

## Reka Montfort

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**From:** Terry Roach [troach@umd.edu]  
**Sent:** Tuesday, April 21, 2009 4:23 PM  
**To:** Kenneth G. Holum  
**Subject:** Resolutions on Promoting Responsible Action in Medical Emergencies

Ken: In anticipation of Senate debate on the Report of the Student Conduct Committee (April 14, 2009 Senate Document #07-08-20), I think it prudent and would respectfully request you place this note in the legislative history of this initiative.

It is important there be no misunderstanding about the distinction between an approved policy and a recommended protocol. This difference is placed in high relief in the context of the subject matter of SD #07-08-20. The debate and resolution pertain to the University Code of Student Conduct. This Code is a Board of Regents policy. It may not be amended to insinuate "Amnesties" of various types, except by the Regents themselves.

Matters pertaining to the administration of the Code, on the other hand, lie within the judgment and prerogative of the Director of Student Discipline (John Zacker). For example, the Director's "prosecutorial discretion" is subject only to the authority of the Vice President for Student Affairs, unless a University policy, approved through the established campus legislative process (including approval by the President) directs to the contrary. Said differently, whether the Director elects not to institute charges in some situations and to institute them in others, is a matter of his seasoned discretion, unless the decision becomes subject to a duly authorized mandate to the contrary. A Resolution and Recommendation of the Senate would not change this.

The Director of Student Discipline on his own institutional authority has offered to implement on a trial basis certain operating guidelines or "protocols" that describe when some alcohol related violations of the Code of Student Conduct may be handled in a manner apart from a campus judicial proceeding. He has worked with the Senate Student Conduct Committee and elements of these protocols are found in the Committee document "Promoting Responsible Action in Medical Emergencies." The Senate may endorse this Committee document by Resolution; but, it is important all parties recognize that not being an approved Regent or Campus Policy, the document has only the status of a recommended set of operating practices. It would place no obligation on the Director of Student Discipline.

The above matter must be clear, lest there be any misunderstanding or future suggestion of bad faith by the proponents of "Promoting Responsible Action in Medical Emergencies." The Director of Student Discipline may or may not elect to implement them, whether in whole or in part. The protocols in this document have not been reviewed for form and legal sufficiency. There are parts, which to our thinking, are unmanageably vague. They would require change. For example, the intersection between alcohol misconduct and criminal conduct (and other violations of the Code of Student Conduct) requires better definition. It is likely, too, that if implemented, the experience of practical application will require modification.

I would respectfully request this note be placed in the records of the Senate where it may accompany this Senate action.

Terry Roach  
Executive Assistant to the  
President for Legal Affairs & Chief Counsel