

To: Faculty Grievance Hearing Panel (FGHP)

From: Christopher J. Melcher
Executive Vice President for Legal Affairs and
Risk Management/General Counsel

Date: March 4, 2016

RE: Written Statement and Exhibits Submitted as Part of the Official
Record For March 4, 2016 Hearing on Hegde Complaint.

I respectfully submit this Written Statement, the Attached Exhibits A-M, and the IACUC Handbook, 3rd Ed. (2014) to be included as part of the Official Record to be considered by the Faculty Grievance Hearing Panel (FGHP) in their consideration of the Hegde Complaint, filed on November 3, 2015. I fully support and respect the role of the FGHP and the Faculty Grievance Policy in its resolution of intramural faculty disputes, and the important role it plays in seeking to resolve valid and appropriate grievances brought forward by faculty members.

Due to the fact that Hegde has retained an attorney and publicly stated his intention to file a lawsuit against the University regarding his complaint, as University Legal Advisor I am unable to participate in person in the Hegde Complaint Hearing and therefore submit this written statement and relevant exhibits for your consideration. I would add that I have never met Hegde personally, nor have I ever spoken with him. Indeed, I joined the University on September 15, 2014, well after the key events in his Complaint and after the prior investigations were begun.

Thank you in advance for your careful and objective review of the facts in this matter, and for your important role in ensuring that the Faculty Grievance Process is properly implemented and not abused by persons seeking to pursue unjustified and false claims for personal advantage.

1. The Hegde Complaint Has Already Been Thoroughly and Exhaustively Investigated by Six (6) Entities, Including Federal And State Agencies.

Hegde's Complaint asks the FGHP for one primary "remedy" - recommend to the University "administration" that they refer this Complaint to "federal and state prosecutors for an independent external investigation", with the "close involvement" of the Faculty Senate. As the facts show, this matter has been thoroughly investigated by **six (6) separate entities**: (1) the National Institute of Health/Office of Lab Animal Welfare (OLAW), (2) the National Science Foundation (NSF), (3) the Association for Assessment and Accreditation of Laboratory Animal Care (AAALAC), (4) the Georgia Office of Economic Opportunity (GOEO), (5) the

University Compliance Office, and (6) the University Research Division and IACUC. The Research/IACUC investigation further involved outside independent veterinarians, scientific experts in the field, a necropsy investigation, and technical experts in the field. In each of these six (6) separate investigations into Hegde's Complaint by the federal and state agencies, by international independent accrediting agencies, and by the University offices and entities charged with reviewing and investigating whistleblower and research misconduct complaints, every single investigation has conclusively determined that there is **no validity to any of claims in the Hegde Complaint.**

Attached to this Statement is a "Timeline of Key Events re: Dr. Hegde", Exhibit A, which recounts the significant facts in this matter regarding Hegde's full access to and participation in the prior investigations (OLAW, NSF, AAALAC, GOEO, Compliance, Research/IACUC), as well as Hegde's full access to all relevant information in this matter (6 Open Records Act Requests as of November 2015, with several additional ORR's from Hegde through February 2016). In addition to Exhibit A, I hereby submit additional documents to support the record (Exhibits B-L) that are attached to this Statement and show Hegde's personal notice and participation in the various prior investigations.

Given the undisputed acts, and the prior investigations, there is no basis and no need for a referral to any additional office or agency for further investigation.

2. False Allegations in Hegde Complaint re Melcher.

Hegde makes two primary false allegations against myself on pages 27 and 28 (of 50) in the Hedge Complaint.

- a. "VP Norton and Melcher set up three (3) additional investigations." That is a false statement, and Hegde is fully aware that he has intentionally made a false allegation. I have never "set up" or requested any investigation into this matter. The six (6) investigations that have been conducted in this matter – OLAW, NSF, AAALAC, GOEO, Compliance, and Research/IACUC -- were all initiated and conducted independently of myself and the Office of Legal Affairs. Hegde participated personally in each and every one of those investigations, and was given full access to the investigation reports and all underlying documents. Hegde knowingly and intentionally has made false statements about my actions.
- b. "Mr. Melcher, insisted, self-evidently falsely [sic], GRU had fully complied with all [Hegde's] prior requests for information". Hegde has submitted at last count eight (8) separate Open Records Requests (ORR) to the Office of Legal Affairs under the Open Records Act – several submitted by his attorney on his behalf. The Office processes these requests under Georgia Law, and they are promptly handled and completed by the attorneys and the staff in the office without my direct involvement.

Hegde knows this since he has personally interacted with several attorneys in the Office (Greg Bryan, Anthony Hightower, Brett Montroy) and with the Office Coordinator (Denise Webster) for updates, payment of fees, and delivery of documents – both in person and by email.

All Hegde requests have been fully researched, and all relevant documents in University possession have been provided if they are relevant and not exempt by reason of privilege or confidentiality. Hegde has submitted multiple requests at different times – which necessarily has resulted in the production of different responsive documents. Hegde has intentionally made false statements about my actions, knowing that the Office has fully complied with his request and the requests of his attorney on all ORR matters.

3. Under federal law, IACUC Decisions May Not Be Reviewed or Challenged in University Grievance Proceedings.

The federal Animal Welfare Act was amended in 1985 to require research facilities that used laboratory animals to establish a Committee to assess animal care treatment and practices in experimental research, and to represent society's concerns regarding the welfare of the animals used in those facilities. The Committee was later named the Institutional Animal Care and Use Committee (the IACUC). See The IACUC Handbook, 3rd Ed., edited by Silverman, Suckow, Murthy (2014). The IACUC at each facility is monitored and oversee by two federal agencies, USDA/OLAW and NIH. The IACUC is further overseen and managed at the facility by the "Institutional Officer" (IO), who at Augusta University is Dr. Michael Diamond. See IACUC Handbook, p. 39. The IACUC is the entity at a research facility charged to review and approve research protocols, subject to review by the IO. See IACUC Handbook, Chapter 3. The IO may apply more stringent requirement to a research protocol, but is not permitted to overrule the IACUC and permit a less stringent protocol that undermines the welfare of the animals. See IACUC Handbook, Chapter 4.

A researcher who is dissatisfied with the IACUC decision on his/her protocol – like Hegde in this Complaint – may appeal to the IACUC for reconsideration.

"Nevertheless, IACUC decisions to withhold approval may not be overturned by a higher institutional authority." See IACUC Handbook, Chapter 9, Sec. 9:56, page 167. The federal law, the Animal Welfare Act, expressly states that **"officials of the research facility [including both administrators and faculty] may not approve an activity involving the care and use of animals if it has not been approved by the IACUC."** See IACUC Handbook, Chapter 9, Sec. 9:59, page 168.

Therefore, Hegde's Complaint, to the extent he seeks to have the IACUC decision regarding his research protocol to be reviewed or overturned by the FGHP, is invalid as a matter of federal law and must be rejected.

4. Under the Faculty Grievance Policy, Hegde's Complaint does not meet the Definition or Requirements of a "Grievance" and Must be Dismissed.

I request the FGHP consider the Grievance Policy and the attached Exhibit M, which I hereby submit as part of the Official Record of this Hearing, and find that the Hegde Complaint fails to meet the requirements of the Policy and must be dismissed.

Conclusion

I request that the FGHP deny in its entirety Hegde's Complaint and his request for a "referral" for further investigation. I request that the FGHP also find that the Hegde Complaint (1) has no basis in fact or law and is without merit, and (2) is not a "grievance" under the Policy and therefore should also be dismissed as invalidly filed. I further request that the FGHP recommend that the Faculty Senate formally censure Hegde for intentionally bringing false claims, in bad faith and with knowledge of their falsity, and intentionally making false and slanderous allegations against University employees, faculty, and staff.

Thank you for your consideration and your careful deliberations.

March 3, 2016

Augusta University Faculty Grievance Hearing Panel

In care of:

Todd Hoffman, Ph.D.

Grievance Hearing Officer

Associate Professor

Department of English and Foreign Languages

1120 15th Street, AH E237

Augusta, Georgia 30912

RE: Hegde Grievance Response

Dear Dr. Hoffman, Dr. Bolgla, Dr. Braxton, Dr. Crawford, Dr. Deaner, and Dr. El-Marakby,

Thank you for your service as Grievance Hearing Officer (Hoffman) and as grievance panel members. In accordance with the Faculty Grievance Policy which allows respondents to respond in writing, this letter serves as my response to the grievance filed by Dr. Jay Hegde.

As you consider this matter, would like to note for the record that I have never met Dr. Hegde in person. I don't know who he is and while he has been described to me, I have never seen him that I know of to recognize him. My only interactions with him have been through email.

Dr. Hegde has alleged in his grievance statement that Mr. Chris Melcher and I set up three "additional investigations. One by Mr. Glenn Powell..., one by the IACUC, and one by Ms. Norton and Mr. Melcher." (See page 27, section B.14.10 of Dr. Hegde's grievance statement)

None of these allegations are true. Mr. Melcher and I did not set up any investigations. Upon receipt of Dr. Hegde's initial email on April 3, 2015, we met with individuals who had been dealing with Dr. Hegde's various concerns at various times between April and early July. We learned from them what their activities had been and the status of their work in response to him. It appeared to us based on those meetings that he had four general concerns. Therefore, we responded on each of those concerns. It was clear from information provided that several individuals were involved at different levels – some were responding to concerns, some were attempting to advise him on what he needed to do to resume his research, some were attempting to care for the monkey. From what I observed, all were interested in helping Dr. Hegde but were also frustrated at his unwillingness to help himself.

I will address each allegation specifically. First, Mr. Glenn Powell was not directed by Mr. Melcher or me to conduct an investigation. Mr. Powell had received a complaint that had been filed by Dr. Hegde with the Georgia Commission on Equal Opportunity (GCEO). When notices of complaints are received by the University, it is Mr. Powell's job to gather the necessary information to respond to the specific questions provided by the GCEO. To my knowledge, Mr. Powell followed the standard protocol he always follows and gathered the necessary

information and submitted a response. He did not conduct his own investigation. Also, it is important to note that at the time Mr. Powell received notice of the complaint from GCEO, he did not notify me of the receipt and so I did not even know about the matter. As a matter of practice, Mr. Powell does not necessarily let me know if notice is received from the GCEO unless it's an employment related matter and he requires copies of documentation held by Human Resources. Thus, he did not notify me that he'd received notice of this complaint nor did he consult with me as he gathered the necessary information required to respond. As I previously stated, Mr. Powell gathered the necessary information in response to this request and he provided it as we are required to do. Again, there was no investigation and we did not direct that there be an investigation. Enclosed for you is a statement from Mr. Powell describing his process and confirming that neither Chris Melcher nor I directed that he conduct an investigation (See Exhibit A). I believe this to be a misunderstanding on the part of Dr. Hegde as to how these complaints are handled.

With regard to the allegation that Mr. Melcher and I set up an investigation by the IACUC, this too is inaccurate and a false allegation. Mr. Melcher and I did not direct that the IACUC conduct an investigation. Rather Dr. Hegde already had an ongoing complaint with the IACUC and we simply identified that they were in the process of responding to his concerns. It is my understanding the statements that Drs. Brands and Stepp are submitting will confirm this. Also, attached is a statement from Dr. Stepp, who chaired the IACUC until June 30, 2015, independently confirming this (See Exhibit B). Like the allegation related to Mr. Powell, I believe this to be a misunderstanding on the part of Dr. Hegde as to how these complaints are handled.

While Dr. Hegde did not allege that we directed Jim Rush to conduct an investigation, I would also offer that Chris Melcher and I learned that Jim Rush was conducting an investigation at Dr. Hegde's request. According to Mr. Rush, that investigation was completed in accordance with Mr. Rush's office protocol and found no wrongdoing.

Finally, Mr. Melcher and I did not conduct our own investigation. We met with those who had information about his concerns and we responded to him with the information we had gathered. During the process of learning about what had transpired, we were advised that various parties had responded to him on multiple occasions through the official processes for those concerns. There was nothing for Chris Melcher or me to investigate as other offices were already appropriately addressing Dr. Hegde's various concerns. I only confirmed that the offices with responsibility for addressing his other concerns had either done so or were in the process of finalizing their work. I responded to him with information on the status of his various concerns only. That is the extent of my involvement. I still have no understanding of what his concerns are with me.

Also, I am unaware of any employment related action that has adversely affected Dr. Hegde and I certainly have not taken any employment action and I do not have the authority to do so. In fact, my understanding is that Dr. Hegde has not suffered any negative employment actions, but rather he received a salary increase of 4% effective last July 1, 2015 for his performance.

(See Exhibits C & D which are contracts for Dr. Hegde for FY 2015 and FY 2016 that I obtained under the Georgia Open Records Act.) For context, the merit pool for increases effective July 1, 2015, was 1% per the University Budget Office. Therefore, I am not aware of any adverse employment action that has affected Dr. Hegde.

In closing, I would like to reiterate that neither Chris Melcher nor I directed that any investigations be set up nor did we conduct an investigation. I have never been involved in anything that could be construed as a cover-up and have no knowledge of any efforts to cover anything up. I literally have no understanding of why Dr. Hegde believes I have somehow wronged him. I'm very sorry that he lost one of his monkeys but I had nothing to do with that then nor have I had anything to do with that since. I also am sorry that he could not agree to follow the feeding protocol approved by the IACUC as I understand was communicated to him, but I also had nothing to do with that then and do not have anything to do with it now.

Thank you again for your service on this important panel and for your commitment to faculty governance. I am also supportive of faculty governance and have always been and remain committed to fairness for all.

Sincerely,

A handwritten signature in blue ink that reads "Susan A. Norton". The signature is fluid and cursive, with the first name "Susan" being more prominent than the last name "Norton".

Susan A. Norton, M.S., SPHR
Vice President, Human Resources
Augusta University

Enclosures: Exhibit A – Glenn Powell Statement
Exhibit B – David Stepp Statement
Exhibit C – 2015 Faculty Contract for Dr. Hegde
Exhibit D – 2016 Faculty Contract for Dr. Hegde

In my capacity as Director of the Office of Employment Equity, I respond to employment discrimination, harassment, and retaliation charges that arise from the U.S. Office of Equal Employment Opportunity Commission. When a discrimination charge is filed with a state agency like the Georgia Commission on Equal Opportunity (GCEO), which provides additional state protections against employment discrimination, the EEOC will share concurrent jurisdiction.

Dr. Hegde had utilized this process when he filed a complaint of discrimination with the GCEO in March, 2015, in which the Board of Regents of the University System of Georgia was listed as respondent. Because the allegations concerned events which had occurred at Augusta University (formerly Georgia Regents University), the charge was forwarded to my office to provide a response.

When an employee presents allegations of employment discrimination to my office (internal complaint), my office typically undertakes a formal investigation which involves a series of formal interviews with the complainant, witnesses referred by the complainant, the accused employee(s), witnesses referred by the accused, and former employees who may no longer work at our location. I also review written and verbal documentation which may be available. With the internal complaint, interviews comprise the most time-consuming element of the investigation, which is why most internal investigations are rarely completed in less than 30 days.

External charges, on the other hand, which are received from the GCEO, do not involve a formal investigation. The GCEO normally requires a response from the respondents to a series of questions (interrogatories) within 15 calendar days. The interrogatories focus on questions about the specific allegations, the individuals involved, and the available relevant documentation.

It is important to note that there is not a formal investigation undertaken in the case of charges received from the GCEO or the EEOC. We do not question the complainants or their witnesses, or receive any written or verbal documentation from the complainants.

Also, when responding to charges received from an external agency, it is important to note that my office is solely responsible for responding to the interrogatories. In responding to external agency charges, my office does not take direction from any internal function at Augusta University. It would be inaccurate to state that my office has undertaken an investigation to an external charge based solely on direction from either Human Resources or Legal Affairs.

And, to be clear, it is totally incorrect to conclude that I, or anyone in my office, initiated an investigation concerning Dr. Hegde on the basis of a directive from either Human Resources or Legal Affairs.


Glenn R. Powell


Date

Director, Office of Employment Equity
System Equal Employment Opportunity Officer
Augusta University

STATEMENT REGARDING NORTON ROLE IN HEGDE GRIEVANCE AND THE IACUC

This statement is provided in response to charges in the complaint to the Faculty Senate Grievance Committee brought by Dr. Hegde involving Susan Norton, Vice-President for Human Resources. Specifically it is stated that VP Norton initiated investigation into affairs of related to the case include the EEOC office and the IACUC. In terms of the IACUC, Ms. Norton's involvement has been over-stated in the grievance. In April of 2015, Dr. Hegde included the VP in correspondence related to a number of parallel processes related to the loss of an animal during a surgical procedure and the management of his animal protocol between January of 2014 and that date. He has alleged that actions taking by the IACUC and institution to fulfill their federally mandated responsibilities to oversee animal welfare are limiting and damaging to his research program and that institutional officials such as Ms. Norton were complicit in this process as accessories after the fact in a "cover-up".

For the record, Ms. Norton's participation in the April meeting originated purely from being included in email chains initiated by Dr. Hegde. At that meeting, Ms. Norton availed herself of the assembled expertise to understand the actions taken and what resolution to other inquiries had been made. As HR has no oversight of the IACUC and Ms. Norton is cognizant of her role and appropriate actions on her part, she in no way acted to initiate any investigations, inquiries or follow-ups to IACUC actions. To my knowledge, after that meeting, she conducted no inquiries and has conducted herself professionally throughout the duration of Dr. Hegde's allegations. At no point did we witness Ms. Norton engaging in improper inquiry and the suggestion that she might have done so on behalf of either the institution or Dr. Hegde is patently false.

A handwritten signature in blue ink that reads "David W. Stepp". The signature is written in a cursive, flowing style.

David Stepp
Past-Chair, IACUC