

# BUSINESS ASSOCIATE AGREEMENT

**WHEREAS**, the American Osteopathic Board of Orthopedic Surgery (AOBOS) provides certain board certification services to osteopathic physicians who complete appropriate postdoctoral training; and

**WHEREAS**, AOBOS' board certification examinations include a clinical phase in which the AOBOS, through qualified inspectors, reviews patient charts and other medical records of patients treated by an applicant for board certification during the course of his or her training for purposes of determining whether AOBOS can recommend that the American Osteopathic Association award board certification to an applicant for certification (AOBOS' work shall be referred to hereafter in this Agreement as "Board Certification Services"); and

**WHEREAS**, in connection with AOBOS' performance of the Board Certification Services, healthcare facilities ("Covered Entities") may disclose or otherwise provide to AOBOS certain Protected Health Information ("PHI"), as defined in 45 C.F.R. 164.501, that may be subject to protection under the Health Insurance Portability and Accountability Act of 1966 ("HIPAA") and/or regulations promulgated thereunder (the HIPAA statute and regulations are hereafter collectively referred to as the "Privacy Rules"); and

**WHEREAS**, AOBOS has entered into separate Business Associate Agreements with the Covered Entities and the terms of such Business Associate agreements require AOBOS to ensure that any independent contractor, subcontractor, agent or other representative that receives, uses, or has access to a Covered Entity's PHI agree, in writing, to comply with the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguards for PHI that apply to AOBOS and/or are required by law; and

**WHEREAS**, \_\_\_\_\_ ("Inspector"), an individual residing in the State of \_\_\_\_\_, assists AOBOS by serving as an on-site inspector of the medical records and patient; and

**WHEREAS**, AOBOS and Inspector wish to comply with the requirements of the Privacy Rules and the Business Associate agreements entered into between the AOBOS and the Covered Entities;

**NOW, THEREFORE**, AOBOS and Inspector hereby agree as follows:

## **1. Inspector's Use and Disclosure of PHI.**

- A. Use and Disclosure of PHI in Providing Accreditation Services. Inspector shall be permitted to use and/or disclose PHI that it receives from or on behalf of a Covered Entity during the course of the AOBOS' providing Board Certification

Services to physicians who completed postdoctoral training at such Covered Entity. Inspector agrees that if it requests PHI from a Covered Entity, it shall request no more than the minimum PHI that Inspector, in Inspector's sole discretion, believes necessary to complete the duties assigned to him or her. Inspector may provide PHI to, and permit the use of PHI by, its agents and representatives to the extent Inspector determines is necessary to perform the duties assigned to him or her.

**B. Use and Disclosure of PHI for Other Purposes.**

- i. Use. Except as otherwise provided in this Agreement or prohibited by law, Inspector may use PHI in order to provide for the proper management and administration of its activities and to carry out its legal responsibilities. As an additional means of protecting PHI, Inspector may, in the course of its activities, remove any and all identification information from the PHI; provided, however, that Inspector's removal of identification information in the PHI shall conform to the requirements set forth in the Privacy Rules.
- ii. Disclosure. Except as otherwise provided in this Agreement or prohibited by law, Inspector may disclose PHI to third parties in order to provide for the proper management and administration of its activities or to carry out its legal responsibilities; provided, however, that Inspector shall not disclose PHI to any third party for these purposes unless: (a) the disclosure of PHI is permitted by this Agreement or required by law; or (b) Inspector obtains reasonable assurances from the recipients of PHI that: (1) the third parties will protect the confidentiality of such PHI and use it and/or further disclose it only as permitted or required by law or for the purpose for which it was disclosed to the third party; and (2) the third party will notify Inspector of any and all breaches of the confidentiality of the PHI. Notwithstanding the foregoing, Inspector may disclose PHI where necessary to report violations of law to appropriate Federal and State authorities and permitted by 45 C.F.R. § 164.502(j)(1) or other provisions of the Privacy Rules.

**2. Inspector's Compliance with Privacy Rules.**

Inspector may use and/or disclose PHI only to the extent permitted or required by this Agreement and the Privacy Rules.

**3. Prohibited Uses and Disclosures of PHI.**

Inspector shall not use or disclose PHI in a manner (i) inconsistent with the AOBOS' and the Covered Entity's responsibilities under the Privacy Rules, or (ii) that would violate the Privacy Rules if directly used or disclosed in such a manner by AOBOS or the Covered Entity.

#### **4. Inspector's Safeguards for the Protection of PHI.**

Inspector shall implement and maintain commercially appropriate and reasonable safeguards and security measures to ensure that PHI obtained by or on behalf of the AOBOS and/or a Covered Entity is not used or disclosed by Inspector except as provided in this Agreement or required by law. Upon request by AOBOS and/or the Covered Entity, Inspector shall provide a written description of the safeguards and security measures.

#### **5. Reporting and Mitigating the Effect of Unauthorized Disclosures.**

If Inspector learns of or otherwise has knowledge of any use or disclosure of PHI not provided for by this Agreement, then Inspector shall immediately notify the AOBOS and/or the Covered Entity in accordance with the procedures set forth in this Agreement. Inspector shall establish and utilize procedures and make other reasonable efforts to mitigate, to the greatest extent possible, any harmful effects known to Inspector arising from any improper use and/or disclosure of PHI.

#### **6. Use of PHI by Subcontractors and Third Parties.**

Inspector shall require any independent contractor, subcontractor, agent or other representative that receives, uses, or has access to a Covered Entity's PHI to agree, in writing, to comply with the same restrictions, conditions and requirements regarding the use and/or disclosure of PHI and safeguards for PHI that apply to Inspector under this Agreement and/or are required by law.

#### **7. Rights of the Individual Patient.**

In the event that Inspector maintains PHI in its records, Inspector shall allow individual patients who are the subject of PHI provided by a Covered Entity the following rights with respect to PHI that is received from the Covered Entity and used or maintained by Inspector.

- A. Right of Access. Inspector shall allow individuals who are the subjects of PHI to inspect and copy their information in possession of Inspector. Inspector shall allow such individuals access to PHI within ten (10) business days of a request of the AOBOS, the Covered Entity or the individual patient in the manner designated by the AOBOS and/or the Covered Entity, consistent with the requirements of 45 C.F.R. 164.524
- B. Right of Amendment. Within fifteen (15) business days of receiving a written request from the AOBOS, the Covered Entity, or the individual who is the subject of PHI, Inspector shall amend PHI as directed so as to satisfy the requirements of 45 C.F.R. § 164.526. Alternatively, if the AOBOS and/or Covered Entity prefers, Inspector shall allow AOBOS and/or Covered Entity access to PHI for purposes of

making any amendments or corrections to PHI that AOBOS and/or Covered Entity directs or agrees to consistent with the requirements of 45 C.F.R. 164.526.

- C. Right to Accounting of Disclosures. Inspector shall document disclosures of PHI to any third party or parties and shall make such documentation available to AOBOS and the Covered Entity so that AOBOS and/or the Covered Entity will have information that is necessary to provide an accounting of disclosures in response to an individual patient's requests for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528. Specifically, Inspector will record the following information in a Disclosure Log: (i) the date of any disclosure to anyone other than those authorized to receive PHI pursuant to the terms of this Agreement; (ii) the name and, to the extent known, the address of any recipient of the disclosed PHI; (iii) a brief description of the PHI disclosed; and (iv) a brief statement setting forth the purpose or reason for disclosure. Inspector shall provide the Disclosure Log and any additional documentation and/or information to AOBOS and/or Covered Entity in the manner designated by AOBOS and/or Covered Entity within ten (10) business days of receiving a request from the Covered Entity or within thirty (30) days the termination of this Agreement.

## **8. Audit and Inspection of Inspector.**

Inspector shall make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from, or created or received by Inspector on behalf of a Covered Entity available to the United States Department of Health and Human Services ("HHS"), the Office for Civil Rights ("OCR"), or their agents for purposes of monitoring compliance with the Privacy Rules.

## **9. AOBOS' Duties.**

- A. Notice of Restrictions on PHI. AOBOS shall provide Inspector with formal written notice of: (i) any restrictions on the use and disclosure of PHI that may affect Inspector's ability to perform its duties; (ii) any changes in or revocation of permission by an individual who is the subject of PHI to the use or disclosure of PHI, if such changes or revocation may affect Inspector's ability to perform its duties; (iii) complaints filed with HHS and/or OCR under 45 C.F.R. § 160.306 with respect to the activities of the AOBOS or the Covered Entity or with respect to PHI provided to Inspector under this Agreement; and (iv) alleged claim(s) or threatened litigation related to PHI.
- B. Permitted Requests. AOBOS shall not ask Inspector to use or disclose PHI in any manner that Inspector or AOBOS or the Covered Entity is not permitted under the Privacy Rules.
- C. Cooperation. AOBOS will make all reasonable efforts to remedy any alleged violation of the Privacy Rules and assist Inspector in remedying any alleged

violation of the Privacy Rules.

## **10. Term and Termination.**

- A. Term. This Agreement will become effective on the Effective Date and shall remain in effect for as long as Inspector shall remain in possession of any PHI received from or on behalf of AOBOS or Covered Entity or until such time as AOBOS and/or the Covered Entity has agreed in accordance with Section 10,C of this Agreement that it is infeasible for Inspector to return or destroy all PHI.
- B. Termination. AOBOS may immediately terminate this Agreement if it determines that Inspector has breached a material term of the Agreement. Inspector acknowledges that in the event of a breach of a material term, AOBOS or the Covered Entity may report the breach to the Secretary of HHS or OCR.
- C. Return or Destruction of PHI. Upon termination or expiration of this Agreement, Inspector shall: (i) take appropriate measures to recover any PHI relating to the Agreement in the possession of independent contractors, subcontractors, agents, or representatives; and (ii) if feasible, either return or destroy all PHI that Inspector still maintains in any form and shall retain no copies of such PHI. If Inspector believes that it is not feasible to return or destroy the PHI as described above, then Inspector shall notify AOBOS and/or Covered Entity in writing and identify the specific reasons supporting its determination. If AOBOS and/or Covered Entity, in their sole discretion, agree that Inspector cannot feasibly return or destroy the PHI, then it or they shall so advise Inspector and Inspector shall continue to extend all PHI protections, requirements and restrictions contained in this Agreement to any PHI retained after the termination of the Agreement.

## **11. Miscellaneous.**

- A. Amendment. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any earlier agreements or understandings between the parties, regardless of whether oral or written. This Agreement may not be modified or amended, except by means of a writing duly signed by the authorized representative(s) of each party. Notwithstanding the foregoing, the Parties agree to amend this Agreement from time to time as may be necessary to comply with the requirements of HIPAA and/or the Privacy Rules.
- B. Compliance with Privacy Rule. Any ambiguity in this Agreement shall be resolved in favor of an interpretation that brings the Agreement into compliance with the then most current version of HIPAA and the Privacy Rules.
- C. Waiver. A waiver with respect to one event will not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

D. Notice. Any notice to be given under this Agreement shall be made by any of the following methods: (i) United States mail, postage prepaid and sent by certified or registered delivery; (ii) commercial courier; or (iii) hand delivery. Notice shall be sent to the party at the address given below or to such other address hereafter specified by notice from the party. Any such notice shall be deemed given when so delivered to or received at the proper address.

If to AOBOS, to:

American Osteopathic Board of  
Orthopedic Surgery  
800 Military St, Suite 307  
Port Huron, MI 48060  
Attention: Richard F. Howard, DO, Chair

If to Inspector to:

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**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on this \_\_\_\_ day of \_\_\_\_\_, 2010.

AMERICAN OSTEOPATHIC BOARD OF      INSPECTOR  
ORTHOPEDIC SURGERY

\_\_\_\_\_  
By: Richard F. Howard, DO  
Title: Chair, AOBOS

\_\_\_\_\_  
By: \_\_\_\_\_