



March 12, 2020

Office of General Counsel

Clinical Agreements

Nursing and Allied Health Programs

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MINNESOTA STATE

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
- Practical Tips and Things to Think About and Red Flags
- Resources



Contract Basics

A clinical site agreement is a contract:
A legally binding document that defines the rights and obligations of the parties and sets “ground rules.”



Templates For Site Agreements – Minnesota State Finance Site

- Nursing and Other Allied Health Programs – Memorandum of Agreement
 - Nursing Program Notices to Students
- Medical Laboratory Technician and Phlebotomy Program(s)
- Paramedic Programs
- Use updated/most current template found on Finance website: <https://www.minnstate.edu/system/templates/index.html> or in Marketplace
- Templates may be modified to list other Allied Health Programs
- 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).



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."

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

- <https://www.cdc.gov/vaccines/>



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.”

NETStudy 2.0 Fingerprinting

- DHS fingerprint process implementation completed 2017.
- DHS selected vendor is Gemalto Cogent (f/k/a 3M Cogent).
- “Public” sites in MN are selected by DHS and Gemalto Cogent.
- Some campuses want to do own fingerprinting as a “private” site.
 - Contract issues, payments and campus requirements need to be worked out.
 - Cannot be used for purposes other than intended and required by Mn Chapter 245C.
- Contact Mary Al Balber by email (maryal.balber@minnstate.edu) if considering doing fingerprinting in-house for this purpose and purchasing equipment.
- Questions about the background study changes and NETStudy 2.0 may be submitted to dhs.netstudy2@state.mn.us.



NETStudy 2.0

 <https://mn.gov/dhs/general-public/background-studies/>

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Background studies

Background studies are required for people who provide care in certain health and human service programs and for people who work in child care settings. DHS also completes background studies on others, such as people who are guardians or are planning to adopt a child. State law defines who is required to have a DHS background study and the related processes.

[What's new](#)

News and updates about background studies and legislative changes.

[General information](#)

Learn more about background studies

[Providers](#)

Get information on the background study process, submitting study requests on NETStudy and training opportunities.

[Study subjects](#)

Find out when a background study is required and what the background

[FAQs](#)

Answers to frequently asked questions.

[Contact us](#)

Contact information for background studies.

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

Expanded Background Study Requests By Facility (Continued)

- 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.

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.

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.

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”.
- <https://www.minnstate.edu/system/ogc/dataprivacy/hipaa.html>

Insurance

- 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. (continued...)

Insurance (Continued)

- If clinical facility contracts have insurance provisions which are inconsistent with Minnesota State requirements, don't sign until provision is modified.
- 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.



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.”*

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 below. Please remember that the MOAs found on this website are to be used for reference and comparison purposes only.
 - <https://www.minnstate.edu/system/ogc/clinicalagreements.html>

Clinical Affiliation Agreements



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 \(12.28.2018\)](#)
- [Bemidji Area Indian Health Service \(05/03/2017\)](#)
- [Catholic Health Initiatives with cover letter \(04/2015\)](#)

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Clinical Affiliation Agreements Negotiated With Hospitals Or Health Care Systems

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[Bemidji Area Indian Health Service \(05/03/2017\)](#)

[Catholic Health Initiatives with cover letter \(04/2015\)](#)

[CentraCare Health with Cover Letter and No Faculty On-Site Agreement \(06/27/2016\)](#)

[Children's Health Care D/B/A Children's Hospital and Clinics of Minnesota \(05/2015\)](#)

[DaVita Dakota Dialysis Center, LLC D/B/A Fargo ND Dialysis Center \(08/25/2014\)](#)

[Department of Veterans Affairs \(U.S.\)](#)

[Department of Veterans Affairs \(State of Minnesota 01/2019\)](#)

[Essentia Health \(08/18/2016\)](#)

[Evangelical Lutheran Good Samaritan Society \(09/2015\)](#)

[Fairview Health Services with cover letter \(02/2018\)](#)

[HealthPartners with cover Letter \(08/08/2016\)](#)

[Hennepin County Medical Center \(08/2010\)](#)

Continued...



Clinical Affiliation Agreements Negotiated With Hospitals Or Health Care Systems (Continued)

[Hy-Vee Inc.- Pharmacy Technician and Other Allied Health Programs- Non-Nursing \(06/2019\) contact OGC for Template](#)

[Mayo Clinic Ambulance Service, Inc. \(formerly known as Gold Cross Ambulance\) \(04/2019\)](#)

[Mayo Clinic \(Rochester\) and Mayo Clinic Health System Sites- Nursing Rotations \(Recurring\) \(1/22/2016\)](#)

[Mayo Clinic \(Rochester\)- Non-Nursing Rotations \(Recurring\) \(05/2019\)](#)

[Mayo Clinic Health System- Non-Nursing Rotations to Sites Other Than Rochester \(Recurring\) \(1/22/2016\)](#)

[Mayo Clinic \(Rochester\)- Non-Nursing Rotation for Individual Student \(1/22/16\)](#)

[Mayo Clinic Health System Site- Non-Nursing Rotation for Individual Student \(1/22/16\)](#)

[North Memorial Health Care with cover letter \(11/2019\)](#)

[Sanford Health \(12/2019\)](#)

[Shriners Hospitals for Children \(05/25/18\)](#)

[St. Croix Regional Medical Center \(05/2019\)](#)

[State of Minnesota Department of Human Services \(02/2018\)](#)

[University of Minnesota Physicians \(06/12/2015\)](#)

[University of Minnesota Clinics and Surgery Center \(05/2017\)](#)



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.”

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.
- Use System templates and forms.
 - Resist changing footer.
- Allow time for negotiation.
- Read Agreement.
- Not every contract can be an emergency.

Practical Tips And Things To Think About

- Read entire agreement prior to asking for legal review.
- Send word version, not PDF. Ask for it 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?

(continued...)



Practical Tips And Things To Think About (Continued...)

- Minnesota State contract template?
 - If not, plan accordingly for review time and negotiation.
- Updated insurance coverage/limits in place (may change on July each year)?
- 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?

Red Flags For Clinical 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 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 clinicals 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.

Resources – Office of General Counsel

- **Mary Al Balber**

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Resources – Attorney General's Office

- **Gary Pihlstrom**
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- **Adam Sorenson**
Assistant Attorney General
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Insurance/Risk Management Issues Or Questions

- **Keswic Joiner**
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Minnesota State Contact Information

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Office of General Counsel

<http://www.minnstate.edu/system/ogc/>

Please take a few minutes to take our survey!





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