

APPENDIX D

INSTITUTIONAL PROCEDURES FOR SANCTIONS OF FACULTY

INCLUDING CENSURE AND DISMISSAL FOR JUST CAUSE

Original Appendix D
Approved by Academic Council
August 5, 1987

Amended by Academic Council
August 3, 1988
February 7, 1990
October 9, 1991
November 10, 1993
April 5, 1995

Rewritten and Approved by Academic Council
October 5, 2005

Revised and Approved by Academic Council
November 8, 2006

APPENDIX D

INSTITUTIONAL PROCEDURES FOR SANCTIONS OF FACULTY

INCLUDING CENSURE AND DISMISSAL FOR JUST CAUSE

TABLE OF CONTENTS

Section 1.	Purpose	3
Section 2.	Scope	3
Section 3.	Definitions	3
Section 4.	General Considerations.....	5
Section 5.	Informal Procedures for Non-Scientific Misconduct.....	6
Section 6.	Formal Proceedings: Phase I.....	7
Section 7.	Suspension of Faculty.....	12

APPENDIX D

INSTITUTIONAL PROCEDURES FOR SANCTIONS OF FACULTY

INCLUDING CENSURE AND DISMISSAL FOR JUST CAUSE

Section 1. Purpose

- A. To provide for the enforcement of the Faculty Bylaws and Institutional policies governing the conduct of faculty.
- B. To provide for appropriate due process protections.

Section 2. Scope

- A. The procedures of this appendix do not apply to faculty nonreappointment or nonrenewal of a faculty contract.
- B. The waiver of any hearing or appeal rights by the accused or the resignation of the accused will not preclude the Institution from following any of the procedures outlined herein.

Section 3. Definitions

- A. Accused. Refers to the faculty member against whom allegations of conduct constituting Just Cause have been made.
- B. Censure. Official and public reprimand.
- C. Charge(s). A formal, written statement of the complaint(s) or allegations against a faculty member.
- D. Dismissal. An involuntary permanent severance of employment, enrollment or volunteer status.
- E. File. Official file for the faculty member.
- F. Funding Agency. Any source which provides funds for the conduct of professional research.
- G. Hearing. An official meeting at which witnesses are heard and evidence is presented.
- H. Inquiry Procedures. Procedures used to determine whether there is probable cause that misconduct has occurred.

- I. Investigatory Procedures. Procedures employed to conduct a thorough evaluation of relevant evidence.
- J. Just Cause. Includes, but is not limited to:
1. professional incompetence;
 2. conduct not in accordance with the ethical standards of a faculty member of the Institution or the profession as defined in the Faculty Code of Conduct;
 3. neglect of duty;
 4. dishonesty in administration, teaching or in the conduct of research or breach of professional ethics;
 5. conduct which significantly impairs the faculty member's ability, or that of others, to carry out their responsibilities to the Institution;
 6. violation of the policies of the Institution and Faculty Bylaws; or
 7. conviction of a felony.
- K. Malfeasance. The doing of an act which a person ought not do at all.¹
- L. Misfeasance. The improper doing of an act which a person might lawfully do.¹
- M. Nonfeasance. The omission of an act which a person ought to do.¹
- N. Preponderance of the Evidence. The greater weight of the evidence, superior evidentiary weight, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.¹
- O. Probation. A defined period of time during which a faculty member must meet a set of goals and expectations or face termination.
- P. Reprimand. Formal written disciplinary documentation by an administrative superior not requiring a hearing or other due process protections. A reprimand constitutes a final, non-appealable resolution of a given charge.
- Q. Sanction. A penalty imposed. All sanctions will be noted in the faculty member's file. The available sanctions include, but are not limited to:
1. reprimand;
 2. removal from a particular project;
 3. special monitoring of future work;
 4. censure;
 5. suspension;

¹ Definitions from Black's Law Dictionary (6th Edition)

6. salary reduction;
 7. probation;
 8. termination of appointment and/or employment.
- R. Scientific Misconduct, Misconduct in Science. Fabrication, falsification, plagiarism or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences of interpretations or judgments of data (42 CFR 50.102). This definition also includes “research misconduct” that is defined as fabrication, falsification, or plagiarism in proposing or performing research funded by National Science Foundation (NSF), reviewing, research proposals submitted to NSF, or in reporting research results funded by NSF (45 CFR 689.1).
- S. Suspension. An immediate, interim action employed by the Dean of the College or the President of the Institution pending a full investigation and disposition of charges brought against a faculty member. The suspension may result in the faculty member being relieved from some or all of his/her duties. Suspension may be automatic or discretionary.

Section 4. General Considerations

A. Public Statements

Public statements on behalf of the Institution may be made only under the authority of the President.

B. Confidentiality

The Institution will conduct all inquiries into charges of misconduct discreetly. This information will be held in confidence to the extent permitted by law. All Committee meetings and hearings will be closed.

C. Protection For "Whistleblowers"

The Institution will, to the maximum extent permitted by law, protect the privacy of and will not take any adverse action against an individual who, in good faith, makes allegations of misconduct. The Institution will not tolerate any retaliation by the accused.

D. Conflicts of Interest

The Institution shall take precautions against real or apparent conflicts of interest on the part of those involved in any investigation or inquiry proceeding. Any person having a conflict of interest must disclose the conflict to the individual responsible for that phase of the proceedings. Objections by the accused to the appointment of a specific inquiry committee or review committee members will be honored if the Institution concludes that the committee or its member(s) cannot be fair and impartial.

E. Duty to Cooperate

All Institution employees are required to cooperate in good faith with investigations of possible misconduct.

F. General Counsel

The Institution's General Counsel will assist during all proceedings (including hearings) by securing, reviewing and maintaining the integrity of evidence, necessary relevant records and materials; and providing consultation to all Committees as needed. All final reports will be maintained by the General Counsel in a secure manner for at least five (5) years after the termination of the proceedings.

Section 5. Informal Procedures for Non-Scientific Misconduct

- A. If an allegation of conduct constituting Just Cause that does not involve scientific misconduct has been made against a faculty member, the Department Chair of the faculty member shall investigate the matter within 30 calendar days of the report. The Department Chair will document the allegation and the results of the investigation.
- B. At the conclusion of his/her investigation, the Department Chair shall provide the faculty member with a written report outlining the allegation and the results of the investigation. The faculty member may submit a written response to the allegation and the results of the investigation to the Department Chair no later than ten (10) business days from the date the faculty member receives a copy of the written report.
- C. Upon receipt of the faculty member's written response or upon expiration of the time period for a faculty member to submit a written response, the Department Chair will confer with the Executive Associate Dean of the respective College to review the allegation, investigation findings and faculty member's response, if applicable, to determine if any further investigation or action is required.
- D. If appropriate and after consultation with the Executive Associate Dean, the Department Chair may issue a reprimand to the faculty member. A reprimand may properly be issued if the violation is relatively minor and correctable and if the violation does not pose a threat to public well being or the Institutional resources. A reprimand will constitute a final, non-appealable resolution of the matter.
- E. If the Executive Associate Dean determines that a sanction beyond a reprimand should be considered, formal proceedings as outlined below will be commenced.

Section 6. Formal Proceedings: Phase I ²

A. Preliminary Inquiry

1. Allegation(s) of scientific misconduct or allegation(s) of conduct constituting Just Cause that may result in a sanction beyond a reprimand must be submitted to the Dean in writing as soon as possible. Upon such notification, the Dean shall provide written notice to the President of the Institution and the accused of the charges and a summary of the supporting evidence or investigative reports, if any, no later than five (5) business days after the Dean's receipt of the allegation(s).
2. No later than five (5) business days from the date the President receives the written allegation, he/she shall appoint a three person Inquiry Committee from within the Institution to advise the Dean. The Inquiry Committee will consist of Associate Professors and Professors from outside the department of the accused. Committee members cannot be co-investigators of the accused.
3. The Inquiry Committee may consult experts without revealing the name of the accused.
4. The Inquiry Committee shall complete the preliminary inquiry, including preparation of a written report, no later than thirty (30) calendar days from the date of the Inquiry Committee appointment. The report shall summarize what evidence was reviewed, relevant interviews and include the conclusions and recommendations of the Inquiry Committee.
5. The accused shall be given a copy of the report and may submit a written response to the report within five (5) calendar days of receipt of the report.
6. If the preliminary inquiry cannot be completed within thirty (30) calendar days from the date of appointment, the record shall include documentation of the reasons for delay and indicate when the inquiry will be completed. However, the preliminary inquiry must be concluded within forty-five (45) calendar days.
7. The Inquiry Committee will make a finding on each charge and will document the reasons for that finding. The committee may recommend in writing to the Dean that:
 - a. no further proceedings are necessary; or
 - b. Phase II formal proceedings should be initiated.
8. The Inquiry Committee report, signed by the Inquiry Committee members, will be submitted to the Dean, who will review it with the President.

² When the President of the Institution and the Dean of the College of the accused faculty member are one in the same, the Executive Associate Dean of that College will serve in the role of the Dean for the process described herein. The responsibility for all external reporting rests with the President.

9. The Dean will provide written notice to the accused of the outcome of the inquiry and will consider the matter closed or request that the President convene a Review Committee within thirty (30) calendar days of the completion of the inquiry.
10. If the Inquiry Committee discovers any reason, as outlined in Section 7(B), which indicates that the Office of Research Integrity (ORI), National Science Foundation (NSF), or other appropriate funding agency should be notified, the Committee Chair must immediately notify the President and the Dean.

B. Notification of Funding Agencies

The President, or designee, will notify the ORI, NSF or other appropriate funding agency if, at any stage of the inquiry or investigation, it becomes apparent that any of the following conditions exist:

1. there is an immediate health hazard involved;
2. there is an immediate need to protect Federal funds or equipment;
3. there is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;
4. it is probable that the alleged incident will be reported publicly;
5. there is reasonable suspicion of possible criminal violation; if criminal activity is suspected, the Institution must inform the funding agency within 24 hours of obtaining that information; or
6. disclosure of facts that may affect current or potential funding for the individual(s) under investigation or that may compromise the funding agency's ability to ensure appropriate use of Federal funds and otherwise protect public interest.

C. Notification of Investigation

If a Review Committee is convened to consider allegations of scientific misconduct, the President or his/her designee will notify the appropriate funding agency, in writing, of the investigation on or before the date formal proceedings begin. Such notification shall include the name of the person(s) accused, the general nature of the allegations, and the application or grant number(s) involved.

Section 7. Formal Proceedings: Phase II

A. Notification of Charges

1. Within five (5) business days of the decision to convene a Review Committee, the Dean will notify the individual(s) involved, in writing, of the:
 - a. charge(s);
 - b. names of the Review Committee members;
 - c. right to a hearing and the date, time and place of said hearing;
 - d. right to attend the hearing; to call witnesses; and to have an individual present designated as counsel who may advise the accused but not address the committee. The accused is responsible for his/her own legal expenses.
2. Notification will be personally delivered or sent by certified mail, return receipt requested.
3. Failure of the accused to attend or participate constitutes a waiver of the right to do so, and will not delay or impede the process as outlined herein.
4. The Dean may suspend the accused from some or all of his/her duties for the duration of the review. Suspension during this period will be with full pay and benefits unless the law forbids.

B. The Review Committee

1. The President will submit to the Academic Council a slate of ten (10) nominees, faculty members from the ranks senior to Assistant Professor, for the Review Committee. From this list of nominees, the Academic Council shall appoint an ad hoc review committee consisting of five (5) members.
2. The committee shall elect its own Chair.

C. Duties of the Review Committee

1. The Review Committee shall conduct an investigation, which shall include examination of documentation, it deems necessary to carry out its responsibilities, in whatever format, including, but not limited to: relevant research data and proposals, publications, correspondence, memoranda, records of telephone calls, research notebooks and the Inquiry Committee's report.
2. The Review Committee will provide a receipt acknowledging possession of the materials to the Inquiry Committee. When requested by the accused, photocopies of written materials taken shall be provided to the accused. Other evidence will be made available for review under controlled conditions.

3. The Review Committee may request supplemental written material and seek the advice of content expert consultants.
4. The Committee must carry its investigation through to completion and pursue diligently all significant issues. (In cases of scientific misconduct, if for any reason the investigation is terminated prior to its completion, the funding agency must be notified.)
5. Hearing Procedures
 - a. The Review Committee shall conduct hearing(s) that are closed to the public at which the Review Committee Chair shall:
 - (1) call witnesses who will present any relevant information and evidence (prior to the hearing, the accused will be provided with a list of known witnesses);
 - (2) allow the accused to present any relevant information and evidence including necessary witnesses and physical evidence, and cross-examine witnesses;
 - (3) allow for the Committee members to question the accused, witnesses and review evidence presented; and
 - (4) cause a verbatim transcript to be kept.
 - b. The accused and the Dean have the right to attend the hearing but not the Committee deliberations.
 - c. The verbatim transcript of the hearing will be available for review by the Committee and the accused. A copy will be made available to the accused upon request.

D. Deliberations by the Review Committee

1. The Review Committee shall meet in executive session to consider all relevant information obtained during the investigation as outlined in Section 8 including evidence obtained at the hearing, if one was held, and any written response to the charge(s) by the accused. The Review Committee may invite content experts, scientific consultants, General Counsel, and appropriate support staff to attend the deliberations as necessary.
2. Each of the charges will be considered separately. One of two findings is possible:
 - a. the evidence does not support the allegation(s); or
 - b. the evidence does support the allegation(s).
3. The standard of proof on each of the charges will be the preponderance of

evidence standard. The Review Committee will attempt to reach a consensus on each of the charges, and where consensus is not achieved, the decision will be made by majority vote, and an anonymous record of the vote will be kept.

4. The Review Committee must maintain documentation to substantiate its findings.
5. The Review Committee shall take no more than ninety (90) calendar days from the date of appointment to complete the investigation, conduct the hearing, prepare a report of its findings, and report its findings and any recommendations to the President and the Dean. All Review Committee members shall sign the report.
6. Within five (5) business days, the Dean or designee shall consider the Review Committee's report and determine what sanction, if any, is appropriate.
7. The President and the accused will receive a copy of the Dean's decision.
8. The decision of the Dean is final unless appealed as outlined herein.

E. Extensions and Progress Reports

If the President determines at the end of the ninety (90) calendar days that the Review Committee cannot complete its work to allow a decision within a 120 calendar day period:

1. The President must submit to the funding agency a written request for an extension and an explanation for the delay that includes an interim report on the progress to date and an estimate of the date of completion.
2. If the extension is granted, the President must file periodic progress reports as requested by the funding agency.

F. Final Report

The final report by the President to the funding agency, due within 120 calendar days from the day the investigation begins, must describe:

1. the policies and procedures under which the investigation was conducted;
2. how and from whom information was obtained relevant to the investigation; and
3. a description of any sanctions applied by the Institution.

G. Appeal Procedure

1. If a sanction other than a reprimand is applied, a faculty member may appeal the decision(s) in writing to the President within ten (10) business days of receipt of the report from the Dean.
2. In case of an appeal, the President may appoint a committee to assist him/her in considering the appeal.

3. The President shall within 30 calendar days:
 - a. consider all relevant reports;
 - b. sustain, overturn or modify the decision of the Dean and so notify the accused and the Dean; and
 - c. file the final report with the funding agency if appropriate.
4. The decision of the President is final.

Section 8. Suspension of Faculty

A. Automatic Suspension

A faculty member will be automatically suspended by the Dean if the:

1. faculty member's narcotics license has been revoked for inappropriate use;
2. faculty member is convicted of or pleads guilty to a felony; or
3. faculty member's license to practice has been permanently revoked.

B. Discretionary Suspension

A faculty member may be suspended by the Dean if the:

1. faculty member's license to practice is suspended, revoked, limited, or if the faculty member is placed on probation by the state licensing board;
2. faculty member's hospital privileges, if applicable, to practice have been suspended, revoked, or he/she is placed on probation, with the exception of medical records deficiencies; or
3. faculty member has been accused of conduct that, if true, would constitute grounds for the suspension, revocation or limitation of the faculty member's license to practice and if in the Dean's judgment, there appears to be sufficient grounds to support such an accusation.

C. Suspensions Lasting Over a Year

If the suspension of a nontenure-track faculty member exceeds a year in length, the faculty member's appointment will be withdrawn.