

# Board of Trustees Bylaws

As Amended, 03/15/2019



Adopted 4/6/2015  
Amended 12/22/2016  
Amended 3/15/2019

**BYLAWS FOR  
THE BOARD OF TRUSTEES  
OF  
BURRELL COLLEGE OF OSTEOPATHIC MEDICINE**

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

### **SECTION 1.1: OBJECTIVES**

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

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

1.2.1 BCOM Investment Partners, LLC (the “Corporation”) is the sole owner and member of the BCOM. These Bylaws reserve rights, consents, or similar actions to the Corporation, and such actions may be exercised on the Corporation’s behalf as specified herein by BCOM Management, LLC, the Corporation’s sole manager (the “Manager”).

1.2.2 The governance, oversight, and direction of the BCOM is vested in the Board of Trustees of the BCOM (the “Board of Trustees”). The primary responsibility and goal of the Board of Trustees is to further the mission and purpose of the BCOM by providing autonomous oversight of the BCOM, 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. The primary function of the Board of Trustees shall be to provide autonomous governance over the operations of the BCOM, and to assure that the BCOM provides quality medical education that meets the needs of the community and complies with all regulatory, licensing and accrediting bodies.

1.2.3 The BCOM’s officers and the Board of Trustees have the governance rights and duties set forth in these Bylaws, subject to the rights and duties, fiduciary and otherwise, that are reserved to the Corporation in these Bylaws (including as set forth in Schedule I) (e.g., merger transactions, sales of securities or membership interests, sales of assets or acquisitions outside the ordinary course) or that are otherwise required to be reserved to the Corporation as the sole member of BCOM by the New Mexico Limited Liability Company Act. Any and all powers and authority not specifically granted by these Bylaws to the Board of Trustees are reserved to the Corporation.

1.2.4 The Board of Trustees has authority to select and hire the President/CEO of the BCOM based upon his or her competency. The President/CEO manages the day-to-day business affairs and administration of the BCOM. The President/CEO reports to the Board of Trustees. The Board of Trustees has delegated to the President/CEO authority for the BCOM’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 Corporation.

## 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 Corporation to oversee general administrative matters of governance of the BCOM as described within these Bylaws, including, but not limited to, policy development, performance improvement, and organizational management and planning. The Corporation 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 BCOM shall be 13. The Board of Trustees shall be composed of:

2.2.1.1 the Managing Member of BCOM Management, LLC, who may serve as Chairman of the Board;

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

2.2.1.2 the CAO of the BCOM, who shall serve as a non-voting ex-officio Member;

2.2.1.3 three classes of Members, totaling 12 additional voting Members. Two of the three classes will have four Members and one of the three classes will have five Members. The three classes will consist of the following types of Members:

- a. Five independent Members from the general public (i.e., persons with no ownership or employment relationship with the BCOM nor familial relationship with any owner or employee of BCOM), nominated and approved by the Board of Trustees; with three serving in the five-member class (Class I), and one serving in each of the four-member classes (Classes II and III). These Members must be selected for their dedication to the BCOM 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 President, in each of the four-member classes (Classes II and III) (the "NMSU Members"); NMSU's President is able to serve as one of the two NMSU Members;
- c. Two Members (in addition to the Managing Member of BCOM Management, LLC) designated by BCOM Management, LLC, one in each of the four-member classes (Classes II and III) (together with the Managing Member of BCOM Management, LLC, "the BCOM Management, LLC Members") and the Managing Member serving in Class I;
- d. Three Members (the "Rice Members"), one in each class, designated by William Marsh Rice University ("Rice University").
- e. At least one Member of each class, nominated and approved by the Board of Trustees, shall represent the medical profession in the communities served by the BCOM.

## SECTION 2.3: TERM OF OFFICE

2.3.1 Each class of voting Members shall be appointed to a term of three years commencing January 1st. A voting Member (other than a Rice Member, NMSU Member or BCOM Management, LLC Member) may serve no more than two consecutive terms without approval from the Board of Trustees. The terms of the classes shall be staggered successively, with the term of one class expiring each year. Each voting Member initially appointed to Class I shall serve for an initial term expiring at the Board of Trustees' first annual meeting following the effectiveness of this provision; each voting Member initially appointed to Class II shall serve for an initial term expiring at the Board of Trustees' second annual meeting following the effectiveness of this provision; and each voting Member initially appointed to Class III shall serve for an initial term expiring at the Board of Trustees' third annual meeting following the effectiveness of this provision;

2.3.2 Any voting Member (other than a Rice Member or BCOM Management, LLC 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 BCOM. The Rice Members may only be removed by Rice University. The BCOM Management, LLC Members may only be removed by BCOM Management, LLC.

## SECTION 2.4: ELECTION

2.4 Each June, the Nominating and Bylaws Committee, after consultation with the Corporation as appropriate, shall present to the Board of Trustees a complete list of names

recommended to replace the independent Members of the class whose term is next scheduled to expire. Within 30 days after receiving the names of the nominees, but not later than the 31st day of August each year, the Board of Trustees shall appoint Members from the list submitted by the Nominating and Bylaws Committee or from names selected by the Board of Trustees. Such appointments shall become effective on the first day of January.

## SECTION 2.5: MEETINGS

2.5.1 Regular meetings of the Board of Trustees shall be held at least quarterly. 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 Corporation. Meetings shall be held at the BCOM unless otherwise designated by the Chairman.

2.5.2 Board of Trustees meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other and be heard and the Secretary shall provide the details regarding how to remotely access each meeting as part of the notice of each regular or special meeting.

## 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 BCOM 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

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 less than a majority of the voting Members are present 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 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 on a particular action.

#### SECTION 2.8: INFORMAL ACTION

2.8 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 in writing, including email voting, by a quorum of Members entitled to vote with respect to the subject matter thereof.

#### SECTION 2.9: ATTENDANCE

2.9 Each Member shall be required to attend in person at least 50% of all regular meetings each year, unless excused for cause, as determined by the Chairman. Failure to meet the attendance requirements shall be grounds for revocation of Board of Trustees membership, except in the case of Rice Members.

#### SECTION 2.10: VACANCIES

2.10 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; except that only Rice University may fill a vacancy caused by the loss or relinquishment of a Rice member, and only BCOM Management, LLC may fill a vacancy caused by the loss or relinquishment of a BCOM Management, LLC 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

2.11 Each Member shall be bound by the conflict of interest policy established from time to time by the Board of Trustees. A copy of the current policy is attached hereto and incorporated herein by reference as Exhibit A.

### **ARTICLE III: OFFICERS**

#### SECTION 3.1: OFFICERS



3.1 The officers of the Board of Trustees shall be the Chairman, who may be the Managing Member of BCOM Management, LLC, the Vice Chairman, who will be an independent member of the Board of Trustees, and the Secretary, who will be the CEO/President.

### SECTION 3.2 ELECTION AND TERM OF OFFICE

3.2 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 shall not be 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 two 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

3.3 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 BCOM. For the avoidance of doubt, a determination to remove the President/CEO of the BCOM from serving as Secretary of the Board does not remove the President/CEO of the BCOM from serving in the role of President/CEO.

### SECTION 3.4: VACANCIES

3.4 A vacancy in any office because of death, resignation, removal, disqualification or otherwise shall be filled by the Board of Trustees for the unexpired portion of the term.

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

3.5 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.

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

3.6 The Vice Chairman of the Board of Trustees, who shall be an independent Member 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.

**SECTION 3.7: SECRETARY**

- 3.7.1           The Secretary shall:
  - 3.7.1.1           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;
  - 3.7.1.2           cause all notices to be duly given in accordance with the provisions of these Bylaws;
  - 3.7.1.3           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; and
  - 3.7.1.4           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.

**ARTICLE IV: FISCAL YEAR**

**SECTION 4.1: FISCAL YEAR**

4.1           The BCOM’s fiscal year shall correspond with the BCOM’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: EXECUTIVE COMMITTEE FUNCTION**

5.1           An Executive Committee shall have the power to exercise all authority delegated to the Board of Trustees during the periods between Board of Trustees meetings subject to final approval of actions by the Board of Trustees at the next Board of Trustees meeting. The Executive Committee shall consist of the officers of the Board of Trustees (provided the Secretary shall not be entitled to vote on any matters) and the chairs of the standing committees of the Board of Trustees. In addition, the Executive Committee shall have at least one Rice Member and at least one BCOM Management, LLC Member with the number of Rice Members and BCOM Management, LLC Members always equal in number. Independent Members shall constitute a majority of the Executive Committee. The Executive Committee shall meet as often as it deems necessary. The Executive

Committee shall render its report to the Board of Trustees at each regular meeting of the Board of Trustees.

## SECTION 5.2: COMMITTEES OF THE BOARD OF TRUSTEES

5.2.1 The Board of Trustees shall act as a committee of the whole unless separate committees are established as provided herein below.

5.2.2 The Board of Trustees may establish one or more additional committees, which shall include (a) a Nominating and Bylaws Committee, (b) a Compliance and Accreditation Committee, (c) an Environment of Care/Safety Committee, (d) a Strategic Planning, Budget, and Audit Committee, and (e) a Compensation Committee. Each standing committee shall have at least five Members, including at least one Rice Member and at least one BCOM Management, LLC Member, with the number of Rice Members and BCOM Management, LLC Members always equal in number, and independent Members shall constitute a majority of each committee. Standing committees may also have advisory members who are not Members.

5.2.3 The creation of a standing committee shall require approval of the number of Members required by these Bylaws to take action on behalf of the Board of Trustees. The Board of Trustees may also establish ad hoc or special committees by the same process, and each such committee shall include at least one Rice Member and at least one BCOM Management, LLC Member, with the number of Rice Members and BCOM Management, LLC Members always equal in number, and independent Members shall constitute a majority of each such committee. Except as provided below, committees established by the Board of Trustees may exercise any authority of the Board of Trustees that is delegated by Board of Trustees action. When establishing a committee the Board of Trustees shall define:

- 5.2.3.1 qualifications for membership on the committee including the selection of non-Members to the committee;
- 5.2.3.2 the term of committee membership;
- 5.2.3.3 the minimum frequency of meetings and attendance requirements;
- 5.2.3.4 the frequency and type of required reports on committee activities; and
- 5.2.3.5 the specific authority and responsibilities of the committee.

5.2.4 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 BCOM. 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. If such ad hoc or special

committee established by the Chairman includes at least one Rice Member then it shall include at least one BCOM Management, LLC Member and vice versa, with the number of Rice Members and BCOM Management, LLC Members always equal in number.

5.2.5 The Board of Trustees by affirmative vote shall appoint the members of any Board of Trustees committees (other than any Rice Member or BCOM Management, LLC Member who serves on a standing committee as set forth in Section 5.2.2 and who in each case shall be appointed to serve on the committee by Rice or BCOM Management, LLC, respectively). Members of committees (other than a Rice Member or BCOM Management, LLC Member) may be removed by the affirmative vote of the number of Members required to take Board of Trustees action.

5.2.6 Any member of a committee who is not also a Member shall serve in an advisory capacity without the right to vote.

5.2.7 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 not to adopt amend or repeal these Bylaws.

5.2.8 Members of committees of the Board of Trustees may participate in a committee meeting by any communication by means of which all participating committee members can simultaneously hear and speak 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.

## **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**

6.1.1 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. A copy of the current policy is attached hereto and incorporated herein by reference as Exhibit B.

### **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, and regularly report to the Board of Trustees regarding the status of compliance.

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 be used in a review of the BCOM'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.

### 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 BCOM'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, life safety management, emergency preparedness, hazardous materials and waste management, security management, medical equipment management, and utility management.

6.3.3 The Board of Trustees shall receive and review regular reports about performance related to safety management, life safety management, emergency preparedness, hazardous materials and waste management, security management, medical equipment management, and utility management.

6.3.4 The Board of Trustees shall receive and review an annual evaluation of the scope, objectives, performance, and effectiveness of safety management, life safety management, emergency preparedness, hazardous materials and waste management, security management, medical equipment management, and utility management.

### SECTION 6.4: PLANNING

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

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

6.4.1.1 approval of the BCOM'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 Corporation 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 annual, 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 BCOM's annual and three year capital budget shall be subject to the ratification of the Corporation 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 overall business plan and budget recommendations; and
- 6.4.1.4 establishment of a collaborative planning process within the BCOM to address:
  - a. definition and communication of a mission, a vision, and values for the BCOM 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;
  - c. the economic viability of the BCOM, and shall include 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 BCOM, as appropriate to the mission and vision of the BCOM, and the scope of services provided.

## SECTION 6.5: CONTRACTED SERVICES

6.5 The Board of Trustees have 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 standards for the contracted service.

#### SECTION 6.6: DEPARTMENTAL POLICIES AND PROCEDURES

6.6 The Board of Trustees shall require that the BCOM's President/CEO, CAO and other relevant personnel collaborate in the development of BCOM-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 delegated to the President/CEO authority to approve such routine departmental policies and procedures. All policies and procedures shall be reviewed and revised periodically by the President/CEO or his/her designee. The period between reviews will comply with COCA standards, at a minimum.

#### 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

Upon vacancy of the founding President/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 BCOM. The Board of Trustees shall also advise the President/CEO in the selection process for the hiring of the Chief Academic Officer.

7.1.2 Ongoing, the Board of Trustees shall participate in monitoring the performance of the President/CEO. At least annually, the Board of Trustees shall conduct a performance evaluation for

the President/CEO. The President/CEO will perform the CAO's annual performance evaluation, in consultation with the Board of Trustees.

### 7.1.3 DEAN & CHIEF ACADEMIC OFFICER

Reporting to the President/CEO, the CAO shall be the chief academic and administrative officer of the BCOM, with primary responsibility for implementing the mission of the BCOM. Upon vacancy of this position following the term of the founding Dean, the CAO shall be appointed by the Board of Trustees upon nomination by the President/CEO from among a slate of nominees provided by a Search Committee, in consultation with Members of the Board of Trustees.

The members of the Search Committee shall be appointed by the President/CEO; the members will be selected from a list of individuals recommended by the BCOM's Faculty, selected student representation, alumni, and representatives of the healthcare, business and civic community within the BCOM's service area. Representatives of NMSU will also be included in the search process as well as Members appointed by the Chairman of the Board of Trustees, and shall include at least one Rice Member and at least one BCOM Management LLC Member, with the number of Rice Members and BCOM Management, LLC Members always being equal in number. A majority of the Search Committee shall be independent Members and non-Members.

The CAO shall serve at the pleasure of the President/CEO and under the terms of his or her contract.

For any reason should the CAO's Office become vacated, the President/CEO, with approval of the Chairman, may appoint an Acting or Interim CAO and inform the Board of Trustees.

There shall be an annual performance review of the stewardship of the CAO. The President/CEO shall conduct the review and will recommend appropriate action to the Board of Trustees. The CEO shall take steps to ensure that Members of the Board of Trustees, the Faculty and other appropriate constituencies have opportunity for input to the annual review.

## SECTION 7.2: AUTHORITY AND DUTIES

### 7.2.1 CHIEF EXECUTIVE OFFICER

The President/CEO is empowered to be responsible for the BCOM's management. The President/CEO will hold the title of President. The specific authority and duties of the President/CEO shall be the following:

- 7.2.1.1 to establish effective day-to-day operations of the BCOM through appropriate departmentalization and delegation of duties;
- 7.2.1.2 to establish information and support systems;
- 7.2.1.3 to recruit and maintain staff;
- 7.2.1.4 to conserve physical and financial assets;



- 7.2.1.5 to carry out all policies established by the Board of Trustees, or by the BCOM when policy authority has been delegated to its officers by the Board of Trustees;
- 7.2.1.6 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 BCOM. 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;
- 7.2.1.7 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;
- 7.2.1.8 to select, employ, control and discharge employees who report directly or indirectly to the President/CEO, including competent individuals who provide services;
- 7.2.1.9 to ensure personnel policies and practices for the BCOM are implemented;
- 7.2.1.10 to ensure the physical properties remain in a good state of repair and operating condition;
- 7.2.1.11 to supervise the business affairs of the BCOM;
- 7.2.1.12 to present to the Board of Trustees or its authorized committee, periodic reports reflecting the professional service and financial activities of the BCOM and prepare and submit special reports as may be required by the Board of Trustees;
- 7.2.1.13 to attend all meetings of the Board of Trustees and committees, thereof;
- 7.2.1.14 to keep the Board of Trustees fully informed of the conduct of the BCOM;
- 7.2.1.15 to review and respond to all inspection reports of any authorized inspecting agency, and to insure that the BCOM meets the standards of COCA and any other appropriate accreditation requirements; and

7.2.1.16 to perform other duties that may be necessary in the best interests of the BCOM.

7.2.1.17 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.

#### 7.2.2 DEAN & CHIEF ACADEMIC OFFICER

The specific authority and duties of the Dean/Chief Academic Officer shall be the following:

7.2.2.1 Primary responsibility for BCOM's educational, research, health care, and service programs; for the development of teaching and research affiliations; for administration of the BCOM; for promotion of the BCOM's development and effectiveness; and for maintaining accreditation with appropriate groups or agencies;

7.2.2.2 design, implementation, evaluation, and revision of curricula;

7.2.2.3 supervision of the members of the academic and non- academic staff of the BCOM, in accordance with the approved organizational structure;

7.2.2.4 recommendation to the President/CEO promotion of the Faculty of the BCOM;

7.2.2.5 recommendation to the President/CEO of appointment, reappointment and promotion of qualified individuals to serve as administrators of the BCOM;

7.2.2.6 oversight of a system of career development for individual paid Faculty members;

7.2.2.7 development and implementation of a system of review of the effectiveness of performance of individual paid Faculty members;

7.2.2.8 preparation and recommendation of an annual budget through the President/CEO to the Board of Trustees

7.2.2.9 implement the expenditure of funds allocated to the BCOM in accordance with the budget approved by the Board of Trustees;

7.2.2.10 assignment of space within the BCOM;

- 7.2.2.11 development of liaisons and mechanisms to foster consultation and discussion with appropriate community groups and other external constituent groups;
- 7.2.2.12 submission of reports and recommendations to the President/CEO and the Board of Trustees concerning the operation, plans and development of the BCOM.

### 7.2.3 ACADEMIC ADMINISTRATIVE OFFICERS

The CAO may, after consultation with the approval of the President/CEO, appoint and delegate authority and/or responsibility to such subordinate administrative officers as may be deemed necessary for effective administration. All appointees shall serve at the pleasure of the CAO and per the terms of their contracts if applicable.

### 7.2.4 DEPARTMENTS

The BCOM may be subdivided into divisions and departments in a manner consistent with its missions and goals on the recommendation of the CAO and with the approval of the President/CEO, subject to the Board of Trustees approval, of the overall organizational structure as addressed within these Bylaws. The organization chart will depict such structure(s). Each academic and academic or student support department shall have a chairperson or equivalent position (Chairperson) who serves at the pleasure of the CAO.

The goal of departmental formation is to minimize the number of departments and foster maximum collaboration towards the achievement of the mission.

Under the CAO, a department Chairperson shall have administrative responsibility for, as well as participate in, the educational, research, health care and service programs of the department.

There shall be an annual performance review and evaluation of the department and its Chairperson's stewardship by the CAO.

The Chairperson's duties shall include the following:

- 7.2.4.1 Development and operation of departmental programs;
- 7.2.4.2 supervision of departmental Faculty and staff;
- 7.2.4.3 annual evaluation of all departmental paid Faculty and review of those evaluations delegated to division, section or program heads;

- 7.2.4.4 establishment of annual goals and objectives with individual paid Faculty members and review of those delegated to division, section or program heads;
- 7.2.4.5 establishment of a career development program and counseling and training concerning progress and career development for individual members of the paid Faculty;
- 7.2.4.6 making recommendations to the CAO regarding all issues of concern to the department;
- 7.2.4.7 review of the budget and program plans with the Faculty members of the Department;
- 7.2.4.8 recommendations to the CAO regarding the annual budget;
- 7.2.4.9 in consultation with the full-time Faculty of the department holding appointments as Associate Professor and above, make recommendations regarding appointments, reappointments, promotions, changes in status, leaves, dismissals and acceptance of resignations;
- 7.2.4.10 evaluation of the department's educational, research, service and, where appropriate, health care programs;
- 7.2.4.11 maintenance of accreditation with appropriate groups and agencies;
- 7.2.4.12 preparation and submission of an annual report to the Dean regarding instructional activities, research and service accomplishments, performance and progress of paid Faculty and financial management within the department. The annual report shall include a description of the process used for consultation with the Faculty. The annual report shall be shared with the Faculty of the Department

Prior to the recruitment of an initial department chairperson, or in the event of a vacancy in a chairperson position, the above mentioned duties and powers may be borne by the appropriate Associate/Assistant Dean or by an Interim/Acting Chairperson, selected by the CAO. This selection shall follow consultation with the CAO by the full-time Faculty of the department holding appointments as Associate Professor and above.

Each Chairperson shall be appointed only by the CAO after the concurrence of the President/CEO.

The Chairperson shall serve at the pleasure of the CAO. The performance of the Chairperson will be reviewed annually by the CAO.

Divisions or sections may be formed within a department on the recommendation of the Chairperson and with the approval of the CAO and the CEO within an overall approved organizational structure as discussed within these Bylaws. Programs leading to the conferral by the BCOM of certificates or degrees may be established within a department on the recommendation of the Chairperson and with the approval of the CAO and the President/CEO. A division, section or program head may be appointed by the CAO and the President/CEO, and shall serve at the pleasure of the Chairperson. There shall be an annual performance review and evaluation of the division, section or program and its head's stewardship. The findings of such review and evaluation shall be reported to the Chairperson and to the Dean.

### 7.2.5 THE FACULTY

The Faculty shall consist of the CAO, subordinate administrative officers of the BCOM with academic appointments, and Emeritus Faculty, and those individuals who hold full academic appointments: Professors, Associate Professors, Assistant Professors and Instructors.

The faculty of the BCOM will be afforded the opportunity to make recommendations to the CAO with regard to the following:

- 7.2.5.1 Design, implementation, evaluation and revision of the curriculum;
- 7.2.5.2 formulation of the policies and procedures for, and delivering the instructional, research and service programs of, the BCOM;
- 7.2.5.3 establishment and promulgation of the academic calendar;
- 7.2.5.4 encouragement of research activities by Faculty members and students;
- 7.2.5.5 establishment of standards for examinations, grading, academic standing, and attendance;
- 7.2.5.6 establishment of requirements for admissions; development of criteria and procedures for selection of students; and via the Admissions Committee, recommendation of students for admission;
- 7.2.5.7 establishment of requirements for degrees and certificates;
- 7.2.5.8 recommendation through the CAO and the President/CEO to the Board of Trustees of those candidates who have fulfilled the requirements for degrees and certificates;
- 7.2.5.9 establishment of policy and procedures under which the Faculty operates.

Academic policies, procedures and plans pertaining to the above matters at the BCOM will be considered final when approved by the CAO subject to the delegation of authority by the Board of Trustees through the President/CEO. Regular meetings of the Faculty will be held during each academic year. The CAO or his/her designee shall be the presiding officer of the Faculty. The CAO or any other Faculty member may place items on the agenda. Notice of a meeting with the agenda shall be circulated at least one calendar week in advance of a meeting. Additional meetings may be convened by the President/CEO or the CAO at their discretion.

## **ARTICLE VIII: INDEMNIFICATION**

### **SECTION 8.1: INDEMNIFICATION**

8.1 The Corporation shall indemnify the Board of Trustees, officers, employees, and agents to the fullest extent permitted by law. The Corporation 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 Corporation, to the extent set forth in such indemnification policy.

## **ARTICLE IX: APPROVAL**

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

9.1 Proposed amendments to these Bylaws may be proposed by the affirmative vote of a majority of the Board of Trustees; provided, however, these Bylaws and any amendments or alterations thereto shall not become effective until final approval by the Corporation as provided in this Section 9.1. These Bylaws may be amended at any time by the Corporation 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 the number of members of the Board of Trustees or modifies, alters or changes any of the rights of the Rice Members or University 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, 5.2, 7.1, or Schedule I, shall require approval of the Corporation and Rice University for only those amendments pertaining to Rice Members, Rice University or an increase in the number of members of the Board of Trustees or Schedule I; provided, further, notwithstanding anything in these Bylaws to the contrary, that any amendment to these Bylaws that alters, limits or curtails the rights, roles and responsibilities of the Corporation or increases or decreases the number of members of the Board of Trustees shall require the approval of the Corporation.

9.2 The approval of the Corporation 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 Corporation.

## **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 BCOM not to discriminate on the basis of race, color, creed, ethnicity, sex, age, religion, national origin, disability, familial status, ancestry, sexual orientation, gender, gender identity or spousal affiliation in its programs, activities, hiring, or the admission of students.

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 BCOM.

The BCOM 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.

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

### **APPROVAL:**

By: \_\_\_ Signature on File \_\_\_\_\_

Daniel Burrell, Chairman – Board of Trustees & Managing Member – BCOM Management, LLC Amended

Date: 3/15/2019

#### 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

Exhibit D, Provision for Due Process (Students & Employees)

Exhibit E, Student Due Process

## **Schedule I – Rights Reserved to the Member**

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

- (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) make or become obligated to make capital expenditures in excess of \$150,000, individually or in the aggregate, in any 12-month period;
- (iv) (x) alter the primary business of the BCOM from that of owning and operating an osteopathic medical college, or (y) undertake any other material business operations by the BCOM;
- (v) take any action which would cause the BCOM to lose the various regulatory approvals necessary for its operation;
- (vi) cause the BCOM to issue additional equity interests or securities exercisable or convertible for equity interest in the BCOM;
- (vii) permit or cause the BCOM at any time to incur or become liable for indebtedness in excess of \$250,000;
- (viii) including as a result of a series of related transactions: (1) merge or consolidate the BCOM with or into another person or a merger of another person with or into the BCOM, (2) convert the BCOM into another entity, (3) take actions that would result in a change of control of the BCOM, (4) sell of all or substantially all of the assets of the BCOM to another person or (5) lease of, or grant an exclusive license for, all or substantially all of the BCOM assets;
- (ix) sell, lease or grant an exclusive license for any portion of the BCOM assets, other than in the ordinary course of business not to exceed \$250,000, individually or in the aggregate;
- (x) permit or cause the BCOM 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;



- (xi) cause BCOM to exit or alter its primary business from that of owning and operating an osteopathic medical college;
- (xii) admit additional members to the BCOM;
- (xiii) grant or permit to exist any security interest, pledge, lien or encumbrance on any of the BCOM assets except in connection with indebtedness otherwise permitted;
- (xiv) cause the BCOM to enter into, directly or indirectly, any transaction with an affiliate of the Corporation or Daniel C. Burrell or any member of Daniel C. Burrell's immediate or extended family;
- (xv) cause the liquidation, dissolution or winding up of the business and affairs of the BCOM; or
- (xvi) 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 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 BCOM and one or more of its Board of Trustees Members, or between the BCOM and any other corporation, firm, association, BCOM, 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 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 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 Board of Trustees would 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 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 Board of Trustees of this Partnership. 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 BCOM provides and supports a system for resolving conflicts among the BCOM's leaders and those under their leadership. Pursuant to the BCOM Code of Ethical Conduct for Burrell College of Osteopathic Medicine, 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 BCOM or the BCOM's customers.
- II. That we shall seek to resolve all conflicts fairly and objectively, whether the conflict is between administrators, managers, faculty members, employees, or the governors of this BCOM.
- III. That all leaders of the BCOM 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, and the BCOM Code of Ethical Conduct.
- IV. Upon knowledge or notification of unresolved conflicts level, the Chairman will 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 BCOM 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 BCOM 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 BCOM'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 BCOM 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 BCOM would create a conflict of interest to a member, that member must make a full disclosure to BCOM'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 BCOM 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.

**EXHIBIT D**  
**EMPLOYEE PROGRESSIVE DISCIPLINE and DUE PROCESS POLICY**

The Board of Trustees of BCOM provides and supports a system to ensure that all employees, students, including but not limited to faculty, non-faculty, managers and executives whether full-time or part-time status, are afforded due process during times of disciplinary review and/or action based on all local, state and federal employment laws.

Every employee has the duty and the responsibility to be aware of and abide by existing rules and policies. Employees also have the responsibility to perform his/her duties to the best of his/her ability and to the standards as set forth in his/her job description or as otherwise established.

BCOM supports the use of progressive discipline to address issues such as poor work performance or misconduct. Our progressive discipline policy is designed to provide a corrective action process to improve and prevent a recurrence of undesirable behavior and/or performance issues. Our progressive discipline policy has been designed consistent with our organizational values, HR best practices and employment laws.

Outlined below are the steps of our progressive discipline policy and procedure. BCOM reserves the right to combine or skip steps in this process depending on the facts of each situation and the nature of the offense. The level of disciplinary intervention may also vary. Some of the factors that will be considered are whether the offense is repeated despite coaching, counseling and/or training; the employee's work record; and the impact the conduct and performance issues have on our organization.

The following outlines BCOM's progressive discipline process:

- **Verbal warning:** A supervisor verbally counsels an employee about an issue of concern, and a written record of the discussion is placed in the employee's file for future reference.
- **Written warning:** Written warnings are used for behavior or violations that a supervisor considers serious or in situations when a verbal warning has not helped change unacceptable behavior. Written warnings are placed in an employee's personnel file. Employees should recognize the grave nature of the written warning.
- **Performance improvement plan:** Whenever an employee has been involved in a disciplinary situation that has not been readily resolved or when he/she has demonstrated an inability to perform assigned work responsibilities efficiently, the employee may be given a final warning or placed on a performance improvement plan (PIP). PIP status will last for a predetermined amount of time not to exceed 90 days. Within this time period, the employee must demonstrate a willingness and ability to meet and maintain the conduct and/or work requirements as specified by the supervisor and the organization. At the end of the

performance improvement period, the performance improvement plan may be closed or, if established goals are not met, dismissal may occur.

If at any time throughout the progressive disciplinary process an employee believes that he or she is being treated in an unfair or unprofessional manner, the employee may request a meeting with the next level supervisor within BCOM's organizational structure and chain of authority to review the employee's grievance. This process may continue up to and including the highest level of management authority within BCOM.

BCOM reserves the right to determine the final and appropriate level of discipline for any inappropriate conduct, including oral and written warnings, suspension with or without pay, demotion and discharge.

**EXHIBIT E**  
**STUDENT DUE PROCESS POLICY**

The Board of Trustees of BCOM provides and supports a system to ensure that all Students are afforded due process during times of disciplinary review and/or action.

BCOM's Students' rights and due process are addressed in BCOM's Student Handbook. Students will be held accountable to BCOM's Student Code of Conduct and Discipline Policy. Any behavior that deviates from the Code of Conduct will be subject to possible review and disciplinary action up to and including expulsion. Students will be afforded due process to appeal actions taken against them by faculty, officers or committees. Such appeal processes are addressed in BCOM's Student Handbook.