

'Misconduct' dispute raises fears of litigation

San Diego. A legal dispute with potentially far-reaching implications for the way universities investigate scientific misconduct cases has been generated by the conclusion of a report from Baylor College of Medicine in Houston, Texas, that one of its researchers published data that had been fabricated.

The dispute has raised the question of whether universities should be immune from certain types of civil lawsuit arising from investigations of research misconduct carried out as required by National Institutes of Health (NIH) regulations.

The dispute centres on Kimon J. Angelides, a neurobiologist who was fired by Baylor in early 1995 after officials concluded that he had falsified research results described in five published papers and in documents used in applications for NIH grants (see *Nature* 383, 107; 1996).

Angelides subsequently moved to the University of Durham in England. He filed a civil lawsuit against Baylor, the scientists who had accused him of improprieties, and members of various *ad hoc* committees at Baylor that ruled that he had committed scientific misconduct.

The civil lawsuit is for wrongful termination, breach of contract, defamation and other actions. These include an allegation of 'blacklisting', a charge associated with the fact that Baylor reported Angelides' alleged offences to the NIH's Office of Research Integrity (ORI), the body that investigates allegations of research misconduct made against scientists receiving NIH funds.

This lawsuit is before a federal appeals court, where Angelides, Baylor and other interested parties are arguing about whether a university should be immune from certain civil lawsuits when investigating misconduct.

takes on new role

million annually), the reactor's annual running costs (around FFr1 billion) and the FFr1.25-billion cost of a new core. The French national audit commission recently estimated that the reactor will have cost a total of FFr60 billion by 2000.

But continuing to operate the reactor is considered to be cheaper than shutting it down. A shutdown would entail the government paying as much as FFr18 billion in compensation to NERSA as a lump sum, as well as the costs of decommissioning.

Whatever the outcome of the research, few expect France to invest in the short term in the many fast breeders that would be needed in practice to eliminate the large stocks of plutonium. Superphénix, which will eventually shut down for good around 2015, seems likely to be one of the last of a dying breed.

Declan Butler

In addition to the civil litigation, federal prosecutors in Houston have opened a criminal inquiry into Angelides' research activities. This raises the possibility that he could be indicted for defrauding the NIH of research funds.

Such criminal investigations are rare, with only one scientist in recent years having been convicted of a crime related to research misconduct.

In the civil case, the federal requirement that a university that receives NIH grants should monitor its scientists, investigate allegations of misconduct and report the conclusions is clashing with an accused scientist's right to due process.

Angelides denies any research misconduct, blaming others for any discrepancies in his reported results. His attorneys argue that he should be able to sue his accusers for damages in a Texas state court, where his civil lawsuit was filed.

But Baylor's attorneys reply that the university is immune from such state court civil action as it is acting for a federal agency, the NIH. They also argue that if the verdict of a civil lawsuit is to be based on the propriety of a university probe of a scientist, the case should be heard in a federal district court, not a state court.

Such issues have already attracted much interest from the Association of American Medical Colleges (AAMC), as well as the ORI, both of which have filed briefs supporting Baylor's position.

Chris B. Pascal, acting director of the ORI, says his agency fears that if Angelides' method of suing is upheld, an already difficult process — the scientific review of misconduct charges at the university level — will be significantly damaged, if not destroyed.

Angelides' lawsuit against Baylor threatens the "partnership" between the NIH and research institutions, says Pascal. "This is a big issue for us," he adds. "If an institution and its committees of scientists are held liable for reporting to ORI, who would write a report and put their name on it? They wouldn't do it any more."

Similarly Joseph A. Keyes Jr, general counsel to the AAMC, says his members believe that state court lawsuits filed by scientists whose research has been challenged by their peers would have a chilling effect on the ability of universities to fulfil their obligations to funding agencies to monitor the conduct of research.

"Faculty members and [other] individuals called to serve on investigating committees fear being tied up in endless litigation," says Keyes, whose organization represents 400 universities and medical schools and 90 professional societies.

Such arguments are being made in legal briefs before the US Court of Appeals for

the Fifth Circuit in New Orleans. A decision on the immunity issue is expected in a few months, and could have broad implications for scientific misconduct cases elsewhere in the United States.

Meanwhile, the trial in Angelides' civil lawsuit has been postponed until August, largely because of the criminal probe of his activities. The existence of the criminal inquiry surfaced last month during a hearing on the civil lawsuit.

Angelides had flown from the United Kingdom to Houston to be questioned by Baylor's attorneys in a deposition. But,



during a brief hearing with the attorneys, Angelides' attorney argued that the pending criminal probe might use his sworn deposition testimony against him, and invoked his Fifth Amendment privilege against self-incrimination.

David H. Peck, the assistant US attorney in Houston who is conducting the inquiry into Angelides' actions, declines to comment on the federal probe. Court records indicate that federal authorities are expected to make a decision on whether to file criminal charges within a month or so.

Angelides declines to comment on his situation. But Rusty Hardin, his criminal attorney in Houston, argues that, for a criminal violation, "someone must conclude that he [Angelides] knowingly submitted false information" to the NIH, which he "unequivocally" did not.

"There is no issue [that] some wrong data was submitted," says Hardin. "The question is: did he know it was wrong when he submitted it? I am satisfied there is no criminal violation."

Pascal at ORI declines to comment on how the criminal inquiry may affect his agency's investigation of Angelides, which started in spring 1995. The ORI cooperates with federal prosecutors when they conduct criminal inquiries, he says, and may delay or complete its investigation, depending on what the federal prosecutors may want.

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