SECTION: Research and Scholarly Activity
TOPIC: Intellectual Property
Approved: Signature on File

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POLICY

The College shall provide guidance in defining the ownership, protection, and transfer of intellectual property created by Covered Persons and provide a framework to facilitate development and dissemination of intellectual property.

Covered persons working with students or trainees on projects involving but not limited to any form of scholarly activity, original research, and creation of teaching resource material must inform the students or trainees in advance of the terms of this Policy and of any obligations of nondisclosure or confidentiality.

Office of Research & Sponsored Programs shall serve to facilitate technology transfer and function as a clearinghouse for contacts with outside partners and service providers on matters deemed to be covered by this Policy. The Assistant Dean for Research shall serve as the Intellectual Property Officer for the College.

RESPONSIBLE OFFICIAL(S):

Burrell President, School Dean/Chief Academic Officer, Vice-President for Administration, Chief Financial Officer, Assistant Dean of Research

DEFINITIONS

- College: Burrell College of Health Sciences (Burrell College of Osteopathic Medicine, LLC). College Resources: any form of funds, facilities, or resources, including equipment, consumables, and/or human resources provided by the College either in a direct or indirect way.
- Commercialization: any form of development of intellectual property including assignment, licensing, internal development within the College, and/or commercialization via a third party by any person who developed the intellectual property while acting as a covered person.
- Copyright: a form of protection provided by the laws of the United States for “original works of authorship”, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations. Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery. Similarly, names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listing of contents or ingredients are not subject to copyright.
- Copyright Owner: the owner of any one of the exclusive rights comprised in the copyright.
- Covered Person(s) or Person(s) Covered by this Policy: all full and part-time faculty, staff and employees and contracted non-employees who use College Resources, or participate in College-administered research, including visiting faculty, trainees and researchers, regardless of obligations to other companies or institutions.
- Creator or Inventor: person(s) who contribute(s) to the conception of an invention or other scholarly work. The terms are used interchangeably in this Policy.

- Invention: any art or process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant which is or may be patentable under the patent laws of the United States.
- Applicant: inventor or joint inventors who are applying for a patent on their own invention, or the person mentioned in 37 CFR §§ 1.42, 1,45, 1.46, or 1.47 who is applying for a patent in place of the inventor
- Earnings: the cumulative gross revenues generated through the transfer or other commercialization of covered intellectual property including, but not limited to, gross royalties, licensing fees or similar income actually received from the sale, assignment, licensing or other exploitation of the covered IP. Intellectual Property: abbreviated I.P. or IP – creative works or ideas embodied in a form that can be shared or can enable others to recreate, emulate, or manufacture them. There are four ways to protect intellectual property: copyrights, patents, trademarks, and trade secrets.
- Intellectual Property Officer: An employee of the College who is charged with the application of this Policy on behalf of the College, and the management of the development, protection and investment in College Intellectual Property.
- Net Earnings: Earnings, minus all expenses of the College in evaluating and protecting the covered IP and in bringing the covered IP to market and maintaining it in market, including, but not limited to, all legal and administrative expenses as well as any and all expenses and payments associated with the utilization of a licensing agent or other organization that the College may rely on to assist with this process. Net Earnings shall not include any compensation received by the College in the form of equity. Furthermore, in cases where the research or program funding agreement requires payment of certain IP related income to the research or program sponsor, all such payments shall be considered College expenses and deducted from Net Earnings.
- Patent: a property right granted by the government of the United States to an inventor "to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States" for a limited time in exchange for public disclosure of the invention when the paten is granted.
- Research Agreement: any agreement or contract made between the College and an external entity related to research, scholarly or academic work pursued by a covered person.
- Significant Use: use of College Resources which imposes on the College costs or liabilities that otherwise would not be incurred, except for incidental use.
- Sponsored Program: research, creative scholarship, public service training and instructional projects conducted by covered persons involving funds, materials, or other compensation from outside sources through grants, contracts, or cooperative agreements.
- Sponsor: the entity providing the funds that support the research, creative scholarship, public service training, and instructional projects conducted by covered persons.
- Trademark: protection of words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others and to indicate the source of the goods. Trademarks, unlike patents, can be renewed forever as long as they are being used in commerce.
- Trade Secret: information that companies keep secret to give them an advantage over their competitors.
- Visiting Researcher: person(s) having a research association with the College without being either employees or students, and includes but is not limited to academic visitors, sabbatical faculty, persons

with honorary appointments, persons with emeritus status, and persons with adjunct status, all of whom will have an executed agreement with the College as a condition of their affiliation.

- Work for Hire: work that is specifically prepared by an employee within the scope of employment, or work specially ordered or commissioned by the College.

PROCEDURE:

1. **Ownership of Intellectual Property**

   Ownership of Intellectual Property created by covered persons shall be determined as follows:

   1.1. Externally Sponsored Research & Creative Scholarship.

   Intellectual property created as the result of work conducted under an agreement between an external sponsor and the College that specifies the ownership of intellectual property shall be owned as specified in said agreement. If the agreement does not declare the owner of intellectual property rights arising from the project, ownership of resulting intellectual property shall be determined as set forth under Section 3, "Development of Intellectual Property".

   1.2. Internally Sponsored Research & Creative Scholarship.

   When the College provides funds or facilities for a project to the extent of Significant Use of College Resources, the College will be considered a sponsor of that work. The College must specify itself as the owner of intellectual property rights arising from the agreement. College sponsored work in the absence of any agreement between the inventor and the College regarding ownership of College sponsored work belongs to the College (Section 3, "Development of Intellectual Property").

   1.3. Intellectual Property Created with Significant Use of College Resources and No External or Internal Sponsorship.

   Intellectual property developed with Significant Use of College Resources by covered persons, outside of any external or internal sponsorship or award belongs to the College, unless stated in a written agreement as a specific exception.

   1.4. Intellectual Property Created Within the Scope of Employment.

   Intellectual property created by College employees shall, except as otherwise expressly set forth herein, be considered "Work for Hire" and owned by the College if said intellectual property was created within the normal scope of the inventor's employment. Faculty ownership of pedagogical materials is an exception to this, and is addressed in section 1.4.1. Intellectual property created by contracted faculty or staff which was created within the normal scope of the inventor's contracted services will be subject to the terms of the contract; if the contract is silent as to treatment of intellectual property, it shall be owned by the College.

   1.4.1. Faculty Ownership of Pedagogical Materials:

   Faculty are presumed not to be hired to produce a particular intellectual property. Intellectual property developed for any course offered by the College and used within the framework of that course for pedagogical purposes, without substantial use of College resources, belongs to the faculty member who created the intellectual property. For the purpose of this section 1.4.1, substantial use of College resources shall mean; extensive use of College laboratory, studio or other specialized facilities, or human resources. The use of these resources must be important to the creation of the

Intellectual Property in question; merely incidental use of a facility does not constitute substantial use, nor does extensive use of a facility commonly available to all faculty or professional staff (such as libraries, reference materials, and offices), nor does extensive use of a specialized facility for routine tasks. In keeping with academic traditions as practiced at many institutions of higher education, the faculty creator of such Intellectual Property used for instruction delivered by said faculty retains all rights to the following types of intellectual property without limitation: books (including textbooks), educational courseware (including computer simulations), manuscripts, articles, graphics, sculptural works, motion pictures, and other similar audiovisual works, and sound recordings regardless of the level of use of College facilities. This provision does not include computer software or databases that were not developed as educational courseware and not used by faculty for instruction in her/his specific teaching.

1.5. Intellectual Property Created Without Significant Use of College Resources.
In general, the covered person who is the Inventor owns all intellectual property created without Significant Use of College Resources, unless otherwise addressed in this Policy. Intellectual property developed by covered persons outside of normal College working hours and without significant use of College Resources belongs to the inventor. Intellectual property developed by faculty during faculty-allowed consulting time and without significant use of College Resources belongs to the faculty creator. Ownership of intellectual property developed as the result of consulting activity by a covered person and to which the College is a party in the consulting agreement will be determined by the terms of the consulting agreement.

1.6. Intellectual Property Created Under Individual Agreements.
Except where limited by external sponsorship agreements, covered persons and the College may enter into negotiations that further define ownership of intellectual property regardless of any other provision herein. Request to enter into such negotiations must be submitted by the covered person and accepted by the College in writing prior to the onset of further ownership negotiations.

2. **Notice Provisions**

2.1. The College Responsibilities
It is the responsibility of the College to inform each person whose intellectual property rights are limited by externally or internally sponsored award of the intellectual property provisions of the award in advance of the beginning of work thereon. Such notice is to be in writing and a written acknowledgement of receipt by the covered person is required. Unless otherwise agreed upon, the College Office of Research & Sponsored Programs serves as the authorized College entity for this communication.

2.2. Covered Person or Inventor Responsibilities
The covered person or inventor of any intellectual property that is or might be owned by the College or shared by the College with another entity as determined herein is required to make prompt written disclosure of the work to the Office of Research & Sponsored Programs and to execute any document deemed necessary to protect legal rights of the College and that allow the College to file the patent applications and applications for copyright registration should the College wish to do so. Such disclosure should be made at a time when

legal protection for the creation in contemplated and must be made before the intellectual property is sold, used for profit, or disclosed to the public. All covered persons and Inventors engaged in the development of intellectual property are expected to keep regular notebooks and records.

3. **Development of Intellectual Property**

When intellectual property is created with Significant use of College Resources provided by internal or external sponsorship and the sponsorship agreement is silent as to ownership of intellectual property, the College will originally retain the rights to the property provided that the College desires to commercially develop the intellectual property or make it available to the public. If, however, the College elects not to commercially develop the intellectual property or fails to show diligence in such development, the ownership rights to the property may be acquired by the Inventor. The Inventor must request transfer of ownership rights in writing, and the College must reply within one-hundred twenty (120) calendar days of the request, or it will be deemed to have automatically waived the College rights and must execute an assignment of ownership rights to the Inventor.

4. **Net Earnings from Intellectual Property Owned by the College**

Net earnings from intellectual property owned by the College will be shared with the Inventor. Unless otherwise defined, modified, or limited by a specific sponsor agreement or other written agreement, distribution of earnings from intellectual property owned by the College will follow the description of distribution outlined in Section 4.1, "Distribution of Net Earnings", including but not limited to: expenditures covering the protection, management and commercialization of intellectual property, such as legal, management and marketing fees. Net earnings will be determined after payment of all costs, including those incurred by the College or its assignee.

4.1 Distribution of Net Earnings

Unless otherwise agree upon in writing by the College and Inventor, the net earnings from College owned intellectual property will be divided as follows:

4.1.1. Inventor

On an annual basis, the Inventor or Inventor's heirs will receive a percentage of the net earnings and the College will receive the remainder, as determined by a separate executed agreement between parties. Where more than one Inventor is identified, the share of earnings will be divided among all identified Inventors as agreed upon the Inventors in writing.

4.1.2 College

On an annual basis, the College will receive the remainder of net earnings not distributed to the Inventor.

5. **Management of Intellectual Property**

5.1 Intellectual Property Officer.

The Intellectual Property Officer will receive and process disclosures of inventors; notify appropriate College Officials regarding appropriate actions with respect to intellectual property; file for, obtain, and maintain records of patents, copyrights, trademark registration, and trade secret registrations as appropriate; recommend and obtain the College approval for budgets for the development, protection, marketing and management of intellectual property, and control all expenditures within approved budgets; attempt commercialization and/or sale of College owned intellectual property; and attempt resolution of all disputes or claims concerning College owned intellectual property. The Intellectual Property Officer will

work within the College framework to develop and implement Standard Operating Procedures to support management of intellectual property, which will include an appropriate procedure for Intellectual Property Dispute Resolution.

CROSS REFERENCES:

Standard Operating Procedure: Management of Intellectual Property
Inventor disclosure agreement template