

BUSINESS ASSOCIATE AGREEMENT

WHEREAS, the American Osteopathic Board of Orthopedic Surgery (“Business Associate”) provides certain certification and related services to osteopathic physicians, including, without limitation, the review and evaluation of osteopathic physicians for purposes of determining whether Business Associate can recommend that the American Osteopathic Association (“AOA”) award board certification in Orthopedic Surgery to such physicians (Business Associate’s work shall be referred to hereafter in this Agreement as “Certification Services”); and

WHEREAS, _____ (“Physician”), an individual residing in the State of _____, has entered into an agreement with Business Associate, pursuant to which Business Associate will provide Certification Services to Physician; and

WHEREAS, _____ (“Healthcare Facility”) provided accredited training to Physician and has certain charts and other medical records in its possession concerning treatment Physician provided to patients at Healthcare Facility during the course of Physician’s postdoctoral training; and

WHEREAS, in connection with Business Associate’s performance of the Certification Services to Physician and Healthcare Facility may disclose or otherwise provide to Business Associate 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 1996 (“HIPAA”) and/or regulations promulgated thereunder (the HIPAA statute and regulations are hereafter collectively referred to as the “Privacy Rules”); and

WHEREAS, Business Associate, Healthcare Facility and Physician wish to comply with the requirements of the Privacy Rules;

NOW, THEREFORE, Business Associate and Healthcare Facility hereby agree as follows:

1. Business Associate’s Use and Disclosure of PHI.

- A. Use and Disclosure of PHI in Providing Certification Services. Business Associate shall be permitted to use and/or disclose PHI that it receives from or on behalf of Healthcare Facility during the course of providing Certification Services. Business Associate agrees that if it requests PHI from Healthcare Facility, it shall request no more than the minimum PHI that Business Associate, in its sole discretion, believes necessary to provide Certification Services. Business Associate may provide PHI to, and permit the use of PHI by, its officers, employees, independent contractors, agents and representatives to the extent

Business Associate, in its sole discretion, determines is necessary for providing Certification Services.

B. Use and Disclosure of PHI for Other Purposes.

- i. Use. Except as otherwise provided in this Agreement or prohibited by law, Business Associate 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, Business Associate may, in the course of its activities, remove any and all identification information from the PHI; provided, however, that Business Associate'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, Business Associate 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 Business Associate 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) Business Associate 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 Business Associate of any and all breaches of the confidentiality of the PHI. Notwithstanding the foregoing, Business Associate 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. Business Associate's Compliance with Privacy Rules.

Business Associate 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.

Business Associate shall not use or disclose PHI in a manner (i) inconsistent with the Physician's responsibilities under the Privacy Rules, or (ii) that would violate the Privacy Rules if directly used or disclosed in such a manner by Healthcare Facility.

4. Business Associate's Safeguards for the Protection of PHI.

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

5. Reporting and Mitigating the Effect of Unauthorized Disclosures.

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

6. Use of PHI by Subcontractors and Third Parties.

Business Associate shall require any independent contractor, subcontractor, agent or other representative that receives, uses, or has access to Healthcare Facility'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 Business Associate under this Agreement and/or are required by law.

7. Rights of the Individual Patient.

Business Associate shall allow individual patients who are the subject of PHI provided by Healthcare Facility the following rights with respect to PHI that is received from Healthcare Facility and used or maintained by Business Associate.

A. Right of Access. Business Associate shall allow individuals who are the subjects of PHI to inspect and copy their information in possession of Business Associate. Business Associate shall allow such individuals access to PHI within ten (10) business days of a request of Healthcare Facility or the individual patient in the manner designated by Healthcare Facility, 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 Healthcare Facility or individual who is the subject of PHI, Business Associate shall amend PHI as directed by the contracting institution or patient so as to satisfy the requirements of 45 C.F.R. § 164.526. Alternatively, if Healthcare Facility prefers, Business Associate shall allow Healthcare Facility access to PHI for purposes of making any amendments or corrections to PHI that

Healthcare Facility directs or agrees to consistent with the requirements of 45 C.F.R. 164.526.

- C. Right to Accounting of Disclosures. Business Associate shall document disclosures of PHI to any third party or parties and shall make such documentation available to Healthcare Facility so that Healthcare Facility will have information that is necessary for the Healthcare Facility to provide an accounting of disclosures in response to an individual's requests for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528. Specifically, Business Associate 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; (iii) a brief description of the PHI disclosed; and (iv) a brief statement setting forth the purpose or reason for disclosure. Business Associate shall provide the Disclosure Log and any additional documentation and/or information to Healthcare Facility or an individual in the manner designated by Healthcare Facility within ten (10) business days of receiving a request from the Healthcare Facility or within thirty (30) days the termination of this Agreement.

8. Audit and Inspection of Business Associate.

Business Associate 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 Business Associate on behalf of Healthcare Facility 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. Healthcare Facility's Duties.

- A. Notice of Privacy Practices. Healthcare Facility shall be responsible for including in its Notice of Privacy Practices a statement indicating that it may disclose PHI for Health Care Operations purposes, as defined in the Privacy Rules.
- B. Notice of Restrictions on PHI. Healthcare Facility shall provide Business Associate with formal written notice of: (i) any restrictions on the use and disclosure of PHI to which Healthcare Facility has agreed that may affect Business Associate's ability to perform certification services; (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 Business Associate's ability to perform certification services; (iii) complaints filed with HHS and/or OCR under 45 C.F.R. § 160.306 with respect to the activities of the Healthcare Facility or with respect to PHI provided by Healthcare Facility under this

Agreement; and (iv) alleged claim(s) or threatened litigation related to PHI provided by Healthcare Facility under this Agreement.

- C. Patient Consent. Where necessary, Healthcare Facility shall obtain from the individual patients who are subject of the PHI provided to Business Associate the necessary consents, authorizations and other permissions.
- D. Permitted Requests. Healthcare Facility shall not ask Business Associate to use or disclose PHI in any manner that Business Associate or Healthcare Facility is not permitted under the Privacy Rules.
- E. Cooperation. Healthcare Facility will make all reasonable efforts to remedy any alleged violation of the Privacy Rules and assist Business Associate 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 Business Associate shall remain in possession of any PHI received from or on behalf of Healthcare Facility or until such time as Healthcare Facility has agreed in accordance with Section 10,C of this Agreement that it is infeasible for Business Associate to return or destroy all PHI.
- B. Termination. Healthcare Facility may immediately terminate this Agreement if it determines that Business Associate has breached a material term of the Agreement. Business Associate acknowledges that in the event of a breach of a material term, Healthcare Facility may report the breach to the Secretary of HHS or OCR.
- C. Return or Destruction of PHI. Upon termination or expiration of this Agreement, Business Associate 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 of Healthcare Facility's PHI that Business Associate still maintains in any form and shall retain no copies of such PHI. If Business Associate believes that it is not feasible to return or destroy the PHI as described above, then Business Associate shall notify Healthcare Facility in writing and identify the specific reasons supporting its determination. If Healthcare Facility, in its sole discretion, agrees that Business Associate cannot feasibly return or destroy the PHI, then it shall so advise Business Associate and Business Associate shall continue to extend all PHI protections, requirements and restrictions contained in this Agreement to any of Healthcare Facility's 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. Third-Party Beneficiary. Business Associate and Healthcare Facility expressly acknowledge that the American Osteopathic Association is an intended beneficiary of this Agreement. Nothing express or implied in this Agreement is intended to confer upon any other individual or organization other than the parties hereto and the American Osteopathic Association and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- C. 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.
- D. 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.
- E. 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 Business Associate, to:

American Osteopathic Board of Orthopedic
Surgery
800 Military St., Suite 307
Port Huron, Michigan 48060

Attention: Richard F. Howard, DO, Chair

If to Healthcare Facility to:

Attention: _____

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on this ____ day of _____, 2010.

AMERICAN OSTEOPATHIC BOARD
OF ORTHOPEDIC SURGERY

[NAME OF HEALTHCARE
FACILITY]

By: Richard F. Howard, DO

By: _____

Title: Chair

Title: _____