

Request and Response Regarding Identification of Errors of Fact

- 36) September 16, 2013 September 16, 2013 response from PETA identifying and correcting errors of fact



September 16, 2013

Axel Wolff, M.S., D.V.M., Director
Division of Compliance Oversight
Office of Laboratory Animal Welfare
Rockledge One, Suite 360
6705 Rockledge Drive – MSC 7982
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Dear Dr. Wolff:

On behalf of People for the Ethical Treatment of Animals (PETA), please consider this our official response to the Office of Laboratory Animal Welfare (OLAW)'s Draft Report on Investigation of Allegations of Noncompliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals at the University of Wisconsin-Madison (the "Draft"). We appreciate the thoroughness of OLAW's investigation and review of this matter and the opportunity to provide feedback on the factual content of the Draft. Below we outline six areas we are asking be corrected prior to the issuance of the final report.

1. On page 3, paragraph 3, the Draft states that the study involving Double Trouble was not funded by NIH. However, the protocol for this experiment ("Behavioral and Physiological Studies of Sound Localization") as approved by the University of Wisconsin's (UW) Institutional Animal Care and Use Committee (IACUC) indicates otherwise. PETA enclosed this protocol as Exhibit B in our original September 12, 2012 complaint. Question 13 of the protocol requires that the Principal Investigator "[i]ndicate any current or pending funding for this project." Two separate grants are identified as the funding source for the experiment, and in both cases "N.I.H." is identified as the funding entity. Even if the experimenter failed to account for other funding sources in the IACUC-approved protocol, because the experiment involving Double Trouble was conducted under this protocol and part of a broader NIH-funded research program, it is likely that at least some NIH funding was involved in supporting the work directly or indirectly. Of course, if the project involving Double Trouble was conducted outside of the approved protocol that identified NIH as the exclusive source of funding, that itself is violation of PHS Policy and the Animal Welfare Act.
2. On page 4, paragraph 3, the Draft states that Double Trouble's head cap infections were "intermittent." Based on Double Trouble's veterinary

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records obtained from UW, PETA disagrees with this characterization. UW's own Treatment and Progress Record for Double Trouble – which was supplied to OLAW as Exhibit A in PETA's September 12, 2012 complaint – demonstrates that Double Trouble received treatment for infections resulting from her head cap on an almost daily basis starting in October 23, 2008 until her euthanasia on December 5, 2008. On page 21 of Double Trouble's Treatment and Progress Record, UW cites the reason for her euthanasia as due to the fact that she developed a "chronic" infection. These facts contradict OLAW's characterization of Double Trouble's head cap infections as "intermittent."

3. On page 5, paragraph 1, the Draft states that UW was not cited by the USDA during a November 16, 2012 inspection that took place in response to PETA's complaints. According to USDA records, this inspection actually took place December 10-13, 2012. Furthermore, although UW unsuccessfully contested it, the U.S. Department of Agriculture did issue a citation to UW for violating 9 C.F.R. § 2.38 (f)(1) of the Animal Welfare Act in connection with the April 2012 incident in which Broc was burned during surgery. I have attached the U.S. Department of Agriculture's Inspection Report and Narrative identifying this citation.
4. On page 6, paragraph 6, the Draft states that OLAW's April 2013 site visit to UW-Madison found the seven cats in the laboratory all "in excellent clinical condition." Based on other records PETA has obtained, we believe these seven cats to be Broc, NJ, Mango, Rainbow, Taro, Tiger, and Timmy. On June 27, 2013, PETA received veterinary records and treatment records for these seven cats for the period of January 16, 2009 to December 4, 2012, although many of the records we were provided go beyond that date. These documents illustrate that the problems of chronic infections and poor health have persisted in this laboratory through at least the end of 2012. Given these records and their prior clinical history, it would be anomalous for all seven cats to now be in "excellent clinical condition." PETA would gladly make these records available for OLAW's review.
5. On page 7, paragraph 1, the Draft states that one cat was observed behaving in one of the "behavioral study procedures" and that the cat was "a willing participant." As a factual matter, we disagree strongly with the notion that any cat in this experiment is a "willing participant." The fact that the protocol outlines that cats must undergo food deprivation for as long as six days straight prior to participating in recording sessions is itself evidence that the cats are not "willing participants" but instead must be coerced into cooperating out of extreme hunger.
6. On page 8, paragraph 6, the Draft Summary begins by stating that the allegations in PETA's complaints "were generally not substantiated." We strongly object to this

characterization and feel that the content of the Draft overall contradict such a claim. As you know, PETA's allegations about the treatment of cats at UW are based entirely on information gleaned from UW's own records regarding the care these animals received in the several years preceding the dates of our complaints. Whether or not this fact pattern existed at the time when OLAW visited UW in April 2013 or not is a separate issue from whether or not our allegations surrounding UW's past conduct are true and whether or not UW was in compliance with PHS Policy during that time.

Specifically, the Draft indicates that OLAW investigated and corroborated the following substantive allegations that PETA alleged in our 2012 complaints:

- In PETA's September and November 2012 complaints, we documented with UW's records how all ten cats used in this laboratory from 2006 to 2008 suffered chronic, severe bacterial infections as a result of the fact that experimenters screw a steel post into their skull and implant metal coils in their eyes. Some cats have had to be euthanized as a result of their deteriorating health. This was the central allegation in PETA's November 5, 2012 complaint and was corroborated during a USDA inspection in December 2012.
- In PETA's September 2012 complaint, we documented with UW's records how on June 11, 2008, during a highly invasive surgery performed on Double Trouble, the instrument delivering anesthesia "became detached" which caused Double Trouble's "anesthetic depth to lighten." Double Trouble's records indicate that she "showed signs of waking" and UW personnel noted that her heart and respiratory rate both markedly increased. The Draft corroborates these allegations as well on page 4.
- In PETA's September 2012 complaint, we documented with UW's records how Double Trouble's bacterial infections were chronic and resilient. Eventually, her health deteriorated so much that experimenters had to euthanize her. Double Trouble's bacterial infections were a direct consequence of experimenters screwing a metal post to her skull. The Draft corroborates these allegations as well on page 4.
- In PETA's September 2012 complaint, we documented with UW's records how the IACUC approved the protocol in question even though it provided contradictory information as to how many animals would be used in the experiment. PETA outlined this in our September 12, 2012 complaint on page 7. The Draft corroborates these allegations as well on page 4 and page 8 when it requests that the protocol be rewritten to remove "ambiguous information."
- In PETA's September 2012 complaint, we documented with UW's records how the scientific justification for the number of animals used in the experiment was deficient.

On page 4 of the Draft, OLAW acknowledged that the protocol's "justification for the number of animals to be used on the study required additional information." On page 8 of the draft, OLAW also recommended that "ACUC review of the rewritten protocol should evaluate the use of the cat as the only acceptable model for this study and examine the number of animals is requested; the protocol is to clearly outline each procedure, provide specific humane endpoints, and contain no ambiguous information." It is telling that OLAW had to issue a formal "recommendation" that UW's ACUC abide by existing federal law and PHS Policy in the re-review of this protocol.

- In PETA's November 2012 complaint, we documented with UW's records how one cat, Cali, had a severe adverse reaction (kidney failure) when she was injected with neomycin in a crude attempt to intentionally deafen her. This was an extremely dangerous method by which to induce deafness. Even though neomycin's nephrotoxic properties are well-known in the medical community, based on the records available UW staff apparently hypothesized that Cali was dehydrated. On pages 5 and 6, the Draft acknowledges this problematic incident and that a different application route is now used, but does not provide any further information.

It is impossible for OLAW's Draft to corroborate the aforementioned allegations made by PETA and also claim that these same allegations "were generally not substantiated."

Additionally, the Draft does not address the following serious, well-documented allegations from PETA's complaints:

- In April 2008, Double Trouble was anesthetized with a mixture of ketamine and acepromazine to undergo a procedure to measure auditory brainstem response. Her records indicate that during this procedure she was "kicking" and "waking up." Personnel wrote "anesthesia too light?" on her records. PETA outlined this incident in our September 12, 2012 complaint and provided OLAW with all relevant documentation.
- Following Double Trouble's June 2008 surgery, she started to twitch and her face appeared paralyzed, which UW staff noted was a "neurological sign." Double Trouble likely had nerve damage as a result of the crude surgeries performed on her, but veterinary staff never appeared to seriously investigate the matter to confirm the cause of Double Trouble's clinical signs. PETA outlined this in our September 12, 2012 complaint and provided OLAW with all relevant documentation.
- Timmy woke up during a December 2008 surgery where metal coils were being implanted in her eyes. During the surgery, fluid began to fill her lungs and her

endotracheal tube was removed, which caused her to “wake up” in the middle of the highly invasive procedure. PETA outlined this incident in our September 12, 2012 complaint and provided OLAW with all relevant documentation.

- PHS Policy and the Animal Welfare Act require a principal investigator to consider alternatives to all potentially painful and distressful procedures described in a proposal for animal use. Yet, the alternatives search included in the UW protocol does not include an assessment of any of the specific procedures covered by the protocol, nor does it include the species of animals being used, and thus cannot represent a “reasonable and good faith” effort to identify alternatives. PETA outlined this in our September 12, 2012 complaint.

PETA is grateful for OLAW’s investigation of this matter and solicitation of feedback on factual matters contained in the Draft. We respectfully ask that the Draft be revised to more accurately reflect the facts outlined above.

Thank you in advance for your time and consideration. I can be reached at Telephone # or JeremyB@peta.org should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "JEREMY BECKHAM". The signature is stylized and written over a large, light-colored scribble or mark.

Jeremy Beckham
Research Project Manager
People for the Ethical Treatment of Animals

Wolff, Axel (NIH/OD) [E]

From: Wolff, Axel (NIH/OD) [E]
Sent: Wednesday, September 18, 2013 2:18 PM
To: 'Jeremy Beckham'
Subject: RE: PETA's response to OLAW Draft re UW-Madison

Thank you for this report Mr. Beckham. I have received it and was able to download it. You will receive a copy of the final report upon completion.

Axel Wolff, M.S., D.V.M.
Director, Division of Compliance Oversight
OLAW

From: Jeremy Beckham [<mailto:JeremyB@peta.org>]
Sent: Wednesday, September 18, 2013 1:36 PM
To: Wolff, Axel (NIH/OD) [E]
Subject: PETA's response to OLAW Draft re UW-Madison
Importance: High

September 18, 2013

Dear Dr. Wolff:

Thank you for being understanding regarding the UPS delivery problems.

Attached is PETA's response to OLAW's Draft Report on Investigation of Allegations of Noncompliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals at the University of Wisconsin-Madison.

Please reply to this email to let me know you received it and were able to download and view the attachment. Thank you for your attention to this matter and for OLAW's thorough investigation.

Sincerely,

Jeremy Beckham
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Laboratory Investigations Department
People for the Ethical Treatment of Animals (PETA)
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