Executive Policy Chapter 12, Research
Executive Policy EP 12.211, Policy for Responding to Allegations of Research and Scholarly Misconduct
Effective Date: *TBD*
Dates Amended: August 2014; 2005; 1998; 1992; 1989
Responsible Office: Office of the Vice President for Research and Innovation
Governing Board of Regents Policy Chapter 12.201, Ethical Standards of Conduct
Review Date: *TBD*

I. Purpose

A. The University of Hawai‘i (University) is committed to fostering and maintaining the integrity of research activities conducted at each of its campuses and research facilities. This policy ensures that allegations of Research Misconduct are investigated and resolved in a fair, objective, and timely manner.

B. This policy is specifically issued to ensure the University’s compliance with applicable procedural requirements mandated by federal regulations, such as the Public Health Service (PHS) Policies on Research Misconduct, 42 CFR Part 93, as amended.

II. Definitions:

A. ***Allegation*** means a disclosure of observed, suspected, or apparent research and scholarly misconduct through any means of communication to the Research Integrity Officer (RIO) or other institutional official such as an Ethics Committee (EC) member, department chair, dean, or equivalent.

B. ***Assessment*** means the initial evaluation by the RIO of an Allegation of Research Misconduct, in consultation with an EC representative.

C. ***Conflict of Interest*** means an unresolved personal, professional, or financial relationship with the Reporting Party, Responding Party, or witnesses that may reasonably call into question the fairness or objectivity of any individual participating in the Research Misconduct Proceeding.

D . ***Deciding Official (DO)*** means a senior academic or research institutional official appointed by the University president.

E. ***Ethics Committee (EC)*** means the standing committee appointed by the DO and established to assist the RIO in evaluating an Allegation of Research

Misconduct by serving on Review Panels, as needed.

F. ***Evidence*** means any document, tangible item, or testimony offered or obtained during a Research Misconduct Proceeding that tends to prove or disprove the existence of an alleged fact.

G. ***General Counsel*** means the legal counsel who represents the University and is responsible for advising the DO, RIO, EC, and Review Panels whenever such counsel is sought. In this capacity, the General Counsel represents only the institutional officials responsible for managing or conducting the University's evaluations of Research Misconduct Allegations as part of their official duties. The General Counsel does not represent the Responding Party, the Reporting Party/Informant or any other person participating during the Inquiry or Investigation stages or any follow-up action.

H. ***Good Faith,*** as applied to a Reporting Party, Informant, or witness, means having a belief in the truth of one's Allegation or testimony such that a reasonable person would call attention to the perceived irregularities known at the time. An Allegation, testimony, or cooperation on the part of a Reporting Party, Informant, witness, or Responding Party is not in good faith if it is made with knowing or reckless disregard for information that would negate the Allegation or testimony. Good faith as applied to an EC member or Review Panel means cooperation for the purpose of helping the University meet its responsibilities to investigate an Allegation of Research Misconduct.

I. ***HHS*** means the United States Department of Health and Human Services.

J. ***Informant*** means a person who informs the University of observed, suspected, or apparent Research Misconduct, but wishes to remain anonymous.

K. ***Inquiry*** means preliminary information-gathering and fact-finding to determine whether an Allegation of Research Misconduct warrants an Investigation.

L. ***Institutional Member*** means a person who is employed by, is an agent of, or is affiliated by contract or agreement with the University, including employees of the Research Corporation of the University of Hawai'i (RCUH). Institutional members may include, but are not limited to officials; tenured and untenured faculty; teaching and support staff; researchers; research coordinators; clinical technicians; postdoctoral and other fellows; students; volunteers; agents; and contractors, subcontractors, sub-awardees, and their employees.

M. ***Investigation*** means the formal development of a factual record and the examination of that record by a Review Panel, leading to a finding whether or not to make a recommendation of a charge of Research Misconduct, which may include a recommendation for other appropriate actions, including institutional

administrative actions. The Review Panel's finding and recommendations are reported in writing to the DO for final determination.

N. ***Research Misconduct,*** for the purposes of PHS-funded activities, means fabrication, falsification, or plagiarism (FFP) in proposing, performing, or reviewing research, or in reporting research results.

1. ***Fabrication*** is making up data or results and recording or reporting them.

2. ***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.

3. ***Plagiarism*** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Research Misconduct does not include honest error or differences of opinion.

O. ***Office of Research Integrity (ORI)*** means the office to which the U.S. Department of Health and Human Services (HHS) Secretary has delegated responsibility for addressing research integrity and misconduct issues related to PHS supported activities (ORI Website: http://ori.hhs.gov/).

P. ***PHS support*** means PHS funding, or applications or proposals therefor, for biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research, or training that may be provided through PHS grants, cooperative agreements, or contracts or sub-grants or subcontracts under those PHS funding instruments; or salary or other payments under PHS grants, cooperative agreements or contracts.

Q. ***Public Health Service (PHS)*** means the unit within HHS that includes the Office of Public Health and Science and the following Operating Divisions: Agency for Healthcare Research and Quality; Agency for Toxic Substances and Disease Registry; Centers for Disease Control and Prevention; Food and Drug Administration; Health Resources and Services Administration; Indian Health Service; National Institutes of Health; Substance Abuse and Mental Health Services Administration; and the offices of the Regional Health Administrators.

R. ***Records of Research Misconduct Proceedings*** includes all of the following:

1. The research records and evidence secured for the Research Misconduct Proceeding pursuant to this policy and 42 CFR §§ 93.305, 93.307(b), and 93.310(d), except to the extent the Review Panel determines and documents that those records are not relevant to the proceeding or that the records duplicate other records that have been retained;

2. RIO and staff documentation of the Review Panel's determination of any irrelevant or duplicate records;

3. The final Inquiry report and all records in support of the report, including the documentation of any decision to not investigate as required by 42 CFR § 93.309(c);

4. The final Investigation report and all records in support of the report, including the recordings or transcripts of each interview conducted; and

5. The complete record of any appeal within the University from the findings, recommendations, and determinations of Research Misconduct.

6. ***Reporting Party*** means a person who makes an Allegation of Research Misconduct. The Reporting Party is a potential witness who provides evidence or testimony in a Research Misconduct proceeding, or may be an Informant who wishes to remain anonymous

7. ***Research*** means a systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) relating broadly to public health by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanism relating to, biological causes, functions or effects, diseases, treatments, or related matters to be studied.

8. ***Research Integrity Officer (RIO)*** is an institutional official appointed by the DO, or the DO's designee, whose responsibilities include overseeing the Research Misconduct Proceeding and providing staff support to Review Panels.

9. ***Research Misconduct Proceeding*** means any action related to alleged Research Misconduct taken under 42 CFR Part 93 and this policy, including but not limited to, the Assessment, Inquiry, Investigation, ORI oversight review, hearing and administrative appeal.

10. ***Research Record*** means the record of data (both written and electronic) or results that embody the facts resulting from academic research or scholarly work, including but not limited to, research proposals, laboratory records, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents and materials provided to the RIO, an EC member, Review Panel, or an institutional official during the course of a Research Misconduct Proceeding.

11. ***Responding Party*** means the person against whom an Allegation of Research Misconduct is directed and who is the subject of a Research Misconduct Proceeding.

12. ***Retaliation*** means an adverse action taken against, or hostile treatment against, a Reporting Party; Informant; witness; EC member; or Review Panel member in response to (1) a good faith Allegation of Research Misconduct; or (2) good faith cooperation with a Research Misconduct Proceeding, which adverse action or hostile treatment would dissuade a reasonable person from continuing with the Allegation, or cooperation with a Research Misconduct Proceeding. Adverse action or hostile treatment include but are not limited to, the examples expressed in EP 9.10 Workplace Non-Violence.

13. ***Review Panel*** means the group of University faculty and staff that conducts an Inquiry or Investigation dealing with an Allegation of Research Misconduct.

III. Executive Policy

A. Mandatory, Discretionary and Concurrent Jurisdiction

1. Mandatory Investigation.

   a. The University must investigate each Allegation of Research Misconduct that meets the PHS definition of Research Misconduct in a manner consistent with the PHS *Policies on Research Misconduct* (42 CFR Part 93). Where research is supported in whole or in part by PHS funds and the Allegation of Research Misconduct encompass FFP, the FFP Research Misconduct Allegation will be given priority over any other intertwined misconduct Allegation.

   b. If the Allegation of Research Misconduct involves research supported by another federal agency, the University must conduct the Research Misconduct Proceeding in accordance with this policy and the regulations of the sponsoring agency.

   c. If there is a conflict between this policy and applicable federal regulations, the federal regulations will apply and supersede any inconsistent provision of this.

2. Discretionary Investigations.

   The University may, at the discretion of RIO and an EC representative, investigate the following types of Allegations including, but not limited to the following:

   a. Improprieties of Authorship, including but not limited to, improper assignment of credit, such as excluding others, misrepresentation of the same material as original in more than one publication; listing as an author

any persons who (i) did not contribute significantly to the published research, (ii) do not or cannot stand behind the research results or (iii) have not carefully examined the manuscript. Improprieties also include allowing oneself to be listed as an author when significant contributions have not been made and submission of multi-authored publications without the concurrence of all authors.

The RIO, upon consultation with an EC representative, may suspend review until the department chair, dean or equivalent, overseeing the academic unit where the alleged authorship dispute arose, has the first opportunity to investigate and resolve the authorship dispute.

In the absence of department or discipline-authorship guidelines, the International Committee of Medical Journal Editors (ICMJE) recommended criteria for “Who is an Author?” will be applied.

b. Violation of generally accepted research practices, including but not limited to, serious deviation from accepted practices in proposing or carrying out research; improper manipulation of experiments to obtain biased results; deceptive statistical or analytical manipulations; or improper reporting of results.

c. Deliberate material misrepresentation of qualifications, experience, or research accomplishments to advance a research program, to obtain external funding, or to attain professional advancement.

d. Conduct that violates research and scholarly-related ethical standards as expressed in relevant codes of conduct promulgated by professional associations and learned societies within the various disciplines.

In exercising judgment whether or not to undertake a discretionary investigation, the RIO and an EC representative may consider the extent to which the Allegation, if true, impair or adversely affect the integrity of the research activity at the University. If a discretionary Research Misconduct Proceeding is commenced, the RIO may adapt and apply the procedural requirements mandated by applicable federal regulations or the requirements in this policy.

3. Referral to Other University Offices with Concurrent Jurisdiction.

The RIO may refer an Allegation to other University offices that may have concurrent jurisdiction for handling, as appropriate, without prejudice to the University Office of Research Integrity, assuming jurisdiction as may be warranted by the facts and circumstances of the specific matter.

B. Scope of Review

1. This policy applies to all University faculty, researchers, and staff members including, without limitation, graduate and undergraduate students; postdoctoral fellows and postdoctoral research associates; visiting faculty or staff; faculty or staff on sabbatical leave; adjunct faculty when performing University work; faculty or staff on leave without pay; and research personnel employed by the RCUH. This policy also applies if research or scholarly misconduct is suspected to have been committed by a former employee of the University while employed by the University.

2. This policy applies only to an Allegation of Research Misconduct that occurred within six (6) years of the date the University or HHS received the Allegation, except where:

    a. The Responding Party continues or renews any incident of alleged Research Misconduct that occurred before the six-year limitation though the citation, republication or other use for the potential benefit of the Responding Party of the Research Record; or

    b. If the University determines that the alleged misconduct, if it occurred, would have a substantial adverse effect on the health or safety of the public.

C. Functions

1. Research Integrity Officer (RIO)

    The DO will appoint the RIO who will have primary responsibility for implementation of the University's policies and procedures on Research Misconduct.

    The RIO is responsible for the following:

    a. Consulting confidentially and/or hypothetically with persons uncertain about whether to submit an Allegation of Research Misconduct;

    b. Receiving an Allegation of Research Misconduct;

    c. Consulting with an EC representative in assessing each Allegation of Research Misconduct;

    d. As necessary, taking interim action and in cases involving FFP and PHS support, notifying ORI of any special circumstances;

e. Sequestering research data and evidence pertinent to the Allegation of Research Misconduct and maintaining the data securely in accordance with this policy and applicable laws and regulations;

f. Providing confidentiality to those involved in a Research Misconduct Proceeding as required by University policies, 42 CFR § 93.108, and other applicable laws and regulations;

g. Notifying the Responding Party and providing opportunities for the Responding Party to review, comment and respond to an Allegation of Research Misconduct, evidence, and draft Inquiry and Investigation reports;

h. Informing the Responding Party, Reporting Party and witnesses of the procedural steps in a Research Misconduct Proceeding;

i. Consulting with an EC representative in appointing Review Panel members to conduct the Inquiry and Investigation, ensuring that Review Panels are properly staffed, and ensuring that Review Panels have the expertise appropriate to carry out a thorough and authoritative evaluation of the Evidence;

j. Determining whether any person considered for appointment to a Review Panel has an unresolved personal, professional, or financial relationship with either the Reporting Party, Responding Party, or witness; and taking appropriate action, including recusal, to ensure that no person with such unresolved relationship is involved in the Research Misconduct Proceeding;

k. Consulting with the appropriate University Office of Human Resources and other institutional officials to protect or restore the positions and reputations of a good faith Reporting Party, Informant, witness, or Review Panel member and countering potential or actual Retaliation against them by a Responding Party or other Institutional Members;

l. In cases where a Responding Party is found not culpable at any stage in the Research Misconduct Proceeding, taking all reasonable and practical steps to protect or restore the Responding Party's position and reputation;

m. Consulting with General Counsel and other UH Offices and institutional officials, as appropriate;

n. Keeping the DO and other institutional officials who need to know apprised of the Review Panel's progress in reviewing an Allegation of Research Misconduct;

o. In cases involving FFP and PHS support, providing notices and reports to ORI as required by 42 CFR Part 93;

p. Ensuring that institutional administrative actions taken by the University and/or ORI are enforced and notifying other involved parties of those actions, such as sponsors, law enforcement agencies, professional societies, editors of journals, and licensing boards; and

q. Maintaining records of the Research Misconduct Proceeding and in cases involving FPP and PHS support, making the records available to ORI in accordance with this policy.

2. Reporting Party/Informant

a. The Reporting Party is responsible for making an Allegation in Good Faith, maintaining confidentiality, and cooperating with the conduct of an Assessment, Inquiry or Investigation. The Review Panel may interview the Reporting Party at the Inquiry stage and provide the transcript or recording of the interview to the Reporting Party for correction. The Review Panel must interview the Reporting Party during the Investigation stage. The transcript or recording of the interview will be given to the Reporting Party for correction.

b. The Informant is also responsible for making an Allegation in Good Faith, maintaining confidentiality and, to the extent possible, cooperating with the Research Misconduct Proceeding. The Informant is under no obligation to be interviewed and retains the right to remain anonymous. However, it must be noted that although the University may be able to control its own investigative process, anonymity cannot be guaranteed in a court of law or in arbitration of a grievance.

c. The Review Panel may provide to the Reporting Party for comment: (1) relevant portions of the Inquiry report (within a timeframe that permits the Inquiry to be completed within sixty (60) calendar days of its initiation); and (2) the draft Investigation report or relevant portions of it. Comments on any report must be submitted within fourteen (14) calendar days of the date on which the Reporting Party received the report. Comments made by the Reporting Party on the draft Investigation report will be included in the final Investigation report.

d. The Reporting Party is considered a witness who can provide testimony or identify potential Evidence of Research Misconduct. The RIO, EC, or Review Panels do not represent the Reporting Party's personal interests in a Research Misconduct Proceeding.

3. Responding Party

   a. The Responding Party is responsible for maintaining confidentiality, cooperating with the conduct of an Assessment, Inquiry or Investigation, providing good-faith testimony, and refraining from retaliatory actions. The Responding Party is entitled to:

      (1) A good faith effort from the RIO to notify the Responding Party in writing at the time of or before beginning an Inquiry;

      (2) An opportunity to comment on the draft Inquiry report and have his/her comments attached to the report;

      (3) Be notified of the outcome of the Inquiry, and receive a copy of the Inquiry report that includes a copy of, or refers to, 42 CFR Part 93 and the University's policies and procedures on Research Misconduct;

      (4) Be provided with written notification of an Allegation to be investigated before the Investigation begins and within thirty (30) calendar days after the University decides to begin an Investigation;

      (5) Be provided with written notification of any new Allegation not addressed in the Inquiry or included in the initial Investigation notice, within a reasonable time after the University is notified of the new Allegation;

      (6) Be interviewed during the Inquiry and Investigation, be given the opportunity to correct and certify any interview recordings or transcripts, and have the corrected recording or transcript included in the record of the Investigation;

      (7) Have the Review Panel interview during the Investigation any witness who has been reasonably identified by the Responding Party as having information on relevant aspects of the Investigation, have the recording or transcript provided to the witness for correction, and have the corrected recording or transcript included in the record of Investigation; and

      (8) Be given a copy of the draft Investigation report and, concurrently, a copy of, or supervised access to the Evidence on which the report is based; and be notified (a) that any comments must be submitted within fourteen (14) calendar days of the date on which the copy was received and (b) that the comments will be included in the final

Investigation report.

b. The Responding Party shall be given the opportunity to admit that Research Misconduct occurred and that they committed the Research Misconduct. With the advice of the RIO and General Counsel, the DO may terminate the Review Panel's review of an Allegation that has been admitted if the Review Panel's acceptance of the admission is approved by ORI (in cases involving FFP and PHS support).

c. As provided in 42 CFR § 93.314(a), the Responding Party will have the opportunity to appeal the University's finding of Research Misconduct. Procedures contained in relevant collective bargaining agreements will also apply. For interviews with the Review Panel, the Responding Party has the right to request union assistance and may request that a union agent be present at the interview.

4. Deciding Official (DO)

a. The DO shall not be the same individual as the RIO and may not have any direct prior involvement in the University's Assessment, Inquiry, or Investigation of an Allegation of Research Misconduct.

b. The DO will appoint individuals to the EC. Such appointments to the EC are not considered to be a direct prior involvement on the part of the DO in a Research Misconduct Proceeding.

c. The DO will receive the Inquiry report and consult with the RIO and an EC representative to decide whether an Investigation is warranted. Any finding that an Investigation is warranted must be made in writing by the DO and must be provided to ORI (in cases involving FFP and PHS support), together with a copy of the Inquiry report meeting the requirements of 42 CFR § 93.309, within thirty (30) calendar days of the DO determination. If it is found that an Investigation is not warranted, the DO and the RIO will ensure that detailed documentation of the Inquiry is retained for at least seven (7) years after termination of the Inquiry, so that ORI may assess the reasons why the University decided not to conduct an Investigation.

d. The DO will receive the Investigation report and, after consulting with the RIO and other appropriate institutional officials, decide the extent to which the University will accept the findings and recommendations of the Investigation. If Research Misconduct is found, the DO will decide what, if any, institutional administrative actions are appropriate. In cases involving FFP and PHS support, the DO shall ensure that the final Investigation report, the findings of the DO and a description of the any

pending or completed institutional administrative actions are provided to ORI (in cases involving FFP and PHS support), as required by 42 CFR § 93.315.

e. The DO is responsible for making final determinations on an Allegation of Research Misconduct and any institutional administrative actions.

D. General Principles and Policies to Promote Research Integrity and Resolve Allegations of Research Misconduct.

1. Responsibility to Report Misconduct.

a . All institutional members should immediately report observed, suspected, or apparent Research Misconduct to the RIO, or other institutional official such as an EC member, department chair, dean or equivalent. Any institutional official or EC member who receives an Allegation of Research Misconduct must report it immediately to the RIO.

b. If the person reporting the Allegation of Research Misconduct is unsure whether a suspected incident falls within the definition of Research Misconduct, the person may informally discuss the suspected Research Misconduct with the RIO, which may include discussing the suspected Research Misconduct anonymously and/or hypothetically.

c. If the circumstances described by the person do not meet the definition of Research Misconduct, the RIO will refer the person or Allegation to other University offices or officials with responsibility for resolving the problem, if appropriate.

2. Cooperation with Misconduct Proceedings.

a. Institutional Members should cooperate with the RIO and other institutional officials in the review of an Allegation and the conduct of the Assessment, Inquiry and Investigation.

b. Institutional Members, including Responding Parties, have an obligation to provide evidence relevant to the Allegation of Research Misconduct to the RIO, EC representative, Review Panel, or to other institutional officials.

3. Confidentiality.

a. The RIO shall limit disclosure of the identity of a Responding Party, Reporting Party, Informant, and witness to those who need to know in order to carry out a thorough, competent, objective, and fair Research

Misconduct Proceeding; and

b. Except as may otherwise be required by law, the RIO shall maintain confidentiality in order to carry out a thorough, competent, object and fair Research Misconduct Proceeding, by limiting disclosure of the following to those who need to know:

(1) The identity of Responding Parties, Reporting Parties, Informants and witnesses; and

(2) Any records or Evidence from which research subjects might be identified.

4. Protecting a Reporting Party, Informant, Witness, EC member, or Review Panel member.

a. Institutional Members may not retaliate in any way against a Reporting Party, Informant, witness, EC member, or Review Panel member. Institutional Members should immediately report any alleged or apparent Retaliation against a Reporting Party, Informant, witness, EC member, or Review Panel member to the RIO.

b. The RIO shall review the matter and, as necessary, take all reasonable and practical efforts to counter any potential or actual Retaliation, and protect and restore the position and reputation of the person against whom the Retaliation is directed.

5. Protecting the Responding Party.

a. As requested and as appropriate, the RIO and other institutional officials shall make all reasonable and practical efforts 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.

b. During the Research Misconduct Proceeding, the RIO is responsible for ensuring that the Responding Party receives all the notices and opportunities provided for in 42 CFR Part 93, including this policy and accompanying administrative procedures.

6. Interim Administrative Actions and Notifying ORI of Special Circumstances.

a. Throughout the Research Misconduct Proceeding, the RIO will assess whether there is any threat of harm to public health, federal funds and equipment; or to the integrity of the supported research process. In the

event of any threat, the RIO will, in consultation with other institutional officials and ORI (in cases involving FFP and PHS support), take appropriate interim action to protect against any threat. Interim action may include additional monitoring of the research process and the handling of federal funds and equipment; reassignment of personnel or of the responsibility for the handling of federal funds and equipment; additional review of research data and results; or delaying publication.

b. In cases involving FFP and PHS support, the RIO shall, at any time during a Research Misconduct Proceeding, immediately notify ORI if the RIO has reason to believe that any of the following conditions exist or if any of the following actions are advisable:

(1) HHS resources or interests are threatened;

(2) Research activities should be suspended;

(3) There is a reasonable indication of possible violations of civil or criminal law;

(4) Federal action is required to protect the interests of those involved in the Research Misconduct Proceeding; or

(5) The Research Misconduct Proceeding may be made public prematurely and HHS action may be necessary to safeguard Evidence and protect the rights of those involved.

b. If at any time during an Assessment, Inquiry or Investigation, it appears that there has been a violation of criminal law, the Research Misconduct Proceeding will be suspended. The RIO will notify the DO, who will consult with the General Counsel to determine the next action to be taken.

IV. Delegation of Authority

The University of Hawai‘i Vice President for Research and Innovation is delegated authority to serve as the Deciding Official.

V. Contact Information

The University of Hawai‘i UH Office of Research Integrity may be contacted at uhrio@hawaii.edu for information relating to this Executive Policy.

VI. References

- 42 CFR Part 93, Public Health Service Policies on Research Misconduct.

- Regents Policy 12.201 Ethical Standards of Conduct.
- AP 12.211 Administrative Procedures for Responding to Allegations of Research and Scholarly Misconduct.
- Link to superseded Executive Policies in old format <https://www.hawaii.edu/policy/archives/ep/>
- Link to Administrative Procedures in old format <https://www.hawaii.edu/policy/archives/apm/sysap.php>

Approved:

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David Lassner Date
President