for alcoholic beverages and [a] bartender fee charged” to a different NSF award, as well as \$251 “for excessive meal charges,” and \$207 claimed for two dinners. Auditors noted that at the time, the allowable per diem rate for dinner was \$26. Although JHU agreed to repay all of the questioned costs, it offered explanations for some, attributing a fringe benefit error to a typo and calling the lack of documentation of some costs “isolated incidents.” Regarding costs near the end of an award, “JHU would like to take this opportunity to respectfully express its opinion that it is not a given that items purchased near or at the end of the award cannot provide a direct benefit to the award. In many cases, these types of purchases can and do provide a necessary direct benefit in finalizing the research objectives,” officials said in their response to draft findings. NSF will review the audit and determine whether to require repayment from JHU. (5/7/20)

◆ **A former West Virginia University (WVU) physics professor is facing 10 years in prison and a fine of up to \$250,000 when he is sentenced after pleading guilty to one count of fraud in connection with employment he accepted at the Chinese Academy of Sciences.** According to the Department of Justice (DOJ), James Patrick Lewis spent most of the fall 2018 semester in China, after having been granted leave by WVU under the guise of being a new parent. “Rather than caring for his newborn child, Lewis planned to work in China during the fall 2018 semester as a part of his agreement with the ‘1000 Talents Plan,’” which was for three years and was signed in July 2017. “Lewis agreed to maintain an active research program that yielded publications in high-quality, peer-reviewed journals, and to provide research training and experience for Chinese Academy of Sciences students,” DOJ said. (5/7/20)

◆ **Institutions that comply with the Common Rule should know that the HHS Office for Human Research Protections “will take into account the specific circumstances that institutions and investigators are experiencing, and will use available flexibility in its decision making as institutions and investigators implement actions necessary to protect public health, while still appropriately protecting research subjects,” OHRP recently announced.** The agency said it has “received questions regarding how the HHS human subjects protection regulations...apply to actions taken by institutions and investigators in response to the COVID-19 outbreak.” OHRP said that, overall, “[g]iven the current circumstances, the [research community is encouraged to prioritize public health and safety,” and noted that many such actions are unlikely to require notification to OHRP. (4/30/20)

◆ **Whether—and how—to license and patent technologies related to COVID-19 tests and treatments are questions some research institutions may feel ill-prepared to address. To assist them, some organizations have weighed in, and the Council on Governmental Relations (COGR) has collected their proposals.** “A number of groups have proposed pledges and statements of principles with regard to [intellectual property] rights and the licensing of technologies related to COVID-19,” COGR explained. “In reviewing these statements, COGR believes a number of considerations should be kept in mind. One is the importance of considering the interests of all stakeholders in the institution, including faculty. Another is whether for a given technology, use of non-exclusive licenses is in fact the best and most effective strategy to facilitate rapid pandemic responses and broad

distribution of technologies that address COVID-19.” (4/30/20)

◆ Harvard University agreed to pay the government \$1,359,791, an amount that DOJ and the HHS Office of Inspector General said reflects overcharges a then-Harvard T.H. Chan School of Public Health (HSPH) professor allegedly claimed against NIH awards for “salary costs” over a five-year period. “The government contends that the HSPH professor, Donna Spiegelman, and her team overstated the time and effort spent working on certain NIH grants for which they provided support (and where they were not principal investigators or key personnel),” the April 27 announcement said. “The overcharges were associated with statistical analysis support that the professor and her team provided to other HSPH professors on grant-related research. The government alleges that Professor Spiegelman and her team inappropriately charged their time and effort by evenly distributing their time across all grants for which they provided statistical support, without accurately accounting for the time they actually spent on particular grants.” (4/30/20)

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