

**MERCY COLLEGE**  
**Research Misconduct Policy**

**Scope and Purpose:**

The purpose of the Research Misconduct policy is to provide a process for the equitable resolution of formal complaints of research misconduct. Responsibility for this purpose resides with the Research Misconduct Panel, whose composition and functions are described below. Institutions that accept research funding from federal agencies are required to have policies and procedures in place for the management of incidents of research misconduct

The Research Misconduct Panel will have jurisdiction over these matters. In developing this policy, Mercy College believes that all individuals engaged in research are responsible for fostering an environment that encourages absolute intellectual integrity with open communication and trust—the cornerstones of the academic enterprise. Incidents of research misconduct violate this trust and harm the research community itself.

**Definitions**

- A. **Allegation** means any written or oral statement or other indication of possible research misconduct made to a College official.
- B. **Complainant** means a person who in good faith makes an allegation of research misconduct.
- C. **Conflict of Interest** means the real or apparent interference of one person's outside interests with the interests of another person where potential bias may occur due to prior or existing personal or professional relationships.
- D. **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.
- E. **Inquiry** means gathering information and initial fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and warrants an investigation.
- F. **Investigation** means the formal development of a factual record and the examination of that record leading to a decision not to make a finding of research misconduct or to a finding of research misconduct or other appropriate remedies, including administrative actions.
- G. **Investigators** means any person paid by, under the control of, or affiliated with the College, such as faculty, scientists, trainees, technicians, and other staff members, students, fellows, guest researchers, or collaborators at or with the College.
- H. **ORI** means the Office of Research Integrity, the office within the U.S. Department of Health and Human Services (DHHS) that is responsible for the research misconduct and research integrity activities of the U.S. Public Health Service.
- I. **PHS** means the U.S. Public Health Service, an operating component of the DHHS.
- J. **PHS support** means PHS grants, contracts, or cooperative agreements or applications therefore.
- K. **Preponderance of the evidence** means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- L. **Research misconduct** is a formal complaint against a principal investigator made by a research participant, student, faculty member, College committee such as the Institutional Review Board, individual outside of the college community, or administrator of Mercy College after efforts to resolve the issue(s) informally have failed. Such a complaint must be made in writing and address one of the following:
  - failure to obtain Institutional Review Board approval prior to initiating research with human participants;
  - failure to follow informed consent and approved research protocol;

- fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.
    - fabrication is 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 [i.e., the record of data or results that embody the facts emerging from the research, and includes, but is not limited to, research proposals, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and books].
    - plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
  - Research misconduct does not include honest error or differences of opinion.
- M. Research record** means any data or results that embody the facts resulting from scholarly inquiry including, but not limited to, grant or contract applications, whether funded or unfunded; grant or contract progress and other reports; laboratory notebooks; notes; correspondence; videos; photographs; X-ray film; slides; biological materials; computer files and printouts; manuscripts and publications; equipment use logs; laboratory procurement records; human subject protocols; consent forms; medical charts; and patient research files (as permitted by HIPAA). “Data or results” shall be interpreted broadly to encompass all forms of scholarly information about the research at issue without regard to the type of recording or storage media, including, but not limited to, raw numbers, field notes, interviews, notebooks and folders, laboratory observations, computers and other research equipment, any type of data storage, research interpretations and analyses, tables, slides, photographs, charts, gels, individual facts, statistics, tissue samples, reagents, and documented oral representations of research results.
- N. Respondent** means the person against whom an allegation of research misconduct is directed or the person whose actions are the subject of the inquiry or investigation. There can be more than one respondent in any inquiry or investigation, and, if there are multiple respondents, all references in this policy to “respondent” shall also be read in the plural as appropriate.
- O. Retaliation** means any action that adversely affects the employment or other College or professional status of an individual that is taken by an institution or another individual (e.g., respondent) because the first individual has in good faith made an allegation of research misconduct or of inadequate College response thereto or has cooperated in good faith with an investigation of such allegation.

### **Confidentiality**

To the extent allowed by law, the identity of respondents and complainants will be secure and confidential and any identifying information shall not be disclosed, except to: (1) those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding; and (2) ORI as it conducts its review of the research misconduct proceeding and any subsequent proceedings.

To the extent allowed by law, any information obtained during the research misconduct proceeding that might identify the subjects of research shall be maintained securely and confidentially and shall not be disclosed, except to those who need to know in order to carry out the research misconduct proceeding.

### **Legal Counsel for College Officials and Entities**

The Associate Provost for Research, Grants, and Academic Initiatives, an informal inquiry committee (if requested by the respondent), an investigation committee, and all other College officials and

entities may seek the advice and/or representation of College-provided legal counsel on any and all aspects and at any stages of this policy.

## **Research Misconduct Panel**

### *Article I: Purpose*

- 1) In allegations of research misconduct or indications of noncompliance with the Health and Human Services (HHS) Regulations for the Protection of Human Research Subjects (45 CFR 46), investigates whether or not the principal investigator has violated the principles of protection of human research participants. Gathers facts, researches issues, conducts hearings, requests information, and renders decisions in allegations of research misconduct that have been brought before it in an appropriate and timely fashion. A timely resolution means that a final decision is reached within 60 days of the filing of the original allegation.
- 2) Renders a decision within five working days of each completed hearing and communicates the decision in writing within two working days of the decision to the involved parties.
- 3) Maintains records regarding misconduct in research hearings and decisions reached.

### *Article II: Membership*

#### Section A: Membership

- 1) Membership shall consist of all members of the Institutional Review Board who have served at least one year.
- 2) Members may not sit on research misconduct reviews of projects that are generated from the School / academic department of the selected members.
- 3) Any potential Misconduct Panel member with unresolved personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses will recuse him/herself from the panel.

#### Section B: Chairperson

The chair of the Research Misconduct Panel shall be the Chairperson of the IRB or designee. The chair shall serve as a non-voting member, except in cases of a tie vote.

#### Section C: Chairperson Duties

- 1) To call and preside over the meeting of the Research Misconduct Panel.
- 2) To follow the Research Misconduct Panel's operating procedures when gathering facts, researching issues, conducting hearings and making determinations of alleged misconduct.
- 3) To establish necessary timelines to obtain complete information pertaining to each case.
- 4) To assist a successor in the transition of responsibilities.
- 5) To vote a hearings in cases of deadlock or tie.

#### Section D: Member Responsibilities

- 1) To attend both meetings and appeal hearings of the Research Misconduct Panel as voting members.
- 2) To follow the Research Misconduct Panel operating procedures.

### *Article III: Meetings and Panel Hearings*

Research Misconduct Hearings shall be called by the Chairperson. No Research Misconduct Hearing can be held if there is not representation from a quorum of the IRB. Research Misconduct Hearings are open only to the Chairperson, Members of the Research Misconduct Panel, the involved parties, and persons to speak on behalf of the parties.

#### Section A: Meetings of the Research Misconduct Panel

- 1) The order of business at meetings for the Research Misconduct Panel shall be according to the agenda established by the Chairperson and any members of the Panel. A 2/3 membership shall constitute a quorum for the conduct of business.

#### Section B: Research Misconduct Panel Hearings

- 1) The order of business at meetings for the Research Misconduct Panel shall be as outlined in Article V – Procedure. A 2/3 membership shall constitute a quorum for the conduct of business. Decisions of the Research Misconduct Panel shall be made by a majority vote.
- 2) In the event of a tie, the chairperson shall cast the deciding vote.

#### *Article IV: Procedure to File an Allegation of Research Misconduct*

Before a case can be heard, the parties involved must have followed the appropriate prior steps and received a decision at each step. An individual in need of clarification concerning the channels listed below should consult with the Associate Provost for Academic Standards and Research or the Chairperson of the Institutional Review Board.

Step 1: Allegations of research misconduct or noncompliance discovered or brought to the attention of the Institutional Review Board will result in immediate notification of the Associate Provost for Academic Standards and Research.

Promptly after receiving an allegation of research misconduct, the Associate Provost for Academic Standards and Research or the Chairperson of the Institutional Review Board shall assess the allegation to determine if: (1) it meets the definition of research misconduct in 42 CFR Section 93.103 (copy attached); (2) it involves either research covered under the College's Federal-wide Assurance; and, (3) the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

Step 2: A Preliminary Inquiry is initiated to determine whether there is sufficient credible evidence of research misconduct to warrant a full-scale, or formal, investigation. The Chairperson of the IRB, or designee, will place an immediate telephone call to the principal investigator notifying him or her to suspend all research activities until the allegations have been investigated and any necessary protections implemented. A written report of the allegation will be sent to the principal investigator with a copy to the Associate Provost for Academic Standards and Research.

Step 3: The principal investigator will have ten working days to respond in writing to the Institutional Review Board regarding the allegations of misconduct or noncompliance. This report will be reviewed by the IRB to determine if further action or a full Research Misconduct Hearing is required.

#### *Article V: Procedures For Research Misconduct Investigations*

In conducting all investigations, the Panel shall: (1) Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of the allegations; (2) 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 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 investigation; (3) Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion; and (4) Otherwise comply with the requirements for conducting an investigation in 42 CFR Section 93.310.

#### *Article VI: Procedure for the Research Misconduct Hearing*

The purpose of the Research Misconduct Panel is to examine and evaluate of all relevant facts to determine if an instance of misconduct has taken place, to evaluate its seriousness and, if possible, to determine responsibility. The Chairperson of the Research Misconduct Panel will require the principal investigator to be available for a Research Misconduct Hearing. A request for the presence of a person to speak on behalf of the involved parties or any resource persons to attend and offer information may be made by the any of the involved parties or any resource persons to attend and offer information may be made by any of the involved parties or the Chairperson at least five working days prior to the hearing. The Chairperson will notify all individuals of the time and place of the hearing. The Research Misconduct Panel must be called by the Chairperson within two weeks of the date the response to the allegation(s) is filed by the principal investigator.

At the Research Misconduct Hearing, the Chairperson shall present all written information to the Research Misconduct Panel. Immediately following the review of the information, the hearing shall begin. The Chairperson shall state the case. Witnesses may be brought in to provide any additional information. Then the principal investigator shall provide information. Witnesses and persons speaking on behalf of the principal investigator shall then be brought in to provide any additional information. After all testimony is delivered, each party will have the opportunity to ask questions. The Research Misconduct Panel may ask questions throughout all stages of the procedure. If it is determined by the Research Misconduct Panel that more information is necessary, the Hearing may be reconvened at a later date, to allow for the research of this information. If the Hearing is reconvened, all involved parties shall again be present.

All matters upon which the decision may be based must be introduced into evidence at the Research Misconduct Hearing. The decision shall be based solely upon such matters. Formal rules of evidence shall not be applicable in disciplinary proceedings conducted under these procedures. The Chairperson of the Research Misconduct Panel may admit all matters into evidence that he or she deems as being probative of the issues presented. Unduly repetitious or irrelevant evidence may be excluded.

Every effort should be made to insure the presence of all parties at the Hearing. If, however, the principal investigator refuses to attend, or does not appear at the Hearing, the Hearing may proceed in his/her absence.

In accordance with the college policy, the proceedings of an inquiry into research misconduct are confidential to protect the members of the inquiry panel, the individual filing the allegation, the person accused, and the witnesses, to the maximum extent possible. All individuals are asked to refrain from discussing the matter with anyone, including faculty members, students, family members, and the media.

#### *Article VII: Deliberation*

If at all possible, the Research Misconduct Panel shall render a decision at the conclusion of the Hearing. However, the Panel must render a decision within two working days after the conclusion of the Hearing.

#### *Article VIII: Decisions*

The decision of the Research Misconduct Panel shall be presented to all parties in writing within seven working days of the Panel's decision. These decisions are final and binding, except in cases where the Panel recommends expulsion from the College. A two-thirds majority vote, by the Research Misconduct Panel, is required for an allegation of misconduct to be upheld. If a two-thirds vote is not achieved the claim of misconduct will be dismissed. A separate vote, also requiring a two-thirds majority of the Panel, shall be taken about the penalty to be imposed or rectifying action to be taken against the principal investigator who engaged in misconduct.

#### *Article IX: Penalties and Actions*

The Research Misconduct Panel may recommend that the Associate Provost for Academic Standards and Research impose one or more of the following penalties or rectifying actions:

- 1) Warning – oral or written notification that continuation or repetition of conduct found wrongful may be cause for more severe disciplinary action.
- 2) Censure – written reprimand for violation of specified regulations, including the possibility of more severe disciplinary sanction in the event of violation of any college or IRB regulation within a period of time stated in the letter of reprimand.
- 3) Institution of the College's policy regarding plagiarism and/or cheating [see student handbook].
- 4) Temporary suspension or permanent revocation of research privileges with notification of peer review groups (the IRB) of an investigator's past noncompliance prior to review of new projects.
- 5) Written notification of the principal investigator's professional license board of professional misconduct or unethical practice [if applicable].
- 6) For Students:
  - a) Suspension – exclusion from class and revocation of other privileges or activities as set forth in the notice of suspension for a definite period of time not to exceed two years.
  - b) Expulsion – termination of student status for an indefinite period. The conditions of readmission, if then determinable, shall be stated in the order of expulsion. This penalty may be imposed only with consent of the College President.

The penalties of suspension or expulsion shall be permanently noted on the transcript of a student. Other penalties will be noted in the student's academic file. The Associate Provost for Academic Standards and Research may, at his or her sole discretion, remove the notation of penalties other than suspension or expulsion from the academic file of the student after six (6) months.
- 7) For Faculty the decision of suspension or termination must follow the guidelines established in the Faculty Handbook. Letters of warning or censure sent to faculty members or administrators will become part of the individual's personnel file at the College.

The College may not overturn the decision of the IRB regarding the existence of misconduct. Any Principal Investigator, faculty or student, however, may grieve the Research Misconduct Panel's imposed penalty or rectifying action through the existing procedures in the College.

#### *Article X – Schedule*

This schedule for accepting cases of research misconduct, procedure, deliberation and decisions is regulated according to the weekdays the College is in session. When the college is out of session, meetings will be called when and if necessary.

#### *Article XI – Records*

The Chairperson shall arrange for the use of a tape recorder to record Research Misconduct Hearings. The deliberations of the Research Misconduct Panel shall be confidential and not recorded. The original tape recording, any documents utilized at the Hearing, and all decisions of the Research Misconduct Panel shall be retained in a confidential file in the Office of the Registrar.

*Article XII – Confidentiality*

The Proceedings of the Research Misconduct Hearing, as well as all written documents arising out of it are to be held in the strictest confidence. Any member violating this confidence is subject to dismissal from the Panel by a 2/3 vote of the other members. Violation of the confidentiality of the Misconduct Hearing may open the faculty member to other disciplinary or legal actions by the College.

*Adapted from the University of California, Irvine and Mercy College Grievance Policy*