



Online Ethics Center  
FOR ENGINEERING AND SCIENCE

# Federal Policy on Research Misconduct

Annotated by Dr. Ken Pimple

## **Author(s)**

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## **Year**

2017

## **Abstract**

An annotated explanation of the 2005 Federal policy on research misconduct.

## **Body**

Department of Health and Human Services. 2005. "42 CFR Parts 50 and 93: Public Health Service Policies on Research Misconduct; Final Rule." Federal Register 70(94):28,370-28,400 (Tuesday, May 15) <https://www.gpo.gov/fdsys/pkg/FR-2005-05-17/pdf/05-9643.pdf> (verified 09/23/2017)

The material in the box below comprises an exact quotation from page 28,386.

Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or publishing research, or in reporting research results.

(a) Fabrication is making up data or results and recording or reporting them.

(b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(d) Research misconduct does not include honest error or differences of opinion.

### **§ 93.104 Requirements for findings of research misconduct.**

A finding of research misconduct requires that-

(a) There be a significant departure from accepted practices of the relevant research community, and the misconduct be committed intentionally, knowingly, or recklessly; and

(b) The misconduct allegation be committed intentionally, knowingly, recklessly; and

(c) The allegation be proven by a preponderance of evidence.

(c)>

## **Legal terms**

adapted from <http://encyclopedia.thefreedictionary.com/culpability>

## **Responsibility**

- If the *goal* and the *result* are the same, the act is **intentional** or purposeful. “intentional” and “purposeful” seem to have the same definition.
- If the actor knows that the result is virtually certain, the act is **knowing**
- If the actor is *aware* that the act *carries a large and unjustifiable risk*, the action is **reckless**

- If the actor is *unaware* that the act *carries a large and unjustifiable risk*, the action is **negligent** If the actor *should have been aware of the risk*

An intentional/purposeful act is also knowing, and a knowing act is reckless

Note that *negligent actions* do not fall under the definition of research misconduct.

### **Standard of evidence**

- preponderance of the evidence - more likely than not; 51+%
- clear and convincing evidence - highly probable
- beyond a reasonable doubt - a reasonable person would not have enough doubt to counter the finding

The *preponderance of the evidence* and *clear and convincing evidence* are the standards in civil law, in which the punishment is usually monetary. Proof *beyond a reasonable doubt* is the standard in criminal law, in which the punishment is often imprisonment.

### **Notes**

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