III-1.10(A) UNIVERSITY OF MARYLAND PROCEDURES FOR SCHOLARLY MISCONDUCT

Approved by the President 1 August 1991;
Revised 11 May 2000)

I. GENERAL

In accordance with the Board of Regents Guidelines for Policies and Procedures Relating to Allegations of Scholarly Misconduct (November 30, 1989), these procedures implement the Board of Regents Policy on Misconduct in Scholarly Work (November 30, 1990). All references to the "University" in these procedures mean the University of Maryland, College Park.

II. SCOPE

These procedures apply to all University faculty, staff and students in the performance of scholarly or creative activity and/or research that is connected with the University or with their University appointment. Conduct, other than scholarly misconduct as defined herein, may be subject to review under other policies and procedures.

• Note: Allegations of misconduct by students in academic exercises, such as examinations and course requirements, are generally handled pursuant to the University's Code of Academic Integrity UMCP Policy III-1.00(B).

III. DEFINITIONS

A. "Complainant" means a person who makes a report under these procedures alleging scholarly misconduct.

B. "Conflict of Interest" means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal or professional relationships.

C. "Days" shall mean calendar days, excluding Saturday, Sunday and days when the University is officially closed.
D. "Good Faith Report" means a report made with the honest belief that scholarly misconduct may have occurred. A report is not in good faith if it is made with malice, with reckless disregard for, or willful ignorance of facts that would disprove the allegation.

E. "Record" means any data, document, computer file, computer diskette, or any other written or non-written account or object that reasonably may be expected to provide evidence or information regarding the proposed, conducted, or reported research or other conduct that constitutes the subject of an allegation of scholarly misconduct. A record includes, but is not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; animal facility records; human and animal subject protocols; consent forms; medical charts; and patient research files.

F. "Respondent" means the person against whom a report of scholarly misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation.

G. "Retaliation" means any action that adversely affects the employment or other institutional status of an individual that is taken by the institution or an employee because the individual has in good faith, made a report of scholarly misconduct or of inadequate institutional response thereto or who has cooperated in good faith with an investigation of such report.

H. "Scholarly Misconduct" means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research and scholarship. Other terms such as research fraud, scientific misconduct, or research misconduct are subsumed within the term scholarly misconduct. Scholarly misconduct does not include honest error or honest differences of opinion. A finding of scholarly misconduct requires that there be a significant departure from accepted practices of the scholarly
community for maintaining the integrity of the research or scholarly record; the misconduct must be committed intentionally; or knowingly, or in reckless disregard of accepted practices; and the allegation must be proven by a preponderance of relevant evidence. Scholarly misconduct may take many forms including, but not limited to:

1. Falsification or Misrepresentation of Data: such as fabrication, manipulation, alteration or falsification of data or background information, deceptively selective reporting, purposeful omission of conflicting data and willful suppression, distortion or destruction of data.

2. Plagiarism: the appropriation of the work of another, such as taking credit for an exact copy or the rewritten or rearranged work of another.

3. Improprieties of Authorship: including improper assignment of credit, such as excluding or insufficiently citing others; misrepresentation of the same material as original in more than one publication; inclusion of individuals as authors who have not made a contribution to the work published; or submission of multi-authored publications without the concurrence of all authors.

4. Abuse of Confidentiality/Misappropriation of Ideas: improper use or appropriation of information obtained from scholarly exchanges and other types of confidential access, such as review of grant applications or manuscripts and service on peer review panels, editorial boards or University committees.

5. Violation of Generally Accepted Research Practices: serious deviation from accepted research practices such as improper manipulation of experiments to obtain biased results, deceptive statistical or analytical manipulations, or improper reporting of results.

6. Deliberate Material Failure to Comply with Federal, State or University Requirements Affecting Research: such as violations involving the use of funds or resources, care of animals,
human subjects, investigational drugs, recombinant products, new devices, radioactive, biologic or chemical materials or the health and safety of individuals or the environment.

7. Deliberate Misrepresentation of Qualifications: such as misrepresentation of experience or research accomplishments to advance the research program, to obtain external funding, or for other professional or personal advancement.

8. Misappropriation of Funds or Resources: such as misuse of funds or resources for personal gain.

IV. GENERAL PRINCIPLES

A. Responsibility to Report Misconduct: Reporting of scholarly misconduct is a responsibility shared by everyone at the University. Reports of scholarly misconduct are serious charges and, as such, should be supported by sufficient evidence. Reports of scholarly misconduct which are not made in good faith will not be tolerated and may result in disciplinary or other actions.

B. Protecting Participants: All participants in the inquiry and investigation process, including the complainant and respondent, should be treated with fairness, respect and sensitivity to their reputations, and should be protected against retaliation in connection with good faith participation. Any alleged or apparent retaliation should be reported to the Vice President for Academic Affairs (VPAA). Parties may have the assistance of counsel; however, counsel is for advisory purposes only and may not participate in the process. Parties must speak for themselves.

C. Confidentiality: To the maximum extent possible consistent with law, University policy and effective and efficient proceedings, the confidentiality of information regarding the complainant, the respondent, and other affected individuals will be protected. Members of the inquiry and investigation committees and other participants in the process should observe the confidentiality of the proceedings and any information and documents reviewed as a part thereof. Outside of official contexts, they should not discuss the matters with the respondent, complainant, witnesses, or any one
not authorized by the VPAA.

D. Conflict of Interest: The integrity of the process shall be maintained by taking reasonable precautions to avoid bias and real or apparent conflicts of interest on the part of those involved in conducting the inquiry or investigation.

E. Timeliness: Any allegation assessment, inquiry, or investigation should be conducted in a timely, objective, thorough, and competent manner. Even if the respondent leaves or has left the University before the case is resolved, the University will pursue a report of misconduct to its conclusion.

F. Standard of Proof: A finding of scholarly misconduct must be established by a preponderance of the relevant evidence. This means that the evidence shows that it is more likely than not that the respondent committed scholarly misconduct.

G. Administrative Actions: Prior to conclusion of the inquiry or the investigation, the VPAA may initiate such interim administrative action(s) as he or she considers appropriate to protect research funds or equipment or the health or safety of research subjects, students, employees or other persons. Such administrative actions, ranging from slight restrictions to complete suspension of the respondent and notification of external sponsors, if indicated, should generally be taken only after consultation with the President and University legal counsel.

H. Notification of Sponsors: If extramural funding is involved, the VPAA, in consultation with University legal counsel, is responsible for notifying the sponsor of the pendency or outcome of a scholarly misconduct charge, and for communicating with the sponsor about the matter. To the extent applicable, notification policies, if any, of the sponsor, including federal regulations, should be followed. Absent specific notification requirements, factors used in determining the need for and timing of such notification may include: (a) the seriousness of the possible misconduct, (b) reasonable indication of possible criminal violations, (c) the presence of an immediate health hazard, (d) University policies, and (e) the interests of the funding agency, the scientific
community, the public, and the individual who is the subject of the inquiry or investigation.

I. Documentation: Appropriate documentation of an inquiry and/or investigation shall be maintained for a period of at least three years.

J. Finality: Findings reached under these procedures as to the existence or absence of scholarly misconduct are not subject to review under any other University policies or procedures.

V. PROCEDURES FOR REVIEWING REPORTS OF SCHOLARLY MISCONDUCT

A. Complaint and Preliminary Review

1. Suspected or apparent scholarly misconduct should be reported to the VPAA. A report of scholarly misconduct must be in writing and signed. Prior to reporting scholarly misconduct, a person may informally discuss the matter with the appropriate Department Chair, Director, Dean, the Vice President for Research, or the VPAA. Such informal consultations or requests for information will not, in and of themselves, be considered a report of scholarly misconduct.

2. The VPAA shall preliminarily review any report of scholarly misconduct and confer with legal counsel, as appropriate, to determine: (a) whether the report warrants initiation of the inquiry process according to these policies and procedures; (b) whether other policies and procedures should be invoked; or (c) whether the report is without any reasonable basis and should be dismissed. If the VPAA determines an inquiry is not warranted, consideration shall be given as to whether the report of misconduct was not made in good faith. If the VPAA determines an inquiry is warranted, the inquiry process will be initiated.

3. Upon initiating the inquiry process, the VPAA will ensure that all original research and other records and materials relevant to the allegation are secured.

4. Upon initiating the inquiry process, the VPAA will
assess the report to determine whether it involves activities with extramural funding. If the report involves activities supported by extramural funding (such as NSF, DOD, NASA, or PHS) the VPAA will oversee compliance, throughout the process, with any applicable sponsor reporting requirements. (See Appendix A for PHS Special Provisions.)

5. If the VPAA has a possible conflict of interest or is unavailable to begin a review immediately, the report should be referred to the President of the University, who shall designate a substitute administrator to oversee the process and carry out responsibilities assigned to the VPAA under this policy with respect to the misconduct report in question.

B. Inquiry

1. The primary purpose of the inquiry is to determine if there is sufficient evidence of scholarly misconduct to warrant further investigation and, if further investigation is not warranted, to make recommendations concerning the disposition of the case. The purpose of the inquiry is not to reach a final conclusion about whether misconduct definitely occurred or who was responsible. Records of the inquiry are confidential to the maximum extent possible as provided herein and are to be passed on to a Committee of Investigation if an investigation is initiated.

2. The VPAA, in consultation with other institutional officials as appropriate, will appoint a Committee of Inquiry and Committee Chair. The Committee shall consist of no less than three University tenured faculty members of equal or senior rank to the respondent with at least one outside the respondent's discipline. The VPAA shall take reasonable steps to ensure that the members of the committee are unbiased, do not have real or apparent conflicts of interest, and have appropriate expertise to evaluate the issues related to the allegation. Every effort shall be made to appoint the Committee within 10 days of initiation of the inquiry.
3. The VPAA shall notify the complainant and the respondent in writing of the charges, the procedures that will be used to examine the charges, and the membership of the Committee of Inquiry. If, within five (5) days, either party submits a written objection to any appointed member of the Committee on the grounds of bias or conflict of interest, the VPAA will determine whether to replace the challenged member or expert with a qualified substitute.

4. The inquiry shall proceed in the manner the Committee of Inquiry believes will best enable it to reach an informed assessment of the report. The Committee shall determine when and in what manner it will receive submissions or interview the parties. The Committee shall endeavor to work as confidentially as reasonably possible, recognizing that it may need to consult persons with relevant knowledge who are not on the Committee.

5. Information, expert opinions, records and other pertinent data may be requested by the Committee. All involved individuals are obliged to cooperate fully with the Committee of Inquiry by supplying such requested documents and information. Uncooperative behavior is unacceptable and may result in disciplinary or other sanctions.

6. All material reviewed by the Committee of Inquiry will be considered confidential and shared only with those with a need to know. The VPAA and the members of the Committee are responsible for the security of relevant documents. Copies of all documents and related communications are to be securely maintained in the Office of the VPAA or in such other secure space as may be designated by the VPAA.

7. The Committee of Inquiry shall keep such confidential notes of its investigation as it believes are reasonable to chronicle its activities and findings. These shall be made available to the VPAA.

8. The Committee of Inquiry shall conclude its process as expeditiously as possible. The inquiry
phase generally should be completed and a written report filed within sixty calendar days from initiation of the inquiry. If this deadline cannot be met, the VPAA and the President shall be advised and the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period. The VPAA shall inform the sponsoring agency of delays, if required by such agency.

9. The Committee of Inquiry shall submit to the VPAA a confidential written report of its findings. The report, which is advisory, shall contain the name and title of the committee members and experts, if any; the allegations; the source of any extramural support, if any; a summary of the inquiry process used; a list of the research records reviewed; summaries of any interviews; a description of the evidence; and the Committee's recommendation with respect to further investigation, the reasons for its recommendation, and whether any other actions should be taken if an investigation is not recommended. University counsel shall review the report prior to submission for legal sufficiency.

10. The VPAA shall provide to the complainant and respondent a copy of the findings and recommendations contained in the report. The parties shall be given the opportunity to comment in writing upon the findings and recommendations of the committee. Such comments shall be submitted within five (5) days. Any comments submitted by the parties will become part of the inquiry record.

11. The VPAA may ask the Committee of Inquiry to undertake such additional inquiry as needed to facilitate a decision respecting the disposition of the case.

12. If the report of the Commission of Inquiry does not recommend a formal investigation, but does find a need for further alternative action(s), such actions may be taken by the VPAA, as appropriate. For example, the inquiry committee may recommend (a) a correction of the literature, (b) that the culpable party be reprimanded for lax
supervision, faulty techniques, or inattention to detail, or (c) that, with the concurrence of the respondent, a public announcement be made.

13. If the Committee of Inquiry finds the allegations of misconduct were not made in good faith, it shall refer the matter to the VPAA. It is a violation of University policy when a report of misconduct is not made in good faith.

14. If the Committee of Inquiry plans to terminate the inquiry for any reason prior to completion of the inquiry process, a report of the termination, including a description of the reasons for such termination, shall be made to the VPAA.

15. The VPAA shall inform the President of the final recommendations of the Committee of Inquiry and of the VPAA's decision respecting the disposition of the case prior to taking further action.

16. Upon approval of the President, the VPAA shall inform the complainant and respondent in writing of the conclusions of the Committee of Inquiry and of the decision respecting the disposition of the case, including a decision to refer the matter to a Committee of Investigation.

C. INVESTIGATION

1. Should an investigation be warranted, the VPAA shall appoint a Committee of Investigation within 15 days (or as soon thereafter as practicable) of the President's approval. The Committee shall consist of no less than three (3) respected members of the academic, professional, or scientific community who have a national reputation of excellence in the same or closely allied discipline as the respondent. At least one member should, if reasonably possible, be a person not primarily associated with the University System of Maryland. The VPAA shall take reasonable steps to ensure that the members of the committee are unbiased, do not have real or apparent conflicts of interest, and have appropriate expertise to evaluate the issues related to the allegation.
2. The VPAA shall appoint the Committee of Investigation in the following manner. First, the VPAA shall develop two lists of potential Committee members: (a) a list of at least ten University System of Maryland faculty, equal or senior to the respondent in rank and (b) a list of at least four persons not primarily associated with the University System. Second, the complainant and respondent shall each be extended the option to strike two persons from the first list and one person from the second list. The VPAA will then appoint the committee and chair from the remaining of the names. Generally, the Committee consists of three (3) members, including the chair and two (2) alternates.

3. The responsibility of the Committee of Investigation shall be to undertake a thorough analysis of the reported allegations, to obtain all reasonably available information which it believes relevant to the charges, and to reach a conclusion based on the investigation. The Committee shall determine whether misconduct has been committed and the extent of the malfeasance and shall make recommendations regarding resolution. No finding of scholarly misconduct shall be made unless a majority of the committee members find it to be supported by a preponderance of the relevant evidence.

4. The Committee of Investigation shall conduct the investigation in the manner it considers most conducive to performing a thorough and honest assessment of the report of scholarly misconduct. The basis tenets of scholarship and scientific inquiry--full and willing disclosure, accuracy of statement, inclusion rather than exclusion of information, and intellectual integrity in argument--must always take precedence. The investigation is not in the character of a criminal or civil legal proceeding. It is not modeled on these adversarial systems, and is not governed by their procedures and rules of evidence. In formulating its conclusions, the Committee may assign to information such weight as experienced members of the discipline customarily accept in the conduct of research. As part of its investigation, the Committee may in its discretion
undertake informal, fact-finding meetings with persons it determines may have useful knowledge. The notes and report of the Committee of Inquiry shall be available to the Committee of Investigation. Interviews should normally be transcribed, tape recorded, or summarized. Summaries or transcripts of the interviews should be provided to the interviewed party for comment. They should be included as part of the investigatory file. In all cases, the respondent and the complainant shall be given an opportunity to meet with the Committee of Investigation to discuss the matter and respond to questions.

5. Consistent with fulfilling its responsibilities, the Committee of Investigation shall endeavor to maintain strict confidentiality in the performance of its activities.

6. The Committee of Investigation shall prepare for the VPAA a confidential written report of its investigation. The report shall contain the name and title of the committee members and experts, if any; the allegations; the source of any extramural support; a summary of the investigation process; a list of the research records reviewed; summaries of any interviews; a description of the evidence; and its findings and conclusions. The report, which is advisory, shall also contain specific recommendations consonant with the nature of its determination.

7. Every effort should be made to complete the investigation within 120 days; this includes conducting the investigation, preparing the report, and submitting the report to the VPAA. It is acknowledged that some cases cannot be fully investigated in 120 days. In such cases, the Committee of Investigation should compile a progress report, identify reasons for the delay, estimate time required to complete the investigation, and request an extension from the VPAA. The VPAA shall report to the funding agency, at appropriate intervals, such information as may be necessary.

8. Upon receipt of the Committee of Investigation's report, the VPAA shall provide the complainant and
respondent an opportunity to comment on the allegations and findings of the investigation. To the extent appropriate, the VPAA may provide such individuals with those portions of the report that address their role and opinions in the investigation. Such comments shall be submitted within five (5) days. Any comments submitted will become part of the record.

9. The VPAA may ask the Committee of Investigation to undertake such additional investigation as the VPAA believes necessary. The Committee shall keep such confidential notes or other record of its investigation as it believes reasonable to chronicle its activities and findings. These shall be made available to the VPAA.

10. The VPAA shall notify the President of the findings and conclusions of the Committee of Investigation and the VPAA's decision regarding the actions to be taken based upon the findings.

11. Following discussion with the President, the VPAA shall inform the complainant and respondent of the VPAA's decision and any intended action. If the sanctions involve a recommendation for termination of employment or other legal rights of faculty or other personnel, applicable disciplinary or termination procedures shall be followed.

VI. RESOLUTION

A. A Finding of No Scholarly Misconduct

1. All research sponsors and others previously informed of the inquiry or investigation should be informed in writing that charges of misconduct were not supported.

2. If the allegations of misconduct are deemed not to have been made in good faith, appropriate disciplinary or other action(s) should be taken. If the allegations, however incorrect, are deemed to have been made in good faith, and no disciplinary measures are indicated, efforts should be made to prevent retaliatory actions and to protect, to the maximum extent possible, the positions and reputations of the persons who made
the allegations as well as those against whom allegations of misconduct were not confirmed. In publicizing the finding of no misconduct, the University should be guided by whether public announcements will be harmful or beneficial in restoring any reputations that may have been affected. Such decision should generally take into account the preference of any person whose reputation is involved.

B. A Finding of Scholarly Misconduct

1. When an investigation confirms misconduct, the VPAA shall consider the recommendations of the Committee and shall be responsible for determining and implementing sanctions as appropriate or referring to the President any action not within the VPAA's authority. The VPAA is responsible for notification to all federal agencies, sponsors or other entities previously informed of the investigation of the outcome.

2. The University shall take action appropriate for the seriousness of the misconduct, including, but not limited to, the following:

   a. Disciplinary action such as
      (1) Termination of employment
      (2) Removal from particular project
      (3) Special monitoring of future work
      (4) Letter of reprimand
      (5) Probation for a specified period with conditions specified
      (6) Suspension of rights and responsibilities for a specified period
      (7) Financial restitution
      (8) Removal from an academic program
      (9) Dismissal from University

   b. Notification, as appropriate, to involved parties such as
      (1) Sponsoring agencies, funding sources
      (2) Co-authors, co-investigators, collaborators, university publications, appropriate campus and other officials
      (3) Editors of journals in which fraudulent research was published
      (4) State professional licensing boards
VII. SPECIAL PROVISIONS FOR SPONSORED PROJECTS

A. As required by the Public Health Service, special provisions for misconduct subject to PHS regulations is Appendix A.

B. Reserved for additional special provisions.

APPENDIX A
SPECIAL PROVISIONS FOR MISCONDUCT SUBJECT TO PHS REGULATIONS

This Appendix A is incorporated in and made a part of the Procedures for Misconduct in Scholarly Work for the University of Maryland, College Park (the University).

The Public Health Service (PHS) has promulgated regulations for dealing with reporting possible misconduct in sciences (PHS Misconduct Regulations). (PHS Misconduct Regulations are codified at Title 42, Subchapter D. Code of Federal regulations, Subpart A, Sections 50.101 through 50.105.) The PHS Misconduct Regulations apply to research, research-training, or research-related grants or cooperative agreements under the Public Health Service Act. The Office of Research Integrity (ORI), a component of the Office of the Director of the National Institutes for Health (NIH), oversees the implementation of all PHS policies and procedures related to scientific misconduct.

A. Compliance with PHS Misconduct Regulations

It is the University's policy to comply with all applicable requirements of the PHS Misconduct Regulations. The University of Maryland will file institutional assurances as required by Section 50.103 of the PHS Misconduct Regulations.

In order to remain in compliance with these regulations, the University will:

1. Keep current and upon request provide to ORI and other PHS officials this policy and other policies the University may develop to encourage scientific integrity.
2. Inform University personnel, as appropriate, of these procedures and the importance of compliance.

3. Take immediate and appropriate action as soon as misconduct on the part of University personnel is alleged. Actions shall include interim measures to protect federal funds and ensure that the purposes of federal financial assistance are being carried out.

4. In accordance with the PHS Misconduct Regulations, inform and cooperate with ORI with regard to each investigation of possible misconduct.

B. Reports to ORI

The VPAA will make all reports to ORI which are required by 50.104, or other parts of the PHS Misconduct Regulations, in connection with allegations of misconduct subject to those regulations. More specifically, the VPAA will report:

1. The University's decision to initiate any investigation. This report will be made in writing to the Director, ORI, on or before the date the investigation begins, and will 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. In general, it will be the University's policy to disclose in this notice no more than the minimum information required under the PHS Misconduct Regulations.

2. Any developments which disclose facts that may affect current or potential Department of Health and Human Services funding for the respondent or that the PHS needs to know to ensure appropriate use of federal funds and otherwise protect the public interest.

3. Plans to terminate an inquiry or an investigation for any reason without completing all relevant requirements under 50.103(d). A copy of the report of such planned termination, including a description of the reasons for such termination, shall be submitted to ORI in accordance with federal regulations.

4. The results of the investigation, which shall be filed with ORI within 120 days of the institution of the investigation unless an extension is granted by ORI. The final report will describe the policies and procedures under which the investigation was conducted, how and from whom information
was obtained relevant to the investigation, the findings, and the basis for the findings, and include the actual text or an accurate summary of the views of any individual(s) found to have engaged in Misconduct, as well as a description of any sanctions under consideration, pending, or taken by the University.

5. A request for extension, if the investigation cannot be completed within 120 days. Such a request shall include an explanation for the delay, an interim report on the progress to date, an outline of what remains to be done, and an estimated date of completion.

6. Immediately, at any stage of the inquiry or investigation, any determination by the University that any of the following conditions exists:

   a. Immediate health hazard;

   b. Need to protect federal funds or equipment;

   c. Immediate need to protect the interests of the persons making the allegations or the individuals who are the subjects of the allegations as well as their co-investigators and associates, if any;

   d. Probability that the alleged incident is going to be reported publicity;

   e. Reasonable indication of possible criminal violation (a report for this reason must be made within 24 hours of obtaining the information leading to this conclusion).

C. Record Keeping

Documentation to substantiate the inquiry and investigation findings shall be prepared, maintained, and made available to the Director, ORI, in accordance with PHS regulations.