Threats from the Libel Law

Adrienne Page QC:

Based upon personal experience, libel actions which may have the potential to stifle scientific debate (usually medical science) have mainly been brought by individual practitioners or researchers whose ethics or honesty have been challenged. Cases of powerful corporations suing individuals for defamatory criticism of their products or business are relatively less common.

Most of the defamation actions involving medical science that have gone to trial or close to trial have ended without success for the claimants.

Experience would suggest that the most effective means of seeing off such a libel claim is a strong defence of justification (i.e. truth). The public interest defences, Reynolds privilege and fair comment, can pose difficulties for defendants because they frequently lead to close scrutiny by the Court of the conduct of the defendant in researching and writing the offending publication. It is usually far preferable to have the Court’s scrutiny focussed upon the conduct of the party complaining of defamation, through a justification defence.

In the case of publications of defamatory allegations to those with a proper interest in the subject (e.g. in papers for specialist conferences), the law of qualified privilege should be effective to protect the author, subject to the author having acted in good faith.

The far greater problem for those who publish defamatory criticism is the high cost of libel actions.