

June 22, 2016

Howard Bauchner, MD
Editor in Chief
JAMA and The JAMA Network

Dear Dr. Bauchner:

Thank you for replying to my [request for retraction](#). I truly appreciate the time that you took to look into this matter. However, your [response](#) does not address the main issue that I raised: “The 2005 JAMA paper’s primary finding is based upon a demonstrably false assertion.”

This false assertion is the authors’ claim that “fetal awareness of noxious stimuli requires functional thalamocortical connections.” This statement is patently wrong, as documented in my letter via the journals *Pain: Clinical Updates* and *Behavioral and Brain Sciences*.

Your reply defends the *JAMA* paper on the grounds that the authors “included modifiers that reflect their review of the evidence available at that time, including uncertainty.” However, the authors included no such modifiers about this falsehood that forms the central argument of their paper. Instead, they plainly stated it as if it were a fact, when in reality, it is a proven untruth.

According to the “[Retraction Guidelines](#)” of the Committee on Publication Ethics, “Journal editors should consider retracting a publication if they have clear evidence that the findings are unreliable, either as a result of misconduct (e.g. data fabrication) or honest error (e.g. miscalculation or experimental error).” The 2005 *JAMA* paper appears to meet this standard.

Your response states that “the article by Merker noted in your May 27 letter never mentions the term fetal pain.” This statement has nothing to do with the points I made, and it appears to be a strawman. I cited the paper by Merker to show that the *JAMA* paper’s central argument (awareness of pain requires functional connections between the thalamus and cortex) is erroneous. To reiterate:

A 2007 paper in the journal *Behavioral and Brain Sciences* documented that children born with little or no cortex (hydranencephaly):

- “are conscious,” “awake,” “often alert,” and “show responsiveness to their surroundings in the form of emotional or orienting reactions to environmental events....”
- “express pleasure by smiling and laughter, and aversion by ‘fussing,’ arching of the back and crying (in many gradations), their faces being animated by these emotional states.”
- behave so normally that they “may initially present no conspicuous symptoms,” and “occasionally the condition is not diagnosed until several months postnatally, when developmental milestones are missed

Concluding, the author noted that these findings have “ramifying implications for issues in medical ethics,” including “pain management in children” who lack a cerebral cortex.

Your response also asserts that “the information we have indicates that the authors complied with the journal conflict of interest requirements in 2005.” In my email to you dated June 16, 2016, I asked if you would “forward me a copy of these requirements,” and you neglected to do so. Instead, you replied that the requirements “focused on potential financial COI [conflicts of interest]” and “I now consider these matters closed.”

As documented in my letter via a 2005 article from *USA Today* and the website of the Women’s Options Center in San Francisco, Eleanor Drey, one of the authors of the *JAMA* paper, was (and still is) the medical director of this clinic that provides abortions. Unless she received no monetary compensation for this work, I find it difficult to believe that her failure to disclose this information to *JAMA* did not violate your standards. To reiterate, the following notice is printed on the paper: “Financial Disclosures: None reported.”

That seemingly deceptive notice appears to be a violation of medical publication ethics. The Editorial Policy and Publication Ethics Committees of the World Association of Medical Editors [states](#) that:

Clinicians have a financial competing interest if they are paid for clinical services related to their research—for example, if they write, review, or edit an article about the comparative advantage of a procedure that they themselves provide for income.

Given the clarity of this standard and Drey’s role as the medical director of an abortion clinic, I again request a copy of *JAMA*’s conflict of interest policy at the time this paper was published.

The retraction guidelines of the Committee on Publication Ethics also state that “notices of retraction should ... be published promptly to minimize harmful effects from misleading publications.” Major media outlets are repeatedly citing this 2005 *JAMA* paper as evidence that fetal pain is unlikely before 29 weeks, and this creates two harmful effects:

- 1) the public and lawmakers are being misled.
- 2) preborn humans are likely being subjected to severe pain through late-term abortion methods. For example, the *Washington Post* has [described](#) the procedure of “dismemberment” abortions, in which “the fetal limbs are pulled off the body in utero, sometimes while the fetus is still alive.” A 2007 Supreme Court ruling [explains](#) the procedure in greater detail.

Given these realities, the *JAMA* paper seems to meet the criterion of “harmful effects” that necessitate a prompt retraction.

Hence, I respectfully request that you provide a transparent, detailed, and attestable account of *JAMA*’s decision to not retract this paper. I also request that you reconsider this decision in light of the facts above.

Sincerely,

A handwritten signature in black ink that reads "James D. Agresti". The signature is written in a cursive, flowing style.

James D. Agresti
President
Just Facts