

## Research Fraud by Health Practitioners and the Criminal Law

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### Introduction<sup>1</sup>

Traditionally, research fraud by health practitioners has been regulated by professional associations and registration boards. Perhaps one of the most well-known cases involved Dr William McBride, the discoverer of the teratogenic properties of Thalidomide. In 1993 Dr McBride was removed from the register of medical practitioners in New South Wales following an investigation that revealed that he had falsified data in his research on the drug scopolamine hydrobromide.<sup>2</sup>

Dr McBride, like most others who engage in research fraud, was not criminally prosecuted for his misconduct but sustained reputational damage, loss of position and the withdrawal of research funding. Yet since 1988 – five years before the NSW Medical Tribunal deregistered Dr McBride – there has also been the possibility of criminally prosecuting those who engage in this type of fraud. Indeed, the criminal prosecution of researchers who deliberately engage in deception for the purpose of obtaining research grants, postgraduate qualifications and/or publications has become a new and important approach to the regulation of egregious research misconduct.

For health practitioners, as indeed most citizens, the threat of criminal prosecution for wrongdoing is a potent disincentive. This chapter reflects on the role of the criminal law in regulating research fraud. It posits that there is no reason why research fraud engaged in by scientific researchers for the purpose of obtaining financial advantage (for themselves, their institution and/or their research projects) should be treated any differently to similar conduct engaged in by others in the community; consequently, research fraud should be subject to the sanctions of the criminal law. Indeed, in light of the potentially harmful consequences of this form of fraud for research participants, colleagues, institutions, publishers, journals and trajectories of research, the deployment of penalties under the criminal law should be viewed as a constructive means to deter grossly unacceptable professional conduct and to encourage adherence to fundamental ethical norms of health research.

1 For a more extensive discussion of some of the cases canvassed in this chapter, see Ian Freckelton, *Scholarly Misconduct: Law, Regulation and Practice* (Oxford University Press, Oxford, 2016).

2 Dr McBride was reinstated in 1998. See Michael Magazanik, *Silent Shock* (Text Publishing, Melbourne, 2015); for Dr McBride's own account, see William McBride, *Killing the Messenger* (Eldorado, Sydney, 1994).

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