MUSC Intellectual Property Policy

Note: The section displayed here has been extracted from pages 35-40 of the MUSC Handbook.
Pursuant to the Final Rule notice of 42 CFR Parts 50 and 93 Public Health Service Policies on Research Misconduct in the May 17, 2005 Federal Register effective June 16, 2005, MUSC, as the awardee or applicant "institution," has complied with the necessary assurance to the Department of Health and Human Services (HHS) that there are both policies and procedures in place. Specific details on compliance and assurances, inquiries and investigations, and other institutional responsibilities are consonant with 42 CFR Subpart C, § 93.300-319 of the Federal Register's Rules and Regulations.

MUSC Policies and Procedures for Responding to Allegations of Research Misconduct may be accessed at http://research.musc.edu/ori/ric/home.htm. Both the inquiry and the investigative phases as well as administrative actions in the event of a finding of misconduct are included. Information at this Office of Research Integrity website supersedes the Faculty Handbook in the event of a discrepancy. (8/12/2005)

10.04 Intellectual Property Policy

10.04a Basic Objectives

The Medical University of South Carolina is a non-profit institution striving to improve human health and welfare by engaging in the investigation, prevention, and treatment of disease and in the education of health care professionals. The intellectual endeavors and activities of its employees and trainees may result in products of a tangible nature for which the University and the employee or trainee may deem it advantageous to enter these products into commerce. These products may be the subject of a patent application or a copyrightable work or other tangible material and are known collectively as "Intellectual Property." MUSC has an affiliation with the MUSC Foundation for Research Development to manage the identification, evaluation, protection, marketing, and licensing and/or sale of such Intellectual Property on behalf of MUSC and for the benefit of the public.

This policy is intended to:

(1) provide an incentive to creative intellectual effort and the advancement of knowledge for the welfare of the people, particularly the people of South Carolina;
(2) insure that the respective interests of the employee or trainee, the University, and supporting sponsor, and society are considered and protected through the development of fair contracts and procedures;
(3) assist the employee or trainee and the University to realize tangible benefits from Intellectual Property;
(4) advance and encourage further research within the University with whatever funds accrue to the University from Intellectual Property resulting from University research.

10.04b Definitions

(1) "University" shall mean the Medical University of South Carolina.
(2) "Staff" shall mean any member of the faculty, administration, staff, or student body; or classified employee, postdoctoral fellow, clinical fellow, visiting scientist or clinician.
(3) "Inventor" shall mean any staff member who shall conceive or reduce to practice an invention while engaged in University activities.
(4) "Author" shall mean any staff member who prepares any University copyrightable work.
(5) "Contributor" shall mean any staff member who shall have contributed substantially to the existence of any item of Intellectual Property.
(6) "University Activities" shall mean activities engaged in by a member of the staff by: (a) written assignment of the University administration; (b) contractual agreement with the University or any sponsor; (c) material use of facilities (other than its libraries), materials, or other resources of the University.
(7) "Intellectual Property" shall mean inventions, University copyrightable works, and tangible results of research.
Invention" shall mean "...any new and useful process, machine, manufacture or composition of matter or any new and useful improvement thereof..." as defined under the Patent Laws of the United States.

"University Copyrightable Work" shall mean any work subject to copyright under the laws of the United States (or any foreign country) including any written works, musical or dramatic compositions, photographs, films, transparencies or other visual aids, video or audio tapes and cassettes, sound recordings, computer software, algorithms, drawings, blueprints or other graphic works and sculptural works that result from University activities. Nothing herein shall be construed to include within University copyrightable works those written works or visual aids that are prepared as a part of a faculty member's obligation to produce scholarly works such as books, journal articles, abstracts, films, sound recordings, and photographs that in academic institutions have traditionally been the property of the individual faculty member unless such written works or visual aids are the express subject of a written work assignment or agreement between the staff member and the University or sponsor. However, computer software and algorithms are regarded as University property.

"Tangible Results of Research" shall mean any tangible material other than an invention or University copyrightable work that results from University activities by any member of the staff. Such tangible material shall include, but not be limited to, antibodies, cell lines, new microorganisms, plant lines, or progeny thereof; recombinant or other biological materials; chemical compounds; devices; machines; or models.

"Sponsor" shall mean any individual or organization that by written agreement with the University shall finance in whole or part any University activities.

"Net Proceeds" or "Annual Net Royalty" shall mean the net amount received by the University in each fiscal year from the sale, licensing or other disposition of any Intellectual Property, initially owned in whole or part by the University after deduction of all costs reasonably attributable to the protection and distribution of such Intellectual Property, including any reasonable expense of patent or copyright prosecution, maintenance, interference proceedings, litigation, marketing or other dissemination and licensing. The costs of protection and distribution shall be assessed at a rate of 15% on the first $200,000 of total, cumulative income plus any out-of-pocket expenses.

"MUSC Foundation for Research Development (FRD)" shall mean the Medical University of South Carolina Foundation for Research Development, Inc.

10.05 Composition of the Committee:

(1) The Committee on Intellectual Property ("Committee") shall consist of the Associate Provost for Research, who shall serve as an active member, and five members of the full-time faculty, one of which shall be a representative from the Faculty Senate. A representative from the Office of Research Administration, the Foundation for Research Development and the General Counsel shall serve as non-voting members of the "Committee." Four faculty members of the "Committee" shall be recommended by the Associate Provost for Research, and the Chair of the Faculty Senate shall appoint their representative. Initially one faculty member shall be appointed for a term of one year, one for two years, one for three years and one for four years. Thereafter each faculty appointment shall be for a term of four years with the exception of the Faculty Senate Representative who shall serve for one year. A quorum of the Committee shall be at least three members eligible to vote; and, excepting adjournment, every action by the Committee shall require the presence of a quorum. The Office of Research Administration shall provide administrative support for the Committee.

(2) Powers and Duties of the "Committee": The powers and duties of the "Committee" shall be:

(a) to interpret and apply these Policies and Procedures; (b) upon request of the Associate Provost for Research or the Vice President for Finance and Administration, to review any agreement with a Sponsor other than the state or federal government; (c) upon request of the Associate Provost for Research or the Vice President for Finance and Administration, to review any agreement providing any individual or organization with rights to Intellectual
Property to which the University has rights of ownership; and (d) to report on the activities of the "Committee" to the Associate Provost for Research, including the "Committee's" recommendations, if any, for amendment of these policies and (e) to serve as a faculty advisory group to the Foundation for Research Development.

10.06 Coverage
These policies shall apply as a condition of appointment or employment by the University to every member of the staff, who during the period of their appointment or employment by the University shall: (a) conceive or first reduce to practice actually or constructively, any invention; (b) prepare any University copyrightable work; or (c) contribute substantially to the existence of any tangible result of research. These policies replace the Patent Policy Statement adopted December 12, 1980, and also apply to an Intellectual Property disclosed to the "Committee" after adoption of this Policy.

10.07 Disclosure of Intellectual Property
Every staff member shall, in writing and in reasonable detail, give the "FRD" prompt notice of any: (a) invention; (b) University copyrightable work; or (c) tangible results of research which or he or she shall desire to have patented, copyrighted or made available to the investigators or the public by commercial or other means, or shall believe or have reason to believe is patentable, copyrightable, or of value to other investigators or the public, or otherwise of commercial value.

10.08 Ownership of Inventions
The rights of ownership to all inventions which shall result from University activities shall be the property of the University; provided, however, that:

a. Within the ninety (90) days next following disclosure of an invention to the University under the preceding Section 5 (or such further period of time as may be agreed upon by the inventor and the "FRD"), the "FRD" shall determine, and advise the inventor in writing, whether such rights shall be retained by the University, conditionally retained by the University or shall be released to the inventor; and

b. The rights of ownership to every invention conceived by any member of the University's staff while engaged in other than University activities shall be the property of that person.

10.09 Ownership of Copyrightable Works
The rights of ownership to all copyrightable works prepared while the staff member is engaged in University activities shall be the property of the University; provided however that:

(1) Within the ninety (90) days following disclosure of copyrightable work to the University under the preceding Section 10.09 (or such further period of time as may be agreed upon by the author and the "FRD"), the "FRD" shall determine, and advise the author, in writing, whether such rights shall be retained by the University, conditionally retained by the University or shall be released to the author; and

(2) Copyrightable works prepared by a member of the staff while engaged in activities other than University activities shall be the property of the author.

10.10 Ownership of Tangible Results of Research
All tangible results of research shall be the property of the University.

10.11 Sponsorship of Intellectual Property
The rights of ownership to each item of Intellectual Property produced during activities conducted pursuant to any agreement between the University and any sponsor shall be determined in accordance with such agreement; however, it shall be the policy of the University to retain title to Intellectual Property whenever possible under state or federal law. Any agreement with a sponsor pertaining to the ownership of Intellectual Property and assignment
thereof shall be made between the University and the sponsor in advance of the research or other activity that produces the Intellectual Property.

10.12 Disagreements

Resolution of any disagreements over the rights of ownership to any Intellectual Property will first be heard by the "Committee." Unresolved disputes shall be determined solely by recourse to the standard Medical University of South Carolina Faculty Grievance and Appeal Procedures.

10.13 Seeking a Patent or Copyright

Whenever the "FRD" shall determine to seek the patenting or copyrighting of any Invention or University copyrightable work, the University shall, without expense to the inventor or author provide such professional services as it shall deem to be necessary or desirable for such purpose, and which may include the services of an independent patent organization. The inventor or author is obligated to cooperate fully in such effort, including his or her execution of all necessary or desirable agreements, applications, and other forms and instruments. If, at any time subsequently, the University shall terminate its effort to seek such patent or copyright, it shall promptly give written notice thereof to the inventor or author who thereupon to the extent allowed by law or any sponsorship agreement shall be free at his or her her or his expense to develop, license, and otherwise use the invention, patent application, patent or copyright. In this event the inventor or author shall receive all benefits of any development, licensing or other use of the invention, patent application, patent or copyright except that the University shall be entitled to recovery of associated costs.

As an incentive to promote patenting of inventions made in the course of University activities, the University shall make a nominal cash award to each inventor upon filing of a patent application. The amount of such award shall be two hundred and fifty dollars ($250.00) per patent to be divided equally among the inventors in the case of multiple inventors on one patent.

10.14 Transfer or Sale of Tangible Results of Research

Tangible results of research may not be transferred or sold to any party outside the University before: (a) a disclosure of the tangible results of research has been submitted to the "FRD" and (b) the Contributor(s) has been notified by the "FRD" of any required conditions of such transfer or sale. Such notification shall be made within thirty (30) days following the disclosure of tangible results of research.

10.15 Promotion and Licensing

In interpreting and applying these policies, the Committee and "FRD" shall, by such means as they shall deem to be most effective and appropriate in each case, act to bring to the public all Intellectual Property to which the University has rights of ownership in whole or part. Such means may include, but shall not be limited to, agreements for the development, patenting, copyrighting, promotion, licensing, printing, distributing or manufacturing of any Intellectual Property; and in every case the University shall advise the inventor, author, or contributor of the terms of any such proposed agreement. No agreements will be entered into by the University without the review of all inventors, authors or contributors. Any disagreement between the University and the inventor(s), author(s) or contributor(s) concerning a proposed agreement will be resolved in a timely fashion by the "Committee" and, if necessary the Grievance and Appeal Procedure as stated in Section 10.12.

10.16 Proceeds from Distribution of Intellectual Property

The Net Proceeds or Annual Net Royalty received by the University from any Intellectual Property initially owned in whole or part by the University in accordance with Sections 10.08, 10.09, and 10.10 shall be apportioned and paid over by the University in accordance with the following schedules:

(1) Patent Proceeds:
(2) Copyright Proceeds: Proceeds from the sale, licensing or distribution of University copyrightable works shall be distributed proportionate to the contribution of the author(s) and the University in accordance with the following equities.

<table>
<thead>
<tr>
<th>Net Proceeds</th>
<th>Percentage (%) to</th>
<th>Royalty ($)</th>
<th>Author Laboratory</th>
<th>Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>First $50,000</td>
<td>70</td>
<td>15</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>$50,000 to</td>
<td></td>
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<tr>
<td>$100,000</td>
<td>50</td>
<td>25</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Over $100,000</td>
<td>35</td>
<td>30</td>
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If the development of a copyrightable work is supported by a sponsor other than the University or is the result of a contractual agreement, the University and the author must adhere to the conditions of the award and/or the terms of the contractual agreement. Where no special contractual agreement requirements prevail, royalties derived will be handled in the manner provided in Section 10.16, Subsection 1. The University must approve of such contracts.

(3) Tangible Results of Research Proceeds: To the extent allowed by law, where any tangible result of research is not within the scope of the claims of a patent, patent application, or copyright, each contributor shall share in any net proceed or annual net income to the same extent an inventor shares in patent proceeds pursuant to Section 10.16, Subsection 1.

In the case of patent, copyright or tangible results of research proceeds where there is more than one inventor, author or contributor, the payment apportioned under said schedules to the inventor, author or contributor shall be divided: (a) equally among all such inventors, authors, or contributors; or (b) in accordance with any written agreement signed by the inventors, authors or contributors. Payment by the University pursuant to any apportionment made to any inventor, author or contributor in accordance with this Section shall not be terminated for the reason that such inventor, author or collaborator shall cease to be a staff member. In the event of the death of a staff member any such payment shall remain a part of the staff member's estate. It is recognized that in some cases more than one invention may contribute to a royalty and that the contribution may not be equal. In the absence of written agreement by the inventors, authors or contributors, the University may, but is not obligated to, attempt to provide arbitration, but otherwise the University will treat the inventions as equal, dividing the royalties first by invention and then by inventors to each invention. Laboratory and department shares will be divided in direct proportion to inventor shares in such multi-inventor cases.

It is recognized that in multi-inventor cases some, but not all, inventors may leave the University or may not have been a university employee at the time of the invention. In this instance, the inventor's laboratory shares will remain with those remaining inventors unless the departing inventor moves to a not-for-profit institution and conducts research as described below. The University may, but is not obligated to, provide arbitration or other legal aid in the event of disputes with non-University inventors; such costs are attributable to the costs of the invention and will be recovered first from the royalties.

In the event that an inventor, author or contributor changes departments within the University, the department shares shall move to the new department. Funds previously earned by the former department shall remain in their account. In the event that an inventor or contributor leaves the University for another academic institution or other not-for-profit institution, then the laboratory...
shares shall follow the inventor or contributor provided that the inventor or contributor has a laboratory and conducts research, but the department shares shall remain payable to the department. If an inventor or contributor leaves the University to join a for-profit organization, the Associate Provost for Research shall decide whether or not the laboratory shares shall remain at MUSC or follow the inventor, author or contributor. No funds other than those shares directly payable to the inventor, author or contributor shall follow an inventor, author or contributor to a for-profit corporation or other employment. If an inventor or contributor subsequently moves to a not-for-profit institution, the laboratory shares earned subsequent to the move will then move to the new place of employment for his/her use in research as above. If a department ceases to exist, their shares shall accrue to the University Royalty Income Account until and unless the inventor, author, or contributor joins a new University department.

Should an inventor become disabled while a University employee, then 50% of the laboratory share will be added to the inventor's share with the remainder being added to the department share.

For any patent, copyright or tangible results of research producing income in a fiscal year, the University shall provide to the inventors, authors, or contributors eligible to receive a share of the income, an accounting of the disposition of such income.

That share of income accruing to the University Royalty Income Account shall be administered by the Associate Provost for Research with the advice of the University Research Council for the primary purpose of advancing and encouraging further research and intellectual property development within the University.

10.17 Sponsors: Other Organizations

If and when any conflict shall arise between these Policies and any condition or conditions of (a) any proposed grant from or contract with any organization offering to act as a sponsor or (b) the patent, copyright or intellectual property policies and procedures of any other organization to which any joint appointment or any affiliation or consulting agreement is made, such conflict shall be referred to the Committee. Following consideration of the conflict the Committee shall recommend a course of action to the University administration. It is incumbent on the University to take all reasonable steps, including but not limited to appropriate legal action, to protect and advocate issues on its behalf and those of the inventor, author or contributor in the event of conflicts with sponsors.

10.18 Release of Rights of Ownership

Subject to the approval of the Associate Provost for Research, the "FRD" may, for reasons and upon terms deemed to be satisfactory by it, release on behalf of the University at any time any invention, patent, patent application, University copyrightable work, copyright or right of ownership to tangible results of research to its inventor, author or contributor.

11. FACULTY DEVELOPMENT

11.01 Sabbatical Leave

A faculty member holding the rank of Professor or Associate Professor who has rendered six or more years of satisfactory service to MUSC may be granted sabbatical leave in order to study or undertake further training. Sabbatical leave is for the primary purpose of enhancing the value of the professional status of the faculty member in further service to the Medical University. The period for sabbatical leave may be for up to one year. Salary support during this period will be at the rate of one month for each year of service to MUSC, up to a maximum of twelve months salary.

A sabbatical leave may be granted by the Board upon recommendation by the President, following approval by the Department Chair, the Dean of the College concerned, and the Vice President for Academic Affairs and Provost, and with the understanding that the faculty member will return to active service MUSC when such leave has ended.