

# Board of Trustees Bylaws

As Amended, July 20, 2022



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# Contents

- ARTICLE I: PURPOSE AND MANAGEMENT ..... 4
  - Section 1.1: OBJECTIVES..... 4
  - Section 1.2: OWNERSHIP AND MANAGEMENT OF THE COLLEGE..... 4
- ARTICLE II: MEMBERS ..... 4
  - Section 2.1: ESTABLISHMENT OF THE BOARD OF TRUSTEES ..... 4
  - Section 2.2: NUMBER AND QUALIFICATIONS ..... 5
  - Section 2.3: TERM OF OFFICE ..... 5
  - Section 2.4: ELECTION AND REPLACEMENT OF INDEPENDENT MEMBERS..... 5
  - Section 2.5: MEETINGS ..... 5
  - Section 2.6: NOTICE..... 6
  - Section 2.7: QUORUM; VOTING ..... 6
  - Section 2.8: INFORMAL ACTION ..... 6
  - Section 2.9: ATTENDANCE ..... 7
  - Section 2.10: VACANCIES ..... 7
  - Section 2.11: CONFLICT OF INTEREST ..... 7
- ARTICLE III: OFFICERS ..... 7
  - Section 3.1: OFFICERS..... 7
  - Section 3.2: ELECTION AND TERM OF OFFICE ..... 7
  - Section 3.3: REMOVAL..... 7
  - Section 3.4: VACANCIES ..... 7
  - Section 3.5: CHAIRMAN OF THE BOARD OF TRUSTEES ..... 8
  - Section 3.6: VICE CHAIRMAN OF THE BOARD OF TRUSTEES..... 8
  - Section 3.7: SECRETARY ..... 8
- ARTICLE IV: FISCAL YEAR..... 8
  - Section 4.1: FISCAL YEAR..... 8
- ARTICLE V: COMMITTEES OF THE BOARD OF TRUSTEES ..... 8
  - Section 5.1: COMMITTEE OF THE BOARD OF TRUSTEES ..... 8
- ARTICLE VI: BOARD OF TRUSTEES FUNCTIONS ..... 10
  - Section 6.1: LIAISON ..... 11
  - Section 6.2: COMPLIANCE WITH LAWS, REGULATIONS AND MAINTENANCE OF ACCREDITATION..... 11
  - Section 6.3: MANAGEMENT OF THE ENVIRONMENT OF CARE..... 11
  - Section 6.4: PLANNING..... 11
  - Section 6.5: CONTRACTED SERVICES..... 12
  - Section 6.6: COLLEGE POLICIES AND PROCEDURES ..... 12

Section 6.7: ORIENTATION, EDUCATION AND EVALUATION ..... 13

ARTICLE VII: ADMINISTRATION ..... 13

    Section 7.1: APPOINTMENT AND EVALUATION..... 13

    Section 7.2: AUTHORITY AND DUTIES ..... 13

ARTICLE VIII: INDEMNIFICATION..... 14

    Section 8.1: INDEMNIFICATION ..... 14

ARTICLE IX: APPROVAL ..... 15

    Section 9.1: APPROVAL AND AMENDMENTS ..... 15

ARTICLE X: NON-DISCRIMINATION ..... 15

    Section 10.1: NON-DISCRIMINATION POLICY..... 15

SCHEDULE I – RIGHTS RESERVED TO THE MEMBER..... 17

EXHIBIT A: CONFLICT OF INTEREST POLICY..... 18

EXHIBIT B: CONFLICT RESOLUTION POLICY..... 19

EXHIBIT C: EXECUTIVE AND MANAGEMENT CONFLICT OF INTEREST POLICY .....20

## **ARTICLE I: PURPOSE AND MANAGEMENT**

### **SECTION 1.1: OBJECTIVES**

The Burrell College of Osteopathic Medicine, LLC (“BCOM LLC”) operates the Burrell College of Osteopathic Medicine (the “College”), an osteopathic medical college licensed to do business in Las Cruces, New Mexico. The role and purpose of the College is to provide the education and clinical training of future osteopathic physicians.

### **SECTION 1.2: OWNERSHIP AND MANAGEMENT OF THE COLLEGE**

1.2.1 BCOM Investment Partners, LLC (the “Company”) is the sole owner and member of BCOM LLC. These Bylaws reflect the delegation of certain oversight and operational responsibilities to the College’s Board of Trustees (the “Board of Trustees”).

1.2.2 Governance, oversight, and direction of the College, as described in these Trustee Bylaws, is vested in the Board of Trustees. The primary responsibility and goal of the Board of Trustees is to further the mission and purpose of the College by providing autonomous oversight of the College, thereby facilitating the establishment and approval of policies, the maintenance of quality education and the provision of institutional management and planning, all in a manner that is responsive to the needs of Las Cruces, the State of New Mexico and the Borderplex Region and in compliance with applicable regulatory, licensing and accrediting bodies.

1.2.3 The College’s officers and the Board of Trustees have the governance rights and duties set forth in these Bylaws. Any and all powers and authority not specifically granted by these Bylaws to the Board of Trustees are reserved to the Company.

1.2.4 The Board of Trustees has authority to select, hire, evaluate and terminate the employment of the President/CEO of the College. The President/CEO manages the day-to-day business affairs and administration of the College and reports to the Board of Trustees. The Board of Trustees has delegated to the President/CEO authority for the College’s business operations as described within these Bylaws. The President/CEO’s fiscal authority is subject to the Annual Budget and Plan approved by the Board of Trustees and, to the extent required by these Bylaws, ratified by the Company.

## **ARTICLE II: MEMBERS**

### **SECTION 2.1: ESTABLISHMENT OF THE BOARD OF TRUSTEES**

2.1.1 The Board of Trustees, as a collective entity, and its individual members (each, a “Member”), shall exercise those privileges and duties specified by these Bylaws.

2.1.2 The Board of Trustees shall be delegated full autonomy and authority by the Company to oversee general administrative matters and matters of governance of the College as described within these Bylaws, including, but not limited to, policy development, performance improvement, and organizational management and planning. The Company acknowledges the Members as a valuable resource necessary for the delivery of quality education in a manner that is efficient and responsible to the community. The authority granted to the Board of Trustees shall be exercised in a manner commensurate with these quality goals.

## SECTION 2.2: NUMBER AND QUALIFICATIONS

2.2.1 The number of voting Members of the Board of Trustees of the College shall be no less than thirteen (13). The Board of Trustees shall be composed of:

2.2.1.1 the President/CEO of the College, who shall serve as a non-voting, ex-officio Member;

2.2.1.2 Thirteen additional voting Members as follows:

a. At least five independent Members from the general public (i.e., persons with no ownership or employment relationship with the College nor familial relationship with any owner or employee of College), nominated and approved by the Board of Trustees. These Members must be selected for their dedication to the College and its mission, and for their ability to represent the osteopathic medical profession, higher education, legal issues and/or community;

b. Two independent Members from New Mexico State University (“NMSU”) as nominated by NMSU’s Chancellor (the “NMSU Members”); NMSU’s Chancellor is able to serve as one of the two NMSU Members;

c. Three Members (the “Rice Members”) designated by William Marsh Rice University (“Rice University”).

d. Three Members (the “TPG Members”) designated by The Rise Fund (“TPG Rise”).

## SECTION 2.3: TERM OF OFFICE

2.3.1 Each independent voting Member shall be appointed to a term commencing at the start of the fiscal year. A standard term shall be for 3 years except that initial terms may be shorter to assure that terms are staggered to maintain continuity in board membership. A voting Member (other than a Rice Member, a NMSU Member or a TPG Member) may serve no more than two consecutive terms without approval from the Board of Trustees.

2.3.2 Any voting Member (other than a Rice Member, a TPG Member or a NMSU Member) may be removed by a majority vote of all remaining voting Members whenever the Board of Trustees determines such removal will be in the best interest of the College. The Rice Members may only be removed by Rice University. The TPG Members may only be removed by TPG Rise. The NMSU Members may only be removed by NMSU.

## SECTION 2.4: ELECTION AND REPLACEMENT OF INDEPENDENT MEMBERS

Prior to the expiration of the term of, or other vacancy by, an independent Member (other than with respect to a NMSU Member), the Chairman of the Board of Trustees shall convene a committee composed of three independent Members and a Member from each of Rice University and TPG Rise which shall provide a slate of all identified candidates with recommendations as among those candidates to the Board of Trustees at least 10 days prior to the meeting of the Board of Trustees at which a vote for a new independent Member shall occur. The Board of Trustees shall, by majority vote, select and appoint independent Members from the slate of names provided by the committee. Such appointments shall become effective on the first day of the fiscal year or sooner if appropriate based on the circumstances of the vacancy.

## SECTION 2.5: MEETINGS

2.5.1 Regular meetings of the Board of Trustees shall be held at least quarterly. The first meeting of the fiscal year shall be designated as the Annual Meeting. A requirement for more frequent regular

meetings may be established by resolution of the Board of Trustees. Special meetings of the Board of Trustees may be called by the President/CEO, the Chairman on his/her initiative, by the Chairman at the request of any four Members, or by the Company. Meetings shall be held at the College unless otherwise designated by the Chairman or as permitted by Section 2.5.2 below.

2.5.2 Members shall be entitled to attend any regular or special meeting by means of telephone conference or by means of other communications equipment that enables all persons participating in the meeting to be heard and seen. The Secretary shall provide the details regarding how to remotely access each meeting as part of the notice of each regular or special meeting. Participation in meetings through this means shall be deemed to be participation in person.

## SECTION 2.6: NOTICE

2.6.1 Notice of any regular or special meeting shall be given at least three days in advance by written notice delivered personally, by reliable overnight courier service, or by email, in each case addressed at a Member's address as provided to the College from time to time. Notice will be deemed to have been delivered at the time of delivery or transmission if delivered personally or by email and on the next business day if given by overnight courier.

2.6.2 Any Member may waive notice of any meeting. The attendance of a Member at any meeting shall constitute a waiver of any defect therein unless the Member, at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting any business at the meeting and does not thereafter vote or assent to action taken at the meeting.

2.6.3 Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Trustees need be specified in the notice or waiver of notice of such meeting.

## SECTION 2.7: QUORUM; VOTING

2.7.1 A majority of the voting Members shall constitute a quorum for the transaction of business at any regular or special meeting of the Board of Trustees. If a quorum is not established at the meeting, a majority of the voting Members present may adjourn the meeting without further notice.

2.7.2 The Members present at a duly organized meeting may continue to transact business until adjourned, notwithstanding the withdrawal of enough voting Members to leave less than a quorum. The act of the majority of voting Members present at a duly organized meeting (in person or by proxy) shall be the act of the Board of Trustees. Notwithstanding the foregoing, no official action of the Board of Trustees shall occur unless a quorum is present and a majority of those present vote (in person or by proxy) on a particular action.

2.7.3 Notwithstanding anything to the contrary set forth in these Bylaws, a voting Member may vote by proxy if and only if the voting Member is absent for cause due to illness, emergency, or conflict, as reported to the Chairman of the Board of Trustees in writing in advance of the relevant meeting. In the case of an independent voting Member who is absent for cause due to illness, emergency, or conflict, as reported to the Chairman of the Board of Trustees in writing in advance of the relevant meeting, the independent voting Member shall give a proxy to the Chairman of the Board of Trustees to vote on their behalf as they instruct in writing. Any Member voting by proxy shall be deemed present for the purpose of establishing a quorum.

## SECTION 2.8: INFORMAL ACTION

Any action required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed or voted upon unanimously in writing, including email voting, by a quorum of Members entitled to vote with respect to the subject matter thereof.

## SECTION 2.9: ATTENDANCE

Each Member shall be required to attend all regular meetings each year, unless absent for cause due to illness, emergency, or conflict, as reported to the Chairman in writing in advance of the relevant meeting. Absences shall be reported to the Board of Trustees and recorded in the meeting minutes. Failure to meet the attendance requirements shall be grounds for revocation of Board of Trustees membership, except in the case of NMSU Members, Rice Members or TPG Members.

## SECTION 2.10: VACANCIES

Any vacancy occurring on the Board of Trustees, whether by virtue of an increase in the size of the Board of Trustees, or of a loss or relinquishment of individual membership, shall be filled by the Board of Trustees consistent with Section 2.4; except that only Rice University may fill a vacancy caused by the loss or relinquishment of a Rice Member, only TPG Rise may fill a vacancy caused by the loss or relinquishment of a TPG Member, and only New Mexico State University may fill a vacancy caused by the loss or relinquishment of a NMSU Member. A Member appointed to fill a vacancy shall be appointed to the unexpired term of the class of membership in which the vacancy occurs.

## SECTION 2.11: CONFLICT OF INTEREST

Each Member shall be bound by the conflict of interest policy established by the Board of Trustees. Each Member shall sign a conflict of interest disclosure at the time of initial appointment and annually, at the Annual Meeting. A copy of the current policy is attached hereto as Exhibit A.

# ARTICLE III: OFFICERS

## SECTION 3.1: OFFICERS

The officers of the Board of Trustees shall be the Chairman, the Vice Chairman, and the Secretary, who will be the CEO/President.

## SECTION 3.2: ELECTION AND TERM OF OFFICE

The Chairman and Vice Chairman of the Board of Trustees shall be elected annually for one-year terms by the Board of Trustees at its first meeting of each fiscal year; the Secretary position is filled as indicated in Section 3.1. If the election of the Chairman and Vice Chairman is not held at such meeting, such election shall be held thereafter as soon as is practicable. In no event shall a Member serve as Chairman for more than three consecutive one-year terms. Each appointed officer shall hold office until his/her successor shall have been duly appointed or until his/her death or until he/she resigns or shall have been removed in the manner hereinafter provided.

## SECTION 3.3: REMOVAL

Any officer of the Board of Trustees may be removed from office by a majority vote of the Board of Trustees whenever the Board of Trustees determines such a removal will be in the best interest of the College. However, a determination to remove the President/CEO of the College from serving as Secretary of the Board does not remove the President/CEO of the College from serving in the role of President/CEO.

## SECTION 3.4: VACANCIES

A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board of Trustees with an existing Member for the unexpired portion of the term, subject to Sections 3.2 and 3.3.

### SECTION 3.5: CHAIRMAN OF THE BOARD OF TRUSTEES

The Chairman shall preside at all meetings of the Board of Trustees and shall see that all orders and resolutions of the Board of Trustees are carried into effect. The Chairman shall also perform such other duties given by these Bylaws and those as may be assigned from time to time by the Board of Trustees. Except as specified in these Bylaws or as assigned by the Board of Trustees in accordance with these Bylaws, the rights and powers of the Chairman shall not differ from those of other Trustees. The Chairman shall be an independent Member of the Board of Trustees.

### SECTION 3.6: VICE CHAIRMAN OF THE BOARD OF TRUSTEES

The Vice Chairman of the Board of Trustees shall perform such duties given by these Bylaws and those as may be assigned from time to time by the Board of Trustees, or the Chairman of the Board of Trustees. In the absence of the Chairman, the Vice Chairman shall have all the powers and responsibilities of the Chairman. The Vice Chairman shall be an independent Member of the Board of Trustees.

### SECTION 3.7: SECRETARY

The Secretary shall:

- 3.7.1 record all proceedings of the meetings of the Board of Trustees and any committees thereof in a book or books to be kept for that purpose;
- 3.7.2 cause all notices to be duly given in accordance with the provisions of these Bylaws;
- 3.7.3 whenever any committee shall be appointed pursuant to a resolution of the Board of Trustees, furnish the chairperson of such committee with a copy of such resolution;
- 3.7.4 in general, perform all duties incidental to the office of the Secretary and such other duties as are given by these Bylaws or as may be assigned from time to time by the Board of Trustees, the Chairman, or the Vice Chairman; and
- 3.7.5 when the Board convenes an Executive Session, the Chairman of the Board reserves the right to delegate the duties of the Secretary during the Executive Session.

## **ARTICLE IV: FISCAL YEAR**

### SECTION 4.1: FISCAL YEAR

The College's fiscal year shall correspond with the College's academic year which commences on July 1st of each year and ends on June 30th.

## **ARTICLE V: COMMITTEES OF THE BOARD OF TRUSTEES**

### SECTION 5.1: COMMITTEE OF THE BOARD OF TRUSTEES

5.1.1 The Board of Trustees may establish standing committees as it deems necessary and appropriate. The Board of Trustees shall act as a committee of the whole unless separate committees are established with specific charters that specify the scope of their authority as established by the Board of Trustees. The creation of standing committees shall be effectuated by a majority vote of the Board of Trustees. Standing committees shall consist of five Members and shall include at least one Rice Member and at least one TPG Member, with the number of Rice Members and TPG Members always equal in number. Independent Members shall constitute a majority of each standing committee and each standing committee shall be chaired by an independent Member who is



nominated by the Chairman of the Board of Trustees and appointed by majority vote of the Board of Trustees.

5.1.2 As of the date of these Bylaws, the standing committees of the Board of Trustees shall be as follows:

5.1.2.1 There shall be a Budget, Audit and Compliance Committee to review and recommend approval of the Annual Budget to the full Board of Trustees as well as to oversee compliance with all regulatory requirements applicable to the College. The Budget, Audit and Compliance Committee shall recommend to the full Board of Trustees an independent auditor and shall monitor the independence and effectiveness of such auditor. The Budget, Audit and Compliance Committee shall periodically review the College's internal financial controls, policies, and procedures and may select outside advisors in so doing. The Budget, Audit and Compliance Committee shall be composed of five Members with a majority of independent Members and with at least one Rice Member and at least one TPG Member, with the number of Rice Members and TPG Members always being equal in number. The Chairman of the Budget, Audit and Compliance Committee shall be an independent Member nominated by the Chairman of the Board of Trustees and appointed by majority vote of the Board of Trustees.

5.1.2.2 There shall be a Compensation and Human Resources Committee composed of five Members with a majority of independent Members and with at least one Rice Member and at least one TPG Member, with the number of Rice Members and TPG Members always being equal in number. The Chairman of the Compensation and Human Resources Committee shall be an independent Member nominated by the Chairman of the Board of Trustees and appointed by majority vote of the Board of Trustees. The Compensation and Human Resources Committee shall oversee the development, negotiation and execution of the President/CEO's contract and shall evaluate the compensation paid to the President/CEO based on an annual performance evaluation of the President/CEO. The Compensation and Human Resources Committee shall evaluate the performance of the President/CEO annually and shall make recommendations to the full Board of Trustees. The Compensation and Human Resources Committee shall also oversee the overall compensation and benefit structure and policies applicable to all employees of the College as well as assess the overall working environment of the College to assure equitable and effective human resources and compensation policies are put in place that foster the fulfillment of the mission of the College. In so doing, the Compensation and Human Resources Committee shall, among other matters, receive and evaluate the results of periodic assessments of staff and faculty satisfaction with such policies and the overall working environment of the College.

5.1.2.3 There shall be a Nominating Committee convened prior to the expiration of the term of, or other vacancy by, an independent Member (other than with respect to a NMSU Member), the Chairman of the Board of Trustees shall convene a committee composed of three independent Members and a Member from each of Rice University and TPG Rise which shall provide a slate of all identified candidates with recommendations as among those candidates to the Board of Trustees at least 10 days prior to the meeting of the Board of Trustees at which a vote for a new independent Member shall occur. The Board of Trustees shall, by majority vote, select and appoint independent Members from the slate of names provided by the committee. Such appointments shall become effective on the first day of the fiscal year or sooner if appropriate based on the circumstances of the vacancy.

- 5.1.3 The Board of Trustees shall determine:
- 5.1.3.1 the qualifications for membership on a committee of any non-Members appointed to any committee;
  - 5.1.3.2 the term of committee membership;
  - 5.1.3.3 the minimum frequency of meetings and attendance requirements;
  - 5.1.3.4 the frequency and type of required reports on committee activities; and
  - 5.1.3.5 the specific authority and responsibilities of the committee.
- 5.1.4 The Chairman may establish ad hoc or special committees for any purpose the Chairman deems appropriate to the business of the Board of Trustees and the College. Those committees established unilaterally by the Chairman shall be advisory in nature and shall not have the authority to transact business on behalf of the Board of Trustees. Such ad hoc or special committees established by the Chairman shall include at least one Rice Member and at least one TPG Member, with the number of Rice Members and TPG Members always equal in number.
- 5.1.5 The Board of Trustees by affirmative vote shall appoint the members of any Board of Trustees committees (other than any Rice Member or TPG Member who serves on a committee as set forth in this Article V who in each case shall be appointed to serve on the committee by Rice University or TPG Rise, respectively). Members of committees (other than a Rice Member or a TPG Member) may be removed by the affirmative vote of the number of Members required to take Board of Trustees action.
- 5.1.6 Any member of a committee who is not also a Member shall serve in an advisory capacity without the right to vote.
- 5.1.7 No committee shall have authority to fill vacancies on the Board of Trustees or on any of its committees, nor to adopt the Annual Budget and Plan, adopt, amend or repeal these Bylaws, or take any action not specifically delegated to it by the Board of Trustees.
- 5.1.8 Members of committees of the Board of Trustees may participate in a committee meeting by any communication means that allows for all participating committee members to hear and speak simultaneously with each other during the committee meeting, and the chairman of the committee shall provide the details regarding how to remotely access each meeting as part of the notice of each meeting. A committee member participating in a meeting by this means is deemed to be present in person at the meeting.
- 5.1.9 Notice of any standing committee meeting shall be in accordance with Section 2.6.
- 5.1.10 Establishment of a quorum for a standing committee meeting shall be in accordance with Section 2.7.
- 5.1.11 Unless otherwise required by this Article V, a particular action authorized by a standing committee shall be in accordance with Section 2.7 and Section 2.8.

## **ARTICLE VI: BOARD OF TRUSTEES FUNCTIONS**

The Board of Trustees is charged with the responsibility to undertake all lawful actions commensurate with its role and purposes as defined in these Bylaws. Without limiting the generality of the foregoing, the Board of Trustees shall perform the following functions:

## SECTION 6.1: LIAISON

The Board of Trustees shall oversee the implementation of a system for resolving conflicts among leaders and the individuals under their leadership. The system's effectiveness shall be regularly reviewed, and revised as necessary.

## SECTION 6.2: COMPLIANCE WITH LAWS, REGULATIONS AND MAINTENANCE OF ACCREDITATION

6.2.1 The Board of Trustees shall ensure compliance with all applicable federal, state, and local laws and regulation. The Board of Trustees shall require the President/CEO to review and respond to the reports and recommendations from planning, regulatory, and inspecting agencies, to report regularly to the Board of Trustees regarding the status of compliance, and to consult the Budget, Audit and Compliance Committee prior to making any material submissions to regulatory bodies, including any such submissions related to substantive changes, applications for new or continued approval (other than routine renewals), annual and periodic compliance filings (other than routine filings), responses to compliance inquiries (other than routine inquiries), or responding to significant or substantive pending requests, inquiries or actions.

6.2.2 The Board of Trustees shall ensure the acquisition and maintenance of accreditation by the American Osteopathic Association's Commission on College of Osteopathic Accreditation ("COCA") and any other required accreditation bodies. From time to time, the Board of Trustees shall require that COCA standards, as well as any other relevant regulatory requirements, be used in a review of the College's ongoing compliance with accreditation standards.

6.2.3 The Board of Trustees shall receive reports, as needed, pertaining to compliance with local, state, federal and accreditation bodies, and shall have access to any records, books or other documents maintained by the College to the extent permitted by applicable laws, regulations, and accrediting agency standards.

## SECTION 6.3: MANAGEMENT OF THE ENVIRONMENT OF CARE

6.3.1 The Board of Trustees shall ensure the planning and implementation of methods for providing for the safety, protection, and care of the College's students, faculty, staff, visitors and others, and ensure allocation of appropriate resources to maintain a safe, secure care environment.

6.3.2 The Board of Trustees shall adopt and periodically review a written plan regarding safety management, , emergency preparedness, security management, and utility management.

6.3.3 The Board of Trustees shall receive and review annual reports about performance related to safety management, emergency preparedness, security management, and utility management.

## SECTION 6.4: PLANNING

The Board of Trustees shall govern the process of institutional planning, subject to ratification by the Company as indicated below.

6.4.1 The institutional planning process shall include the following minimum features:

6.4.1.1 approval of the College's annual and three year budget and operating plan and key performance indicators ("Annual Budget and Plan") inclusive of Total Revenue, Total Expenses, and Total Net Income (each as defined in the Annual Budget and Plan), subject to ratification of the Company if Total Revenue, Total Expenses, or Total Net Income deviates by greater than 10% from Total Revenue, Total Expenses, or Total Net Income in the prior fiscal year's approved Annual Budget and Plan; the Annual Budget and Plan shall be prepared annually, shall be developed as indicated in these Bylaws, and shall be prepared according to generally accepted accounting principles;

6.4.1.2 approval of the College's annual and three-year capital budget shall be subject to the ratification of the Company if the total annual or three-year, as applicable, capital budget amount deviates by greater than 10% from the prior year's approved annual or three-year capital budget, as applicable. The form of the capital budget shall be a three-year capital expenditure plan, which shall be developed by the President/CEO and CAO in collaboration with other leaders of the organization, and which shall identify the objectives of, and anticipated sources of financing for, each proposed capital expenditure in excess of \$100,000;

6.4.1.3 review and updating at least annually of the business and strategic plans as well as budget recommendations, including overall compensation and human resource policies; and

6.4.1.4 establishment of a collaborative planning process within the College to address:

a. definition and communication of a mission, a vision, and values for the College and creating the strategic, operational, programmatic, and other plans and policies to achieve the mission and vision;

b. planning which addresses all of the important organizational functions identified by COCA and other applicable regulatory bodies;

c. the establishment of a faculty development plan that determines the appropriate quantity, specialties, and practice profiles of professionals necessary to the delivery of quality education and the economic viability and success of the College, as appropriate to the mission and vision of the College, and the scope of services provided.

## SECTION 6.5: CONTRACTED SERVICES

The Board of Trustees has delegated to the President/CEO to provide mechanisms to ensure that services provided under contract are in compliance with all applicable conditions of participation, regulations, and COCA (and any other applicable accreditation bodies) standards for the contracted service.

## SECTION 6.6: COLLEGE POLICIES AND PROCEDURES

The Board of Trustees shall require that the College's President/CEO, CAO and other relevant personnel collaborate in the development of College-wide programs, policies, and procedures. Departmental policies and procedures shall be developed to reflect each department's goals and scope of services, as well as staff knowledge and skill. At a minimum, policies and procedures shall describe how the department addresses routine functions in areas including, but not limited to, student, academic, research and clinical administration. The Board of Trustees has further delegated to the President/CEO authority to develop routine departmental policies and procedures. All College-wide policies shall be reviewed and approved by the Board of Trustees after considering any recommendations from the President/CEO and standing or special/ad hoc committees. Board of Trustees Policies are set forth in Exhibits A through C. Amendments to Board of Trustees Policies and to College-wide Policies shall require approval of a majority of the Members that includes at least one affirmative vote from a Rice Member and at least one affirmative vote from a TPG Member. The Board shall annually review the list of Board of Trustees Policies and scope of delegation.

## SECTION 6.7: ORIENTATION, EDUCATION AND EVALUATION

6.7.1 The Board of Trustees, acting through the Chairman and the President/CEO, shall provide resources necessary to enable all Members of the Board of Trustees to understand and fulfill their responsibilities. An annual orientation program for all new Board of Trustees members shall be conducted, as well as relevant continuing education programs as may be appropriate from time to time.

6.7.2 The Board of Trustees shall review and evaluate its own performance and effectiveness on an annual basis.

## ARTICLE VII: ADMINISTRATION

### SECTION 7.1: APPOINTMENT AND EVALUATION

#### 7.1.1 CHIEF EXECUTIVE OFFICER

7.1.1.1 Upon vacancy or dismissal of the President/Chief Executive Officer (CEO), the Board of Trustees shall select and employ a competent President/CEO using a criteria-based process which outlines qualifications for the position based on education and experience, who shall be responsible for management of the College.

7.1.1.2 The Board of Trustees shall monitor the performance of the President/CEO on an ongoing basis and conduct, at least annually, a performance evaluation for the President/CEO and determine terms of continued employment.

### SECTION 7.2: AUTHORITY AND DUTIES

#### 7.2.1 CHIEF EXECUTIVE OFFICER

7.2.1.1 The Chief Executive Officer (CEO) of the College shall hold the title of President and be responsible for management of the College. The specific authority and duties of the President/CEO shall be the following:

- a. to establish effective day-to-day operations of the College through appropriate departmentalization and delegation of duties;
- b. in accordance with accreditation requirements, to hire a Chief Academic Officer (CAO)/Dean following consultation with the Board of Trustees and provide to the Board no less frequently than annually, an evaluation of the CAO's performance;
- c. in accordance with accreditation requirements, to hire a Chief Financial Officer (CFO) following consultation with the Board of Trustees. The CFO shall report to the President. The CFO shall provide all pertinent financial statements and reports, including the annual audit, to the Budget, Audit and Compliance Committee and the Board of Trustees;
- d. to establish information and support systems;
- e. to recruit and maintain staff;
- f. to conserve physical and financial assets;
- g. to carry out all policies established by the Board of Trustees, or by the College when policy authority has been delegated to its officers by the Board of Trustees;

- h. to develop and submit to the Board of Trustees for review and approval, a plan of organization of the personnel and others concerned with the operation of the College. This plan of organization will be subsequently reviewed and approved annually by the Board of Trustees with the Annual Budget and Plan. The President/CEO has the authority, within the approved Annual Budget and Plan, to authorize changes to the organization as needed within the academic year;
- i. to prepare, with direct input from the CAO, an Annual Budget and Plan showing expected receipts and expenditures, and a long-term capital expenditure plan, which shall be presented to the Board of Trustees for approval of the final Annual Budget and Plan with such changes as it deems appropriate;
- j. to select, employ, control and discharge employees who report directly or indirectly to the President/CEO, including competent individuals who provide services;
- k. to ensure personnel policies and practices for the College are implemented;
- l. to ensure the physical properties remain in a good state of repair and operating condition;
- m. to supervise the business affairs of the College;
- n. to present to the Board of Trustees or its authorized committee, periodic reports reflecting the professional service and financial activities of the College and prepare and submit special reports as may be required by the Board of Trustees;
- o. to attend all meetings of the Board of Trustees and committees thereof, other than meetings related to the compensation of the President/CEO;
- p. to keep the Board of Trustees fully informed of the conduct of the College;
- q. to review and respond to all inspection reports of any authorized inspecting agency, and to ensure that the College meets the standards of COCA and any other appropriate regulatory requirements; and
- r. to perform other duties that may be necessary in the best interests of the College.
- s. In the absence of the President/CEO the Board of Trustees will designate the officer who will perform the duties of the duties of the President/CEO.

## **ARTICLE VIII: INDEMNIFICATION**

### **SECTION 8.1: INDEMNIFICATION**

BCOM LLC shall indemnify the Board of Trustees, officers, employees, and agents to the fullest extent permitted by law. BCOM LLC may purchase and maintain insurance providing indemnification on behalf of any Board of Trustee Member, officer, employee, agent or any individual who is or was a representative of the Board of Trustees, or BCOM LLC, to the extent set forth in such indemnification policy.

## **ARTICLE IX: APPROVAL**

### **SECTION 9.1: APPROVAL AND AMENDMENTS**

9.1.1 Amendments to these Bylaws may be proposed by the affirmative vote of a majority of Members. Proposed amendments to these Bylaws may be offered at any time by the Company after first seeking the advice of the Board of Trustees; provided, however, notwithstanding anything in these Bylaws to the contrary, any provision in an amendment of these Bylaws that increases or decreases the number of Members of the Board of Trustees or modifies, alters or changes any of the rights of the Company, the Rice Members, the TPG Members, Rice University, or TPG Rise set forth in these Bylaws, including, but not limited to this Section 9.1 or Sections 2.2, 2.3, 2.4, 2.9, 2.10, 5.1, 6.6, 7.1 or Schedule I, shall require approval of the Company, Rice University, and TPG Rise to the extent such amendment pertains to (i) rights of the Company, the Rice Members, the TPG Members, Rice University, or TPG Rise, (ii) changes the number of voting Members of the Board of Trustees, or (iii) changes Schedule I.

9.1.2 The approval of the Company shall be required for (A) any action expressly requiring the approval of a member under the New Mexico Limited Liability Company Act, (B) any action set forth on Schedule I to these Bylaws or (C) any other action expressly set forth in these Bylaws as requiring approval of the Company.

## **ARTICLE X: NON-DISCRIMINATION**

### **SECTION 10.1: NON-DISCRIMINATION POLICY**

10.1.1 It is the firm policy of the Board of Trustees and the College not to discriminate on the basis of any legally protected status.

10.1.2 This policy applies in recruitment and admission of students, employment of faculty and staff, and scholarship and loan programs. This policy is also followed in the operation of all other programs, activities and services of the College.

10.1.3 The College subscribes to the principles and adheres to the requirements of state and federal law pertaining to civil rights and equal opportunity, in accordance with the requirements of Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973, as amended; and the Age Discrimination Act of 1975, as amended.

10.1.4 Evidence of practices inconsistent with this policy should be reported to the Director of Human Resource, who is the designated coordinator of the College's non-discrimination program. Inquiries regarding compliance with the sex discrimination provisions of Title IX may also be directed to the College's Title IX Coordinator, or to the Assistant Secretary for Civil Rights, Department of Education, Washington, D.C.

**APPROVAL:**

**By:**

John L. Hummer, Secretary - Board of Trustees

Amended Date: July 20, 2022

Exhibits:

Schedule I, Rights Reserved to the Member

Exhibit A, Conflict of Interest Policy

Exhibit B, Conflict Resolution Policy

Exhibit C, Executive and Management Conflict of Interest



## SCHEDULE I – RIGHTS RESERVED TO THE MEMBER

Notwithstanding anything to the contrary in the Bylaws, BCOM LLC shall not, without first obtaining the approval of the Company:

- (i) adopt an Annual Budget and Plan for the upcoming fiscal year inclusive of Total Revenue, Total Expenses, and Total Net Income (each as defined in the Annual Budget and Plan for the upcoming fiscal year), if Total Revenue, Total Expenses, or Total Net Income deviates by greater than 10% from Total Revenue, Total Expenses, or Total Net Income in the prior fiscal year's approved Annual Budget and Plan;
- (ii) adopt an annual and three-year capital budget if the total annual or three-year, as applicable, capital budget amount deviates by greater than 10% from the prior year's approved annual or three-year capital budget, as applicable.
- (iii) (x) alter the primary business of BCOM LLC from that of owning and operating an osteopathic medical college, or (y) undertake any other material business operations by the College;
- (iv) take any action which would cause the College to lose the regulatory approvals necessary for its operation;
- (v) cause BCOM LLC to issue additional equity interests or securities exercisable or convertible for equity interest in BCOM LLC;
- (vi) permit or cause BCOM LLC at any time to incur or become liable for indebtedness in excess of \$250,000;
- (vii) including as a result of a series of related transactions: (1) merge or consolidate BCOM LLC with or into another person or a merger of another person with or into BCOM LLC, (2) convert BCOM LLC into another entity, (3) take actions that would result in a change of control of the College, (4) sell of all or substantially all of the assets of BCOM LLC to another person or (5) lease of, or grant an exclusive license for, all or substantially all of BCOM LLC's assets;
- (viii) sell, lease or grant an exclusive license for any portion of BCOM LLC's assets, other than in the ordinary course of business not to exceed \$250,000, individually or in the aggregate;
- (ix) permit or cause BCOM LLC to make donations or contributions to, or commit to provide scholarships to students of, New Mexico State University ("NMSU") Foundation or affiliates of NMSU in excess of \$600,000 in any 12-month period;
- (x) cause BCOM LLC to exit or alter its primary business from that of owning and operating an osteopathic medical college;
- (xi) admit additional members to BCOM LLC;
- (xii) grant or permit to exist any security interest, pledge, lien or encumbrance on any of BCOM LLC's assets except in connection with indebtedness otherwise permitted;
- (xiii) cause BCOM LLC to enter into, directly or indirectly, any transaction with an affiliate of the Company;
- (xiv) cause the liquidation, dissolution or winding up of the business and affairs of BCOM LLC; or
- (xv) agree to do any of (i) through (xiv), above.

## **EXHIBIT A: CONFLICT OF INTEREST POLICY**

It is a policy of the Board of Trustees that all Members of the Board of Trustees shall disclose and avoid any actual or potential conflicts of interest pertaining to any decisions or matters before the Board of Trustees in which a Member of his or her immediate family has a conflict of interest, financial or otherwise.

A conflict of interest is defined as any contract, transaction, or other matter between the College and one or more of its Board of Trustees Members, or between the College and, other than BCOM LLC or the Company, any other corporation, firm, association, the College, or other entity in which one or more of the Board of Trustees Members are officers, directors, or Members and are financially or otherwise interested. No Member shall be disqualified from participating in deliberations or voting on issues solely because of affiliation with BCOM LLC, the Company, Rice University or TPG Rise.

No Member of the Board of Trustees may participate in any discussions of any matters other than to disclose a conflict, or vote on any matters before the Board of Trustees when such matters could result in a conflict of interest or financial gain or loss to the Member or the Member's immediate family. Such matters would include, but not be limited to, contracts to furnish goods and/or services, leases or purchase agreements of real or personal property, or such like matters which would result in conflict of interest or a financial gain or loss. Upon learning that a matter before the Board of Trustees could create a conflict of interest to a Member, that Member must make a full disclosure to the Board of Trustees of his or her financial interest in such manner, and the remaining Members shall determine whether the conditions require disqualification and if so, shall not further participate in any discussion of or decision on such matter. The failure of a member to make a disclosure as described herein may result in the avoidance of such agreement, contract, lease, or other matter at the discretion of the Board of Trustees. For the purpose of this policy, the term "immediate family" shall mean a Member's spouse, child/children, grandchild/grandchildren and the brothers, sisters, parents, grandparents, nieces or nephews of a Member or his or her spouse.

## **EXHIBIT B: CONFLICT RESOLUTION POLICY**

The Board of Trustees of the College provides and supports a system for resolving conflicts among the College's leaders and those under their leadership. The Board of Trustees acknowledges the following principles:

- I. That the potential exists for conflicts to arise from time to time among those who participate in making decisions regarding operational, medical, social, or financial matters on behalf of the College or the College's customers.
- II. That all conflicts shall be fairly and objectively resolved, whether the conflict is between administrators, managers, faculty members, employees, or the governors of this College.
- III. That all leaders of the College shall promote decision making that results in the appropriate use of power, protection of human rights, and consideration of organizational and societal issues, as reflected in the organization's mission and values statements.
- IV. Upon knowledge or notification of unresolved conflicts level, the Chairman shall evaluate the nature of the conflict and develop an appropriate system of review and corrective action for each specific unresolved conflict.

## **EXHIBIT C: EXECUTIVE AND MANAGEMENT CONFLICT OF INTEREST POLICY**

It is a policy of the Board of Trustees that all members of the executive and management team shall disclose and avoid any conflicts of interest pertaining to any decisions or matters before the organization in which a member of his or her immediate family has a conflict of interest, financial or otherwise.

A conflict of interest is defined as any contract, transaction, or other matter between the College and one or more of its employed members, or between the BCOM and any other corporation, firm, association, or other entity in which one or more of the College's trustees, managers or executives are officers, directors, or members and are financially or otherwise interested in this other entity.

No member of the executive or management team may participate in any discussions of any matters other than to disclose a conflict, or decide on any matters before the College when such matters would result in a conflict of interest or financial gain or loss to the member or the member's immediate family. Such matters would include, but not be limited to, contracts to furnish goods and/or services, leases or purchase agreements of real or personal property, or such like matters which would result in conflict of interest or a financial gain or loss. Upon learning that a matter before the College would create a conflict of interest to a member, that member must make a full disclosure to the College's next chain of command of his or her financial interest in such manner, and the member shall not further participate in any discussion of or decision on such matter. The failure of a member to make a disclosure as described herein may result in the avoidance of such agreement, contract, lease, or other matter at the discretion of the College of this relationship, product or service. For the purpose of this policy, the term "immediate family" shall mean a member's spouse, child/children, grandchild/grandchildren and the brothers, sisters, parents, grandparents, nieces or nephews of a member or his or her spouse.