



3/10/2022

Office of General Counsel

Time for a Checkup! Keeping Your Clinical Affiliation Agreements Healthy

Mary Al Balber, Assistant General Counsel

Gary Pihlstrom, Assistant Attorney General

MINNESOTA STATE

Next Month's Webinar

April 14, 2022

Contract Amendments

Presented by Assistant General Counsel Sarah McGee



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
- 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.
- Use System templates and forms.
 - Resist changing footer.
- Allow time for negotiation.
- 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
 - 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
- 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:

Mary Al Balber, Assistant General Counsel: MaryAl.Balber@minnstate.edu

Amanda Bohnhoff, Legal Assistant: Amanda.Bohnhoff@minnstate.edu

Number	Name	Description	Updated
1	Memorandum of Agreement	Medical Laboratory Technician and Phlebotomy Programs	06/2018
2	Memorandum of Agreement	Nursing and Other Allied Health Programs	06/2018
3	Amendment to MOA	Nursing and Other Allied Health Programs Amendment	06/2018
4	Memorandum of Agreement	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."

[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. 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.]

STATE OF MINNESOTA
MINNESOTA STATE COLLEGES AND UNIVERSITIES

MEMORANDUM OF AGREEMENT

BETWEEN

[INSERT NAME OF COLLEGE OR UNIVERSITY]

AND

[INSERT NAME OF FACILITY WITH WHICH AGREEMENT IS ENTERED INTO]

This Agreement is entered into between the State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities, on behalf of [INSERT NAME OF COLLEGE OR UNIVERSITY] (hereinafter "College/University"), and [INSERT FULL NAME OF LEGAL ENTITY AND ITS FULL ADDRESS] (hereinafter "Facility").

This Agreement and any amendments and supplements thereto, shall be interpreted pursuant to the laws of the State of Minnesota.

WITNESSETH THAT:

WHEREAS, the College/University has established a Practical Nursing Program, Nursing Assistant Program, Associate Degree Program in Nursing, Baccalaureate Program in Nursing, Baccalaureate Program in Nursing for Registered Nurses, and/or a Nurse Refresher Program and other allied health programs [insert names of programs if applicable] for qualified students preparing for and/or engaged in nursing and other allied health careers; and

WHEREAS, the Board of Trustees of the Minnesota State Colleges and Universities is authorized by Minnesota Statutes, Chapter 136F to enter into Agreements regarding academic programs and has delegated this authority to the College/University; and

WHEREAS, the Facility has suitable clinical facilities in general nursing and allied health for the educational needs of the nursing and allied health programs(s) of the College/University; and

WHEREAS, it is in the general interest of the Facility to assist in educating persons to be qualified or better qualified nursing and allied health personnel; and

[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. 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.]

STATE OF MINNESOTA
MINNESOTA STATE COLLEGES AND UNIVERSITIES

MEMORANDUM OF AGREEMENT

BETWEEN

[INSERT NAME OF COLLEGE OR UNIVERSITY]

AND

[INSERT NAME OF FACILITY WITH WHICH AGREEMENT IS ENTERED INTO]

This Agreement is entered into between the State of Minnesota, acting through its **Board of Trustees of the Minnesota State Colleges and Universities**, on behalf of **[INSERT NAME OF COLLEGE OR UNIVERSITY]** (hereinafter "College/University"), and **[INSERT FULL NAME OF LEGAL ENTITY AND ITS FULL ADDRESS]** (hereinafter "Facility").

This Agreement and any amendments and supplements thereto, shall be interpreted pursuant to the laws of the State of Minnesota.

WITNESSETH THAT:

WHEREAS, the College/University has established a Practical Nursing Program, Nursing Assistant Program, Associate Degree Program in Nursing, Baccalaureate Program in Nursing, Baccalaureate Program in Nursing for Registered Nurses, and/or a Nurse Refresher Program and other allied health programs **[insert names of programs if applicable]** for qualified students preparing for and/or engaged in nursing and other allied health careers; and

WHEREAS, the Board of Trustees of the Minnesota State Colleges and Universities is authorized by Minnesota Statutes, Chapter 136F to enter into Agreements regarding academic programs and has delegated this authority to the College/University; and

WHEREAS, the Facility has suitable clinical facilities in general nursing and allied health for the educational needs of the nursing and allied health programs(s) of the College/University; and

WHEREAS, it is in the general interest of the Facility to assist in educating persons to be qualified or better qualified nursing and allied health personnel; and

WHEREAS, the College/University and the Facility are desirous of cooperating to furnish a clinical experience program for students of nursing and allied health programs enrolled at the College/University;

NOW, THEREFORE, it is mutually agreed by and between the College/University and the Facility:

1. COLLEGE/UNIVERSITY RESPONSIBILITIES

- a. The College/University, which is accredited by the North Central Association of Colleges and Secondary Schools, is responsible for offering one or more of the following programs: a Practical Nursing Program; a Nursing Assistant Program; an Associate Degree Program in Nursing; a Baccalaureate Program in Nursing; a Baccalaureate Program for Registered Nurses; and/or a Nurse Refresher Program. **[revise /insert allied health programs as applicable]**. Each program shall be either: 1) approved by the Minnesota Board of Nursing; and/or 2) approved by the Minnesota Department of Health.
- b. The College/University will supervise its students during the clinical experience program at the Facility, unless otherwise agreed to in writing by the parties. For nursing, the College/University will provide its nursing faculty to effectively implement the clinical experience program at the Facility. The College/University will provide at least one nursing faculty member for approximately every ten (10) students while the students are in the clinical experience program at the Facility. The College/University faculty so assigned will hold current R.N. licensure valid in the State of Minnesota.
- c. The College/University faculty will be responsible for planning, directing and evaluating the students' learning experiences. The College/University faculty will attend the Facility's orientation for clinical experience instructors as deemed necessary by the College/University and the Facility.
- d. The College/University will provide the Facility, at its request, with objectives for the clinical experience program. Implementation of those objectives will be accomplished by the College/University in cooperation with the Facility's designated representative.
- e. The College/University will provide the Facility with a list of the students who are participating in the clinical experience program, the units within the Facility where they are assigned, and the dates of each student's participation in the program.
- f. The College/University will inform its faculty and students of the Facility's policies and regulations which relate to the clinical experience program at the Facility.
- g. The College/University will inform its faculty and the students who are participating in the clinical experience program that they are encouraged to carry their own health insurance and are responsible for carrying their own

professional liability insurance if professional liability insurance is not provided by the College/University.

- h. The College/University will maintain a record of students' health examinations and current immunizations and shall obtain students' permission to submit data regarding their health status to the Facility.
- i. 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.

2. FACILITY RESPONSIBILITIES

- a. The Facility will maintain current accreditation by the Joint Commission on Accreditation of Health Care Organizations (d/b/a "The Joint Commission") or any other appropriate and required accrediting body.
- b. 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.
- c. The Facility will provide the College/University with a copy of its policies and regulations which relate to the clinical experience program.
- d. The Facility will permit the College/University faculty and students to use its patient care and patient service facilities for clinical instruction according to a mutually-approved plan.
- e. The Facility will allow a reasonable amount of Facility staff time for orientation and joint conferences with College/University faculty, for planning with College/University faculty, and for such other assistance as shall be mutually agreeable.
- f. When available, physical space such as offices, conference rooms, and classrooms of the Facility may be used by the College/University faculty and students who are participating in the clinical experience program.



- g. The College/University faculty and students participating in the clinical experience program will be permitted to use the Facility's library in accordance with the Facility's policies.
- h. The Facility will make locker or cloak room facilities available for the College/University faculty and students during assigned clinical experience program hours. These facilities may be shared by other faculty and students.
- i. The Facility assumes no responsibility for the cost of meals, uniforms, housing, parking or health care of College/University faculty and students who are participating in the clinical experience program. The Facility will permit College/University faculty and students who are participating in the clinical experience program to use any cafeteria on the same basis as employees of the Facility. The Facility will permit College/University faculty to use Facility parking spaces under the same policies governing Facility personnel.
- j. The Facility recognizes that it is the policy of the College/University to prohibit discrimination and ensure equal opportunities in its educational programs, activities, and all aspects of employment for all individuals regardless of race, color, creed, religion, gender, national origin, sexual orientation, veteran's status, marital status, age, disability, status with regard to public assistance, or inclusion in any group or class against which discrimination is prohibited by federal, state, or local laws and regulations. The Facility agrees to adhere to this policy in implementing this Agreement.
- k. **AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE**

The Facility agrees that in fulfilling the duties of this Agreement, the Facility is responsible for complying with the American with Disabilities Act, 42 U.S.C. Chapter 12101 et seq., and any regulations promulgated to the Act. The College/University is not responsible for issues or challenges related to compliance with the ADA beyond its own routine use of facilities, services and other areas covered by the ADA.

3. **MUTUAL RESPONSIBILITIES**

- a. The College/University and the Facility assume joint responsibility for the orientation of the College/University faculty to Facility policies and regulations before the College/University assigns its faculty to the Facility.
- b. **HIPAA.** Solely for the purposes of defining the students' and faculty roles in relation to the use and disclosure of the Facility's protected health information, the College/University and faculty engaged in activities pursuant to this Agreement are members of the Facility workforce, as that term is defined in 45 CFR 160.103. The College/University students and faculty are not, and shall not be construed to be, employees of Facility.

The College/University shall cooperate with Facility in complying with its obligations as a HIPAA covered entity, including, but not limited to, complying with its policies and procedures under the HIPAA Privacy Regulations, 45 CFR parts 160 and 164. Prior to placement at Facility, the College/University shall instruct its students and faculty to comply with Facility's policies and procedures governing the use and disclosure of individually identifiable health information.

- c. Personnel of the College/University and the Facility will communicate regarding planning, development, implementation, and evaluation of the clinical experience program. The communication may include but not be limited to:
 - i. Communication to familiarize Facility personnel with the clinical experience program's philosophy, goals and curriculum;
 - ii. Communication to familiarize the College/University faculty with the Facility's philosophy, policy and program expectations;
 - iii. Communication to keep both parties and the parties' personnel who are assigned to the clinical experience program informed of changes in philosophy, policies and any new programs which are contemplated;
 - iv. Communication about jointly planning and sponsoring in-service or continuing education programs (if appropriate);
 - v. Communication to identify areas of mutual need or concern;
 - vi. Communication to seek solutions to any problems which may arise in the clinical experience programs; and
 - vii. Communication to facilitate evaluation procedures which may be required for approval or accreditation purposes or which might improve patient care or the College/University's nursing curriculum.
- d. **INSURANCE.** Each party, at its sole expense and at all times during the term of this Agreement, shall secure and maintain the following insurances (or comparable coverage under a program of self-insurance) covering itself and its employees who perform any work, duties or obligations in connection with this Agreement.

i. **Commercial General Liability Insurance**

The College/University will maintain Commercial General Liability insurance in conformance with the Tort Claims limits set forth in Minn. Stat. 3.736, subd. 4, with limits not less than \$500,000 per person and \$1,500,000 per occurrence for bodily injury and property damage.

The Facility will maintain Commercial General Liability insurance with limits not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate for bodily injury and property damage.

ii. **Professional Liability Insurance**

The College/University will maintain Professional Liability insurance for participating students (and faculty, if applicable) or cause any student participating in the program to maintain Professional

Liability insurance, with limits not less than \$2,000,000 each claim and \$3,000,000 aggregate.

The Facility will maintain Professional Liability insurance covering itself and its employees, agents or assigns with limits not less than \$2,000,000 each claim and \$3,000,000 aggregate.

If insurance covered by claims-made policies is discontinued, then extended reporting period coverage must be obtained and evidence of such coverage shall be provided to the other party.

iii. **Additional Conditions:**

An Umbrella or Excess Liability insurance policy may be used to supplement the Facility's policy limits to satisfy the full policy limits required by the Agreement.

Each party shall provide to the other party upon request certificates of insurance or self-insurance evidencing the required coverage.

If Facility receives a cancellation notice from an insurance carrier affording coverage herein, Facility agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Facility'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 University.

Each party, at its sole expense, shall provide and maintain Workers' Compensation insurance as such party may be required to obtain by law. The College/University is self-insured for Workers' Compensation purposes, and any such insurance extends only to employees of the College/University, not to students.

4. **STUDENT REQUIREMENTS**

- a. Each student may be required, as a condition for participation in the clinical experience program, to submit the results of a health examination to the College/University and, if requested, to the Facility, to verify that no health problems exist which would jeopardize student or patient welfare. The health examination shall include an update of required immunizations. The health examination shall include a Mantoux test or chest x-ray and verification of immunity for rubella and rubella. A list of those students with positive Mantoux or negative rubella/rubella results may, at the request of the Facility, be provided to the Facility.
- b. Students participating in the clinical experience program shall be encouraged to carry their own health insurance.



- c. Students participating in the clinical experience program shall be responsible for carrying their own professional liability insurance if professional liability insurance is not provided by the College/University.

5. EMERGENCY MEDICAL CARE & INFECTIOUS DISEASE EXPOSURE

- a. Any emergency medical care available at the Facility will be available to College/University faculty and students. College/University faculty and students will be responsible for payment of charges attributable to their individual emergency medical care at either the Facility or the College/University.
- b. Any College/University faculty member or student who is injured or becomes ill while at the Facility shall immediately report the injury or illness to the Facility and receive treatment (if available) at the Facility as a private patient or obtain other appropriate treatment as they choose. Any hospital or medical costs arising from such injury or illness shall be the sole responsibility of the College/University faculty member or student who receives the treatment and not the responsibility of the Facility or the College/University.
- c. The Facility shall follow, for College/University faculty and students exposed to an infectious disease at the Facility during the clinical experience program, the same policies and procedures which the Facility follows for its employees.
- d. College/University faculty and students contracting an infectious disease during the period of time they are assigned to or participating in the clinical experience program must report the fact to their College/University and to the Facility. Before returning to the Facility, such a College/University faculty member or student must submit proof of recovery to the College/University or Facility, if requested.

6. LIABILITY

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.

7. TERM OF AGREEMENT

This Agreement is effective on the later of [insert full date (e.g., January 29, 2013)], or when fully executed, and shall remain in effect until [insert full date (e.g., January 29, 2014)]. This Agreement may be terminated by either party at any time upon one year written notice to the other party. Termination by the Facility shall not become effective with respect to students then participating in the clinical experience program.

8. FINANCIAL CONSIDERATION

- a. The College/University and the Facility shall each bear their own costs associated with this Agreement and no payment is required by either the College/University or the Facility to the other party, except that, where applicable, the Facility shall pay the tuition and other educational fees of students it places in the clinical experience program.
- b. The Facility is not required to reimburse the College/University faculty or students for any services rendered to the Facility or its patients pursuant to this Agreement.

9. AMENDMENTS

Any amendment to this Agreement shall be in writing and signed by authorized officers of each party.

10. ASSIGNMENT

Neither the College/University nor the Facility shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.

11. STATE AUDIT

The books, records, documents and accounting procedures and practices of the Facility relevant to this Agreement shall be subject to examination by the College/University and the Legislative Auditor.

12. DATA PRIVACY

The requirements of Minnesota Statutes § 13.05, subd. 11 apply to this contract. The Facility and College/University must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the College/University in accordance with this contract, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Facility in accordance with this contract. The civil remedies of Minnesota Statutes §13.08 apply to the release of the data referred to in this clause by either the Facility or the College/University.

In the event the Facility receives a request to release the data referred to in this clause, the Facility must immediately notify the College/University. The College/University will give the Facility instructions concerning the release of the data to the requesting party before the data is released.

The parties additionally acknowledge that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g and 34 C.F.R. 99, apply to the use and disclosure of education records that are created or maintained under this agreement.

13. OTHER PROVISIONS: [attach additional page(s) if necessary, otherwise insert NONE]

The rest of this page intentionally left blank. Signature page to follow.

[WHEN FINALIZING DOCUMENT, FORMAT DOCUMENT SO THE ENTIRE SIGNATURE PAGE REMAINS ON THE LAST PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

APPROVED:

1. FACILITY:

Facility certifies that the appropriate person(s) have executed the Agreement on behalf of Facility as required by applicable articles, by-laws, resolutions, or ordinances.

By (authorized signature and printed name)
Title
Date

By (authorized signature and printed name)
Title
Date

2. COLLEGE/UNIVERSITY:

By (authorized signature and printed name)
Title
Date

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](#)



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.
- 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 IDEMIA.
- DHS --[FAQs on transition to IDEMIA](#)

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.

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



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.

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.”

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 \(12.28.2018\)](#)
- [Bemidji 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 \(U.S.\)](#)
- [Department of Veterans Affairs \(State of Minnesota 01/2019\)](#)
- [Essentia Health \(01/20/2022\)](#)
- [Evangelical Lutheran Good Samaritan Society \(09/2015\)](#)
- [Fairview Health Services with cover letter \(02/2022\)](#)

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

Office of General Counsel
Clinical Agreements
Contracts
Copyrights
Data Privacy
Elections
Student Affairs



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.”

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?

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?

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

Assistant General Counsel
Minnesota State Colleges and Universities
651-201-1752
maryal.balber@minnstate.edu

Amanda Bohnhoff

Legal Assistant
Minnesota State Colleges and Universities
651-201-1676
amanda.bohnhoff@minnstate.edu

Gary Pihlstrom

Assistant Attorney General
651-757-1314
gary.pihlstrom@ag.state.mn.us

Adam Sorenson

Assistant Attorney General
651-757-1202
j.adam.sorenson@ag.state.mn.us

HIPAA/Data Privacy Questions?

Daniel McCabe

Assistant General Counsel
Minnesota State Colleges and Universities
651-201-1833
daniel.mccabe@minnstate.edu

Insurance

Keswic Joiner

Director of Risk Management
Minnesota State Colleges and Universities
651-201-1778
keswic.joiner@minnstate.edu



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



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.

Contact Information

- Mary Al Balber, Assistant General Counsel
 - MaryAl.Balber@Minnstate.edu
- Gary Pihlstrom, Assistant Attorney General
 - Gary.Pihlstrom@ag.state.mn.us





MINNESOTA STATE

30 East 7th Street, Suite 350
St. Paul, MN 55101-7804

651-201-1800
888-667-2848

www.MinnState.edu

This document is available in alternative formats to individuals with disabilities.
To request an alternate format, contact Human Resources at 651-201-1664.
Individuals with hearing or speech disabilities may contact us via their preferred Telecommunications Relay Service.
Minnesota State is an affirmative action, equal opportunity employer and educator.