

 <p><b>BAY OF PLENTY</b> DISTRICT HEALTH BOARD HAUORA A TOI</p> <p><b>INTELLECTUAL PROPERTY PROTOCOL</b></p>	<p><b>INTELLECTUAL PROPERTY STANDARDS</b></p>	<p><b>Policy 2.1.10 Protocol 1</b></p>
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## OBJECTIVE

To outline the Bay of Plenty District Health Board (BOPDHB) management of intellectual property to ensure that staff are aware of their obligations and responsibilities.

## STANDARDS TO BE MET

### 1. Employees

- 1.1 Creative endeavours shall be encouraged within all levels of BOPDHB as part of an employee's prescribed duties.
- 1.2 Any use of facilities, resources, other employees and DHB funds for the development of intellectual property shall require the prior written approval of the employee's General Manager (GM).
- 1.3 BOPDHB shall have ownership of intellectual property created by an employee in the course of their employment.
- 1.4 BOPDHB may agree to waive ownership in the following types of intellectual property:
  - a) Books, articles, audio-visual materials, lectures, course materials or other scholarly works generated by employees, provided that:
    - i. these have not been commissioned by BOPDHB or created pursuant to a specific directive given by the employee's GM / Chief Operating Officer (COO);
    - ii. these are not published by BOPDHB;
    - iii. BOPDHB is appropriately acknowledged as the institution employing the Author; and
    - iv. BOPDHB has the right to use such publications for its normal teaching, research, consultancy or administrative activities, if the copyright agreement with the publisher permits such use.

### 2. External Parties

BOPDHB shall have ownership of intellectual property created by an external contractor or consultant in the performance of their contract unless the contrary is indicated in the contract for service.

### 3. Students

- 3.1 Undergraduate, honours and post-graduate students undertaking work experience or study under the auspices of BOPDHB (whether or not their formal enrolment is elsewhere) may be asked prior to the undertaking to assign or licence to BOPDHB any intellectual property developed by them in the course of their tenure. Such requests shall be made particularly where:
  - a) Development will involve substantial use of BOPDHB resources or services.
  - b) Development will involve use of BOPDHB intellectual property.
  - c) The intellectual property will form part of the intellectual property generated by a project team of which the student is directly or indirectly a member.
  - d) The intellectual property will be developed as the result of project specific funding provided or obtained by BOPDHB.

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<p>Protocol Steward: GM Corporate Services</p>	<p>Authorised by: General Counsel</p>	

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e) Development of the intellectual property will occur as part of a project or course of research directly or indirectly suggested by a supervising BOPDHB employee and which is intended or likely to result in the development of intellectual property of that kind.

3.2 In the absence of a formal undertaking between the student and BOPDHB intellectual property rights remain the property of the student.

#### **4. Identification and Notification**

Where any creator generates or is likely to generate intellectual property to which BOPDHB may have claim in terms of policy 2.1.10 the creator shall promptly disclose this information in writing to the relevant GM.

#### **5. Disputes**

5.1 If any dispute arises between BOPDHB and a creator concerning the application of this protocol then the creator and the GM of the appropriate service shall meet as soon as possible in an effort to settle the dispute.

5.2 If no agreement is reached at that meeting, or it is not held within seven days of any request for such a meeting, then the dispute may be referred by any party to a mutually agreed expert.

5.3 The mutually agreed expert shall act as an expert and not an arbitrator, and may adopt whatever procedure he or she thinks fit to reach a decision on the dispute promptly. That decision shall be final and shall be binding on all parties.

5.4 If any dispute arises between BOPDHB and a creator about ownership of intellectual property, then BOPDHB may seek, and the other parties shall participate in, mediation.

5.5 If the dispute is not resolved within a reasonable time by mediation then any party to the dispute may seek, and the other party shall participate in, arbitration. Arbitration shall be carried out by a person agreed by the parties and any decision shall be final. The proceedings and decision of any mediation or arbitration shall be kept confidential.

5.6 Where an arbitrator is unable to be agreed, the President of the Waikato Bay of Plenty Law Society shall be asked to nominate a person to undertake this role.

#### **6. Third Party Intellectual Property**

6.1 No employee, or third party, student, contractor, consultant or other person acting for or on behalf of BOPDHB shall breach the Intellectual Property Rights of a third party.

6.2 Where an employee, or third party, student, contractor, consultant or other person is made aware that they have breached the Intellectual Property Rights of a third party they shall promptly notify their GM.

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## 7. Success Indicators

- 7.1 All employment contracts signed after authorisation date of this policy shall indicate the application of this policy or shall expressly assert BOPDHB ownership of intellectual property arising in the course of employment, unless agreement to the contrary is reached when employment is commenced or an employment contract is reviewed.
- 7.2 Where possible all contracts with external consultants or contractors shall indicate the application of this policy or shall expressly assert BOPDHB ownership of intellectual property arising from the performance of the contract, except where agreement has been reached that intellectual property arising from a contract with an external consultant or contractor shall not be owned by BOPDHB.

## ASSOCIATED DOCUMENTS

- Bay of Plenty District Health Board policy 2.1.10 Intellectual Property
- Bay of Plenty District Health Board policy 2.1.7 Research
- Bay of Plenty District Health Board Collective Employment Contracts
- Bay of Plenty District Health Board Contracts for Service
- Bay of Plenty District Health Board Individual Employment Contracts

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