



March 12, 2018

Adrian Hernandez, M.D., MHS
Vice Dean for Clinical Research
School of Medicine
Duke University
Durham, NC 27710

Dear Dr. Hernandez:

I am writing to inform you of the actions that the National Institutes of Health (NIH) is taking with respect to grants administration at Duke University (Duke). NIH is extremely concerned about new allegations of misconduct at Duke, and Duke's response to such allegations, per correspondence with Duke since December 2017 elaborated below, especially when these new allegations are put in context as continuing indication of inadequate internal controls and oversight over the use of NIH grant funds and research integrity, and the resultant noncompliance with the terms and conditions of NIH grant awards. Regulations at 45 CFR 75.303 require that a non-Federal entity "must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award."

As further background regarding the context for our concerns about Duke's management of NIH awards, bolstering our decision to take the actions discussed here following Duke's management of the most recent misconduct allegations impacting NIH awards, we reference the following examples of other recent research integrity concerns at Duke that have impacted NIH-funded research:

- Fifteen papers involving contributions from Ms. Erin Potts-Kant, while serving as a Duke employee involved in research funded by NIH, have now been retracted, with many notices citing "unreliable" data. Several others have been modified with either partial retractions, expressions of concern, or corrections.
- In ongoing litigation filed by a former colleague of Ms. Potts-Kant, the researcher, her former supervisor, and the University are accused of including fraudulent data in NIH applications and reports involving more than 60 grants estimated at \$200 million.
- Dr. Anil Potti engaged in research misconduct while serving as a Duke employee involved in research funded by NIH, by including false research data in several papers, manuscripts, grant applications and research records. Falsified results were published in at least nine scientific journals, reinforcing a significant impact on NIH-funded science.



- As we noted in previous correspondence (September 18, 2017) to Mr. Michael Dickman, Associate Director of Research Administration at Duke University, NIH found that an Investigator inappropriately uploaded a blank placeholder in lieu of a Biosketch in a grant application (2R01GM066014-17). The application passed e-validation checking because the system confirmed that a “document” had been uploaded, delaying recognition that the application was, in fact, incomplete. It appears this was an attempt to circumvent application requirements. While we appreciate the efforts you have taken to communicate with the involved investigator, the fact that this event occurred at all raises additional concerns about the adequacy of research grant oversight at your institution.

Most recently, Duke sent NIH a letter dated December 15, 2017, notifying NIH of (1) allegations of research misconduct against several investigators in the Duke Department of Psychiatry and (2) potential issues concerning clinical research irregularities such as not adhering to the research plan, inadequate reporting of adverse events to the IRB and regulatory agency, and signing data forms without conducting assessments. Due to lack of details concerning patient welfare and safety and with no further communications from Duke, in a letter dated January 31, 2018, NIH asked Duke to respond to NIH’s overarching concern for the welfare and safety of research participants as well as several pertinent questions concerning the reported research irregularities. NIH suspended the seven NIH grant awards identified as impacted by these issues until Duke is able to assure the welfare and safety of research participants. Of particular relevance, during a phone call between NIH and Duke on February 5, 2018, regarding this matter, Duke expressed confusion about how to manage NIH awards under these circumstances of misconduct allegations; acknowledged that Duke did not follow NIH protocol, including the requirement in the terms and conditions of NIH awards to notify NIH and seek approval for changes in senior/key personnel; and specifically asked for NIH’s further guidance and assistance. We received additional correspondence from Duke on February 14 in response to our questions. While we will be sending our detailed response shortly, Duke’s February 14 letter did not sufficiently address our concerns, including but not limited to: failure to note halts to study enrollment in NIH progress reports, enrollment of ineligible patients into clinical protocols, and ambiguity as to whether the IRB has been (as opposed to “will be”) notified of protocol deviations.

In light of all circumstances above, in order to provide additional oversight of Duke’s management of NIH grant awards, NIH will withdraw certain expanded authorities and require certain actions by Duke in accordance with 45 CFR 75.207, Specific Award Conditions, and the NIH Grants Policy Statement (NIHGPS), a term and condition of all NIH grant awards, Section 8.5, Remedies for Noncompliance and Special Award Conditions.

Specifically, for all new and continuation NIH grant awards that are issued on or after April 1, 2018, the following two expanded authorities will be withdrawn. This will require that Duke request and receive written prior approval from the NIH awarding IC(s) before taking either of these actions for up to 18 months or as otherwise required at the discretion of NIH:

1. No automatic No-Cost-Extensions: no automatic extensions of the final budget period for up to 12 months are permitted without prior written approval; and

2. No automatic carryover of unobligated balances: no automatic carryover of unobligated balances from one budget period to any subsequent period is permitted without prior written approval, regardless of the grant mechanism.

Additionally, NIH also will request that Duke submit full budgets in support of modular applications, which will be requested by each awarding IC as part of the Just-in-Time process.

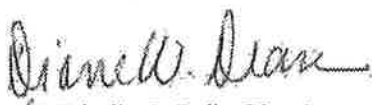
Further, Duke is required to develop and implement a corrective action plan to assess and correct apparent systemic weaknesses, as follows:

1. Financial Management, as required by 45 CFR 75.302 and NIHGPS 8.3.1, including written policies and procedures and effective internal controls over:
 - o Determining allowable and unallowable costs; accurate application costing; monitoring of expenditures; source documentation; compliance with special terms and conditions of grant award, including suspension of grant activities; the use of funds for the purpose for which they were awarded; purchasing, and staff responsibilities, including, but not limited to, Project Directors/Principal Investigators.
2. Preparation and submissions of grant applications, as required by NIHGPS 2.3.6 and 2.3.9.5, including written policies and procedures and effective internal controls over:
 - o complete and accurate applications, conformity with all application requirements; compliance with all applicable assurances and certifications; correct F&A cost rate; correct other support; subawards and monitoring; and staff responsibilities, including, but not limited to, Project Directors/Principal Investigators.
3. Research misconduct, as required by 42 CFR 93 and NIHGPS 4.1.27, and protecting the integrity of research, including written policies and procedures and effective internal controls over:
 - o Process and procedures for addressing allegations of research misconduct, fostering research integrity to include but not limited to electronic laboratory notebooks, training of faculty, oversight of the scientific process, protection of human subjects and live vertebrate animals during misconduct investigations, and staff responsibilities, including, but not limited to, Project Directors/Principal Investigators.

Duke must develop a corrective action plan addressing the items specified above to include an assessment of existing internal controls and policies and procedures. This corrective action plan must be submitted to GrantsCompliance@OD.NIH.GOV by April 30, 2018, for review and approval prior to implementation. Duke must provide quarterly updates to NIH on its progress toward completion, identifying any noted problem areas. Once Duke has completed this assessment, it must provide NIH with a report of its activities and discussion of subsequent actions taken to institute or strengthen internal controls, as appropriate. NIH will observe these actions for the remainder of the fiscal year 18 and will reconsider the need for these or other requirements. NIH will ensure that the additional requirements are removed upon its assessment that the conditions that prompted them, as detailed above, have been corrected.

The NIH Office of Policy for Extramural Research Administration will work with you as you develop Duke's corrective action plan. Please respond to Michelle Bulls at Michelle.Bulls@nih.gov by March 16, 2018 acknowledging your receipt of this letter. Please feel free to contact Michelle at 301.594.6739 or Diane Dean at: Diane.Dean@nih.gov or 301.435.0930 if you have additional any questions or requests regarding the additional requirements.

Sincerely,



for / *Diane W. Dean*

Michelle G. Bulls, Director
Office of Policy for Extramural Research Administration,
Office of Extramural Research
National Institutes of Health

cc:

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