SESSION OVERVIEW

- Why GOOD contracts are necessary
- Using system template agreements
  - Where to find them & how to appropriately modify them
  - Understanding standard requirements (Insurance, Background Studies, Data Privacy, HIPAA, and more...)
- Agreements negotiated with other Hosp. or Health Systems
- Religious Affiliated Facility Agreements
- Practical Tips and Things to Think About and Red Flags
- State Authorizations-Distance Education
- Resources

Questions may be submitted in writing via “chat” to Host and Presenter or at end of session by “raising your hand.”
A clinical site agreement is a contract:

a legally binding document that defines the rights and obligations of the parties and sets “ground rules.”
MnSCU TEMPLATES FOR SITE AGREEMENTS

- Nursing Program – Memorandum of Agreement
  - Nursing Program Notices to Students
- Medical Laboratory Technician and Phlebotomy Program(s)
- Paramedic Programs
- Student Training Experience/Internship Agreements
- Templates may be modified to list other Allied Health Programs
NECESSITY OF WRITTEN CONTRACT

- Clarity, completeness, and common understanding is essential.
- Supersedes previous oral discussions or “how we’ve always done it”.
- After contract signed, if you wish to change it, conversations or e-mails to change the contract are not sufficient. Changes to contracts (amendments) must be in writing and signed by the parties.

(continued...)
NECESSITY OF WRITTEN CONTRACT (continued...)

- Contract must be signed **before (!) the parties begin performing duties under the contract.**
  - Good practice and state law requires it.

- Good Contracts are Preventative Care:
  - Easier to work out issues before signing contract than to leave things unaddressed or “silent” and risk breaching the contract and/or litigation later.
EXAMPLES OF NON-CONTRACTS

- Letters of intent
- Verbal and “hand shake” agreements
- Unauthorized deals or unauthorized signers
- Jumping the gun or taking action before a written agreement
- Gifts
Approved Forms

Required unless other form approved by AGO or OGC

Procedure 5.14.2 Consultant, Professional or Technical Services


- Contracts must be prepared on forms approved by the system office to assure that they include all state required contract language. Any modification of forms approved by the system office or the use of a non-system office form requires the review by the system legal counsel and approval of the vice chancellor-chief financial officer. System legal counsel includes either the Minnesota State Colleges and Universities General Counsel or the Minnesota Attorney General's Office.
NOT A MnSCU FORM OR TEMPLATE?

- College/University must review for essential elements, prohibited provisions, practicality and business decisions.
- Don’t assume that a provision suggested by a party can’t be changed or modified.
- If other party wants to use its contract form, consult with MnSCU Office of General Counsel or Attorney General’s Office for legal review and possible negotiation and recommended changes, or drafting addendum or amendment.
- Avoid “We’ll sign yours, if you’ll sign ours.”
TERMINATION

- Preferred: both parties to terminate with or without cause.
- Provide written notice of termination to authorized representative of other party.
- Negotiate over how much notice must be given.
- Contract should be no longer than 5 years from effective date.
- Pay attention to the “end date” so that you have plenty of time to renew or execute a contract prior to need to place students.

**Note:** Contract should specifically include a sentence in termination provision to allow current students to complete the internship:

- “Termination by the Facility shall not become effective with respect to students then participating in the clinical experience program.”
INDEMNIFICATION AND LIABILITY

- Be alert for sections in other parties’ contracts headed: *Hold Harmless; Indemnification; Limitations on Liability; or Liabilities.*

- College and Universities **prohibited by law** from agreeing to indemnify other party to contract (reference: Minnesota Constitution article XI, section 1 and Minnesota Statutes section 16A.138).

(continued...)

*Minnesota State Colleges & Universities*
INDEMNIFICATION AND LIABILITY (continued)

- It is permissible for other party to contract to agree to indemnify the College/University.
- MnSCU Template states:

  “Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The College/University’s liability shall be governed by the Minnesota Tort Claims Act, Minnesota Statutes § 3.736, and other applicable laws.”
ANTI-DISCRIMINATION PROVISIONS

- State and/or federal laws prohibit system schools from discriminating on basis of sex, race, national origin, sexual orientation, religion, age, disability and other protected classes.
  - Facilities must also agree under clinical contracts.
  - Do not consent to deleting provisions from the templates.
  - Seek legal assistance if facility objects.
DATA PRIVACY ISSUES

- Both parties must comply with Minnesota Government Data Practices Act and FERPA, as applicable.
  - Templates include appropriate language.
  - Sharing student data with facility generally requires written consent (e.g., immunization info, SSN, etc.).
  - Facility should understand that student records are “private.”

- HIPAA
  - Facility is “covered entity” but college/university is not, at least re: clinical training.
  - College/University is NOT a “business associate” of facility when it has clinical affiliation relationship.
    - Do not sign “business associate” agreement, if offered;
    - Seek legal assistance if facility persists.
BUSINESS ASSOCIATE AGREEMENTS

- Sometimes sent by facility to campus.
- Just say "NO" (thank you).
- College/University not "business associate" of facility when it has clinical affiliation relationship.
- For HIPPA purposes, facility, not campus, is "covered entity”.
- [http://www.ogc.mnscu.edu/dataprivacy/hipaa.html](http://www.ogc.mnscu.edu/dataprivacy/hipaa.html)
CONFIDENTIALITY CLAUSES
PROPOSED BY FACILITY

- May be overbroad:
  - Can’t agree to keep *everything* confidential.
  - Alternative language is available if needed.
  - Must be reviewed and approved by Office of General Counsel or Attorney General’s Office.
CAUTION

- In general, watch out for contract provisions that require the College or University to adopt policies of the facility or take on new compliance responsibilities unless authorized by OGC or AGO.
  - e.g.: proposed requirement that university adopt facility’s anti-fraud policy
- The HIPAA language in the system template agreement provides that participants will follow facility’s policies.
IMMUNIZATIONS/ HEALTH RECORDS

- State law requires students/faculty providing direct care to demonstrate current immunizations.
- Generally College/University keeps records and provides verification to facility.
- Student consent needed to release records or information to facility.
- Be sure to inform students of facility/state law requirements as far in advance as possible.
- If facility wants additional, contact OGC and AGO for guidance and possible wording changes.
CDC IMMUNIZATION GUIDELINES

REQUIRED BACKGROUND STUDIES

State in agreement who will conduct background studies.

“The College/University agrees and represents that it will require all students and faculty to have completed a background study conducted in accordance with Minnesota Statutes Chapter 245C, Human Services Background Studies, as a pre-condition to participation in the clinical experience. College/University will not assign a student or faculty member to the Facility if his/her background study documents ineligibility to have direct contact with Facility's patients or residents under applicable law or regulations. If requested, College/University shall provide the Facility with documentation regarding the completion or results of the background study pursuant to the written consent of the subject.”
EXPANDED BACKGROUND STUDY REQUESTS BY FACILITY

- Facility may request more than required by applicable law.
- Agreement may be revised by OGC or AGO to require *Facility* to be responsible for expanded background studies and costs.
  - advise students in advance
- Refuse to be repository of extra records.

(continued...)
Example: Student must provide to Facility results of a national background and criminal screening, covering a period of at least seven (7) years, within one (1) year prior to his/her educational experience at Sanford. The student shall be responsible for arranging for the national background screening, providing said screening results to Sanford and all costs associated with such screening. The background screening must include at the minimum: Social Security Trace; County Criminal Record History, and; State by State Sex Offender Search.
REMOVAL OF STUDENT FROM CLINICAL INTERNSHIPS

Preferred contract language:

The Facility is responsible for the safety and quality of care provided to its patients by the students who are participating in the clinical experience program at the Facility. In order to effectively fulfill that duty, it is agreed that Facility has ultimate control over all persons involved in the program and may immediately terminate the participation in the program of any of the students enrolled in the program where an emergency exists involving health and safety; and in all other (non-emergency) instances, Facility shall consult with the College/University before taking any action to terminate the participation of a student.
CLINICAL INTERNSHIPS
STUDENT RELEASES

Students should not sign the contract *between the Facility and School*. Some facilities may request students to sign a confidentiality agreement, waivers or releases of liability in order to participate.

Because College/University and student are distinct for legal purposes, College/University should:

- Give student ample time for review of facility confidentiality or release or waiver.
- Inform students they are free to consult their own attorney.
- If student doesn’t want to sign, may have to choose an alternative site for internship.
- Don’t give “legal advice” (OGC and AGO will not advise students individually).
DRUG TESTING REQUESTS

- Campus doesn't have authority to require this.
- Contact OGC or AGO to change wording to require facility to arrange directly with student and arrange who will pay costs.
- Refuse to be repository for results.
INSURANCE

- Key consideration: Contract language must be consistent with existing insurance coverage for MnSCU campuses.
- Sometimes insurance requirements change, usually effective July 1.
- Minnesota Department of Administration, Risk Management and MnSCU Director of Risk Management provide assistance with coverage requirements, renewals, proof of insurance requests, and changes of insurance coverage for clinic agreements. Alternative language/requirements available when other party is a governmental/political unit (municipality, county, etc..)
- If clinical facility contracts have insurance provisions which are inconsistent with MnSCU requirements, don’t sign until provision modified.
- Don’t agree to requests by Facility to have “lower” insurance requirements. Consult Risk Management, OGC and AGO.

(continued...)
INSURANCE (continued...)

ADDITIONAL INSURANCE CONDITIONS

- Upon request, each party shall provide to the other party certificates of insurance or self-insurance evidencing the required coverage.

- Template includes:

  *If either party receives a cancellation notice from an insurance carrier affording coverage herein, such party agrees to notify the other party within five (5) business days with a copy of the cancellation notice, unless such party’s policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days’ advance written notice to the other party.*
WORKER’S COMPENSATION INSURANCE

- MnSCU is self-insured for worker’s compensation.
- College/University cannot agree to provide worker’s compensation for a student.
- MnSCU coverage extends only to employees.
MnSCU legal counsel has negotiated memorandum of agreement (MOA) templates for specific health care organizations. Samples of these negotiated MOA templates can be found below. Please remember that the MOA’s found on this website are to be used for reference and comparison purposes only.

- [http://www.ogc.mnscu.edu/clinicalagreements/index.html](http://www.ogc.mnscu.edu/clinicalagreements/index.html)
Office of General Counsel Main Page
Clinical Affiliation Agreements

Office of General Counsel

- About Us
- Clinical Agreements
- Data Privacy
- Employee Ethics
- Events
- Immigration
- International Activity
- Legal Services
- Legal Topics
- Student Affairs
- Webinars

Search OGC

Clinical Affiliation Agreements

MnSCU legal counsel has negotiated memorandum of agreement (MOA) templates for specific health care organizations. Samples of these negotiated MOA templates can be found below. Please remember that the MOAs found on this website are to be used for reference and comparison purposes only.

The standard MnSCU clinical MOA template can be found at http://www.mnscu.umn.edu/contracts/purchasing/contracts/forms/index.html

If you receive a MOA from a facility and they indicate there is a negotiated template, please review what has been sent to you with the corresponding MOA found on this website. By directly comparing the two documents, you can help to ensure that your college or university has received the most up-to-date MOA as approved for use by MnSCU legal counsel. Many of the facilities prefer to send the proposed MOA to the campus and not have the campus send a standard MnSCU clinical template. If an organization uses a cover letter, a “sample” cover letter is also included below for your review and comparison. If you have any questions, please contact the Office of General Counsel.

- AHSUS Therapies, Inc., 2 party (2/25/2009)
- AHSUS Therapies, Inc., 3 party (7/16/2013)
- Allina Health System (Approved by Minnesota Attorney General’s Office on 05/07/13)
- Children’s Health Care of Minnesota Children’s Hospital and Clinics of Minnesota (05/10)
- DaVita Dakota Dialysis Center, LLC DBA Fargo HD Dialysis Center (10/10/07)
- Department of Veterans Affairs
- Essentia Health (12/2012)
- Evangelical Lutheran Good Samaritan Society (6/2017)
- Fairview Health Services with cover letter (12/3/2013)
- Hennepin County Medical Center (8/31)
- North Memorial Health Care with cover letter (11/9/12)
- Sanford Health – Fargo (OFC 07/2015 Revised 08/2012)
- State of Minnesota Department of Human Services (10/2008)

Please remember that the MOA’s found on this page are samples and are to be used for reference and comparison purposes only. If what you received from the facility is different from what is on this website contact the Office of General Counsel.
CLINICAL AFFILIATION AGREEMENTS NEGOTIATED WITH HOSPITALS OR HEALTH CARE SYSTEMS

- AEGIS Therapies, Inc. 2-party
- AEGIS Therapies, Inc. 3-party
- Allina Health System
- Avera Health (to be added)
- Catholic Health Initiatives
- Children’s Health Care d/b/a Children’s Hospital & Clinics of Mn
- DaVita Dakota Dialysis Center LLC d/b/a Fargo ND Dialysis Center
- Dept. of Veterans Affairs
- Essentia Health
- Evangelical Lutheran Good Samaritan Society
- Fairview Health Services
- Gold Cross Ambulance (to be added)
- Hennepin County Medical Center (HCMC)
- Minnesota Department of Human Services
- North Memorial Health Care
- Sanford North Health System (Fargo, ND)
- Sanford South Health System (Sioux Falls, SD) (being updated)
RELIGIOUS AFFILIATED FACILITY AGREEMENTS

- College/University cannot agree to adopt or comply with religious-based policies, procedures, regulations or directives of facility.
- Contact OGC or AGO for assistance in modifying provisions of agreement.

(continued...)
RELIGIOUS AFFILIATED FACILITY AGREEMENTS
(continued...)

Example: “College/University *acknowledges* that Facility conducts its operations and activities in accordance with the Ethical and Religious Directives for Catholic Health Care Services, as promulgated from time to time by the American Conference of Catholic Bishops. College/University *acknowledges* that Facility requires that the Students perform the services contemplated by the Agreement in a manner consistent with the Ethical and Religious Directives. Notwithstanding the foregoing, this Agreement does not, and shall not be construed to require the College/University to comply with the Catholic Health Initiatives (CHI) Standards of Conduct or the Ethical and Religious Directives or any policies, procedures, regulations, or directives of the Facility that are based on the CHI Standards of Conduct or Ethical and Religious Directives.”
PRACTICAL TIPS AND THINGS TO THINK ABOUT

- Read entire agreement prior to asking for legal review.
- Agreement “works” for College/University? If not, let us know why or what works better.
- Agreement meets programmatic, academic and accreditation requirements?
- Business decisions for College/University? What is your decision?
- Does the contract provide clarity of obligations, responsibilities, and duties internally and externally?

(continued...)
PRACTICAL TIPS AND THINGS TO THINK ABOUT (continued)

- MnSCU contract template?
  - If not, plan accordingly for review time and negotiation.
- Updated insurance coverage/limits in place (may change on July 1 each year)?
- Alternative or multiple sites for students?
- On-site student supervision expectation-responsibility? College/University or Facility?
RED FLAGS FOR CONTRACTS

- Site does not allow changes to its standard template contract.
- Student is also an employee and site does not feel a contract is necessary.
- Health requirements required by the site, but not currently required by university.
- Site is mailing a signed contract, but changes still being negotiated.
- Indication from site, student, etc. that a student is going to start clinicals without a contract.
- Site says template it provided has been signed by another MnSCU or state university.
Lead Time

- Plan accordingly—expect the best and plan for the worst.
- Use System templates and forms.
- Allow time for negotiation.
- Read Agreement.
- Not every contract can be an emergency.
State Authorization-Distance Education

- The Minnesota State Colleges and Universities have joined the State Authorization Network sponsored by WCET for training and materials related to the July 1, 2011 implementation of the federal DOE rule for distance education.

- [http://asa.mnscu.edu/academictechnology/stateauthorization/](http://asa.mnscu.edu/academictechnology/stateauthorization/)
  - Latest News
  - What should my institution do?
  - MnSCU Communications
  - Federal Regulations and Communications
  - Response Letters from States
  - State Authorization Reciprocity Agreement (SARA)
  - And MORE.....
RESOURCES FOR QUESTIONS:

- **Mary Al Balber**
  Assistant General Counsel
  Minnesota State Colleges and Universities
  (651) 201-1752
  maryal.balber@so.mnscu.edu

- **Michele Owen**
  Assistant Attorney General
  (651) 757-1322
  michele.owen@ag.state.mn.us

- **Kristine Kaplan**
  Deputy General Counsel
  Minnesota State Colleges and Universities
  (651) 201-1749
  kristine.kaplan@so.mnscu.edu

HIPPA/Privacy Questions?
INSURANCE/RISK MANAGEMENT
ISSUES OR QUESTIONS

- Keswic Joiner
  Director of Risk Management
  Minnesota State Colleges and Universities
  (651) 201-1778
  keswic.joiner@so.mnscu.edu

- Marlys Williamson
  Risk Management Division
  Department of Administration
  (651) 201-2591
  marlys.williamson@state.mn.edu
Contact Information
Minnesota State Colleges & Universities
System Office

Mary Al Balber
Assistant General Counsel
MaryAl.Balber@so.mnscu.edu
651-201-1752

Office of General Counsel
www.ogc.mnscu.edu