



University of Colorado  
Colorado Springs

## Guidelines and Procedures for Research Misconduct Allegations

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# I. Introduction

## A. General Policy

The University of Colorado Colorado Springs, herein referred to as “UCCS,” is responsible for fostering a research environment that promotes the responsible conduct of research, discourages research misconduct, and addresses allegations of possible research misconduct. UCCS’s obligations to prevent and investigate allegations of research misconduct arise under Articles I and V of the Laws of the Regents; University of Colorado Administrative Policy Statement 1007 Misconduct in Research, Scholarship and Creative Activities (“APS 1007”); and the requirements of federal agencies, including the National Institutes of Health/Public Health and the National Science Foundation.

The Faculty Assembly of UCCS has formed the Committee on Misconduct in Research, Scholarship, and Creative Activities (“CMRSCA”) to fulfill its obligation of investigating allegations of research misconduct. These *Guidelines and Procedures* are intended to provide guidance with respect to the manner in which UCCS, through CMRSCA, will carry out these responsibilities.

Nothing in these *Guidelines and Procedures* is intended to override or contradict provisions of other regulations or policies of the University of Colorado or of funding agencies.

Although these *Guidelines and Procedures* set forth the presumptive timeframes for the conduct of proceedings before the CMRSCA or any committees that the CMRSCA appoints, these timeframes are not absolute and may be modified as necessary for the CMRSCA or its committees to adequately perform their functions. Failure to complete an inquiry, investigation, or other process within these timeframes shall not be grounds for dismissal of an allegation of research misconduct, but any undue delay may be considered by the CMRSCA or other appropriate official when reviewing the findings and recommendations of CMRSCA and its committees.

## B. Scope

These *Guidelines and Procedures* apply to:

1. any person who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with UCCS, such as officials; faculty; scientists and trainees; technicians, research coordinators, and other research staff; teaching and support staff; students<sup>1</sup>, post-doctoral, and other fellows; volunteers and guest researchers; contractors,

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<sup>1</sup> UCCS has academic dishonesty procedures that generally take precedence for allegations involving student course work. As such, most (but not all) course-related work is covered by student disciplinary/honor code policies. However, students are covered under this policy if the work in question meets the definition of research. Student theses and dissertations are generally covered by this policy. Work conducted by a student in their role as a UCCS employee is also covered by this policy.

subcontractors, and subawardees and their employees;

2. any person who is alleged to have committed research misconduct prior to his or her employment, agency, or affiliation with UCCS, provided the CMRSCA determines that such allegations of research misconduct have the potential to impact the reputation of UCCS.

Misconduct alleged to have occurred more than six years prior to the University's receipt of the allegation (an "Untimely Allegation") will generally not be reviewed through these procedures. Upon prior approval by the Deciding Official, CMRSCA may accept an Untimely Allegation for review. Untimely Allegations that may be deemed worthy of review include:

- conduct that is identified in the process of an ongoing inquiry or investigation of alleged misconduct;
- allegations received from a federal agency after the six-year period;
- allegations of misconduct that were not discovered and were not reasonably discoverable prior to expiration of the six-year period;
- continued or renewed conduct through the citation, re-publication, or other use by respondent of the research record at issue;
- allegations of research misconduct that may have an adverse effect on public health or safety;
- instances when review is required by law or is otherwise deemed to be in the best interest of the University;
- instances when a longer limitation period (or no limitation period) is imposed by contract or funding entity.

In the event that potential research misconduct is alleged to have occurred in the course of federally-funded research, the CMRSCA shall attempt to comply with both these *Guidelines and Procedures* and the funding agency's requirements for the investigation of research misconduct. In any such case, the CMRSCA shall refer to the requirements delineated by each federal agency, including, for example, the Public Health Service requirements contained in 42 C.F.R. 93 and the National Science Foundation requirements described in Section 930 of the NSF Grant Policy Manual. In the event that these *Guidelines and Procedures* materially conflict with the requirements of any funding agency, the CMRSCA will apply the requirements of the funding agency.

## II. Definitions

### A. Allegation

*Allegation* means a disclosure of possible research misconduct through any reliable means of communication to the Research Integrity Officer or chair of the Committee on Misconduct in Research, Scholarship, and Creative Activities. (See Section VI.A)

*Good faith allegation* means an allegation made with the honest belief that research misconduct may have occurred. An allegation is not in good faith if it is made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

### B. Inquiry

*Inquiry* means preliminary gathering of information and initial fact-finding to determine whether an allegation warrants an investigation.

### C. Investigation

*Investigation* means the formal examination and evaluation of all relevant facts to determine if research misconduct has occurred and, if so, to determine the responsible person(s) and the seriousness of the misconduct.

### D. Research

*Research* is broadly defined to include all forms of research, scholarship, and creative activities within the responsibilities of faculty, staff, or students that are designed as original works or are intended to contribute to generalizable knowledge in a field of academic inquiry. The terms *research* and *research, scholarship, and creative activities* may be used interchangeably throughout this policy.

### E. Research Misconduct

*Research Misconduct* includes the following misconduct:

1. Fabrication, falsification, plagiarism:
  - Fabrication: making up research records and recording or reporting them
  - Falsification: manipulating research materials, equipment or processes, or changing or omitting data/results such that the research is not accurately represented in the research record
  - Plagiarism: appropriation of another's ideas (including Artificial Intelligence<sup>2</sup> generated content), processes, results or words without giving them appropriate credit

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<sup>2</sup> Artificial Intelligence (AI) generated content could constitute research misconduct if the agency, journal, conference etc. do not expressly specify that AI-generated content can be used or is accepted.

2. Other serious deviations from accepted practices<sup>3</sup> in proposing, carrying out, or reviewing, or reporting results from research may include but are not limited to:
  - breach of duty of confidentiality with respect to information related to the research process, including as part of peer review of manuscripts or grant proposals;
  - stealing, tampering with, or destroying research materials;
  - directing or encouraging others to engage in research misconduct.
3. Failure to comply with established standards regarding author names on publications;
4. Retaliation of any kind against a person who, in good faith, reported or provided information about suspected or alleged research misconduct.

*Research Misconduct* does not include honest error or honest differences in interpretations or judgments of data. However, where a person's conduct otherwise constitutes research misconduct, the burden of proof lies with that person to establish by a preponderance of the evidence that the conduct represents honest error or honest differences in interpretation of data.

Allegations which may be addressed via other University processes (e.g., conduct involving human subjects or animals) will be investigated through these *Guidelines and Procedures* only to the extent that there is not an alternative investigative process to address such misconduct.

If, in the course of an investigation, the Committee on Misconduct in Research, Scholarship, and Creative Activities or its committees determines that the allegations of research misconduct relate to federally-funded research and the federal funding agency's definition of research misconduct is more limited than the definition set forth in these *Guidelines and Procedures*, the federal funding agency's definition of research misconduct shall apply for determining whether such research misconduct shall be reported to the federal funding agency or other appropriate authority. UCCS's definition of research misconduct, however, shall continue to apply for UCCS's internal administrative purposes, including the imposition of discipline against any person who is determined to have engaged in conduct that meets UCCS's definition of research misconduct.

## **F. Preponderance of the Evidence**

*Preponderance of the evidence* means the standard of proof used when making findings of fact and conclusions as to whether research misconduct occurred. A *preponderance of the evidence* exists when the totality of the evidence demonstrates that an allegation of misconduct is more probably true than not.

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<sup>3</sup> "Accepted practices" is federal terminology and is used to convey the need to take into account context of the research setting and disciplinary practices.

If the evidence weighs so evenly that the applicable committee or deciding official is unable to say that there is a preponderance on either side, then the decision maker should determine that there is insufficient evidence to conclude that research misconduct occurred.

In applying the *preponderance of the evidence* standard, both direct and indirect (circumstantial) evidence may be considered. If witness statements are relevant, then it is appropriate to consider the credibility of witnesses and the weight to be given to their statements, taking into consideration their means of knowledge, strength of memory, opportunities for observation, the reasonableness or unreasonableness of their statements, the consistency or lack of consistency of their statements, their motives, whether their statements are contradicted or supported by other evidence, and any evidence of bias, prejudice or interest.

## **G. Finding of Research Misconduct**

In order to constitute research misconduct, there must be a finding, by a preponderance of the evidence, that the conduct represents a serious deviation from accepted practices AND that it was committed recklessly, knowingly, or intentionally.

## **H. Serious Research Error**

Serious Research Error results when alleged conduct does not satisfy the definition of a "Finding of Research Misconduct," such as conduct that is the result of honest error or honest differences in interpretations or judgments of data or conduct that is not found to have occurred intentionally, knowingly, or recklessly, but is still found by the Inquiry or Investigative Committee to be a significant departure from accepted practices of the relevant research community.

## **I. Research Records**

*Research records* means data, documents, or other written or non-written accounts or objects - whether in electronic or other form - that reasonably may be expected to provide evidence or information regarding the proposed, conducted, or reported research that constitutes the subject of an allegation of research misconduct.

A *research record* includes, but is not limited to, the following: 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.

Research records should be retained and maintained following procedures of the University, funding agency, or publishing company.

The destruction of, absence of, or Respondent's failure to provide research records adequately documenting the questioned research is evidence of research misconduct



when the University has established by a preponderance of the evidence that, after notice that a research misconduct allegation has been made against the Respondent, (1) the Respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain such records but did not do so, or maintained the records and failed to produce them in a timely manner; and (2) the Respondent's conduct constitutes significant departure from accepted practices of the relevant research community.

## **J. Retaliation**

*Retaliation* means an adverse action taken against a Complainant, witness, or committee member by an institution or one of its members in response to a good faith allegation of research misconduct or good faith cooperation with research misconduct proceedings.

## **K. Public Health Service Office of Research Integrity (PHS/ORI)**

As used in these *Guidelines and Procedures*, PHS/ORI refers to the Office of Research Integrity within the Public Health Service, within the Department of Health and Human Services. This office oversees research misconduct investigations involving research funded by the National Institutes of Health.

### III. Roles and Responsibilities

#### A. Committee on Misconduct in Research, Scholarship, and Creative Activities (CMRSCA)

The *Committee on Misconduct in Research, Scholarship, and Creative Activities* (“CMRSCA”) is a standing committee of the Faculty Assembly and is responsible for inquiries and investigations of allegations of research misconduct. The basic responsibilities of the CMRSCA are: to promote exemplary ethical standards of research conduct; to receive allegations of misconduct; to ensure thorough, fair, and expeditious proceedings for the evaluation of allegations; and to recommend possible disciplinary action, policy changes or other actions to remedy the misconduct and prevent similar misconduct in the future. CMRSCA operates according to its by-laws and uses these *Guidelines and Procedures* to address allegations of research misconduct. The CMRSCA and its committees shall attempt to preserve the rights of all parties during the inquiry and investigation processes.

As more fully described in Section VI of these *Guidelines and Procedures*, the CMRSCA is responsible for inquiries and investigations of allegations of research misconduct and shall:

1. Take appropriate action to promote awareness of the need to avoid activities that amount to or might be misinterpreted as Research Misconduct; encourage each unit to adopt and promulgate standards for authorship; and otherwise enhance ethics in research-related activities;
2. Publicize its existence as the group to whom suspected Research Misconduct is to be reported;
3. Receive and review allegations that the Research Integrity Officer and CMRSCA Chair have determined to warrant an inquiry of Misconduct in Research;
4. Strike an appropriate balance between protecting the rights of the Respondent and protecting the Complainant and witnesses from possible retaliation. The course of action in this regard must be suitable to the circumstances of each individual case;
5. Promptly report to the appropriate dean, vice chancellor and university counsel any allegation(s) judged to be without reasonable basis in fact or that should be handled via another university review process or a separate entity<sup>4</sup>;
6. Promptly notify the appropriate dean and vice chancellor, as well as the appropriate regulatory agencies and/or sponsor at any time during a Misconduct in Research proceeding if it has reason to believe that any of the following conditions exist:

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<sup>4</sup> See footnote 1 and 2, for example.

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
  - Resources or interests are threatened;
  - Research activities should be suspended;
  - There is reasonable indication of possible violations of civil or criminal law;
  - Federal action is required to protect the interests of those involved in the Misconduct in Research proceeding;
  - The research institution believes the Misconduct in Research proceeding may be made public prematurely so that the appropriate regulatory agency may take appropriate steps to safeguard evidence and protect the rights of those involved;
  - The research or academic community or public should be informed;
7. Periodically review and update these operating procedures as necessary to carry out APS 1007 and meet federal requirements;
  8. Take appropriate steps to inform all persons of their obligation to comply with these operating rules and procedures.

## **B. Research Integrity Officer**

The *Research Integrity Officer* (“RIO”) will be the Associate Vice Chancellor for Research unless the Chancellor appoints, in writing, another person to serve. The RIO is the institutional official who has primary responsibility for implementing these *Guidelines and Procedures*. The RIO’s duties are described in Appendix A, and generally include informing any person who is considering whether to submit an allegation of research misconduct about the requirements of these *Guidelines and Procedures*, receiving allegations of research misconduct, coordinating the work of the CMRSCA and its committees, administering these *Guidelines and Procedures* to provide timely notice and an opportunity to respond to any person alleged to have engaged in research misconduct, and providing timely notifications of research misconduct inquiries and investigations to appropriate University and federal agency officials.

The RIO shall be responsible for (1) notifying the CMRSCA of any requirements of funding organizations concerning research misconduct; (2) communicating with such agencies as required by agency guidelines; and/or (3) acting as liaison between the CMRSCA and the appropriate dean, vice chancellor, or other university official if that party is required to communicate with the funding agency on research matters.

## **C. Deciding Official**

The *Deciding Official* (“DO”) will be the Provost unless the Chancellor appoints, in writing, another person to serve. The DO will receive the final Investigative Report from the CMRSCA and determine the appropriate institutional response. To the extent

possible the DO should have no prior involvement in the institution's inquiry, investigation, or allegation assessment; the fact that the DO received an allegation of research misconduct or referred such an allegation to the RIO shall not constitute direct prior involvement. In the event that the Provost has a conflict of interest in a case, the Chancellor shall appoint another individual as the DO. The DO may consider if CMRSCA or its committees failed to provide the rights identified in these *Guidelines and Procedures* when determining the appropriate institutional response to an allegation of research misconduct.

## **D. Complainant**

The *Complainant* is the individual who presents an allegation of research misconduct to the RIO or CMRSCA. The University requires any person who makes an allegation of research misconduct to report in good faith and proceed only if they have a reasonable basis for believing that research misconduct occurred.

A research misconduct case sometimes does not include a specific, named Complainant, such as when an allegation is presented by an entity (e.g., another university, ORI or NSF, a journal) or an anonymous source. In such instances, the RIO, CMRSCA Chair, or DO will reasonably determine the extent to which provisions in these Procedures referring to a Complainant will apply.

## **E. Respondent**

The *Respondent* is the person against whom an allegation of research misconduct has been made. As further described in these *Guidelines and Procedures*, the Respondent has rights that the CMRSCA and its committees shall attempt to preserve during the inquiry and investigation processes.

## **IV. General Policies and Principles**

### **A. Responsibility to Report Misconduct**

UCCS faculty, employees and students have an obligation to report observed or suspected research misconduct to the RIO or to the CMRSCA. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, the person may contact the RIO to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. If the circumstances described by the individual do not meet the definition of research misconduct but are appropriately addressed by another UCCS entity or third party, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem. Except to the extent necessary to comply with reporting requirements or state law or to defend any legal action which might be asserted against UCCS, the RIO will maintain confidential any such discussions or consultations regarding concerns of possible research misconduct.

### **B. Cooperation with Research Misconduct Proceedings**

In accordance with the University of Colorado Administrative Policy Statement 1007 on Misconduct in Research, Scholarship, and Creative Activities, members of the UCCS community are obligated to cooperate with and provide evidence relevant to a research misconduct allegation to the RIO, the CMRSCA, and other institutional officials. Any member of the UCCS community who fails or refuses to cooperate with the inquiry or investigative processes shall be reported to the appropriate dean or vice chancellor; such non-cooperation may constitute the basis for disciplinary action. Nothing herein will be interpreted in such a way as to infringe on an individual's right to invoke the protection of the Fifth Amendment to the U.S. Constitution with regard to self-incrimination.

During both inquiry and investigation, the RIO and the CMRSCA shall elicit the cooperation of the Complainant, the Respondent, and any other persons who have knowledge of the alleged research misconduct. Any person's failure to provide such cooperation, however, shall not preclude UCCS's continued investigation of potential research misconduct.

### **C. Confidentiality**

The RIO, the CMRSCA, and its committees shall take reasonable steps to maintain the confidentiality of an allegation of research misconduct through the inquiry and investigative stages. The RIO, the CMRSCA, and its committees shall request that the Complainant, the Respondent, and any other involved persons maintain confidentiality of the allegations, inquiries, investigations, resolutions, and related documentation and communication during the inquiry and investigative processes, including through the use of confidentiality agreements.

During the course of the inquiry and investigative stages, the RIO, the CMRSCA, and its committees may disclose information related to an allegation of research misconduct through the inquiry and investigative stages to the extent necessary to gather relevant documentation and otherwise conduct their inquiry and investigation. The RIO or the CMRSCA may also disclose information related to the inquiry and investigative processes if the seriousness of the alleged research misconduct warrants disclosure pending the outcome of the inquiry or the investigation. Without limitation, such instances include where the disclosure is necessary: (1) to prevent an immediate health hazard; (2) to protect the University's resources or reputation; (3) to protect the interests of the academic community; (4) to protect any person's resources or reputation; (5) to comply with the University's obligations to any state or federal agency; or (6) to correct misinformation made available to the public about the alleged research misconduct and the University's response.

To the extent possible, the RIO and/or the CMRSCA shall limit disclosure of the identity of the Complainant, Respondent, or witnesses in the inquiry and investigative processes. For example, unless the circumstances merit direct identification of the participants in their reports and other documents, the CMRSCA and its committees should refer to the participants as "Complainant," "Respondent," and "Witness 1." In the event that the CMRSCA or its committees choose to refer to individuals in their reports using generic identifiers, it shall also include a confidential appendix containing those persons' identities.

The CMRSCA, upon recommendation to and approval by the RIO and the Provost, may disclose the final Inquiry Report and/or Investigative Report as necessary for it to meet its obligation of discouraging research misconduct in the University community, to remediate the harm caused by research misconduct, or as necessary to comply with the requirements of funded research. In the event that the CMRSCA finds that a Respondent has not engaged in research misconduct, the CMRSCA may disclose the final Inquiry Report and Investigative Report if the CMRSCA deems it appropriate and necessary to protect the reputation of the Respondent.

Notwithstanding any other provision in these *Guidelines and Procedures*, the University, the RIO, the CMRSCA, and its committees shall disclose any information reasonably necessary for it to comply with state or federal law.

## **D. Non-Retaliation and Whistleblower Protection**

Members of the University community may not retaliate in any way against Complainants, witnesses, or committee members (Regent Policy 1C). Any alleged or apparent retaliation against such individuals should be immediately reported to the RIO. The RIO shall review the allegation of retaliation and, if warranted, take reasonable and practical efforts to redress any retaliation that has already occurred and to prevent further retaliation. The retaliation allegation will be sent to the CMRSCA for review under these *Guidelines and Procedures*.

## **E. Interim Administrative Actions and Notifying PHS/ORI of Special Circumstances**

Throughout the research misconduct inquiry and investigation, the RIO will monitor the proceedings to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the federally-supported research process. In the event of such a threat, the RIO will, in consultation with other institutional officials and the funding agency, take appropriate interim action to protect against any such threat.

Interim action might 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, delaying publication, or notifying appropriate persons of errors in published research.

The RIO shall, at any time during a research misconduct proceeding, notify PHS/ORI immediately if the person has reason to believe that any of the following conditions exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- Department of Health and Human Services (HHS) resources or interests are threatened;
- Research activities should be suspended;
- There is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the research misconduct proceeding;
- 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; or
- The research community or public should be informed.

## **F. Termination or Resignation of Respondent Prior to Completing Inquiry or Investigation**

The termination of the Respondent's employment with the University, 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, without admitting to the misconduct, elects to resign his or her position prior to the initiation of an inquiry, but after an allegation has been reported, or during an inquiry or investigation, the inquiry or investigation will proceed. If the Respondent refuses to participate in the process after resignation, the CMRSCA 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.

## **V. General Operating Procedures**

### **A. CMRSCA**

CMRSCA operates according to the approved by-laws (provided in Appendix B). These *Guidelines and Procedures* are for addressing research misconduct allegations and for ensuring compliance with APS 1007.

### **B. Clerical and Administrative Support**

Clerical and administrative support shall be provided by the Office of Research. Copies of all CMRSCA written records are to be kept by the Office of Research in accordance with the University's record retention policy. A secure folder may be used for electronic storing of files and the sharing of files in a misconduct investigation.

### **C. Conflict of Interest or Bias**

To ensure impartiality, members of the CMRSCA, the Inquiry Committee, the Investigative Committee, the RIO, and the DO are expected to reveal any actual or potential conflicts of interest to the CMRSCA, including: (1) previous personal knowledge of or involvement in the matter forming the basis of the research misconduct allegation; (2) close personal, professional, or financial relationship with the Complainant, Respondent, or any other participant in the inquiry or investigative processes.

Any individual with an actual conflict of interest or bias should withdraw from the relevant processes. Any member may also withdraw or limit participation if the person feels that participation may create the appearance of impropriety, even if there is no actual conflict of interest. The Chair of the CMRSCA may also disqualify any member determined by the Chair or the CMRSCA to have an actual conflict of interest or bias. If a member withdraws or is disqualified from particular proceedings, that member shall take no part in those proceedings as a member of the Committee, including attending meetings, asking questions, observing the proceedings, and discussing the allegations with other members. Complainants and Respondents may identify to the RIO any persons with a potential conflict to request they not participate in the CMRSCA, the Inquiry, and/or Investigative Committee. A disqualified member may, however, be called as a witness during the inquiry or investigative processes.

### **D. Role of the University Counsel**

The CMRSCA and its committees, the RIO, and the DO may seek advice and assistance from the Office of the University Counsel as they deem necessary. University Counsel also provides interpretation of rules and laws related to a research misconduct proceeding. University Counsel will not provide legal advice to Respondents, witnesses, or Complainants, and it is within their individual discretion to seek advice from their own legal counsel.



The Office of the University Counsel shall be notified of the meetings of the CMRSCA and provided with minutes of CMRSCA proceedings. University Counsel may send a representative to attend meetings of the CMRSCA or proceedings conducted by the Inquiry or Investigative Committees appointed hereunder if the University Counsel considers that such attendance is in the best interests of the University.

## **E. Amendments to Guidelines and Procedures**

Changes to these *Guidelines and Procedures*, when possible, will be made following normal campus processes and with appropriate input and approvals by faculty representative assembly. To ensure compliance with University, federal, or other requirements for a pending investigation, the RIO, in consultation with the CMRSCA chair or faculty assembly president, may make changes or amendments if there is not sufficient time to follow normal processes (e.g., during summer with a pending case).

## **F. Education of the Academic Community**

Deans, directors, chairs, and graduate advisors shall be reminded annually of APS 1007 and of these *Guidelines and Procedures*. The University shall also inform all faculty, students, and staff of (1) the need for integrity in research performance and (2) the role of the CMRSCA in considering allegations of research misconduct.

## **VI. Conducting an Assessment of Misconduct**

### **A. Reporting Allegations of Research Misconduct**

All persons having knowledge of research misconduct or having reason to believe that such research misconduct may have occurred, should submit allegations of research misconduct to the RIO. Allegations may also be given to any CMRSCA member, who shall direct them to the RIO. All allegations must be in writing, either from an identified or anonymous source. If an allegation is communicated to the RIO anonymously in some other way, e.g., via the ethics hotline, the RIO will have the discretion to record the allegations in writing for the purpose of implementing these procedures.

Upon receiving an allegation of misconduct in research, the RIO will notify the Complainant, if known, of the existence of APS 1007 and of these procedures. If unsigned allegations are submitted by a research sponsor, that sponsoring agency shall be regarded as the Complainant for reporting purposes. If no funding agency is associated with unsigned or anonymous allegations, the portions of these procedures which pertain to a specific Complainant shall not be applicable.

Individuals who are uncertain about whether to file an allegation may consult with the RIO prior to filing a complaint. Except as described in the section of these *Guidelines and Procedures* detailing confidentiality, the RIO will maintain confidential any such discussions or consultations regarding concerns of possible research misconduct.

### **B. Initial Review**

Within 30 calendar days of the receipt of allegations by the RIO, the RIO shall convene the CMRSCA. The CMRSCA shall determine whether the allegation (a) is sufficiently credible and specific so that potential evidence of research misconduct may be identified, and (b) meets the definition of research misconduct described under these *Guidelines and Procedures* or under any federal standard applicable to the research.

Should multiple complaints about the same Respondent be received, the CMRSCA Chair shall have the discretion to determine how best to proceed. Generally, multiple complaints will be handled as follows:

1. If an inquiry is already in process, the new complaint will be forwarded to the current Inquiry Committee (described below). The current Inquiry Committee may recommend to the CMRSCA that the new complaint be included as part of the ongoing inquiry, that a new Inquiry Committee be formed to explore the new complaint, or that the new complaint be rejected as being duplicative with the allegations already being reviewed.
2. If an investigation is underway when a new complaint arrives, the chair of the CMRSCA will confer with the chair of the Investigative Committee to determine if the new complaint is most appropriately included in a revised charge to the Investigative Committee or whether it should be referred to an Inquiry Committee.

3. If a complaint is received after an Investigation has been completed, the CMRSCA Chair will determine whether the new complaint merits an Inquiry or is redundant with the prior complaint(s) that have already been investigated.

The initial assessment period should be brief. In conducting the assessment, the RIO or the CMRSCA need not interview the Complainant, Respondent, or other witnesses nor conduct any research or gather any data beyond any that may have been submitted with the allegation, except as necessary to determine whether the allegation is sufficiently specific so that a potential instance of research misconduct may be identified.

If the CMRSCA, upon a majority vote of all members, determines that the allegations present a possible instance of research misconduct, the allegations will be referred for inquiry as described herein. If the CMRSCA determines the allegations do not state a possible instance of research misconduct or do not meet the definition of research misconduct, the chair of CMRSCA shall notify the RIO who shall notify the Complainant.

## **C. Inquiry Phase**

### **1. General Requirements**

Upon a determination by the CMRSCA that the allegations merit further inquiry, the CMRSCA shall appoint an Inquiry Committee of at least three members to determine whether any or all allegations warrant a full investigation. Members should be selected based on their academic rank and level of experience with the type of misconduct allegations or research methodologies used. The Inquiry Committee must consist of individuals who do not have unresolved personal, professional, or financial conflicts of interest with either the Complainant or Respondent.

No members of the CMRSCA shall be members of the Inquiry Committee.

The inquiry process is a fact-finding, non-adversarial<sup>5</sup> proceeding to evaluate whether sufficient credible evidence of research misconduct exists to warrant full investigation. The inquiry process is intended only to provide a means of initially evaluating the merits of the allegations of research misconduct for the purpose of identifying and dismissing non-meritorious allegations. Consequently, because of the limited nature of the inquiry proceedings, the inquiry process does not require the Inquiry Committee to fully review all of the evidence related to the allegation. The Inquiry Committee will pursue diligently all allegations, including any additional instances of possible research misconduct that may arise during the inquiry process. The Respondent will be informed promptly of any additional allegations.

The Inquiry Committee shall request confidentiality from all participants in the inquiry process, and each interested party shall be interviewed separately. Any person—whether a Complainant, Respondent, or witness—may have an advisor or attorney

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<sup>5</sup> “Non-adversarial” is used in the legal sense. A non-adversarial process is a fact-finding process resulting in a committee’s determination, with allowances for Respondents to present information and to respond to determinations. An adversarial process involves legal representation and cross-examination of witnesses.

present at any interview of such person to act as a personal advisor. Such advisors may assist in the presentation of information but may not speak for the party they are accompanying. The inquiry proceedings typically will not be recorded, although the members of the Inquiry Committee may take informal written notes during the proceedings or, at their discretion, record deliberations.

The inquiry process shall be initiated and conducted as expeditiously as possible. The inquiry process, including preparation of the final inquiry report and the decision of the CMRSCA on whether an investigation is warranted, shall normally be completed within 45 calendar days of the initial written notification to the Respondent. However, if the RIO determines that the inquiry process cannot be completed within this 45-day period, the RIO may extend the time within which the Inquiry Committee is to complete its work, not to exceed 60 calendar days. If a time extension is granted, the final report of the Inquiry Committee must include the reasons for the extension.

## **2. Notice to Respondent**

The Respondent is normally not informed of an allegation until after the CMRSCA has completed its initial review and determined that the allegation should proceed to the inquiry process. Once this determination has been made, the RIO, on behalf of the CMRSCA, must make a good faith effort to notify the Respondent in writing of the allegations and University and campus rules and procedures governing the inquiry process. In the case of funded research, the RIO will provide the Respondent with the relevant federal regulations.

Following a formal notification of the allegations, the Respondent should be given the opportunity to admit that research misconduct occurred and that the Respondent committed the research misconduct. If the Respondent chooses to admit to the allegations, the Inquiry Committee should evaluate and opine upon the adequacy of the scope of the admission and include that opinion as part of its report to the CMRSCA; this process may involve collection of corroborative evidence or other inquiry. With the advice of the RIO and CMRSCA, the DO may terminate the institution's review of an allegation that has been admitted. In the case of allegations that fall under the purview of the Public Health Service, the University's acceptance of the admission and any proposed settlement must be approved by PHS/ORI.

If the Inquiry Committee pursues additional incidences of potential research misconduct discovered during the inquiry phase, the Respondent will be informed promptly of these.

## **3. Protection of Evidence**

The RIO shall, on or before the date on which the Respondent is notified of the allegation, take all reasonable and practical steps to obtain custody of all records and evidence necessary to conduct the inquiry. The RIO shall inventory and sequester all such records and evidence. The RIO shall confer with the Respondent to identify the records and evidence needed for the inquiry and the best means of preserving and maintaining the integrity of the records and evidence.

Where the records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments. The RIO may consult with NIH/PHS or other similar parties for advice and assistance in this regard.

#### **4. Inquiry Committee Procedures**

The Inquiry Committee shall typically begin its inquiry by reviewing the written allegations of research misconduct and any supporting materials to determine whether to gather additional evidence and/or if further investigation of the allegations is warranted. The Inquiry Committee shall request that the Respondent provide a written response to the allegations of research misconduct within 14 calendar days of receiving notice of the allegation, but the Inquiry Committee may grant a reasonable extension of this deadline at its discretion. The Inquiry Committee may, at its option, interview or submit written questions to the Complainant but is not required to do so.

After receiving and reviewing the Respondent's written response to the allegations of research misconduct, or if the Respondent does not respond within the allowed period of time, the Inquiry Committee normally shall invite the Respondent for an in-person or virtual interview to discuss the details of the alleged misconduct. This interview shall be fact-finding rather than adversarial. If either the Respondent declines an interview or the Inquiry Committee requires additional information, the Inquiry Committee may also interview the Respondent through solicited responses to questions or other methods.

In extraordinary cases where it is unable to form an opinion whether the written allegations are unsupported by the evidence, the Inquiry Committee may interview additional witnesses. In these cases, the Respondent will be informed of the allegations before any additional interviews are conducted. Any such interviews may be conducted in person, virtually, by telephone, through solicited responses to written questions or other methods. These interviews will be conducted in a manner designed to protect the confidentiality of the inquiry process, including, to the extent possible, the Respondent's identity, and the witnesses/experts will be asked to sign Confidentiality Agreements.

When the Inquiry Committee conducts any interviews as part of its investigation, it shall record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of the investigation. Additional sources of information, such as documents and physical evidence, may be gathered and considered by the Inquiry Committee.

On the basis of information provided by both the Complainant and Respondent, physical evidence, and any other interviews deemed necessary, the Inquiry Committee, by recorded simple majority vote, shall decide whether further investigation into any or all allegations of research misconduct is warranted or whether to terminate consideration of any or all of the allegations. The Inquiry Committee shall provide its recommendation in a fully documented written report to the CMRSCA for appropriate action.

## **5. Summary of Relevant Evidence**

Once it has completed its review of the evidence, the Inquiry Committee will prepare a Summary of Relevant Evidence document (SRE). This document summarizes the information obtained from any interviews that the committee conducted as well as any documents the committee reviewed. The document is intended to be an objective summary of the relevant information obtained to date and is not expected to include any conclusions or determinations.

Once finalized, the Research Integrity Officer will provide the SRE to the Respondent. The Respondent has 10 calendar days from delivery to review the SRE and may, if they desire, provide a written response to the RIO within that ten-day period that identifies any inaccuracies or omissions they feel exist in the SRE. If no response is received within 10 calendar days, the SRE will be deemed to be sufficient.

The CMRSCA Chair may, but is not required to, direct the RIO to provide the Complainant with a copy of the SRE, or relevant portions of it, for Complainant's response. The RIO shall not provide the Complainant with a copy of the SRE unless the Complainant agrees to be bound by a confidentiality agreement permitting review of the information solely to provide feedback to the inquiry committee and prohibiting disclosure of the contents. A Complainant will be allowed 10 calendar days from the date an SRE is delivered to provide the RIO with a written response. If received within that time frame, the RIO shall provide the Complainant's written response to the Inquiry Committee.

The Inquiry Committee will review the response from the Respondent (and, if applicable, the Complainant) and determine whether any changes to the SRE, or any additional information gathering, is warranted. The SRE, the response(s), if any, as well as the Inquiry Committee's evaluation of the response(s), will be included in the committee's Inquiry report.

## **6. Solicitation of Comments**

Before submitting its report to the CMRSCA, the Inquiry Committee shall provide a copy of its proposed report to the Respondent for review. If the Respondent wishes to submit any comments on the proposed report to the CMRSCA, the Inquiry Committee shall include those comments with the final Inquiry Report that is transmitted to the CMRSCA. The Respondent's comments shall be received by the Inquiry Committee within 10 calendar days after the Respondent's receipt of the proposed report. Upon receipt of comments by the Respondent, the Inquiry Committee may modify its proposed report before submitting a final report to the CMRSCA. The Inquiry Committee is not required to provide the Respondent with its modifications before submitting the final report to the CMRSCA.

## **7. The Inquiry Report**

The Inquiry Committee's Inquiry Report shall include the following:

- a) The name and position of the Respondent;

- b) A description of the allegations of research misconduct;
- c) Grant support (if applicable), including, for example, grant numbers, grant applications, contracts, and publications listing the source of support;
- d) The names and titles of the committee members who conducted the inquiry;
- e) A summary of the inquiry process;
- f) A list of the research records reviewed;
- g) Summaries of interviews;
- h) Summary of the relevant evidence;
- i) The basis for recommending or not recommending that the allegations warrant a full investigation;
- j) Whether any other actions should be taken if an investigation is not recommended; and
- k) Any comments by the Respondent to the report.

## **8. CMRSCA Review of Inquiry Report**

The CMRSCA shall review the Inquiry Committee's Report and vote to determine whether to refer some or all of the research misconduct allegations to the Investigative Committee for full investigation. Only upon a vote of at least 67% of CMRSCA members participating in the case shall CMRSCA refer some or all of the research misconduct allegations to the Investigative Committee for a full investigation.

CMRSCA shall dismiss any research misconduct allegation that fails to receive a vote of at least 67% of CMRSCA members participating in the case for referral to the Investigative Committee for full investigation. The inquiry shall be deemed concluded as to any dismissed allegation.

The RIO shall inform the Complainant and the Respondent of the CMRSCA's determination and the bases for its determination. If the CMRSCA determines that some or all of the Complainant's allegations were made not in good faith, the CMRSCA may refer the Complainant to appropriate entities within the University or other institutions.

## **9. Notification to Complainant and Respondent**

The RIO shall inform the Complainant and the Respondent of the CMRSCA's determination and the bases for its determination. The RIO will provide the Respondent with a copy of the final Inquiry Report.

The CMRSCA may, but is not required to, provide a copy of the Inquiry Report to the Complainant. The CMRSCA shall not provide the Complainant with a copy of the Inquiry Report unless the Complainant agrees to be bound by a confidentiality agreement preventing disclosure of the contents of the report.

If either the Complainant or Respondent wishes to submit any comments upon the report to the CMRSCA, they will be included in the final record (and will be provided to

the Investigative Committee, if applicable). Such comments do not constitute an appeal of the CMRSCA's decision, which is final.

#### **10. Notification to PHS/ORI (if applicable)**

Within 30 calendar days of the decision by the CMRSCA that an investigation is warranted, the RIO will so inform any source of funding for the research with a copy of the Inquiry Report. Sources may include federal or state agencies or private party sponsors. The RIO will provide the following information to a funding source upon request: (1) the institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) the charges to be considered in the investigation.

If the CMRSCA decides that an investigation is not warranted, the RIO shall secure and maintain for 7 years after the termination of the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by a funding source of the reasons why an investigation was not conducted. If the request comes from PHS/ORI or other authorized HHS personnel, these documents must be provided.

### **D. Investigation Phase**

Unless extraordinary circumstances exist, the investigation phase must begin within 45 calendar days after the determination by the CMRSCA that an investigation is warranted. The purpose of the investigation is to develop a factual record by exploring the allegations in detail and examining the evidence in depth. The ultimate purpose is to determine whether research misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible research misconduct that would justify broadening the scope beyond the initial allegations.

#### **1. Appointment of Investigative Committee**

As soon as possible after the CMRSCA votes to pursue an investigation, the CMRSCA, in consultation with the appropriate dean or vice chancellor, shall appoint an ad hoc committee of three to five members, including a chair, to serve as the Investigative Committee. The Investigative Committee is charged with conducting a thorough and unbiased investigation of the allegations of misconduct, including any additional instances of possible research misconduct that may arise during the investigation. The Respondent will be informed promptly of any additional allegations.

The CMRSCA may select Investigative Committee members from inside or outside the University, but no member of the CMRSCA may serve on the Investigative Committee. In selecting members, the CMRSCA should consider: (i) any conflicts of interest or bias that would prevent a person from serving as an impartial member of the Investigative Committee; (ii) the member's area of expertise and ability to provide substantive assistance to the investigative process; and (iii) the member's academic rank.



The RIO shall notify the Respondent and Complainant of the names of potential Investigative Committee members to ensure that Investigative Committee members do not have a bias or conflict of interest in considering the case. If a potential member's impartiality is questioned, the CMRSCA will determine whether the potential member should be excluded from the Investigative Committee. If, during the course of an investigation, a member's impartiality is questioned, the CMRSCA will determine whether the potential member should be removed and replaced.

## **2. Charge to the Investigative Committee**

The RIO will convene the first meeting of the Investigative Committee at which the Chair of the CMRSCA and the RIO will review with the Investigative Committee the charge, the Inquiry Report, and these *Guidelines and Procedures*. At least one member of the Inquiry Committee should also be present to address any questions about the Inquiry Report. The RIO will inform the members of the Investigative Committee of the confidentiality requirements of these *Guidelines and Procedures* and obtain the members' agreements to these requirements. The RIO shall provide each member with these *Guidelines and Procedures*, as well as any federal standards applicable to the investigation. The RIO will be available throughout the investigation to advise the Investigative Committee as needed.

The CMRSCA will provide the Investigative Committee with a written charge that:

- a) Describes the allegations and related issues identified during the inquiry;
- b) Identifies the Respondent;
- c) Informs the Investigative Committee that it must conduct the investigation as prescribed in these *Guidelines and Procedures*;
- d) Informs the Investigative Committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, the type and extent of it and who was responsible;
- e) Informs the Investigative Committee that the Respondent has the burden of proving by a preponderance of the evidence any affirmative defenses raised, including honest error or an honest difference of opinion;
- f) Informs the Investigative Committee that it must determine by a preponderance of the evidence whether the Respondent committed the research misconduct intentionally, knowingly, or recklessly; and
- g) Informs the Investigative Committee that it must prepare or direct the preparation of a written investigative report that meets the requirements of this policy and, if applicable, 42 CFR § 93.313.

## **3. Investigative Process**

The Investigative Committee has the responsibility for conducting a thorough and unbiased investigation. In accordance with this mandate, the Investigative Committee shall:

- a) Begin its proceedings by studying the information and evidence collected by the Inquiry Committee;
- b) Determine what additional evidence the Investigative Committee needs to make an informed determination as to whether research misconduct has occurred, including interviews of witnesses (including witnesses already interviewed by the Inquiry Committee) and review of additional evidence;
- c) Provide the Respondent with an opportunity to provide oral or documentary evidence related to the allegations or research misconduct;
- d) Provide the Respondent with an opportunity to identify witnesses with knowledge in the area of the alleged research misconduct;
- e) Provide the Respondent with an opportunity to review and respond to any evidence that the Investigative Committee relies upon in making its determinations;
- f) Preserve the evidence that it relies upon in making its determinations.

The Investigative Committee shall request confidentiality from all participants in the investigation.

When the Investigative Committee conducts any interviews as part of its investigation, it shall record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of the investigation.

The Chair of the Investigative Committee shall control the proceedings and determine the admissibility of evidence. The Investigative Committee shall not be bound by the Colorado Rules of Evidence which would apply in a court setting and may admit any evidence that the Chair deems reasonably related to the allegations of research misconduct. The Chair shall have the ability to limit the presentation of irrelevant or repetitious evidence. The Investigative Committee has the discretion to determine whether or not to record its deliberations.

Any party appearing before the Investigative Committee may have an advisor present, who may be an attorney. The advisor may assist the party in his/her presentation of information but may not speak on the party's behalf.

#### **4. Summary of Relevant Evidence**

Once it has completed its review of the evidence, the Investigation Committee will prepare its Summary of Relevant Evidence (SRE), which may be based, in large part, upon the SRE originally prepared by the Inquiry Committee. This document will summarize the information obtained from any interviews that the committees conducted as well as any documents or other evidence the committees reviewed. The document is intended to be an objective summary of the relevant information obtained by the committees to date and is not expected to include any conclusions or determinations.

Once finalized, the Research Integrity Officer will provide a copy of the SRE to the Respondent. The Respondent has 30 calendar days from delivery to review the SRE and may, if they desire, provide a response to the RIO within that 30-day period that identifies any inaccuracies or omissions they feel exist in the SRE. The Respondent may wish to identify any additional questions for witnesses or other relevant evidence that they feel should be explored by the Investigation Committee. If no response is received within 30 calendar days, the SRE will be deemed sufficient.

The CMRSCA Chair may, but is not required to, direct the RIO to provide the Complainant with a copy of the SRE, or relevant portions of it, for the Complainant's response. The RIO shall not provide the Complainant with a copy of the SRE unless the Complainant agrees to be bound by a confidentiality agreement permitting review of the information solely to provide feedback to the investigation committee and prohibiting disclosure of the contents. A Complainant will be allowed 20 calendar days from the date that an SRE is delivered to provide the RIO with their written response. If received within that 20-day time frame, the RIO shall provide the Complainant's written response to the Investigation Committee and the Respondent.

The Investigation Committee shall consider the Respondent's (and Complainant's, if applicable) comments, shall determine whether any changes to the SRE or additional information gathering is warranted. The Investigation Committee shall include the comments, if any, and the Investigation Committee's response to such comments, as an appendix to their SRE. If the Investigation Committee chooses to amend its SRE, it is not required to provide either the Respondent or Complainant with its SRE modifications before submitting their final report to the CMRSCA.

## **5. Time for Completion**

The Investigative Committee shall normally complete its investigation, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to CMRSCA, within 120 calendar days of the Investigative Committee's first meeting. The Chair of the Investigative Committee shall keep the RIO informed of the status of its investigation.

If the RIO determines that the investigation cannot be completed within this 120-day period, the RIO may extend the time within which the Investigative Committee is to complete its investigation. The rationale for this extension should be included in the final report of the Investigative Committee. If the investigation falls under the jurisdiction of the Public Health Service, the RIO will submit to PHS/ORI a written request for an extension, setting forth the reasons for the delay, and if such an extension is granted and PHS/ORI direct the filing of periodic progress reports, the RIO will ensure that such periodic progress reports are filed with PHS/ORI.

## **6. Decision by the Investigative Committee**

When it considers that its task has been completed, the Investigative Committee shall determine by majority vote whether the allegations of misconduct are supported by a preponderance of the evidence. The Investigative Committee shall reach one of the

following decisions as to each allegation of research misconduct:

- a) A Finding of Research Misconduct;
- b) A Finding of no Research Misconduct, but Serious Research Error; or
- c) A Finding of no Research Misconduct and no Serious Research Error.

The Investigative Committee shall communicate this decision to the CMRSCA in an initial written Investigative Report. The initial Investigative Report shall:

- a) Describe the nature of the allegation of research misconduct, including identification of the Respondent;
- b) Describe any external support, including, for example, the numbers of any grants that are involved, grant applications, contracts, and publications listing this support;
- c) Describe the specific allegations of research misconduct considered in the investigation;
- d) Describe the institutional policies and procedures under which the investigation was conducted;
- e) Identify and summarize the relevant evidence and sources that the Investigative Committee relied upon in making its determination;
- f) Include a statement of findings for each allegation of research misconduct identified during the investigation.
- g) Each statement of findings must
  - (1) identify whether the research misconduct was falsification, fabrication, or plagiarism or other form of conduct outlined in University policies and rules, including these *Guidelines and Procedures*;
  - (2) identify whether the research misconduct was committed intentionally, knowingly, or recklessly;
  - (3) summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the Respondent, including any effort by the Respondent to establish that there was no research misconduct because of honest error or a difference of opinion;
  - (4) identify the specific evidence that the Investigative Committee relied upon in making its determination;
  - (5) identify whether the research misconduct would require any publications to need correction or retraction; and
  - (6) identify the person(s) responsible for the research misconduct.

If the Investigative Committee determines that the Respondent did not engage in an alleged act of research misconduct, the final Investigative Report should indicate whether the Investigative Committee finds that allegation was not made in good faith.

## **7. Comments on the Investigative Report and Access to Evidence**

### **Respondent**

The Investigative Committee will provide its initial Investigative Report to the RIO, who shall provide the Respondent with a copy for comment and, concurrently, a copy of, or supervised access to, the evidence upon which the report is based.

The Respondent will be allowed 30 calendar days from the date that the initial Investigative Report was received to provide the RIO with a written response to the Investigative Report. If received within that time frame, the RIO shall provide the Respondent's written response to the Investigative Committee.

### **Complainant**

At its option, the CMRSCA may, but is not required to, direct the RIO to provide the Complainant with a copy of the initial Investigative Report, or relevant portions of it, for Complainant's response. The RIO shall not provide the Complainant with a copy of the initial Investigative Report unless the Complainant agrees to be bound by a confidentiality agreement preventing disclosure of the contents of the report. If the CMRSCA allows the Complainant to receive the Investigative Report, the Complainant will be allowed 30 calendar days from the date the initial Investigative Report was received to provide the RIO with a written response. If received within that time frame, the RIO shall provide the Complainant's written response to the Investigative Committee.

### **Incorporation into the Report**

The Investigative Committee shall consider the Respondent's (and Complainant's, if applicable) comments when finalizing its report to the CMRSCA and shall include the comments as an appendix to the final Investigative Report. If the Investigative Committee chooses to amend its report, it is not required to provide either party with its modifications before submitting the final report to the CMRSCA.

Before submitting its final report to CMRSCA, the Investigative Committee may submit the report to University Counsel for review for legal sufficiency.

## **8. Referral to CMRSCA**

After completing its report, the Investigative Committee shall transmit the final Investigative Report to the CMRSCA. The CMRSCA shall consider the Investigative Report to determine whether it requires additional information, explanation, or investigation from the Investigative Committee.

If the CMRSCA requests any additional information, explanation, or investigation from the Investigative Committee, it shall return the Investigative Report to the Investigative Committee for further response. Upon completing any additional response, the Investigative Committee shall return the report to the CMRSCA.

When the CMRSCA determines that the Investigative Committee's report is complete and no further response is necessary, it shall accept the report as final and inform the Investigative Committee that it has completed its obligations.

## **E. Disposition by the CMRSCA**

The CMRSCA shall consider the Investigative Committee's report, as well as any comments by the Respondent and Complainant, before preparing the final CMRSCA Report.

Upon receipt of the Investigative Committee's final Investigative Report and the responses thereto, if any, from the Respondent or Complainant, the CMRSCA shall review the same and create a final CMRSCA Report. The final CMRSCA Report is not intended to be a separate investigation of the allegations. Rather, it shall include recommendations consistent with APS 1007 and based on the findings included in the Investigative Report regarding:

1. Possible disciplinary action, policy changes, or other actions that might ensure that similar research misconduct does not occur in the future;
2. Steps to correct or ameliorate the effects of the research misconduct;
3. Steps to be taken to prevent retaliation against the Complainant or other persons providing information in the investigation and to restore the positions and reputations of persons who have made allegations in good faith;
4. Whether the Respondent's reputation has been unjustly damaged by the investigation and, if so, what steps might be taken to repair that damage;
5. Whether any allegation is judged to have been made not in good faith. Such determinations will be provided to the RIO and/or DO for their referral to the academic supervisor of the Complainant.

The final CMRSCA Report along with the final Investigative Report shall be submitted to the DO and to the Respondent.

## **F. Final Disposition**

### **1. Decision by the Deciding Official**

Upon receipt of the final CMRSCA Report and the Investigative Report, the DO will determine in writing: (1) whether the University accepts the Investigative Report, its findings, and the CMRSCA Report; and (2) set forth the University's actions in response thereto. If this determination varies from the findings of the Investigation Committee and/or the recommendations of the CMRSCA, the DO will, as part of his/her written determination, explain the basis for the decision.

Independent of this process, the Respondent may submit to the DO any additional statements. The Respondent has the burden of proving by a preponderance of the evidence any mitigating factors that are relevant to a decision to impose administrative

sanctions.

## **2. Disagreement with Investigation Committee Report**

If the DO's disagreement pertains to the findings of the Investigation Committee, the CMRSCA may direct the Investigation Committee to provide a response. This may involve additional investigation or re-evaluation of their original report. The Investigation Committee will then issue a revised report to the CMRSCA. This revised report and CMRSCA conclusions will then be provided to the DO as the final Investigation and CMRSCA Reports.

## **3. Disagreement with CMRSCA Report**

If the DO still disagrees with the recommendations of the CMRSCA, the DO may meet with the CMRSCA to discuss their differences before issuing a final decision. In the event that the CMRSCA or its committees fail to provide the rights identified in these *Guidelines and Procedures*, the DO may consider any such failure when determining the appropriate institutional response to an allegation of research misconduct.

## **4. Communication of Decision**

When the DO has reached a final decision on the case, the DO will so notify both the Respondent and the Complainant in writing.

The DO, in consultation with the RIO and the Office of University Counsel, will determine whether other university officials, PHS/ORI, law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the Respondent in the work, or other relevant parties should be notified of the outcome of the case. The RIO is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

## **G. Appeals**

The determination of the DO is final and may not be appealed. Any disciplinary or administrative action taken as a result of the DO's determination shall be handled in accordance with the University's existing grievance and appeal processes if the Respondent is expressly granted with a right to do so. For cases under the jurisdiction of PHS/ORI, such appeals must be completed within 120 calendar days of filing. If unable to be completed within 120 calendar days, the DO must ask PHS/ORI in writing for an extension and provide an explanation for the request.

## **H. Notice to PHS/ORI or Other Funding Agencies**

To the extent applicable, unless an extension has been granted, the RIO must, within the 120-day period for completing the investigation, submit the following to PHS/ORI or other funding agencies that require such reporting: (1) a copy of the final Investigative Report with all attachments; (2) a statement of whether the University

accepts the findings of the Investigative Report; (3) a statement of whether the University found misconduct and, if so, who committed the misconduct; (4) a description of any pending or completed administrative actions against the Respondent; and (5) a description of any pending or completed administrative actions to correct or ameliorate the effects of the misconduct and/or to ensure that similar misconduct does not occur in the future.

The RIO must maintain and provide to PHS/ORI upon request “records of research misconduct proceedings” as that term is defined by 42 CFR § 93.317. Unless custody has been transferred to HHS or PHS/ORI has advised in writing that the records no longer need to be retained, records of research misconduct proceedings must be maintained in a secure manner for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation. The RIO is also responsible for providing any information, documentation, research records, evidence, or clarification requested by PHS/ORI to carry out its review of an allegation of research misconduct or of the institution’s handling of such an allegation.

## **I. History**

- Original policy adopted by Faculty Research Misconduct Committee on November 14, 2011
- Name changes of committee and member terms to match Faculty Representative Assembly rules made on July 1, 2013 by RIO (not voted on by committee).
- Revisions adopted by Committee on Misconduct in Research, Scholarship, and Creative Activities to include retaliation to match APS 1007 on October 29, 2015.
- Revisions made and adopted following campus procedures for procedural changes (e.g., review by Faculty Assembly, CMRSC, Deans, Leadership Team) on May 5, 2017.
- Revisions adopted by Committee on Misconduct in Research, Scholarship, and Creative Activities to include updates based on guidance from the Federal Office of Research Integrity, clarification of timelines, and allowance for virtual interview options on March 1, 2023.



# **Appendix A: Research Integrity Officer Responsibilities**

## **General**

The Research Integrity Officer (RIO) has lead responsibility for ensuring that the institution:

- Takes all reasonable and practical steps to foster a research environment that promotes the responsible conduct of research, research training, and activities related to that research or research training, discourages research misconduct, and deals promptly with allegations or evidence of possible research misconduct.
- Has written policies and procedures for responding to allegations of research misconduct and reporting information about that response to PHS/ORI, as required by 42 CFR Part 93.
- Complies with its written policies and procedures and the requirements of 42 CFR 93.
- Informs its institutional members who are subject to 42 CFR Part 93 about its research misconduct policies and procedures and its commitment to compliance with those policies and procedures.
- Takes appropriate interim action during a research misconduct proceeding to protect public health, federal funds and equipment, and the integrity of the PHS supported research process.

## **Notification, Reporting, and Cooperation with PHS/ORI**

The RIO has lead responsibility for ensuring that the institution:

- Files an annual report with PHS/ORI containing the information prescribed by PHS/ORI.
- Sends to PHS/ORI with the annual report such other aggregated information as PHS/ORI may prescribe on the institution's research misconduct proceedings and the institution's compliance with 42 CFR Part 93.
- Notifies the appropriate dean and vice chancellor, as well as the appropriate regulatory agencies and/or sponsors, if at any time during the research misconduct proceeding: (a) there is reason to believe that health or safety of the public is at risk (including an immediate need to protect human or animal subjects); (b) HHS, other sponsor, or institutional resources or interests are threatened; (c) research activities should be suspended; (d) there is reasonable indication of possible violations of civil or criminal law; (e) federal action is required to protect the interests of those involved in the research misconduct proceeding; (f) the institution believes that the research misconduct proceeding may be made public prematurely so that HHS may take appropriate steps to safeguard evidence and protect the rights of those involved; or (g) the research

community or the public should be informed.

- Provides PHS/ORI with a written finding that an investigation is warranted and a copy of the inquiry report within 30 calendar days of the date on which the finding is made.
- Notifies PHS/ORI of the decision to begin an investigation on or before the date the investigation begins.
- Within 120 calendar days of beginning an investigation, or such additional days as may be granted by PHS/ORI, (or upon completion of any appeal made available by the institution) provides PHS/ORI with the Investigative Report, a statement of whether the institution accepts the investigation's findings, a statement of whether the institution found research misconduct and, if so, who committed it, and a description of any pending or completed administrative actions against the Respondent.
- Seeks advance PHS/ORI approval if the institution plans to close a case at the inquiry, investigation, or appeal stage on the basis that the Respondent has admitted guilt, a settlement with the Respondent has been reached, or for any other reason, except the closing of a case at the inquiry stage on the basis that an investigation is not warranted or a finding of no misconduct at the investigation stage.
- Cooperates fully with PHS/ORI during its oversight review and any subsequent administrative hearings or appeals, including providing all research records and evidence under the institution's control, custody, or possession and access to all persons within its authority necessary to develop a complete record of relevant evidence.

## **Research Misconduct Proceedings**

### **1. General**

The RIO is responsible for:

- Promptly taking all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner.
- Taking all reasonable and practical steps to ensure the cooperation of Respondents and other institutional members with research misconduct proceedings, including, but not limited to their providing information, research records and evidence.
- Providing confidentiality to those involved in the research misconduct proceeding as required by 42 CFR § 93.108, other applicable law, and institutional policy.
- Determining whether each person involved in handling an allegation of research misconduct has an unresolved personal, professional, or financial conflict of interest and taking appropriate action, including recusal, to ensure that no person

with such a conflict is involved in the research misconduct proceeding.

- Keeping the DO and others who need to know apprised of the progress of the review of the allegation of research misconduct.
- In cooperation with other institutional officials, taking all reasonable and practical steps to protect or restore the positions and reputations of good faith Complainants, witnesses, and committee members and to counter potential or actual retaliation against them by Respondents or other institutional members. In the case of retaliation against the RIO, (s)he will report the retaliation to the DO, who will take steps to protect the RIO.
- In conjunction with the DO, making 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.
- Assisting the DO in implementing his/her decision to take administrative action against any Complainant, witness, or committee member determined by the DO not to have acted in good faith.
- Maintaining records of the research misconduct proceeding, as defined in 42 CFR § 93.317, in a secure manner for 7 years after completion of the proceeding, or the completion of any PHS/ORI proceeding involving the allegation of research misconduct, whichever is later, unless custody of the records has been transferred to PHS/ORI or PHS/ORI has advised that the records no longer need to be retained.

## **2. Allegation Receipt**

The RIO is responsible for:

- Consulting confidentially with persons uncertain about whether to submit an allegation of research misconduct. The RIO is not required to file a complaint with regard to allegations discussed during these confidential sessions.
- Receiving allegations of research misconduct and transmitting them to the CMRSCA Chair.

## **3. Inquiry**

The RIO is responsible for:

- On or before the date on which the Respondent is notified, or the inquiry begins, whichever is earlier, taking all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventorying the records and evidence, and sequestering them in a secure manner. Where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on the instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

- Providing the Inquiry Committee with needed logistical support, e.g., expert advice, including forensic analysis of evidence, and clerical support, including arranging witness interviews and recording or transcribing those interviews.
- Being available or present throughout the inquiry to advise the Inquiry Committee as needed and consulting with the committee prior to its decision whether to recommend that an investigation is warranted on the basis of the criteria in these policies and procedures and 42 CFR § 93.307(d).
- Determining whether circumstances clearly warrant a period longer than 60 calendar days to complete the inquiry (including preparation of the final Inquiry Report and the decision of the DO on whether an investigation is warranted), approving an extension if warranted, and documenting the reasons for exceeding the 60-day period in the record of the research misconduct proceeding.
- Within 30 calendar days of a CMRSCA decision that an investigation is warranted, providing PHS/ORI with the written finding and a copy of the Inquiry Report and notifying those institutional officials who need to know of the decision.
- Notifying the Respondent (and the Complainant, if the CMRSCA determines that doing so is appropriate) whether the Inquiry Committee found an investigation to be warranted and including in the notice copies of or a reference to 42 CFR Part 93 and the University of Colorado research misconduct policies and procedures.
- Providing to PHS/ORI, upon request, the institutional policies and procedures under which the inquiry was conducted, the research records and evidence reviewed, transcripts or recordings of any interviews, copies of all relevant documents, and the allegations to be considered in the investigation.
- If the CMRSCA decides that an investigation is not warranted, securing and maintaining for 7 years after the termination of the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by PHS/ORI of the reasons why an investigation was not conducted.

#### **4. Investigation**

The RIO is responsible for:

- On or before the date on which the investigation begins: (1) notifying the Respondent in writing of the allegations to be investigated and (2), if applicable, notifying PHS/ORI of the decision to begin the investigation and providing PHS/ORI a copy of the inquiry report.
- Prior to notifying Respondent of the allegations, taking all reasonable and practical steps to obtain custody of and sequester in a secure manner all research records and evidence needed to conduct the research misconduct proceeding that were not previously sequestered during the inquiry.
- Assisting the CMRSCA chair in preparing a charge for the Investigative Committee in accordance with the institution's policies and procedures.

- Convening the first meeting of the Investigative Committee and providing Investigative Committee members a copy of the University's policies and procedures and 42 CFR Part 93.
- Providing the Investigative Committee with needed logistical support, e.g., expert advice, including forensic analysis of evidence, and clerical support, including arranging interviews with witnesses and recording or transcribing those interviews.
- Being available or present throughout the investigation to advise the committee as needed.
- On behalf of the institution, the RIO is responsible for ensuring that the Investigative Committee: (1) uses diligent efforts to conduct an investigation that includes an examination of all research records and evidence relevant to reaching a decision on the merits of the allegations and that is otherwise thorough and sufficiently documented; (2) takes reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical; (3) takes reasonable steps to interview each Respondent, Complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the Respondent, and records or transcribes each interview, provides the recording or transcript to the interviewee for correction, and includes the recording or transcript in the record of the research misconduct proceeding; and (4) pursues diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible research misconduct, and continues the investigation to completion.
- When applicable, upon determining that the investigation cannot be completed within 120 calendar days of its initiation (including providing the draft report for comment and sending the final report with any comments to PHS/ORI), submitting a request to PHS/ORI for an extension of the 120-day period that includes a statement of the reasons for the extension. If the extension is granted, the RIO will file periodic progress reports with PHS/ORI.
- Assisting the Investigative Committee in preparing a draft Investigative Report that meets the requirements of 42 CFR Part 93 and University policies and procedures, sending the Respondent (and Complainant at CMRSCA's option) a copy of the draft report for his/her comment within 30 calendar days of receipt, taking appropriate action to protect the confidentiality of the draft report, receiving any comments from the Respondent (and, optionally, the Complainant) and ensuring that the comments are included and considered in the final investigative report.
- Transmitting the draft Investigative Report to University Counsel for a review of its legal sufficiency.
- Assisting the Investigative Committee in finalizing the draft Investigative Report and receiving the final Investigative Report.

- If applicable, transmitting to PHS/ORI within the time period for completing the investigation, a copy of the final Investigative Report with all attachments, a statement of whether the institution accepts the findings of the report, a statement of whether the institution found research misconduct, and if so, who committed it, and a description of any pending or completed administrative actions against the Respondent.
- When a final decision on the case is reached, the DO will normally notify both the Respondent and the Complainant in writing.
- Maintaining and providing to PHS/ORI upon request all relevant research records and records of the institution's research misconduct proceeding, including the results of all interviews and the transcripts or recordings of those interviews

# **Appendix B: By-laws for the Faculty Assembly Committee on Misconduct in Research, Scholarship, and Creative Activities**

## **Purpose and Responsibility**

The University of Colorado Colorado Springs, herein referred to as “UCCS,” is responsible for fostering a research environment that promotes the responsible conduct of research, discourages research misconduct, and addresses allegations of possible research misconduct. UCCS’s obligations to prevent and investigate allegations of research misconduct arise under Articles I and V of the Laws of the Regents, University of Colorado Administrative Policy Statement 1007 Misconduct in Research, Scholarship and Creative Activities (“APS 1007”), and the requirements of federal agencies, including the National Institutes of Health/Public Health and the National Science Foundation.

The Faculty Assembly of UCCS has formed the Committee on Misconduct in Research, Scholarship, and Creative Activities to fulfill its obligation of investigating allegations of research misconduct.

The *Committee on Misconduct in Research, Scholarship, and Creative Activities* (“CMRSCA”) is a standing committee of the Faculty Assembly and is responsible for inquiries and investigations of allegations of research misconduct. The basic responsibilities of the CMRSCA are to promote exemplary ethical standards of research conduct, to receive allegations of misconduct, to ensure thorough, fair and expeditious proceedings for the evaluation of allegations, and to recommend possible disciplinary action, policy changes or other actions to remedy the misconduct and to prevent similar misconduct in the future.

## **Membership**

The CMRSCA shall include at least one tenured or tenure track faculty member from each of UCCS’s schools and colleges, including the library. The Faculty Assembly President shall seek nominations for faculty members to serve on the CMRSCA. Committee membership should reflect the diversity of the faculty and should comply with University policies for constituting committees. During the spring semester of each academic year, the members of the CMRSCA will elect a Chair. The Chair of the CMRSCA will take office on July 1 and will serve until the CMRSCA elects a subsequent Chair. The Chair will attend meetings of and report to the Faculty Representative Assembly and will ensure that the committee meets and has sufficient members. Members of the CMRSCA shall be appointed for staggered three year terms. Members are not limited in the number of terms they may serve. If a member is replaced before the end of a regular three year term, the replacement will serve the remainder of the current term. When allegation(s) of research misconduct is made, then the Chair will have the CMRSCA appoint a chair for the allegation(s)

proceedings.

The Research Integrity Officer (RIO) serves as an ex officio and non-voting member of the CMRSCA.

## **Meeting schedule**

The CMRSCA shall meet at least twice each academic year, once in the fall and once in the spring, for the purpose of complying with the requirements of APS 1007.

Additional meetings shall be called by the Chair of the CMRSCA as necessary (e.g., for the purpose of dealing with an investigation of misconduct).

## **Rules for Committee Meetings and Voting Procedures**

For regular business activities, the CMRSCA shall be considered to have a quorum when a simple majority of its members are present. The CMRSCA may take normal business actions upon the majority vote of the quorum. For regular business activities, the CMRSCA will follow the *rules for small committees* as provided in the most recent edition of *Robert's Rules of Order*.

For research misconduct allegations, the CMRSCA will follow the current version of approved guidelines for research misconduct proceedings. When voting, at least 67% of the CMRSCA members participating in a case must vote for further inquiry, investigation, or other recommended actions. If during an investigation, CMRSCA members are recused due to potential bias for hearing the allegation, the CMRSCA chair may, with Faculty Assembly President approval, appoint additional members to serve on CMRSCA for the duration, and purpose of hearing, of the specific misconduct allegation.

The votes of the CMRSCA shall be recorded only by indicating the number of members voting for or against a motion; the names of the members shall not be recorded or reported in the minutes. Only those members of the CMRSCA who were substantially involved in the discussion of an item may vote on that item. Electronic voting for regular business is allowed when approved by majority vote at a given meeting.

## **Clerical and Administrative Support**

Clerical and administrative support shall be provided by the Office of Research for research misconduct allegations. Copies of all CMRSCA written records for a research misconduct allegation are to be kept by the Office of Research in accordance with the University's record retention policy. Minutes or reports of regular CMRSCA meetings not concerning a research misconduct allegation may be submitted to faculty assembly. A secure folder may be used for electronic storing of files and the sharing of files in a misconduct allegation investigation.



## **Role of University Counsel**

The CMRSCA may seek advice and assistance from the Office of University Counsel as they deem necessary.

## **Amendments to By-laws**

Committee by-laws shall be reviewed every 3 years. Changes will be taken to Faculty Representative Assembly for review and vote.

Approved by Faculty Representative Assembly March 10, 2017.