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December 4, 2018

**VIA ELECTRONIC MAIL**

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Dr. Carolyn Westhoff

Editor-In-Chief, Contraception

Elsevier, Inc.

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New York, NY 10169

***Re: Maintaining rigor in research: flaws in a recent study and a reanalysis of the relationship between state abortion laws and maternal mortality in Mexico, Darney, B. et al., Contraception 95 (2017) 105-111***

Dear Dr. Westhoff:

We represent Drs. Elard Koch, John Thorp, and Joseph Stanford. We understand that our clients have been in communication with you over the past several months concerning the above-referenced article ("Article" or "Darney Article") and their request for a retraction. While the Article has now been retracted, the retraction language is not acceptable.

The retraction notice reads as follows:

This article has been retracted: please see Elsevier Policy on Article Withdrawal (<https://www.elsevier.com/about/our-business/policies/article-withdrawal>).

This article has been retracted at the request of the Editor-in-Chief and Authors. The authors recently discovered an error that affected the results in their article on the relationship between state-level maternal mortality in Mexico and state-level abortion legislation. In Table 2 the beta-coefficient for abortion legislation was calculated as -22.49 and erroneously interpreted as +22.49. This error affects several of the paper's conclusions, and thus the editor and authors have jointly made the decision to retract the paper.

The authors would like to express their sincere regret at the errors in their initial report.

Quite simply, the retraction notice is not accurate. At the very least, it is erroneous, inaccurate and/or ambiguous. The statement, “The authors recently discovered an error . . .” is not correct. The authors did not simply “discover” an “error” in their Article. As you know, it was after replicating Darney et al.’s entire study (including the original database) that Dr. Koch and his team discovered that Dr. Darney and her co-authors seriously misinterpreted a pivotal result. The misinterpretation essentially *invalidated* the assumptions and conclusions in the Article. The retraction notice wholly fails to mention the foregoing, including the long process of external review after our clients’ submission of their reply article, as well as the correspondence with you and others at the journal and Elsevier. As Dr. Koch noted in his August 13, 2018 email to you, the retraction should be accompanied by a reply from my clients or editorial comment pointing out the substantial issues leading to the retraction.

Moreover, my clients ruled out any error in computing the negative sign of the beta coefficient in their replication study. Paradoxically, in the Article, the authors interpreted the beta coefficient (-22.49) on Table 2 using the words “decline,” “negative association,” and “decreasing” effect. These interpretations by the authors are basically correct (they are related to coefficients with a negative sign, never a positive sign as the retraction note states). The problem, however, is that in the text of their Article, the authors linked this correct negative sign to a ‘decline’ in the MMR for *Mexico City* instead of a decline for the other 31 Mexican states.

It may well be that the retraction notice is based on the “erratum” proposed by the authors at the beginning of the review process. However, as noted above, my clients’ replication study *ruled out* the existence of any error or “typo” in the sign of the coefficient. That is the reason the retraction notice is inaccurate and/or potentially fabricated. Furthermore, the retraction notice fails to state the other major issues addressed in my clients’ manuscript which was submitted in response to the Article.

In addition, we are troubled that the manuscript my clients submitted in response to the Darney Article remained “under review” for *more than six months*. Then, on November 29, 2018, you advised my clients that their submitted manuscript is “no longer relevant” due to the fact that the Darney Article has been retracted. *Contraception’s* decision not to publish my clients’ manuscript directly damaged their reputations. For more than six months, the Darney Article was in the public domain, read and cited by others as a basis to criticize my clients’ BMJ Open article, yet *Contraception* refused to give my clients an equal platform to defend their article. With all due respect, my clients’ manuscript is not “irrelevant.” At the very least, in addition to the below changes which we propose be made to the retraction itself, we request that *Contraception* agree to publish a commentary or editorial article with my clients’ most important findings. Also, as my clients previously requested, please share with them any comments about their manuscript which were received from external reviewers during the review process.

Finally, as you know, my clients have previously expressed their concern over the possible conflict of interest due to the fact that Dr. Blair Darney, the lead author of the *Contraception* Article, is on the Journal's editorial board. When this issue was first raised, in August 2018, Mr. Andrea Boccelli rejected the notion of a conflict, stating to Dr. Koch that while Dr. Darney is currently on *Contraception's* editorial board, she was not at the time her Article was accepted for publication, and that all papers, including papers submitted by board members, are "assessed using the same criteria" as is applied for all other submissions (8/30/18 email from Mr. Boccelli to Dr. Koch). While those facts may be true, they are somewhat immaterial at this stage. The Journal, ***on whose editorial board Dr. Darney – the lead author – currently sits***, has just issued a retraction whose content is unacceptable and unquestionably as deferential to Dr. Darney as a retraction could be under these circumstances. We are concerned that the editorial board's decision to publish a relatively innocuous retraction was motivated by its desire to protect the reputation of one of its own, Dr. Darney, at the expense of the reputations of my clients. Given the substantial and undeserved reputational damage that the *Darney et al.* paper caused our clients, the retraction must be revised to more accurately state the magnitude of the "error" by Dr. Darney and her co-authors. My clients request that the retraction be revised to read as follows:

This article has been retracted: please see Elsevier Policy on Article Withdrawal (<https://www.elsevier.com/about/our-business/policies/article-withdrawal>).

This article has been retracted at the request of the Editor-in-Chief and Authors. The article purported to replicate, reanalyze and provide a critical review of a previous study on the relationship between state-level maternal mortality ratio (MMR per 100,000 live births) in Mexico and state-level abortion legislation [Koch E, Chireau M, Pliego F, Stanford J, Haddad S, Calhoun B, Aracena P, Bravo M, Gatica S, Thorp J. Abortion legislation, maternal healthcare, fertility, female literacy, sanitation, violence against women and maternal deaths: a natural experiment in 32 Mexican states. *BMJ Open* 2015;5(2):e006013]. The authors of the *BMJ Open* article conducted a thorough replication study of the now retracted paper, and they submitted their findings to the editor-in-chief of *Contraception*. An independent and neutral statistical review commissioned by the editors corroborated several methodological flaws, including a serious misinterpretation in the beta coefficient for abortion legislation in Table 2 of the now retracted article. This coefficient was calculated as -22.49 decline in the MMR associated to the 31 states with restricted access to abortion, but the authors erroneously interpreted this result as associated to Mexico City with wide access to abortion. This and other major errors affect several of the paper's conclusions, and thus the editor and authors have jointly made the decision to retract the paper.

The authors would like to express their sincere regret at the errors in their initial report. The retraction of the article removes the basis the authors relied on for criticizing the *BMJ Open* study.

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We appreciate your consideration of this letter and the proposed alternative retraction language. If appropriate, please forward this letter to the Journal's counsel, if any. We hope that we can reach a mutually agreeable resolution of this issue soon.

Very truly yours,



Paul S. Thaler

cc: (via email)  
Dr. Elard Koch  
Dr. John Thorp  
Dr. Joseph Stanford