

RESEARCH MISCONDUCT POLICY

No: S-45.5

Revised: September 12, 2005

Authority: UWM Faculty Document #1793
and UWM Administration

I. INTRODUCTION

This policy is required under the regulations of the Department of Health and Human Services found at 42 CFR § 93 (Public Health Service Policies on Research Misconduct). While it is designed to meet requirements for research funded by the National Institutes of Health, Food and Drug Administration, and other Public Health Service agencies, it applies to all research conducted at UWM.

This policy is intended to be consistent and interconnect with existing UWM policies governing faculty and researchers, including the:

A. UWM Policies and Procedures 5.40 (Authorization of Faculty Rights and Responsibilities Committee); 5.41 (Faculty Rights and Responsibilities); 5.45 (Committee Procedures); 5.46 (Objection(s) and Decision); and

B. Wisconsin Administrative Code § UWS 6.01 (University of Wisconsin System)

Deleted: System)

II. DEFINITIONS

A. **Misconduct.** Research misconduct includes fabrications, falsification, plagiarism, and violations of requirements for the protection of human or animal subjects. It does not include unintentional error or honest differences in interpretations of or judgments about data.

B. **Dean.** The Dean of the Graduate School, or his or her designee.

C. **Inquiry.** A confidential, informal preliminary information-gathering and preliminary fact-finding that meets the criteria and follows the procedures of 42 CFR §§93.307-93.309, as set forth below.

D. **Investigation.** A formal, thorough development of a factual record and the examination of that record, complete with a fair hearing per UWM Policies and Procedures 5.45(3), leading to a decision not to make a finding of research misconduct or to make a finding of research misconduct which may include a recommendation for other appropriate actions, including administrative actions.

E. **Faculty Rights and Responsibilities Committee.** A faculty standing committee, authorized and defined in UWM Policies and Procedures 5.40.

III. STATEMENT OF INTENT

It is the intent of the University of Wisconsin - Milwaukee to foster a research environment that promotes integrity in all research and that deals forthrightly with allegations of research misconduct. The policies and procedures established for the investigation of research misconduct are designed to protect both the accused and the accuser from detrimental effects, including loss of reputation, until the investigation is completed and the findings made public. This policy does not annul or replace any existing policy or set of procedures outlined in the UWM Policies and Procedures.

IV. PROCEDURES

A. If not already resolved by administrators at the department, school, or college level, a complaint alleging research misconduct shall be forwarded to the Dean, as the chancellor's designee, pursuant to UWS 6.01.

B. Inquiry

The Dean shall be responsible for conducting a preliminary inquiry. An inquiry is warranted if an allegation is sufficiently credible and specific to identify potential evidence of research misconduct. The inquiry shall be considered informal and confidential; it shall be conducted in a manner that protects both the accused and the accuser(s). The identity of the accused and accuser(s), as well as any research subjects, will be limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective and fair research misconduct proceeding, and as allowed by law. The inquiry is conducted to determine whether there is probable cause to believe that research misconduct has occurred and, if so, whether a full investigation is warranted. The inquiry must be completed and the report (see below) filed with designated recipients within 60 days of receipt of the allegation, unless extraordinary circumstances prolong the period of inquiry, in which case, a written statement of the extraordinary circumstances must be included in the report.

C. Notification to Accused of Commencement of Inquiry

The Dean shall notify the accused in writing of the inquiry at the time of, or before beginning an inquiry.

D. Evidence and Research Record

When the accused is notified of the commencement of an inquiry the University will promptly take all reasonable steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding. Where the research materials are shared by several users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

E. Report of Inquiry

A written report shall be prepared, which states the evidence reviewed, including testimonial evidence, and the findings and conclusions of the inquiry. Regardless of conclusion, a copy of the inquiry report, including a copy of or reference to 42 CFR § 93 and the University's policies and procedures on research misconduct, shall be given to the accused and the accuser. The accused has the right to make, within 15 working days, a written response or comment, which shall be made part of the record.

The report of inquiry, along with any written response or comment by the accused shall be maintained in secure files for at least seven years beyond the close of the inquiry or investigation, whichever is later.

F. Determination of Need for Investigation

If the Dean, on the basis of the inquiry, determines either that there is probable cause to believe that research misconduct occurred or that an investigation is warranted, the Dean shall promptly so inform the chancellor in writing. The Dean will notify the accused in writing of the decision to conduct an investigation before the investigation begins, and the notification will include any new allegations that arise from the inquiry.

G. Investigation

The Faculty Rights and Responsibilities Committee shall act pursuant to the powers provided in UWM *Policies and Procedures* 5.41 and 5.45. The investigation must commence within 30 days of the date upon which the report of the inquiry was filed. The investigation must be completed, disciplinary action recommended, and report filed with the funding agency (if required) within 120 days of commencement.

1. Any member of the Faculty Rights and Responsibilities Committee who may have a conflict of interest, either real or apparent, shall not participate in any way in the case.
2. In conducting any investigation and hearing, the Faculty Rights and Responsibilities Committee shall secure the necessary expert testimony as appropriate to conduct a thorough and authoritative evaluation of the relevant evidence.

A finding of research misconduct requires the following elements:

1. There be a significant departure from accepted practices of the relevant research community; and
2. The misconduct be committed intentionally, knowingly, or recklessly; and
3. The allegation be proven by a preponderance of the evidence

H. Report of Investigation, Findings, and Recommendation by Faculty Rights and Responsibilities Committee

A written report shall be prepared, and promptly transmitted to the chancellor, per UWM *Policies and Procedures* 5.45(5). A copy of this report shall be given to the accused, and the accused shall have the right to make written comments on the record, per UWM *Policies and Procedures* 5.46 (1) and (2). Comments must be submitted within 30 days of the date on which the accused received the draft investigative report.

The University will make all reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made. Furthermore, the University will make all reasonable and practical efforts to protect or restore the position and reputation of any accuser, witness, or Faculty Rights and Responsibilities Committee member and to counter potential or actual retaliation against these accusers, witnesses, and committee members.

V. DEAN'S ADMINISTRATIVE PREROGATIVE

During the course of any inquiry or investigation, the Dean shall have the prerogative to take interim administrative actions, as appropriate, to protect federal funds and insure that the purposes of the federal financial assistance are protected.

VI. REPORTING REQUIREMENTS

A. Public Health Service Grants

1. Any time it becomes apparent that any one of the following circumstances exists with respect to research funded by Public Health Service (PHS), the Dean is required to report such circumstances to the funding agency:
 - a) when an inquiry indicates that an investigation is warranted;
 - b) when there is an immediate health hazard to the public, including an immediate need to protect human or animal subjects;
 - c) when there is an immediate need to protect federal resources or interests;
 - d) whenever research activities should be suspended;
 - e) when there is an immediate need for federal action to protect the interests of those involved in the research misconduct proceeding;
 - f) when it is probable that the allegation will be reported publicly; or
 - g) whenever the research community or public should be informed.
2. Whenever there is reasonable cause to believe that civil or criminal law violations have occurred, the Dean is required to immediately report it to the funding agency.
3. The Dean is required to notify the funding agency of any and all actions taken in response to final findings of research misconduct.

4. The University is required by federal law to provide full and continuing cooperation with the Office of Research Integrity (ORI) during any oversight review or administrative hearing conducted by ORI. This includes providing all research records and evidence under the University's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence.

B. National Science Foundation Grants

Any time it becomes apparent that an allegation of misconduct warrants an investigation (as defined in II.D., above), the Dean is required to report that conclusion to the funding agency.

C. Grants from Other Extramural Agencies

Regulations and requirements for reporting research misconduct to other extramural funding sources will be incorporated into this policy, as they are announced by the agency.