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Maryland Court of Appeals Dismisses Former University Employee's Claims for Access to Research Materials and Wrongful Termination for Reporting Research Misconduct

In a noteworthy case involving an employed scientist's allegations of wrongful termination for reporting research misconduct, the Maryland Court of Appeals in *Yuan v. Johns Hopkins University* refused to recognize the federal regulations prohibiting research misconduct as a clear "public policy" that can support a tort claim for wrongful termination of employment. The court also held that the University had properly denied the former employee access to research materials and records, upon his termination.

Factual Background

In a suit brought by Daniel S. Yuan, M.D., a former employee of Johns Hopkins University (the "University"), Dr. Yuan alleged that he had been terminated for reporting research misconduct that violated 42 U.S.C. § 289b and 42 C.F.R. Part 93, in connection with a federally funded project at the University. Dr. Yuan claimed that he repeatedly reported research misconduct involving a particular project, and that he was terminated from the University as a result of those reports. Under a theory of conversion, Dr. Yuan also alleged that the University violated its own policy by first granting, but then ultimately denying, him access to his research materials and records upon termination.

Court's Analysis

In Maryland, an at-will employee like Dr. Yuan may be lawfully terminated at any time. However, Maryland courts recognize a "public policy" exception to the at-will employment rule when the reason for termination contravenes a clear mandate of public policy (*e.g.*, being terminated for refusing to engage in unlawful conduct). In its unpublished opinion affirming the lower court's judgment for the University, the court noted that Dr. Yuan failed to follow the University's protocol for reporting research misconduct claims. The court also found that Dr. Yuan had been unable to demonstrate that federal provisions regarding research misconduct constitute a clear public policy to support a tort claim for wrongful termination of employment. The court observed that the "scientific institution, not this Court, is in the best position and has the expertise to determine whether the research results of its employees amount to impermissible research misconduct."¹ Therefore, the court concluded that the research misconduct regulations lack clarity as to what constitutes a violation, leaving the court "at a loss to determine what the contours of a wrongful termination claim based on reporting research misconduct would be."² The court therefore held that the research misconduct provisions fail to provide a clear public policy to support a tort claim for wrongful termination of employment.

Regarding Dr. Yuan's claim that the University improperly denied him access to his research materials and records after his termination from employment there, the court, in reviewing the University's policy on retention of research data, found that it unequivocally states that the University owns all research data generated by projects conducted under the auspices of the University. Additionally, although the policy provides for instances when researchers *may* receive permission to take such research materials with them upon leaving employment at the

¹ *Yuan v. Johns Hopkins Univ.*, No. 35, SEPT.TERM, 2013, 2017 WL 1161020, at *9 (Md. Mar. 29, 2017).

² *Id.*

University, the policy did *not guarantee* such access. Therefore, the court held that under the University's policy, the University retained ownership of the research materials, and thus acted in accordance with its policy by denying Dr. Yuan's access to such materials.

Implications

This decision is significant, particularly given that research misconduct has become an issue of rapidly emerging concern in academia and industry. The court in *Yuan* reinforces the concept that scientific institutions are in the best position to assess allegations of research misconduct in complying with the federal regulatory framework. The opinion also demonstrates the importance that universities maintain explicit policies relating to retention of research materials, records and data, and that those policies vest wide discretion in the university for determining whether the departing investigator may take such research materials, records and data upon ending service at the university.

If you have any questions, please feel free to contact your usual Ropes & Gray advisor.