



## Policy Governing Misconduct in Research

Responsible Executive:  
Vice President for Research  
Responsible Office:  
Office of Research  
Approved by:  
Office of Research and Office of  
General Counsel  
Date: December 2015

### 1. POLICY STATEMENT

The University of Notre Dame strives to cultivate an atmosphere of honesty and trust in which the pursuit of knowledge can occur. Integrity of research forms the foundation of respect among scholars and students and between the academic world and the public. All members of the University community share responsibility for maintaining this climate of trust and integrity.

Research Misconduct (which is defined as fabrication, falsification, or plagiarism) detracts from this climate of trust and integrity. Research Misconduct is especially serious in collaborative research, where the reputations of several researchers pursuing different components of an integrated project may be damaged by the actions of one or more partners. Colleagues in a cooperative venture bear mutual responsibility for ensuring the integrity of research performed and published jointly under their names.

Not all irregularities or serious deviations from accepted ethical practices in the conduct of research are covered by this Policy. For instance, sexual harassment, discriminatory harassment, the violation of regulations for fiscal responsibility in the performance of research, or the protection of human and animal subjects used in research are covered by other specific University policies or federal regulations and are not within the scope of this Policy, but are subject to review and sanction under other applicable University policies, or applicable laws and regulations.

#### 1.1 Duty to Report

It is the explicit duty of all members of the faculty, staff, student body, or other individuals associated with the University of Notre Dame to report observed, suspected, or apparent Research Misconduct to the Vice President for Research or a dean of a college or school. If a complainant wishes to make an anonymous complaint, they may contact Notre Dame's Integrity Line (1-800-688-9918).

#### 1.2 Confidentiality

To the extent practical, the University will make a reasonable effort to conduct all investigations and proceedings related to Research Misconduct allegations in a manner that will protect the confidentiality and privacy interests of all parties involved. Nevertheless, circumstances may arise in which the University may not maintain such confidentiality, and the University reserves the right to disclose information it considers in the University's best interest. In addition to these efforts by the University, all parties to the alleged complaint or those knowledgeable of or involved in the investigation or evaluation of claims of Research Misconduct should treat the matter under investigation with discretion and respect for the reputation of all parties involved.

### **1.3 Retaliation**

The University strictly prohibits Retaliation against individuals who report allegations of Research Misconduct or of inadequate institutional response, and those who cooperate in inquiries or investigations. Retaliatory actions taken against these persons in the terms and conditions of their employment or other status at the University will be reviewed and subject to appropriate disciplinary action. Employees should immediately report any alleged or apparent Retaliation to the Vice President for Research or a dean. If a complainant wishes to make an anonymous complaint, they may contact Notre Dame's Integrity Line (1-800-688-9918).

### **1.4 Cooperation with Inquiries and Investigations**

University faculty, students, and staff shall cooperate with the Vice President for Research and other institutional officials in the review of allegations and the process of inquiries and investigations regarding Research Misconduct. Employees have an obligation to provide relevant evidence to all institutional officials concerning Research Misconduct allegations.

### **1.5 Sequestering and Handling of Evidence**

At any point during an inquiry or investigation, the University may obtain or sequester evidence relevant to the allegation including, but not limited to, research proposals, laboratory records, protocols, images, specimens, machines and equipment, abstracts, theses, oral presentations, internal reports, journal articles, data, and correspondence. All available material identified as relevant by the University to the allegation shall be promptly provided.

### **1.6 Interim Administrative Actions**

The University reserves the right to take interim administrative actions to protect the health and safety of research subjects and the interests of students and colleagues. Such actions may range from slight restrictions to reassignment of the activities of the respondent. In extreme circumstances, the respondent may be suspended temporarily. Interim administrative actions will be taken with full awareness of how they might affect the respondent and the ongoing research projects of the University.

### **1.7. Standard of Proof**

All procedures set forth in this Policy (including the procedures for inquiries and investigations) will be evaluated under the preponderance of the evidence standard, which means proof that leads to the conclusion that the fact at issue is more likely true than not.

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## **2. SCOPE**

This Policy applies to all disciplines of research conducted within the University, including but not limited to the applied and natural sciences, social sciences, engineering, and humanities. This Policy is intended to comply with the requirements set forth in the Code of Federal Regulations, including, but not limited to, 42 C.F.R. Section 93 (regarding research funded by the Department of Health and Human Services and the Office of Research Integrity) and 45 C.F.R. Section 689

(regarding research funded by the National Science Foundation). However, this Policy also applies to all other research conducted within the University, regardless of funding source. It is the responsibility of University researchers to comply with all relevant state and federal regulations, University policies, and contractual obligations.

The Policy applies to all University faculty members (including part-time and visiting faculty), students, staff, and any other University employee or person associated with University (including postdoctoral scholars) who propose, conduct, or report research on behalf of the University.

The Policy and associated procedures will normally be followed when an allegation of possible Research Misconduct is received by an institutional official as set forth herein. In the case of any inconsistency between this University Policy and policies that may be adopted at the department or college level, this Policy will generally govern. Particular circumstances in an individual case may dictate variation from the normal procedure deemed in the best interests of University. Any change from normal procedures must also ensure fair treatment to the subject of the inquiry or investigation. Any significant variation must be approved in advance by the Deciding Official.

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### **3. DEFINITIONS**

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#### **Conflict of Interest**

A conflict of interest arises in a situation where financial or other personal or professional considerations may compromise an individual's objectivity, professional judgment, professional integrity, and/or ability to perform his or her responsibilities to the University.

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#### **Deciding Official**

The Vice President for Research will make the final determination whether to accept any recommendations from the Misconduct Review Officer(s), the inquiry report, the investigation report, and any findings contained therein (including the recommended institutional actions). The Vice President for Research will receive the inquiry and/or investigation report and any written comments made by the respondent or the complainant on the draft report. The Vice President for Research will appoint a Misconduct Review Officer, the Inquiry Committee and, if subsequently needed, a separate Investigation Committee and ensure that necessary and appropriate expertise is secured to carry out a thorough and authoritative evaluation of the relevant evidence in an inquiry or investigation.

If it is determined that the Vice President for Research has a personal, professional, or financial conflict of interest with the complainant or respondent regarding an allegation of Research Misconduct, the Associate Provost for Faculty Affairs shall initiate the inquiry process and serve as the Deciding Official.

#### **Inquiry Committee**

A Committee appointed by the Deciding Official to determine whether or not alleged conduct constitutes

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	Research Misconduct and whether there is sufficient evidence of the alleged misconduct to warrant a full investigation.
<b>Investigation Committee</b>	A Committee appointed by the Deciding Official after an Inquiry Committee has found sufficient evidence that Research Misconduct may have occurred. This Committee further examines all relevant evidence to confirm whether or not the misconduct occurred and what, if any corrective action and sanctions are warranted.
<b>Misconduct Review Officer</b>	The Misconduct Review Officer (MRO) is appointed by and reports directly to the Deciding Official. The MRO has primary responsibility for overseeing this policy, for implementing the procedures associated with this policy, and for serving as the facilitator and primary point of contact for the inquiry and investigation processes.
<b>Research Misconduct</b>	Misconduct in research is defined as fabrication, falsification, or plagiarism. Fabrication is defined as making up data or results and recording or reporting them. Falsification is manipulating research materials, equipment, or processes or changing or omitting data or results such that the research is not accurately represented in the research record. Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. This definition does not include honest errors or honest differences in interpretations or judgments of data.

**Examples of Activities Representing Misconduct in Research:**

- Claiming the ideas or words of another to be one's own;
- Including false statements or data in research proposals, progress reports, publications, or related documents; and,
- Manipulating research procedures or data so as to bias results.

**Examples of Research Practices That Are Inappropriate But Do Not Generally Represent Misconduct In Research**

- Maintaining inadequate research records, especially for results that are published or are relied on by others;
- Failing to give appropriate recognition to people who have made significant contributions to the research;
- Conferring or requesting authorship on the basis of a specialized service or contribution that is not significantly related to the research reported in the

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paper;

- Refusing to give peers reasonable access to unique research materials or data that support published papers;
- Releasing preliminary research results, especially in the public media, without providing sufficient data to allow peers to judge the validity of the results or to reproduce the experiments; and,
- Neglecting to supervise others properly in work for which a faculty member is responsible.

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**Retaliation**

Any adverse action an individual experiences as a consequence of that individual: reporting Research Misconduct; participating in a University investigatory, grievance, or appeals procedure; or otherwise objecting to a practice that the individual reasonably believes is unlawful, unethical, or in violation of University policy.

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## **4. INQUIRY AND INVESTIGATION PROCESS**

### **4.1. Submitting an Allegation of Misconduct**

It is the explicit duty of all members of the faculty, staff, student body, or other individuals associated with the University of Notre Dame to report observed, suspected, or apparent Research Misconduct to the Vice President for Research or a dean of a college or school. If a complainant wishes to make an anonymous complaint, they may contact Notre Dame's Integrity Line (1-800-688-9918).

If an individual is unsure whether a suspected incident falls within the definition of Research Misconduct, he or she may contact the Vice President for Research to discuss the suspected misconduct informally. Allegations that do not appear to constitute Research Misconduct, but that may implicate another University policy, shall be referred to the appropriate division of the University.

### **4.2 Inquiry Process**

The inquiry is intended to be an unbiased preliminary evaluation of the available facts and circumstances underlying the allegations of Research Misconduct to determine if a full investigation is warranted.

1. To initiate the inquiry process, upon receiving an allegation of Research Misconduct, the Deciding Official will:
  - a. Appoint an Inquiry Committee within 10 days of the initiation of the inquiry. The Inquiry Committee should consist of three tenured faculty members who have no real or apparent personal, professional or financial Conflicts of Interest, as defined in the policy, with the complainant(s), respondent(s), witnesses or anyone otherwise involved in the case, are unbiased, and have the necessary expertise to evaluate the evidence and

issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry.

- b. Appoint a Misconduct Review Officer who will:
  - i. Sequester any additional evidence relevant to the allegations.
  - ii. Provide written notice to the respondent. The notification will include a description of all allegations of Research Misconduct made against the respondent along with an explanation and documentation of the University's policies in regard to allegations of misconduct including the respondent's rights and responsibilities. The respondent will also be notified the University will not tolerate acts of Retaliation against any individual participating in a Research Misconduct proceeding.
  - iii. Notify the respondent of the proposed committee membership. If the respondent submits a written objection to any appointed member of the Inquiry Committee based on bias or Conflict of Interest within 5 days, the Misconduct Review Officer will determine whether to replace the challenged member with a qualified substitute.
  - iv. Provide a copy of this Policy to both the complainant and respondent.
2. The Inquiry Committee will review the evidence and conduct interviews of the complainant, the respondent, and any other key witnesses it may consider necessary to its inquiry. At this stage the complainant's name may be kept confidential, but he or she will be made aware that as the process moves forward, the complainant's identity may have to be revealed in order to afford the respondent a full and fair opportunity to respond to the allegations.

The Inquiry Committee will diligently pursue all significant issues, leads, and new allegations of Research Misconduct.

All complaints of retaliation will be reviewed separately pursuant to the University's Non-Retaliation Policy.

3. The Inquiry Committee will determine (a) whether or not the conduct, if it did occur, would constitute Research Misconduct, and (b) whether there is sufficient evidence of the alleged misconduct to warrant a full investigation.
4. Within 45 days of the initiation of the inquiry, the Inquiry Committee will generate a draft written report of its inquiry and recommendations for further action. The report will include, but need not be limited to, the following elements:
  - a. The name and position of the respondent;
  - b. A description of the allegations of Research Misconduct;
  - c. The research support related to the allegation, if any;

- d. The institutional policies and procedures under which the inquiry was conducted; and
- e. The basis for recommending whether or not the alleged actions warrant a full investigation.

If this timeframe is not possible in a particular case, the reasons are to be documented and the Deciding Official so informed.

5. The Misconduct Review Officer shall promptly submit to the respondent a written draft inquiry report. The respondent shall be allowed (10) ten days from receipt of the draft inquiry report to comment on the report. Based on the comments received, the Inquiry Committee will revise the report as appropriate and will then generate the final inquiry report. Any and all comments submitted by the respondent shall be made a part of the final inquiry report and will then be submitted to the Deciding Official for review and determination.
6. The MRO shall immediately notify the Deciding Official and the Office of the General Counsel if the determination is made that an investigation is warranted, so that the Office of the General Counsel may determine whether external research sponsors and regulatory agencies shall be informed of the Research Misconduct proceedings in accordance with applicable laws, regulations, and rules.

### **4.3 Investigation Process**

If determined to be warranted by the Inquiry Committee (upon approval by the Deciding Official), an investigation will be initiated. The investigation will include an examination of all relevant evidence and interviews with all individuals involved to determine whether Research Misconduct has occurred and to recommend what, if any, corrective actions and sanctions are warranted.

1. An investigation is initiated by the Deciding Official by:
  - a. Providing written notice to the respondent. The notice will include a description of all allegations that will be investigated. If evidence or allegations of additional issues will be investigated, the Deciding Official will provide written notice of the Inquiry Committee's intention to broaden its investigation to the respondent, other implicated individuals, the Provost, appropriate dean, and appropriate department head
  - b. Appointing an Investigation Committee and the committee chair within 10 days of the notification to the respondent that an investigation is planned or as soon thereafter as practicable. The Investigation Committee should normally consist of five individuals who were not involved in the inquiry process. Members of the Investigation Committee should be tenured faculty who have no real or apparent personal, professional or financial Conflicts of Interest with the complainant(s), respondent(s), witnesses or anyone otherwise involved in the case, are unbiased, and have as far as practicable the necessary expertise to evaluate the evidence and issues related to the allegations, interview the principals and key witnesses, and conduct the investigation. These individuals may be subject matter experts, or other qualified persons.

- c. Appointing a Misconduct Review Officer who will:
  - i. Sequester any additional evidence relevant to the allegations.
  - ii. Notify the respondent of the proposed committee membership. If the respondent submits a written objection to any appointed member of the Investigation Committee based on bias or Conflict of Interest within 5 days, the Misconduct Review Officer will determine whether to replace the challenged member with a qualified substitute.
2. The Investigation Committee will make a good faith effort to determine the scope/extent of the misconduct and whether there is evidence of other instances of Research Misconduct related to any other research with which the individual is involved.
3. The Investigation Committee's responsibility is to determine whether Research Misconduct has occurred and to recommend what, if any, corrective actions and sanctions are warranted. By majority vote, the Investigation Committee shall decide whether to dismiss the allegation of Research Misconduct or make a determination that Research Misconduct occurred. The determination need not be unanimous.
4. Within 45 days of the initiation of the Investigation, the Investigation Committee will generate a draft report of its investigation, determinations, and recommendations for further action, if any. The report may also set forth recommendations as to the appropriate sanctions and/or corrective actions and will include, but need not be limited to, the following elements:
  - a. Description of the nature of the allegations of Research Misconduct;
  - b. Description of the research support related to the allegations of Research Misconduct, if any;
  - c. Description of the specific allegations of Research Misconduct for consideration in the investigation;
  - d. Policies and procedures under which the investigation was conducted;
  - e. Identification and summary of the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed; and
  - f. For each separate allegation of Research Misconduct identified during the investigation, provide a finding as to whether Research Misconduct did or did not occur, and if so:
    - i. Identify whether the Research Misconduct was falsification, fabrication, or plagiarism, and if it was intentional, knowing, or in reckless disregard;
    - ii. Summarize the facts and the analysis which support the conclusion and consider the merits of any reasonable explanation by the respondent;
    - iii. Identify the specific research support;



- iv. Identify whether any publications need correction or retraction;
- v. Identify the person(s) responsible for the misconduct; and
- vi. Identify any current support or known applications or proposals for support that the respondent has pending.

If this timeframe is not possible in a particular case, the reasons are to be documented and the Deciding Official so informed.

5. The Misconduct Review Officer shall promptly submit to the respondent the draft report as well as copies of, or supervised access to, the evidence on which the report is based. The respondent shall be allowed five (5) days from receipt of the draft report to provide comments on the report. The Investigation Committee will review the comments, revise the report as it deems appropriate, and generate the final investigation report. Any and all comments submitted by the respondent will be made a part of the final report.
6. The MRO will provide a copy of the final investigation report to the respondent, the Deciding Official, and to the dean of the respondent's school. The Misconduct Review Officer will notify the respondent's department head, in writing, of the outcome of the investigation. When the Investigation Committee determines Research Misconduct has occurred, the respondent's department head will also be provided a copy of the final investigation report.
7. Absent extraordinary circumstances, the investigation shall be carried through to completion (which includes imposing any potential discipline) within 75 calendar days. The investigation may extend beyond 75 calendar days only with the written approval of the Deciding Official. If an extension is granted, the Misconduct Review Officer will: (a) document the reason and terms of the extension in the final investigation report and the official record; and (b) notify the respondent and any other applicable parties in writing of an extension.

#### **4.4 Institutional Review and Decision**

The Deciding Official will make the final determination whether to accept the investigation report, its findings, and the recommended institutional actions. Among the responses to accept or reject the committee's recommendation, the Deciding Official may return the report to the Investigation Committee with a written request for further fact-finding or analysis when:

1. There is new evidence that may be sufficient to alter a finding or recommendation that was not considered by the committee and such evidence or facts were not known to the committee, complainant or respondent at the time of the original proceedings;
2. The committee's proceedings were not conducted in substantial conformity with the prescribed procedures; or

3. The decision does not appear to be based on substantial evidence, that is, the facts as detailed in the report were not sufficient to establish or support a finding that a violation occurred.

Upon receipt of the Deciding Official's written request, the Investigation Committee will conduct such proceedings and deliberations as it deems necessary and forward a supplemental investigational report. When a final decision on the case has been reached, the Misconduct Review Officer will notify both the respondent and the complainant in writing.

In addition, the Deciding Official, in consultation with the Office of General Counsel, will determine whether 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 Deciding Official shall report the final decision and administrative action to the Provost and other appropriate institutional officials as warranted.

#### **4.5 Discipline**

Disciplinary action against the accused will vary according to the nature of the infraction.

In all cases pertaining to Research Misconduct by a faculty member, the Deciding Official shall recommend to the Provost specific disciplinary action that might be taken. If a charge of Research Misconduct has been sustained by the evidence, and the accused is a member of the faculty, the most significant sanction is dismissal from the University. All disciplinary action taken against a faculty member will be done in accordance with the Academic Articles.

Non-faculty employees and students of the University will be disciplined in accordance with procedures applicable to their status or affiliation with the University.

The finding about whether or not there is a violation of this policy will be communicated to the complainant and the alleged offender. However, any sanction imposed will not be communicated with the complainant.

#### **4.6 Appeals**

In all cases pertaining to Research Misconduct by a faculty member, except that of dismissal of a faculty member, appeal of the disciplinary actions must be made in writing to the Provost within fifteen (15) calendar days after notice of the proposed action has been mailed to or otherwise given to the accused party. The Provost will consider and make a final ruling on the appeal on behalf of the University. In the case of faculty dismissal, the procedure for appeal shall be that contained within the Academic Articles.

Non-faculty employees and students of the University may file appeals pertaining to Research Misconduct in accordance with procedures applicable to their status or affiliation with University.

#### **4.7 Sanctions for False Accusations**

If the procedure of inquiry and investigation was initiated by a complaint made in good faith, and no violation of this policy is found, every effort must be made to protect the position and reputation of the complainant and prevent any Retaliation or discrimination. If, however, the investigation concludes that the allegation was made on some basis other than good faith, disciplinary action may be taken against the complainant. Similarly, to the maximum extent practical, the position and reputation of the accused must be protected and restored if the allegations of Research Misconduct are not confirmed.

#### 4.8 Records and Retention

The University shall retain all records of the case in a confidential manner. However, circumstances may arise in which the University may not maintain such confidentiality, and the University reserves the right to disclose information it considers in the University's best interest. The records, documents, and final report are to be maintained for a minimum period of three (3) years after final disposition by the University or a longer period as may be required by federal regulations.

### 5 RELATED DOCUMENTS

Policy or Document	Web Address
Ethical Conduct Policy	<a href="http://policy.nd.edu/policy_files/EthicalConductPolicy.pdf">http://policy.nd.edu/policy_files/EthicalConductPolicy.pdf</a>
Faculty Handbook	<a href="http://facultyhandbook.nd.edu/">http://facultyhandbook.nd.edu/</a>
Non-Retaliation Policy	<a href="http://policy.nd.edu/policy_files/NonRetaliationPolicy.pdf">http://policy.nd.edu/policy_files/NonRetaliationPolicy.pdf</a>

### 6 CONTACTS

Subject	Office or Position	Telephone Number	Office Email or URL
Policy Clarification	Office of the Vice President for Research	(574) 631-5000	www.research.nd.edu
Web Address for this Policy		<a href="http://or/nd/edu/ResearchMisconductPolicy">http://or/nd/edu/ResearchMisconductPolicy</a>	