

April 11, 2013

BOARD OF GOVERNORS
BUDGET AND FINANCE COMMITTEE

Request for Approval of Affiliation Agreement between
East Carolina University's Brody School of Medicine and Vidant Medical Center

Request: East Carolina University respectfully requests the Board of Governors approve the updated affiliation agreement between East Carolina University's Brody School of Medicine ("BSOM") and Pitt County Memorial Hospital, Inc. d/b/a Vidant Medical Center ("VMC").

Affiliation Background

- VMC and BSOM have maintained a close affiliation dating back to the inception of BSOM. The first affiliation agreement between the two was signed in 1974. An updated version of the agreement, with a 20 year term, was finalized in 1994.
- The affiliation agreement establishes the foundation for the relationship between BSOM and VMC and outlines areas of mutual activity and interest, including:
 - Administration and financial responsibility of each institution;
 - Medical student education;
 - Graduate medical education (GME, i.e., residency training programs);
 - VMC Medical Staff membership and VMC Chiefs of Service;
 - Research, Facilities, and Services; and
 - Appointments to the VMC Board.
- The affiliation agreement establishes a Joint Policy Committee that oversees operation of the affiliation agreement and assists in related problem solving.
- BSOM and VMC have worked collaboratively over the last year through small work teams to draft an updated affiliation agreement as the expiration date for the current agreement nears. This proposed new version has been approved by the Joint Policy Committee, the ECU Board of Trustees and the VMC Board of Trustees on April 9, 2013. Because of the County's reversionary interest in VMC, it will be submitted to the Pitt County Board of Commissioners for approval as well.

Key Revisions to the Agreement

- The updated affiliation agreement submitted here with a request for approval is generally consistent with the prior agreements between the parties, but with several modifications, including:
 - Updating and strengthening the segments of the agreement dealing with medical student education to support BSOM accreditation (via LCME);

- Strengthening the inter-relationship to conduct research studies, citing the value both organizations place on the development of knowledge;
- Adding a provision which states the parties may join in the creation of collaborative healthcare delivery arrangements over time;
- Clarifying the process for the ECU Chancellor and the Vidant Health CEO to make recommendations to the Board of Governors for appointments to the VMC Board¹;
- Simplifying the process for forming search committees for clinical department chairs, to make the process consistent with the present approach (which includes a representative from VMC and the relevant local private practice community);
- Revising the process for the BSOM Dean and the President of VMC to agree on appointments for VMC Chiefs of Service, and the opportunity of the President of VMC to annually evaluate the work of the Chief;
- Memorializing the role of VMC in assessing and treating workplace injuries to medical students which supplements the role of the ECU;
- Expanding the authority of the Office of Graduate Medical Education to include selected non-accredited training programs for medical school graduates;
- Clarifying the need to communicate collaboratively when one entity is considering expanding or revising facilities that could impact clinical or academic activities;
- Changing the authority for resolving major issues between the two entities that cannot be handled by the Joint Policy Committee from the VMC Board and the Board of Governors to the ECU Vice Chancellor for Health Sciences and the Vidant Health CEO; and
- Updating the termination and change of control provisions.

ECU will be glad to provide additional information if needed for your consideration of this proposal.

¹ VMC is governed by a Board of Trustees with twenty (20) members. The current affiliation agreement calls for the Pitt County Commissioners to appoint eleven (11) board members to the hospital's board and the UNC Board of Governors to appoint the remaining nine seats. Of these nine, one seat is appointed from a slate of four persons nominated by a nominating committee composed only of trustees appointed by the UNC Board of Governors. In some cases, VMC submitted possible appointees directly to the Board of Governors for consideration without ECU involvement. Revisions incorporated into the version proposed for approval ensure the opportunity for appropriate input from ECU to the Board of Governors.

DRAFT 02/26/13
AFFILIATION AGREEMENT BETWEEN
THE BRODY SCHOOL OF MEDICINE AT EAST CAROLINA UNIVERSITY AND
PITT COUNTY MEMORIAL HOSPITAL dba VIDANT MEDICAL CENTER

WHEREAS the parties, on December 17, 1975, entered into an Affiliation Agreement which expired in December 1995; and

WHEREAS the parties, on October 14, 1994, agreed to amend the previous agreement and renew it with changes effective January 1, 1995; and

WHEREAS an Affiliation Agreement between the Brody School of Medicine at East Carolina University (BSOM) and Pitt County Memorial Hospital, dba Vidant Medical Center (VMC) will continue to provide for the utilization of VMC as the primary teaching hospital of BSOM, and will thereby render unnecessary the construction and operation of a separate State-owned teaching hospital with attendant duplication of facilities and services; and

WHEREAS VMC and BSOM each recognize that VMC benefits from an affiliation with BSOM through the enrichment of its medical education, research, and other related programs and the care of certain of its patients; and BSOM and VMC each recognize that East Carolina University and its BSOM benefit from an affiliation with VMC by having available for their faculty and medical students opportunities for clinical education, research, patient care, and other related activities afforded by VMC, its medical education programs, and facilities; and

WHEREAS the majority of the physicians on the VMC medical staff consists of physicians who have faculty appointments from BSOM and a majority of all VMC admissions are made by physicians who are faculty members; and

WHEREAS an Affiliation between BSOM and VMC will continue to most advantageously utilize their combined facilities, professional staff and other resources to effect their common concern for excellence in community service, patient care, medical education and research for the residents of Pitt County, other counties in eastern North Carolina and the State of North Carolina; and

WHEREAS the principles of a primary Affiliation of VMC and BSOM have in the past been jointly developed and approved by representatives of the parties involved; and

WHEREAS expanded facilities which may be necessitated by the Affiliation Agreement will permit continuation of the present VMC policy of providing for the hospital health care needs of Pitt County residents while expanding the availability of services to the regions to be served by VMC; and

WHEREAS it is the objective of VMC and BSOM that the Affiliation Agreement be so constructed as to comply with the standards and regulations of the reviewing and accrediting agencies involved; and

WHEREAS the parties to this agreement from time to time have entered or may in the future enter into leases, contracts and/or agreements outside this Affiliation Agreement which are consistent with the spirit of this agreement,

Now, therefore, this agreement is made and entered into this _____ day of _____, 2013 by and between the Board of Trustees of VMC, the Board of Commissioners of Pitt County, the Board of Trustees of East Carolina University, and the Board of Governors of The University of North Carolina, as follows:

I. AREAS OF RESPONSIBILITY

- A. The BSOM shall be operated as a reputable and accredited school of medicine as prescribed by the laws of the State of North Carolina and the requirements of the Liaison Committee on Medical Education (LCME) of the American Association of Medical Colleges and the American Medical Association. The Board of Governors of The University of North Carolina (UNC) shall retain for its facilities all jurisdictional powers incident to separate ownership. The operation of this Agreement as it affects BSOM shall be consistent with the policies of the Board of Trustees of East Carolina University (ECU) pursuant to the ECU Board's authority under the laws of North Carolina and the Code of UNC, and policies, regulations, and guidelines adopted by the Board of Governors of UNC or the President of UNC pursuant to their authority under the Constitution and laws of the State of North Carolina.
- B. The VMC Board shall retain for its facilities all jurisdictional powers incident to separate ownership, including the powers to determine general and fiscal policies and to appoint its administrative officers and other personnel, under terms of subsequent paragraphs of this agreement. Teaching and research facilities which are provided by the VMC Board shall be fully integrated with the program of BSOM. The VMC Board is not to be understood as intending, and neither is it the intent of this Agreement, to obligate VMC to engage in any activities, research or otherwise, beyond those required for accreditation of VMC and BSOM, and neither is it the present intent of the VMC Board to undertake activities, research or otherwise, which are properly the responsibility of the BSOM.
- C. The VMC Board retains final jurisdiction over the administration and the supervision of its facilities and over admission of patients and assignments of beds to them, consistent with the service purpose of VMC and the educational program of BSOM. The VMC Board shall seek counsel and advice from the Dean of BSOM when the exercise of such jurisdiction may affect the programs of teaching and research.
- D. Educational programs and research projects conducted solely by and in BSOM shall remain the responsibility of BSOM.
- E. BSOM and VMC shall communicate on any education, research or service

programs that serve the mission of both institutions, and may collaborate if the Dean of the BSOM and the President of VMC, or their respective delegates, agree to do so. Where applicable, a separate agreement will be formalized for such a program. Both institutions value the products of scientific investigation, including the creation of new knowledge applicable to the healthcare of patients, and will collaborate on such programs as agreed upon. Other programs of education, research and service within VMC shall remain the responsibility of the sponsoring institution. VMC and BSOM may from time to time jointly engage in, and apply their resources to support, collaborative healthcare delivery arrangements with each other outside this Affiliation Agreement which are consistent with the spirit of this agreement.

II. RIGHTS AND PRIVILEGES OF PHYSICIANS AND DENTISTS

- A. The rights and privileges of all physicians and dentists on the VMC medical staff shall be maintained consistent with accreditation standards and requirements for VMC and BSOM and may not be withdrawn arbitrarily. The Board of Trustees of VMC shall maintain the authority to appoint the VMC medical staff and delineate privileges after consultation with the VMC medical staff.
- B. The following terminology shall apply when various physician groups are referred to in this Affiliation Agreement:
 - (1) The Medical Staff: All physicians and dentists who have been admitted to VMC medical staff membership according to the VMC medical staff bylaws.
 - (2) Medical School Based Faculty: Members of the BSOM faculty who are employed or contracted by BSOM either full or part-time.
 - (3) Community-Based Faculty: Members of the medical staff who are not employed by BSOM, who practice in the community, and who have appointments to the BSOM faculty.

III. GOVERNANCE

- A. The Board of Trustees of VMC (the VMC Board) shall provide oversight to VMC so as to meet accreditation standards for VMC and for BSOM's educational programs.
- B. VMC will be governed by a 20-member Board of Trustees. Pitt County, through its Board of Commissioners, will appoint 11, or 55%, of the governing body of VMC, at least one of whom shall be a Pitt County physician. The UNC Board of Governors will appoint the remaining 9 seats, or 45%, of the governing body of VMC. Of these 9, one member will be appointed from a slate of four persons nominated by a nominating committee composed only of trustees appointed by the UNC Board of Governors. Neither the County nor UNC Board of Governors shall remove any of their appointed Trustees except for

cause.

- C. The Executive Committee of the VMC Board shall consist of nine members including the Chairman, Vice Chairman, Secretary, and six members elected by the VMC Board from the at large membership in a manner such that a total of five members of the Executive Committee are members of the VMC Board appointed by the County Commissioners and a total of four members of the Executive Committee are members of the VMC Board appointed by the Board of Governors of UNC.
- D. For appointments by the Board of Governors of The University of North Carolina (UNC BOG), the Chancellor of East Carolina University and the Chief Executive Officer of Vidant Health, or their designees, will develop a slate of candidates for appointments and reappointments to present to the UNC BOG as a joint recommendation for appointment to the VMC Board. These recommendations will be based on agreed upon competencies of the candidates as needed for the proper knowledge, expertise and function of the VMC Board. The submission of recommendations to the UNC BOG will be in the form of a letter, with the letterhead consisting of the identity of each entity, jointly signed by the Chancellor and the Chief Executive Officer. In the event that agreement on candidates cannot be reached, separate letters may be sent by the respective parties, with proper notification of the intent to do so. This process does not apply to seat five, the seat appointed from a slate of four persons nominated by a nominating committee composed only of trustees appointed by the UNC Board of Governors, as described in III B above, as the process for appointment to this seat is established within the Agreement to Change Status of Pitt County Memorial Hospital entered into between the County and VMC dated June 1, 1998 (the "Transfer Agreement"), and may not be modified outside of that agreement.

IV. FINANCIAL RESPONSIBILITY

Expenses incurred for the operation of the facilities of VMC shall be paid by VMC. Expenses incurred for the operation of BSOM shall be paid by ECU. However, nothing in this paragraph shall prohibit subsequent agreements, subject to the legal powers and limitations of VMC and BSOM for the joint employment of personnel and for the pro rata apportionment of salaries thereof or for the pro rata apportionment of other related costs and expenditures. Such agreements will be agreed to by the Dean of BSOM and the President of VMC on these or other budgetary matters.

V. PATIENTS

Each patient admitted to a VMC service shall be available for teaching programs unless the attending physician or dentist, the patient, the guardian, or in the event of patient incapacity, the person authorized to consent to care specifies otherwise.

VI. MEDICAL SCHOOL-BASED FACULTY: APPOINTMENT, RECRUITMENT, PRIVILEGES

- A. Appointment to the BSOM faculty shall be the responsibility of BSOM, subject to the policies and regulations of ECU and of the Board of Governors of UNC.
- B. Each search committee for a chair of a clinical department at the School of Medicine shall include unrestricted representation from the VMC President or designee and Community-Based Faculty relevant to the department.

VII. CHIEF OF SERVICE

- A. The chairperson of a clinical department in BSOM, or such other person as the Dean of BSOM may designate, and who is confirmed by the President of VMC, shall be appointed by the VMC Board as the Chief of the corresponding VMC hospital service. The Dean of BSOM and the President of VMC will define a process wherein the President will provide input on the annual evaluation of each Chief of Service based on performance criteria defined in a contractual agreement outlining the work of the Chief of Service. Recognition for outstanding performance or failure to fulfill the performance criteria as specified in the contract will be addressed through specific actions in the contract.
- B. Each Chief of Service will be responsible for providing a mechanism for representation from all members of the service in developing patient care policies of the service.

VIII. MEDICAL STUDENT AND GRADUATE MEDICAL EDUCATION PROGRAMS

- A. Medical student educational programs within VMC shall conform to the requirements of the Liaison Committee for Medical Education (LCME). The Chair of an academic clinical department shall be responsible for medical education programs within that department within VMC. Medical student participation in patient care shall be supervised by members of the Medical School-Based Faculty and Community-Based Faculty as agreed to by VMC and BSOM. The medical education programs of BSOM and VMC will assure that the learning environment promotes the development of explicit and appropriate professional attributes in its medical students and residents. BSOM and VMC mutually recognize that the learning environment includes both formal learning activities, and the attitudes, values and informal lessons conveyed by individuals who interact with the medical students and residents. When a medical student is exposed to an infectious, environmental, or other occupational hazard during the course of his/her clinical experience at VMC, initial evaluation and treatment will be provided by VMC's Occupational Health Office (and

Emergency Department for after hours needs), with follow-up care assured by BSOM's Office of Prospective Health. Initial evaluation and treatment costs will be borne by VMC.

- B. VMC and BSOM accept the joint responsibility for developing and administering all residency and other graduate medical education (GME) programs accredited by the Accreditation Council for Graduate Medical Education (ACGME) or other national accrediting agencies, and unaccredited programs as jointly approved by the Dean of BSOM and the President of VMC. GME programs shall be conducted in accordance with the requirements of the accrediting body and the GME Committee. The Chair of an academic clinical department sponsoring any GME program shall maintain management responsibility for the conduct of these programs unless otherwise directed by the President of VMC and the Dean of BSOM acting jointly.
- C. A Graduate Medical Education Committee shall have the responsibility for advising on and monitoring all aspects of residency education. This committee is responsible to the Executive Committee of the Medical Staff of VMC for all medical staff issues related to these trainees. In all other issues, the GME Committee is responsible to the Dean of BSOM and the President of VMC.
- D. The President of VMC and the Dean of BSOM shall jointly appoint a BSOM faculty member to be the Director of GME in VMC and the Associate Dean for GME in BSOM. This person shall be the Designated Institutional Official for the ACGME and chair the GME Committee. The Dean of BSOM and the President of VMC will define a process wherein the President will provide input on the annual evaluation of the Director of GME/Associate Dean for GME based on performance criteria defined in a contractual agreement outlining the work of the Director of GME/Associate Dean for GME. Recognition for outstanding performance or failure to fulfill the performance criteria as specified in the contract will be addressed through specific actions in the contract.

IX. RESEARCH

- A. BSOM and VMC shall encourage the development of research programs to advance medical knowledge, to support the undergraduate and graduate educational programs, and to contribute to the recruiting of an outstanding faculty.
- B. All proposed research projects within VMC shall conform with federal, state, and other governmental regulations, and be approved by the appropriate VMC process.

X. EXPANSION OF TEACHING FACILITIES AND SERVICES

VMC and BSOM shall consult with the other regarding proposed expansion and/or renovation plans in order to provide adequate facilities and services for academic and clinical functions.

XI. JOINT POLICY COMMITTEE

- A. In order to administer equitably the provisions of this Affiliation Agreement, there shall be established a Joint Policy Committee, hereinafter referred to as the "Committee". It shall consist of ten members:

1. The chair of the VMC Board of Trustees
2. The President of VMC
3. One appointed by the chair of the VMC Board of Trustees
4. One appointed by the Pitt County Commissioners
5. The Chief of the VMC Medical Staff
6. The Past Chief of the VMC Medical Staff
7. The Dean of BSOM
8. The Vice Chancellor for Administration and Finance of ECU
9. and 10. Two appointed by the Chancellor of ECU

The chairperson of the committee shall hold office for one year and be the Past Chief of the VMC Medical staff.

- B. Its duties shall include:

1. Review of this Agreement, at least annually, to assess its operating effectiveness and to ascertain how, if at all, the Agreement may be improved to the satisfaction and mutual benefit of the parties involved.
2. Recommendation of amendments to this Agreement.
3. At the request of BSOM and VMC, review and make recommendations for solving problems related to the mutual programs of research, teaching, patient care and community services.
4. Consideration of such other matters which from time to time arise and which are of common concern to BSOM and VMC.
5. In the event that the Joint Policy Committee cannot resolve differences, the issue shall be referred for negotiation between the Vice Chancellor for Health Sciences of ECU and the Chief Executive Officer of Vidant Health, neither of whom shall be Committee members.

- C. Appointments to the committee shall be for three year terms except those who serve by reason of the position they hold. Any member of the committee may be reappointed at the discretion of the party making the original appointment. A member may be removed only by the appointing party. In the event of removal, death, or resignation of a member, a successor shall be selected by the appointing party.

- D. The Committee shall meet at anytime at the request of either BSOM or VMC. Such a request shall be submitted in writing to the Chairperson of the Committee. Notice of the time and place of the meeting shall be given at least ten days in advance. Said meeting shall be held within a reasonable time from the date the request is submitted or not more than thirty days.
- E. In the event it is impossible for any member to be present at a meeting so called, the appointing party may designate an alternate to attend the meeting.

XII. TERMINATION OR AMENDMENT OF THE AGREEMENT

- A. The parties of this Affiliation Agreement acknowledge that the success of the combined program of medical training and patient care can only be achieved through faithful communication and sympathetic cooperation between the Dean of BSOM and its faculty and the President of VMC and its medical staff, and the Board of Trustees of VMC, the Board of Commissioners of Pitt County, the Board of Trustees of ECU, and the Board of Governors of UNC.
- B. This Agreement shall extend for a period of twenty years from its effective date (the "Initial Term"). It may be terminated prior to the conclusion of the twenty year period only upon mutual consent of BSOM and VMC . In such an instance, a period of four years shall be allowed to effect the termination unless a shorter period is established by mutual consent of BSOM and VMC .
- C. It is understood that this Agreement may be amended in writing at any time to include such provisions as are agreed upon by the parties. Future provisions in this document required for accreditation purposes by either VMC or BSOM should be addressed by addendum to this agreement or other contractual mechanisms rather than through termination and renegotiation of this agreement.
- D. In the event BSOM or VMC 1) declares bankruptcy, 2) fails to comply with any Federal or State law that materially impairs its ability to perform its obligations under the Agreement or that materially and adversely affects the operation or regulatory compliance of another party after being notified in writing of a failure to comply, 3) loses any North Carolina, federal, or accreditation agency license or permit that materially impairs its ability to perform its obligations under the Agreement or that materially and adversely affects the operation or regulatory compliance of the other party, or 4) is excluded from participation in Government Programs, then this Agreement may be terminated immediately by written notice of termination given by the other party (BSOM or VMC). Notwithstanding the foregoing, the party receiving notice of termination shall be allowed 30 days or such other

time period as agreed upon by BSOM and VMC to cure the deficiency.

- E. If BSOM or VMC shall be guilty of a material breach of this Agreement other than any of those identified specifically above as a basis for immediate termination, then the non-breaching party may cancel the Agreement at its option after written notice of the basis for termination and a reasonable opportunity to cure the breach, which shall be no less than one year.
- F. BSOM or VMC shall have the right to terminate this Agreement in the event that the other party merges with a third party and is not the surviving party of such merger or otherwise undergoes a change of control (i.e., a material change in fundamental purposes; a new appointing authority for members of its board of trustees or directors; or a change in majority of the persons on its board of trustees or directors other than in the ordinary course of business pursuant to the bylaws in effect as of the effective date of this Agreement). BSOM and VMC agree to provide written notice to the other no later than one year prior to the effective date of any such event if any of these specified events is planned or reasonably foreseeable, and the other party shall, within sixty (60) days of receipt of such notice, notify the other party in writing as to whether or not it elects to exercise its rights under this section.
- G. It is further agreed that this Agreement, as it may be amended from time to time, shall be renewed for an additional period of twenty years beyond the Initial Term unless VMC or BSOM provides written notice to the other of intent not to renew at least one year prior to expiration of the Initial Term. In the event that BSOM or VMC provides such timely notice of intent not to renew, the Agreement shall be extended for two years beyond the Initial Term to allow for an orderly wind-up of the relationship of the parties. In the event of termination for any reason or non-renewal of this Agreement, the parties agree to cooperate in good faith in the wind-up of the activities that are the subject of this Agreement, including but not limited to the wind-up of student clinical education or training insofar as feasible. VMC and BSOM shall conduct the wind-up in a manner minimally disruptive to the parties' programs and personnel and in compliance with accreditation requirements.

BOARD OF GOVERNORS OF
THE UNIVERSITY OF NORTH CAROLINA
BY: _____
Chairman

ATTEST:

Secretary

BOARD OF TRUSTEES OF
PITT COUNTY MEMORIAL HOSPITAL
BY: _____
Chairman

ATTEST:

Secretary

PITT COUNTY BOARD OF COMMISSIONERS
BY: _____
Chairman

ATTEST:

Secretary

BOARD OF TRUSTEES OF
EAST CAROLINA UNIVERSITY

BY: _____
Chairman

ATTEST:

Secretary