

THE UNIVERSITY OF NEW MEXICO

RESEARCH MISCONDUCT POLICY

(Research Fraud Policy approved by UNM Faculty Senate, September 10, 1996; approved by the UNM Board of Regents, October 10, 1996; revised as "Research Misconduct Policy" approved by the UNM Faculty Senate, April 23, 2002; approved by the UNM Board of Regents, May 10, 2002; approved by the Faculty Senate, April 22, 2003 and February 24, 2004; approved by UNM Board of Regents, April 13, 2004.)

1. INTRODUCTION AND SCOPE

Integrity, trust, and respect are important elements in an academic research environment. Investigators typically conduct research and explain findings and theories with painstaking diligence, precision, and responsibility. However, research misconduct threatens both to erode the public trust and to cast doubt on the credibility of all researchers.

Because the University of New Mexico as well as the general public and government are affected by this issue, the faculty and administration have created a process to deal with research misconduct if it arises and to ensure the credibility and objectivity of research activities. In broad terms this process is to:

- Ensure that ethical standards for research at UNM are clearly stated and applied.
- Promptly inquire into allegations of misconduct and, where appropriate, initiate formal investigations and advise sponsors of action taken.
- Ensure that each investigation is properly documented to support findings and carefully conducted to protect any person whose reputation may be placed at risk during the process.
- Respect the principles of academic freedom.

The policy and procedures regarding research misconduct are intended to protect the integrity of the University's research enterprise and not hinder the search for truth or interfere with the expansion of knowledge

This policy applies to all individuals who may be involved with a research project, including, but not limited to, faculty, graduate/undergraduate students, staff, employees, contractors, visiting scholars, and any other member of the University's academic community.

2. DEFINITIONS

2.1 “Complainant” means a person who makes an allegation of research misconduct. There can be more than one complainant in any inquiry or investigation.

2.2 “Fabrication” is making up data or results and recording or reporting them.

2.3 “Falsification” is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

2.4 “NSF” means the National Science Foundation. The NSF has adopted rules establishing standards for institutional responses to allegations of research misconduct.

2.5 “ORI” means the Office of Research Integrity, an office within the U.S. Department of Health and Human Services that is responsible for overseeing the implementation of PHS policies and procedures on research misconduct.

2.6 “PHS” means the Public Health Service, a component of the U.S. Department of Health and Human Services. The PHS has adopted rules establishing standards for institutional responses to allegations of research misconduct.

2.7 “Plagiarism” is the appropriation of another person’s ideas, processes, results or words without giving appropriate credit.

2.8 “Recklessly” means that a person acts in such a manner that the individual consciously disregards a substantial and unjustifiable risk or grossly deviates from the standard of conduct that a reasonable individual would observe.

2.9 “Research misconduct” is defined as fabrication, falsification or plagiarism in proposing, conducting, reporting or reviewing sponsored or unsponsored research. The misconduct must have been committed intentionally, knowingly or recklessly. Research misconduct is further defined to include gross carelessness in conducting research amounting to wanton disregard of truth or objectivity, or failure to comply or at least attempt to comply with material and relevant aspects of valid statutory or regulatory requirements governing the research in question. Research misconduct is more than a simple instance of an error in judgment, a misinterpretation of experimental results, an oversight in attribution, a disagreement with recognized authorities, a failure in either inductive or deductive reasoning, an error in planning or carrying out experiments, or a calculation mistake.

2.10 “Respondent” means the person against whom an allegation of research misconduct is directed or the person who is the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

3. GENERAL PRINCIPLES

3.1 Research misconduct cannot be tolerated and will be firmly dealt with when found to exist.

3.2 For purposes of resolving allegations of research misconduct, the process established by this policy shall apply to allegations of fabrication, falsification or plagiarism. All other allegations of research misconduct shall be resolved utilizing other applicable University policies and procedures.

3.3 Charges of research misconduct shall be promptly reviewed and a copy of this policy shall be made available to the complainant. Allegations must be made in writing, and signed and dated by the complainant. If health or safety is involved, prompt remedial action shall be taken.

3.4 Every effort shall be made to protect the rights and the reputations of everyone involved, including the individual who in good faith alleges perceived misconduct as well as the alleged violator(s). A good faith allegation is made with the honest belief that research misconduct may have occurred. Persons making a good faith allegation shall be protected against retaliation. However, persons making allegations in bad faith will be subject to disciplinary action, up to and including termination or expulsion. An allegation is made in bad faith if the complainant knows that it is false or makes the allegation with reckless disregard for or willful ignorance of facts that would disprove it.

3.5 All members of the University community are expected to cooperate with committees conducting inquiries or investigations.

3.6 Confidentiality

Care will be exercised at all times to ensure confidentiality to the maximum extent possible and to protect the privacy of persons involved in the research under inquiry or investigation. The privacy of those who report misconduct in good faith will also be protected to the maximum extent possible. Files involved in an inquiry or investigation shall be kept secure and applicable state and federal law shall be followed regarding confidentiality of personnel records.

3.7 Conflict of Interest

If the Provost, the Vice Provost for Research, or Vice President for Health Sciences, as appropriate, has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The President of the University shall appoint designates to act instead.

When a case continues to the Inquiry and Investigation stages (Sections 5.3 and 6.3), if the President of the Faculty Senate has any actual or potential conflict of interest, the

person shall recuse him/herself from the case and the Senate President-Elect shall appoint a designate to act instead.

If any member of the Faculty Senate Operations Committee or the Chair of the Research Policy Committee has any actual or potential conflict of interest, the persons shall recuse themselves from the case. The Faculty Senate President, or designate as appropriate, shall appoint faculty members to act instead.

4. PRELIMINARY ASSESSMENT OF ALLEGATIONS

4.1 An initial report of alleged research misconduct shall be treated and brought in a confidential manner to the attention of the faculty member or other person (e.g., chairperson, supervisor, director, principal investigator) responsible for the researcher(s) whose actions are in question, or to the dean of the researcher's college, or to the Vice Provost for Research (for allegations concerning a main campus researcher) or Vice President for Health Sciences (for allegations concerning a HSC researcher). The person receiving the initial report shall, in turn, make an immediate confidential report of the allegations to the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

4.2 An initial report of research misconduct might arise as part of an administrative review. Such a report will be acted upon in accordance with this policy. The report should be brought confidentially to the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

4.3 Upon receipt of an initial report of alleged research misconduct, the Vice Provost for Research or Vice President for Health Sciences, or designee, shall conduct a preliminary assessment within seven (7) working days. The purpose of the preliminary assessment is to determine whether the allegation falls within the definition of research misconduct and whether there is sufficient evidence to warrant an inquiry. If both conditions are met the inquiry process shall be initiated. If the allegation is vague, an effort should be made to obtain more information before deciding whether there is sufficient evidence to warrant an inquiry. If the preliminary assessment finds insufficient information to allow specific follow-up or the allegation falls outside the definition of research misconduct, the matter will not proceed to an inquiry, and the Vice Provost for Research or Vice President for Health Sciences shall so inform the respondent and complainant in writing. The allegation may be referred for review under another University policy, as appropriate.

5. INQUIRY

5.1 Purpose and Initiation

If the preliminary assessment reveals that the allegation falls within the definition of research misconduct and there is sufficient information to allow specific follow-up, the inquiry process shall be initiated by the Vice Provost for Research or Vice President for Health Sciences, as appropriate. The initiating official will clearly identify the original

allegation and any related issues that should be evaluated in the inquiry. The purpose of the inquiry is to make a preliminary evaluation of the available evidence to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. The purpose of the inquiry is not to reach a final conclusion about whether misconduct occurred. The findings of the inquiry shall be set forth in an inquiry report.

5.2 Securing Research Records

After determining that an inquiry will occur, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, will direct the process whereby all original research records (or copies if originals cannot be located) and materials which may be relevant to the allegation are immediately secured. Prompt securing of records is in the best interests of both the respondent and UNM. Immediately upon ensuring that the research records are secure, the respondent shall be notified that an inquiry is being initiated and an inventory of the secured records shall be provided him/her. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested. The respondent shall be notified of the charges and the procedures to be followed.

5.3 Inquiry Committee

The inquiry shall be carried out by a committee of three persons appointed by the Vice Provost for Research or Vice President for Health Sciences, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate. At least two Inquiry Committee members shall be tenured faculty. One of the tenured faculty members shall chair the committee. Committee members should be selected on the basis of relevant research background and experience. Faculty members from other universities may be named to the Inquiry Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the inquiry.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Vice Provost for Research or Vice President for Health Sciences, as appropriate, in consultation with the President of the Faculty Senate, or his/her designate, will consider the objection and if it has merit, shall make appropriate substitution(s). In the case of disagreement regarding appointments, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall designate an official to assist the committee in conducting the inquiry. The committee shall receive a written charge from the Vice Provost for

Research or Vice President for Health Sciences, as appropriate, defining the subject matter of its inquiry prior to beginning its work.

5.4 Inquiry Process

The respondent and complainant shall be given an opportunity to interview with the Inquiry Committee. The committee may interview others and examine relevant research records, as necessary, to determine whether there is sufficient credible evidence of possible research misconduct to warrant conducting an investigation. University legal counsel shall be available to the committee for consultation.

The length of the inquiry shall not exceed sixty (60) days unless prior written approval for a longer period is obtained from the Vice Provost for Research or Vice President for Health Sciences as appropriate. If the period is extended, the record of the inquiry shall include documentation of the reasons for exceeding the sixty-day period.

5.5 Inquiry Report

The Inquiry Committee shall prepare a report that includes:

- (1) the names and titles of the committee members, and experts consulted, if any;
- (2) the allegations;
- (3) the PHS support, if any;
- (4) a summary of the inquiry process;
- (5) a summary of the evidence reviewed;
- (6) a summary of any interviews;
- (7) the conclusions of the inquiry as to whether an investigation is recommended; and
- (8) whether any other action should be taken if an investigation is not recommended.

The respondent shall be given fourteen (14) days to review the report and to add his or her comments, which will become part of the final inquiry report and record. Based upon the respondent's comments, the Inquiry Committee may revise its report.

5.6 Inquiry Determination

The Inquiry Committee final report will be sent to the Vice Provost for Research or Vice President for Health Sciences, as appropriate, who will determine whether the results of the inquiry provide sufficient evidence of possible research misconduct to warrant conducting an investigation or whether the matter will not be pursued further. The respondent and complainant shall be notified in writing of the decision.

6. INVESTIGATION

6.1 Purpose and Initiation

The purpose of the investigation is to explore the allegations in detail, examine the evidence in depth, and determine specifically whether research misconduct has been committed, by whom, and to what extent. If instances of possible misconduct involving a different respondent are uncovered, the matter should be sent to the Vice Provost for Research or Vice President for Health Sciences, as appropriate, to initiate a preliminary assessment.

The Investigation Committee will be appointed and the process initiated within thirty (30) days after the conclusion of the inquiry. If required by sponsoring agency regulations, the office of the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall notify the agency of its decision to commence an investigation on or before the date the investigation begins.

6.2 Securing Research Records

Any additional pertinent research records that were not previously sequestered during the inquiry will be immediately sequestered when the decision is made to conduct an investigation. The Vice Provost for Research or Vice President for Health Sciences, as appropriate, will direct this process. This sequestration should occur before or at the time the respondent is notified that an investigation will begin. The need for additional sequestration of records may occur for any number of reasons, including a decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured. As soon as practicable, a copy of each sequestered record will be provided to the respondent, or to the individual from whom the record is taken if not the respondent, if requested.

6.3 Investigation Committee

The investigation shall be conducted by a committee of five persons appointed by the Faculty Senate Operations Committee, in consultation with the Chair of the Research Policy Committee or his/her designate. Committee members should be selected on the basis of relevant research background and experience. All persons appointed from UNM shall be tenured faculty. Tenured faculty members from other universities or senior researchers from research institutions may be named to the Investigation Committee if a sufficient number of qualified UNM faculty members are not available. Members of the committee shall have no actual or potential conflicts of interest in the case, shall be unbiased, and shall, together, possess sufficient expertise to enable the committee to conduct the investigation. No more than two members of the Inquiry Committee may be appointed to serve on the Investigation Committee.

The respondent and the complainant shall be notified of the proposed committee membership and may object in writing to any of the proposed appointees on the grounds that the person, or the committee as a whole, does not meet the criteria stated above. The Faculty Senate Operations Committee will consider the objection and if it has merit, shall make appropriate substitution(s), in consultation with the Chair of the Research Policy Committee or his/her designate. In the case of disagreement regarding appointments made by the Faculty Senate Operations Committee, the Vice Provost for Research or Vice President for Health Sciences, as appropriate, shall decide the challenge. That decision shall be final.

If the committee so requests, the Vice Provost for Research or Vice President for Health Sciences shall designate an official to assist the committee in conducting the investigation. The committee shall receive a written charge from the Vice Provost for Research or Vice President for Health Sciences, as appropriate, defining the subject matter of its investigation prior to beginning its work.

6.4 Investigation Process

The investigation will normally involve examination of all relevant documentation. The committee shall make diligent efforts to interview the complainant, the respondent, and other individuals who might have information regarding aspects of the allegations. The interviews will be recorded on a recording device provided by the office of the Vice Provost for Research or Vice President for Health Sciences as appropriate. A verbatim written record shall be made of all interviews. A transcript of his/her interview shall be provided to each witness for review and correction of errors, which shall be returned and become part of the investigatory file. University legal counsel shall be available to the committee for consultation.

6.5 Investigation Report

The Investigation Committee shall prepare a draft of the final report that includes:

- (1) the names and titles of the committee members, and experts consulted, if any;
- (2) the allegations;
- (3) the PHS support, if any;
- (4) a summary of the inquiry process;
- (5) a summary of the evidence reviewed;
- (6) a summary of any interviews;
- (7) findings and basis for each finding;
- (8) conclusion(s) as to whether research misconduct occurred; and
- (9) recommendations for institutional action.

Copies of all significant documentary evidence that is referenced in the report should be appended to the report.

A finding of research misconduct requires that four conditions be met:

- (1) the conduct at issue falls within this policy's definition of research misconduct;
- (2) the misconduct be committed intentionally, or knowingly, or recklessly;
- (3) there be a significant departure from accepted practices of the relevant research community; and
- (4) the allegation be proven by a preponderance of the evidence. This means that the evidence shows that it is more likely than not that the respondent committed research misconduct.

The respondent will be provided with a copy of the draft investigation report for review and comment. The respondent will be allowed fourteen (14) days for review and any comments will be attached to the final report. The findings of the final report should take into account the respondent's comments in addition to all of the other evidence. The complainant may be provided with those portions of the draft investigation report that address the complainant's role and opinions in the investigation, and the complainant will have fourteen (14) days to review and submit any comments to the Investigation Committee. The report may be modified, as appropriate, based on the complainant's comments.

If the Investigation Committee puts forward a final report with a finding of research misconduct, the respondent has 14 days to elect a hearing before the Provost or Vice President for Health Sciences, as appropriate. The hearing will allow for argument, rebuttal, cross-examinations and a written record of the proceedings.

6.6 Institutional Review and Determination

The Investigation Committee final report will be forwarded to the Vice Provost for Research or Vice President for Health Sciences, as appropriate. The Vice Provost for Research will transmit the report to the Provost who is the University deciding official for cases where the respondent is not a Health Sciences Center employee. The Vice President for Health Sciences is the deciding official for cases where the respondent is a Health Sciences Center employee. The deciding official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions.

If the respondent has elected a hearing, the deciding official will conduct the hearing following the University model hearing procedure, available from the University Counsel's office. The Investigation Committee presents the case consistent with its report. The respondent presents the rebuttal. The respondent may have an advisor present.

The deciding official's decision should be consistent with the definition of research misconduct, the University's policies, and the evidence reviewed and analyzed by the Investigation Committee. The deciding official may also return the report to the Investigation Committee with a request for further fact-finding or analysis. The deciding

official's final determination will be sent to the respondent and complainant. If the deciding official's decision varies from that of the Investigation Committee, the basis for rendering a different decision will be explained in the report to ORI and other agencies as appropriate.

Respondent may appeal the final determination to the University President. An appeal is limited to: (1) a claim of procedural error; and/or (2) a claim that the sanction imposed as a result of a finding of research misconduct is inappropriate.

The investigation shall be completed within 180 days of the first meeting of the Investigation Committee. However, if PHS sponsored the research, the investigation shall be completed, with the final investigation report and final determination submitted to ORI, within 120 days of the first meeting of the Investigation Committee, unless ORI grants an extension.

7. ACTIONS FOLLOWING INVESTIGATION

7.1 Finding of Research Misconduct

If the final determination is that research misconduct occurred, UNM shall take appropriate action, which may include but is not limited to:

- (1) notifying the sponsoring agency;
- (2) withdrawal or correction of all pending or published abstracts and papers emanating from the research;
- (3) removal of the responsible person from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, rank reduction or termination of employment in accordance with UNM policies and procedures. In cases involving faculty, implementation must be consistent with the Policy on Academic Freedom and Tenure;
- (4) determining whether law enforcement agencies, professional societies, professional licensing boards, collaborators of the respondent, or other relevant parties should be notified; and
- (5) any other steps deemed appropriate to accomplish justice and preserve the integrity of UNM and the credibility of the sponsor's program.

7.2 Restoration of Respondent's Reputation

If the final determination is that no research misconduct occurred, efforts shall be undertaken to the extent possible and appropriate to fully protect, restore, or maintain the credibility of the research project, research results, and the reputation of the respondent, the sponsor and others who were involved in the investigation or deleteriously affected thereby. Depending on the circumstances, consideration should be given to notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in forums in which the allegation of research misconduct was previously publicized, expunging all reference to the research misconduct allegation

from the respondent's personnel files, or reviewing negative decisions related to tenure or advancement to candidacy that occurred during the investigation. Any institutional actions to restore the respondent's reputation must first be approved by the Vice Provost for Research or Vice President for Health Sciences, as appropriate.

7.3 Protection of the Complainant and Others

Regardless of whether UNM determines that research misconduct occurred, reasonable efforts will be undertaken to protect complainants who made allegations of scientific misconduct in good faith and others who cooperate in good faith with inquiries and investigations of such allegations. The Vice Provost for Research and Vice President for Health Sciences, or designee, will also take appropriate steps during the inquiry and investigation to prevent retaliation against the complainant. If a complainant believes that retaliation was threatened, attempted or occurred, he or she may file a complaint with the UNM Audit Department.

7.4 Allegations Made in Bad Faith

If relevant, the Vice Provost for Research or Vice President for Health Sciences will determine whether the complainant's allegation of research misconduct was made in good faith. If an allegation was made in bad faith, appropriate disciplinary action will be taken in accordance with UNM policies and procedures. If the complainant is not associated with UNM, appropriate organizations or authorities may be notified and administrative or legal action considered.

8. OTHER CONSIDERATIONS

8.1 Requirements for Reporting to ORI When Funding from PHS Is Involved

8.1.1 The decision to initiate an investigation must be reported in writing to the Director, ORI, on or before the date the investigation begins. The notification must include at a minimum the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved.

8.1.2 If UNM plans to terminate an inquiry or investigation without completing all relevant requirements of the PHS regulation, a report of such planned termination shall be made to ORI, including a description of the reasons for the proposed termination.

8.1.3 If UNM determines that it will not be able to complete the investigation within 120 days, a written request for an extension shall be submitted to ORI that explains the delay, reports on the progress to date, estimates the date of completion and describes other necessary steps to be taken. If the request is granted, UNM must file periodic progress reports as requested by ORI.

8.1.4 UNM will keep ORI apprised of any developments during the course of an investigation that may affect current or potential Department of Health and Human

Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

8.1.5 ORI shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:

- (1) there is an immediate health hazard involved;
- (2) there is an immediate need to protect federal funds or equipment;
- (3) there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;
- (4) it is probable that the alleged incident is going to be reported publicly;
- (5) the allegation involves a public health sensitive issue (e.g. a clinical trial); or
- (6) there is reasonable indication of possible criminal violation in which case UNM must inform ORI within 24 hours of obtaining that information.

8.2 Requirements for Reporting When NSF Funding Is Involved

8.2.1 The decision to initiate an investigation must be reported immediately in writing to NSF.

8.2.2 NSF shall be notified at any stage of the inquiry or investigation if any of the following conditions exist:

- (1) public health or safety is at risk;
- (2) NSF's resources, reputation, or other interests need protecting;
- (3) there is reasonable indication of possible violations of civil or criminal law;
- (4) research activities should be suspended;
- (5) federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or
- (6) the scientific community or the public should be informed.

8.2.3 NSF shall be provided with a copy of the final investigation report.

8.2.4 The inquiry shall be completed within 90 days and the investigation completed within 180 days of its initiation. If completion of an inquiry or investigation will be delayed, NSF shall be notified and may require submission of periodic status reports.

8.3 Interim Administrative Action

UNM officials will take interim administrative actions, as appropriate, to protect federal funds and insure that the purposes of the federal financial assistance are carried out.

8.4 Termination of UNM Employment

The termination of the respondent's UNM employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the misconduct procedures. If the respondent refuses to participate in the process after termination of employment, the committee will use its best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the committee's review of all the evidence.

8.5 Record Retention

All documentation of an inquiry that does not lead to an investigation shall be maintained in University Counsel Office files for at least three (3) years after the conclusion of the inquiry. All documentation of an investigation shall be maintained in University Counsel Office files for five (5) years after the end of the investigation. Documentation shall be provided to the sponsoring agency and ORI upon request or if required by the agency's regulations. Documentation shall be treated as confidential personnel information to the extent provided for by law.

8.6 Reimbursement

If requested, the Board of Regents in the pursuit of justice and fairness may, in its sole discretion, fully or partially reimburse the respondent and/or the complainant for legal fees in cases of unusual hardship.

8.7 Federal Regulatory Changes

If PHS, ORI, NSF or any other federal agency amends its requirements on research misconduct, those amendments shall govern where applicable and shall be incorporated into this policy by reference herein. Such changes in federal requirements shall supersede all relevant portions of this policy.

8.8 Revision

The Faculty Senate is authorized to make minor technical and implementing modifications to the detailed Research Misconduct Policy subject to approval of the President of the University.