

UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT

RESEARCH ADMINISTRATION OFFICE

LETTER Information

December 19, 1996

CONTRACT AND GRANT OFFICERS VICE CHANCELLORS - RESEARCH

Subject: Senate Concurrent Resolution No. 66 -- Publication Restrictions

As a result of negative publicity about a publication restriction clause in a University California, San Francisco campus clinical trial contract, State Senator Quentin Kopp sponsored Senate Concurrent Resolution (SCR) No. 66, a copy of which is attached to this memo. SCR 66 requests that The Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing board of each community college district prohibit the institutions under their jurisdiction, or any of the staff or component parts of these institutions, from signing any agreement that requires the permission of an entity outside the institution to publish or otherwise communicate the results of academic research, unless the research involves proprietary information, the release of which would negatively affect the commercial value of the research of the sponsor, provided that the research does not affect the public health or welfare, or unless national security considerations require confidentiality;

While SCR 66 is advisory only, Contract and Grant Officers may find it useful to cite to State agencies, in particular, as well as to other sponsors which insist on language requiring prior approval for reports or publications. The Resolution conveys the sense of the State Legislature's view on publication restriction clauses in awards to State supported higher education institutions.

A general summary of the University's publication policy and guidelines on Right to Results of Extramural Projects or Programs (September 20, 1996) is also attached to this Information Letter for your reference. The full text of these policies is included in Contract and Grant Manual Chapter 1, Academic Policy.

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David F. Mears
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Subject Index: 01, 02
Organization Index: S-005

Attachments

cc: Marc Aarens
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Jay Stowsky

SCR66 <http://www.sen.ca.gov/ER.TXT>; 1/bill/SCR66

SCR 66 Postsecondary education: academic research: "gag clauses"

BILL NUMBER: SCR 66 CHAPTERED 09/11/96

RESOLUTION CHAPTER 83

FILED WITH SECRETARY OF STATE SEPTEMBER 11, 1996

ADOPTED IN SENATE AUGUST 29, 1996

ADOPTED IN ASSEMBLY AUGUST 28, 1996 AMENDED IN ASSEMBLY AUGUST 26, 1996 AMENDED
IN SENATE AUGUST 6, 1996 AMENDED IN SENATE JULY 10, 1996

**INTRODUCED BY Senator Kopp (Coauthors: Senators Ayala, Boatwright, Hayden, Petris, and Solis)
(Coauthors: Assembly Members Bates, Gallegos, Knox, Martinez, Mazzoni, Napolitano, Richter, Speier,
and Sweeney)**

JUNE 26, 1996

Senate Concurrent Resolution No. 66--Relative to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SCR 66, Kopp. Postsecondary education: academic research: "gag clauses."

This measure would urge the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing board of each community college district in the state to prohibit the institutions under their jurisdiction, or any of the staff or component parts of those institutions, from signing any agreement that requires the permission of an entity outside the institution to publish or otherwise communicate the results of academic research, unless the research involves proprietary information, the release of which would negatively affect the commercial value of the research of the sponsor, if the research does not affect the public health or welfare, or unless national security considerations require confidentiality.

The measure would also urge the regents, trustees, board of governors, and governing board of each community college district to contest vigorously the enforcement of any such "gag clause" that may be a part of a contract previously executed by an institution under its jurisdiction or any of the staff or component parts of that institution.

WHEREAS, Recent revelations demonstrate to the Legislature that attorneys for the University of California recently advised one of its distinguished researchers, Dr. Betty Dong, that it could be detrimental to her and the university to contest a contract that she had signed with the corporate sponsor of her research permitting the corporation to suppress an academic manuscript that was to have been published by the Journal of the American Medical Association; and

WHEREAS, The results of the suppressed study would have likely been harmful to the financial **interests** of a major pharmaceutical manufacturer that had financed the study; and

WHEREAS, The contract for the study, entered into between the pharmaceutical manufacturer and Dr. Dong, included a so-called "gag clause"--a provision prohibiting publication of results of the study without the permission of the manufacturer; and

WHEREAS, The existence of a "gag clause" relating to academic research is antithetical to the spirit of free

inquiry that must prevail at all publicly funded California universities; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That, to ensure academic freedom, the Legislature of the State of California urges the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing board of each community college district in the state to prohibit the institutions under their jurisdiction, or any of the staff or component parts of these institutions, from signing any agreement that requires the permission of an entity outside the institution to publish or otherwise communicate the results of academic research, unless the research involves proprietary information, the release of which would negatively affect the commercial value of the research of the sponsor, provided that the research does not affect the public health or welfare, or unless national security considerations require confidentiality; and be it further

Resolved, That the Legislature also urges the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing board of each community college district in the state to contest vigorously the enforcement of any such "gag clause" that may be a part of a contract previously executed by an institution under its jurisdiction, or any of the staff or component parts of that institution; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to each member of the Regents of the University of California, each member of the Trustees of the California State University, each member of the Board of Governors of the California Community Colleges, and the presiding officer of the governing board of each community college district in the state.

"/Senate Home Page ~ Search Bill Text

Senate Rules committee / California State Senate WebMaster@sen.ca.gov

Summary of University of California Publication Policy and Guidelines on Rights to Results of Extramural Projects or Programs (September 20, 1996)

1. It is longstanding UC Policy that freedom to publish or disseminate results is a major criterion of the appropriateness of a sponsored project, and particularly of a research project.
2. University policy normally precludes assigning to an extramural fund source the right to make final decisions about what may be published or to place an unreasonably long or unlimited delay period on the publication or dissemination of the information resulting from the work done under the sponsored project.
3. Chancellors, Laboratory Directors, and Vice Presidents, in their areas of responsibility, may make exceptions to this policy, or recommend exceptions in cases where contract or grant authority has not been delegated, when one or more of the following conditions is met:
 - (a) if security considerations in the national interest are involved;
 - (b) if the work is clearly a "deliverable" such as the production of a manual, book, film, videotape, in other words, a product that the sponsor is "buying" from the University;
 - (c) if special or extraordinary circumstances prevail -- e.g. government requirements restricting the timing or character of publications to protect the national interest -- which do not, however, involve censorship of the results of the project;
 - (d) if the sponsor reserves the first right of publication, but only if there is a provision surrendering this right to the University after a reasonable interval of time, in the event the sponsor has not published within that time.
4. When appropriate, and as necessary background data for a research project, the University may agree to accept a sponsor's proprietary data. The University will agree to use its reasonable efforts not to disclose any agreed-to

proprietary data, but will not be held financially liable for any inadvertent disclosure.

5. University regulations state that particular care should be taken when such a non-disclosure agreement encompasses students working under the Principal Investigator, both to ensure that procedures are in place for making students aware of -their obligations regarding confidentiality (and liability in case of breach) and to ensure that students' progress on theses or dissertations is not impeded.

6. Acceptable non-disclosure agreements should specifically exclude information which: (a) is in the public domain at the time of disclosure to the University or, through no fault or action on the University's part, becomes a part of the public domain subsequent to the date of receipt; (b) is known by the University, as evidenced by appropriate documentation, prior to obtaining the same from sponsor; or (c) was disclosed to the University by a third party having a bona fide right to disclose same to any party.

7. A sponsor may seek a short delay in publication in order to comment upon and to review publications for disclosure of its proprietary data or for potentially patentable inventions. Such a delay in publication should normally be no more than 60 to 90 days.

8. In short, while the University does allow a prepublication review, will protect patentable subject matter until protection is filed, and will remove the sponsor's proprietary information, such considerations are given only if the University retains the right to publish findings and disseminate the research results to other researchers for scholarly purposes.

9. If there is any doubt concerning an exception to a particular case, it should be resolved either by refusing to accept an award containing a restrictive clause, or by referring the problem to the Office of the President for resolution.

Questions concerning this policy and other academic policies pertaining to research should be addressed to Director, Research Policy and Development, University of California, Office of the President. Phone: (510) 987-9428.