

ELECTIVE AGREEMENT BETWEEN
SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM
AND
NATIVIDAD MEDICAL CENTER, COUNTY OF MONTEREY

This agreement (“Agreement”) is made between the Southeast Alaska Regional Health Consortium (“SEARHC”) and Natividad Medical Center, County of Monterey (“Affiliate”) (individually a “Party” and collectively “the Parties”). The purpose of this agreement is to establish guidelines for the clinical course of instruction of a Family and Community Medicine resident participating in the rural rotation and gaining clinical and professional experience at SEARHC in Alaska.

The parties agree as follows.

I. GENERAL INFORMATION:

1.1 The course of instruction (the “Clinical Program”) will cover periods of time mutually agreed upon between Affiliate and SEARHC during the term of this Agreement. The dates for Resident’s participation in the Clinical Program will normally be agreed upon at least one month before the beginning of each Clinical Program.

1.2 The Parties intend to provide and support a positive learning environment that promotes the development of professional attributes in Resident/Participant. Resident/Participant will observe and participate, as appropriate, in the provision of medical services to patients, and will perform clinical assignments as specified by the SEARHC Medical Director or designee.

1.3 This Agreement does not contemplate the payment of any fees or remuneration by either party to the other.

1.4 Resident will not be an employee of SEARHC, and is not eligible for compensation, employee benefits or health care benefits from SEARHC, except for blood borne pathogen exposure care as specifically noted below.

1.5 Neither Affiliate nor SEARHC nor Resident will discriminate against any patient, SEARHC employee, applicant or resident on the basis of race, national origin, religion, creed, gender, sexual orientation, gender identification, age, or marital, veteran or disability status, except to the extent SEARHC may apply its Native preference policies to hiring decisions and student selection.

1.7 The Parties agree to comply with the Family Educational Rights and Privacy Act of 1974, as amended, and its regulations governing the privacy of student records. Affiliate

understands that all records relating to individuals maintained by SEARHC, including Resident, are subject to the Privacy Act, 5 U.S.C. § 522a, and may not be disclosed by SEARHC except as permitted by that Act.

1.8 The parties agree that when performing clinical services under this Agreement, Resident is considered to be a member of SEARHC's workforce as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Privacy, Security and Breach Notification Rules (45 CFR Parts 160 and 164). This section applies solely to the privacy, breach and security rules applicable to SEARHC and does not establish an employment relationship between SEARHC and Resident for any other purpose.

II. RESPONSIBILITIES OF AFFILIATE:

2.1 Affiliate shall have and retain the primary responsibility over academic instruction relating to the Clinical Program, the education and evaluation of the Resident in the program, and the instruction of the Resident while at SEARHC.

2.2 Affiliate shall provide and maintain the records and reports required for clinical learning experiences of its Resident under this Agreement. Affiliate will retain the responsibility for assigning grades for Resident in the Clinical Program.

2.3 Affiliate shall provide to SEARHC a disclosure statement for each faculty member and Resident planning to participate in the course of instruction at SEARHC ("Program Participants") that indicates the Program Participant's health and immunization data (including MMR, Tuberculin, and Hepatitis B immunity clearances), personal medical insurance coverage, CPR certification date and date of blood borne pathogen training.

2.4 Affiliate shall complete a background check for each Program Participant and shall submit to SEARHC a disclosure statement that identifies any criminal charges or convictions, including no contest pleas, for each program participants. Affiliate will assure that all program participants meet the character and background standards of the Indian Child Protection Act, 25 U.S.C. § 3201 et seq., the Alaska Barrier Crimes Act, AS 47.05.300 et seq., and the Alaska Barrier Crime Act regulations, 7 AAC 10.900 – 7 AAC 10.990.

2.5 Affiliate shall verify that each Program Participant is eligible to participate in all federal and state health programs and shall verify that each Program Participant is not on the OIG or GSA exclusion list.

2.6 Affiliate shall defend, indemnify and hold SEARHC harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Affiliate, its officers, agents, Residents or employees.

2.7 Affiliate will only assign to SEARHC Residents who are regularly enrolled, in good standing, and who have satisfactorily completed the necessary training didactic portions of Affiliate's curriculum to participate in the Clinical Program.

2.8 Affiliate will enforce its rules of conduct and regulations governing Residents and any other rules that are mutually agreed upon between Affiliate and SEARHC, specifically including any drug or substance abuse testing that SEARHC may require, and will enforce disciplinary action against a student who violates any applicable policies, procedures, standards, rules or regulations.

2.9 Affiliate shall require each Program Participant to sign a confidentiality agreement and to ensure that Program Participants will hold confidential and not disclose any patient information and other confidential information obtained through participation in the Clinical Program and will comply with all applicable provisions of the Privacy Act, 5 USC § 522a, the HIPAA Privacy, Security and Breach Notification Rules, 45 CFR Parts 160 and 164, and the Confidentiality of Alcohol and Drug Abuse Records Rule, 42 CFR Part 2.

III. RESPONSIBILITIES OF SEARHC:

3.1 SEARHC will provide clinical experience for Resident, participate and cooperate in the educational guidance of Resident. SEARHC will retain full responsibility for the care of its patients.

3.2 SEARHC will maintain administrative and professional supervision of Resident insofar as their presence affects the operation of SEARHC. Supervision will be available at all times the Resident are on duty to ensure that each Resident assumes an appropriate level of responsibility for safe, effective, and compassionate patient care that is consistent with the student's level of experience and training.

3.3 SEARHC will assure that each of its supervising providers has a medical diploma from an accredited United States or Canadian Affiliate, a current state Alaska license in good standing, and a current CPR certificate.

3.4 SEARHC provides health care services, including managing the Mt. Edgecumbe Hospital, the Ethel Lund Medical Center and numerous other health clinics, pursuant to the Alaska Tribal Health Compact and Annual Funding Agreements with the Secretary of Health and Human Services, as authorized by Sec. 325 of P.L. 105-83 and Title V of the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 5301, *et seq.*, Pub. L. No. 93-638, as amended. Negligence claims, including professional liability claims, against SEARHC are deemed to be claims against the United States and are covered by the Federal Tort Claims Act, 28 U.S.C. §§ 1346, 2401 and 2671-2680, pursuant to 42 U.S.C. § 233, 25 U.S.C. § 5321(d) and 25 U.S.C. § 1680c(d), § 314 of P.L. 101-512, as amended.

3.5 SEARHC will maintain adequate resources as necessary and appropriate for the Resident's clinical education at SEARHC, and shall provide professional experience in all available aspects of the practice associated with the Resident's area of study.

3.6 SEARHC reserves the right to limit the number of Residents participating in the Clinical Program and, in consultation with Affiliate, shall determine the dates for Resident's participation in the Clinical Program.

3.7 SEARHC shall provide and maintain records and reports required by Affiliate for conducting the Clinical Program and provide Program Participant evaluations to Affiliate on forms provided by Affiliate.

3.8 SEARHC is under no obligation to maintain any facilities or equipment for the Clinical Program other than those ordinarily maintained in the course of its business.

3.9 SEARHC shall provide available time and space, when possible, to clinical instructors for attending clinical supervisory meetings and conferences called by Affiliate as part of the Resident's educational program.

3.10 SEARHC shall defend, indemnify and hold Affiliate harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of SEARHC, its officers, agents, or employees.

3.11 SEARHC retains the right to terminate any Resident's participation in the Clinical Program at any time and for any reason, including for its convenience. SEARHC shall immediately notify Affiliate's Clinical Coordinator when a Resident's participation is terminated.

3.12. SEARHC has policies in place that address accidental exposures to blood or bodily fluids, as well as exposures to other infectious or environmental hazards and occupational injuries. SEARHC will provide employee-related health coverage at no cost if a Program Participant is accidentally exposed to blood, bodily fluids or other infectious or environmental hazards, including exposure to blood-borne pathogens.

IV. Other.

4.1 Either Party may terminate this Agreement upon sixty (60) days advance written notice to the other Party.

4.2 Any revision or modification of this Agreement shall be in writing, and shall be signed by both Parties.

4.3 This Agreement shall be effective as of October 1, 2019. The term the Agreement shall be October 1, 2019 through September 30, 2021 unless either party declines to continue the Agreement and notifies the other in writing.

4.4 In the event of a dispute arising from or relating from this agreement that cannot be resolved informally, the parties agree that, before taking any other formal action, they will make a good faith attempt to resolve their differences by mediating under the auspices of the American Health Lawyers Association. In the event mediation does not resolve the dispute, the parties agree that venue for any claim will be in the United States District Court for the District of Alaska, provided however, that by so agreeing the parties do not waive any statutory or common law immunities or defenses from suit.

V. Insurance.

5.1 Each party, at its sole cost and expense shall obtain, keep in force and maintain insurance as follows:

- a. **Professional Medical/Dental Liability Insurance or Self-Insurance.** Each party shall maintain insurance or a self-insurance program with financially sound and reputable companies. Except to the extent that SEARHC's activities are included in coverage provided by the Federal Tort Claims Act ("FTCA"), each party shall carry healthcare entity comprehensive liability coverage with minimum limits of \$1 Million (\$1,000,000) per occurrence and general aggregate of \$3 Million (\$3,000,000). If such insurance is written on a claims-made form, it shall continue for three (3) years following termination of this Agreement. In the event that a claims-made policy is canceled or non-renewed, then each party shall obtain extended reporting (tail) coverage for the remainder of the three (3) year period. At any time during the term of this Agreement, if SEARHC is not covered under the Federal Tort Claims Act ("FTCA"), SEARHC shall obtain and maintain, at SEARHC sole cost and expense, professional liability insurance covering SEARHC and its employees in the minimum amount of One Million Dollars (\$1,000,000) for each occurrence and Three Million Dollars (\$3,000,00) in the aggregate per year. Such insurance shall be primary with respect to covering the acts and omissions of SEARHC employees. Notwithstanding the foregoing, the above insurance requirements in this subsection shall be deemed satisfied by SEARHC with respect to FTCA covered individuals acting within their scope of employment and performing functions within the scope of SEARHC's approved Federal section 330 grant project for as long as SEARHC continues to be deemed a covered entity under Section 224(a) of the Public Health Services Act entitled to liability protection under the FTCA. SEARHC represents and warrants that FTCA coverage is occurrence-based coverage.
- b. **General Liability Insurance.** General liability insurance with minimum limits of \$1,000,000 each occurrence and a general aggregate of at least \$3 Million (\$3,000,000). If such insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date prior to or coinciding with the effective date of this Agreement.

5.2 **Workers Compensation Insurance** in a form and amount covering each party's full liability as required by law, specifically, as to SEARHC, under Alaska law and, as to Affiliate, under California law.

5.3 It should be expressly understood, however, that the coverages required under this AGREEMENT shall not in any way limit the liability or indemnity obligation of either party.

5.4 Prior to the execution of the AGREEMENT, each party shall furnish, upon request, the other party with Certificates of Insurance evidencing compliance with all requirements. Certificates shall further provide for thirty (30) day's advance written notice to the other party of any modification, change or cancellation of any of the above insurance coverages." Except for ten (10) days' notice of non-payment, the parties will require 30 days' written notice if the policy is canceled, non-renewal, or coverage/limits that are reduced or materially altered.

For the:
COUNTY OF MONTEREY, on behalf of
its owned and operated Natividad Medical Center

For the:
SOUTHEAST ALASKA REGIONAL
HEALTH CONSORTIUM

By: _____
Gary Gray, DO, CEO

By: _____
Dr. Cate Buley, FFAFP

Title: _____

Title: Medical Dir. - Primary Care Clinics

Date: _____

Date: 8/27/19

APPROVED AS TO FORM
Stacy [Signature]
CLERK OF COUNTY COUNCIL
COUNTY OF MONTEREY

Reviewed as to fiscal provisions
[Signature]
Auditor-Controller
County of Monterey 9-5-19