

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.