

A WORD FROM OLAW

In response to the issues posed in this scenario, the National Institutes of Health - Office of Laboratory Animal Welfare (NIH-OLAW) provides the following clarification:

In this scenario, a graduate student under duress from his mentor performs an unapproved procedure on a rat. Subsequently, the student reports the noncompliance anonymously to the IACUC. Then, the mentor, assuming the student was the whistleblower, retaliates. During its investigation of the unapproved activity, the IACUC uncovers the mentor's reprisal and must decide a course of action.

The PHS Policy requires the IACUC as an agent of the institution to review concerns involving the care and use of animals at the institution¹. Although the PHS Policy does not have explicit whistleblower protections, OLAW expects institutions to vigorously enforce both institutional and state protections for individuals who come forward with valid concerns regarding research animal welfare and research integrity as mandated by the *Guide for the Care and Use of Laboratory Animals*². OLAW disagrees with the IACUC chair's interpretation of the *Guide's* requirements for reporting animal welfare concerns. Protection from reprisals should be afforded to any person reporting a concern whether identified or anonymous. When anonymous complaints are made to the IACUC, it is important to have a feedback mechanism to inform the complainant of the outcome. This may prevent those reporting anonymously who may feel the concerns have not been acknowledged from reporting to oversight agencies or other outside parties.

While OLAW is not tasked specifically in the PHS Policy with determining if retaliation has occurred, it takes allegations of retaliation seriously and in such cases carefully monitors institutional animal care and use programs for compliance with PHS Policy and the *Guide*, particularly regarding reporting policies related to animal welfare concerns³⁻⁴. OLAW considers whistleblower protections imperative to ensure effective institutional oversight. A whistleblower may be the

only individual willing or able to provide information about an animal welfare issue even at institutions with effective reporting structures for animal welfare concerns.

Whistleblowers should use the institution's internal reporting structure to report animal welfare concerns but may also call OLAW to either make a report or receive anonymous consultation. Once an incident has been reported to the IACUC and the institution has verified that a noncompliance has occurred, an authorized individual at the institution must contact OLAW promptly with a preliminary report³. If reprisals are reported to OLAW's Division of Compliance Oversight, the institution will be asked to reaffirm their reporting policy for animal welfare concerns and clearly state that the policy complies with the institution's Animal Welfare Assurance with OLAW and the *Guide*.⁵ It is important to note that the source of a whistleblower complaint to OLAW is not releasable under the federal Freedom of Information Act^{3,6}. □

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1. Office of Laboratory Animal Welfare, National Institutes of Health. *Public Health Service Policy on Humane Care and Use of Laboratory Animals*. (US Department of Health and Human Services, Bethesda, Maryland, USA, 2015). <https://olaw.nih.gov/policies-laws/phs-policy.htm>
2. Institute for Laboratory Animal Research. *Guide for the Care and Use of Laboratory Animals*. 8th edition 23-23, (National Academies Press, Washington, D.C., USA, 2011).
3. Office of Laboratory Animal Welfare, National Institutes of Health. *Reporting Noncompliance*. <https://olaw.nih.gov/guidance/reporting-noncompliance.htm> (2020).
4. Potkay, Steven & DeHaven, William OLAW and APHIS: Common Areas of Noncompliance. *Lab Animal* 2000 29 32-37. <https://olaw.nih.gov/sites/default/files/LabAnimal.pdf> (2020).
5. Office of Laboratory Animal Welfare, National Institutes of Health. *Domestic Assurance Sample Document, Part III. Institutional Program for Animal Care and Use* <https://olaw.nih.gov/sites/default/files/assurmp.htm#sectionIII> (2020).
6. National Institutes of Health. *Public Health Service Policy on Humane Care and Use of Laboratory Animals - Frequently Asked Questions. Institutional Reporting to OLAW, Question C.5*. (US Department of Health and Human Services, Bethesda, MD, USA, revised 2017). https://olaw.nih.gov/guidance/faq#report_5 (2020).

could claim any number of acceptable reasons to terminate him. The lack of evidence and witness accounts regarding the exchange between Richmond and Levine make this a 'he said/he said' situation. With proper training and awareness, Richmond should have reported the conflict to the IACUC as soon as it happened, before performing the procedure, so that resolutions could have been made to prevent noncompliance. At present, Richmond should identify himself as the whistleblower to the IACUC so he can at least provide a witness account of the interaction that Levine is denying and be afforded protection from reprisal.

Richmond's relationship with Levine is already beyond repair, and the ethical murkiness of the mentor's philosophy is not a nurturing and welcoming place to learn. Richmond should reconsider the hostile working environment in the laboratory and anticipated mentorship value from a researcher who is clearly not adhering to IACUC authority, who is performing unethical research, and who belittles and intimidates others who may question his practices. A noncompliance of this magnitude requires reporting to OLAW, and the report should also go to the department chair. The chair, working with the IACUC, could lend support to identifying a more welcoming research environment for Richmond. While coming clean will not change the need for Richmond to find a new lab, it could salvage his reputation, self-esteem, and possibly his research career while assisting the IACUC in holding Levine accountable for promoting noncompliance and punishing thoughtful dialogue. □

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2. Institute for Laboratory Animal Research. *Guide for the Care and Use of Laboratory Animals*. 8th edn. (National Academy Press, Washington, DC, 2011.)