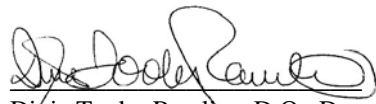
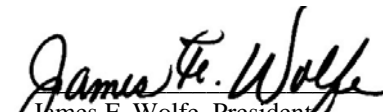


**EDWARD VIA VIRGINIA COLLEGE OF OSTEOPATHIC MEDICINE**

Policy Order No: F-020 v3  
Effective Date: 9/1/06

  
Dixie Tooke-Rawlins, D.O., Dean  
And Chief Administrative Officer

  
James F. Wolfe, President

**INTELLECTUAL PROPERTIES AND AGREEMENTS POLICIES AND PROCEDURES**

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## **Purpose**

The Edward Via Virginia College of Osteopathic Medicine (hereinafter “VCOM” or the “College”) supports its faculty, staff and students in securing commercial development of intellectual and other property resulting from their research to ensure that the resulting benefits reach society at the earliest opportunity. The College has developed policies and guidelines that protect the integrity of research conducted here and that provide incentives for its researchers. Furthermore, the College provides an array of administrative services to its faculty to assist them in protecting rights to VCOM’s Intellectual Property.

This document describes VCOM’s policy with respect to the development, protection and transfer of rights to Intellectual Property resulting from the work of its faculty, staff or students, and lists its available resources on Intellectual Property. This policy shall be consistent with applicable federal and state statutes and implementing regulations. It shall apply to all students receiving remuneration for services, faculty, and staff of the College (with the exception of those covered under the Invention Policy of Virginia Tech).

## **Intellectual Property: Definition**

For purposes of this policy, Intellectual Property is defined as any new and useful process, machine, composition of matter, life form, article of manufacture, software, copyrighted work, or tangible property. It includes such things as new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, data sets, software, musical processes, or unique and innovative uses of existing Inventions. Intellectual Property may or may not be patentable or copyrightable. It is created when something new and useful has been conceived or developed, or when unusual, unexpected, or non-obvious results, obtained with an existing Invention, can be practiced for some useful purpose. Intellectual Property can be created by one or more individuals each of whom, to be an Inventor, must have conceived of an essential element or have contributed substantially to its conceptual development.

## **Responsibilities of the College**

VCOM recognizes the importance of preserving and transferring ownership of its Intellectual Property in an appropriate and cost-effective manner. To maximize the value of the Intellectual Property for the benefit of the College and its faculty, staff and students, the College shall establish efficient means for technology transfer. Technology transfer generally involves the movement of Intellectual Property developed in research programs at the College, out of the research lab, through the Patent and Copyright process, and into the commercial sector.

To this end, the College shall:

1. Provide oversight of Intellectual Property management and technology transfer to ensure adherence to College policies.
2. Assist the academic divisions in developing and maintaining effective means of technology transfer.
3. Provide legal services and cooperate with the academic divisions in promoting and licensing Intellectual Property.
4. Take appropriate actions to protect VCOM’s Intellectual Property.

In addition, each academic division of the College shall:

1. Promote technology transfer in a manner consistent with the division's objectives and academic environment.
2. Establish policies and procedures for technology transfer consistent with VCOM's policies.
3. Review and approve all agreements that convey or affect VCOM's rights to Intellectual Property originating in that division.

### **Responsibilities of the Faculty, Staff and Students**

Faculty members, staff and students receiving remuneration for services, who create Intellectual Property shall:

1. Disclose to appropriate College officials the creation of Intellectual Property.
2. Conduct technology transfer activities in a manner consistent with the VCOM's policies and procedures, including those governing conflicts of commitment and conflicts of interest.
3. Cooperate with the College in defending and prosecuting patents and in legal actions taken in response to infringement.

### **Ownership of Intellectual Property**

1. In general, VCOM shall have ownership rights to Intellectual Property developed by faculty, staff, and those students receiving remuneration for services, as a result of support either directly from, or channeled through VCOM. "VCOM support" is defined as financial or other support, regardless of origin, including, but not limited to, College-administered funds, College-funded time and College resources (i.e., equipment, facilities, and expendable materials), which is used in the discovery or development of Intellectual Property.
2. In the absence of VCOM support, rights of ownership to Intellectual Property shall remain with the Inventor. Provision of a faculty appointment shall not in and of itself be construed as VCOM support for purposes of this definition. VCOM may decline to accept any rights of ownership by assignment or otherwise, in which case all rights revert to the Inventor.
3. When software or other unpatented tangible research property (e.g., cell lines and data sets) is developed by faculty, staff, or students using VCOM support, VCOM shall own all rights to such property, including copyright (subject to agreements with appropriate funding sources). Software developed at VCOM shall be treated as an Invention.
4. Copyright to, and royalty from, literary or scholarly works in tangible or electronic form (e.g., textbooks and other curricular materials, reference works, journal articles, novels, music, photographs, etc.) produced by faculty members as a part of their usual teaching, service, and research activities, and which do not result directly as a specified deliverable work from projects funded in whole or in part by VCOM or a sponsored research agency, shall belong to the faculty who prepared such works and may be assigned or retained by them.
5. Ownership of Intellectual Property developed by students who are also employees of the College, or students working in a research lab located in the College, will be determined by the rules that apply to all College employees. Intellectual Property generated by students not employed by the College and not using College resources of at least \$5,000 in their generation will be owned by the student; however, such ownership rights shall be subject to any applicable

prior rights of private sector or government sponsors, and to the right of the College to use the Intellectual Property internally at no cost. Students contributing to Intellectual Property developed by a VCOM investigator will receive royalty or equity consistent with the extent of their contribution to the Intellectual Property development.

6. Patent rights shall belong to VCOM in all future filings from any knowledge gained in studies in which a VCOM employee was the principal investigator, unless agreed upon in advance by the VCOM Dean and Vice President of Academic Affairs. Should an investigator leave VCOM, VCOM shall hold an interest in all patent rights arising from studies in which the former VCOM employee was a principal investigator.

## **Invention Disclosure**

Inventors/creators of Intellectual Property shall promptly provide information on the time of the discovery, any preexisting technologies, and any pending or already-published articles on such new technology. This information shall be used by VCOM to review funding sources and obligations for notification requirements and other rights. It also aids VCOM in determining whether the Invention will meet the U.S. Patent Office's criteria of novelty, utility, and non-obviousness or, if not, whether the Invention can be protected by a means other than patenting. It is important to have this information on record as early as possible, in case a patent is obtained and later challenged. When providing this information, please fill out an Invention Disclosure Form and submit it to the appropriate Associate Dean of Research.

If, in the absence of timely disclosure, commercial utilization of an Invention takes place with the direct or indirect involvement of the Inventor/creator(s) but without involvement of the College, the Inventor/creator(s) shall be deemed to have not fulfilled their obligation to disclose. In this event, the College may:

1. Take whatever legal and/or business action is indicated to protect its rights and rightful share of financial benefits.
2. Deny to the Inventor/creator(s) any share of revenues that would otherwise accrue to them under this policy.

## **Revenue from Intellectual Property**

### ***General Principles***

Revenues received as a result of licensing agreements in the form of cash royalties and/or equity holdings shall be distributed to encourage technology development within, and technology transfer from, VCOM. Such "Gross Revenues" shall not include funds received for research support.

VCOM costs for patent prosecution, licensing, and license maintenance, shall be reimbursed from Gross Revenues. All shares of revenue should contribute to the reimbursement of VCOM costs for patent infringement actions. The manner and amount of said reimbursement will be determined by the Associate Dean of each division and the Dean and Vice President of Academic Affairs to maintain fairness and adequate incentives in the distribution of revenue.

Sensitivity to conflicts of interest necessitates that certain types of research on a licensed Invention by its Inventor(s) and/or VCOM may be disallowed whatever the funding source. Sponsored research to advance the state-of-the-art of existing inventions is encouraged under those circumstances where the Inventor's participation presents little, if any, opportunity to compromise the integrity of the Inventor

and VCOM. For review of cases involving potential conflicts of interest, each division should create a faculty committee to review and make recommendations to the Dean.

***Schedule for Net Revenue Distribution from Intellectual Property***

The schedule for distribution of Net Revenues shall be designed to provide incentives to Inventors. The support and further development of technology transfer offices and functions shall be increased from the distribution of net revenues to the divisions of VCOM. All named Inventors will receive equal distribution, unless otherwise specified.

This policy provides for the distribution of revenues from both net cash royalties and equity shares resulting from Intellectual Property agreements. The distribution of revenue is in two tiers: at or below \$100,000 per year as shown in Table 1.

**Table 1. Net Revenue Distribution from Intellectual Property.**

Annual Net Revenue	Inventors' Personal Share	Inventors' Department	Inventors' Division	VCOM Share
First \$100K	50%	15%	10%	25%
Over \$100K	50%	10%	10%	30%

***Equity Holdings***

With sufficient safeguards, licensing agreements involving equity participation by VCOM and its faculty, staff, and students receiving remuneration for services, are permitted. Under appropriate circumstances, research sponsored by companies in which faculty, staff, students receiving remuneration for services, and/or VCOM have equity holdings may also be permitted. Specific procedures for implementing the policy guidelines provided below are the responsibility of each division:

1. VCOM contracts with licensees must be negotiated by the appropriate VCOM office and not directly by the Inventor.
2. The Inventors' and VCOM's equity interest will not be traded until after a stipulated trigger date.
3. The Inventors' equity interest will be held in escrow for the benefit of the Inventor by VCOM.
4. Any association of the Inventor(s) with the licensee will be subject to disclosure, including compensation, prior approval, and annual reporting.
5. Divisions from which the Intellectual Property originates must have adequate policies and procedures for conflict of interest consistent with those outlined in this section (General Principles).

***Distribution of Equity Revenue***

Unlike royalty revenue, equity revenue distribution is sporadic and likely to occur only once. Cash received from the sale of shares allocated to the Inventors' laboratory share will be apportioned in equal amounts annually over the remaining life of the relevant U.S. patent or the remaining years under the relevant license agreement, whichever is shorter, unless the Dean and Vice President of Academic Affairs and the Inventor(s) agree to another method of distribution. The distribution schedule for equity revenue distribution is shown in Table 1.

***Distribution after Termination or Death***

The Inventors' personal share shall survive termination of affiliation with VCOM and, in the event of death of the Inventor, shall inure to his/her estate. Upon termination of the Inventor's affiliation with VCOM, the Inventors' laboratory share, as well as the unspent portion and future allocations, shall be reallocated to the Inventors' division according to the applicable royalty distribution policy.

## **Additional Provisions**

### ***Research***

VCOM shall only enter into a research contract or other binding commitment to perform work that can reasonably be expected to be publishable, provide educational opportunities, and/or be in the public interest.

### ***Use of the VCOM Name***

All written or broadcast material containing VCOM's name, or names of its employees, for advertising, marketing, or other promotional purposes shall be submitted for approval to the Dean and Vice President of Academic Affairs prior to use of such material. A statement on the use of VCOM's name, or the names of its employees, shall be included in all appropriate contracts between industry (company) and VCOM.

### ***Publication***

VCOM shall enter into contracts or other binding commitments to conduct research and training only if such contracts or commitments permit the disclosure and publication of research. Delays in publication up to 120 days may be agreed to in order to permit time for filing of patent applications.

### ***Confidentiality***

Faculty, staff, and students receiving remuneration for services, shall not undertake research in which the sponsor: (i) prohibits the researcher from disclosing the existence of the agreement or (ii) restricts the researcher's public disclosure of information developed by that researcher.

### ***Avoidance of Conflicts of Interest and Commitment***

The requirement for reporting as outlined in the following paragraph is meant to ensure that conflicts of commitment and conflicts of interest will be considered openly and fairly, and that appropriate action will be taken to resolve those conflicts. Reporting thus serves to protect individual faculty members, staff and students receiving remuneration for services; VCOM; and academic freedom in general.

In cases where faculty, staff and students receiving remuneration for services, enjoy rights to Intellectual Property under this policy, they have an obligation to report fully any outside activities and interests related to their teaching, research, or service to their Division Chair or other designated VCOM official and obtain prior approval before the activity begins. The report must be in writing and must include the names of companies for whom he/she consults or performs services, the number of days committed to each consulting agreement, and a copy of any proposed consulting agreements associated with Intellectual Property. Consulting agreements must be reviewed for compliance with VCOM policies and government regulations and approved by the appropriate division office before the consultation can begin.

The holding of equity interest in a commercial venture by VCOM and the faculty, staff or student Inventor, and the receipt of royalties and acceptance of consultant fees, places a burden on the Inventor to report such financial interests in all relevant papers prepared for publication or oral presentation, in order to avoid later accusation that adverse results had been suppressed in order to enhance the marketability of the Invention.

## ***Grievances***

In the event an Inventor has a grievance about VCOM's handling of his/her Intellectual Property, he/she may appeal to the appropriate divisional committee or individual. An investigator may take a grievance to the Office of the Dean if his/her division has no appeals mechanism or if he/she wishes to appeal a divisional decision.

## **Appendix: Definitions**

*Commercial Venture:* A commercial venture shall mean a start-up company, limited partnership, joint venture, or any other entity that has obtained a license to a division's technology that involves equity. Ownership of a company's stock by VCOM in the endowment investment pool (EIP) will not alone define the company as a commercial venture.

*Copyright:* Works of authorship in any tangible medium of expression can be copyrighted. Copyright does not protect mere ideas; it is the reproduction of the particular expression of the idea that receives protection by the federal statute known as the 1976 Copyright Act. A copyright gives an author or creator of an original expression (or in certain instances, the author's employer) the exclusive right to reproduce such expression; to distribute the expression (the right to control the first sale of an embodiment of a copyright); to display the original embodiment; and to prepare derivative works. To establish copyright it is necessary, prior to first publication, to mark the work with the copyright symbol, ©, as well as the date and the name of the copyright owner.

*Equity or Equity shares:* Equity or equity shares shall mean shares of common or preferred stock, warrants, options, convertible instruments, units of a limited partnership, or any other instrument conveying ownership interest in a commercial venture.

*Gross Revenues:* Gross revenues shall mean all income received by VCOM under a license agreement. Excluded from income shall be research funds (unless the research funds offset future royalty obligations) and maintenance fees received under the license agreement.

*Income:* Income is the revenue paid as consideration for a license. Income includes one time payment or on-going revenues such as license fees, maintenance fees, minimum annual royalties, earned royalties, reimbursement of patent expenses, and equity.

*Inventor:* An inventor is one who makes a creative input to the conception of the invention. U.S. patent statutes require that only the true Inventor(s) be named on the patent. A coauthor or one who merely reduces the invention to practice (i.e., successfully uses the invention in its intended manner) is not an inventor unless he makes a creative input to the conception.

*Inventors' Laboratory:* The inventors' laboratory is defined as the facilities which provide the opportunity for experimentation, observation, and/or practice of the inventors' particular field of study.

*Invention:* A creation of Intellectual Property which did not exist previously.

*License:* A license is a contract which awards to a party other than the owner(s) of the Intellectual Property the right to make, use, or sell the Intellectual Property. Licenses may be awarded on an exclusive or non-exclusive basis and may provide for payment of fees, royalties, or other income to the owner(s) of the Intellectual Property.

*License Agreement:* A license agreement shall mean an agreement conveying rights in a School's technology to the commercial venture, and under which equity is received as partial or full consideration.

*Net Revenue:* Net revenue shall mean gross revenue less unreimbursed patent prosecution expenses, licensing expenses associated with a particular license agreement, and that portion of the expenses connected with infringement actions which have been agreed upon between the Associate Dean of the Division and the Dean and Vice President of Academic Affairs as appropriate for reimbursement from gross revenues.

*Patent:* A U.S. patent is a grant which gives the owner of the invention covered by the patent the right to exclude all others from making, using, or selling the invention in the United States. In the U.S., a patent provides that exclusive right for 17 years. To qualify for U.S. patent protection, an invention must be deemed new, useful, and non-obvious to one skilled in the art, and must not have been in public use or on sale in the U.S. or described in a printed publication as defined below, anywhere in the world for more than one year prior to the filing date of the U.S. patent application.

Patent rights in many foreign countries may be lost if there has been any disclosure of the invention, verbal or written, anywhere in the world prior to filing the foreign patent application. However, if the U.S. patent application has been filed prior to any disclosure of the invention, patent applications may still be filed in foreign countries within one year of the U.S. filing date in those countries which adhere to an International Convention even if there has been an intervening publication.

*Publication:* As related to inventions and patents, a publication is an enabling public disclosure of an invention and may be verbal or printed. An enabling disclosure is one which will teach one skilled in the art how to practice the invention. Printed publications include abstracts and, in certain instances, grant proposals, funded or unfunded. A public disclosure is a non-privileged communication to one or more individuals from outside the VCOM community. It is important to emphasize that the issuance of a publication may jeopardize one's ability to secure a foreign patent.

*Research Contract:* A research contract shall mean a separate agreement to conduct research related to licensed technology.

*Tangible Property:* Tangible property is anything having a physical embodiment (e.g., cell lines, software, devices, compositions of matter) whether or not patentable or copyrightable.

*Trigger Date:* Trigger date shall mean the date the equity held by VCOM and Inventors is no longer subject to restrictions imposed by VCOM and may be traded, subject to any remaining restrictions imposed by law, the underwriters, or the commercial venture.