

Report on Research Compliance Volume 21, Number 7. June 06, 2024 Cleveland Clinic Pays \$7.6M Related to PI Whose Charges Were Dropped; 'He Was Treated Horribly'

By Theresa Defino

Attorney Peter Zeidenberg was surprised to learn that NIH had successfully clawed back \$3.6 million—plus a nearly 100% penalty—from Cleveland Clinic. The Department of Justice (DOJ) claimed the award funds were ill-gotten because the Cleveland Clinic failed to disclose to NIH that Qing Wang, Zeidenberg's former client, had support from a university in China.

Cleveland Clinic's alleged failures when applying for the awards amounted to violations of the False Claims Act (FCA), the government said. NIH contended it wouldn't have made three awards to Cleveland Clinic, with Wang as the principal investigator (PI), had it known that he had "duplicative" support from the institution in China, according to DOJ.^[1] Wang's was one of the Trump administration's China Initiative cases, in which NIH investigated whether PIs were hiding support received from China, including through its Thousand Talents program. Zeidenberg, a partner with Arent Fox LLP, has represented other investigators similarly accused; he previously told RRC that "universities should be not acting as junior G-men for the FBI."^[2]

But DOJ couldn't make FCA and wire fraud charges stick against Wang himself. He was arrested on May 13, 2020 (but never indicted); Cleveland Clinic fired him the same day. On July 21, 2021, the charges were dismissed—one of a number of cases dropped by the Biden administration. But for Wang, the damage was permanent and devastating. According to Zeidenberg, Cleveland Clinic wouldn't rehire him for fear of alienating NIH.

Wang, an expert in genetics and cardiovascular disease, was a professor at Cleveland Clinic's Lerner Research Institute, which he joined in March 1999; since 2003, he also worked for Case Western Reserve University, most recently as a professor of molecular medicine. Wang came to the U.S. from China in 1986 and became a naturalized citizen in 2005. Zeidenberg called Wang Cleveland Clinic's "most productive faculty member," having published, usually as the senior author, a dozen peer-reviewed papers a year from 2008 to 2019.

He also held various positions at Huazhong University of Science and Technology (HUST), including director of the Center for Human Genome Research—all of which Wang's U.S. institutions knew about, Zeidenberg said.

Wang was forced to leave the U.S. and return to China, where he has tried to put his life back together, a move Wang had hoped wouldn't have been necessary, Zeidenberg said. With news of Cleveland Clinic's payback, it has resumed its defamation of Wang, he added.

"I was surprised" by the settlement, Zeidenberg told RRC. But, he said, "I don't really care. It doesn't matter to me. What angers me is when they defame Dr. Wang. They're trying to shift blame from their own mistakes to a scientist who [was] doing groundbreaking work." The attorney has maintained that Wang disclosed everything—and then some—that he was required to, and said Cleveland Clinic's own investigation came to the same conclusion.

That investigation "found that Dr. Wang "list[ed] his role as an adjunct faculty member at HUST, his position as a Yangtze Scholar and his role as director of a laboratory at HUST" in biosketches Cleveland Clinic submitted to NIH with the grant applications, and that he "may not have been obligated to disclose all of his positions in

biosketches if he concluded some were not relevant to a particular application,” Zeidenberg said, quoting from the report.

Although the government dropped the charges, “DOJ isn’t in a position to give him his job back, and they’re not in a position to instruct NIH to give him back grant funding,” Zeidenberg said. “What happened to Dr. Wang was unfair and unjust. He was treated horribly.”

Zeidenberg said the PIs he has represented, including Wang, did not receive training to understand grant requirements and language, and, moreover, that research offices “themselves do not understand these regulations. And for many, many years, it was understood that grants that did not go through, that weren’t being handled by the research institution, [did] not need to be reported.”

Clinic ‘Surprised’ a Settlement Resulted

While it signed off on the settlement, Cleveland Clinic did not admit wrongdoing. And in statements to *RRC* regarding the case, a Cleveland Clinic spokesperson blamed Wang and made potentially libelous statements about his performance while an employee there. *RRC* asked for supporting evidence, but no further communication from Cleveland Clinic followed, so *RRC* is not reporting those parts of the statement. Moreover, Cleveland Clinic forwarded to *RRC* the FBI’s 2020 news release announcing Wang’s arrest and repeated that he had engaged in “criminal conduct.”

“For undisclosed reasons, the U.S. Attorney’s office decided in 2021 to no longer pursue Dr. Wang for his criminal conduct,” the statement said. Cleveland Clinic also indicated that it, too, was not expecting the case to conclude with the repayment demand, given its cooperation with NIH and DOJ.

“We were surprised that the U.S. Attorney’s office chose to pursue this matter knowing that Cleveland Clinic worked with NIH and the U.S. Attorney’s office on this issue,” the statement said.

Cleveland Clinic noted that the investigation began when it was contacted by NIH and that, “like hundreds of research institutions across the United States receiving similar inquiries at the time, [it] collected and provided information to NIH.”

DOJ: Disclosures Were Missing

Additionally, as Cleveland Clinic “learned more about Dr. Wang’s activities in China, we contacted the U.S. Attorney’s office to apprise them of our findings and actively supported and cooperated with the government’s multi-year investigation into Dr. Wang’s activities. Throughout their investigation of Dr. Wang, federal prosecutors assured Cleveland Clinic it was not the target,” the statement said.

The settlement doesn’t mention Wang by name. It states that the U.S. government “has certain civil claims against CCF [Cleveland Clinic Foundation] arising from false statements and payment claims submitted to NIH between November 1, 2013 and May 31, 2020 in connection with grants designated as R01 HL121358 (Grant #1); R01 HL126729 (Grant #2); and R01 HL138465 (Grant #3), based on the following alleged conduct, which is referred to below as the Covered Conduct.”^[3]

According to DOJ, “CCF failed to disclose in grant applications, ‘Just-In-Time’ application updates, and Research Performance Progress Reports (collectively ‘grants submissions’) that its employee, who was identified by CCF as the Principal Investigator on Grants #1, #2, and #3, had pending and/or active other support from foreign sources.”

Cleveland Clinic employees “believed that they knew all the facts and they submitted this on their own...they

were not administering these other grants that he had,” Zeidenberg told RRC. “They never checked with him. Nevertheless, in his grant application paperwork [and biosketch] he references his Chinese grants repeatedly. You have to list all of your relevant papers. And so he listed a dozen papers, and on those papers it references the Chinese research grants.” He also argued to the DOJ officials who dropped the case that there was no scientific overlap.

NIH: CCF Violated Password Policies

Yet, there’s more to this case than allegations of FCA violations. In his defense of Wang, Zeidenberg said Cleveland Clinic employees using Wang’s login information entered the disclosure information, at times without his knowledge or review. DOJ found this claim had merit.

“The settlement also resolves allegations that CCF violated NIH password policies by permitting CCF employees to share passwords. Some of the false submissions wherein CCF failed to disclose the Principal Investigator’s foreign grant support were made by CCF employees who were inappropriately given access to NIH’s online grant reporting platform,” DOJ said in announcing the settlement.

Moreover, the repayment is accompanied by a somewhat rare requirement that Cleveland Clinic develop and comply with a one-year corrective action plan that affects all its NIH awards, DOJ said in the settlement announcement.

The only mention of this plan in the settlement documents themselves is the admonition that any costs associated with any DOJ audit or Cleveland Clinic’s “investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys’ fees)” are unallowable costs.

‘Assessment of Internal Controls’ Required

The announcement goes into more detail.

In addition to the \$7.6 million settlement, NIH “imposed Specific Award Conditions on all CCF’s grants for a one-year period,” DOJ said. “Federal regulations allow NIH to impose Specific Award Conditions on grant recipients, including on recipients that do not comply with the terms of a federal award.”

“Among other requirements,” NIH is mandating that Cleveland Clinic:

- Have a “high-level CCF employee...personally attest to the truth, completeness, and accuracy of all ‘other grant support’ information CCF provides to NIH.”
- “Develop a corrective action plan that includes an assessment of internal controls related to other grant support and foreign-component reporting.”
- “Create a mandatory training program addressing requirements for disclosing other grant support, research security, and cyber security.”
- “Develop an improvement plan for its internal controls, ensuring that CCF has oversight at the institutional level to confirm that the information its Principal Investigators disclose is true, complete, and accurate.”

These award conditions “will begin Oct. 1, 2024, and remain in effect through Sept. 30, 2025, or until NIH is satisfied that CCF has successfully completed the Corrective Action Plan,” DOJ said.

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1 U.S. Department of Justice, U.S. Attorney's Office for the Northern District of Ohio, "Cleveland Clinic to Pay Over \$7 Million to Settle Allegations of Undisclosed Foreign Sources of Funding on NIH Grant Applications and Reports," news release, May 17, 2024, <https://bit.ly/4e7j6yE>.

2 Theresa Defino, "After Researcher's Conviction on Some Counts, Attorney Chides Universities, Sees 'No Harm,'" *Report on Research Compliance* 19, no. 5 (May 2022), <https://bit.ly/3VeFzRM>.

3 Settlement agreement, *United States v. Cleveland Clinic Foundation* (N.D. Ohio 2024), May 17, 2024, <https://bit.ly/4e2Ssqx>.

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