

# UNIVERSITY OF CALIFORNIA, ACADEMIC SENATE

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SANTA BARBARA • SANTA CRUZ

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*Faculty Representative to the Board of Regents*  
*University of California*  
*1111 Franklin Street, 12th Floor*  
*Oakland, California 94607-5200*

March 19, 2007

John J. Moores, Regent  
The Regents of the University of California  
1111 Franklin Street, 12th Floor  
Oakland, CA 94607

Dear John:

I write in response to your letter to me of January 23, 2007, soliciting on behalf of The Regents the Academic Senate's input on issues raised at the January Regents' meeting by RE-89, a proposed policy by The Regents to decline tobacco-industry funding for tobacco-related research.

The overriding question posed in your letter is whether or not the faculty support RE-89. I am committed to providing an unambiguous answer to that question before The Regents act on RE-89 at the May Regents' meeting. I have sent out RE-89 for systemwide review, and have announced that I will convene the 60-member Assembly of the Academic Senate — our sovereign legislative body — for an up-or-down vote on RE-89 at a face-to-face meeting to be held on May 9, 2007.

Your letter also asked a series of specific questions that seek to explore the evidentiary basis for the faculty's position. These questions would be very difficult for a legislative body to answer in the best of circumstances, given the congeries of different reasons legislators might have, individually, for voting together on the same resolution. I have been concerned that the Assembly, as such, would either fail to answer your questions, or, by answering them, would fail to achieve an unambiguous vote supporting or opposing RE-89.

I have discussed these concerns with the Assembly, at our telephonic meeting on February 14, and at the February 28th meeting of the Academic Council (the executive committee of the Assembly). The Council appointed a working group of five Council members, representative of the range of views among the Senate on RE-89 and related issues, to prepare answers to your specific questions. It is the Council's view, and mine, that this is the best way to respond to your letter in good faith, and as fully as possible, without getting bogged down in endless revisions and word-smithing by either the 19 members of Council or the 60 members of the Assembly.

I enclose the working group's response, which is in the form of a letter to me signed by all five members of that group, and includes two internal attachments. At the working group's suggestion, I am also circulating its letter and attachments to all agencies of the systemwide Academic Senate, to assist in their responses to my call for systemwide review of RE-89. We would certainly welcome similarly broad circulation among other Regents of this letter, the working group's letter, and the attachments thereto.

Sincerely yours,

A handwritten signature in blue ink, appearing to be 'JO', is placed over a light blue rectangular background.

John B. Oakley  
Chair, Academic Council

Encl.

cc: Chairman Richard C. Blum  
Regent Russ Gould  
President Robert Dynes  
Provost Rory Hume

March 12, 2007

Professor John Oakley  
Chair, Academic Council

Dear John:

On February 28, Academic Council considered how best it might answer the questions posed in the letter sent to you on January 23, 2007, by Regent Moores. Although Council is not accustomed to receiving such letters, Council interpreted the letter as an indication of the seriousness with which The Regents view the concept of shared governance. Certainly APM 010 states that “[t]he substance and nature of ...the professional standards [that sustain the University’s pursuit and achievement of knowledge] properly lie within the expertise and authority of the faculty as a body.” As you know, Council appointed a working group (the signers of this letter) to determine how to respond to the letter, and charged us to report back as soon as possible.

Our working group intentionally included members known to have different perspectives on the question of RE-89. Specifically, it included one member known to be leaning toward advising The Regents to adopt RE-89, two individuals known to be leaning toward advising The Regents not to adopt RE-89, another individual who saw merit in both positions, and an individual known to be agnostic on the issue of RE-89, the last of whom served as chair of the working group. Over a period of 11 days, the group devised a strategy for answering the questions, relying on internal expertise and on the advice of expert colleagues. What we present to you herein is the result of our combined efforts.

### ***Our goal***

Our goal is to answer as faithfully as we can the questions posed by Regent Moores so that his questions can be used to help frame the deliberations of the different divisions and committees as they consider the issue of RE-89. We have tried to provide facts as we know them where Regent Moores’ questions require facts, and to explain the main points of view in response to questions of opinion. We have done our best to avoid the appearance, and the substance, of persuasion.

We hope and believe that the great majority of faculty on both sides of this issue will not find our document objectionable in its totality. We also recognize that we may have overlooked some analyses or inadvertently omitted some facts. We nonetheless believe that the document we transmit here can help members of the Senate come to a determination about how to answer the question: should The Regents endorse or fail to endorse RE-89?

We also hope that this document can contribute to thinking about broad issues of academic freedom and research integrity. While Regent Moores’ questions are specific to possible banning of tobacco funding, there are many faculty members who hope that the issue will be considered without regard to any specific industry or funding source.

### ***Our request***

We request that you electronically convene the Academic Council on Tuesday, March 13, and ask them to endorse by Friday, March 16, the circulation of this document to all divisions and all committees so that it can help inform the responses that you have requested of the divisions and the committees by April 13. Should a majority of those responding vote to circulate this document, we request that it be circulated immediately after the vote.

### ***Our responses***

Below are the responses to the questions posed by Regent Moores in his letter to you dated January 23.

#### *1. How would APM010 have to be amended to be consistent with the proposed policy?*

Various answers have been advanced. According to one point of view, RE-89 would require no change because APM 010 does not mention financial arrangements. Others argue that given the realities of contemporary scientific research, a prohibition of funding operates functionally the same as a research ban. Accordingly, acceptance of RE-89 would require excising these words from APM 010: “The principles of academic freedom guarantee freedom of inquiry and research . . . .” These faculty believe that principles of academic freedom are rooted in the notion that scholarly inquiry is not susceptible to manipulation. Still other faculty members say that the very aims of academic freedom principles would be upheld and advanced in the special case of non-acceptance of tobacco industry funding because of the way in which the industry has manipulated the scientific process and distorted or suppressed evidence of tobacco-related health risks. Because the APM must provide a broad framework of policies and procedures necessary to guide and regulate faculty conduct, it is intentionally non-specific. Amending it to proscribe a single source of funding could distort that purpose.

#### *How might the proposed tobacco funding policy be amended to be consistent with APM 010?*

There are a large number of possible answers to this question; which answer a person selects depends, again, on how that person views matters of academic freedom. One view is that no restriction (however it is worded) is consonant with the principles of academic freedom. A second view is that a policy could be devised that allows for heightened scrutiny under a set of narrowly constrained circumstances so that, for example, no research funding can be accepted from illegal entities like the cocaine cartel or from legal entities that have been found to have engaged in a certain set of behaviors such as racketeering. Another view is that the policy must be broad and not tagged to a specific industry.

How might we create a “broad policy” not tagged to a specific industry? The starting point for such a policy might reside in identifying what it is, in the view of The Regents, that makes the tobacco industry “unique.” In what ways have the freedom-subverting actions of the tobacco industry differed from freedom-subverting actions on the part of other industries that have attracted public notoriety?

2. *At institutions that ban tobacco money, what examples are there of blocked research?*

While specific cases may exist, we do not know of any research that has been prevented at other institutions that have policies banning tobacco money, because no such examples have been offered for our consideration; without appropriate surveys, they would be difficult to find. However, we are aware of an instance wherein a person accepted funding from a particular funding source that stipulated prohibition from receiving research funds from the tobacco industry, for either his colleagues or himself.

*What examples are there of individuals who have not been able to obtain funds because UC had no tobacco ban?*

Some years ago the issue of a funding ban arose at UC San Diego, where an investigator had accepted funding from the American Legacy Foundation (ALF), an organization dedicated to preventing tobacco use. When a grant from the ALF was due to be renewed in 2002, it came to light that acceptance of ALF funding entailed proscription of “tobacco funding” by other faculty, a circumstance that appeared to have escaped administrative notice when the original grant was accepted. The matter was referred to the UCSD Division of the Academic Senate and also to the Vice Chancellors for Research at the various campuses. Upon the recommendation of the systemwide Vice Provost for Research, Lawrence Coleman, and the campus Vice Chancellors for Research, funding with such “strings attached” was declined by the University. Although the ALF was invited to remove the proscription, it apparently did not wish to do so. The matter was thoroughly discussed by the UCSD Division of the Academic Senate which resolved that acceptance of funding on behalf of faculty that stipulated proscription of receipt of other funding by other faculty would infringe on the rights of those faculty members, would violate academic freedom, and would be potentially grievable as a Privilege and Tenure violation. These events took place several years ago, but renewed discussion of the matter during the current year led the UCSD faculty to reaffirm its earlier position with a single faculty member dissenting.

We understand that there may be other projects at UCLA in the School of Nursing that have not been able to obtain funds because UC did not have a tobacco ban. The American Cancer Society, the American Lung Association of California, and the Flight Attendant Medical Research Institute have policies of not funding *investigators* who take tobacco money; there has been discussion of expanding this to *institutions*. However, it must be noted that many faculty members have expressed concerns about having university policies determined by funding agencies. The concern also might be raised that funding entities that support both advocacy and research may have difficulty in taking a neutral view with regard to academic freedom.

3. *How can the Regents be assured that current policies protect the integrity of the research process?*

Again, based on a person’s philosophy, different answers can be imagined; but one neutral starting point is to differentiate between policies and their application. We note that the University of California has in place a system designed to assure the integrity of the research process. The policies governing the conduct of research at UC appear in multiple places.

The University Committee on Research Policy (UCORP) attempted to summarize these in its July 9, 2004, report on *Problematic Restrictive Clauses in Contracts, Grants, and Gifts for Research*, which was adopted by the Academic Council on July 21, 2004. The report indicates that “the principles of

institutional autonomy and academic freedom are the underpinnings of numerous policies restricting and defining conduct of research in the University” (page 4). The report then goes on to describe six key areas in which policies governing the acceptance and conduct of research have been developed. The full text of this section of the UCORP report is contained as Attachment 1, and the areas are summarized below:

- Publication policy. The freedom to publish and disseminate research results is a key condition of any funding accepted at UC.
- Classified research. There are certain circumstances in which a contract or grant with publication restrictions might be accepted if the work is deemed as “classified” and conducted at an off-campus site, including the Los Alamos and Livermore National Labs or the Marine Physical Laboratory of the Scripps Institution of Oceanography.
- Intellectual property. Policies have been developed to protect the University’s intellectual property as well as that of individual faculty and students.
- Nondiscrimination. University policy prohibits discrimination against an individual based on a number of personal factors, and can be applied to selection of research participants.
- Private gifts for research. Gifts are distinguished from grants, and it is noted that both are subject to the same rules and procedures.
- Solicitation and acceptance of funding. It is noted that all awards to the University are made to “The Regents of the University of California”.

In addition, the university has a detailed policy on integrity in research (Attachment 2), which describes the conduct of research and the standards of ethical behavior expected of faculty and students involved in research. The policy also discusses the procedures for addressing allegations of misconduct in research.

In the *Statement of Ethical Values* adopted by The Regents in May of 2005 and sent to all faculty the following October, the ethical conduct of research is described:

Members of the University community engaged in research are not to: fabricate data or results; change or knowingly omit data or results to misrepresent results in the research record; or intentionally misappropriate the ideas, writings, research, or findings of others. All those engaged in research are expected to pursue the advancement of knowledge while meeting the highest standards of honesty, accuracy, and objectivity.

Are the policies always perfectly applied? Of course not. We recognize that even when researchers engage in no impropriety, research results can be mishandled. Yet, among the thousands of faculty who are continuously engaged in research, there are relatively few instances where the policies have not been applied in an appropriate manner. We see the relative rarity of abuse as an indication that the policies are well conceived.

The relative rarity of abuse may also derive from the motivations of academic researchers as contrasted with researchers in industry. Academic researchers are not predominantly motivated by material gain but are driven by a desire to contribute knowledge, as well as by the knowledge that they are judged by academic peers in the academic review process. The value placed on a researcher’s work depends entirely on his or her integrity. Any researcher thought to be lacking in integrity has only worthless products no matter how much he or she has toiled. Among academics at

the University of California, therefore, people have a strong self-interest in scrupulous adherence to the precepts of academic integrity.

Even if the self-interested pull toward integrity were less strong than it is, academic researchers are the subject of a great deal of self-policing in their various disciplines. Yes, some poorly done studies are published. But the process of peer review helps assure the community that high standards are followed.

4. *What is the proper interpretation of the October Assembly resolution saying “past funding arrangements involving the tobacco industry have been shown to suppress academic freedom.”*

An institutional body, such as The Regents or the Academic Senate, does not have one mind or, therefore, one necessarily coherent reason or set of reasons behind its actions. When asked, the author of the resolution in question – which was the third research-funding-related resolution adopted on October 11, 2006 – said that she intended the resolution to signal that a Regental decision to decline funding from the tobacco industry would be consistent with the protection of academic freedom. Without interviewing all the members of the Assembly who were present on October 11, however, it would be impossible to provide a more detailed answer as to the proper interpretation of this resolution; and the intentions of the author of the resolution may not have been universally known or understood by those voting. Some claim to have thought they were simply making a statement acknowledging the egregious nature of the tobacco industry, a point of agreement among both proponents and opponents of a tobacco industry funding ban. The October Assembly resolution in question was in fact an outgrowth of a resolution previously passed by the Academic Council (the executive committee of the Assembly) and placed before the Assembly at the opening of a discussion time that was limited to forty-five minutes. The assertion was based on opinion and reference was made to the judgment in a racketeering trial, but senate members did not have the opportunity to study the documents provided in support of the motion. One may also wonder about the appropriateness of singling out a resolution for explanation. Resolutions that admit of different interpretations are, perhaps, not good resolutions. Yet, perhaps resolutions, good or bad, need to stand – or fall – on their own merits.

5. *What weight should the Regents give to a certain pattern of legal findings?*

The weight of legal findings in civil and criminal proceedings is an important matter. Certainly, the appeal process should be exhausted if The Regents believe determinations made by a trial court are to play a role in their decision-making about funding. However, if they wish to make their decisions on academic grounds and the established pattern of behavior of the funding source with respect to how they have engaged the research or teaching enterprise, then judicial determinations are superfluous. Some faculty think that what matters then is whether there is evidence of behavior that is inconsistent with the purposes of the principles of academic freedom as judged by the Academic Senate. Other faculty members think that what matters is not how a funding source behaves, but rather whether the University has policies that can assure that funding sources will not be able to manipulate research done by our faculty.

#### *Unnumbered question*

Regent Moores’ letter also asks what changes might ensure that a policy is not misinterpreted in the future. Again, there is no simple answer, and any meaningful reply involves numerous

contingencies. All members of the workgroup agree that an initial step might be taken that could prove essential for future deliberations.

Specifically, we think that The Regents ought to elaborate on one statement in proposed RE-89. The recommended policy contains the statement: “The collective use of sponsored research by the manufacturers and distributors of tobacco products as an industry to support a public deception about its products is unique, unprecedented and represents just such rare and compelling circumstances.” If the tobacco industry is indeed thought to be truly unique in its behavior (which it may well be), then this uniqueness should be described and demonstrated via comparative study. The existence of even a single ban establishes that there are circumstances that call for bans, and therefore those circumstances must be delineated. Only by articulating the governing principles clearly and specifically will there be guidelines that reassure us that we are not beginning a slide down a slippery slope.

Failure to articulate the general principle underlying the claim that “[t]he collective use of sponsored research by the manufacturers and distributors of tobacco products . . . is unique, unprecedented and represents just such rare and compelling circumstance” would take UC into dangerous policy territory. The absence of stated principles and policies opens the door to a potential flood of future requests such that the time and thought of the Academic Council could be consumed by consideration of additional bans on research funding from other industries, leaving little time for consideration of other Council business. Some faculty feel that even establishing the admissibility of bans with sufficient cause would throw the understanding of academic freedom, varied though it might be among the faculty, into serious philosophical disarray.

#### *Final note*

It is tempting to allow ourselves to feel impatient with those who hold different views than our own. Open and free debate has, nonetheless, been fostered within the working group. While our points of view have diverged rather sharply on several occasions, we have continued to hold each other in very high regard and to respect that reasonable people may differ about matters of great importance. We hope that the trouble we have gone to in seeking genuine answers to the provocative questions posed by Regent Moores has resulted in a document that is of use to all members of the Senate as, separately and together, we seek to advise The Regents about RE-89.

Sincerely,

Mary Croughan, Working Group Chair, Chair of the University Committee on Academic Personnel  
Faye J. Crosby, Chair of the Santa Cruz Division  
Wendy Max, Chair of the University Committee on Research Policy  
Henry Powell, Chair of the San Diego Division  
Mark Rashid, Chair of the Board of Admissions and Relations with Schools



## Attachment 1

### **Excerpt from Report of the University Committee on Research Policy. Problematic Restrictive Clauses in Contracts, Grants, and Gifts for Research. July 9, 2004. Adopted by the Academic Council. July 21, 2004.**

## **II. UC POLICIES AND PRINCIPLES**

### **A. Fundamental Principles: Academic Freedom and Autonomy**

The research, teaching, and public service missions of an institution of higher education rest on two fundamental principles: the academic freedom of the faculty and the autonomy of the institution. The University of California is governed by a Board of Regents, which under Article IX, Section 9 of the California Constitution has "full powers of organization and governance" subject only to very specific areas of legislative control. This constitutional autonomy of the University protects the institution's ability to make academic decisions without state or other external interference. The U.S. Supreme Court first recognized an institution's autonomy in academic decisions in the 1957 concurring opinion for *Sweezy v. New Hampshire*:

It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment, and creation. It is an atmosphere in which there prevail "the four essential freedoms" of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.<sup>1</sup>

It is this institutional autonomy that allows the University to protect the academic freedom of its faculty. In an amicus brief filed in *Princeton University v. Schmid*, the AAUP noted that "any direct governmental infringement of the freedom of teaching, learning, and investigation, is an assault upon the autonomy of institutions dedicated to academic freedom.... Freedom of the university is required at certain points in order to protect freedom in the university."<sup>2</sup> Academic freedom enables the University "to advance knowledge and to transmit it effectively to its students and to the public" by protecting the "freedom of inquiry and research, freedom of teaching, and freedom of expression and publication."<sup>3</sup> By protecting the University and its faculty from external interference, institutional autonomy also helps ensure that the research conducted in the University is focused on the public interest as opposed to a sponsor's interests.

### **B. Policies for Research Awards**

The principles of institutional autonomy and academic freedom are the underpinnings of numerous policies restricting and defining conduct of research in the University. The language of these policies provides the initial basis for conduct of research at the University—essentially defining the scope and providing the framework and justification for all research. In a practical sense, these policies define the balance between individual freedom and the defense of other principles. UC's *Contract and Grant Manual*, which is a collection of Regental and Presidential statements, policy memos, and

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<sup>1</sup> *Sweezy v. New Hampshire*, 354 U.S. 234 (1957). U.S. Government Printing Office  
<[http://www.access.gpo.gov/su\\_docs/supcrt/index.html](http://www.access.gpo.gov/su_docs/supcrt/index.html)>

<sup>2</sup> Euben, Donna. "Academic Freedom of Individual Professors and Higher Education Institutions: The Current Legal Landscape." May 2002. AAUP <<http://www.aaup.org/Com-a/aeuben.HTM>>

<sup>3</sup> "Academic Freedom." *General University Policy Regarding Academic Appointees*, APM-010. 29 Sep 2003. UC  
<<http://www.ucop.edu/acadadv/acadpers/apm/apm-010.pdf>>

other documents, sets forth systemwide policies for the solicitation, acceptance and administration of awards from extramural sponsors. It is the duty of the research administration officers on each campus to interpret this manual and apply its policies to sponsored project award agreements. This independence grants the campuses the flexibility to agree to specific terms, based on the circumstances of the research, that protect the University's principles while addressing, as well as possible, the needs of the sponsor and principal investigator.

Some of the fundamental guiding policies for research awards outlined in the *UC Contract and Grant Manual* and other institutional resources include:

### Publication

The freedom to publish and disseminate research results is a major criterion for determining whether a sponsored project award will be accepted. Normally a contract or grant is unacceptable if it limits this freedom by: assigning to the sponsor ownership of the results; assigning to the sponsor the final decision of what may be published; or placing an unreasonably long or unlimited delay in the publication and dissemination of the results.<sup>4</sup> Various exceptions to these rules are allowed only under certain circumstances.

### Classified Research

Although a contract or grant for research to be conducted on a UC campus is unacceptable to the University if it limits the freedom to publish or disseminate results,<sup>5</sup> the federal government has recognized that in certain research areas the public interest precludes open publication; research in these areas is deemed "classified." UC faculty can conduct classified research at off-campus sites, including the UC-managed Los Alamos and Lawrence Livermore National Labs and an off-campus facility of the Scripps Institution of Oceanography. In addition, UC policy permits the UC President to grant an exception to policy to allow classified research to be conducted on a campus, for research that involves vital national security interests and that cannot readily be conducted at the off-campus sites, when the special expertise of UC personnel is required. To the best of our knowledge, no such exceptions have ever been made.

### Intellectual Property

Regulations and restrictions related to patent policy involve protection of the University's intellectual property, as well as that of individual faculty and students, and define the balance between the two. Simultaneously, they defend the University's rights within the industrial community, and are a large part of any collaboration or grant contract with an industrial partner. UC's responsibility to manage in the public interest the intellectual property derived from federal research funding was established by Congress in 1980 through the Bayh-Dole Act.<sup>6</sup> The intellectual property policies have been recently reviewed and clarified in "Guidance for Faculty and other Academic Employees on Issues Related to Intellectual Property and Consulting" by the UC Technology Transfer Advisory Committee.<sup>7</sup>

### Nondiscrimination

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<sup>4</sup> "Publication Policy and Guidelines on Rights to Results of Extramural Projects or Programs." *Contract and Grant Manual*, 1-400. UC Research Administration Office <<http://www.ucop.edu/raohome/cgmanual/chap01.html#1-400>>

<sup>5</sup> Ibid.

<sup>6</sup> "The Bayh-Dole Act: A Guide to the Law and Implementing Regulations." Oct 1999. Council on Governmental Relations <[http://www.cogr.edu/docs/Bayh\\_Dole.pdf](http://www.cogr.edu/docs/Bayh_Dole.pdf)> or <<http://www.ucop.edu/ott/bayh.html>>

<sup>7</sup> "Guidance for Faculty and Other Academic Employees on Issues Related to Intellectual Property and Consulting." 3 Mar 2003. UC Office of Technology Transfer <<http://www.ucop.edu/ott/pdf/consult.pdf>>

In accordance with state and federal regulations the University maintains a nondiscrimination policy. This policy prohibits discrimination against an individual on the basis of a number of personal factors (e.g., race, gender, ethnicity, age).<sup>8</sup> These prohibitions against discrimination also apply to the selection of participants in research projects.

### Private Gifts for Research

The University has identified a number of characteristics to be used to distinguish between whether monies awarded by private donors should be classified and processed as gifts or as grants.<sup>9</sup> In general, private awards that contain special contractual requirements, terms allowing the revoking of funds, or special requirements and conditions that direct the research project should be classified as research grants rather than gifts. Regardless of whether an award is designated as a gift or grant, it is subject to the research review process and the administrative rules and procedures that apply to all University funds.

### Solicitation and Acceptance of Funding

The right to solicit funding for research is strictly controlled by current University policy. Awards are made to the corporation known as “The Regents of the University of California,” not to an individual researcher, and therefore any commitments accepted under awards are the commitments of the corporation.<sup>10</sup> The Standing Orders of the Regents authorize the President to solicit and accept or execute research proposals and awards, with stated exceptions.<sup>11</sup> The President has delegated this authority to the Senior Vice President–Business and Finance, Vice President–Agriculture and Natural Resources, the Director of Federal Governmental Relations, Chancellors, and Laboratory Directors who have, in turn, delegated their authority, with varying levels and limitations, to the appropriate Vice Chancellors, Deans, Directors, and Contract and Grant Officers.<sup>12</sup> The right to accept grants is similarly controlled.<sup>13</sup>

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<sup>8</sup> “Nondiscrimination/Affirmative Action.” *Contract and Grant Manual*, chap. 14. UC Research Administration Office <<http://www.ucop.edu/raohome/cgmanual/chap14.html>>

<sup>9</sup> “Distinguishing Between Private Gifts and Grants for Research.” *Contract and Grant Manual*, 9-500. UC Research Administration Office <<http://www.ucop.edu/raohome/cgmanual/chap09.html#9-500>> and “Is it a Gift or a Private Grant?” *Development Policy and Administration Manual*, chap. III – Gift Administration Policy. UC <<http://www.ucop.edu/ucophome/policies/devpol/dpa3d.html>>

<sup>10</sup> “Corporate Status.” *Contract and Grant Manual*, 13-200. UC Research Administration Office <[http://www.ucop.edu/raohome/cgmanual/chap13.html - 13-200](http://www.ucop.edu/raohome/cgmanual/chap13.html-13-200)>

<sup>11</sup> “Duties of the President of the University.” *Standing Orders of the Regents*, 100-4. UC Regents <<http://www.universityofcalifornia.edu/regents/bylaws/so1004.html>>

<sup>12</sup> “Solicitation Authority.” *Contract and Grant Manual*, 2-200. UC Research Administration Office <<http://www.ucop.edu/raohome/cgmanual/chap02.html#2-200>>

<sup>13</sup> “Authority to Accept Awards.” *Contract and Grant Manual*, 2-610. UC Research Administration Office <<http://www.ucop.edu/raohome/cgmanual/chap02.html#2-610>>

## **Attachment 2**

### **UNIVERSITY POLICY ON INTEGRITY IN RESEARCH University of California June 19, 1990**

#### **Policy**

It is longstanding policy of the University of California to encourage and maintain the highest ethical standards in research. This Policy reaffirms the University's commitment to integrity in research.

Integrity in research includes not just the avoidance of wrongdoing, but also the rigor, carefulness, and accountability that are hallmarks of good scholarship. All persons engaged in research at the University are responsible for adhering to the highest standards of intellectual honesty and integrity in research. Faculty and other supervisors of research activities have a responsibility to create an environment which encourages those high standards and integrity in research. Open publication and discussion, emphasis on quality of research, appropriate supervision, maintenance of accurate and detailed research procedures and results, and suitable assignment of credit and responsibility for research and publications are essential for fostering intellectual honesty and integrity in research.

University policies set forth expectations for high standards of ethical behavior for faculty and students involved in research and provide procedures for addressing allegations of misconduct in research. Those policies and procedures are set forth in the Bylaws of the Academic Senate, the University Policy on Faculty Code of Conduct and the Administration of Discipline, and University Policies Applying to Campus Activities, Organizations, and Students--Part A, Student Conduct and Discipline. Procedures for administration of discipline also exist for other academic and staff employees in accordance with applicable personnel policies and collective bargaining agreements. (A list of University of California policies which pertain to integrity in research is attached.)

Misconduct means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scholarly and scientific community for proposing, conducting, or reporting research. Misconduct does not include honest error or honest differences in interpretations or Judgments of data./1

The University will continue to take prompt and vigorous action to investigate and address allegations of misconduct in research, based on the following principles:

Institutional and academic responsibility for self-regulation;

Mechanisms to protect to the greatest extent possible the due process rights of the accused, the interests of those making allegations, and the public interest;

The highest degree of confidentiality compatible with an effective response and applicable sponsor reporting requirements; and

Precautions against real or apparent conflict of interest.

Campus and Laboratory Implementation

Campuses and Laboratories shall have necessary guidelines and procedures to provide appropriate responses to allegations of misconduct in research. Such guidelines and procedures should specify how pertinent University policies and procedures will be used to address allegations of misconduct in research by faculty, students, and staff. When extramural funds are involved, local guidelines and procedures also should comply with conditions of the award, including applicable regulations issued by the sponsor of the research. Such regulations include, but are not limited to, the Responsibilities of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science (42 CFR, Part 50, Subpart A) and the National Science Foundation regulations on Misconduct in Science and Engineering Research (45 CFR, Part 689). Among their requirements, these regulations require specific reports to the sponsoring agency.

Chancellors and Laboratory Directors, or their designees, shall be responsible for implementation of this Policy, which may include the consideration of initial reports of misconduct and, when necessary, the referral or initiation of formal investigations. Local guidelines and procedures should clarify available mechanisms for imposing appropriate sanctions or discipline on individuals when the allegation of misconduct has been substantiated. Chancellors and Laboratory Directors, or their designees, shall refer to the University Policy and Procedures for Reporting Improper Governmental Activities and Protection Against Retaliation for Reporting Improper Activities to ensure coordination of allegations of misconduct which may be reported under that Policy and to advise on the procedures to protect against retaliation.

Copies of local guidelines and procedures shall be sent to the Senior Vice President--Academic Affairs for review as to compliance with this Policy.

Note 1/The definition of misconduct is based upon the regulations of the Public Health Service, Department of Health and Human Services (Responsibilities of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science, 42 CFR, Part 50, Subpart A), and it is consistent with the ethical principles and types of unacceptable conduct regarding scholarship listed in the Faculty Code of Conduct and with the types of misconduct specified in the University Policy on Student conduct and Discipline.

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#### University of California Policies which Pertain to Integrity in Research

1. University Policy on Faculty Conduct and the Administration of Discipline (June 14, 1974), including the Faculty Code of Conduct (August 26, 1988).
2. University Policy on Disclosure of Financial Interest in Private Sponsors of Research (April 26, 1984).
3. Policy on Outside Professional Activities of Faculty Members (April 13, 1979).
4. Standing Order of The Regents of the University of California 103.1(b), Special Provisions Concerning Officers, Faculty Members, and Employees of the University, Service Obligations.
5. University Policy on the Use of Animals in Research and Teaching (October 15, 1984).

6. University Policy on the Protection of Human Subjects in Research (September 2, 1981).
7. Guidelines on University-Industry Relations (May 17, 1989).
8. University Regulation No. 4, Special Services to Individuals and Organizations, Academic Personnel Manual, Section 020, (June 23, 1958).
9. University Policies Applying to Campus Activities, Organizations, and Students -- Part A, Student Conduct and Discipline (October 31, 1983).
10. Business and Finance Bulletin G-39, Conflict of Interest Policy and Compendium of Specialized University Policies, Guidelines, and Regulations Related to Conflict of Interest (Revised April 15, 1986 and June 15, 1989).
11. Guidelines for Disclosure and Review of Principal Investigators' Financial Interest in Private Sponsors of Research (April 27, 1984).
12. University of California Patent Policy (November 18, 1985 and revised in part on April 16, 1990).
13. University Copyright Policy (August 1,-1975).
14. University Policy and Procedures for Reporting Improper Governmental Activities and Protection Against Retaliation for Reporting Improper Activities (January 1, 1990).

January 23, 2007

John Oakley  
Chair, Academic Senate  
University of California  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, CA 94607-5200

Dear John,

On behalf of the Regents, I am soliciting the Academic Senate's input on the ongoing discussion of a possible policy by the Regents to decline tobacco industry funding for tobacco-related research. The policy as proposed is:

*The freedom of our academic community to pursue research and educational activities is vital to the University's mission and to its success as a world-class institution, and should be affected by University mandate only in rare and compelling circumstance. The collective use of sponsored research by the manufacturers and distributors of tobacco products as an industry to support a public deception about its products is unique, unprecedented and represents just such rare and compelling circumstance. Accordingly, the Regents of the University of California shall accept no funds from the manufacturers or distributors of tobacco products, their affiliates, or any entity controlling or controlled by such companies, that are to be used to study tobacco-related diseases, the use of tobacco products or the individual or societal impacts of such use.*

In an effort to move the discussion beyond rhetoric and on to a firmer evidentiary base, there are several specific questions we ask the Senate to address. **The Regents are interested in whether or not the faculty support the policy. Equally important, we are interested in the evidentiary base that supports the faculty's position.** In your explanation please provide guidance on the following specific questions:

1. Academic freedom has been raised as an issue in the discussion of the proposed policy, but it is not immediately clear how acceptance or restriction of different funding sources impacts academic freedom. How, if at all, would the University's policy on Academic Freedom (APM-010) have to be amended to be consistent with the proposed tobacco funding policy, should the Regents chose to adopt the tobacco policy?

Conversely, how, if at all, would the proposed tobacco funding policy need to be amended to be consistent with APM-010?

2. Many of UC's peers have decided to flatly decline tobacco industry funding under policies that are much broader than the policy under consideration by the Regents.

What examples does the Senate have of meritorious research that has either been blocked or been unable to find alternative funding at any of these institutions?

Similarly, is the Senate aware of examples where individuals or non-tobacco organizations have declined to fund research at universities because of those universities' practices of accepting funding from the tobacco industry?

3. Both the briefing materials from the Office of the President and the Academic Senate's most recent statement on the issue of tobacco industry funding stressed the University's policies on academic integrity. In the letter the American Cancer Society (ACS) sent to the University, and apparently to the Regents, last October, the ACS included specific allegations of scientific misconduct in connection with a tobacco industry funded study at UC and offered to provide more details.

As of the January Regents' meeting, no one had requested the details from ACS to determine if a formal investigation was warranted. (Since the meeting, the Provost has made such a request.)

How can the Regents be assured that the current University policies are adequate in protecting the integrity of the research process at the University of California specifically when dealing with the tobacco industry, given evidence that the tobacco industry sometimes systematically seeks out investigators who will cooperate with it in the conduct and reporting of their results?

4. At the January 2007 Regents' meeting the Academic Assembly's determination that "past funding arrangements involving the tobacco industry have been shown to suppress academic freedom" was interpreted as a cautionary warning to individual faculty considering seeking tobacco industry funding.

We have heard from others that this statement was meant to indicate that a Regental decision to decline money from the tobacco industry would be consistent with protecting academic freedom (by refusing to deal with an organization that suppressed it). We would appreciate clarification on this point.

If the former interpretation is correct, what procedures does the Senate propose to ensure that all future potential applicants for tobacco industry funding are aware of this conclusion? At what point, if ever, would the tobacco industry's suppression of academic freedom warrant a Regental policy to decline tobacco industry funding?

5. What weight should the Regents give to the facts that:
  - a. The tobacco industry has been found guilty by a federal judge of civil



*John Oakley*  
*January 23, 2007*

racketeering;

- b. The Philip Morris External Research Program has been specifically identified as part of an ongoing enterprise to defraud the public; and
- c. The consensus of sound scholarship that the tobacco industry has successfully used the funding of universities as a central part of its strategy to defend and expand its markets, with the attendant massive adverse health effects on the public?

(We are aware of the fact that this decision is on appeal. Therefore, please assume that the judge's Findings of Fact will be upheld.)

The intent of the proposed tobacco policy is to: (1) set a high bar as a precedent for any future similar policies in light of the fact that the Regents would be identifying tobacco as a "rare and compelling circumstance" to avoid a "slippery slope"; and (2) limit the scope of the policy to tobacco industry funding of research related to tobacco while still permitting that funding for non-tobacco related research.

What, if any, changes to language would the Senate suggest to ensure that the policy is not misinterpreted in the future?

The Regents look forward to hearing the Senate's views on these questions in advance of the May, 2007 Regents meeting.

Best regards,

John J. Moores  
Regent

cc: Chairman Richard C. Blum  
Regent Russ Gould  
President Robert Dynes  
Provost Rory Hume