

MEMORIAL HEALTHCARE SYSTEM

STANDARD PRACTICE

Date: October 2009

Date Reviewed: October 2009; January 2011; April 2013; August 2013; August 2022; August 2023

Date Revised: October 2009; April 2013; August 2023

Title: **Intellectual Property**

Standard Practice: Except as otherwise set forth in this Standard Practice, MHS owns all Intellectual Property discovered, created or developed by a Covered Person, and Covered Persons agree to assign such Intellectual Property to MHS.

All Intellectual Property made, discovered, or created by Covered Persons while acting within the course and scope of employment or while performing their job duties must be disclosed to MHS.

The Covered Person acknowledges that all Intellectual Property now or hereafter existing made or developed by Covered Person related to MHS are works made in the course of or as a result of the Covered Person's services with MHS constitute works for hire under U.S. copyright and patent law, and the Covered Person shall and does hereby irrevocably:

- a. assign to MHS all of his/her right, title and interest in and to all of the Intellectual Property;
- b. waive any and all moral rights with respect to all Intellectual Property rights therein; and
- c. acknowledge that the MHS owns all Intellectual Property.

This Standard Practice applies to all Covered Persons, as defined below.

Definitions:

Academic Works: Written works and oral works of authorship in recorded form that communicate or share for the benefit of the public or the field an activity or accomplishment within the scope of a Covered Person's research, education or academic clinical activities undertaken at or in connection with their academic appointments at any institution, but excluding private activity that is disclosed and approved as required and excluding works created for MHS' operational, administrative or other internal or external business purposes. Academic Works may take the form of articles, books, commentaries, blogs or websites, to name some examples. Characterization as Academic Works does not turn on form, but on the relationship of the action to the academic appointment, and its purposes.

Covered Person: (1) Employees of MHS, including fellows and residents or (2) any other member of the medical staff or research staff of MHS, faculty member, student, visiting faculty or scientist, consultant, and volunteer of MHS, whether compensated or not, who are involved in educational, research, clinical or other activities supported in whole or in part by funds, personnel, facilities, materials or other resources of MHS, or administered by MHS and who have

signed an Acknowledgement of Memorial's Intellectual Property Standard Practice and Participation Agreement ("**Participation Agreement**") with MHS. All individuals who are not employed by MHS must submit to MHS a Participation Agreement prior to Intellectual Property collaboration with MHS, which will permit the individual to proceed as a Covered Person under this Standard Practice. All MHS employees are considered Covered Persons for purposes of this Standard Practice and do not need to sign a Participation Agreement.

Copyrightable Work(s): Any original work of authorship that is fixed in any tangible medium of expression. Examples of Copyrightable Works include but are not limited to journal articles and other scholarly or scientific papers, books, photographs, drawings and diagrams, software, video materials (any visual, audio or audio-visual work), audio files and web content, including text, images and multi-media of any kind.

Database: Any collection of data extracted and curated from clinical practice organized especially for rapid search and retrieval, and which is being collected for any commercial, scholarly, research or other purpose besides direct patient care.

Department: An unincorporated division of MHS relating to a clinical specialty and headed by a chief or acting chief.

Intellectual Property: Inventions, patents, Copyrightable Works, Trademarks, Materials, know-how and any other intellectual or intangible property. Further, Intellectual Property includes, but is not limited to, research notebooks, data, databases, photographs, original drawings and diagrams, computer programs.

Invention: Any creation, innovation, enhancement, improvement, alteration, approach or process, in the form of composition of matter, design, device, manufacture, or method, that is made, conceived or reduced to practice for any purpose, whether or not patentable.

Inventor: A Covered Person who makes, conceives, or reduces to practice an Invention.

Materials: Chemical and biological materials including but not limited to reagents, proteins, genes, gene products, DNA probes, vectors, cell lines, transgenic animals and human or animal blood and tissue samples; devices; instruments; equipment; or other tangible objects.

MHS: The South Broward Hospital district, all of its hospitals and other activities it does under any fictitious name, and any of its respective body corporate, subsidiaries, and affiliates. For any direction in this Standard Practice that a Covered Person must provide notice, disclosure, seek permission or otherwise communicate with MHS, MHS shall appoint a single point of contact. The initial point of contact is the MHS Innovation Executive Director or designee. MHS reserves the right to subsequently change that person and provide such notice as it deems appropriate.

Software: Computer or computer-based materials in the broadest sense, including but not limited to computer programs, user interfaces, users' manuals and other accompanying explanatory materials or documentation, mask works, firmware and computerized databases. It includes, for example, microcode, subroutines, operating systems, high level languages, and application programs in whatever form expressed (e.g., machine or assembly language, source or object code) or embodied (e.g., chip architecture, ROM, disk or tape storage, program listing). While some materials defined here as Software may not be covered by United States copyright laws (mask works, for example, are protected separately under the Semi-Conductor Chip

Protection Act), for convenience all Software is treated as Copyrightable Works for purposes of this Standard Practice.

Trademarks: A brand name associated with a specific good or service. A trademark or service mark includes any word, name, symbol, device, or any combination, used or intended to be used to identify MHS or the services provided by MHS.

Trade Secret: Information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

I. Ownership of Intellectual Property

Ownership of Intellectual Property

Except as otherwise set forth in this Standard Practice, MHS owns all Intellectual Property discovered, created or developed by a Covered Person, and Covered Persons agree to assign such Intellectual Property to MHS. All Covered Persons must sign the Invention Disclosure Form (“IDF”) and, as applicable, the Participation Agreement. Under the Participation Agreement the Covered Person assigns, and/or confirms the assignment of, all Intellectual Property to MHS, agrees to cooperate fully with MHS by promptly disclosing Inventions, executing and delivering assignments with respect to all Inventions, complying with all relevant policies and procedures, and maintaining all appropriate research records.

Covered Persons who, by virtue of their professional relationship with another institution, are also obliged to execute that institution’s participation agreement, will inform, as soon as practical, MHS, their Department Chief or Program Director and Human Resources of this fact and provide the name of the institution, as well as their professional relationship with the institution. As appropriate, MHS will work with the other institution to clarify the assignment obligations of the Covered Person and will so inform the Covered Person. The Covered Person shall thereafter assign his/her rights in Intellectual Property in accordance with any subsequent agreement reached between MHS and the other institution.

Covered Persons are not permitted to sign any agreements, including, for example, confidentiality agreements, license agreements, assignments, material transfer agreements, or research agreements, that restrict, commit, or affect Intellectual Property. Only agreements approved and signed by an authorized representative of MHS shall be valid and binding upon MHS.

Copyrightable Works

In the course of their relationship with MHS, Covered Persons may create copyrightable material that MHS wishes to distribute to the broader community to further our academic teaching, clinical and research missions. MHS owns all Copyrightable Works, subject to the discussion below regarding Academic Works.

All Covered Persons must disclose the creation of Copyrightable Works to MHS. MHS will maintain an inventory of all such Copyrightable Works in order to coordinate the licensing and distribution of Copyrightable Works in a consistent and effective manner that supports the overall mission of MHS.

Covered Persons may not display or distribute Copyrightable Works through a website that has not been approved by MHS for the purpose of distributing Copyrightable Works.

MHS does not endorse commercial entities or products. Neither Copyrightable Works nor Academic Works may be displayed in a manner that suggests such endorsement.

Royalties received from the licensing and distribution of Copyrightable Works will be distributed as set forth in this Standard Practice.

Database

Covered Persons are encouraged to engage in research involving digital data aggregation or registry activities within MHS and in collaboration with other institutions. Nevertheless, all Databases on MHS computers are owned by MHS exclusively, and Covered Persons hereby assign such Intellectual Property to MHS. These digital data repositories are sometimes referred to as data registries and may contain extracted information from an MHS electronic patient record.

Prior to creating a Database, a Covered Person shall inform MHS of the need and business rationale to obtain authorization to proceed with the creation or housing of such a Database. MHS, if it decides to support and proceed with such program, will conduct all legal, regulatory, technical capability, and other requirements to create the requested database. The decision will always be in MHS' sole discretion, and MHS shall have all decision making as to all aspects of the Database during its formation, operation and any retirement. It is anticipated that the Covered Person(s) who are the sponsor of a database, that they would work with MHS to develop a program charter. The program charter will generally, but is not required to, have such elements and terms as governance, staffing, financial commitment, capital assets deployed, key performance indicators, and as otherwise developed by the Covered Persons and MHS.

Academic Works

In accordance with the uniform practice of academic institutions, MHS grants to the author(s) of an Academic Work a perpetual, royalty-free, non-exclusive right to: assign the MHS copyright to an Academic Work or, alternatively, to license any copyrights thereunder where a license suffices, and to execute any permissions for others to anthologize or extensively incorporate all or part of an Academic Work, with acknowledgement. This right only exists where such assignment or license is for an academic or charitable purpose, and personal compensation is zero, *de minimis*, or limited to a reasonable honorarium or royalties. For private works of authorship (such as textbooks) both permitted and disclosed as required that do not arise from or relate to MHS' Intellectual property or resources, Covered Persons may retain the copyright in their own name and contract personally, subject to the rules on consulting and other institutional Standard Practices.

In exercising these prerogatives, authors should find out if any reservation of rights for use by MHS and their Departments and programs is negotiable, and if feasible attempt to obtain a reservation such as the following: "Nontransferable rights are reserved for the author's personal and academic use, to the author's Department or program for promotional and academic purposes, and to MHS for any noncompetitive not-for-profit purposes."

Trademarks

All Trademarks, whether registered or not, are MHS' Intellectual Property. In furtherance of MHS' mission, MHS has an interest in ensuring that its Trademarks are distinctive and are not infringed or diluted and are appropriately monitored and managed. Only Trademarks approved by MHS may be used by Covered Persons to identify or describe MHS, MHS' programs or MHS' services.

I. Disclosure of Inventions and Commercialization and Distribution Process

Submission and Review of Invention Disclosures

Each Covered Person who makes, conceives, or reduces to practice an Invention shall promptly submit a completed MHS Invention Disclosure Form to MHS. All Inventions must be disclosed even if the Covered Person believes it may not be owned by MHS solely or jointly. The Invention Disclosure Form serves as the basis for an evaluation by MHS of the Invention's patentability, protectability, and potential for commercial application. The description of the Invention in the Invention Disclosure Form should provide enough detail to determine the most appropriate steps, if any, to protect and commercialize the Invention. To the extent reasonably possible, in the event of joint invention, MHS will coordinate efforts to protect and commercialize Inventions with other institutions/collaborators.

Covered Persons are encouraged to make disclosures as early as possible, preferably as soon as they believe they have created an Invention to allow maximum lead time to evaluate and, where appropriate, file patent applications, and develop a commercialization and distribution strategy. To maximize the potential breadth and usefulness of patent protection, Covered Persons must make disclosures prior to publication or other public presentation.

Filing Patent Applications and Registering Copyrights

After consultation with the Inventor(s) and others as appropriate, MHS, shall be responsible for making the final determination as to whether protection of an Invention shall be pursued by MHS (e.g., patent application or copyright). Such determinations will be made on the basis of United States patent and copyright law, commercial potential, obligations to and rights of third parties, or other relevant considerations. When MHS determines to seek the patenting or copyrighting of any Invention which MHS owns in whole or in part, (a) MHS shall, without expense to the Inventor (other than repayment for Invention cash flows), provide such professional services as it shall deem to be necessary or desirable to patent or copyright the Invention, and (b) the Inventor(s) shall cooperate fully in such effort, including promptly executing all necessary or desirable agreements, applications, assignments and other forms and instruments.

Commercialization and Distribution

MHS shall be responsible for the commercialization and distribution of Inventions. Where an Invention is subject to an external agreement with a third party (for example, the federal government or other funding sponsor), MHS shall make decisions consistent with that agreement. MHS shall make reasonable efforts to keep Inventor(s) involved and informed of its commercialization and distribution efforts. Final decisions about commercialization and distribution of Inventions shall be made by MHS.

Release of Inventions

MHS may decide not to file to protect an Invention, including the decision not to file a patent application on an Invention, or abandon a patent application on an Invention prior to issuance of the patent, or abandon an issued patent on an Invention. These decisions will, if feasible, be made in consultation with the Inventor(s), but the final decision will be made by MHS. In such cases MHS will make reasonable efforts to inform the Inventor(s) of this decision and the Inventor(s) may request MHS to release the Invention or issued patents or patent applications or other legal protections to the Inventor(s). Upon determining that releasing the Invention or issued patents or patent applications to the Inventor(s) will not violate the terms of an external funding agreement, and that such release will not interfere with future

funded research, and is in the best interests of MHS and the public, MHS may, at MHS's sole discretion, agree to a release and in such case will assign or release all interest which it holds or has the right to hold in the Invention or issued patents or patent applications to the Inventor(s), consistent with this Standard Practice.

MHS is under no obligation, however, to release any Invention and its related patent or other legal protection, to any Inventor(s). As part of the release of issued patents or patent applications, MHS may require that appropriate compensation be provided to MHS, such as for its un-reimbursed out-of-pocket expenses associated with the issued patents or patent applications including, without limitation, attorney's fees and other costs incurred in obtaining legal protection for the issued patents or patent applications. If required, such compensation shall be paid to MHS once licensing or other revenue has been realized by the Inventor, 50% of revenue received by the inventor shall be paid to MHS until its out-of-pocket expenses have been recouped.

MHS may also elect to retain a non-exclusive, transferable right to use any released Invention or issued patents or patent applications or other legal protections for MHS' research and business purposes. MHS may impose other requirements of the Inventor(s), including but not limited to, requiring the Inventor(s) to agree to certain limitations on MHS' liability and indemnification.

II. Disclosing or Transferring Intellectual Property

Distribution of Materials

This Standard Practice applies equally to Intellectual Property that are defined as Materials under this Standard Practice. The dissemination of Materials raises other issues such as the safety of the Materials; the need for Materials to be more fully characterized or developed prior to distribution; for human tissue and other bodily samples, the need for appropriate consent and compliance with applicable policies regarding transfer of human samples; and the need to ensure that dissemination of Materials is consistent with applicable policies, laws and regulations as well as contractual obligations to third parties.

Materials which constitute human tissue or other bodily samples, or which raise safety concerns, or the distribution of which may be subject to contract, policy, law or regulation (such as export control laws, or laws pertaining to special agents) must be subject to an agreement that is reviewed, negotiated and approved by MHS, and which contains the provisions and restrictions deemed appropriate by MHS for the particular distribution.

Without limiting the generality of the foregoing, in order to protect MHS, Materials that are intended to be distributed for commercial research purposes or to a for-profit entity must be under the terms of an agreement negotiated and approved by MHS.

Treatment of Intellectual Property as Confidential Information

All Intellectual Property (including data), invention disclosures, license agreements, and research reports and documents pertaining thereto shall be treated as confidential, proprietary information belonging to MHS until public release. If Intellectual Property is disclosed outside MHS (such as in a publication or oral presentation, by use, by public offer for sale, or by public sale), before appropriate steps are taken to protect the Intellectual Property, such as filing a patent application, certain legal rights may be lost. Therefore, prior to any proposed publication of Intellectual Property or other disclosure of the Intellectual Property outside MHS, Covered Persons must advise MHS of the intended disclosure in sufficient time to permit MHS to take steps necessary to protect MHS' rights in the Intellectual Property. In many cases, MHS may determine that a Confidential Disclosure Agreement must be obtained from a recipient before

information about the Intellectual Property is disclosed to that party.

III. Intellectual Property Revenue Distribution

Proceeds for Inventions

MHS shall act to bring to the public all Inventions which MHS owns in whole or in part, by such means MHS deems appropriate under the circumstances. The cumulative net revenue received by MHS for the sale or licensing of an Invention shall be distributed as shown in the table below. Cumulative net revenue includes all income received by MHS from the sale or licensing of an Invention less all out-of-pocket costs attributable to patenting, copyrighting, litigation, marketing, development and other related expenses incurred by MHS including any obligations to third party sponsors, co-owners and/or co-inventors of such Invention.

<u>Inventor</u>	<u>MHS</u>
45%	55%

In MHS' discretion, distribution of revenue from Copyrightable Works, Databases and Materials may be handled separately with the revenue going to the Inventor's research or education endeavor.

Income shall be distributed for the lifetime of the license (or in accordance with such other agreements MHS shall make, such as a sale of a royalty stream) according to the terms of the Intellectual Property Standard Practice in effect on the effective date of the license agreement, or on the date of signing if no effective date is stated. In the event MHS adopts a new Intellectual Property Standard Practice and all the parties (Inventors, and MHS) agree, then an existing license may be handled under the terms of a new Standard Practice.

The determination that an Inventor is to be listed on a patent application is governed by patent law and may differ from academic standards of authorship. If there is more than one Inventor, the Inventor's share will be distributed as indicated on the submitted and accepted Invention Disclosure Form among the co-Inventors, unless MHS has been instructed otherwise in writing by all of the co-Inventors.

MHS pays royalties only to its own Inventors. However, when a MHS Inventor makes an Invention with a co-inventor at another academic or non-profit institution, and the institutions agree to market the Invention jointly, MHS may authorize an agreement whereby each institution pays all inventors according to the terms of its own intellectual property policy.

MHS may agree to distribute royalties from an Inventor's share to other MHS employee(s), who has/have made a substantial contribution to the Invention even if such contribution does not rise to the level of inventorship, provided all Inventor's agree in writing to such distribution and describe the substantial contribution of such employee to MHS.

If an Inventor dies, then MHS will distribute the Inventor's individual share to the Inventor's estate or heirs. MHS will make reasonable efforts to inform the estate or heirs of any net revenue available for distribution, however, it will be the responsibility of the executor or legal representative of the Inventor's estate to notify MHS in writing, as to where future payments should be sent.

Royalty shares will be distributed by MHS no less frequently than quarterly.

IV. Formation of Start Up Companies Based on MHS Intellectual Property

In some cases, MHS may determine that the most appropriate method to bring a technology to the public may be to license the Intellectual Property to a newly formed company and to receive stock, stock options, warrants or similar ownership interests (hereinafter "equity" or "stock") in the company as consideration or partial consideration for the license. In such situations, the new company may wish to execute founder, consulting or scientific advisory agreements with key individuals who contributed to the development of the transferred Intellectual Property. Taking equity in companies to which MHS transfers technology, however, raises serious legal questions, and conflicts of interest concerns both for the institution and individuals. This Standard Practice addresses MHS receipt of equity under license agreements and sets forth steps to guide Covered Persons in the formation and participation in new companies and in the receipt of any equity for founding, consulting or advisory agreements.

Covered Persons may not form or hold equity investments in companies that receive a license of MHS' Intellectual Property without prior notification to, and written approval from, the General Counsel and MHS. Any Covered Person considering forming or receiving equity in such a company must discuss his/her business plans in advance with MHS. Upon approval by MHS and General Counsel, MHS will work with the Covered Person to assist in determining if the company in question is the most appropriate method for commercializing the technology and, if so, will provide advice and guidance in the appropriate structure of the company. MHS will also ensure that the confidential information of MHS is not shared without sufficient protection.

V. Resolution of Disputes

Any disputes or problems of interpretation that arise in connection with this Standard Practice shall be resolved by the Chief Executive Officer with the advice of such persons as he or she may deem appropriate.

For any decision as to whether to file patents, trademarks or otherwise protect rights in any Intellectual Property, or to commercialize any Intellectual Property, such decision shall be solely at the discretion of MHS, which discretion may be exercised on any basis or rationale or none at all. No Covered Person is owed any duty by this Standard Practice to protect or otherwise advance any Intellectual Property developed by Covered Person. MHS shall be held harmless and indemnified by Covered Person, for any infringement, misappropriation, negligence or other action as to the Intellectual Property.

Nothing in the Standard Practice or associated agreement(s) shall be deemed to require indemnification by MHS of any Covered Person. In all instances and situations within the scope of this Standard Practice, MHS shall not ever be liable, if at all, for an amount greater than the limitation of liability for contractual or tort claims under Ch. 768.28, Fla. Stat., or otherwise operate to increase MHS' limitations of liability for contractual or tort claims under Ch. 768.28, Fla. Stat., or waive any immunity under applicable law, or to create liability or responsibility on the part of MHS for the acts or omissions of any party other than itself, its agents, and its employees.



K. Scott Wester, FACHE
President and Chief Executive Officer