

## Intellectual Property Policy

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Policy Number:

Owner Department: Research-Ric Scalzo Institute

Approved Date/Effective Date: March 24, 2021

### **I. POLICY STATEMENT/PURPOSE**

This policy clarifies the rights and responsibilities for Southwest College of Naturopathic Medicine & Health Sciences ("SCNM") an Arizona non-profit corporation, its employees, non-employee students of SCNM, and anyone who creates Intellectual Property with significant use of SCNM resources in the development and use of educational materials and other intellectual property. In general, SCNM provides its employees with broad rights to use educational materials they create as SCNM employees, but with the exceptions as described in this Policy.

### **II. POLICY STATUS**

Revised dated March 2021

Revised dated May 2017.

New dated October 2014

### **III. HISTORY/BACKGROUND**

Creating and disseminating knowledge are fundamental to the mission of SCNM. SCNM reaffirms its commitment to the principles of academic freedom, and to encourage authorship, creation, development, and invention of Intellectual Property ("IP"). Because there is no standard practice in higher education regarding ownership of IP, this policy addresses these issues and applies them to SCNM. This policy also addresses privacy and ownership concerns related to recorded classroom sessions and online course content. The latest policy revision added specific language to accommodate forms of IP generated from work performed at the Ric Scalzo Institute for Botanical Research. It also acknowledges Co-Inventorship and clarifies the revenue distribution structure related to IP.

### **IV. DEFINITION(S)**

*Authors* – developers of intellectual property, including authors, creators, researchers, and inventors.

*Classroom Session* – any teaching and learning session led by SCNM employees in all classroom, laboratory, and/or clinic settings. Methods of engagement may include, but are not limited to, lecture, team-based learning sessions, laboratories, online course format settings, or other experiential learning experiences.

*Educational Materials* – educational materials include, but are not limited to, textbooks, electronic media such as PowerPoint files and audio/video recordings, syllabi, tests, assignments, monographs, papers, models, compositions, works of art, images, and unpublished manuscripts, including online course content.

*Instructor* – the facilitator of any teaching and learning session in any environment.

*Intellectual Property or IP* – all forms of legally recognized intellectual property including, but not limited to, patentable invention products, formulae, ingredients, patent disclosures, patent applications, structures, models, techniques, processes, compositions, compounds, and apparatus relating to the same, patterns, discoveries, devices, ideas, data, other compilations of information, records and specifications, concepts, techniques and

## **Intellectual Property Policy**

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services, including information relating to research, development, inventions, manufacture, purchasing, accounting, engineering, marketing, merchandising, selling, pricing policies, financial information, employee files and other materials and information, whether or not reduced to writing or placed in any tangible medium of expression, which information SCNM or any of its affiliates maintains as confidential copyrightable subject matter, including, without limitation, all educational materials created by SCNM employees and instructors.

*Invention* – any patentable discovery or related intellectual property item as indicated in the definition of IP and any associated technology including trade secrets developed or licensable products that are required for development or application of the discovery.

*Inventor* – a person who, individually or jointly with others, makes an Invention and who, in the context of a specific patent, should be listed as an inventor according to the established criteria used in United States patent law.

*Recording* – to cause (sound, visual images, data, etc.) to be registered permanently on something (such as a disc, magnetic tape, or cloud based storage) in reproducible form.

*Research Materials* – knowledge or products developed including, but not limited to, protocols, procedures, experimental data, botanical formulations, extraction methods, and concepts.

*Substantial SCNM Resources* – SCNM resources above and beyond those that are customarily and currently provided to employees. Offices, office equipment, library access, and computers, which are customarily provided, would be excluded from determination of substantial use of SCNM resources.

### **V. SCOPE/KEY STAKEHOLDERS**

This policy applies to all SCNM employees, including, without limitation, full-time and adjunct faculty, instructors, part-time employees, student employees, visiting scholars and scientists and employees on sabbatical who receive remuneration from SCNM, employees on a leave of absence who are using substantial SCNM resources and all others who receive remuneration from SCNM. This policy also applies to non-employee students of SCNM and to anyone else who creates Intellectual Property with significant use of SCNM resources including full and part time employees, consultants, and visiting scholars or scientists working within any division of SCNM. Also, as to the ownership and distribution of Educational Materials, this policy also applies to students and guests at SCNM. The Vice President of Strategic Partnerships and Business Development is the SCNM officer who is authorized to approve exemptions to this policy.

### **VI. POLICY ITEMS**

#### **A. Works Made for Hire**

Under U.S. copyright law, a “work made for hire” includes a work prepared by an employee within the scope of his or her employment *or* a work specially ordered or commissioned for certain specific uses if the parties expressly agree in a written instrument signed by them that work shall be considered a work made for hire. If a work is made for hire, an employer is considered the author even if an employee actually created the work.

#### **B. Copyright Ownership and Use of Educational Materials**

1. Ownership of Works Made for Hire at SCNM: SCNM owns copyrights of the works created by employees of SCNM within the scope of their employment at SCNM. SCNM also own works specially ordered or commissioned for certain specific uses if the parties expressly agree in a written instrument signed by them that work shall be considered a work made for hire. SCNM may, in its discretion, register and maintain registrations on all such copyrighted works.

## Intellectual Property Policy

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2. Ownership Rights for Works Published by Third Parties: Employees are entitled to own the copyright and retain any revenue derived from books and other copyrightable works they create but that are published by third parties outside of SCNM, except for works commissioned by contract or created as part of an explicitly designated assignment made in writing, other than normal employment expectations.  
In cases where it is not clear whether the foregoing exemptions apply, Authors are strongly encouraged to pursue a negotiated written agreement. Consistent with the terms of this policy, SCNM assigns to the author(s) any interest and ownership claims on publication of research, scholarly materials and publication activities that typically occur in academic journals, books, and other professional resources published outside of SCNM.
3. License to Employee Authors of Educational Materials: Unless otherwise stated in writing, SCNM grants to employees, both during and after their employment with SCNM, a royalty free, non-exclusive, world-wide license in perpetuity to reproduce, prepare derivative works, distribute copies, perform, or display works prepared by employees within the scope of their employment with SCNM or created for use at SCNM, including, but not limited to, textbooks, electronic media, syllabi, test, assignments, monographs, papers, models, compositions, works of art, images and manuscripts, including online course content.
4. Rights of SCNM to Use Educational Materials: Nothing in this policy shall prohibit SCNM from using employee-authored Educational Materials for educational and administrative purposes, including, for example, classroom/lab/clinic instruction, and satisfying requests of accreditation agencies for faculty-authored syllabi, assessments and course descriptions. Such usage shall extend beyond the author's employment with SCNM. Additionally, in the event that a faculty member assigned to teach a course becomes unavailable to teach that course, SCNM shall be permitted to use any and all Educational Materials.

### **C. Research Materials: Disclosure, Ownership and Licensing of Research Intellectual Property**

1. Disclosure. SCNM recognizes its responsibility to produce and disseminate knowledge. Inherent in this responsibility is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other Inventions, some of which may have potential commercial value. Supervisors of SCNM employees must be promptly informed in writing about the existence of potential commercially valuable research-related Inventions or other forms of IP.
2. Ownership. Except as provided otherwise by this or other SCNM policies, SCNM shall own all Inventions, and all IP associated with such Inventions, made or invented with the direct or indirect support of funds administered by SCNM as long as there exist no other co-inventors, institutions and/or companies outside of SCNM involved in the development of the Invention. If co-inventors, institutions and/or companies outside of SCNM are involved in Invention development, ownership rights will be negotiated based on resources, funds, and support utilized. Inventions created by SCNM employees, students, visiting scientist or adjunct faculty with the use of SCNM resources should be appropriately managed in the best interest of SCNM, Inventor(s) and all entities. All Research Materials shall be owned by SCNM. If students or visiting scientists contribute significantly to the intellectual aspects of IP developed, they may be considered as a co-inventor by the Principal Investigator or Lead Creator of the work.
3. Patents and licensing. SCNM may license or assign Inventions or patents within a reasonable time and in its sole discretion. Researchers who engage in research projects at SCNM that may lead to patentable discoveries are encouraged to negotiate an agreement with SCNM about ownership of patents and/or licensing agreements. If SCNM opts to maintain ownership of the Invention or patent, SCNM is responsible for all costs involved in obtaining and maintaining a domestic and/or foreign patent for intellectual property for which SCNM holds an interest. Additionally, SCNM will pay all reasonable costs for marketing, promoting, or maintaining the licensing of intellectual property for which SCNM holds an interest. If

## **Intellectual Property Policy**

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the IP is assigned to another party, all costs for obtaining and maintaining a patent will be the responsibility of the party to whom the IP was conveyed.

4. Publication rights for the protection of intellectual property. Peer-reviewed publications and presentations of results are major objectives of academic research. This policy does not impede an SCNM employee's ability to publish. However, public disclosure of a patentable invention prior to filing a patent application may preclude patent protection. Upon disclosure of the existence of potential commercially valuable research, the Inventor shall appropriately delay publication/presentation of the results until sufficient time as to complete an internal evaluation process and pursue opportunities to protect the intellectual property.

### **D. Trademarks and Trade Secrets**

1. Trademarks. SCNM owns all common law and registered trademarks and service marks associated with its name and logo and retains all rights to register, manage, and license such marks and is entitled to retain all revenue generated from the licensing or use of such marks.
2. Trade Secrets. SCNM owns all trade secrets developed by SCNM and its employees during the course of their employment. SCNM employees shall be bound by the terms of SCNM's Non-Disclosure/Confidentiality Agreement.

### **E. Commercialization and Revenue Distribution Related to Intellectual Property**

1. Commercialization. Following disclosure of potentially commercially valuable IP and/or potential patents, the Authors and/or Inventor(s) should enter into negotiations with SCNM concerning commercialization of any such IP. Written agreements should be created that cover commercialization issues such as royalty sharing.
2. Revenue Distribution. Except as provided in this policy and absent any agreement to the contrary, an employee, Inventor or Author who creates any IP as the result of work for which he/she is paid by SCNM or which resulted from using SCNM facilities and resources will receive a minimum of 33.3% of the net income received by SCNM related to the sale, licensing, or royalties received for such IP. This royalty-revenue sharing is not to be construed as wages or salary compensation to the employee, Inventor or Author from SCNM, but rather as separate income derived from commercialization activities involving the IP. If more than one employee, Inventor or Author is involved in the development of the IP, they collectively will share the employee percentage (33.3%) of net income. In these cases, the percentage is to be divided based on each employee's, Inventor or Author's contribution and documented in a written sharing arrangement executed by the Inventors. The Principal Investigator or Lead Creator has final decision-making authority as to the relative employee contribution and corresponding revenue distribution. An employee's, Inventors or Authors rights that have accrued shall continue beyond employment with SCNM. The remaining 66.7% of net income received by SCNM related to the sale, licensing, or royalties received for IP shall be equally distributed: 33.3% to the college division in which it was created, (e.g. The SCNM Medical Center, The Ric Scalzo Institute, School of Nutrition) and 33.3% for SCNM.

### **F. Process for Documenting Exceptions and Dispute Resolution**

1. Designation of Responsible Authority for Educational Materials: The chief academic officer (or designate) shall be responsible for undertaking an initial assessment of any matters relating to exceptions or disputes for Educational Materials, including making a determination as to whether substantial SCNM resources have been used, and whether a negotiated agreement is necessary. This party shall also be responsible for developing any such written agreement. The chief academic officer shall retain written agreements and related documentation indefinitely.
2. Designation of Responsible Authority for All Other IP: The Vice President of Strategic Partnerships and Business Development (or designate) shall be responsible for undertaking an initial assessment of any matters relating to exceptions or disputes for

## **Intellectual Property Policy**

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all other IP not related to Educational Materials, including making a determination as to whether substantial SCNM resources have been used, and whether a negotiated agreement is necessary. This party shall also be responsible for developing any such written agreement. The Vice President of Strategic Partnerships and Business Development shall retain written agreements and related documentation indefinitely.

3. **Negotiated Written Agreements:** Negotiated written agreements are required when Substantial SCNM Resources are used. It is the responsibility of the Author or Inventor to seek clarification as to whether the resources being used in the development of Educational Materials or other Intellectual Property constitutes use of Substantial SCNM Resources. Use of Substantial SCNM Resources, depending on the terms of the negotiated written agreement, may result in an obligation to share revenues, reimburse SCNM, or confer a license.
4. **Modifications to Written Agreements:** Any negotiated written agreement made in connection with the creation of IP may be modified at any time upon the agreement of all signatories. Such modifications will normally be necessary with changes to:
  - i. Participation of Author(s) in a continuing project;
  - ii. SCNM's contribution of Substantial Resources;
  - iii. Dispute resolution by the Intellectual Property Board.
5. **Intellectual Property Board:** As needed, the chief academic officer or the VPSPBD shall establish an Intellectual Property Board comprised of one faculty, one administrator, and one staff member to hear and recommend resolution of disputes related to Educational Materials and other Intellectual Property to the chief academic officer or to the VPSPBD, with final recourse if needed to the SCNM President. The Intellectual Property Board may also interpret, oversee the implementation of this policy, and advise the chief academic officer or VPSPBD about exemptions under this policy.

### **G. Recording of Classroom Sessions**

1. **Prohibited Recordings:** Photography and video recording are not allowed in the gross anatomy lab. While SCNM supports and facilitates the recording of most classroom and laboratory sessions, permission to record any session remains at the discretion of session instructors with final determination by the program Dean.
2. **Recording by the Instructor.** Any time an instructor intends to record instructional content during a classroom session, students must be informed in writing before the recording is made. For courses, all planned recordings of classroom sessions will generally be indicated on the syllabus. If it is the intent of an instructor to record students during a class session such as a lecture or a lab (example: using a student as a model in order to demonstrate a medical procedure), then the recorded student(s) shall sign a release form in order to document their consent to be recorded. Instructors should make every effort to make sure that personal information is not recorded and if SCNM becomes aware that personal information is accidentally recorded; it must be removed from any copy uploaded to SCNM course sites. Uploaded recordings on MySCNM or the learning management system will be for internal educational use only, not for public distribution.
3. **Photographs and Images.** In order to promote all SCNM departments through various media (including television, the SCNM website, magazines, journals, newspapers, online presentations and internally developed publications and advertisements) faculty, staff, visiting scholars/scientists and students may be photographed and/or video recorded. SCNM retains ownership and reserves the right to publish these photographs and videos.
4. **Recordings by Students.** Students must obtain written permission from the classroom instructor(s) before recording by audio, video or any other electronic means any classroom session, by completing the SCNM Classroom Recording Permission Form. SCNM only allows students to record classroom sessions for their personal educational use. Students are explicitly prohibited from posting recordings online or publicly sharing recorded classroom sessions.

## Intellectual Property Policy

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5. Classroom Recordings by Others. Anyone wishing to record an educational session must obtain written permission from the instructor(s) before recording the session by completing the SCNM Classroom Recording Permission Form. Instructors must inform attendees of a session where such recordings are made.
6. Descriptions of Classroom Recordings in Course Syllabi. Recording of any educational session is at the discretion of the instructor(s). Course syllabi must specify intention, recording date(s) and usage of classroom recordings. If a course syllabus does not specifically state if recordings will be made, students should assume that no recordings will be made and are not allowed. If the decision to make such recordings is made after the start of the quarter, the instructor must send an email notifying all enrolled and auditing students, and an updated version of the syllabus describing the nature of these recordings must be posted to the course site.
7. Recording of Events. Anyone wishing to record any Event occurring at any SCNM affiliated site in person or virtual, must obtain permission from the Event Organizer in advance.
8. Classroom Recording Permission Form. A copy of the form is attached to this policy as an appendix.

### VII. RESPONSIBILITY FOR IMPLEMENTATION

Vice President of Strategic Partnerships and Business Development

### VIII. NEXT REVIEW DATE

Three years from the date of implementation and every three years thereafter.

### IX. VERSION CONTROL AND CHANGE HISTORY

Version Control	Approved By/Date	Date Effective	Amendment
1	President's Council/October 22, 2014	October 22, 2014	
2	President's Council/May 24, 2017	October 9, 2017	
3	President's Council /March 24, 2021	March 24, 2021	Updated to include work at the Ric Scalzo Botanical Research Institute and to expand the overall scope

### X. POLICY AUTHOR/CONTACT

Vice President of Strategic Partnerships and Business Development