

### A Word From OLAW and USDA

Although this scenario involves rats and mice only, this commentary was coordinated between the Office of Laboratory Animal Welfare (OLAW) and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Animal Care (USDA/APHIS/AC) because some of the basic IACUC and IO authority comments would apply to both agencies if the scenario had involved a USDA-covered species. This commentary assumes that the research project in question was PHS-supported. Readers are cautioned that the issues involved in this analysis are highly context-specific and should not be overly generalized.

This scenario poses two central questions: does the IO have the authority to stop an activity that the IACUC has approved, and must the infraction be reported promptly to OLAW (and/or APHIS for USDA-covered species)?

In both cases, the answer is an unequivocal "yes".

As pointed out by one of the reviewers, PHS *Policy* at IV.C.8 is explicit in recognizing the authority of officials at the institution to conduct further appropriate review of proposals that have been approved by the IACUC. 9 CFR Section 2.31(d)(8) contains almost identical language for Animal Welfare Act enforcement purposes.

For PHS *Policy* purposes, it may be a matter of semantics as to the correctness of describing the IACUC or IO actions as suspensions if the activity in question was never approved in the first place. Some may view this as an unauthorized "significant change" from a previously approved protocol, while others may simply call it a new activity conducted without a protocol. Regardless of whether the action is labeled a suspension, the unapproved animal activity still constitutes serious noncompliance with the PHS *Policy* (IV.F.3) and, as such, requires prompt reporting to OLAW.

For APHIS purposes, 9 CFR Section 2.31(d)(7) requires the IO to report to APHIS any suspension of an animal activity initiated by the IACUC. Even though the suspension in this case was not conducted strictly according to regulatory requirements (which state that this can only be done at a convened meeting of a quorum of the IACUC), it apparently was done in accordance with the institution's decision to allow the AV to temporarily suspend a protocol, and therefore would have to be promptly reported to USDA and any Federal agency funding that activity.

OLAW has issued guidance that identifies a change of species as an example of a "significant change" requiring prior IACUC approval<sup>1,2</sup>. This is also consistent with the NIH Grants Policy Statement (Rev.03/01) that identifies the substitution of one animal model for another as an example of "change of scope" likely requiring prior NIH (Grants Management Officer) approval. The signature block on the face page of the PHS form 398 grant application requires the institution to declare that it meets and will maintain compliance with all applicable terms and conditions of award. Knowingly submitting false information in a federal grant application subjects the signers to civil or criminal penalties.

Notwithstanding the fact that the IACUC could have approved the use of more than one species in the original protocol, there is no question about the IACUC's intent regarding the limitation of its approval to rats. The PI acknowledged this limitation when he revised the protocol to exclude mice, and cannot subsequently claim a misunderstanding. The technicians' disregard for the veterinarian's instructions to wait for clarification may also indicate a culture of noncompliance within the lab. No amount of rationalization about lack of harm done can erase the fact that the PI knowingly violated the protocol. The IACUC's willingness to accept such behavior is shocking, given the potential consequences for the institution that include violations of PHS *Policy*, NIH Grants Policy (including possible disallowance of charges against the grant), and the federal False Claims Act (31 U.S.C. §§ 3729–3730).

Another matter for consideration is the publication of articles in scientific journals. Most scientific journals have editorial policies or require statements attesting to full compliance with applicable federal animal welfare laws and policies. The investigator in this scenario would not be able to make such a statement truthfully. To act dishonestly in this regard would risk public embarrassment to the PI and his institution, and could harm the integrity of the biomedical research enterprise.

### References

1. Potkay, S., Garnett, N.L., Miller, J.G., Pond, C.L. & Doyle, D.J. Frequently asked questions about the Public Health Service Policy on Humane Care and Use of Laboratory Animals. *Lab Anim. (NY)* 24, 24–26 (1995).
2. USDA/APHIS/AC. Research Manual Part 18. <http://www.aphis.usda.gov/ac/researchmanual/18-4PROC.PDF>.

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further review and approval, but may not approve an activity that has not been approved by the IACUC<sup>2</sup>." Thus in both his roles, as Great Eastern's Vice President for Research and as the IO, Schiller has authority to review and approve or withhold approval, in this case suspend, research projects. He could not overrule the IACUC and approve a protocol that they had rejected, but he can, as he has in this case, suspend a project for further review of the issues raised.

Although I can certainly agree with the Committee's desire to work with the investigator to resolve problems and allow the investigator to continue research, I agree with the IO that there are many unresolved

issues in this case. Because the meeting involved the potential suspension of a protocol, I would have invited the IO to attend the meeting. This probably would have eliminated the problem of Schiller countering the IACUC. Jenkins had full authority to suspend the research temporarily. The technicians should not have continued with the surgery until after the meeting resolved the issue. The technicians were not aware of what rodent species was on the protocol. This makes me wonder how many other protocol issues on this and other projects escaped the awareness of the technicians. Additionally, it would appear that Maslo is directing the technicians without following the protocol.

The *US Government Principles for the Utilization and Care of Vertebrate Animals* requires that animals be of the appropriate species<sup>3</sup>, and the Guide for the Care and Use of Laboratory Animals lists the key items of a protocol to include justification of the species<sup>4</sup>. The PHS *Policy* and AWAR require that IACUCs review and approve protocols, and that significant changes be reviewed and approved before being implemented.

Maslo had selected rats as the most appropriate species at the time that the protocol was approved. To use mice would require submitting an amendment request with justification to the IACUC. When Jenkins raised the issue of mice versus rats,