

# Report of Faculty Hearing Committee of SACUA, 2009-2010

Submitted April 21, 2010

Approved by SACUA \_\_\_\_\_

**Issued under authority of University of Michigan Regents Bylaws Sec. 4.01:** The senate is authorized to consider any subject pertaining to the interests of the university, and to make recommendations to the Board of Regents in regard thereto. **4.08:** The Senate Advisory Committee on University Affairs, on behalf of the assembly, shall advise and consult with the president of the university on matters of university policy and shall serve as an instrument for effecting the actions of the senate and the assembly.

## 1 Introduction and Background

### 1.1 Raison d’Etre

According to the Faculty Handbook the Senate Advisory Committee on University Affairs (SACUA) has a Faculty Hearing Committee with purpose described below.

**10.I SACUA Faculty Hearing Committee:** A subcommittee of SACUA has been created to advise on faculty complaints or grievances that do not fall readily into established school and college grievance procedures. This subcommittee is known as the SACUA Faculty Hearing Committee and consists of one member of each SACUA class. After the initial formation, one member of the incoming class is appointed annually by the chair. Inquiries, complaints, and grievances addressed to SACUA from individual faculty members and groups of faculty members (e.g., school or college executive committees, programs slated for discontinuance) will be referred to the subcommittee for consideration. The subcommittee will then advise SACUA and counsel a course of action.

### 1.2 Why FHC was brought into this matter

A complaint was brought to the attention of SACUA by Dr. Andrei Borisov regarding University policy and implementation with respect to misconduct and allegations of misconduct by individuals with staff and administrative appointments in the Medical school, Office of the Vice President for Research (OVPR), the Provost’s office, the Office of General Counsel (OGC), and Department of Public Safety (DPS). Dr. Borisov presented his complaint to SACUA. This is clearly a complaint that does not fall readily into grievance

procedures of a single school or college. As such, SACUA passed a motion that charged the Faculty Hearing Committee with looking into this complaint.

### **1.3 Charge of FHC**

The faculty hearing committee was charged by SACUA on June 1, 2009. The specific charge is documented below.

The Faculty hearing committee is hereby charged by SACUA with investigating the case of Dr. Borisov to determine answers to the specific questions below and to generally determine whether university personnel followed the applicable university policies in this case. The committee is also charged with recommending revisions to the policies regarding reporting scientific misconduct, if appropriate.

Questions:

1. Was Dr. Andrei Borisov wrongfully deprived of intellectual and personal property or academic freedom?
2. Does the evidence indicate that university personnel followed university policy in the area of academic integrity?
3. Does the evidence indicate that Dr. Borisov was retaliated against for reporting wrongdoing?
4. Does the evidence indicate that university personnel wrongfully deprived Dr. Borisov of reputation and credibility?

### **1.4 Operation of FHC**

#### **1.4.1 People Interviewed**

The FHC met with Dr. Borisov, Dr. Bruce Carlson, Provost Teresa Sullivan, Dr. Victor Thannickal, Dr. Joel Swanson, Dr. Douglass Smith, Ms. Judy Nowack, Vice President Stephen Forrest, Ombudsman Michael Welsh to learn about facts and policy. The chair of Faculty Hearing Committee met with Office of General Counsel (OGC) personnel, Ted St. Antoine as well. Other University personnel were invited to meet with the committee but declined to meet with the committee under advice from the Office of General Counsel. These included Dr. Jeffrey Frumkin, Dr. Valerie Castle, Dr. Mark Russell. Ms. Judith Nowack also declined to meet with the committee to discuss facts of the case but did meet with the committee to discuss general policy in the Office for Vice President of Research. Dr. John Lehman assisted the committee in obtaining various documents that Dr. Borisov possessed.

### **1.4.2 Materials Considered**

Dr. Borisov provided much of the information that the committee examined and considered including copies of emails, letters of offers etc. In addition, Dr. Borisov also provided audio files of various conversations he had leading up to his arrest at which point DPS seized his recorder. We also obtained copies of the lawsuit filed by Dr. Borisov and the response filed by Dr. Russell, Dr. Castle, Dr. Gyetko and Dr. Frumkin. Finally material was obtained by Dr. Smith via freedom of information act (FOIA) requests and was also considered.

### **1.5 Other Information**

After the Faculty Hearing Committee was charged by SACUA a civil lawsuit was brought by Dr. Borisov against Dr. Russell, Dr. Castle, Dr. Margaret Gyetko and Dr. Frumkin. The Office of General Counsel decided that the University would represent these individuals in the lawsuit. The Office of General Counsel advised these latter four individuals to not meet with the committee. The Faculty Hearing Committee was thereby denied the opportunity to hear complete testimony about events. Further information might have uncovered more evidence related to this matter. Nevertheless, the information that the committee has obtained is sufficient to respond to the above charge.

### **1.6 Summary of Findings**

The committee finds that

1. Dr. Andrei Borisov was wrongfully deprived of intellectual and personal property and academic freedom.
2. The evidence indicates that university personnel did not follow university policy in the area of academic integrity.
3. The evidence indicates that Dr. Borisov was retaliated against for reporting wrongdoing.
4. The evidence indicates that university personnel wrongfully deprived Dr. Borisov of reputation and credibility.

The rest of this report is organized as follows. In section 2 we describe the major events that are related to the Borisov complaint. In section 3 we list the evidence we have been able to collect related to these events. Section 4 analyzes the evidence. In Section 5 we present the conclusions and recommendations. Any part of the remainder of the text that is emphasized, underlined, or made bold has been added and is not part of the original.

The committee reserves the right to augment this report, including the conclusions, should new evidence become available. However, as mentioned earlier, the evidence received is sufficient to answer the charge of SACUA.

## 2 Chronology of Major Events Related to the Borisov Complaint

### 2.1 Overview of Events

Dr. Borisov was hired in the Department of Pediatrics and Communicable Diseases as a research investigator in 2002 and promoted to Research Assistant Professor in 2004. His position as a Research Assistant Professor was to direct research into cellular and molecular mechanisms related to the heart. Dr. Borisov was collaborating with Dr. Russell, an untenured assistant professor until 2005, on several research projects including an R01 grant from NIH and an MDA grant. In November 2006 Dr. Russell reduced Dr. Borisov's appointment on the R01 grant to 10% and in December 2006 started writing bi-monthly reviews. The first and second reviews of Dr. Borisov were negative and made claims regarding authorship of a proposal. Dr. Borisov began to complain to his department administrators, medical school administrators and University personnel about his evaluations and about Russell's misconduct with regard to a grant on which he was working. In the reviews of Borisov Russell made claims Borisov did not work on a particular grant applications and that Russell wrote the "entire text". Dr. Russell reduced Dr. Borisov's effort on the R01 grant in November of 2006 from 97% to 10% without the required prior approval from NIH. On January 30, 2007 Dr. Russell sent a letter to MDA informing MDA that Borisov was "removed from the project", effective July 1 2004. Dr. Borisov's review by the department in the summer of 2007 was negative. Dr. Borisov attempted to rebut the reviews of his performance by Dr. Russell and the departmental annual review letter with specific allegations that these reviews contained false information, information that denied him credit for working on a proposal for which he participated in writing. Dr. Borisov discussed this with Assistant Dean Jayne Thorson. The response from Dr. Castle on September 20th, 2007 threatened to eliminate his position effective July 1, 2008. In June 2008 Dr. Borisov was presented with a 90 day "improvement" plan. This plan indicated he was to conduct research under the direct supervision of Dr. Russell. At the same time (June 2008) the medical school personnel seem to have decided that Dr. Borisov would be terminated. In the summer of 2008 Dr. Borisov received an unofficial offer from the Department of Internal Medicine. The official offer was a delayed in the office of faculty affairs (in the medical school), partly because of the requirement to post the position for 30 days. In a meeting on September 4, 2008 Dr. Borisov was given an ultimatum to either sign a resignation letter effective September 12, 2008 or he would be fired effective September 12, 2008. Dr. Borisov signed the letter of resignation. Dr. Castle, chair of his department, requested DPS officers to be present at the meeting. Dr. Castle accused Dr. Borisov, in front of DPS officers of being physically threatening and ordered that he not have contact with Dr. Russell. Dr. Borisov was ordered to vacate the building and was not allowed to take his personal property. Dr. Borisov was arrested for trespass and resisting and obstructing. The trespass charge was later dropped and a charge of **attempted** assault on a police officer was

added. On September 8, 2008 Dr. Castle sent Dr. Borisov a letter stating that because of his arrest he is no longer eligible for rehire at the University. Dr. Borisov was acquitted on all charges in April 2009. Dr. Borisov requested a lifting of the trespass order in June 2009. DPS Chief Magee granted only a partial relief. Dr. Borisov is still barred from the medical campus.

<b>Date</b>	<b>Event</b>
5/1/1994	Dr. Borisov (AB) appointed by Department of Anatomy and Cell Biology as research fellow.
9/1/1997	Dr. Borisov appointed by Department of Anatomy and Cell Biology as research investigator.
8/1/2002	Dr. Borisov appointed as research investigator in Department of Pediatrics and Communicable Diseases. Letter dated July 16, 2002.
9/1/2004	Dr. Borisov appointed as research assistant professor Department of Pediatrics and Communicable Diseases for a term through November 2009.
9/1/2005	Dr. Mark Russell (MR) promoted to associate professor with tenure in the Department of Pediatrics and Communicable Diseases.
12/2006	Borisov receives negative review from MR that claims MR wrote an "entire text" of a proposal and put AB's name on it
12/2006-9/2008	Dr. Borisov complains to various University Personnel regarding misconduct.
6/10/2008	Dr. Borisov has an (email) offer from the Department of Internal Medicine within the Medical School effective August 1, 2008.
9/4/2008	Dr. Borisov position is terminated from the University. Dr. Borisov is arrested in his faculty office for trespassing, resisting/obstructing police.
9/5/2008	Email from Dr. Thannickal (Internal Medicine) stating that an official letter is available for his offer from the Department of Internal Medicine.
9/8/2008	Dr. Borisov told he is ineligible for rehire at the University. because of an alleged "altercation with Department of Public Safety (DPS) officer which resulted in your arrest" and told "you are not to contact Medical School staff or faculty for any reason."
9/30/2008	Additional charge of attempted assault of a police officer is added, charge of trespass is dropped.
4/24/2009	A jury finds Dr. Borisov not guilty of all charges.
6/18/2009	Dr. Borisov's request for a total lifting of the trespass order is denied (the trespass order is only modified).

### 3 Evidence Related to the Borisov Complaint

#### 3.1 Dr. Borisov's positions at the University of Michigan

- Dr. Borisov was appointed Research Fellow from May 1, 1994 to August 31, 1997 in Department of Anatomy and Cell Biology.
- Dr. Borisov was appointed Research Investigator from September 1, 1997 to July 31, 2002 in Department of Anatomy and Cell Biology.
- Dr. Borisov worked in the laboratory of Dr. Bruce Carlson from May 1, 1994 to July 31, 2002.
- Dr. Borisov was appointed Research Investigator in the Department of Pediatrics and Communicable Diseases effective August 1, 2002. In the offer letter from Dr. Jean Robillard (Department Chair) and Dr. Russell, Dr. Borisov is told that “your principal responsibility as a new faculty member will be to direct studies in the laboratory of Dr. Mark Russell...” [1].
- Dr. Borisov was promoted from Research Investigator to Research Assistant Professor in the Department of Pediatrics and Communicable Diseases in a letter dated January 25, 2005 [2].
  - The terms of his appointment were effective September 1, 2004 continuing through November 30, 2009 (note that the appointment was effective retroactively nearly 5 months prior to the date of the letter).

Your appointment will begin September 1, 2004 and will continue through November 30, 2009. Dr. Russell and the department will provide all necessary support of your efforts.
  - The offer included \$120,000 in research startup funds under his control put into a DAF (research) account.
  - The offer included 300 square feet of research space.
  - The expectations of a Research Assistant Professor include independently securing research funding and conducting independent research.
  - Comments from Dr. Russell regarding Dr. Borisov's appointment on June 22, 2004. “I am very glad that your promotion is in progress. It is well deserved and long overdue. You are doing world class work and it deserves to be greatly rewarded. This step is far less than you deserve but at least it is a start....”

In the offer letter from Dr. Russell, Dr. Al Rocchini and Dr. Castle, Dr. Borisov is told that

“...your principal responsibility will be to **direct** studies on cellular and ...  
Criteria for successful performance will include the following:

- 1) Your submission of at least two manuscripts as the first or senior author and two grant proposals as a principal investigator every year.
- 2) All images, experimental results, and manuscripts will be stored in a manner such that they are always accessible to the investigator who funded the study or funded the salary time during which the study was performed. Research funded by grants on which you are the principal investigator can be stored in any manner preferred so long as they are available for review as needed.
- 3) You will participate in the training and education of students, pre- and post-doctoral fellows and research assistants/associates within the laboratory.

“...Your appointment will begin September 1, 2004 and continue through November 30, 2009. The starting annual salary for this position will be \$75,000 and will be paid from Dr. Russell’s research grant funding until such time as you secure external funding. It will be paid for the period delineated above, provided the conditions for successful performance are met.”

“As a new faculty in the Department of Pediatrics, you will be provided by the Department with start-up funds totally [sic] \$120,000 to help support your research efforts until external funding can be secured”

- On June 14, 2004 the APRAPT Committee approved the promotion but placed a contingency on its endorsement. “The committee requested that a detailed Career Development Plan for Dr. Borisov be provided.” [3]
- A Career Development Plan was written by Dr. Russell which states [4]

In summary, we are very enthusiastic about the potential promotion of Dr. Borisov to the Research Assistant Professor level. He is extremely well qualified and we are very committed to providing him with the scientific mentoring, the financial support and the research resources that he will need to make the successful transition to (or rather return to) **independent status**.

- Annual review in August of 2006 from Dr. Castle to Dr. Borisov [5].

I would like to acknowledge the excellent progress you have made in securing funding for your collaborative research programs with Dr. Russell and Dr. Pagani as well as the excellent record of publications in the past year. This level of scholarly productivity is very good and should position you



well for the independent grant applications (e.g. RO1) that you plan to submit in the coming year.

- Annual review from Dr. Castle to Dr. Borisov written August 27, 2007 [6].

“It is important for you to understand that the discretionary funds which are currently supporting your effort are controlled by Dr. Russell and are for the purpose of supporting research that is at his discretion. Thus if your work does not fulfill the interest of a collaboration with him and you do not secure alternative independent funding sources, your appointment will be jeopardized due to lack of funding.”

- June 6th, 2008 letter [7] 90 day improvement plan from Dr. Castle to Dr. Borisov:

“As indicated in your original appointment letter, you were hired specifically to conduct research studies in collaboration with Dr. Mark Russell. In addition, you were expected to conduct research studies that would generate manuscripts and independent grant proposals. You were provided with start-up funding and technical assistance to assist you in this endeavor.”

“Dr. Borisov, we want you to be successful as a research faculty member in the Department of Pediatrics. We have confirmed our commitment to your success with funding, research space, laboratory resources and professional guidance.”

“I have asked Dr. Russell to provide you with an itemized list of tasks, research experiments and writing assignments to be completed over the next 90 days. Your performance will be reviewed against these expectations to determine if you have made sufficient progress to remain in your appointment at the University of Michigan. If you are not successful or do not sustain the achievable level you will be subject to termination from the University, effective September 12, 2008.

- On June 10th, 2008 an email [8] from Dr. Castle to Assistant Dean Jayne Thorson (copied to Dean Gyetko, Ms. Skeete, and Dr. Frumkin and others) apparently replying to some message regarding the case of Dr. Borisov:

```
From: Valerie Castle [mailto:vcastle@med.umich.edu]
Sent: Tuesday, June 10, 2008 1:05 PM
To: Valerie Castle; Thorson, Jayne Ann
Cc: Carol Jarema; Margaret Gyetko; Maydis Skeete; Smitka, Curt W;
jfrumkin@umich.edu
Subject: Re: Fwd: Re: Dr.~Borisov
Jaynethis is not a RIF.
```

- From the audio recording of the meeting on September 4th, 2008 meeting with Dr. Castle:

DR. CASTLE: “We are going to go through everything calmly and very straightforward. In June we met and we discussed your performance that the (indiscernible) put in place for 90 days that had specific milestones for you to reach. You did not reach all of those milestones. In my letter in June I indicated these—please let’s go through this. Step by step.”

DR. BORISOV: “I listen to you.”

DR. CASTLE: “I indicated that if you did not complete those steps, you would be, your appointment would be not renewed as of September 12th. Today I was planning to give you a letter that reiterated that again, that your appointment with the Department of Pediatrics terminates as of September the 12th. I am willing to not provide you with this [termination] letter if you will resign today.”

- September 4, 2008 Dr. Borisov signs a resignation letter [9] effective September 12th. Dr. Borisov is read the trespass order and arrested for trespassing and resisting and obstructing.
- In the morning of September 5, 2008 Dr. Borisov finds out that the letter from Internal Medicine is ready for signature. In the afternoon he learns that the offer has been retracted [10].
- On September 8, 2008 Dr. Castle sends Dr. Borisov a letter indicating he is no longer eligible for rehire at the University of Michigan. The letter is copied to Dr. Rocchini, Dr. Gyetko, Dr. Frumkin and Maydis Skeete [11].

### 3.2 Dr. Borisov’s Offer From Internal Medicine

During the summer of 2008 Dr. Borisov was arranging for a position in the Department of Internal Medicine.

Dr. Borisov received a draft letter [10] from Internal Medicine on June 10, 2008. Shortly thereafter, according to Dr. Borisov, “an unknown source informed the administration of the division and department of Internal Medicine concerning my unsatisfactory performance at the Department of Pediatrics and provided the text of a crushing letter by the Chair of Pediatrics of June 6.”

Dr. Borisov says he provided Dr. Victor Thannickal with documented facts proving that the statements in the Dept. Chair letter were incorrect and untrue. The Department decided to go through with an offer. The offer letter is apparently delayed with [10] “a lot of red tape issues unexpectedly”. The position is posted on August 7th, 2008 which would allow a September 5th or 6th start date.

An email exchange [12] on August 15th 2008 between Cheryl Sweetland (Manager of Faculty Affairs, Internal Medicine Department) and Dr. Borisov indicates that the position could start on September 1, 2008.

The school agreed to a 9/1 start pending medical school approval of the appointment transfer and assuming the appointment recommendation is at the medical school the day after the posting ends.

Email from Cheryl Sweetland (Manager of Faculty Affairs, Internal Medicine Department) to Dr. Thannickal [13].

Cheryl Sweetland 8/25/2008 12:02 AM

Dr. Thannickal,

I have made revisions to the Borisov offer and MOU. I will send you the updated version of both documents tomorrow morning. My office coordinates departmental and Medical School review and approval of all departmental offer letters. Once approved by all departmental reviewers and the Medical School, we can print on letterhead and obtain signatures from Drs. Todd and Toews on the offer letter and all 3 of your signatures on the MOU.

We had to post a position departmentally which must be posted for 30 days before we can 'fill' it. The 30 day posting requirement will be fulfilled on 9/6/2008 (Saturday). We cannot present the offer letter to Dr. Borisov until 9/8.

We will submit the offer (for School review) and the appointment transfer request to the Dean on 9/8. They will not review and approve an offer until the posting requirement has been met. The School has confirmed that they will allow for a retroactive effective date of 9/1 assuming everything is in order. Along with the offer and MOU, I've drafted a transmittal letter to the Dean on behalf of Drs. Todd and Toews requesting his approval of the transfer from Peds to Medicine. I'll send that to you and Dr. Toews for review and revision tomorrow as well.

Thanks!

Cheryl Sweetland

### **3.3 Dr. Borisov's Charged Support**

Time Period	Effort	Account
08/05/02-03/31/03	100%	F004463 (NIH-Cloning of a Potential Regulator of the dHAND Factor)
04/01/03-06/30/04	100 %	U001987 (Russell DAF)
07/01/04-08/31/04	100 %	C275732 (Divisional DAF)
09/01/04-02/28/05	55 %	C275732 (Divisional DAF)
09/01/04-02/28/05	45 %	F011387 (Mich Center for hES Cell Research)
03/01/05-06/30/05	45 %	F012307 (R01)
03/01/05-06/30/05	45 %	F011387 (Mich Center for hES Cell Research)
03/01/05-06/30/05	10 %	U014737 (Departmental DAF)
07/01/05-01/31/06	49 %	F011387 (Mich Center for hES Cell Research)
07/01/05-01/31/06	48 %	F012307 (R01)
07/01/05-01/31/06	3 %	U014737 (DAF)
02/01/06-10/31/06	97 %	F012307 (R01)
02/01/06-10/31/06	3 %	U014737 (DAF)
11/01/06-09/12/08	87 %	U014200 (Borisov research account)
11/01/06-09/12/08	10 %	F012307 (R01)
11/01/06-09/12/08	3 %	U014737 (DAF)

**Notes:**

- Mich Center for hES Cell Research might have been a large program project (federal grant).
- U014737 is an internal funding source.
- Anyone funded with NIH funds can not claim more than 97% research support.
- Possibly Dr. Borisov's MDA work in the period 9/01/04-2/28/05 could have been construed as cost sharing for the MDA grant up to 52%.
- For the period from 3/1/05-6/30/05 Dr. Borisov effort could have been construed as having 7% cost sharing for the MDA grant.
- From 7/1/05-10/31/06 the university could **not** have been cost sharing Borisov's salary.
- From 11/01/06- 9/12/08 the university could claim that 7% of Borisov's salary was cost shared. At least 3% must not be research.

### 3.4 Dr. Borisov's collaboration with Dr. Russell

#### 3.4.1 R01 Grant: A joint proposal by Dr. Russell and Dr. Borisov to NIH

Date	Event
2/2004	Proposal Submitted
03/01/05	Research Begins
03/01/05-06/30/05	Borisov paid 45% from R01
07/01/05-01/31/06	Borisov paid 48% from R01
02/01/06-10/31/06	Borisov paid 97% from R01
11/01/06-09/12/08	Borisov paid 10% from R01

- In the medical school having an R01 grant funded is one key evaluation criteria for tenure.
- Email [14] from Russell to Borisov February 24, 2004 “Thanks you so much for the figure! It fits perfectly into the grant.”
- Russell and Borisov submitted an R01 Grant in February 2004 (PAF Form).
- The R01 [15] was entitled “Role of Obscurin and Obscurin-MLCK in myofibrillogenesis” and was related to cardiac muscle cell biology.
- From the PAF [15]: “Dr. Borisov, the Co-Investigator, will devote 50% of his time to the studies described in this proposal. With over 20 years experience in muscle biology, he will establish and maintain the primary myocyte cultures and perform the immunohistochemical analyses and the electron microscopy. He will assist in the analysis of the gene-targeted animals and the zebrafish and assist in the preparation of manuscripts.”
- From the PAF [15]: “A Research Assistant (100% effort) will be hired to assist with animal studies and protein interaction studies.”
- Statement by Dr. Borisov regarding the R01 grant [16]. “Both the MDA and R01 were focused on myofibrillogenesis. I contributed to the proposals all data related to myofibrillogenesis and used the antibody that I developed 22 years ago and actively used in my studies of myofibrillogenesis for a long time. This is the direct continuation of my earlier work.”
- In the review of the R01 proposal a reviewer comments “The co-investigator, Dr. Borisov, seems to be a strength of the application and lends considerable expertise to complement that of Dr. Russel’s [sic].” [17]
- In the Career Development Plan [4] for Dr. Borisov (likely written in June 2004) Dr. Russell states “Dr. Borisov has been instrumental in the preparation of successful

grant applications both while in Dr. Carlson's laboratory and our laboratory. His work and expertise has led to the previously-mentioned program [a stem cell program project grant] and a recently funded Muscular Dystrophy Association proposal."

- Prior to submission of the R01 grant and the MDA grant there was one research paper related to cardiac or skeletal myocytes, myofibrologenesis, or obscurin coauthored by Russell [18].
- Prior to submission of the R01 grant and the MDA grant (up to and including 2003) there were 19 research papers related to cardiac or skeletal myocytes or myofibrologenesis coauthored by Borisov over a 18 year period [19].
- R01 Grant was funded as of March 1, 2005
- The notice of grant award (NDA) states that the key personnel on the grant are Dr. Russell and Dr. Borisov [20].
- Borisov was actually paid 45% from 3/01/05 to 6/30/05 [21]. Note there is an apparent typographical error in that the appointments went from 2/01/06-10/31/06 (not 10/31/08).]
- Borisov was actually paid 48% from 7/01/05 to 1/31/06.
- Borisov was actually paid 97% from 2/01/06 to 10/31/06.
- Borisov was reduced to 10% for the period 11/1/06 through 9/12/08. This is a reduction from the approved budget of 50% effort by 80%.
- A letter from Russell to Borisov in October 2006 [22].

Dear Andrei,

As you well know, now is a very difficult time to acquire and retain external research funding. The limitations on research dollars have forced national and private funding agencies to be increasingly vigilant about how their dollars are spent. **Effort reporting is an extremely important part of this process and one that funding agencies are becoming very strict about. They want to make absolutely sure that their research funds are being used to advance the initiatives that they support. Inaccurate effort reporting can lead to loss of funding or even criminal proceedings.**

As the division administrators and I were reviewing our expenditures for the past year, it became apparent that you are not spending 50% of your time on the obscurin project as has been promised to the NIH under the

budget agreement for the RO1. Therefore, in order to avoid jeopardizing current and future grant support from the NIH for you and for me, we have decided that it would be most appropriate to significantly reduce your percent effort on the RO1 project to 10%, a figure more in line with actual time spent. Please remember that the NIH will fund manuscript preparation (for manuscripts related to the funded project) but not grant preparation. This reduction will become effective on November 1, 2006 unless a greater percent effort can be documented on the RO1 project.

The funds from the ROI will be reallocated to hire another researcher to work on the obscurin project so that it can continue to move forward. This person will work on the obscurin project but will also be assigned to assist you (and answer directly to you as the principal investigator) on any projects that you would like to perform. You can direct the interview and hiring process and I will only assist as needed (although I will need to approve any salary).

- Russell **informed** the NIH on January 10, 2007 via an annual report [23] that Borisov's effort would be reduced to 10% effective March 1, 2007. The reduction from the proposed effort of 50% to a level of 10% constitutes a reduction of 80 percent.

Andrei Borisov, Co-Investigator, will be transitioning to developing his own independent projects and will be supervising/mentoring an additional, newly hired technician in the research lab that will take over most of his responsibilities on this grant. This will change his effort from 48% to 10% effort in the new budget period.

- The NIH Grants Policy statement says [24].

The grantee is required to notify the GMO in writing if the PI or key personnel specifically named in the NGA will withdraw from the project entirely, be absent from the project during any continuous period of 3 months or more, or reduce time devoted to the project by 25 percent or more from the level that was approved at the time of award (for example, a proposed change from 40 percent effort to 30 percent or less effort). NIH must approve any alternate arrangement proposed by the grantee, including any replacement of the PI or key personnel named in the NGA.

- The NIH Grants Policy Statement states that [24].

All requests for NIH awarding office prior approval must be made in writing (which includes submission by e-mail) to the GMO no later than 30

days before the proposed change. The request must be signed by both the PI and the AOO. Failure to obtain required prior approval, from the appropriate NIH awarding office may result in the disallowance of costs, termination of the award, or other enforcement action within NIH's authority.

E-mail requests must be clearly identified as prior-approval requests, must reflect the complete grant number in the subject line, and should be sent by the AOO to the GMO that signed the NGA. (E-mail addresses for NIH staff can be obtained from the NIH Directory and E-Mail Forwarding Services at <http://directory.nih.gov>.) E-mail requests must include the name of the grantee, the name of the initiating PI, the PI's telephone number, fax number, and e-mail address, and comparable identifying information for the AOO. If the entire message of the request cannot be included in the body of the e-mail, the request should be submitted to NIH in hard copy.

The GMO will review the request and provide a response to the AOO indicating the final disposition of the request. The GMO will provide copies of the response to the PI and to the cognizant NIH PO. Only responses provided by the GMO are to be considered valid. Grantees that proceed on the basis of actions by unauthorized officials do so at their own risk, and NIH is not bound by such responses.

Whenever grantees contemplate rebudgeting or other post-award changes and are uncertain about the need for prior approval, they are strongly encouraged to consult, in advance, with the GMO.

Under a consortium agreement or contract, the prior-approval authority usually is the grantee. However, the grantee may not approve any action or cost that is inconsistent with the purpose or terms and conditions of the NIH grant. If an action by a consortium participant will result in a change in the overall grant project or budget requiring NIH approval, the grantee must obtain that approval from NIH before giving its approval to the consortium participant.””

- The PAF listed the key personnel as Dr. Russell and Dr. Borisov.
- The NGA dated March 2, 2006 covering the budget period 3/1/2006-2/28/2007 listed Dr. Borisov as key personnel [25].
- The NGA dated March 8, 2007 covering the budget period 3/1/2007-2/29/2008 listed Dr. Borisov as key personnel [26].



- The NGA dated November 13, 2008 covering the budget period 3/1/2008-2/28/2009 listed Dr. Borisov as key personnel [27].
- The NGA dated February 2, 2009 covering the budget period 03/01/2008 02/28/2010 listed Dr. Borisov as key personnel [28].

KEY PERSONNEL:

In addition to the PI, any absence, replacement, or substantial reduction in effort of the following individual(s) below, requires the written prior approval of the National Institutes of Health awarding component.

Andrei Borisov

- Email from MR to AB on November 11/8/2006 “Hey Andrei, I will be putting this [the progress report] together over the next few weeks. Anything that we could list as submitted would be a bonus.” [29].
- Email from Dorthy Nalepa to Dr. Borisov on February 2, 2007 telling Dr. Borisov that Dr. Russell had “denounced” his effort on the R01 and MDA grants [30].
- According to NIH [31] the results of this grant consisted of eight published papers. Dr. Borisov is a coauthor on seven of those eight papers and not a coauthor on one of the papers listed. On three of the eight papers Dr. Borisov is the first author, on one of the eight papers Dr. Borisov is the last author. On three of the eight papers Dr. Borisov is a middle author (neither the first nor the last author).
- A renewal of the RO1 grant was prepared in June 2008 [32]. The renewal listed Dr. Borisov as having a 25% appointment for 5 years beginning October 1, 2009.
- The NGA sent by NIH to the University of Michigan on March 2, 2009 still listed Dr. Borisov as one of the key personnel [20]. At this point Dr. Borisov was no longer employed by the University.
- As of May 2009, NIH has no record of approving the change of Dr. Borisov’s appointment level (by more than 25% of the proposed/approved effort) on the R01 grant. [33]

This is our final response to your May 4, 2009, Freedom of Information Act (FOIA) request addressed to the National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health (NIH). You requested copies of any written prior approval by the National Institutes of Health

awarding component for the replacement or substantial reduction in effort of Andrei Borisov from grant RO1HL075093-01A1. The NHLBI Division of Cardiovascular Diseases and the Grants Management Office searched its files, and **no records responsive to your request were located.**

### 3.4.2 Internal Pediatrics Grant

Dr. Borisov submitted a proposal for an internal grant in November 2006. There was a collaboration between Dr. Borisov and Dr. Russell as seen in the exchange of emails in November 2006 [34].

- Email on 11/22/2006 from AB to MR giving potential title of grant, background and significance and indicating that he is “working on the text right now.”
- Email on 11/23/2006 (8:14am) MR thanks AB ”for sending me the text.” Indicates he will be in the lab working on the papers and grant submissions.
- Email on 11/23/2006 (2:06pm) resisting MR changes to grant and providing more text.
- Email on 11/24/2006 (1:35pm) MR to AB discussing aims of grant and essentially taking over writing of first draft.
- Email on 11/24/2006 (10:18pm) AB to MR acquiescing to MR’s proposed writing.
- Email from AB to MR: Responds to “text” that MR sent.
- Email from AB to MR: 11/27/06, 11:40am “The grant is ready to be submitted. I used every line up to the allowed limits for each section. We can submit it now whenever you have a couple of minutes for a quick look....”
- Email from AB to MR: 11/27/06, 14:58 “Mark, This is the final text (attached).”
- The first bimonthly review [35] (called the Faculty Development Interim Report) Dr. Russell wrote “During this time period, I recommended that he apply for internal grants through the Department of Pediatrics. He suggest a potential title and I offered him some of our prior material and grant text that might be appropriate and might speed his grant preparation. When there was no return text to review, I worried that he wasn’t working on it and wound up writing the entire text and putting his name on it as the principal investigator. In the end, it was apparent that he had spent no time on the grant and only at the last minute did the work of adding his CV and making copies of the application.”

- The second bimonthly review [36] of Dr. Borisov covering December 1, 2006-January 31, 2007 Dr. Russell wrote regarding the internal grant proposal through the Department of Pediatrics: “I had hoped this would be a collaborative effort but I wound up writing the entire proposal and supplying all of the preliminary data when I determined that he had not been working on the application.”

### 3.4.3 MDA grant

The MDA grant had a cost sharing issue.

Date	Event
1/12/2004	Proposal Submitted (PAF)
7/1/04	Funding Started

- Three year grant started July 1, 2004
- MDA approved budget included a 20% cost sharing of AB’s effort as a co-investigator.
- The PAF [37] for the proposal indicates that the 20% cost sharing is Russell’s DAF account (U001987)
- On March 1, 2005 email from Donna Wilkin (Admin Assit, Ped Card) to Julie Feldkamp (DRDA) asks how to change Borisov from an investigator with cost-sharing support to a consultant on the MDA grant [38].
- March 9, 2005 Dr. Russell receives an email [39] from MDA letting him know that the Project Status Report is due 5/1/2005. Dr. Russell forwards that to Dr. Borisov and says “Please send the RNAi manuscript in this week.”
- Dr. Borisov says [39] that he submitted the paper within two days. It was accepted August 2, 2005 and was published in March 2006 (print).

Borisov et al (2006) Essential role of obscurin in cardiac myofibrillogenesis and hypertrophic response: evidence from small interfering RNA-mediated gene silencing. *Histochem Cell Biol* 125(3): 227-238.

- Email [40] between Donna Wilkin (Grants Coordinator) and Julie Feldcamp (DRDA, Managing Project Representative).

```
From: Julie Feldkamp <feldkamp@umich.edu>
Subject: Re: Question DRDA#04-2674
Date: January 30, 2007 11:19:46 PM GMT-05:00
. To: "Donna Wilkin" <dawilkin@med.umich.edu>
Cc: "Brett Habermas" <bhaberma@med.umich.edu>
e/1 Attachment, 56.3 KB (-Sa~~!)
```

Yes, MDA should have been notified. See page 11, Section XII of attached MDA Research Policy.

Julie

On Jan 30, 2007, at 12:14 PM, Donna Wilkin wrote:  
Julie,

Our project, N00S963 with the Muscular Dystrophy Assoc. 7/1/04-6/30/07, originally had a Co-Investigator, Andrei Borisov listed with 20% effort that we were going to cost share because according to their rules, MDA wouldn't pay salary on a Co-Investigator. As it turned out, according to Dr. Russell the PI, Dr. Borisov has not done work on this project and his salary was funded on other grants when this project started. So the cost sharing was never done. Is this something we should have reported to MDA?

Thanks,  
Donna

- Dr. Russell notifies MDA [41] on January 30, 2007 that Dr. Borisov has (retroactively, effective July 1, 2004) been removed from the grant as an investigator and changed his role to consultant (0% effort).
- Dr. Borisov emails Dorothy Nelapa on February 2, 2007 asking about cost-sharing on MDA grant. Dorothy replies on the same day "Mark has denounced your effort on the R01 as well as the MDA" [30].

#### **3.4.4 Other MDA Grant**

In an email [42] from Borisov to Russell on June 19, 2008 Dr. Borisov writes: "...I am responding to your request to cancel my intention to submit my proposal by the next deadline, July 2008 to maximize the chance of the approval for funding of your proposal. Thus, as you requested, I will not submit my proposal during this cycle."

#### **3.5 Dr. Borisov's evaluations**

- February 24, 2004 email [14] from Dr. Russell to Dr. Borisov: Dr. Russell tells Dr. Borisov he "would like to sit down with Dr. Castle and discuss advancing you to the next academic level ahead of the normal cycle."

- April 22, 2004 email [43] from MR to AB: “I am very glad your promotion is in progress. It is well deserved and long overdue.”
- May 11, 2004 letter [44] from Russell to AB. “I greatly appreciate your commitment, dedication and hard work and am working diligently to retain you in our laboratory for as long as your [sic] wish to remain.”
- June 14, 2004 email from Kim Leahy (Office Assistant Faculty Affairs, Office of the Dean) to Dr. Castle: APRAPT Committee approves the promotion with a contingency that a Career Development Plan be provided [3].
- August 25, 2006 annual review letter from Dr. Castle to Dr. Borisov [5].

I would like to acknowledge the excellent progress you have made in securing funding for your collaborative research programs with Dr. Russell and Dr. Pagani as well as the excellent record of publications in the past year. This level of scholarly productivity is very good and should position you well for the independent grant applications (e.g. RO1) that you plan to submit in the coming year.

- Emails between Borisov and Russell indicating authorship of proposal.
- Dr. Russell in a Faculty Development Interim Report [35] covering the period October 1, 2006-November 30,2006.

Grants: Unfortunately, Andrei seems to view grants more as rewards for prior work than as contracts for future work and does not consistently carry out the works proposed. This may be due to the fact that he did not propose any of the studies contained in the grants that have supported his salary and is not entirely convinced of their merit...

During this time period, I recommended that he apply for internal grants through the Department of Pediatrics. He suggested a potential title and I offered him some of our prior material and grant test that might be appropriate and might speed his grant preparation. When there was no text to review, I worried that he wasn't working on it and wound up writing the entire text and putting his name [Dr. Borisov] on it as the principal investigator.

- Dr. Russell in a Faculty Development Interim Report [36] covering the period December 1, 2006-January 31, 2007.

Grants: Andrei seems to view grants as rewards for prior work than as contracts for future work and does not consistently carry out the work

proposed. He applied for an AHA and a McKay grant during this time but I was not given the opportunity to review the completed application. I reviewed the specific aims and made some recommendations but never reviewed a completed text. Andrei continues to waste too much time on the grant application process rather than letting the administrative staff perform the tasks. He needs to focus more on his own responsibilities and not try to do the work of others. During this time, we received an internal grant through the Department of Pediatrics. I had hoped this would be a collaborative effort but I wound up writing the entire proposal and supplying all of the preliminary data when I determined that he had not been working on the application.

- Dr. Russell in a Faculty Development Interim Report [36] covering the period February 1, 2007-April 31, 2007.

Overall Assessment: Andrei is a world class scientist who has the potential to be a tremendous asset to the Department and the University but at the present time continues to be a distraction. He has not contributed any new data relevant to ongoing lab projects in over 2 years and does not make old data available for full review. Given the level of his current contributions to the laboratory, I feel that his effort assignment of 10% salary support the the R01 is very generous. The addition of a research assistant to work with him has not yet improved his productivity. His inability to work openly and collaboratively with the rest of the laboratory is impeding the progress of the lab and jeopardizing his own future.

- Dr. Russell in a Faculty Development Interim Report [36] covering the period May 1, 2007-July 31, 2007.

Andrei is an extremely talented individual but, unless he secures his own independent funding, he will need to work more openly and freely with other investigators.

- In an evaluation from Rocchini covering the period July 2005-June 2006 Dr. Rochinni writes [45]

Dr. Borisov has been a Research Assistant Professor since September 2004. Dr. Borisov is a research associated working in the laboratory setting of Dr. Mark Russell. At present, Dr. Borisov has no clinical responsibilities, has limited teaching responsibilities in that he team taught a course in histology and currently is serving on no major research committees. He continues to work as a collaborator with Dr. Russell on Dr. Russell's currently funded NIH and muscular dystrophy grants. He is currently

funded with two internal grants in 2006, one is a translational research grant from the University of Michigan for which he is a co-investigator and another is an internal Helman award. His current research efforts are to develop an independent academic career. He has currently been involved with 12 peer reviewed papers in the last 3 years, 4 as first author and 3 as senior author. I have a concern about Dr. Borisov's performance. Dr. Russell has reduced Dr. Borisov's effort on the NIH grant because Dr. Borisov did not complete work related to aims of the proposal. In addition, Dr. Borisov was given start-up funding to support ongoing collaboration with Dr. Russell. If this collaboration does not occur it is possible that some or all of the remaining start-up funding will be lost.

**Objective 1:** The major objective for Andrei is to develop an independent research career, that being independently funded proposals for which he is the principal investigator. I would hope that over the next year Andrei would develop a clear plan that demonstrates that he is on a track to academic independence. I would expect over the next year to be able to evaluate his grant reviews and find that these reviews demonstrate that he has either gotten independent funding or that his grants are getting substantially closer towards being funded. Dr. Borisov should review his proposed grant submission with Dr. Russell to ensure they are of the highest quality.

**Objective 2:** He needs to set up a budgetary program that clearly defines the resources he needs to establish his independence towards obtaining independent funding.

**Objective 3:** He continues to need to find a better way to function collaboratively with Dr. Russell.

Borisov complained that the evaluation was factually incorrect. Dr. Borisov tried to get Rocchini to change the evaluation. Rocchini said he did not write the review and would not change it.

- In July 2007 Dr. Borisov met with Dr. Thorson to complain about the situation with Dr. Russell and his evaluations [46].
- In a July 9th, 2007 email from Dr. Thorson to Dr. Eva Feldman, College of Medicine Assistant Dean Thorson tells Feldman "from the correspondence Andrei has shared with me, he's really gotten a bad deal" [46].
- On July 10th Borisov writes Thorson thanking her for her desire to help but says he will talk to Dr. Castle.
- Meeting with Castle and Borisov [47] on July 15th, 2007.

- On August 14, 2007 Borisov sends rebuttal of annual review [47].

The text of my annual review evidently requires corrections because it does not accurately reflect the reality. As I informed you earlier, this appears to be a sad misunderstanding. This evaluation has never been discussed with me. I do not agree with its content and can not sign it.

During my annual meeting with the Division chair in April, I was informed that there was no concerns or problems related to my performance. At the end of May I received the text stating the opposite. I informed Dr. Rocchini about this situation on June 5 and provided clear documentation supporting the necessity of the revision of the text. Dr. Rocchini told me that he only signed the text and that he was not responsible for its content. Two weeks ago Dr. Rocchini suggest me to write a rebuttal.

- August 17, 2007 rebuttal re-sent [47].
- August 23, 2007 letter from MR to AB giving AB one of three options [48].
  - Laboratory Manager (funded by lab with all data being the property of the lab).
  - Independent Investigator (responsible for generating your own salary through independent grants and collaborations... data that is generated will be expected to be the property of that investigator).
  - Laboratory Manager with transition to Independent Investigator

The stipulation that **all** of your data be made freely available to the laboratory is clearly stated in your promotion letter to the Assistant Professor level and applies to all data and manuscripts that you have generated within the laboratory since you arrived.

- Annual review from Dr. Castle to Dr. Borisov August 27, 2007 is negative [6].

“It is important for you to understand that the discretionary funds which are currently supporting your effort are controlled by Dr. Russell and are for the purpose of **supporting** research that is at his discretion. Thus if your work does not fulfill the interest of a collaboration with him and you do not secure alternative independent funding sources, your appointment will be jeopardized due to lack of funding.”

- September 7, 2007 AB writes rebuttal email to Dr. Castle after receiving Dr. Castle’s letter [49].

Today I received your letter that constains your evaluation of my work performed during the last academic year, 2006-2007. I was surprised to



learn that you evaluated my performance as unsatisfactory.

I believe this is a misunderstanding that should be clarified and corrected.

Six weeks ago and three weeks ago I sent you three letters. In these letters I presented clear material facts and documented evidence that the information supplied to your office regarding my academic accomplishments was incorrect, and at that time I requested to disclose this information to me. I would like to get access to these documents. Where and how can I see to these materials?

I feel it is very important to me to get your brief comments on these letters because I did not receive any reply as yet. Why the facts reported in the letters have been totally disregarded and dismissed?

Please consider this message as my formal request to review the facts and documents directly related to this question and to reconsider this evaluation that is based on absolutely incorrect information. I am ready to provide all supporting materials for your attention any time.

- September 20, 2007 Castle writes to Borisov. She tells him “The discretionary account currently funding your effort were provided for the sole purpose of supporting research that is part of Dr. Russell’s research program.” Dr. Castle gives Borisov a six month deadline to “secure independent funding” otherwise his appointment will be terminated as of July 1, 2008 due to lack of funding. [50]
- Email [51] on September 21, 2007 from Borisov to Assistant Dean Thorson complaining.

“As I mentioned to you, Mark Russell forced me to sign a letter that he called a Career Development Plan stating that I should accept a position as his \*Laboratory Manager\*. This move, in my view, would completely transform me into his bench slave. He threatens me that if I do not sign the letter, my employment will be terminated.”

“The terms and conditions of this letter state that that [sic] I do not have rights to my data, and as far as I understood from the text, have no rights to submit papers and grant proposals.”

- Dr. Borisov meets with Dr. Thorson in July 2007 and after September 20 letter.
- June 4, 2008 email from Borisov to Russell. Borisov is asking Russell what does it mean that the “office of faculty affairs performed an evaluation of the case of

my “complaints” to the OFA in early September last year and decided that my employment should be immediately terminated and reported this Decision to the Department Chair.” [52].

- Letter [7] June 6, 2008 from Dr. Castle to Dr. Borisov (copied to Dr. Frumkin and Dr. Geytko). “I have asked Dr. Russell to provide you with an itemized list of tasks, research experiments and writing assignments to be completed over the next 90 days. “Your performance will be reviewed against these expectations to determine if you have made sufficient progress to remain in your appointment at the University of Michigan.”
- Russell writes 3 letters/emails [53] to Maydis Skeete (Department Administrator) that Andrei is not working out.
  - Email July 14, 2008 from Dr. Russell to Maydis Skeete (Administrator in the Pediatrics Department). “In short, he has made some changes but it is not clear that we can retain him at his current salary to do the work that he chooses to do.”
  - Email August 14, 2008 from Dr. Russell to Maydis Skeete. “ I regret to inform you, although Andrei has returned to bench work and is generating high quality data, the data is not being made available to the laboratory and is not always exactly what has been requested.”
  - Email August 21, 2008 from Dr. Russell to Maydis Skeete . “It is very difficult to get straight answers from him on any topic...what he has done, what he plans to do...either scientifically or professionally. His enthusiasm for his work makes me believe that he is just not capable of making the changes requested. I think that he would make the changes if he could...he just can't. In short, he has been updated on my interpretation of his progress. I have let him know that any data not made freely available to the laboratory does not exist and therefore cannot be counted as work performed.”
- Email August 28th, 2008 from Dr. Castle to Dr. Rocchini, “Al- It seems from this email stream and the previously submitted progress report [Russell’s emails] that Dr. Borisov has made little or no progress.” Reply from Dr. Rocchini, “Based on my discussion with Mark, I would agree with your assessment.” [53]
- September 2008 Dr. Borisov was asked to prepare a package of what he had done.
- Dr. Castle, Chair of the Department of Pediatrics sends a letter [54] to Dr. Borisov dated September 8, 2008 confirming the resignation of Dr. Borisov effective September 12, 2008.

## 3.6 Dr. Borisov's reporting of misconduct

### 3.6.1 Reporting to Department Personnel

Beginning in late 2006, shortly after the first Faculty Development Interim Report of Russell, Borisov begins to complain that Russell is unfairly denouncing Borisov's effort on research grants and his contribution to proposals and articles.

- He complains to Thorson, in November 2006 [55].
- He meets with Castle in December 2006.
- He meets with Judith Nowack (OVPR) in December 2006.
- Nowack sends him to Frumkin/Sharphorn.
- He meets with Frumkin (Provosts Office) and Sharphorn (OGC) in December 2006.
- He meets with Thorson again in January 2007.
- He complains to Thorson, in September 2007 [55].
- Borisov also went to Dean Woolscroft. Dean Woolscroft held "office hours" for faculty to discuss any issue.
- Thorson meets with Borisov January 21, 2008 [55]
- Thorson emails Borisov in January 22, 2008 confirms the meetings in November 2006 and January 2007. [55]
- Borisov begins to complain regarding funding sources. Meets or emails with Rocchini, Nowack, Frumkin, Sharphorn, Thorson in November-December 2006. He claims he spent 100% (full time) on collaborative projects with MR including the R01 and MDA grants.
- On December 1, 2006 Dr. Borisov emails Dr. Rocchini (Division Chief) that in November he spent 100% of his normal work schedule on his collaborative projects with Russell. The collaborative projects are the R01 and the MDA. He disagrees that the effort on these project is 10%. [56]
- Dr. Borisov meets with Rocchini in May or June
- In August 2007, Castle writes evaluation letter to Borisov.
- August 14, 2007 Borisov sends a rebuttal letter .
- September 7th, 2007 Borisov writes a rebuttal letter to Castle.
- Dr. Borisov gets letter on September 20th, 2007 from Dr. Castle that he must get money or his positions will be terminated.

### 3.6.2 Reporting to Medical School Personnel

- Dr. Borisov met with Dr. Thorson in early December 2006. She advised Dr. Borisov to talk to Judith Nowack at OVPR.
- In early July, 2007 Dr. Borisov meets with Jayne Thorson.
- Email from Dr. Thorson to Dr. Eva Feldman on July 9th, 2007 Dr. Thorson says, “From the correspondence Andrei has shared with me he’s really gotten a bad deal.” Dr. Eva Feldman (Professor of Neurology) was interviewing Dr. Borisov and that was the reason for the email.
- Email to Thorson on July 10th, 2007 Borisov emails Dr. Thorson documenting his complaint. Dr. Borisov says “[Russell] removed me from the grants as co-investigator leaving only 10% effort.” He describes promises made by Russell to keep Borisov from taking another job. “When I showed to Mark the documents addressed by him to me earlier with the promises and the opposite evaluations, he denounced my past and present contributions and participation in the projects and removed me from the grants.”
- Thorson responds the same day asking if she should forward email to Dr. Castle.
- Borisov responds (July 10th, 2007) requesting she not contact Dr. Castle.
- Standard Practice Guide 303.03 states:

Reporting suspected academic misconduct is a shared and serious responsibility of all members of the academic community. Allegations should not be made capriciously, but indications or evidence of fraud or misconduct must not be ignored. Confidential advice about University policy and procedures is available at any time from the Office of the Vice President for Research or the Office of the General Counsel.

- Dr. Borisov emails [51] Dr. Thorson on September 21, 2007 requesting confidential advice.

“What Mark did to me was unethical and immoral. It is apparent that Mark actively tries to discredit me and convince the department chair to terminate my employment.” ... “In September 2006-January 2007 Mark Russell sent several letters to the division head. These letters contained the false information that discredits and offended me professionally and personally.” ... “ In April 2007 I had an annual meeting with the division head... to retract these letters.”...“ The fact that Mark removed me from our joint grants... evidence of my unsatisfactory performance. Actually this

illustrates the profession dishonesty of Mark Russell” “ Now Mark states that I did not contribute anything to the grants and I did not perform even a single independent experiment.” “Mark says that I always stole data from his technician presenting it as mine.”

- In September 2008 Borisov complains to Gyetko. Gyetko asks him to bring documentation. She tells him he must resign before accepting a new position.

### **3.6.3 Reporting to University Personnel**

- Reporting to Judith Nowack: Dr. Borisov claims that he met with Judith Nowack on December 6, 2006 to at least
  1. complain to her about his reduction in the effort on the R01 grant without notifying NIH.
  2. complain about the cost sharing on the MDA grant and false statements made to MDA
  3. complain that his evaluations by Russell stating that he never performed any work on the grants after funding was approved were untrue.
  4. request advice from Judith Nowack about how to act regarding false statements by Russell claiming that Borisov did not write one of his funded grants.
  5. Informed her that the grants/proposals included sets of Dr. Borisov’s data and were based on his work.
- Reporting to Dr. Frumkin and Mr. Sharphorn: After meeting with Judith Nowack, he was advised to meet with Dr. Frumkin and Mr. Sharphorn. This happened shortly after meeting with Ms. Nowack. These individuals decided that this was a department matter and sent Dr. Borisov back to the department.

### **3.7 University Personnel Retaliation against Dr. Borisov**

- An email from Dr. Russell to Dr. Borisov on August 28th, 2008 states: “The current situation has far more to do with your interim faculty review in which you complain that promises were not being kept, etc. The allegations were looked into and deemed to be without merit.”
- Conversation between Dr. Russell and Dr. Borisov: Russell and Borisov had a conversation on September 3, 2008. The conversation is recorded by Dr. Borisov.

DR. RUSSELL: “I think there are people that do want to punish you because of ... Do you want to know what it stems from? It stems from the letter from your faculty assessment that really ticked off a lot of people.”

### 3.7.1 Dr. Borisov's termination and arrest

An email from Dr. Castle to Dean Thorson (copied to Dean Gyetko, Ms. Skeet, and Dr. Frumkin) apparently replying to some message regarding the Dr. Borisov case.

From: Valerie Castle [mailto:vcastle@med.umich.edu]  
Sent: Tuesday, June 10, 2008 1:05 PM  
To: Valerie Castle; Thorson, Jayne Ann  
Cc: Carol Jarema; Margaret Gyetko; Maydis Skeete; Smitka, Curt W; jfrumkin@umich.edu  
Subject: Re: Fwd: Re: Dr.~Borisov  
Jaynethis is not a RIF.

- Dr. Borisov claims (and this has not been contradicted by anyone) that he spoke with Dr. Gyetko regarding his transfer to internal medicine on the morning of September 4, 2008. According to Dr. Borisov, she told him that he needed to resign before accepting the offer from Internal Medicine.
- He told Maydis Skeete that he intended to resign. The result was that a meeting was set up with Dr. Castle that day.
- Officer Dorta in his report [57] on September 5th states that "Lt. Neumann also told me that the hearing was being conducted for Andrei Borisov, who was being terminated due in part for his threatening behavior towards Dr. Mark Russell, his mentor."
- Recorded Conversation between Castle, Borisov, Skeete, Officers Dorta and Lucas.

DR. CASTLE: Dr. Borisov, he [Dr. Russell] has advocated fairly and recently for you. He has agreed to this plan. Not only has Dr. Russell agreed to this plan, all of the appropriate university offices have agreed to this plan; that includes the Dean's Office, and that includes the Provost's Office. So again, you have one of two options: I will be giving you this letter, which indicates your position terminates as of September 12th. It also indicates that the Department will payout, according to University policy, all unused vacation time. Should you choose not to have a termination letter, you may resign. I request that you resign today.

DR. CASTLE: "I have asked the officers to be here because of your behaviors. Both behaviors, just let me finish, both on this floor and behaviors you've had with Dr. Russell." (Page 2 line 20 of transcript).

DR. BORISOV: -it's a false accusation. I cannot agree to this. If you have any evidence of this, I would like to read the definitions to what I am

accused of. What are the facts? (Page 9, Line 12)

DR. CASTLE: Well, that is now being handled by DPS.

DR. BORISOV: Oh,—

DR. CASTLE: A formal report will be filed.

DR. BORISOV:Dr. Castle—

DR. CASTLE: With DPS. So Andrei, I think you're making—you better make some very careful decisions now.

UNIDENTIFIED FEMALE (Maydis Skeete) You resign on September 12th—

UNIDENTIFIED FEMALE (Maydis Skeete) that means today, that as of today you don't—you get your—you take your belongings and you do not come back.

DR. BORISOV: But it's totally, these are false accusations. Who has any statement

DR. CASTLE: Andre, you know, false or not false, I have a responsibility. So I think we, you know, we really are —

DR. CASTLE: Andre, listen to me: my responsibility as a chair of the Department of Pediatrics is to ensure the safety and welfare of all faculty and staff in this department. When I hear that my staff and our faculty in here, they feel threatened and uncomfortable with your behaviors—

DR. BORISOV: I never did that.

DR. CASTLE: —which is what I have heard, I have a responsibility to ensure their safety.

DR. BORISOV: I never—

DR. CASTLE: And your safety.

DR. CASTLE: and the things that I have learned about give me enough concern that I cannot take a chance that you might do something inappropriate and more threatening to one of the faculty or staff. ... So that's the scenario we're in. You need to understand, that's how people feel when you walk with them to their cars—

DR. CASTLE: That is a threatening behavior.

DR. BORISOV: My personal plea to you ... I will never appear in the laboratory and the department but let me simply leave gracefully.

DR. CASTLE: I have to take all the information that comes into the department. If I get even a sense that a faculty member or a staff member

feels threatened by an individual, an employee in the department, I have an obligation to that. ... You have not done what you've been required to do, and additionally I am now told that there are faculty and staff that feel threatened by your behavior.

DR. CASTLE: "...quite honestly there are issues with your time cards that have come to my attention, that are very concerning to me, which I'm not even going to go into today, but I would be happy to discuss with the University—"

DR. CASTLE: "Okay, so we're missing timesheets, and I understand that you, after your timesheets were signed, you wrote in things on your timesheets that are inconsistent with the information that we have, or you've hand-written things in your timesheets that Dr. Russell did not see.

DR. BORISOV: "Dr. Castle, please don't destroy me."

While in Castle's office one of the DPS officers told him:

"Doctor, I think—I'll tell you what's going to happen here. As soon as you're done here, whether you want to sign it or not, we're going to remove your stuff, you're going to be read the trespass statute. You're no longer allowed at the University of Michigan Med School property unless the chief of police of the University of Michigan tells you you can."

In the meeting Officer Dorta ordered Dr. Borisov to not contact Dr. Russell by any means. Officer Dorta ordered Borisov not to talk to Dr. Russell and claimed Dr. Borisov could be arrested for stalking.

UNIDENTIFIED MALE: Dr. Castle, if I can actually add something. **Because Dr. Russell has expressed concern for his safety**, we ask that he have no contact with Dr. Russell. That includes no emails, no contact through a third party unless it's approved by the Chair of Pediatrics. All right, so that means no email, no messages, no phone calls, no showing up at his place of business, no showing up at his home. Any violation of any of those rules can lead to your arrest for stalking.

- The reply brief [58] of the attorneys for Castle, Russell, Gyetko and Frumkin, page 23, paragraph 69, states that

On one occasion, as Dr. Russell tried to open his car door to get in the car, Dr. Borisov pushed the door closed. On the fourth attempt to get into his car, Dr. Russell did not allow Borisov to push the door closed and got



in the car. They spoke for another minute or two before Dr. Russell left.  
**Dr. Russell did not characterize this as threatening behavior by Borisov, but noted that it was very unusual.**

- There is no evidence that DPS verified or investigated allegations that Borisov was a physical threat.
- There is no evidence that DPS documented the call for service.
- Dr. Borisov was arrested for trespass while still a university employee.
- Chief Magee appeared at SACUA: The minutes state the following question and answer of Chief Magee.

Q: How do you evaluate cases when an administrator charges that a faculty member is dangerous?

A: The director said that evaluation would begin by consulting the management staff. They would conduct checks including through the Law Enforcement Information Network to learn if the individual has a permit to carry concealed weapons. He said that DPS will charge someone with filing a false police report if they believe that is the case. He said that the prosecutor's office makes the final determination in such cases, but that they are hard to prove.

- Borisov was prosecuted for resisting and obstructing and attempted assault on police officers and disturbing the peace (when the officers twisted his arm and Dr. Borisov yelled and a post-doc came out to see what was going on).
- Castle sent Mr. Victor Boccalon (facilities coordinator) to determine which stuff was Borisov's. Victor Boccalon is the facilities manager without expertise to determine which was Borisov's property.
- Officer Dorta and Lucas state in their reports that there was controversy over what Borisov could put in his brief case. Some documents that had been in a cabinet and had been placed in his bag or briefcase were at issue. Officer Dorta stated in his report on September 5th, 2008 that

Borisov picked up the bag from the chair and rushed at Officer Lucas and I who were standing in the doorway, apparently intent on making a run out of the office with the bag. In the process, Borisov crashed into both Officer Lucas and I, hitting us both on the chest with his shoulders.

Officer Lucas states in his report

As officer Dorta and I stepped back to the door, Mr Borisov quickly grabbed the bag and tried to push past officer Dorta and myself, bumping my right shoulder as he tried to push past me.

Officers testified that Borisov was trying to leave with his briefcase. Officers stopped him. They charged him with trespass. Borisov was trying to show officers his briefcase but officers could not determine whether the contents belonged to Borisov or others.

- Borisov went to St. Joe's emergency room. Dr. Borisov told doctors that injuries were caused by DPS. Doctors at St. Joseph Hospital were required by law to report the injuries to police. They called Ann Arbor Police. Ann Arbor Police said it had to be reported to DPS. DPS procedures require that use of force and/or resisting arrest must be reported and investigated. Assault charges were ordered after Dr. Borisov reported injuries.

- Officer Lucas in his police report states

Officer Dorta handcuffed Mr Borisov and stated "he tried to break my finger". While Mr Borisov struggled against our efforts to handcuff him, I told him to stop at least three times, at on [sic] point advising him that if he continued he would go to the ground with him. ...

After initially clearing MSRB III, I escorted officer Dorta to the University of Michigan Emergency Room (UMER), for an icepack for his hand. ...

Officer Dorta later responded back to the UMER on 9/4/2008 for treatment to his injury. Officer Dorta was advised by medical staff that the tendons for his index finger and thumb were sprained. Officer Dorta received splints for his finger and thumb to immobilize them.

- Chain of custody document shows the tape recorder siezed was in Lucas' possession for six weeks.
- In the reply brief the attorneys for Castle, Russell, Gyetko and Frumkin claim [58]

In the morning of September 5, 2008, Maydis Skeete notified faculty and staff who work on the 8th floor of the building where Dr. Borisov's office was located that there would be a meeting to provide information and an opportunity for discussion with the faculty and staff who had witnessed or heard about the altercation between Borisov and the officers of the DPS on September 4, 2008. The meeting occurred at 12:30 p. m. on September 5,2008. Maydis Skeete and Dr. Castle met in the morning to discuss what to say to the faculty and staff. In the meeting, it was stated, among other things, that as a result of his actions with the DPS, Dr. Borisov was not to come to the 8th floor again or to the administrative offices of the Department, which are located in another building.

After a draft of this report was written, Prof. Kate Barald, Professor of Cell and Developmental Biology provided the committee with a letter in regard to Dr. Borisov [59]. In her letter Prof. Barald makes the following comment regarding the claim that Dr. Borisov was a physical threat.

I wish to provide this letter because Dr. Borisov has been described as a threat to the safety of some of his former colleagues, and because he has been denied access to the University of Michigan Medical Schools premises and also because he has been denied the option of being rehired at the University of Michigan. Because in all my years of experience with Dr. Borisov, the idea that he could be perceived as a threat to anyones safety or well-being strikes me as ridiculous (not too strong a descriptor) and leaves me frankly, incredulous, I wish to provide this commentary.

### 3.7.2 Allegation of Falsifying Time Cards

- The NGA for the RO1 grant [60] states

This grant is subject to Streamlined Noncompeting Award Prodecures (SNAP).

- Reports from 7/1/2007 till 9/12/2008 are signed by Russell.
- During this time Dr. Borisov was disputing with the Department and Russell regarding the reporting of his effort.
- The time cards were preprinted with percent effort determined by Russell.
- Dr. Borisov annotated the time cards with his actual effort.
- Dr. Borisov reported more effort than the grants were charged (which could not be construed to violate NIH funding rules).
- According to Dr. Borisov the order in which signatures were added varied; sometimes Russell signed first, sometimes Borsov signed first.
- NIH Policy regarding retention of records. ([http://grants1.nih.gov/grants/policy/nihgps\\_2003/NIH](http://grants1.nih.gov/grants/policy/nihgps_2003/NIH))

#### Record Retention and Access

Grantees generally must retain financial and programmatic records, supporting documents, statistical records, and all other records that are required by the terms of a grant, or may reasonably be considered pertinent to a grant, for a period of 3 years from the date the annual Financial Status Report (FSR) is submitted. For awards under SNAP (other than those to

foreign organizations and Federal institutions), the 3-year retention period will be calculated from the date the FSR for the entire competitive segment is submitted.

The FSR is the annual financial report for the project. Records for the reporting period March 1, 2005-February 28, 2006 must be kept for 3 years after the annual FSR. So this must be till February 28, 2009. For the time period March 1, 2006-February 28, 2007 the records must be kept till February 28, 2010. For a Streamlined Non-Competing Award Process (SNAP) the records must be kept 3 years after the date of the final FSR which would have been no earlier than May 2009 which means that the records must be kept till May 2012.

- Time and effort reports from July 1, 2005 to June 30, 2007 are missing [61].

You requested, “all time & effort certification reports for Dr. Andrei Borisov for calendar years 2002 through 2008.”

Your request is granted in part. Enclosed find copies of Effort Certification Reports for FY 2001-02,2002-03,2004-05,2007-08 and 2008-09. No report was required in FY 2003-04. We have been unable to locate such records for FY 2005-06 and 2006-07.

### **3.8 The “car incident” with Russell on September 2nd and discussion with Russell on September 4th.**

Apparently the accusations made by Dr. Castle in the discussion on September 4th refer to Dr. Borisov walking out to the car with Dr. Russell. Dr. Borisov recorded this conversation and provided the audio of the conversation to the faculty hearing committee.

- On September 2nd about 6pm Dr. Russell and Dr. Borisov walked out to their cars in the parking lot/garage.
- Dr. Borisov taped the conversation.
- The recorded conversation has no hint whatsoever of Andrei being a physical threat.

18:40 DR. RUSSELL: “Andrei, I don’t want to keep you any longer. I’ll let you get back to your

18:53 Keys in car (car beeping)

19:12 DR. BORISOV : “And actually, I don’t want to keep you here, probably your family is waiting for you, but I have to finish something upstairs

19:57 Car starts.

20:29 DR. RUSSELL “I’m not going to stick my neck out for you if that’s all I get.

DR. BORISOV “But I told you that’s good stuff I can do a lot.”  
20:28 DR. BORISOV: “See you tomorrow. Thanks a lot. ”  
20:30 Dr. RUSSELL: “OK, Have a good night.”  
DR. BORISOV: : “Thanks. You too and drive carefully Mark. Don’t be too upset”.

- On May 15, 2008 Russell emails Borisov “Thank you so much for the ride to the auto repair shop yesterday!! That would have been a long walk.” [62]

### 3.9 Personal and Intellectual Property

According to an email from Dr. Borisov [63] on January 30, 2010 there is personal and intellectual property that has not been returned to Dr. Borisov. He had prepared a computer disk containing images of his scientific research (electronmicrographs and immunohistochemistry of muscle cells). This computer disk containing his intellectual property was never returned. His scholarly work was stored on a computer for which he no longer (as of September 4th) had access or could download. Specimens that were prepared for sectioning and staining, including some from outside collaborators, were never returned to him. His book chapter manuscript that was in his brief case was never returned. His microsurgical instruments were never returned. Below is the contents of an email sent to the committee on January 30, 2010 [63].

Dear Committee Members:

I am writing to inform the Faculty Hearing Committee that the research materials that were located at my laboratory and my faculty office in the Medical School remain in the possession of my former Department.

These materials include the following items:

- 1) unique collections of tissue samples and specific probes kept in the freezers at -80 and -20 degrees C and the processed collections of samples kept at room temperature.
- 2) sets of my laboratory and research instruments.
- 3) my research materials and data in paper and digital forms including the data saved on CDs.
- 4) books and biomedical research journals.
- 5) the documents confiscated from my briefcase.

I kept non-perishable materials in the drawers, on the benches and on the shelves in my laboratory and in file cabinets in my office.

I received a letter from Assistant General Counsel Christine Gerdes admitting the fact that my former Department still retains at least some of these items. However, I have never received the itemized inventory lists of the confiscated, packed and retained items.

### 3.10 Formal Allegations of Misconduct

After the faculty hearing committee commenced, Dr. Douglas Smith made allegations of misconduct [64] in the Borisov matter under section SPG 303.3.

From: dsmith [mailto:douglas2k@comcast.net]  
Sent: Monday, September 21, 2009 11:31 PM  
To: 'presoff@umich.edu'  
Subject: Allegations of misconduct

President Coleman:

I want to be sure that it is understood that my August 6, 2008 letter to you as well as my comments to the Sept. 17, 2008 Board of Regents meeting constitute a complaint of misconduct under SPG 303.3.

Dr. Borisov's original complaint was of plagiarism as defined under Section I.E.2 as well as fiscal misconduct regarding grants. My complaint includes retaliation under Section I.E.9 and failure to report observed major offenses under Section I.E.8. There was also a breach of the promise of confidentiality under II.B.1.c when Dr. Nowack and Dr. Gyetko reported Dr. Borisov's complaints to Dr. Castle. There was also a failure to perform an inquiry upon Dr. Borisov's complaints to Dr. Nowack and Dr. Gyetko and active obstruction of the inquiry in Dr. Castle's letter to Dr. Borisov dated Sept 8, 2008, which ordered him not to contact any faculty or staff of the Medical School for any reason, an order that has not been rescinded to this day and an order that was enforced by a threat from the police officers to arrest Dr. Borisov for stalking if he did not obey it. There was also obstruction by Dr. Castle and Dr. Russell when they ordered confiscated the documentation gathered by Dr. Borisov and requested by Dr. Gyetko.

The SACUA Faculty Hearing Committee has tried to conduct an inquiry, in lieu of that not performed by the administration, but their inquiry has been obstructed by the refusal of Dr. Castle, Dr. Russell, Dr. Nowack, Jeff Frumkin, and Dr. Gyetko to testify.

There are substantial conflicts of interest by many senior administrators and the General Counsel's office and therefore, I would request an inquiry by external

investigators chosen in part by the shared governance of the Faculty Senate as recommended by SACUA after their investigation of the case of Dr. William Kaufman.

Douglas M Smith, MD, PhD

The relevant section of SPG 303.3 is

Some lapses in integrity are more serious than others. Lesser offenses, such as carelessness or questionable research practices, should be handled through the normal administrative channels. Other situations are sufficiently grave that they require University review through an inquiry or formal investigation. The procedures outlined in this document govern the steps to be taken in handling major offenses. It is critical to distinguish serious academic misconduct from the honest error and the differences of interpretation that are inherent in the scientific and creative process and are normally corrected through further research and scholarship.

Misconduct in the pursuit of scholarship and research includes at least the following major offenses:

1. Fabrication of data: dishonesty in reporting results, ranging from fabrication of data, improper adjustment of results, and gross negligence in collecting or analyzing data to selective reporting or omission of conflicting data for deceptive purposes;
2. Plagiarism: taking credit for someone else's work and ideas, stealing others' results or methods, copying the writing of others without proper acknowledgment, or otherwise falsely taking credit for the work or ideas of another;
3. Abuse of confidentiality: taking or releasing the ideas or data of others which were shared with the legitimate expectation of confidentiality, e.g., stealing ideas from others' grant proposals, award applications, or manuscripts for publication when one is a reviewer for granting agencies or journals;
4. Falsification in research: deliberately misrepresenting research, including the progress of research, to a research sponsor;
5. Dishonesty in publication: knowingly publishing material that will mislead readers, e.g., misrepresenting data, particularly its originality, misrepresenting research progress, or adding the names of other authors without permission;

6. Deliberate violation of regulations: flagrant and repeated failure to adhere to or to receive the approval required for work under research regulations of Federal, State, local or University agencies, including, but not limited to, guidelines for the:
  - protection of human subjects
  - protection of animal subjects
  - use of recombinant DNA
  - use of radioactive material
  - use of hazardous chemicals or biologicals
  - conduct of classified research
7. Property violations: stealing or destroying property of others, such as research papers, supplies, equipment, or products of research or scholarship;
8. Failure to report observed major offenses: covering up or otherwise failing to report major offenses or breaches of research ethics by others that one has observed.
9. Retaliation: taking punitive action against an individual for having reported alleged major offenses.

Dr. Smith made allegations of misconduct to the President of the University [65]. The committee requested copies of the results on any inquiry that could have been conducted relevant to these allegations of Dr. Smith. The response to this request for an inquiry was obtained by the Faculty Hearing Committee from General Counsel Scarnechia. The OGC response is [66]

The request for an inquiry by Dr. Smith was rejected as a matter not falling under SPG 303.3. The University does not issue a written report when an inquiry is rejected, so there is no report that is responsive to the Committee's request.

Furthermore, the OGC indicated that in the above decision that the matter did not fall under SPG 303.3 was made by OVPR [66].

## **4 Analysis of Borisov Complaint**

### **4.1 Analysis of Relationship between Dr. Russell and Dr. Borisov**

Dr. Borisov is a scientist who came to the US in the mid 1990s and collaborated with Dr. Bruce Carlson. When Carlson retired Dr. Borisov began a collaboration with Dr. Russell. At the time Dr. Russell was an untenured assistant professor and had published only 2 papers between 1998 and 2003. Dr. Russell needed to have more research publications to



get tenure. The collaboration between Dr. Russell and Dr. Borisov was very beneficial to Dr. Russell in order to achieve tenure. The fact that the R01 grant is a key ingredient of a successful tenure casebook in the Medical School and that the reviewers of the R01 grant recognized that Dr. Borisov was a strength behind the R01 proposal strongly suggests that the R01 grant was largely funded based on Dr. Borisov's past work and expertise. Even Dr. Russell admits that Dr. Borisov's work led to the funding of the R01 proposal. The R01 grant resulted in numerous papers that helped Dr. Russell's case for tenure. Dr. Russell received tenure in 2005. At this point Dr. Borisov had transitioned from a research investigator to a research assistant professor. The expectation of a research assistant professor are to become an independent researcher. After helping Dr. Russell achieve tenure, Dr. Borisov tried to become more independent. Dr. Russell saws this as threatening because Dr. Borisov would become a competitor for research grants rather than a collaborator for grants.

Dr. Russell claims in his review of Dr. Borisov for the period October to November 2006 and in his review from December 2006 to January 2007 that for the internal pediatrics proposal he (Dr. Russell) wrote the entire text himself and put Dr. Borisov's name on it. In fact, there is a sequence of emails with text attached that show Dr. Borisov was in fact providing text for the proposal. It was not a lack of effort on the part of Dr. Borisov that caused Dr. Russell to provide a draft of the proposal that had different focus than what Dr. Borisov was proposing. Dr. Borisov was an active participant in the writing. SPG 301.03 defines Plagiarism as

Plagiarism: taking credit for someone else's work and ideas, stealing others' results or methods, copying the writing of others without proper acknowledgment, or otherwise falsely taking credit for the work or ideas of another;

Clearly Dr. Russell was taking credit for someone else's work. In fact, Dr. Russell mentions twice that he wrote the entire text of the proposal.

In the time period beginning in November 2006 Dr. Russell started criticizing Dr. Borisov. After receiving tenure Dr. Russell stated that Dr. Borisov's work was not related to either the MDA grant or the R01 grant. As such Dr. Russell removed Dr. Borisov from the MDA grant retroactively and reduced the effort of Dr. Borisov from the R01 grant from 97% to 10% without the required 30 day prior approval of NIH. Dr. Russell wanted "the data" that Dr. Borisov was generating in order to write proposals, or renewals to get support for the research. Dr. Borisov seems more interested and focused on writing papers. Dr. Russell thought the results were "beautiful" but criticized Dr. Borisov for not doing what the R01 grant needed. After Dr. Russell received tenure Dr. Borisov probably thought that it was important for him to obtain independent funding and to have some independence from Dr. Russell. From November 2006 till September 2008 Dr. Borisov was only 10% on the R01 and 87% on his "start-up" funds; as a Research Assistant Professor he had no obligation to turn over the data to Dr. Russell (at least not for the 87% part). Those were start-up funds that would allow him to write grant proposals and get independent

funding. Those funds were not under the control of Dr. Russell. Thus the claim that he did not provide data to Dr. Russell and thus was not living up to the conditions of his term contract were, in fact, not true. Dr. Russell, in the career plan he wrote for Dr. Borisov, states incorrectly that the original agreement said that all data was the “property” of the lab when in fact the original offer letter indicated that only the data that was supported by research grants was the property of the principal investigator that funded the grant. The understanding of the conditions of his employment by Dr. Russell clearly had changed from his appointment. He went from someone with the expectation of directing studies on a particular topic in his appointment letter to someone that should provide whatever Dr. Russell needed. This change is inconsistent with the expectations of a research assistant professor who desires to be promoted at some stage. Thus Drs. Castle and Dr. Russell changed, without approval, the conditions of his employment. What caused a productive collaboration for 3-4 years turn to into a disagreement that could not be solved by multiple trained university personnel? The most likely answer is that Borisov wanted to continue his research along the same lines that he had been doing research for the last 20 years. Borisov also needed to get independent (of Dr. Russell) funding of his research. Dr. Russell wanted to continue this research activity as well. However, a collaboration of the style Dr. Russell wanted between the two was no longer possible if Borisov was to exhibit independence from Dr. Russell.

## 4.2 Analysis of Grant Misconduct

### 4.2.1 R01 Grant

There was clearly fiscal misconduct on the NIH R01 grant in that Dr. Borisov was removed from the R01 without proper notification of NIH. There was an attempt to rectify this by **notifying** NIH in an annual progress report in January 10, 2007 that AB’s effort was changed from 48% to 10%. This is a reduction from the proposed effort of 50% by 80 percent (more than the 25 percent that requires prior NIH approval). Even with that “notification”, NIH never **approved** the changes. In addition, Dr. Russell notified NIH in January 2007 that this reduction would be effective in the new budget cycle (March 1, 2007) when in fact he had already reduced Borisov’s effort to 10% effective November 1, 2006. Borisov’s effort was actually reduced from 97% to 10%. This is clearly grant misconduct. Dr. Borisov is also reduced from 10% to 0% (a 100% reduction over the 10% effort previously and a 100% reduction over the proposed/approved 50% effort) without notification and approval of NIH. Thus there are essentially two incidents where NIH was not notified regarding significant (more than a 25% change) changes in the effort for significant personnel for the R01 grant. In addition, there is the misrepresentation by Dr. Russell that for the time period November 1, 2006-February 28, 2007 Borisov has a 48% effort on the R01.

#### **4.2.2 Time Cards/Effort Certification**

The university has not properly maintained effort certification for research efforts of Dr. Borisov related to the NIH grants. A FOIA of such effort certification reveals the University does not have records of time cards for a two year period.

Faculty report time and effort annually with effort certification and not on monthly time cards. It is inappropriate for Dr. Borisov to be required to fill out monthly time cards to report effort which are actually labelled for salaried staff.

In summary there are multiple instances where University personnel did not follow proper procedures for reporting and obtain approval to changes in personnel on multiple grants. The University has not properly maintained record of effort for The R01 grant.

#### **4.2.3 R01 Grant Renewal**

The R01 grant renewal proposal was submitted in early July 2008. At this point Borisov's termination was already decided by Castle (see June 10th email). By putting Borisov on the grant there was clear misrepresentation that Borisov would actually participate in the proposal.

#### **4.2.4 MDA Grant**

For the MDA grant there are two possibilities:

- Dr. Borisov did not spend time on the MDA and MDA was not notified till after the fact. (They need permission from MDA for removal [67]).
- Dr. Borisov did spend time on the MDA grant but that time (from July 1, 2005 to June 30, 2006) was charged to a federal grant. There was the usual 3% time charged required by NIH whenever a person has NIH funding, but all other effort was allocated to Federal Projects. If Borisov did spend time on this grant then there is an issue of incorrect charging of his salary to federal projects.

In either case there is misconduct with respect to the MDA grant. Based on actual publications, Dr. Russell's request to Borisov for publications supported by the MDA grant for progress reports, and Dr. Borisov's own testimony (time cards) it is clear that Borisov was spending part of his total effort working on the MDA grant.

### **4.3 Analysis of Personnel Matters**

Department and Medical School administrative personnel did not follow university policy when Borisov made allegations of misconduct with respect to inaccuracies and false statements in the reviews of Borisov and his complaints about changes in his efforts on the grants. In analyzing this matter Dr. Borisov could be considered as an employee/staff

member. In this case university personnel did not follow proper procedures for terminating an employee. If he was a staff member he would have the right to a disciplinary review conference regarding a potential termination for poor performance or misconduct according to SPG 201.12 II.D. There was no documentation of such a conference. If Dr. Borisov is treated as a faculty member then a 5.09 procedure would have been appropriate action for termination for cause. If this was a simple reduction in force or RIF (which Dr. Castle denies in the email to Dr. Thorson), then there probably should have been notice given and it would have been unnecessary for DPS to be present and for Dr. Borisov to be banned from talking to anyone or being read a trespass order.

- Dr. Borisov had a term contract with contract continuing through November 30, 2009. Therefore it was inappropriate in the letter of June 6th, 2008 and the proposed termination letter of September 2nd, 2008. to claim he was not being reappointed. Even if one accepted that his resignation was legitimate he still was duly employed at the University till September 12, 2008.
- The ninety day letter for termination is a policy that applies to staff members, not to faculty members.
- He was treated as a staff member, not a faculty member. This is evidence of a predetermined outcome.
- The email from Dr. Castle to Dr. Thorson also strongly suggests that the outcome really was predetermined.
- His resignation was involuntary (resign or be terminated) with DPS effectively threatening him and Dr. Castle threatening him with other misconduct charges related to allegedly falsifying time cards.
- The evidence the committee has seen indicates that the accusations made about him threatening the safety of university personnel were false and known to be false by those involved. The reply brief indicates that Dr. Russell did not perceive Borisov as having threatening behavior. So either Castle was not truthful in her accusation of Borisov exhibiting threatening behavior to Dr. Russell or the Reply Brief is not truthful in stating that Dr. Russell did not view Borisov as exhibiting threatening behavior.

#### **4.3.1 Analysis of Medical Center Personnel Conduct**

- If Dr. Borisov was fired under the category of staff, then SPG 201.12 would apply. In this case there should have been a disciplinary review conference. Dr. Borisov was never notified of a Disciplinary Review Conference. Castle told Borisov that some of the things that happened recently caused concern. She didn't report any incidents

to DPS. She said he would be arrested if she put them in writing. She refused to tell him who had accused him and what they had accused him of doing.

- If Dr. Borisov was fired under the category of instructional faculty there should have been a 5.09 hearing.
- Stating that startup funds belonged to Dr. Russell was a breach of contract.
- Dr. Castle, having spent some time as an Associate Provost for Academic and Faculty Affairs should have known university policies regarding reporting misconduct.
- Dr. Castle falsely accused Dr. Borisov of threatening behavior and in fact she says it does not matter whether the allegations are true or not.

#### **4.3.2 Analysis of Meeting with Dr. Castle on September 4th**

In the meeting with Dr. Castle on September 4th accusations were leveled at Dr. Borisov of him being physically threatening. It is apparent that these conclusions were based on information supplied to her by Dr. Russell regarding the conversation that Dr. Russell had with Dr. Borisov two nights before when they were both walking out to their respective automobiles (in an audio recording). While one could argue that Dr. Borisov was not interested in listening to what Dr. Russell was saying at all (the two men were talking past each other by and large) there is no justification to say that based on this incident that Dr. Borisov was physically threatening. A person that felt physically threatened would not wish the other person to “have a good night.” If the incident occurred at some other time then Dr. Castle and Dr. Russell should have taken steps (e.g. contact DPS) at the time the incident occurred and not wait till September 4th. The committee interviewed various other people that have known Dr. Borisov over the years regarding his personality, character and none of these people believed the allegation that Dr. Borisov was or could be a physical threat. The recorded conversations of Dr. Borisov and Dr. Russell on the morning of September 2nd, also has no indication that Dr. Russell ever felt threatened by Dr. Borisov. Dr. Russell calls Borisov an “idiot” at one point in that conversation but there is never the case that Dr. Borisov yelled at Dr. Russell or physically threatened Dr. Russell. Of course, Dr. Borisov knew that the conversation was being recorded whereas Dr. Russell was unaware of the recording. So the likelihood that some rational person would tape-record himself physically threatening another person seems unreasonable. Yet, that is what is claimed by Dr. Castle on the morning of September 4th. Even supposing that Dr. Borisov did not meet the conditions of his employment, which we do not find to be the case, there was no basis for accusing Dr. Borisov of being a physical threat. If Dr. Castle had received complaints of physically threatening behavior by Dr. Borisov she should have followed university policy and immediately investigated and/or contacted DPS.

SPG 601.18: Any member of the University community, contractor, or visitor can report a violation and seek assistance. In addition, employees in positions

of authority (including deans, directors, chairs, supervisors, faculty, graduate student instructors, coaches or others who oversee employees or students) have an obligation to contact the appropriate resources if they see or are informed of violence or threats of violence.

Even if one assumes that Borisov was completely at fault with respect to the job he was supposed to be doing (research) there is no good reason that DPS needs to be called in to escort him out of the building. A simple termination/resignation meeting would have been sufficient. Dr. Castle could have gotten his resignation for September 12th and let Borisov do what ever he needed till September 12th at which time Dr. Borisov would have taken the job in Internal Medicine. The fact that DPS was called without any evidence of threatening behavior indicates that Dr. Castle (and perhaps others) had other motives for getting rid of Borisov. If Borisov had evidence of either plagiarism or grant misconduct then using DPS to force him to vacate the building would give Dr. Castle (and others) the opportunity to destroy any such evidence. Another motive was to confiscate the intellectual property of Dr. Borisov (the data) that Dr. Russell had been demanding for many months. So the fact that DPS was called and forced Dr. Borisov to leave the premises immediately when there clearly was not evidence of Borisov being a physical threat needs an explanation.

**In summary, the committee does not find that Dr. Borisov was a physical threat. This allegation by Dr. Castle was used to justify bringing DPS to the meeting on September 4th, read him the trespass warning and order him to not have any contact with anyone in the Medical School. We find this allegation is reckless and without merit.**

#### 4.4 Analysis of DPS Conduct

DPS was called by Castle to assist in a meeting involving a potential termination of Borisov by Castle. Castle repeatedly claimed threatening behavior of Dr. Borisov in front of the DPS officers. The officers acted upon this claim by Castle as a command by Dr. Castle that because Dr. Borisov was guilty of threatening behavior he should be barred from campus.

- The officers should have investigated the allegations of physically threatening behavior as a complaint rather than as a command.

Officer Dorta handed Dr. Borisov a letter of resignation and asked him to sign it.

- DPS should not have been involved in signing a letter of resignation.

At the meeting Officer Dorta threatened to arrest Dr. Borisov for stalking if he contacted Dr. Russell directly in any form (email, phone, etc.). There was not a restraining order on Dr. Borisov and there was no condition that Borisov would be arrested for stalking if his communications were threatening. This is a violation of his civil rights (freedom of speech) under color of law.

- Officer Dorta should not have threatened to arrest Dr. Borisov for stalking.

Officer Dorta told Dr. Borisov that he would be read a trespass warning while they were still in Dr. Castle's office. He was still a faculty member until September 12, 2008. The officers relied upon an oral statement by Dr. Castle that he was to leave that day (September 4th).

- DPS is **not** supposed to issue trespass warnings to faculty, staff or students unless they are an immediate threat to others. [57]
- Officers told him he was unemployed. Officers should know that a written agreement can not be modified by an oral agreement (Four corners doctrine, agreement is within the four corners of the page).

Dr. Castle testified that Victor Bocalon was sent with the officers to make determinations what was Dr. Borisov's property. Mr. Bocalon was facilities coordinator for the Department of Pediatrics. He could not make determinations of which research documents were the property of Dr. Borisov and which belonged to the University. When that became clear to the officers they did not call Dr. Castle or anyone else for assistance.

- DPS should not get involved in civil matters such as property disputes.

DPS escalated the situation by giving him only 20 minutes to pack. They accused him of lying about his ID badge.

- They should not have escalated the situation. They told him he had only 20 minutes to pack.

If they had not read the trespass warning he would not have been arrested for trespassing. He should not have been read the trespass warning. The officers did not give him an opportunity to submit voluntarily to arrest. The only instruction was "stop resisting, stop resisting stop resisting." Dr. Borisov was confused as to what was happening and the officers used excessive force to subdue him. They did not fill out the officer subject resisting/ officer control report. There is no record of any investigation of Dr. Borisov's injuries or the use of force.

- Dr. Borisov was falsely arrested for trespassing.
- He was falsely arrested for resisting arrest. Case law says that resisting an unlawful arrest is not unlawful.
- The officers and department did not follow procedures for use of force reporting.

A charge of attempted assault of a police officer was added on September 30th, 2008. This was based on the officers report that he had rushed them, tried to run out of the room with the bag. The careful listening of the tape does not support the Officer Dorta's contention that he crashed into them with the intent of making a run of it.

- Dr. Borisov was falsely charged with attempted assault.

According to the chain custody document Officer Lucas checked out Borisov's tape recorder on September 15th and did not return it until November 4th 2008. It seems unlikely that having the tape recorder checked out for six weeks by a police officer is appropriate. Perhaps the prosecutor should have had access to this evidence but it is unclear why the police officer needed access to the tape recorder for six weeks.

- There was likely mishandling of evidence by DPS.

**Summary:** DPS was called for a civil standby procedure where DPS officers goal should have been to keep the peace. They incorrectly interpreted Dr. Castle as commanding them to read the trespass warning when they should have known that Dr. Borisov was still an employee. Dr. Borisov understood that he was still an employee until September 12, 2008. Dr. Borisov never posed a threat and as a faculty member at the time should have been allowed in his office and have personal freedom to conduct his normal business, at least until his resignation was in effect. DPS officers should understand that University faculty should not be arrested for trespass, unless extenuating circumstances exist (DPS Policy and Procedural Order Section III.B.3). Thereafter, he could he only be charged with trespass if he violated some other part of the trespass statute. Thus, their arrest of Dr. Borisov for trespassing was not warranted. His alleged resisting their unwarranted arrest does not constitute means for denying Dr. Borisov his reputation.

#### 4.5 Analysis of University Personnel Conduct

Dr. Borisov, shortly after receiving a performance review letter that he believed inaccurately portrayed him as not writing any text for the internal pediatrics grant, and having his appointment on the R01 changed, began complaining to Medical school personnel at the Department level and Dean level, to personnel in OVPR and the Provost's office. His complaints were regarding one faculty member taking credit for what another faculty member had done as well as issues regarding misreporting of effort on research grants. Ms. Nowack in OVPR met with Dr. Borisov in early December 2006. However, she did not keep any record or document of that meeting nor did she follow up on that meeting. She could have and should have written a letter summarizing the events of the meeting and that her recommendation was to meet with Dr. Frumkin and Mr. Sharphorn. Instead she sent Dr. Borisov to Dr. Frumkin and Mr. Sharphorn and did not document any of the allegations presented to her by Dr. Borisov. If Dr. Borisov had really refused to leave her with



any documents she should have written a letter to Dr. Borisov acknowledging the meeting and that he refused to leave her with documents and stating that no inquiry would be made at this time because the documents were not available. Given the evidence of Dr. Borisov's complaint in the school of medicine we believe that Dr. Borisov made serious allegations to Dr. Rocchini, Dr. Thorson, Ms. Nowack, Dr. Frumkin and Mr. Sharporn that there was misconduct of the nature that falls under the policy on integrity of scholarship (see <http://www.drda.umich.edu/policies/um/integrity.html>). As such, these University personnel should have started an inquiry into the possible wrong doing per article II of the Policy on Integrity of Scholarship.

The evidence also strongly suggests that Dr. Frumkin played a role in the termination of Dr. Borisov. He was copied by Castle on the letter sent to Borisov on September 8th. Furthermore Castle mentions that University personnel are on board with the termination.

#### **4.6 Analysis of OVPR Interpretation of University Policy**

The committee met with Ms. Nowack and Vice President Forrest in the Fall of 2009. The meeting was agreed to if the topic of the discussion was not with respect to the specific complaint of Dr. Borisov but of University Policy. VP Forrest and Ms. Nowack were asked about the Integrity of Scholarship policy. Specifically how the offense of plagiarism is interpreted. The definition of plagiarism in the policy statement is

(2) Plagiarism: taking credit for someone else's work and ideas, stealing others' results or methods, copying the writing of others without proper acknowledgment, or otherwise falsely taking credit for the work or ideas of another;

VP Forrest said they interpret this to mean to exclude disputes between two faculties members about credit for work. In particular they appear to adopt the language (<http://ori.hhs.gov/policies/plagiarism.shtml>) from the The Department of Health and Human Services Office of Research Integrity (ORI) that states

ORI considers plagiarism to include both the theft or misappropriation of intellectual property and the substantial unattributed textual copying of another's work. It does not include authorship or credit disputes.

Clearly the plain reading of the language from the University Policy on Integrity includes credit disputes ("falsely taking credit for the work or ideas of another") whereas the ORI does not include credit disputes. VP Forrest clearly stated that OVPR interprets the University Policy to conform to the ORI policy which does not include credit disputes. If the University is going to interpret its policy outside the plain language of the policy then the University should change the policy. The Borisov incident definitely included a dispute about taking credit for work or ideas of another. The University is falsely claiming to have a policy regarding this issue but in actuality does not adhere to its own policy.

## 4.7 Analysis of Retaliation

Borisov complained to Dr. Rocchini, Dr. Castle, Assistant Dean Thorson, Ms. Nowack, Dr. Frumkin, Mr. Shaphorn at various times starting at the end of 2006. Assistant Dean Thorson communicated those complaints to Dr. Castle. Dr. Borisov wrote a rebuttal letter to his August 2007 review. He also wrote the actual time spent on grants on his time sheets, in spite of Dr. Russell's reduction in support on various grants. Dr. Castle had predetermined the outcome on June 10th, 2008. University administrators went through a pro-forma period during which Dr. Borisov could potentially "improve" his performance whereas they had already decided that his position was to be terminated. Dr. Castle was in communication with Dr. Gyetco and Dr. Frumkin at the time of Borisov's firing/termination. The claim by Dr. Castle that Dr. Borisov was a physical threat to others was knowingly false. These false accusations of misconduct were a tactic to immediately remove Dr. Borisov from University employment without due process. There was no other justification for them to remove him. If they had allowed Dr. Borisov to remain employed till September 12th, he would have taken a position in Internal Medicine beginning at that time or earlier. Then he would have been able to, in an orderly manner, retain control of his scholarly works, data, specimens and personal property, personal freedom. However, at that point Dr. Borisov would have been more insulated from potential retaliation by Dr. Castle since he would no longer be in her department.

## 4.8 Analysis of Office of Vice President for Research

The OVPR did not follow university policy in responding to serious allegations made by Dr. Borisov in 2006 and by Dr. Smith in 2008. In addition, OVPR does not follow University policy regarding plagiarism.

## 5 Conclusion

The faculty hearing committee has answered the specific charge as follows.

1. Was Dr. Andrei Borisov wrongfully deprived of intellectual and personal property or academic freedom?

**Dr. Borisov was deprived of intellectual property. He was deprived of personal freedom. He was deprived of academic freedom.**

- He was deprived of intellectual property in that unpublished manuscripts and other scholarly works were confiscated.
- He was deprived of personal property in that items belonging to him, including instruments, personal specimens, books and journals were never returned to him

- He was deprived of academic freedom in that he was forced to turn over data that he generated on start-up funds that should have been under his control yet was repeatedly asked to turn over the data to another faculty member. He was not allowed to do the “work he chooses to do.” This eventually led to his termination/forced resignation.
  - DPS did not follow university policy. They issued a trespass warning and arrested a research assistant professor with a valid appointment. They did not investigate allegations made by Dr. Castle.
2. Does the evidence indicate that university personnel followed university policy in the area of academic integrity?

**No. Evidence indicates that university personnel did not follow university policy**

- OVPR did not follow university policy. The policy regarding plagiarism in the SPG is pretty clear. However, OVPR does not, in fact, follow this policy. They follow the ORI policy.
  - Medical School personnel did not follow university policy. Numerous allegations of misconduct were made by Dr. Borisov but medical school personnel never did an inquiry.
  - Associate Vice Provost and Senior Director Academic Human Resources Jeffery Frumkin did not follow university policy. The allegations of misconduct made by Dr. Borisov to Mr. Frumkin should have at least triggered an inquiry.
  - Dr. Frumkin was likely consulted at various points in the events regarding Dr. Borisov. He was copied on many of the letters and emails. The Provost office is mentioned as having approved various actions of the department including calling in DPS for the termination. It is likely that he was consulted on these matters.
3. Does the evidence indicate that Dr. Borisov was retaliated against for reporting wrongdoing?

**Yes.**

- His offer letter included a promise to support him through November 30, 2009. This was changed in [50] the letter from Castle to Borisov on September 20, 2007 to be only through July 1, 2008.
- They removed his DAF funds from his control to being controlled by Russell (Review in August 2007).
- They interfered with his ability to find other jobs; in particular the June 6th letter was circulated to the internal medicine department.

- They prematurely terminated his position.
  - They brought up false charges (physically threatening, falsifying time cards).
  - They called DPS to read him a trespass warning without any reason to suspect physically threatening behavior.
  - In Russell and Borisov conversation, Russell clearly states that the rebuttal to his 2007 review was the reason for his problems.
  - Letter from Russell to Borisov August 28, 2008 states that the situation is the result of a rebuttal letter.
  - Recorded conversation of Russell states they are using firing to get the data.
4. Does the evidence indicate that university personnel wrongfully deprived Dr. Borisov of reputation and credibility

**Yes.**

- The university (through DPS) pressed criminal charges against Dr. Borisov holding him up to public scorn and ridicule including newspaper reporting.
- Within the university his reputation was tarnished by the June 6, 2008 letter from Castle. [10]
- Up until the trial and acquittal he was unable to apply for new positions without worrying about whether a background check would reveal the arrest and pending charges.
- Dr. Castle accusations of Borisov physically threatening behavior in the presence of Maydis Skeete and the DPS officers deprived Dr. Borisov of reputation and credibility.
- Dr. Castle met with faculty and staff on September 5th stated that “as a result of his actions” Dr. Borisov was not to come to the 8th floor. This clearly tarnished his reputation and credibility.
- The refusal of Chief Magee to lift the trespass order completely and his contention that there is still an established fear of Dr. Borisov deprives him of his reputation and credibility.

The FHC finds that there is clear and convincing evidence that Dr. Borisov’s allegations regarding misconduct by medical school personnel that he communicated to numerous university personnel led to retaliation including his unwarranted dismissal involving DPS personnel. This is a clear violation of the Integrity of Scholarship statement of the University. There is also clear and convincing evidence that the University was irresponsible in regard to complying with federal regulations. They did not seek approval for significant changes in key personnel on a grant and they did not keep documents related to time and effort reporting for personnel supported by an NIH grant.

## References

- [1] *Appointment Letter to AB as Research Investigator*, July 16 2002.
- [2] *Appointment letter to AB from MR,AR,VC*, January 25 2005.
- [3] *Email from Kim Leahy to Valerie Castle*, June 14, 2004.
- [4] *Career Development Plan*, June 2004.
- [5] *Review letter to AB from VC*, August 25 2006.
- [6] *Letter from VC to AB with performance evaluation*, August 27, 2007.
- [7] *Letter from VC to AB with copies to JF and MG*, June 6, 2008.
- [8] *Email from VC to JT*, June 10, 2008.
- [9] *Resignation letter from AB to VC andMR*, September 4, 2008.
- [10] *Draft Offer Letter from Internal Medicine to AB*, June 10, 2008.
- [11] *Letter from VC to AB with copies to AR, MG, JF and MS*, September 8, 2008.
- [12] *Email between VC to AR*, August 27,28 2008.
- [13] *Email between Dr. Victor Thannickal and Cheryl Sweetland*, June 24-30, 2008.
- [14] *Emails between Russell and Borisov*, February 24, 2004.
- [15] *Proposal Approval Form (PAF) for NIH R01 grant*, February 26, 2004.
- [16] *Statement by Dr. Borisov*, June 18, 2009.
- [17] *Review A of R01 proposal*, 2004.
- [18] *Results of a PubMed search*.
- [19] *List of publications by Dr. Borisov related to cardiac myocytes*.
- [20] *FOIA response from NIH with NGA for RO1 grant*, April 22, 2009.
- [21] *Funding sources for Dr. Borisov's salary*.
- [22] *Letter from MR to AB*, October 2006.
- [23] *ESNAP Report for Budget Period March 1, 2007-Feb. 29, 2008*, January 16, 2007.
- [24] *NIH Grants*. [http://grants1.nih.gov/grants/policy/nihgps\\_2003/nihgps\\_2003.pdf](http://grants1.nih.gov/grants/policy/nihgps_2003/nihgps_2003.pdf).

- [25] *Notice of Grant Award for 3/1/2006-2/28-2007*, March 2, 2006.
- [26] *Notice of Grant Award for 3/1/2007-2/29/2008*, March 8, 2007.
- [27] *Notice of Grant Award for 3/1/2008-2/28/2009*, November 13, 2008.
- [28] *Notice of Grant Award for 3/1/2008-2/28/2010*, February 2, 2009.
- [29] *Email from Dr. Russell to Dr. Borisov*, November 8, 2006.
- [30] *Email from Dorothy Nalepa to AB*, February 2, 2007.
- [31] [http://projectreporter.nih.gov/project\\_info\\_results.cfm?aid=7021382](http://projectreporter.nih.gov/project_info_results.cfm?aid=7021382), February 12, 2010.
- [32] *PAF for*, June 25, 2004.
- [33] *Response to FOIA of NIH regarding any notification of change in personnel regarding the R01 grant*, May 2009.
- [34] *Emails between MR and AB*, November 22-28, 2006.
- [35] *Review letter to AB from VC*, August 25 2006.
- [36] *Bimonthly review covering 10/1/2006-11/30/2006*, December 2006.
- [37] *PAF for MDA grant*, Jan 12, 2004.
- [38] *Emails between Donna Wilkin and Julie Feldkamp*, March 1 2005.
- [39] *Email from Aliaa Abdel-Gawad (MDA Grants Coordinator to Russell*, March 9, 2005.
- [40] *Emails between Donna Wilkin and to Julie Feldkamp*, Jan 30, 2007.
- [41] *Letter from MR to MDA*, Jan 30, 2007.
- [42] *Email from Dr. Russell to Dr. Borisov*, June 19, 2008.
- [43] *Emails from Russell to Borisov*, April 22, 2004.
- [44] *Email from Dr. Russell to Dr. Borisov*, May 11, 2004.
- [45] *Evaluation by Dr. Rocchini*, June 2007.
- [46] *Email from Dr. Thorsen to Dr. Eva Feldman*, July 9, 2007.
- [47] *Email from Dr. Borisov to Dr. Castle*, August 14-17, 2008.
- [48] *Email from Dr. Russell to Dr. Borisov*, August, 23 2007.

- [49] *Letter from AB to VC regarding AB's Annual Review*, September 7, 2007.
- [50] *Response letter from VC to AB regarding AB's Annual Review*, September 20, 2007.
- [51] *Email from AB to JT regarding AB's Annual Review*, September 20, 2007.
- [52] *Email from AB to MR*, June 4, 2008.
- [53] *Email between VC to AR*, August 27,28 2008.
- [54] *Letter from Dr. Castle to Dr. Borisov*, September 8, 2008.
- [55] *Emails between AB and JT*, January 23, 2008.
- [56] *Email from Dr. Borisov to Dr. Rocchini*, December 1, 2006.
- [57] *Police Reports regarding the Borisov matter*, February 5, 2010.
- [58] *Reply Brief*, October 26, 2008.
- [59] *Letter from Prof. Kate Barald to the FHC*, April 19, 2010.
- [60] *Response from DRDA*, February 12, 2010.
- [61] *Response to FOIA request for time and effort reporting*, January 25, 2010.
- [62] *Letter from MR to AB*, May 15, 2008.
- [63] *Email from AB to FHC*, January 30, 2009.
- [64] *Letter from Dr. Smith to President Coleman*, September 21 2009.
- [65] *Response to request for an inquiry under SPG303.3*, January 2010.
- [66] *Email from General Counsel Scarnetchia to Wayne Stark*, February 6 2010.
- [67] *Email between Julie Feldkamp and Donna Wilkin*, January 30, 2007.