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Declarations, Accusations and Judgement: Examining conflict of interest discourses as performative speech-acts

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Abstract

Concerns over conflicts of interest (COI) in academic research and medical practice continue to provoke a great deal of discussion. What is most obvious in this discourse is that when COIs are declared, or perceived to exist in others, there is a focus on both the descriptive question of whether there *is* a COI and, subsequently, the normative question of whether it is good, bad or neutral. We contend, however, that in addition to the descriptive and normative, COI declarations and accusations can be understood as performatives. In this article, we apply J.L. Austin's performative speech-act theory to COI discourses and illustrate how this works using a contemporary case study of COI in biomedical publishing. We argue that using Austin's theory of performative speech-acts serves to highlight the social arrangements and role of authorities in COI discourse and so provides a rich framework to examine declarations and accusations of COI that often arise in the context of biomedical research and practice.

Keywords: J.L. Austin, conflicts of interest, discourse analysis, research ethics

Introduction

Physicians, academic researchers, public administrators, elected representatives and many others are expected to act in the public's interest. Financial gain, family obligations, or ideological commitments are expected to be secondary to their primary obligations (Thompson, 1993). Actions that allow secondary interests to interfere with primary interests are often assigned the label "conflict of interest". Indeed, hardly a day goes by without a professional or public figure being accused of "conflict of interest" (COI) and demands being made for greater transparency and/or regulation to ensure that the COI does not taint the profession or compromise the public interest. For the most part, such calls to action are accepted uncritically. And to the extent that critical voices are added to the discourse at all, they are usually either descriptive—focusing on whether the discourse about COI is factually correct—or normative—focusing on whether it is morally or legally appropriate to assign the label. While descriptive and normative accounts are important, we argue that they fail to address an important dimension of COI-related discourse: the "performative" dimension.

In this article, we explain what is meant by performative speech-acts, apply this idea to COI discourses, and illustrate how understanding COI as performative speech acts works using a contemporary case study of COI in biomedical publishing. We argue that using Austin's theory of performative speech-acts serves to highlight the social arrangements and role of authorities in COI discourse and provides a rich framework for examining declarations and accusations of COI that often arise in the context of biomedical research and practice.

I. The “performative” dimension of language

Words *do* things. Although this is an uncontroversial point among linguists and philosophers of language, words often slip into the background of daily life, leaving their activity unnoticed. In his 1955 James lectures, J.L. Austin famously drew attention to the connection between physical actions and the act of saying something (1975 114). He observed that statements do not merely *describe* a state of affairs or convey information, but can *effect* a state of affairs. To illustrate his point Austin used the following examples: “I will take this person to be my spouse”, “I bet you a dollar it will rain tomorrow” or “I bequeath my watch to my brother”. These sentences, according to Austin, do not merely describe what is being done. Rather, to utter these words ‘is to do it’ (Austin, 1975 6). Austin called these utterances “performative” as they perform an action.

Austin's theory of performative speech acts has provoked a wide literature that crosses traditional disciplinary boundaries of continental and analytic philosophy, anthropology and linguistics. John Searle, H.L.A. Hart, Judith Butler and Pierre Bourdieu are some of the prominent philosophers and theorists who have engaged with Austin's ideas on performative speech acts. The purpose of this section is not to review all the varieties of uses Austin's theory has been put to, or the criticisms it has faced. Rather, we outline Austin's core theory and draw on some of Bourdieu's criticisms to highlight pertinent aspects in considering how performative speech act theory may inform our understanding of conflict of interest discourse in biomedical publishing.

As mentioned, Austin was interested in the way certain sentences *did something* in the world, rather than merely describing the world. Austin proposed that we refer to sentences that do something as performative sentences or utterances. As he put it, the ‘name is derived, of course, from “perform”, the usual verb with the noun “action”’: it indicates that the issuing of the utterance is the performing of an action – it is not normally thought of as just saying something’ (Austin, 1975 6-7). Performatives should not be thought of as a frivolous “performance” in the sense of a charade that masks true intentions. Indeed, as Austin's examples of marriage vows or Pierre Bourdieu's analysis of Catholic rituals indicate, performatives are often solemn and earnest acts with significant consequences (1991).

There are four key features of performatives. First, performatives *produce effects in the world*. Edmund Erde writes that the ‘performative meaning is the effect speakers expect to achieve beyond merely informing their audience’ (1996 13). It is important to emphasise that this is not merely affecting or influencing audiences through rhetoric, but effecting states of affairs.

Second, performatives depend on specific circumstances and *social arrangements* in order to produce their effect. As Austin indicated, a performative is not simply the uttering of words – ‘a good many other things have as a general rule to be right and to go right if we are to be said to have happily brought off our action’ (Austin, 1975 14). Many of those ‘things’

fall within what Austin referred to as the *social arrangements* in which the speech act occurs. To have its desired effect, the pronouncement of “Not guilty” requires a host of background and foreground features to be in place. It needs to be uttered by the judge, who has heard the case, after the appropriate trial procedures have been followed, in a court in which the judge has jurisdiction and so on. Thus for Austin, we must look beyond the actual words uttered and ‘consider the total situation in which the utterance is issued – the total speech-act’ (Austin, 1975 52).

It is in relation to social arrangements that Pierre Bourdieu’s work on performatives is important. Bourdieu criticised Austin for failing to adequately follow through with the analyses of the social conditions and conventions of speech acts, and instead keeping his analysis within remit of formal linguistics. For Bourdieu, performative speech acts could not be isolated from the institutions that set the conditions of discourse (1991 8). An institution for Bourdieu was a durable set of social relations that endow individuals with power, status, and resources to act and speak in certain ways, and to be understood by others within that set of social relations (1990 192ff). The social arrangements of institutions establish the conditions in which performatives can be made and effects achieved (Hall, 1999).

The third feature of performatives is that they depend for their effects on the *authority of the speaker*. This, in turn, is determined by the social arrangements that condition performative speech acts. Austin’s examples of naming a ship or marrying a couple emphasised the necessity of an authoritative speaker in order for a speech act to be effective. However, the influence that social arrangements have on the authority of speakers, and the boundary between inappropriate persons and inappropriate circumstances is not always clear. Austin uses the example of a clergyman baptizing the wrong baby with the right name (Austin, 1975 35). The clergyman has the authority, but the social arrangements are not quite right.

The authority of the speaker is derived from, and exercised within, certain social arrangements. This was a central concern for Bourdieu. He contended that the ‘power of words is nothing other than the *delegated power* of the spokesperson’ (Bourdieu, 1991 107). The delegation of this power comes from ‘outside’ the speaker and is orchestrated by the social arrangements in which the speech act takes place. It is not just an office-bearer speaking, but also the symbolic capital manifest in that office that makes the speech effective. The authorized speaker, according to Bourdieu, is only able produce an effect on others and social arrangements ‘because his [sic] speech concentrates within it the accumulated symbolic capital of the group which has delegated him and of which he is the *authorized representative*’ (Bourdieu, 1991 110-111).

Bourdieu also believed that the success of the speaker and the discourse uttered ‘is dependent on the combination of a systematic set of interdependent conditions which constitute social rituals’ (Bourdieu, 1991 111). For Bourdieu, the power of language derives not from the words themselves, or solely the authority of the speaker, but ‘in the institutional conditions of their production and reception’ (Bourdieu, 1991 111). Discourses of authority, such as a sermon, lecture or, as we are arguing, a declaration or accusation of a conflict of interest is not dependent on a compelling enunciation. Rather, each of these discourses ‘exercises its specific effect only when it is *recognized* as such’ (Bourdieu, 1991 113), and it is the social arrangements in which the discourse is uttered that enable the necessary recognition.

This brings us to the fourth key feature of Austin's performatives: their dependence on whether the combination of the first three features results in a *felicitous* (i.e. recognised) or *infelicitous* (i.e. misrecognised) speech act. According to Austin, while performatives have the grammatical make-up of a statement, 'when more closely inspected, [they are] quite plainly, *not* utterances which could be "true" or "false"' (Austin, 1975 12). A performative utterance that we may be tempted to call 'false' – promising to bequeath a watch you no longer possess to a sibling – is 'not indeed false but in general *unhappy*' (Austin, 1975 14). That is, the utterance does not meet the various criteria of the social arrangements in which it is uttered.

Austin outlined two main categories of infelicitous performatives: Misfires and Abuses. Misfires occur when the act is purported but void due to misinvocation or misexecution of procedure. Abuses occur when the act is professed but is hollow. That is, the procedure is followed but is done so with insincerity or disloyalty (Austin, 1975 16). However, Austin is quick to point out that infelicitous performatives due to misfires or abuses are not necessarily without effect. Following the procedures of marriage when one of the couple is already married, for example, is a "misfire" through which we 'have most interestingly have committed the act of bigamy' (Austin, 1975 17).

Austin's marriage example can illustrate the process by which we might determine whether a performative is felicitous or infelicitous. In uttering 'I will' a person potentially alters the social reality of their relation with another person. However, for this potential to be fulfilled, the appropriate social arrangements need to be in place. A priest or celebrant needs to be present. The couple getting married need have a status that is permitted to enter into marriage (e.g. being a human being, of a certain age, who is not currently married etc). And in relation to these social arrangements, the speaker needs to have the authority to speak. The best man cannot say 'I will' on behalf of the groom, nor can photographer say 'I pronounce you married' on behalf of the priest or celebrant. With these features in place, the speech act 'I will' is not determined true or false, but felicitous or infelicitous. That is, the speech act either happily or unhappily performs the intended action of marriage.

To recap, performatives produce effects in the world, depend on specific social arrangements, require an authorised speaker, and can be either felicitous or infelicitous. We contend that these features provide a useful analytic lens for examining declarations, accusations and judgements of conflicts of interests in biomedical literature.

II. The performative nature of declarations, accusations and judgments of conflict of interest

In professional life, conflicts of interest (COI) are most commonly managed through *declaration* of interests prior to accepting a particular position, publishing research or performing a role. Indeed, failure to declare a COI, or an inadequate declaration of COI, can result in *accusations* of corruption from a whistle-blower, journalist or ombudsman. These declarations and accusations are often accepted at face value. To the extent that they are questioned, this usually centres on whether or not secondary interests are impeding primary interests—i.e. whether or not a COI exists—and, if so, whether this is good, bad or neutral.

With few exceptions, declarations, accusations and judgments of COI have generally not been conceived as performative utterances (Brody, 2007; Erde, 1996). Rather the overwhelming focus has been on whether a description of the state of affairs is accurate and whether this state of affairs is good or bad. However, there are a number of features of the statements about COI that can usefully be examined as performative acts—most notably the

central place that *declarations, accusations and judgments* have in “getting” COIs understood and managed in particular ways. In examining COI discourse as performative speech acts, we are not denying that COIs “exist” in the world, and can be described as such. Facts about a researcher accepting money from a sponsor with a financial stake in the outcome of the research are important. What we are arguing, however, is that COI declarations, accusations and judgments about these “facts” do not merely describe a reality but ‘get something done’ in a specific social arrangement (Eagleton, 2007 19).

Declarations as performative speech acts

Declarations of COI are extremely common, and have become standardised speech acts that occur in academic publishing, grant applications, submission to public tender, at the commencement of adopting a public office and in a host of other scenarios. Although there are a variety of procedures for declaration, most involve some form of public acknowledgement of an agent’s past or present relations, activities, services or associations with parties that could potentially have an interest that undermines the agent’s capacity to perform their primary task or role. These standardised speech acts can be understood as a form of ritual that both ‘fits’ the world and ‘constitutes it’ (Hall, 1999 185). That is, the COI declaration purports to ‘fit’ with certain facts about an agent’s relations or activities, but it also ‘constitutes’ a social reality in which these facts are to be understood. Rather than simply describe certain facts about a researcher’s relationship with a pharmaceutical company, a COI declaration effects a social reality in which the researcher and their work is understood. This performative function has both descriptive and normative components as it describes relationships and activities, but it also constitutes a world in which these activities and the researcher are understood as trustworthy, authoritative, honest, or the opposite.

Accusations as performative speech acts

In contrast to declarations, which are highly formalised and standardised, accusations take many forms. Like COI declarations, accusations not only alert people to something that exists in the world, but also do things, such as ‘tainting’ individuals, institutions or work practices by altering the way they are regarded; shifting responsibility back onto the agent; condemning the individual, institution or practice as corrupt; and warning others. For example, in academic publishing, only the authors can declare a COI, yet anyone can accuse the author of having a COI that diminishes the authority and meaning of their work.

Judgments as performative speech acts

Judgement following a declaration or accusation of COI is different again. The judge is an authority – ombudsman, judge, Prime Minister – who determines whether a COI is, in fact, present when a declaration or accusation is made. A COI judgment thus confirms whether a COI declaration or accusation is felicitous or infelicitous. This judgement is itself both a description of something in the world and a performative utterance that transforms and shapes the world. In utterance of a judgement (by an appropriate judge) the status of a person transforms from the accused to the convicted as guilty, untrustworthy or corrupt or they can be acquitted. While the material conditions may not change, the utterance produces an effect that transforms the social reality.

In this way a judgment too can be felicitous or infelicitous depending on the social arrangements that grants authority to the judge. While there can be some confusion over the performative act of declarations and accusations, the question of who has the authority to judge is where there is the most uncertainty. Other uncertainties include: how is the COI assessed and by what criteria, and what makes an effective or felicitous judgement?

In some cases, COI judgments are accepted without controversy. For example, The Integrity Commission in Tasmania (Australia) was established by an act of parliament (Integrity Commission Act 2009) to improve the standard of conduct, propriety and ethics in public authorities in Tasmania. In its 2014 Report on allegations of nepotism and conflict of interest by senior health managers, the Commission judged that conflicts of interest were apparent in a number of scenarios involving senior health administrators (Integrity Commission, 2014 8). Based on this judgement, the Premier of Tasmania terminated the employment of two senior administrators.

However, COI judgements are not always so clear or conclusive. The uncertainty is partly due to ambiguity of the authority of the judge. An ombudsman at a journal can investigate claims of COI, however the conclusiveness of his or her judgement is limited due to the extent of authority and social arrangements. For instance an ombudsman does not have the legislative power to access all the relevant information that may or may not determine if a COI is present and what its normative status should be. Investigations can take years and are often inconclusive. COI judgements are therefore difficult to perform in social arrangements whether there is not a specific authority.

COI declarations, accusations and judgments thus describe certain factual relations, yet they also act upon and constitute a particular reality, producing effects in the world. Yet in order to achieve this felicitously, these speech acts are dependent on specific social arrangements and authorities. The merit of considering each of these aspects of the COI discourse as performative acts can be illustrated by reference to a major dispute regarding COI that surrounded the publication of a paper by Ian Hickie and Naomi Rogers in *The Lancet*.

III. The Lancet and the Hickie and Rogers Case

Professor Ian Hickie is an internationally renowned Professor of Psychiatry and Director of the *Brain and Mind Institute* at the University of Sydney, Australia. He has received numerous national and international awards recognizing his research, and has also held significant positions in advising governments on drugs and mental health reform. In 2009, Hickie and his colleague Naomi Rogers were commissioned by *The Lancet* to write a New Drug Class paper on antidepressant treatment strategies targeting the circadian system.

Following a two year peer-review process, the article was published online on 18 May 2011 and in print on 13 August 2011 (Hickie & Rogers, 2011). The article reviewed five distinct melatonin analogues and concluded by indicating that one of these analogues—agomelatine—had potential benefit as an antidepressant. The published article included a lengthy conflicts of interest declaration. However, in the January 21 2012 issue, *The Lancet* published six letters criticising Hickie and Rogers. These critics explicitly or implicitly accused Hickie and Roger of having a COI due to their involvement with Servier Laboratories, the pharmaceutical company manufacturing agomelatine.

This case is useful in illuminating the different performative features of declarations and accusations of COI and the way social arrangements can make a clear judgement of culpability extremely difficult.

Declarative speech acts in the “Hickie and Rogers case”

The COI declaration accompanying Hickie and Rogers's article was detailed and comprehensive.

IBH was previously chief executive officer and clinical adviser of beyondblue, an Australian National Depression Initiative. He has led projects for health professionals and the community supported by governmental, community agency, and drug industry partners (Wyeth, Eli Lilly, Servier, Pfizer, AstraZeneca) for the identification and management of depression and anxiety. He has served on advisory boards convened by the drug industry in relation to specific antidepressants, including nefazodone, duloxetine, and desvenlafaxine, and has participated in a multicentre clinical trial of agomelatine effects on sleep architecture in depression. IBH is also supported by a National Health and Medical Research Council Australian Medical Research Fellowship. He is a participant in a family-practice-based audit of sleep disturbance and major depression, supported by Servier, the manufacturers of agomelatine. NLR has received grant support from Vanda Pharmaceuticals, Servier, Pfizer, and Cephalon, and has received honoraria for lectures from Pfizer, CSL Biotherapies, and Servier. She has previously received research funding from Vanda Pharmaceuticals, manufacturers of tasimelteon. She has also received an unrestricted educational grant from Servier. Research studies done by IBH and NLR are mainly funded by NHMRC project and program grants (Hickie & Rogers, 2011).

In this declaration, Hickie and Rogers list the facts about specific relations and activities they have undertaken, yet it is insufficient to view this text as simply descriptive. Rather, it needs to be viewed as performing a particular act in the social arrangement of biomedical publishing. In this case, it produces at least four different effects i) it makes visible and known certain relations (transparency); ii) it implies permission that allows the continuation of the activity of publishing research; iii) it indicates absolution that defuses issues of secrecy through transparency; and iv) it shifts responsibility to readers who need to judge for themselves how to respond.

Clearly, this declaration did not simply take the form "I/We declare that we have no conflicts of interest". Written in the third person, it appeared to be a description of different relations, activities and services in which the authors had been engaged. Irrespective of the form in which the declaration was stated, it is consistent with Austin's idea that performatives can be both implicit and explicit (Austin, 1975 32). Whether a performative is explicit or implicit often depends on the social arrangements and circumstances making it so (Austin, 1975 33)—in this case, the social arrangements mandated that a standardised declaration explicitly catalogue relations between the researchers and funders. Yet, in this explicit declaration is the implicit performative act of a ritual that minimises the perception that these funding relations alter the trustworthiness of the research.

Accusatory speech acts in the "Hickie and Rogers case"

Following the publication of the agomelatine review, six critical letters were published in *The Lancet*, all of which suggested that Hickie and Rogers had overstated the efficacy of agomelatine. (Barbui & Cipriani; Carroll; Howland; Jureidini & Raven; Lloret-Linares, Bergmann, & Mouly; Serfaty & Raven). The authors of three of these letters accused Hickie and Rogers of bias due to their relationship with Servier Laboratories. Jon Jureidini and Melissa Raven argued that Hickie and Rogers's relationship with Servier contributed to 'unjustified and misleading conclusions in the summary (abstract), withholding of information about serious adverse effects, citation misrepresentation, and possible conflicts

of interest' (Jureidini & Raven). Bernard Carroll argued that the article 'seems biased for promotional effect', and questioned the role of Servier Laboratories in the research as well as drafting of the article (Carroll). In his letter, Carroll implicitly highlighted the effectiveness of Hickie and Rogers's COI declaration as a performative speech act that allows the continuation of certain activities by claiming that Hickie and Rogers's paper 'seems to break new ground for sponsored writing in medical journals, with conflicts of interest hidden in plain sight while bias continues' (Carroll). Carroll seemed to be arguing that, by exhaustively declaring COI, Hickie and Rogers had performed a social ritual that allowed their relationship with Servier Laboratories to continue and at the same time to enable publication of their manuscript. Celia Lloret-Linares, Jean-François Bergmann and Stéphane Mouly warned readers that they 'should be aware of Hickie and Rogers's numerous conflicts of interest with Servier' (Lloret-Linares et al.). They then paraphrased Hickie and Rogers' declaration and transformed it into an accusation that the '[c]linical trials and audit sponsored by Servier, unrestricted educational grants, consultancy fees, and honoraria for lectures might explain the subjective nature and inappropriateness of Hickie and Rogers's conclusions' (Lloret-Linares et al.).

Hickie and Rogers subsequently wrote a letter to *The Lancet* defending their integrity and the conclusions of their research. While Hickie and Roger's response letter is where the matter ended with *The Lancet*, the case produced a great deal of discussion in Australian medical and general news media (Brill, 2012; Dunlevy, 2012; Phillips, Komesaroff, Kerridge, & Hemming, 2013; Ryan, 2012), largely due to the reputation and influence of Hickie as a researcher and adviser to government on policy relating to mental health reform. However, perhaps the most novel aspect of this critical discourse was the use of Twitter and its role in drawing wider attention to the matter.

At the same time that the six critical letters were published in *The Lancet*, the editor of *The Lancet*, Richard Horton, used Twitter to question the integrity of Hickie's research by suggesting that his speaking engagements with Servier Laboratories had influenced his analysis. Responding to a tweet by Melissa Raven, one of the letter writers, Horton stated that 'the bias in this paper is very disturbing...[as the paper] purported to be an unbiased review of a new drug class'. Horton linked Hickie's supposed bias to 'the fact that ...[he] took part in speaking engagements for the company [Servier] making one of these drugs'. He continued, 'It's a difficult thing when a clearly intelligent person does not see a problem in mixing pharma promotion with science. It's explosive'. Horton's tweets thus added to the accusations against Hickie of bias, lack of transparency, and scientific misconduct resulting from his relationship to Servier Laboratories.

Accusations of COI in biomedical publication produce effects in at least four ways: i) warning readers; ii) altering the social arrangements supporting certain reputations, ideas and practices; iii) tainting individuals and the profession; and iv) focusing attention on some features of an event, while defusing others. Importantly, accusations of COI in the social arrangement of academic publishing in general, and pharmacology in particular, can have significant consequences for a researcher's reputation and integrity. Austin's idea of warning as a performative speech act seems to be particularly salient here (1975 131). Depending on the relationship between the speech act and the facts, to warn or alert an audience produces a certain action or effect in the audience. It is not merely describing circumstances, but claiming that the circumstances warrant an action, such as avoidance. A warning also alters social relations.

In their accusation that Hickie and Rogers have a COI, Lloret-Linares, Bergmann and Mouly explicitly intended to warn readers and make them aware of the declared relationship with Servier. In doing so they performed an act that transformed, or at least questioned, the trustworthiness of Hickie and Rogers and the practice of declarations. Hickie and Rogers's article thus became a potentially harmful or suspect piece of research that should be avoided or perhaps retracted.

From Hickie and Rogers's perspective, the accusations of COI made against them were consistent with Austin's notion of a 'misinvocation' (Austin, 1975 17). That is, the accusations followed a procedure but misfired in performing the act because Hickie and Rogers had faithfully executed their disclosure, which purports to negate or minimise effects of potentially conflicting relationships. Following the initial accusations, Hickie and Rogers did not deny their relationships with Servier Laboratories, but appealed to the exhaustive disclosure of those relationships as evidence that they had dealt with them appropriately.

'...the paper was commissioned by The Lancet and developed solely by us. It was not initiated or supported financially by Servier Laboratories...Our other academic, educational, public research, and financial relationships with Servier Laboratories (and other government and industry-related entities) were disclosed exhaustively at the time of publication.'

While Hickie and Rogers implied that the COI accusations were infelicitous misinvocations (resulting in a misfire of a well-intended act of declaration), the accusations suggest that Hickie and Rogers's COI declaration was an infelicitous abuse – where an act is professed but hollow and insincere (Austin, 1975 16ff). More specifically, the accusation was that Hickie and Rogers followed the procedure of declaring all interests, but did so in an insincere manner that hid COI in 'plain sight while bias continue(d)' (Carroll). Importantly, even if Hickie and Rogers are right, and these accusation or declarations are unhappy, they are not simply descriptive and still produce the effects described above (Austin, 1975 39ff).

Austin argued that to alter the social arrangements such that reputations, ideas and practices are questioned requires a certain level of authority within that social arrangement (1975 14ff). In this instance, the authority of the letter writers stemmed from three sources. First, they have scientific expertise in the matter at hand. Second, all hold positions at reputable research institutions. Third, in going through the editorial process of *The Lancet*, an additional level of authority was added to their views that further legitimated their accusation of COI. Through this authority, these scholars were able to alter the way researchers, and a piece of research, were regarded and also call into question ideas of transparency and practices of declaration.

Horton's activities on Twitter are a particularly powerful illustration of the importance of authority for the effectiveness of accusatory speech acts. As the editor of *The Lancet*, Horton has considerable authority, including procedural authority via privileged insight into the publication process of Hickie and Rogers's article, and symbolic authority due to the reputation of *The Lancet* as one of the world's leading medical journals. This authority was then amplified via his 13 000 Twitter followers, which extended and reinforced his influence into non-specialist publics. With this authority and access to a wide audience, Horton's accusations of COI profoundly shaped the social reality in which the reputations of Hickie and Rogers exist.

Hickie was acutely alert to Horton's power in this regard. In a commentary he wrote for the Australian online publication *Crikey*, he claimed that most of the criticisms of his article 'would have passed without further comment if it were not for the tweeting behaviour' of Horton (Hickie, 2012). This comment is revealing not only for the impact of Twitter, but also for its implication that, in most other circumstances, where those concerned have less power, COI accusations almost always dissipate without having a clear impact. Horton's tweets, in contrast, produced a snow-balling effect where more people became aware of the COI accusations and not only questioned the integrity of Hickie and Rogers's article, but of Hickie's work on mental health reform more generally. Hickie complained that 'Horton's intervention has given renewed life to this broader anti-psychiatry campaign in Australia' (Hickie, 2012).

Importantly, in altering social arrangements and tainting research and researchers, COI accusations focus attention on some features of COI, while defusing others. For example, the attention in social and general media focused on Hickie rather than Rogers. This was arguably due to Hickie's reputation in Australia and Internationally. More significantly however was the almost exclusive focus on Hickie and Rogers rather than on *The Lancet*. Juredini and Raven and Carroll questioned *The Lancet's* responsibility and potential financial benefits for allowing the article to be published, and Hickie also attempts to shift the focus towards Horton and *The Lancet*, stating: 'If at any stage in this two-year process Dr Horton had genuinely believed I was personally compromised, or that our work was not of a sufficient academic standard, he could have decided not to proceed with publication' (Hickie, 2012). However, in tweeting accusations against Hickie, Horton successfully distanced *The Lancet* and his role as editor from the production of the article and minimised its responsibility for accepting the author's COI declaration as sufficient. Horton tweeted: 'Peer review improved it, yet not enough.' This mirrors the performance of COI declarations in placing responsibility on the reader by exhaustively making known all relations and then requiring them to judge how to respond.

Judging speech acts in the "Hickie and Rogers case"

The Hickie and Rogers case appears to have had no clear conclusion, most likely because it is not obvious who could, or should, have fulfilled the role of judge in this case. Horton could have assumed this role, yet his tweeting and other public comments placed him in the role of accuser. Hickie apparently lodged a complaint with *The Lancet* Ombudsman, who also could potentially have fulfilled the role of judge; however there has not yet been a report or judgement as to whether Hickie and Rogers held a COI or whether the accusations (especially Horton's) were unfounded. The article has not been retracted and has been cited over 150 times. The letters remain public, as do Horton's tweets, despite accusations that they 'breach professional standards' (Ryan, 2012).

IV. **Concluding remarks**

We have demonstrated how a performative analysis can illustrate the socially embedded nature of COI disputes, direct attention to the effects of declarations, accusations and judgements, and make salient questions of authority and the social conditions for normative assessment of COI.

We anticipate a number of criticisms of this approach. Some may object that rather than clarifying COI, a performative analysis confuses and complicates our understanding of COIs in health and medicine. We do not deny that drawing attention to the social arrangements

and production of effects of COI discourse can be complex. However, this is the nature of COI. To pretend otherwise will permit problematic features of COI discourse to go unchecked or unnoticed. For example, viewing COI declarations as simple descriptions of the “truth” about COI, rather than as performative acts, we can easily come to see declarations as intrinsically good, and perhaps as sufficient for managing COI. In demonstrating the performative aspects of COI declarations, we are not suggesting that such declarations are redundant. Indeed we recognise that they can convey important information to help readers evaluate the objectivity and trustworthiness of research (Resnik, 2013). However, in doing so the COI declaration shifts responsibility on to readers and allow the continuation of the status quo.

Perhaps a more serious complaint against the analysis we have outlined is the dependence of felicitous or infelicitous declarations, accusations and judgements on social arrangements. Embedding COI in social arrangements can rub against simplistic applications of normative frameworks – deontology, utilitarianism and more recently principlism – that dominate ethical analyses in biomedical research and practice. Appeals to these frameworks often aspire to provide universal and objective direction. The performative analysis put forward here, and especially the notion of felicitous or infelicitous acts, troubles such aspirations. Rather than providing universal and objective principles, the performative approach requires careful analysis and attention of the discourse in relation to specific social arrangements. Although normative formulas such as Dennis Thompson’s, which define COIs as the presence of absence of troublesome personal interests or social commitments, can be helpful (1993), the conditions for COI judgement are dependent on the specific set of social arrangements in which COI discourse occur. To apply a simple of formula of whether a secondary interest undermines a primary interest invariably excludes aspects of the social arrangement that define and shape those interests. This is not to suggest normative formulas do not have a place, but that the performative dimension raises salient questions of power and authority, which helps to shed light on the role of social arrangements to “set-up” the normative concern (Erde, 1996 15).

In summary, we contend that there are four advantages in conceiving COI discourse as performative speech acts: i) it addresses the effects of COI declarations/accusations; ii) it brings to light the social arrangements necessary for a declaration or accusation to be made; iii) it reveals the role of authoritative speakers in making COI declarations or accusation; and iv) rather than the fixed judgements of true/false or good/bad associated with descriptive and normative accounts, the performative analysis allows for a flexible account of using Austin’s notion of felicitous or infelicitous speech acts. This analysis does not replace normative judgements of COI, but provides tools that can be used to ensure that such judgements can be made felicitously.

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