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June 3, 2014

The Honorable Claire McCaskill
Chairman
Subcommittee on Financial and Contracting Oversight
United States Senate
Washington, DC 20510-6250

Ivan A Boatner, Esq.
Vice President and General Counsel
Oak Ridge Associated Universities
PO Box 117
Oak Ridge, TN 37831

Dear Senator McCaskill and Mr. Boatner:

I am the attorney for Dr. Paul M. Cole. For the past several weeks, I have been seeking some explanation for the termination of Dr. Cole's ORISE contract for services to JPAC. I have done so by multiple letters to the JPAC command and to ORISE. Neither JPAC nor ORISE has provided any substantive response to my requests. No explanation or justification of any kind has been provided for Dr. Cole's termination which was done without notice to him of the charges nor an opportunity to respond thereto.

The very first notice of the charges against Dr. Cole was in the letter dated April 24, 2014 from Mr. Boatner to Senator McCaskill. Dr. Cole had no knowledge of that letter or its content from Mr. Boatner or from anyone in or related to the Senator's office. Instead, he was informed of the letter by staff of the *Honolulu Star Advertiser*.

The second notice of the charges against Dr. Cole has come from a posting on the Senate Homeland Security and Governmental Affairs Committee's (HSGAC) website. This posting is the same letter dated April 24, 2014, to Senator McCaskill from Mr. Boatner that was sent to the *Star Advertiser*.

In Mr. Boatner's April 24th letter, he asserts that Dr. Cole's ORISE fellowship was terminated

based on several incidents of misconduct, including failing to follow JPAC and Department of Defense (DoD) policies and directives pertaining to the release of non-public information.

The Honorable Claire McCaskill
Ivan A Boatner, Esq.
June 3, 2014
Page 2

Dr. Cole has never been informed of who accused him of “misconduct” at JPAC, what the nature of the alleged “misconduct” might be, nor has JPAC or ORAU informed him of the accusation(s) against him. It, therefore, certainly came as much more than a surprise to learn of the charges by seeing Mr. Boatner’s letter that was first sent to a newspaper and then posted on the HSGAC website.

It may be naïve on my part living out here in the middle of the Pacific some 4,800 miles removed from Washington, D.C. However, prior to this event, I would not have thought it possible that a U.S. citizen could lose his job based upon charges made anonymously, without being given notice of the charges and an opportunity to contest them, seek and be denied an explanation for the termination and then, finally, only learn of the charges through a newspaper and then from a U.S. Senate website.

My naïveté aside, the accusation that Dr Cole released “non-public government information” is both false as well as not supported by DoD policy or federal law. 41 USC 2303, dealing with “Ethics safeguards related to contractor conflicts of interest,” provides at section (b)(1)(B)(ii), that the government’s “policy on personal conflicts of interest” “prohibit[s] contractor employees who have access to non-public government information obtained while performing relevant acquisition functions from using the information for personal gain.”

Further, the National Defense Authorization Act for FY2009, citing Public Law 114-417, in Subtitle E — Department of Defense Contractor Matters, (1)(B)(ii) “prohibit[s] contractor employees who have access to non-public government information obtained while performing such functions from using such information for personal gain.”

Finally, as best as I am able to ascertain, “Non-public government information” does not appear nor is defined in any DoD Directive, Instruction or Manual concerning control of information.

Dr. Cole was never a contractor, he was never involved in “acquisition functions,” nor has he used any non-public information for his personal gain. Thus, there are only two possible explanations. Either JPAC invented an idiosyncratic category of controlled information, or JPAC misused the term “non-public government information.”

It is apparent that ORAU did not conduct any due diligence on JPAC’s accusations against Dr. Cole. In fact, both JPAC and ORAU denied Dr. Cole even the most basic due process. ORAU ignored every step required to terminate an ORISE Fellow as presented in the ORISE Handbook. The only way JPAC could motivate ORAU to

The Honorable Claire McCaskill
Ivan A Boatner, Esq.
June 3, 2014
Page 3

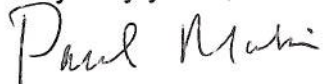
terminate Dr Cole's fellowship was for JPAC to go it alone, in secret, using faulty legal reasoning.

The only credible conclusion for this utter disregard of appropriate and applicable procedures is that Dr. Cole was improperly terminated in retaliation for his IVC Study. We have obtained direct evidence that at least one senior DoD official advocated Dr Cole's dismissal for that reason. We also note that an editorial in the *Honolulu Star Advertiser* (May 29, 2014) concluded, in part: "Cole's claims of retaliation are plausible and is right to seek every remedy regarding his dismissal."

This improper termination of Dr Cole's ORISE Fellowship is a personnel matter. Posting a letter concerning an unresolved personnel dispute on the Senate HSGAC website is unfair, premature, inappropriate as well as prejudicial to Dr. Cole's interests.

We respectfully request that Mr. Boatner's letter be removed from the Senate HSGAC website and, to the extent your committee wishes to be involved in this personnel matter, that JPAC and ORISE be directed to provide Dr. Cole with the specifics of the charges against him and the opportunity to contest those charges.

Very truly yours,



Paul Maki

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