

**ORANGE COUNTY
BOARD OF EDUCATION
AGENDA ITEM ABSTRACT**

Meeting Date: September 9, 2013

**AGENDA
ITEM No. 13-09-16**

ACTION ITEM: (Y/N) Y

SUBJECT: Duke University Health System Graduate Medical Trainee Affiliation Agreement Amendment

INFO. CONTACT: Dr. Marcie Holland **PHONE: 919-732-8126**

ATTACHMENT: 1. Graduate Medical Trainee Affiliation Agreement
2. First Amendment to the Graduate Medical Trainee Affiliation Agreement

PURPOSE: The purpose of this item is to allow the Board to review the Graduate Medical Trainee Affiliation Agreement and First Amendment to the Affiliation Agreement.

BACKGROUND: In 2002, Orange County Schools entered into the Graduate Medical Trainee Affiliation Agreement with Duke University Health System. Since that time, the Agreement has automatically renewed for 1-year terms. The original agreement specifically covers medical residents, i.e. medical students who come to OCS athletic events, as part of a training rotation. It incorporates by reference Training Letters of Agreement with individual departments, which Orange County Schools receives periodically, such as the Orthopaedic Surgery Residence Program Agreement last year, as well as the Sports Medicine Services Agreement for physical therapists currently under consideration.

The Amendment to the original agreement is being presented to address requirements put in place legislatively since the original agreement was signed in 2002. Specifically, it addresses the requirement for criminal background checks/sex offender registry checks to be completed, updated information regarding Workers' Compensation Coverage, and Confidentiality of Student information.

The original agreement does reference and require Orange County Schools to obtain 'appropriate consents', as detailed in #19 on page 8 of the original agreement, that will allow Duke to provide clinical care for Orange County Schools' students "for any procedures performed pursuant to or within the contemplation of this Agreement." This agreement, related specifically to the Duke doctors, does not require a HIPPA consent form.

FINANCIAL IMPACT: None

RECOMMENDATION: The Superintendent recommends the Board of Education approve the First Amendment to the Graduate Medical Trainee Affiliation Agreement.

AGREEMENT
BETWEEN
ORANGE COUNTY SCHOOLS
AND
DUKE UNIVERSITY HEALTH SYSTEM, INC. d/b/a DUKE HOSPITAL

GRADUATE MEDICAL TRAINEE AFFILIATION AGREEMENT

ORIGINAL

This Agreement is made effective this 1st day of October 2002 by and between Duke University Health System, Inc. d/b/a Duke Hospital, a nonprofit healthcare institution, located in Durham, North Carolina ("Duke"), and Orange County Schools ("Affiliate"), a North Carolina Public School System located in Orange County, NC

WITNESSETH

WHEREAS, Duke, in conjunction with the Duke University School of Medicine, is the sponsor of approved graduate medical education programs in various medical specialties and operates an acute care hospital that is considered to be a teaching hospital for purposes of receiving graduate medical education payments under the Medicare program;

WHEREAS, Duke wishes to offer its graduate medical trainees expanded learning environments in a clinic setting according to the following terms and conditions;

WHEREAS, Affiliate desires to provide such graduate medical trainees with an opportunity to increase their medical knowledge and to further the clinical and educational missions of Duke and Affiliate by providing an additional clinical training environment for such graduate medical trainees;

WHEREAS, such a collaborative relationship between Duke and Affiliate is of mutual interest and benefit to both parties; and

WHEREAS, Affiliate agrees to accept such services according to the following terms and conditions;

Now, therefore, the parties agree as follows:

1. Responsibilities of Duke

- a) Duke will provide graduate medical trainees for clinical training experiences in settings at Affiliate from Duke's training program(s) named on the attached Training Letter(s) of Agreement labeled as Exhibit A and incorporated by reference herein.
- b) Services provided by Duke's graduate medical trainees pursuant this Agreement will be within the established and written requirements of the degree, certification, or training being pursued as required and as required of every candidate for that degree, or certification, if applicable.
- c) Graduate Medical Trainees participating in training activities at Affiliate will, as a condition of participation, agree to comply with all applicable policies, procedures, rules and regulations of the Affiliate. Upon request, Duke shall remove any graduate medical trainee from the training experience at Affiliate for unsatisfactory performance or a failure to follow Affiliate's administrative and patient care policies, procedures, rules and regulations. Reasons for such demand for withdrawal shall be furnished to the student and to Duke in writing and Affiliate shall follow Affiliate's established policies and procedures regarding due process.
- d) Duke shall pay the costs of the graduate medical trainees' salaries and fringe benefits when the Graduate Medical Trainees are participating in the clinical training and provision of patient care services at Affiliate's site under this Agreement.

2. Responsibilities of Affiliate

- a) Affiliate agrees to provide clinical training experiences for Duke's graduate medical trainees at Affiliate from the training programs identified in the attached Training Letter(s) of Agreement labeled as Exhibit A. Affiliate agrees to accept such graduate medical trainees for clinical education experiences subject to the terms and conditions of this Agreement and the attached Exhibit A.
- b) Affiliate is responsible for the administrative supervision of graduate medical trainees participating in clinical training experiences pursuant to this Agreement.

- c) Affiliate will provide appropriate facilities, support services, support personnel, supplies as applicable to enable the graduate medical trainee to perform the services described in this Agreement.
- d) Affiliate shall obtain appropriate consents, signed by the parent or authorized guardian (or the student if over the age of 18) enabling Duke to provide clinical care for Affiliate's students pursuant to this Agreement.

3. Clinical Supervision and Training.

As between the parties to this Agreement, Duke retains sole authority and responsibility for the care and treatment of patients treated pursuant to this and will ensure that each patient has an attending physician of record. Duke also shall ensure that each graduate medical trainee providing clinical services under this Agreement has a consistent and appropriate level of clinical supervision. Supervision for graduate medical trainees training at Affiliate pursuant to this Agreement shall be as set forth in the Training Letter(s) attached as Exhibit A. For each training program assigning graduate medical trainees to Affiliate the parties agree to identify in such Training Letter(s) one or more qualified physicians, (the "supervising physician(s)"), to provide supervision and training with respect to all clinical activities undertaken by each graduate medical trainee. In the event there is a conflict between the supervision requirements as described in this Section and those described in the attached Exhibit A, the training program specific supervision requirements agreed to by the parties in the Exhibit A shall prevail.

4. Rotation Coordinator

For each graduate medical trainee clinical training experience Affiliate will designate one person to be the coordinator who will facilitate communication between Duke and Affiliate. All correspondence regarding schedules will be distributed and communicated with the coordinator designated as the coordinator by Affiliate. Duke will likewise designate one person to provide such coordination services for Duke.

5. Financial Arrangements

Affiliate acknowledges that it does not have significant

incremental costs associated with the arrangement of clinical supervision and training of the graduate medical trainees at Affiliate's site. The presence of (and professional services rendered by) the graduate medical trainees is considered by the Affiliate and the supervising physician to present an opportunity for increased productivity and coverage that at least matches any incremental supervision/training costs that may exist. Duke incurs all or substantially all of the costs associated with the training of the graduate medical trainee while at Affiliate's site. Duke does not provide compensation to Affiliate of the supervising physician for providing supervision and training at Affiliate's site.

6. Liability Insurance

- a) Duke shall maintain in full force and effect during the term of this Agreement professional liability insurance covering Duke against all claims arising out of or related to the performance of services by the graduate medical trainees in connection with this Agreement. Such insurance shall be in coverage amounts of not less than \$1 million per incident and \$3 million annual aggregate.
- b) Affiliate participates in a risk management program with the North Carolina School Boards Trust (NCSBT) which provides general liability coverage totaling \$1,000,000.00 for each claim made and \$2,000,000.00 total coverage and errors and omissions coverage totaling \$1,000,000.00 for each claim and \$1,400,000.00 total coverage (inclusive of defense costs, charges and expenses); Affiliate shall provide Worker's Compensation coverage in accordance with the minimum statutory limits. Such insurance shall extend to all activities of Affiliate in connection with this Agreement.
- c) Each party shall provide the other with proof of the foregoing insurance coverage upon request. Each party is obligated to notify the other immediately of any cancellation or change of such insurance coverage.

7. Indemnification

Each party (as the "Indemnifying Party") hereto agrees to indemnify and hold the other party and its trustees, directors, employees, students, and agents, harmless from and against any losses, costs, liabilities, damages or expenses, including reasonable attorneys fees (collectively "Losses"), arising out of or in connection with any failure to perform any of the Indemnifying Party's obligations hereunder or the negligent or intentional act or omission of

the Indemnifying Party in connection with this Agreement. The indemnification obligations of this section shall survive termination of this Agreement

8. Independent Contractor

The relationship of the parties under this Agreement shall be that of an independent contractor, and not that of an agent, employee, partner, or joint venturer. Neither party shall exercise control over the manner in which the other party performs its duties hereunder except as provided in this Agreement or to assure compliance with this Agreement.

9. Use of the Parties' Names

- a) Affiliate agrees not to use the name, symbol, trademarks, or service marks currently existing or subsequently established of Duke without the prior written consent of Duke. All material to be reviewed should be sent or faxed to: Malcolm Isley, Associate Vice President, Network Services, Duke University Health System, Inc., 3100 Tower Blvd, Suite 600, Box 80, Durham, North Carolina 27707. FAX Number (919) 493-9159.
- b) Duke agrees not to use the name, symbol, trademarks, or service marks currently existing or subsequently established of Affiliate without the prior written consent of Affiliate.

10. Term and Termination

- a) This Agreement shall be effective as of the effective date and shall remain in full force and effect for a period of one (1) year from its effective date, unless earlier terminated as provided in this article. Thereafter, this Agreement shall be automatically renewed for successive one (1) year periods (subject to any pending notice of termination provided in accordance with this Section 10) unless a party gives written notice to the other party that it shall not renew at least sixty (60) days prior to the expiration of this Agreement.
- b) Either party may terminate this Agreement for any reason, without cause or penalty, upon 60 days notice.
- c). Either party may immediately terminate this Agreement

for illegal conduct or fraud by the other party.

- d) Either party may terminate this Agreement for any material breach of the Agreement provided the breaching party is given written notice of the breach and 30 days from receipt of such notice to correct the breaching conditions as described in the notice.

11. Notice.

Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed given as of the date it is (a) delivered by hand; (b) mailed, postage prepaid return receipt requested, to the parties at the addresses listed below or later specified in writing; or (c) sent, shipping prepaid, return receipt requested, by a national courier service, to the parties at the addresses listed below:

As to Duke:

Malcolm Isley
Associate Vice President, Network Services
Duke University Health System, Inc.
Box 3229
Erwin Road
Durham, North Carolina, 27705

and

As to Affiliate:

Superintendent *Mike Williams, Ph.D*
Orange County Schools
200 East King Street
Hillsborough, NC 27278
(919) 732-8126

12. Dispute Settlement

In accordance with the terms of the United States Arbitration Act, any disputes between the parties arising under or related to this Agreement, if not resolved through good faith negotiation between the parties within a reasonable period, may be resolved exclusively through arbitration proceedings conducted in accordance with the commercial arbitration rules of the American Arbitration Association (AAA). The arbitration shall be conducted at a location agreed upon by the parties (or, if the parties are unable to agree, at a location determined by the AAA) before

a panel of three AAA arbitrators selected in accordance with the procedures of the AAA. The parties agree that the determination of the arbitrators is final and binding.

13. Governing Law.

The laws of the state of North Carolina shall govern this Agreement.

14. Assignment.

This Agreement is for professional services. No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other parties.

15. Entire Agreement.

This Agreement, including any schedules or other attachments that are incorporated herein by reference, contains the entire agreement among the parties as to its subject matter.

This Agreement merges all prior discussions among the parties and no party shall be bound by conditions, definitions, warranties, understandings, or representations concerning such subject matter (including those in any prior agreement between the parties) except as provided in this Agreement or as may be specified later in writing and signed by properly authorized representatives of all of the parties.

16. Waiver.

The failure of a party in any instance to insist upon the strict performance of the terms of this Agreement shall not be construed to be a waiver or relinquishment of any of the terms of this Agreement, either at the time of the party's failure to insist upon strict performance or at any time in the future, and such term or terms shall continue in full force and effect.

17. Severability.

Each clause of this Agreement is a distinct and severable clause and if any clause is deemed illegal, void or unenforceable, the validity, legality and/or enforceability of the remaining clauses or portion of this Agreement shall not be affected thereby.

18. Modification for Change In Law.

To the extent that any law, rule, or regulation of any authority (including the JCAHO or other relevant accrediting agency) having jurisdiction over the parties to this Agreement shall raise question as to the legality, enforceability, or appropriateness of this Agreement or any provision hereof, the parties agree to negotiate promptly regarding modification as may be required to bring this Agreement into compliance with such applicable law, rule, or regulation. Should the parties be unable to agree upon such modification within a period of thirty (30) days from the date any party shall give notice to the others of such changes in law, rule, or regulation, this Agreement shall be deemed terminated.

19. Medical Records.

Each party shall be responsible for the storage, maintenance and confidentiality of proper medical records for the patients treated pursuant to this Agreement. Each party shall be responsible for fulfilling all requirements imposed by applicable law and its own medical records procedures with respect to the preparation, maintenance, security, disclosure and retention of such medical records. Facility and Duke shall provide copies of medical records, films and reports to one another upon request to the extent appropriate consent of the patient has been obtained or authorized by law. Each party shall obtain, record and preserve as required by relevant law, rule or regulation any and all specific consents as may be required for any procedures performed pursuant to or within the contemplation of this Agreement.

20. Confidentiality of Medical Information.

Both parties shall maintain the confidentiality of patient medical information as required by law. The parties understand that the graduate medical trainees will be required to comply with Affiliate's policies and procedures relating to the protection of confidential patient medical information with respect to all services provided at Affiliate's facility during the term of this Agreement.

21. No Third Party Beneficiaries.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Nothing in this Agreement is intended, nor shall be deemed, to confer any benefits on any third party, including, without limitation, any patients of DUHS or Affiliate, nor shall such person or entity have any right

to seek, enforce or recover any right or remedy with respect hereto.

22. Stark Law, Anti-Kickback Statute, Civil Money Penalties Law, and Similar State Prohibitions.

The parties enter into this Agreement with the intent of conducting their relationship in full compliance with applicable federal, state and local law, including but not limited to the federal Stark law and regulations, the federal anti-kickback statute and regulations, the federal civil money penalties law and regulations, and similar state law and regulatory prohibitions. Notwithstanding any unanticipated effect of any of the provisions herein, no party will intentionally conduct itself under the terms of this Agreement in a manner to constitute a violation of the Stark law, anti-kickback statute, the civil money penalties law, or similar state prohibitions.

23. No Referral Obligation.

Affiliate acknowledges and understands that this Agreement does not require, and shall not be construed to require (directly or indirectly, explicitly or implicitly), Affiliates' use of any DUHS facility or service related to DUHS, or the admission or referral of any Affiliate's patients to a DUHS facility.

24. Amendment.

Any amendment to this Agreement shall be in writing and duly executed by appropriate representatives of each of the parties.

IN WITNESS WHEREOF, the parties hereby execute this Agreement:

DUKE UNIVERSITY HEALTH SYSTEM, INC.

BY: William J. Donelan DATE: 11/6/02

William J. Donelan
Executive Vice President

BY: Malcolm Isley DATE: 10/31/02

Malcolm Isley
Associate Vice President, Network Services
Duke University Health System, Inc.

ORANGE COUNTY SCHOOLS (AFFILIATE):

BY: Michael F. Williams DATE: 10/22/02

Name: Michael F Williams
Title: Superintendent (Interim)

FIRST AMENDMENT TO AGREEMENT BETWEEN ORANGE COUNTY SCHOOLS AND
DUKE UNIVERSITY HEALTH SYSTEM, INC. d/b/a DUKE UNIVERSITY HOSPITAL
GRADUATE MEDICAL TRAINEE AFFILIATION AGREEMENT

Effective this ___ day of _____, 2013, the 2002 Graduate Medical Trainee Affiliation Agreement between Duke University Health System, Inc., d/b/a Duke University Hospital ("Duke"), and the Orange County Schools ("OCS") is hereby amended as follows:

1. Criminal Background Checks/Sex Offender Registry Checks. Duke will conduct criminal background checks on Duke personnel, including graduate medical trainees, who will have contact with students pursuant to this Agreement. Such checks shall include checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. Duke shall provide documentation to OCS that the background check was conducted prior to assigning personnel to OCS. Duke shall not allow any person who has been convicted of (1) a felony, or (2) any crime, whether felony or misdemeanor, involving sex, violence or drugs, to participate in an experience pursuant to this Agreement at OCS. OCS reserves the right to prohibit any individual personnel from Duke from participating under this Agreement if OCS' reasonable judgment indicates the person may pose a threat to the safety of OCS staff or students. Under no circumstances shall any individual who is listed on one of the three sex offender registries listed above have any direct interaction with students at the direction of Duke pursuant to this Agreement. Duke expressly acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense.
2. Workers' Compensation Coverage. Duke acknowledges that OCS's workers' compensation insurance policy does not extend to cover Duke personnel and/or graduate medical trainees, and OCS is not responsible for providing workers' compensation coverage for Duke personnel and/or graduate medical trainees. Contrary language in Paragraph 6(b) of the Agreement is hereby deleted.
3. Confidentiality of Student Information. Duke agrees that all student records, if any, obtained by its medical trainees in the course of providing services to the OCS under this Agreement shall be subject to the confidentiality and disclosure provisions of applicable Federal and State statutes and regulations, and OCS policies. Duke shall not forward to any person other than the parent or OCS any student record or information gained from student records without the written consent of the parent and OCS.

This the ___ day of _____, 2013.

DUKE UNIVERSITY HEALTH SYSTEM, INC.
D/B/A DUKE UNIVERSITY HOSPITAL

By: _____ Date: _____
William J. Fulkerson, Jr., MD
Executive Vice President - DUHS

ORANGE COUNTY SCHOOLS

By: _____ Date: _____
Dr. Del Burns, Interim Superintendent