

91-02

January 22, 1991

**Subject: MISCONDUCT IN RESEARCH AND CREATIVE ACTIVITY****I. Introduction**

A. Institutions applying for and awarded grants and contracts from the U.S. Department of Health and Human Services (HHS), particularly, its operational division, the U.S. Public Health Service (PHS), are required to provide, annually, assurance that the institution has established and will follow an administrative process for (a) reviewing, (b) investigating, and (c) reporting allegations of "misconduct in science" in connection with PHS- sponsored biomedical and behavioral research conducted under the auspices of the institution. (Federal Register, Vol. 54. No. 151, pp. 32446-32451.) The Assurance will be submitted on forms provided by the PHS together with such aggregate of information on allegations, inquiries, and investigations as the Secretary of HHS may require.

B. Since misconduct in the professional activities of faculty and staff are neither frequent nor, when occurring, limited to persons in the sciences, it is appropriate that a policy governing the institutional response to misconduct in research, whether under Federal initiative or not, treat all faculty members and staff members equally and fairly. Accordingly, this policy concerns misconduct in research and creative activity in all academic disciplines, misconduct in science being a subset within which activities sponsored by the Federal government must be treated in ways defined by the sponsoring agency. All references to "misconduct in research" in this document include "creative activity" and include the Federal definitions, processes, and requirements concerning "misconduct in science."

**II. Definition of Misconduct in Research**

A. Misconduct in research is defined as fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic community for proposing, conducting, or reporting research and creative activity. Misconduct does not include honest error or honest differences in interpretations of data.

**III. Responsibility**

A. The Director of University Research (DoR) shall be responsible for (1) filing the required University assurances with agencies funding research, (2) maintenance of a complete and up-to-date set of agency regulations regarding misconduct in research (3) preparation of regular periodic reports and submission of both periodic and special reports, and (4) taking immediate and appropriate action, as defined below, upon receipt of allegations of misconduct in research by employees of the University or the California State University, Long Beach Foundation.

B. The Director of Research and other University and Foundation personnel have specific responsibilities as detailed below.

**IV. Allegations of Misconduct in Research**

A. Any person who alleges to the University or to the Foundation misconduct in research by an employee of the University or the Foundation must submit the allegation in writing to the DoR. Anonymous or unsigned allegations cannot be accepted. The personal privacy of those making allegations will be maintained within the constraints of due process in the conduct of inquiries and investigations, as described below. Upon receipt of written allegations, the DoR shall inform the Provost.

B. Upon receipt of a direct written allegation of misconduct in research or when first notified in

writing by the Office of Scientific Integrity (OSI), the DoR shall immediately inform the Provost and Vice President for Academic Affairs (Provost) and the Assistant Vice President and Dean of Graduate Studies (AVP-DGS) of the allegation.

C. With the advice of the Provost and/or the AVP-DGS the DoR shall (1) if the allegation involves research funded under the U.S. Public Health Service, inform the OSI that a formal allegation has been received and, (2) inform the Chair of the Scholarly and Creative Activities Committee (Chair-SCAC) that an allegation has been received and that an Inquiry must be established, and (3) inform the person or persons against whom the allegation has been made, except in the circumstances of additional criminal allegations where proper civil authority requests a delay of this information, in which case the activities of an Inquiry Panel will commence only after the Panel has informed the person or persons of the allegation.

D. Accusations or communications concerning allegations from any source which are not received in writing shall not be considered to be "allegations" under the terms of this policy. Upon receipt of such information the DoR shall take reasonable means to determine whether a written allegation will be registered. When no written allegation or notice of allegation is received within a reasonable period of a verbal accusation (two weeks), the DoR shall take no further action under this policy.

## **V. Matters of Evidence and Due Process**

A. If there is an allegation that includes an allegation of criminal acts in addition to "misconduct in research" as defined above, the Provost shall inform the President, the Director of Public Safety, and, if the misconduct was alleged to have occurred in a project or program sponsored by the U.S. Public Health Service, the Office of Scientific Integrity (OSI) of the National Institutes of Health.

B. In the case of allegations of criminal acts in addition to misconduct in research, an Inquiry shall be conducted **only with respect to the allegations of misconduct in research** and all reasonable care will be taken to coordinate the activities of the Inquiry Panel and the civil authorities.

C. An Inquiry or subsequently an Investigation shall not be terminated by an external authority except by the order of the Chancellor or a court having jurisdiction in the criminal matter.

D. Persons against whom allegations of misconduct in research have been made are (1) to be provided a complete summary of the allegations, and a copy of this policy statement, and (2) at that time informed that an Inquiry or an Investigation are non-judicial, internal reviews of matters of fact. (see policy on responses immediately below and in sections VII.E.1., and VIII.D.1.)

E. An Inquiry (or Investigation) Report is a summary of the facts discovered and the consensual opinion of the Panelists regarding these facts. As such it is a University document and its authors are protected in the same way as other University employees are protected when they render formal opinions regarding the competence and fitness for service of other University employees.

F. A person or persons against whom an allegation is made shall have **15 regular working days** from the time of notification that an allegation has been received to prepare a formal written response. This response shall be presented directly to the Inquiry Panel.

G. Neither an Inquiry Panel nor an Investigation Panel has the right of unlimited access to personal property or to require testimony in seeking information concerning an allegation. No University or Foundation employee is required to respond to direct or written questions by members of Inquiry or Investigation Panels. A Panel may include in its report the fact that persons decline to respond to direct or written questions.

H. All records, equipment, supplies, animals, plants, micro-organisms, chemicals, computer

programs and files, and research notes directly relating to a research project conducted on the property of the University or the Foundation, or on property rented by the University or Foundation, or otherwise under the auspices of the University or Foundation are considered to be the property of the University or of the Foundation. Such artifacts or entities must be made available to members of Panels for their review, unless it can be shown that such a record, item of equipment, artifact, or other entity is personal property and was created, purchased, rented, or otherwise acquired independently from and not employed in any way in the conduct of the research project.

I. In certain circumstances, personal property involved in the conduct of a research project is loaned to the project during those periods when it is being used, observed, etc. Thus, for example, a personal wristwatch used to time events in a project may be held by the University as an element of evidence when the allegation directs attention to the use of the wristwatch as a part of the alleged misconduct, e.g., stating time measurements in increments more precise than either the mechanism or the face of the watch permit. On the other hand, private automobile used to reach the site where the wristwatch was employed is not material evidence unless there was also an allegation of misconduct related to the automobile itself.

## **VI. Matters of Privacy and Reputation**

A. In all aspects of the application of this policy the maximum attainable level of confidentiality and personal privacy will be sought and maintained. All persons involved, including those alleging misconduct, are enjoined from public statements concerning the allegations during the conduct of the inquiry or investigation, except as a court of law may require. Violations of this injunction will be made a matter of record in the Inquiry and/or Investigation Report.

B. At all times diligent efforts will be taken to maintain or to restore, if need be, the reputations of those against whom allegations are not confirmed.

C. Diligent efforts will be taken to protect the positions and reputations of persons, who in good faith, make allegations of misconduct in research.

## **VII. "Inquiries" into Allegations of Misconduct in Research**

### A. Formation of Inquiry Panel

1. Within 10 regular working days of receipt of a written allegation and acting together, the Chair-SCAC and the DoR shall secure the cooperation of and empanel no fewer than two members of the faculty who have both expertise in the conduct of the relevant academic discipline or a cognate academic discipline and each of whom has sufficient social and professional distance from the person or persons against whom the allegation is made to give reasonable assurance of independence of judgment.

### B. Charge to an Inquiry Panel

1. The charge of an Inquiry Panel is to determine from available evidence and testimony whether or not there is sufficient reason to believe that misconduct in research has occurred. The Inquiry Panel must interview the person or all persons against whom an allegation is made. The Inquiry Panel must make every reasonable effort to interview all persons making allegations. An Inquiry Panel is also charged with the preparation of an Inquiry Report, as described below.

2. If at any time in the conduct of an Inquiry any member of the Inquiry Panel believes that there is reasonable evidence of criminal activity, the Panel member shall so inform the DoR who shall inform the Provost and the President, the Director of Public Safety and, if relevant, within 24 hours of the presentation of acceptable evidence, the OSI.

### C. Inquiry Report

1. The Inquiry Panel must provide the DoR and the Chair- SCAC a written report of its findings within **60 regular working days** of receipt of a written allegation. A copy of this report will be

provided to the Provost and the AVP-DGS.

2. An Inquiry Report shall contain the following:

- (a) a statement of the allegation;
- (b) a statement by the Panel of the elements of the allegation which they believe to be covered by the definition of misconduct in research, above;
- (c) a statement of the evidence reviewed;
- (d) a summary of the relevant interviews;
- (e) a statement of the conclusions of the Panel, including an opinion as to whether there is sufficient reason to conduct a formal Investigation.

3. An Investigation into allegations of misconduct in research shall be carried out when sufficient evidence is observed by the Inquiry Panel

- (a) to provide prima facie support for the allegation of misconduct in research, and
- (b) to suggest that
  - (1) the alleged misconduct is not limited to nor completely defined by the allegation or the evidence already discovered, or
  - (2) where the allegation cannot be confirmed or disconfirmed with the immediately accessible evidence, or
  - (3) when the possible extent or severity of violations raises questions of either civil or criminal offense or violation of CSU or University regulations.

4. The DoR and the Chair-SCAC shall review the Inquiry Report. If in their opinion the Inquiry Panel has not satisfactorily reviewed the allegation and the circumstances surrounding it, or that the Inquiry Report does not reflect a satisfactory review, they shall direct the Panel to continue the Inquiry and/or to resubmit the Report. In such a case the **60 regular working day limitation shall be extended by 30 additional regular working days** and, if relevant, a written explanation of the nature of the extension submitted to the OSI.

5. When the DoR and the Chair-SCAC believe that a satisfactory inquiry and satisfactory Inquiry Report has been received, they shall inform the Provost and AVP-DGS as to its conclusions.

6. If the DoR and the Chair-SCAC disagree as to any matters relative to the conduct of proceedings under this policy, they shall meet with the Provost and with the Chair of the Academic Senate to discuss and resolve the disagreement.

#### D. Response to an Inquiry Report

1. Within ten regular working days after receipt of the Inquiry Report the DoR shall provide the person or persons against whom the allegation was made a copy of the Report.

2. The DoR shall provide notice of the right to respond to the written Inquiry Report in writing, and that to be included with the Inquiry Report, such a response must be presented to the DoR within **30 regular working days** of receipt of the Report.

#### E. Conclusion of an Inquiry

1. If the Inquiry Report does not recommend a more formal Investigation, the DoR shall report the findings of the Inquiry Panel to the Provost, AVP-DGS, and, if relevant, the OSI. If the findings of the Inquiry report are determined to represent a complete review of the situation by the Provost (or OSI when involved), the Provost shall determine whether further action is to be taken and so notify the person or persons against whom allegations were made.

2. If an Inquiry Report does not recommend a formal Investigation, a person or persons against whom allegations have been made may request that an Investigation take place. In such a case, the Provost will direct the DoR to carry out the provisions of this document with respect to initiating an Investigation.

### **VIII. "Investigations" into Allegations of Misconduct in research**

#### A. Formation of the Investigation Panel

1. If the Inquiry Report recommends a complete Investigation, the DoR shall notify the Provost, AVP- DGS and, if relevant the OSI (supplying the information required in the relevant PHS guidelines). Within **30 regular working days** of receiving such a recommendation the DoR and the Chair-SCAC shall form an Investigation Panel by augmenting the existing Inquiry Panel, adding as many additional members of the faculty as necessary, normally to not more than a total of nine members, each of whom meets the tests of academic expertise and distance. The Investigation Panel shall elect a Chair and Secretary.

#### B. Charge to an Investigation Panel

1. The charge to an Investigation Panel is to:

(a) review the Report of the Inquiry Panel, particularly the recommendation for a formal Investigation;

(b) conduct a complete examination of the circumstances relating to the allegations of misconduct in research, including an examination of the records of the scientific project/study/etc., hereinafter referred to as "Project," including the Project grant proposal, budget, administrative records, personnel records, scientific records, and published materials. The Investigation Panel may consult with Provost, Vice President for Administration and Finance, Vice President for Student Services, or the Vice President for Development concerning information relevant to the Project and the allegations which is not available from the Project records or Project-related testimony. Provision of information is subject to the published regulations of the CSU, the University, and the Foundation; and

(c) provide a complete report, as required by current OSI regulations.

2. An Investigation Panel shall have access to and examine all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, the Investigation Panel shall conduct interviews of all individuals involved either in making allegations or against whom allegations are made, as well as individuals who might have information regarding key aspects of the allegations. Complete summaries of interviews shall be prepared and included as part of the Investigation Report.

3. If at any time in the conduct of an Investigation any member of the Investigation Panel believes that there is reasonable evidence of criminal activity, the Panel member shall so inform the DoR who shall inform the Provost and/or the AVP-DGS. If in the judgment of the Provost or AVP-DGS there is reasonable evidence to support the opinion, the DoR shall notify OSI (if relevant) and campus security. Such a report must be made within 24 hours of the presentation of the opinion and evidence by the Investigation Panel.

4. If any member of the Panel believes or in the course of an investigation comes to believe that other members of the Panel have a conflict of interest with respect to the Investigation, the member shall address this concern to the DoR. The DoR will confer with the Chair- SCAC, the Provost, and the AVP-DGS. If in the opinion of the Provost, there is reasonable evidence for such a concern, the member(s) will be asked to respond to the concern and, if upon hearing the explanation the Provost believes that the work of the Investigation Panel would be harmed or subsequently impugned, the member(s) will be thanked for their service and replaced.

5. When Investigation Panel members require special expertise not represented in the Panel, the Chair of the Panel shall communicate this need to the DoR. The DoR shall solicit the assistance of such an individual as an unpaid consultant to the Panel.

6. The Secretary of the Investigation Panel shall insure that all documents reviewed, interview summaries, and findings made are readily available during the conduct of the Investigation and are subsequently delivered to the DoR. All such documents shall be in a condition to be made available to the DoR and to the OSI as required. The Office of the DoR shall support the photocopy, document preparation, and reasonable travel requirements of the Investigation Panel.

### C. Investigation Report

1. An Investigation should be completed within **90 regular working days** of its initiation. Upon receipt of an Investigation Report, the DoR shall report its findings to the Provost and provide a copy of the Report to the person or persons investigated.

### D. Response to an Investigation Report

1. Upon receipt of an Investigation Report the DoR shall advise the person or persons against whom the allegation was made that, in order to have their written response appended to the Report, they must submit same within 30 regular working days. The inclusion of such an appendix to the Report does not affect the conclusions of the Report, nor does it represent the single means by which a response may be registered. If relevant, when directed by the Provost the DoR shall provide the OSI with the Investigation Report.

## **IX. Corrective Action**

The nature of non-disciplinary, corrective action taken as a result of the conclusion of an Inquiry or Investigation will depend on the individual characteristics of the situation. The Provost shall direct the relevant Dean or Deans, the relevant Foundation manager, or the DoR to effect changes in the conduct of the scientific project with the object of eliminating both the appearance and fact of misconduct. (See also Subsequent Disciplinary Action, below.)

## **X. Subsequent Disciplinary Action**

When the findings of an Inquiry Report (which does not require a subsequent Investigation) or the findings of an Investigation Report implicate an employee of the University or of the University Foundation under the definition of misconduct in research, the responsible Vice President shall initiate disciplinary proceedings against such a person in accordance with the provisions of relevant CSU and campus regulations and Memorandum of Understanding with faculty and staff bargain units. Where evidence of criminal activity has been disclosed the appropriate Vice President, the Provost, the President, and CSU General Counsel will be informed; the civil authorities will have been informed at the time that the evidence was disclosed as described above.

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**EFFECTIVE: Immediately**