

STATE OF WISCONSIN

CIRCUIT COURT COUNTY OF DANE

05 NOV -7 PM 3:00

DANE COUNTY, WI

Goran Hellekant, individually
and in his official as a
member of the Faculty of the
University of Wisconsin-Madison
1201 Brookwood Rd.
Madison, WI 53711,

Plaintiff

v.

John Wiley, in his official
capacity as Chancellor of the
University of Wisconsin-Madison
500 Lincoln Drive
Madison, WI 53706,

Defendant.

Case No. **05CV3652**

Case Code: 30701

Declaratory Judgment

COMPLAINT

Now comes the plaintiff, by Steven C. Underwood, his attorney, and for a cause of action against the defendant above-named, alleges and shows to the court as follows:

1. The plaintiff Goran Hellekant is an adult individual and a member of the faculty of the University of Wisconsin-Madison (UW-Madison). He sues individually and in his official capacity as a member of the Faculty of the UW-Madison which derives its powers from Sec. 36.09(4) Wisconsin Statutes. He resides at 1201 Brookwood Rd., Madison, Wisconsin. He has served on the Faculty of the UW-Madison for greater than 15 years.

2. Plaintiff is currently and openly engaged in research using animals at the UW-Madison, uses grants in research and has published many treatises on scientific

studies which have required the use of animals to reach the studies' results.

3. The defendant John Wiley is an adult individual and the Chancellor of the UW-Madison whose powers are derived from Sec. 36.09(3) Wisconsin Statutes. He has a business address of 500 Lincoln Drive, Madison, Wisconsin. He is sued in his official capacity as Chancellor.

4. This action is for declaratory judgment as that term is described in Sec. 806.04 Wisconsin Statutes.

5. Pursuant to the Wisconsin Administrative Code, Chapter UWS 6, members of the Faculty at the UW-Madison are protected from arbitrary disciplinary action by the Chancellor who must follow the due process procedures set forth in Chapter 9 of the UW-Madison Faculty Policies and Procedures (FPP) before any disciplinary action can occur against a Faculty Member. These protections are extensive.

6. The FPP were established at the UW-Madison by the faculty of the UW-Madison in accordance with the provisions of Sec. UWS 6.01 Wis. Adm. Code providing in pertinent part as follows:

"UWS 6.01 Complaints. The faculty of each institution, with the approval of the chancellor, shall establish rules and procedures to deal with allegations by the administration, students, academic staff members, other faculty members, classified staff members, or members of the public concerning conduct by a faculty member which violates university rules or policies, or which adversely affects the faculty member's performance of his/her obligation to the university but which allegations are not serious enough to warrant dismissal proceedings under ch. UWS 4. Such rules and procedures shall include, but not necessarily be limited to, the following:

7. Similar but not identical due process procedures are in place for the protection of members of the Academic Staff at the UW-Madison. Powers of the Academic Staff in the university of Wisconsin System are found in Sec. 36.09 (5)

Wisconsin Statutes. Due process procedures are mandated by the Wisconsin Administrative Code, Chapter UWS 11.

8. In the past and under the defendant's predecessor, the plaintiff has been disciplined by the authority of the Chancellor of the UW-Madison because of claimed violations of existing protocols for the use of animals in their research. He was not provided with the protections afforded by the provisions of Chapter 9 of the FPP.

9. Recently, at least one other member of the Faculty at the UW-Madison was denied her right to use animals in one of her research projects because of alleged protocol violations for a period of at least two years but was not afforded her due process procedural rights under Chapter 9 of the FPP.

10. Instead, this Faculty member was disciplined by application of procedures devised and created through the authority of the defendant and called the "Policy on Non-Compliance" (PNC) administered by the Research Animal Resources Center (RARC). A true and correct copy of this policy is attached hereto, marked Exhibit A, and incorporated herein by reference.

11. Upon information and belief, members of the Academic Staff using animals in research have also been disciplined under the procedures of the PNC.

12. Upon information and belief, the PNC was neither established, reviewed or approved by any recognized Faculty body at the UW-Madison, nor was the Faculty consulted regarding this policy.

13. Upon information and belief, the PNC was neither established, reviewed or approved by any recognized Academic Staff body at the UW-Madison, nor was the Academic Staff consulted regarding this policy.

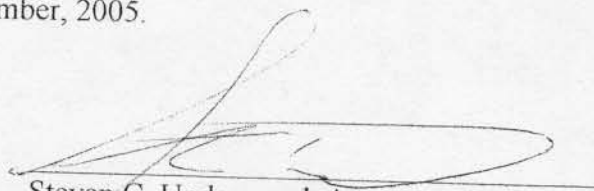
14. The disciplinary procedures found in the PNC provide the plaintiff and other members of the Faculty and the Academic Staff who have been disciplined by the Chancellor and who may be subject to discipline in the future with few or none of the due process protections afforded Faculty and Academic Staff from the Wisconsin Administrative Code and the FPP in disciplinary actions commenced and completed against them by the authority of the defendant.

15. The application and the threat of the application of the PNC by the defendant has a chilling effect on the efforts of researchers, including the plaintiff, who use animals at the UW-Madison.

16. The plaintiff is an interested party to this action.

WHEREFORE, plaintiff demands a declaratory judgment finding the PNC to be unenforceable by the defendant and finding that faculty and academic staff at the UW-Madison who use animals in research have a right to be afforded the due process procedures mandated by the Wisconsin Administrative Code, the FPP and the ASPP when the defendant attempts to sanction them for alleged performance and misconduct violations in their work.

Dated this 4th day of November, 2005.



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ALL CAMPUS ANIMAL CARE & USE COMMITTEE POLICY

Policy Number: 1999-008
 Adoption Date: 12/14/99
 Effective Date: 12/14/99
 Expiration Date: ongoing
 Review Date: Annually in January

Title: Policy on Non-Compliance

Purpose: This policy establishes guidelines for dealing with non-compliance issues and situations involving the use of animal in teaching and research. Such non-compliance issues would include, but not be limited to: failure to have an approved protocol in place; violation of the methods, procedures, numbers, and conditions of the approved protocol; and mistreatment of animals.

Policy:

1. It is recognized that non-compliance can occur as the result of simple and minor error with no intent to circumvent the requirements. As such, discretion may determine that a full investigative process is not required. Thus, this policy is not intended to eliminate the ability of an investigator to immediately correct a simple and minor oversight or error. Rather it is intended for dealing with serious issues that are beyond the scope and definition of a simple and minor oversight.
2. It is usually most appropriate to have the issue/situation initially investigated and dealt with by the School/College level Animal Care and Use Committee (ACUC). In cases where the School/College ACUC believes there is sufficient conflict-of-interest (real or perceived) that would preclude an impartial investigation, the matter can be referred directly to the All Campus Animal Care and Use Committee (IACUC).
3. When an issue of non-compliance becomes known, it shall be reported to the chair of the School/College ACUC. The Chair will in turn advise the individual(s) involved that an issue of non-compliance is known and will be investigated. The Chair will also inform the Chair of the IACUC, the Chief Campus Veterinarian, and the Attending Veterinarian of the issue and


Exhibit A


pending investigation.

4. The Chair will schedule a meeting of the full ACUC at first opportunity. This initial meeting will be for the purpose of informing the ACUC of the non-compliance issue and determining the method of investigation.
5. All investigations and actions involved with issues of non-compliance shall be conducted in accordance with appropriate federal, state, and university legal and policy standards. ACUC should seek out expertise (e.g. Human Resources, Legal Services) to assure investigations and actions are properly conducted and follow due-process.
6. The investigative process can be delegated by the committee to a sub-committee of the ACUC or any other individual(s) that the ACUC believes appropriate to conduct the investigation. In cases of delegation, the ACUC still maintains responsibility to assure that the investigation is conducted in an appropriate and legal manner.
7. At the conclusion of the investigation, a written report detailing the investigation shall be prepared and presented to the ACUC Chair. The Chair will then convene a meeting of the ACUC at which time the investigation shall be reviewed and appropriate action determined. The individual(s) who are the subject of the investigation shall be provided a copy of the investigative report and afforded an opportunity to respond at the committee meeting.
8. Prior to any disciplinary action being taken, the investigation and action of the ACUC will be reviewed by the All Campus Animal Care and Use Committee (IACUC). Again, the individuals who are the subject of the investigation shall be afforded the opportunity to address the IACUC. The IACUC will determine the final outcome.

Prepared By: R. Lane

Reference Minutes: 12/14/99

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