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Office of General Counsel

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# Checking Up on Clinical Affiliation Agreements

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MINNESOTA STATE

# Next Month's Presentation December 14, 2023

## Minnesota Government Data Practices Act

Presented by

Assistant General Counsel Daniel McCabe

For a complete listing of the Spring Second Thursday topics, please

visit the Office of General Counsel's website at

<https://minnstate.edu/system/ogc/index.html>

For more information email Amanda Bohnhoff at

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# Session Overview

(This is general clinical agreement session and not Marketplace Training Session)

- Why GOOD contracts are necessary
- Using system template agreements
  - Where to find them and how to have them modified
  - Understanding standard requirements (immunizations, insurance, background studies, data privacy, HIPAA, and more...)
- Agreements negotiated with other Hospital or Health Systems
- Religious Affiliated Facility Agreements
- Understand the Difference in Clinical and Student Experience Internship templates-
- Practical Tips and Things to Think About and Red Flags
- Resources
- Question and Answer

# Lead Time

- Plan accordingly—expect the best and plan for the worst.
- Have signed contracts in place at least a semester before placing students at a site- especially out of state placements.
- Use System templates and forms.
  - Resist changing footer.
- Allow time for negotiation. Not all get to “yes.”
- Read Agreement.
- Not every contract can be an emergency.

# The Basics: Clinical Affiliation Agreements



# It's a Contract!

- A clinical site agreement is a contract
  - A legally binding document that defines the rights and obligations of the parties and sets “ground rules.”
- Must conform to all applicable statutes, policies, procedures and guidelines
- Must be reviewed for legal and business decisions
  - Legal Decisions: A determination as to whether or not something is legal
    - Remember: Just because it's legal doesn't mean it's a good idea.
  - Business Decisions: A business decision is a decision as to whether or not something is “good” business.

# Why Do I Need A Written Contract?

- Services, unlike goods, are not governed by Uniform Commercial Code (UCC);
- Clarity, completeness, and common understanding is essential;
- Supersedes previous oral discussions or “how we’ve always done it”;
- After contract signed, if 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;
- Contract must be signed before (!) the parties begin performing duties under the contract - Good practice and state law requires.
- 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.

# Minnesota State Standard Contract Templates

## Required Unless Other Form is Approved by Attorney General's Office (AGO) or Office of General Counsel (OGC)

- Required by System Procedure 5.14.2 Consultant, Professional or Technical Services Part 3, Contract Preparation
  - 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 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.



# Templates For Site Agreements – Minnesota State Finance Site

- Nursing and Other Allied Health Programs – Memorandum of Agreement- Updated November 2023
  - Nursing Program Notices to Students
- Medical Laboratory Technician and Phlebotomy Program(s)
- Paramedic Programs
- Use updated/most current template found on [Finance website](#) or in Marketplace
- Templates may be modified to list other Allied Health Programs without legal review
- Look at footer to confirm you have the most recent version. Please do not modify footer.
- **NOTE:** Non-Allied Health Student Training Experience/Internship Agreements Template (Not a “short form” or legally sufficient for clinical affiliation agreements).

# Minnesota State Contract Forms and Templates Webpage

## ▼ Clinical Agreement

Minnesota State has templates for clinical affiliation agreements for nursing and other allied health programs. The templates below should be used as a starting point for all clinical affiliation agreements. The "nursing" template can be modified by the campus to include other allied health programs (i.e. dietician, dental, occupational/physical therapy, etc.) as needed. There should be only one clinical affiliation agreement for the college/university with a facility. Before establishing a new agreement with a facility, or amending an agreement, please check internally at your campus to determine which allied health programs should be included in the agreement.

Any changes or modifications to the template need to be reviewed by system legal counsel at the Office of General Counsel or the Attorney General's Office.

Additionally, Minnesota State legal counsel has negotiated a number of memorandum of agreement (MOA) templates for specific health care organizations. Samples of these negotiated MOA templates can be found on the Office of General Counsel's [clinical agreements webpage](#).

Please remember that the MOA's found on the Office of General Counsel's website are to be used for reference and comparison purposes only. Guidance on use of pre-negotiated templates can be found on the Office of General Counsel's webpage.

### Contact:

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Number	Name	Description	Updated
1	<a href="#">Memorandum of Agreement</a>	Medical Laboratory Technician and Phlebotomy Programs	06/2018
2	<a href="#">Memorandum of Agreement</a>	Nursing and Other Allied Health Programs	06/2018
3	<a href="#">Amendment to MOA</a>	Nursing and Other Allied Health Programs Amendment	06/2018
4	<a href="#">Memorandum of Agreement</a>	Paramedic Programs	06/2018
5	Hy-Vee, Inc MOA	Pharmacy Technician Other Allied Health Programs- Non-Nursing (contact Office of General Counsel for template)	06/2019

> Design & Construction

> Goods & Services

> Facilities & Lease Agreements



# Not A Minnesota State 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 part can't be changed or modified.
- If other party wants to use its contract form, consult with 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."

# Clinical Agreement Template

## Updated November 2023

**[INSTRUCTIONS FOR COMPLETING THIS FORM ARE IN RED AND BRACKETS. Please complete every field and delete all instructions including the brackets. NOTE: There should only be one clinical affiliation agreement for the College/University with a Facility (not individual program agreements with a facility). Before establishing a new agreement with a Facility, or amending an agreement, please check internally at your campus to determine which Allied Health Programs should be including in the Agreement, or if there is already an existing agreement. You should also check the OGC clinical affiliation agreement website to see if a pre-approved/negotiated agreement already exists, and if so, ask the facility to send you the agreement.]**

**STATE OF MINNESOTA  
MINNESOTA STATE COLLEGES AND UNIVERSITIES**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**[INSERT NAME OF COLLEGE OR UNIVERSITY]**

**AND**



# 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 requirements or modifications, contact OGC or AGO for guidance and possible wording changes.
- Read and familiarize yourself with these provisions in the template.
- [CDC Immunization Guidelines](#)



# NETStudy 2.0 Fingerprinting

- DHS fingerprint process implementation completed 2017.
- In 2021 DHS selected a new vendor : IDEMIA Identity & Security USA LLC (IDEMIA) in a competitive bid to replace “Thales”/Gemalto Cogent.
  - And, once the contract with Thales expires, entities cannot use live scan equipment purchased from Thales for DHS fingerprinting. Thales will contact entities that purchased live scan equipment to provide further information and instructions.
  - Contact OGC if presented a new contract for fingerprinting.
- DHS --[FAQs on transition to IDEMIA](#)
  - <https://mn.gov/dhs/general-public/background-studies/faqs/idemia-transition/>

# 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.
  - 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.

# Drug And Alcohol 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.
- Student must have results sent to facility, NOT campus.
- Refuse to be repository for results.
- Advise students in advance.



# Removal Of Students 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).

# Indemnification And Liability

- Be alert for sections in other parties' contracts headed: Hold Harmless; Indemnification; Limitations on Liability; or Liabilities.
- Colleges and universities are prohibited by law from agreeing to indemnify other party to contract (reference: Minnesota Constitution article XI, section 1 and Minnesota Statutes section 16A.138).
- It is permissible for other party to contract to agree to indemnify the College/university.
- Minnesota State Templates 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 or offers alternative provision or language.

# Data Privacy Issues

- Both parties must comply with the 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.”
- 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.

# 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.
- Watch out for contract provisions that require your College/University to "ensure" that the student comply with certain matters (for example, comply with the Facility's business confidentiality terms, or the Facility's release terms for the student, or health insurance requirements). Instead, contact AGO or OGC so that the terms can be redrafted to state that: "the College/University **will inform students** that the Facility is requiring them to comply with the Facility's....." You cannot ever be a guarantor of student behavior.

# Insurance- Always Important!

- Key consideration: Contract language must be consistent with existing insurance coverage for Minnesota State campuses.
- Sometimes insurance requirements change, usually effective July 1.
- Minnesota Department of Administration, Risk Management and Minnesota State Director of Risk Management provide assistance with coverage requirements, renewals, proof of insurance requests, and changes of insurance coverage for clinic agreements.
- If other party is a governmental/political unit (municipality, county, etc.) subject to Minn. Stat. Chapter 466, contact OGC or AGO for alternative insurance language/requirements.



# Insurance (2)

- If clinical facility contracts have insurance provisions which are inconsistent with Minnesota State requirements, don't sign until provision is modified and approved.
- Don't agree to requests by Facility to have "lower" insurance requirements. Contact Risk Management, OGC and AGO.
- 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.



# Workers' Compensation Insurance

- Minnesota State is self-insured for workers' compensation.
- College/University cannot agree to provide workers' compensation for a student.
- Minnesota State coverage extends only to employees.
- This is addressed in Minnesota State template in the insurance provision.

# 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. In templates usually one year notice. Sometimes facility wants less time.
- 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.”

# 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”.
- For more information please visit the [Office of General Counsel’s webpage](#).



# Clinical Affiliation Agreements Negotiated With Hospital Or Health Care Systems

- Minnesota State legal counsel has negotiated a number of memorandum of agreement (MOA) templates for specific health care organizations. Samples of these negotiated MOA templates can be found on the [Office of General Counsel's Clinical Agreements webpage](#). Please remember that the MOAs found on this website are to be used for reference and comparison purposes only.

# Office of General Counsel Clinical Affiliation Agreements Webpage

## Clinical Affiliation Agreements

Minnesota State 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.

The standard Minnesota State clinical MOA template can be found on the [Minnesota State Forms and Contract Templates](#) page.

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 Minnesota State legal counsel. Many of the facilities prefer to send the proposed MOA to the campus and not have the campus send a standard Minnesota State 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.

- [AEGIS Therapies, Inc. 3-Party \(06/16/2016\)](#).
- [Allina Health System \(Approved by Minnesota Attorney General's Office on 05/07/2013\)](#)
- [Avera Health \(12.28.2018\)](#)
- [Remidji Area Indian Health Service \(05/03/2017\)](#)
- [Catholic Health Initiatives with cover letter \(04/2015\)](#)
- [CentraCare Health No Faculty On-Site Agreement \(01/21/2022\)](#)
- [Children's Health Care D/B/A Children's Hospital and Clinics of Minnesota \(06/2020\)](#)
- [DaVita Dakota Dialysis Center, LLC D/B/A Fargo ND Dialysis Center \(08/25/2014\)](#)
- Department of Veterans Affairs (U.S.)-The system legal counsel is in negotiation to update a new agreement. The 2017 VA-US contract template as found in the footer, should not be used. Please ask the VA for its most recent version of the contract and then contact OGC or AGO for assistance.

<https://minnstate.edu/system/ogc/clinicalagreements.html>

# Memorandum of Agreement for Student Training Experience/Internship

STATE OF MINNESOTA  
MINNESOTA STATE COLLEGES AND UNIVERSITIES  
*[Insert name of College/University]*

## MEMORANDUM OF AGREEMENT FOR STUDENT TRAINING EXPERIENCE/INTERNSHIP FOR NON-ALLIED HEALTH PROGRAMS

This Agreement is made between the State of Minnesota acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of [fill in name of College/University], [fill in city where College/University located], Minnesota ( “the College/University”) and [Facility Name]\_\_\_\_\_, [City]\_\_\_\_\_, [State]\_\_\_\_\_ (“the Facility”). This Agreement, and any written changes and additions to it, shall be interpreted according to the Laws of the State of Minnesota.

*The purpose of this Memorandum of Agreement is to outline the terms of the training/internship experience for the student of the College/University and to identify the responsibilities of the College/University and the Facility.*

### A. THE PARTIES UNDERSTAND THAT:

1. The College/University has a(n) [ fill in name of program] Program (the “Program”) for qualified students enrolled in the College/University; and

# 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.
  - 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 requires 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.”



# What's the Difference?

## Memorandum of Agreement for Nursing and Other Allied Health Programs

Only applies to nursing and allied health and required for academic program;

Generally contract terms are required as part of academic program, subject to accreditation, regulatory, and statutory requirements.

Contract is between C/U and Facility- students do not sign

Often 5 years in duration and covers multiple students in multiple nursing and allied health programs, for each year at facility.

## Memorandum of Agreement for Student Training Experience/Internship

Is an optional template for use if C/U or other party wants a contract for general internships. Not every internship needs a contract, and may not be an academic program requirement.

Is only suitable for non-allied health/regulated programs (think marketing, shadowing, limited on site activities)

Doesn't include nursing/allied health required background studies, immunizations, accreditation programs, insurance (but if needed based on risk or activities, such as welding, contact OGC and Risk Management because insurance language may be needed)

Students sign document related to any requirements and participation

Is short term, contract is solo-student focused to go to another site, not multiple students for long period.

Is NOT a "short cut" clinical template.

# What's the Difference? (2)

## **Memorandum of Agreement for Nursing and Other Allied Health Programs**

One C/U agreement per facility- include all programs

## **Memorandum of Agreement for Student Training Experience/Internship**

Usually only one student going to site, not multiple programs/people



# Practical Tips And Things To Think About

- Read entire agreement prior to asking for legal review.
- Send word version, not PDF. Ask for word version if necessary.
- Ask internally on campus which academic programs need to be included in each agreement. One agreement per college/university and facility is appropriate to cover academic programs.
- In your email transmittal to OGC or AGO include the following:
  - 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 clarify of obligations, responsibilities, and duties internally and externally?

# Practical Tips And Things To Think About (2)

- Minnesota State contract template?
  - If not, plan accordingly for review time and negotiation.
- Updated insurance coverage/limits in place
- Alternative or multiple sites for students?
- On-site student supervision expectation-responsibility?  
College/university or Facility?
- Have you answered all the questions asked in legal review?
- Do you know your campus contract process for approvals, decisions, and signatures?
- If contacted by an attorney for facility, contact OGC/AGO

# Red Flags For Clinical Contracts

- Site does not allow changes to its standard template contract. (Alternative sites for students available?)
- 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 college/university.
- Site is mailing a signed contract, but changes still being negotiated.
- Indication from site, student, etc. that a student is going to start clinical without a contract.
- Site says template it provided has been signed by another Minnesota State college or university. Ask which one and get a copy of the signed agreement.

# Resources

## **Mary Al Balber**

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## **Insurance**

## **Keswic Joiner**

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# Question and Answer with Mary Al and Gary

- Please chat in your general questions about clinical and allied health affiliation agreements
- If you have questions about specific contracts, contact us directly for assistance



# Contact Information

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# Please Take Our Survey

A link to our survey is provided in the chat. We appreciate your feedback and are always looking for ideas for future webinars and ways to improve.



# Contact Information

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