



Item: IX

Wednesday, January 21, 2009

**SUBJECT:** Approval of Termination Agreement for Academic Medical Center Affiliation Agreement.

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**PROPOSED BOARD ACTION**

Approve an Affiliation Termination Agreement terminating the February 17, 2006 Academic Medical Center Affiliation Agreement among FAU, the University of Miami, and the Boca Raton Community Hospital.

**BACKGROUND INFORMATION**

On February 17, 2006, the University entered into an affiliation agreement (the "Affiliation Agreement") with the University of Miami ("UM") and the Boca Raton Community Hospital ("BRCH") for the establishment of an academic medical center and a regional medical school campus on the FAU Boca Raton Campus. Under the Affiliation Agreement, UM and FAU are responsible for the development and delivery of a four-year medical education program. UM and FAU have met their obligations and a four-year regional campus of the UM medical education program is now fully operational on the Boca Raton campus, under the name of UMMSM@FAU.

Under the Affiliation Agreement, BRCH had several obligations, most notably the construction of a replacement hospital facility on the FAU campus that would serve as the academic medical center for the UMMSM@FAU medical education program. As has been widely reported, BRCH has come under severe financial pressure over the past eighteen months. Due to these pressures, BRCH has informed FAU and UM that it will not be able to meet its obligations under the Affiliation Agreement.

The University regrets BRCH's unfortunate circumstances and is hopeful that the problems will be corrected in the future. However, as it would be unworkable to maintain a tri-partite agreement with one party unable to participate, the parties have agreed to terminate the Affiliation Agreement in order to relieve BRCH of all of its obligations and to allow FAU and UM to develop a new, bi-partite agreement. FAU and UM have begun discussions concerning a new agreement and have agreed that the status quo among them shall remain unchanged during the pendency of their negotiations. Specifically, the pendency of the negotiations between FAU and UM shall have no impact on the delivery of medical education under the UMMSM@FAU program or upon the affiliation between UM and FAU. The parties anticipate concluding their negotiations on a revised agreement in the coming months.

**IMPLEMENTATION PLAN/DATE**

Upon approval by the BOT.

**FISCAL IMPLICATIONS**

None. All operations of UMMSM@FAU shall remain unchanged. Because BRCH had not provided significant support for the program to date, no costs must be assumed. Any future affiliation agreement for the construction of an academic medical center shall be brought to the BOT for approval.

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Supporting Documentation: Proposed Affiliation Termination Agreement

Presented by: David L. Kian  
Senior Vice President & General Counsel

## **AFFILIATION TERMINATION AGREEMENT**

**THIS AFFILIATION TERMINATION AGREEMENT** (this “Termination Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 200\_, (the “Accelerated Termination Date”) among **Boca Raton Community Hospital, Inc.**, a Florida not for profit corporation (“**BRCH**”), **Florida Atlantic University** (“**FAU**”), and the **University of Miami** (“**UM**”).

### **RECITALS:**

A. BRCH, FAU and UM are parties to that Regional Academic Medical Center Agreement effective as of the 17th day of February, 2006 (the “Affiliation Agreement”) pertaining to the development of a regional campus in Boca Raton of UM’s Miller School of Medicine.

B. The Parties desire to clarify the respective rights and obligations of the parties under the Affiliation Agreement by terminating the Affiliation Agreement upon the terms, covenants, conditions and provisions hereinafter set forth.

**NOW, THEREFORE**, in consideration for the promises and covenants contained herein, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals are true and correct and are incorporated herein by this reference, as if set forth in their entirety.

2. **Definitions.** All terms used but not otherwise defined herein shall have the meanings set forth in the Affiliation Agreement.

3. **Termination of Affiliation Agreement.** The Parties hereby terminate the Affiliation Agreement as of the Accelerated Termination Date. As of the Accelerated Termination Date, the Affiliation Agreement shall be null and void and of no further force and effect, and no Party shall have any further rights, liabilities or obligations thereunder, except for Section 16.4, Confidential Information, and any rights, liabilities or obligations set forth in this Termination Agreement. The Parties hereby each release both of the other Parties from any and all claims and rights that such Party may have against either of the other Parties under the Affiliation Agreement.

4. **Waiver of Notice.** The Parties waive any right to notice of termination set forth in the Affiliation Agreement.

5. **Notices.** All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by overnight air courier, by certified, registered or express mail, or transmitted by confirmed facsimile followed by first class mail, postage prepaid, and shall be deemed to have been duly given and to have become effective (a) upon receipt if delivered in person or other electronic means, including by confirmed

facsimile, arriving on any business day prior to 6:00 p.m. at the address of the addressee, or on the next succeeding business day if delivered on a non-business day or after 6:00 p.m. local time, (b) one business day after having been delivered to an air courier for overnight delivery or (c) three business days after having been deposited in the mails as certified, registered or express mail, return receipt requested, all fees prepaid, directed to the Parties or their assignees at the following addresses (or at such other address as shall be given in writing by a Party hereto):

If to BRCH, addressed to:

Boca Raton Community Hospital, Inc.  
800 Meadows Road  
Boca Raton, FL 33486  
Attn: President and Chief Executive Officer  
Attn: General Counsel

If to FAU, addressed to:

Vice President for Medical Programs  
Florida Atlantic University  
Biomedical Sciences Building, BC71, Room 145  
Boca Raton, FL 33431

with a simultaneous copy (which shall not constitute notice) to counsel for FAU:

General Counsel  
Florida Atlantic University  
Administration Building, Room 367  
Boca Raton, FL 33431

If to UM, addressed to:

Dean  
University of Miami Miller School of Medicine  
1600 N.W. 10th Avenue  
Rosenstiel Medical Sciences Building, Room 1143A  
Miami, Florida 33136

with a simultaneous copy (which shall not constitute notice) to counsel for UM:

General Counsel  
University of Miami  
5915 Ponce de Leon Boulevard, Suite 10  
Coral Gables, FL 33124

6. Further Assurances. The Parties shall cooperate fully and in a timely manner and will use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated under this Termination Agreement. From time to time, without further consideration, the Parties will, at their own expense, execute and deliver, or cause to be executed and delivered, such documents as another party may reasonably request in order to carry out the purposes of this Termination Agreement. This Section shall survive the termination of the Affiliation Agreement and the termination or expiration of this Termination Agreement.

7. Governing Law; Venue. The terms and provisions of this Termination Agreement shall be governed by and construed in accordance with laws of the State of Florida and venue for all disputes arising hereunder must be in state or federal courts having jurisdiction in Palm Beach County, Florida, and in no other jurisdiction.

8. Entire Agreement. This Termination Agreement constitutes the entire understanding and agreement of the parties hereto and supersede any prior written or oral agreement or notice pertaining to the subject matter hereof. The terms and provisions of this Termination Agreement shall not be construed more liberally in favor of, or more strictly against, any party.

9. Execution. This Termination Agreement may be executed in counterparts. Facsimile signatures shall be binding as original signatures.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties have duly executed this Termination Agreement to be effective as of the day and year set forth above.

**BOCA RATON COMMUNITY HOSPITAL, INC.**

By: \_\_\_\_\_  
Name: Jerry Fedele  
Title: President and CEO  
Date: \_\_\_\_\_

**FLORIDA ATLANTIC UNIVERSITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**UNIVERSITY OF MIAMI**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_