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Contract Hot Topics: Identifying, Navigating and Demystifying Important Contract Issues for Clinicals, Academic Agreements, Grants, and MORE!

Mary Al Balber, Assistant General Counsel

Office of the General Counsel

Gary Pihlstrom, Assistant Attorney General

Office of the Attorney General

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Session Overview

- » Contract Basics (Again)! Yes, you need to know this.
- » Hot Topics! Don't get burned!
 - Clinical Agreements - online programs, out of state facility
 - “Reverse” clinical/internships- 3rd party sending students to Minnesota State?
 - Registered Teacher Apprenticeship Programs (HOT!)
 - Limitation of Liability Provisions- They want us to do what?
 - Other Topics: Not so “hot” but still simmering: Academic contracts (pre-negotiated clinical and non allied health uptick), Grant contracts (applying and receiving issues), your RFP response to others, and other issues)
- » General Questions and Answers

NOTE: This webinar doesn't address software or software as service contracts.

Lead Time

- » Plan accordingly—expect the best and plan for the worst.
- » Use helpful System templates and forms to start.
 - Resist changing footer
 - **Contact system legal counsel sooner rather than later.**
- » Allow time for negotiation.
- » Read Agreement! Know your academic, accreditation, program, licensing and business requirements. Does this work? Has the decision-maker made the required decisions?
- » **Not every contract can be an emergency!**

Contract Basics (Again)!

Yes, you need to know this.

A Document By Any Other Name Is Still A Contract (“Tuna Fish”)

- » Grant
- » Nondisclosure Agreement
- » Memorandum of Understanding (MOU)
- » Terms of Service
- » End User License Agreement (EULA)
- » License
- » Terms and Conditions
- » Memorandum of Agreement (MOA)
- » Affiliation Agreement
- » Joint Powers Agreement
- » Real Estate-Lease, License, Purchase Agreement
- » Clinical Agreement
- » “Click” Agreements
- » Statement of Work
- » Terms of Use
- » Inter-Agency Agreement
- » Letter of Engagement

What is a Contract?

- » A contract is: a legally binding document between two or more parties that defines the rights and obligations of the parties and sets “ground rules”
 - Offer – a promise to do or not do something (“I’ll wash your car for \$10”)
 - Acceptance – promise or performance (“I agree to pay \$10”)
 - Consideration – the value or inducement to perform (the value received and given – the money and the washing of the car)
 - Agreed to by someone with authority
 - Intra-agency (i.e. two colleges) is not a contract

What is a Contract (2)?

- » College/university determines if contract meets your academic, program, accreditation, licensing and business needs
- » 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
 - Business Decisions: a business decision is a decision as to whether or not something is “good” business
 - **Remember: Just because it’s legal doesn’t mean it’s a good idea or you should do it**

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.

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 party can't be changed or modified.
- » If other party wants to use its contract form, consult with the Office of General Counsel or the Attorney General's Office for legal review and possible negotiation and recommended changes, or drafting addendum or amendment. Your communication is necessary.
- » **Avoid “We’ll sign yours, if you’ll sign ours” or attaching their contract to Minnesota State contract.**

Why a Written Contract?

- » 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 emails 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 often 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.

HOT TOPICS! Don't Get Burned!

Registered Teacher Apprenticeship Programs (RTAP)

» What is it?

- An exciting new way to pay and incentivize people that want to become licensed teachers while the teacher candidate is employed by, and learning at a school district, and completing classes through a degree awarding college/university.
- Often targeting underserved school districts to try to better meet teacher needs in that district.
- Often used by current employees of a school district (paraprofessionals) that want to become licensed teachers.

RTAP, Collaborators

- » The collaborators in this endeavor are:
 - The school district which will hire the employee as a teacher apprentice.
 - The school district also employs a journey worker (mentor teacher) to provide mentorship to the teacher candidate.
 - **A degree awarding institution, in this case a Minnesota State college or university, that has an accredited program leading to the award of a teaching degree.** (emphasis added)
 - A sponsoring entity that will oversee and coordinate the apprenticeship program among the school district, the college/university and the teacher candidate. According to the Department of Education, sponsors monitor program progress assist with recruitment efforts, collect and report data, ensure program fidelity, and support sustainable funding efforts.

RTAP Collaborators (2)

- » There are currently two sponsoring entities in Minnesota that have been approved by the Minnesota Department of Labor:
 - Minnesota Teacher Joint Apprenticeship and Training Committee (A newly formed Minnesota non-profit corporation, associated with Brightworks. NOTE: This is not a governmental entity.)
 - Teacher Apprenticeship Minnesota (A newly formed Minnesota non-profit corporation associated with Education Minnesota. NOTE: This is not a governmental entity but is related to a teacher's union.)
- » The employee/teacher candidate.

Registered Apprenticeship Program Key Components

- » According to the Minnesota Department of Education, a registered apprenticeship program has five key components.
 - <https://education.mn.gov/MDE/dse/equitdiv/reg/index.htm>

RTAP: Five Key Components

- 1. Employment:** The teacher apprentice is an employee of a Minnesota school district, charter school, Tribally Controlled School or service cooperative. Typically, teacher apprentices start their program as paraprofessionals.
- 2. On-the-Job Training:** Teacher apprentices meet many teacher licensure standards by working in a classroom setting alongside a journey worker (mentor teacher). As the teacher apprentice moves throughout the program, they take on additional teaching responsibilities.
- 3. Related Instruction:** Teacher preparation coursework supplements on-the-job training. Courses (or related instruction) ensure apprentices are meeting all Minnesota teacher licensure standards. In some instances, related instruction may include other courses needed to complete a bachelor's degree.

Five Key Components (2)

4. **Wages:** Teacher apprentices are school employees and receive a wage for their work. Teacher apprentices must receive at least one progressive wage increase while in the registered apprenticeship program.
5. **Credentials:** At the end of the registered apprenticeship program, teacher apprentices will qualify for a Minnesota Tier 3 teaching license with the Professional Educator Licensing and Standards Board (PELSB).

New Minnesota Statutes Chapter 178 RTAP Funding

- » Funding is available to school districts, employer associations or an eligible apprenticeship committee. To support these expenses, districts and program sponsors may access grants, state and federal funding, tuition discounts, and other financial resources.
- » Funding under Minnesota Statutes chapter 178 is not available directly to a college or university.
 - <https://www.dli.mn.gov/business/workforce/registered-teacher-apprenticeship-program-rtap-grant>

RTAP Memorandum of Understanding Requests

- » Sponsoring entities are now asking state colleges and universities to enter into a memorandum of understanding (MOU) with the sponsoring entity and a school district to create a RTAP. An MOU is a CONTRACT that must go through contract review. NOTE: An MOU is a contract even if it states on its face that it is not a contract!
- » These proposed contracts with a state college or university are in their infancy and will be modified and coordinated with the OGC for Minnesota State and the Minnesota Attorney General's office to make sure they comply with law and policy and are consistent among the colleges and universities. This may take some time, but it can and will be done with the cooperation of the colleges and universities.

RTAP Memorandum of Understanding Requests (2)

- » It is imperative that the state colleges and universities continue to do what they do best, and that is to offer courses compatible with this apprenticeship model to deserving candidates so that they earn a degree leading to teacher licensure.
- » NOTE: Even though the collaborators all have the same goal of paying and educating teacher candidates to ultimately increase the pool of licensed teachers in chosen districts, their interests will, at times, be in conflict with one another. The OGC and AGO will continue to support the colleges and universities with legal guidance as they explore becoming part of an RTAP.

Limitation of Liability: What is it?

- » Limitation of liability is a contract provision where the vendor attempts to limit the amount of damages that would ever be payable by the vendor to the college/university in the event the contractor breaches the contract, is negligent, or even intentionally engages in wrongful conduct.

Limitation of Liability: Example

UNDER NO CIRCUMSTANCES SHALL CONTRACTOR BE LIABLE TO COLLEGE/UNIVERSITY FOR THE GREATER OF: (I) ANY AMOUNTS IN EXCESS OF THE AMOUNTS PAID TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM OR (II) THE TOTAL COST OF PARTS AND SERVICES SUPPLIED BY CONTRACTOR UNDER THE AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE.

Example Limitation of Liability: What It Might Mean for Damages.

- » If the college/university just paid the Contractor a relatively small sum of money under the terms of the contract, the Contractor would be shielded from having to pay those damages with this clause.
- » This is ultimately a business decision but must be weighed carefully each and every time you are faced with a limitation of liability clause.
- » You don't have to accept any limitation of liability from the contractor. If needed, contact the OGC or AGO to consider offering alternative "compromise" language.

Limitation of Liability: Special Cases

- » Elevator maintenance and repair contracts
- » Generator maintenance and repair contracts
- » Unless an approved and unmodified system template is used, these will always require attorney review and modification.

GRANTS – Applying for and Receiving Grants

Applying for and Receiving Grants

- » A college/university/system office completing a grant application doesn't necessarily require legal review of the application before it is signed and sent to the grantor.
- » The grant applications are contractual in nature and must be carefully reviewed by the college/university/system office to confirm that the promises being made in the grant application comply with law and policy.

Applying for Grants (2)

- » Use the legal name. “The State of Minnesota by and through the Board of Trustees of the Minnesota State Colleges and Universities on behalf of [NAME OF YOUR COLLEGE/UNIVERSITY/SYSTEM OFFICE HERE].”
- » The legal name alerts the grantor that you are a state entity. The grantor should know [but often does not know] that you may be constrained by law and policy as to what you can agree to in the application.
- » NOTE: Your college/university is a public institution and is NOT a non-profit corporation and should not be identified as such in a grant application.
- » Key Takeaway: Just because the grant application comes from another state entity, does not mean that it complies with law and policy applicable to Minnesota State. Contact OGC or AGO if needed.

Indemnifications

- » EXAMPLE: Many grant applications from a state entity or state agency use their “standard” forms but most often requires the college/university/system office (applicants) to indemnify and hold harmless the grantor from claims associated with the representations made in the grant application and from claims arising from the use of the grant money. Making such an indemnity violates law, see Minnesota Statutes section 16C.05, subd. 8.
- » Let them know in your application that Minnesota State, as a state entity, is prohibited from indemnifying third parties.

Confidentiality Provisions (Alert!)

- » Minnesota State is subject to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 and cannot agree to keep all matters confidential. Contact your data practices officer at your school if you have questions.

Relevant IT Matters (Alert!)

- » Are there matters in the grant application that should be reviewed internally by the college/university/system office IT Team? By the system office IT Team?
- » Consult with your subject matter experts and IT to determine what is needed, what can be agreed to, or to answer questions. This is important if the grant involves non-public or educational data, an exchange of data or data hosting or security.

Responding to Non-Minnesota State Requests for Proposals

Responding to Requests for Proposal solicited by non-Minnesota State

- » A college/university completing a Response to a Request for Proposal for a solicitation for goods/services doesn't necessarily require legal review of the response before it is signed and sent to Requester.
- » For example, your college/university will often be asked to Respond to a Request for Proposal seeking customized training or instruction.
- » The response must be carefully reviewed internally by you/campus to confirm that the promises being made in the response comply with law and policy.
- » Just because the Request comes from another state entity does not mean that the Request complies with law and policy applicable to your college/university/system office.

Responding to Requests for Proposal (2)

- » Use the legal name. “The State of Minnesota, acting through its Board of Trustees of the Minnesota State Colleges and Universities on behalf of [NAME OF YOUR COLLEGE/UNIVERSITY/SYSTEM OFFICE HERE].”
- » Using your legal name alerts the requestor that you are a state entity. The requestor should know [but often does not know] that you are constrained by law and policy as to what you can agree to in the Response. This even applies to State of Minnesota solicitations.

Responding to Requests for Proposal (3)

- » The Request for Proposal may have attached to it a proposed written contract and indicating Minnesota State must agree to sign if you are awarded a winning bid. You need to read the proposed contract very carefully and may likely need to identify in your response what can not be agreed to, or you take exception to, because of law and policy.
- » NOTE: That the Request for Proposal will almost always have a section that states the responder should provide a detailed statement of exception for each item in the contract that the responder objects to and the reason for the exception.
- » If you do not provide an itemized list of contract exceptions, Minnesota State may have unintentionally agreed to the unmodified contract terms.

Responding to Requests for Proposal (4)

- » Before sending in the response your proposed contract needs to be reviewed internally by the college/university/system to ensure it complies with law and policy. This may include necessary review by your business office and others who are very familiar with what can be agreed to in contracts.
- » CAUTION: Just because the proposed contract attached to the RFP comes from another state agency, does not mean the proposed contract complies with law and policy applicable to your institution.
- » Best practices include having a team of helpers including subject matter experts and other divisions such as IT, marketing, facilities, academics and the business/procurement office, all who should know and understand law and policies for Minn. State for subsequent contracts and also capable of reviewing the Mn State response to an RFP.

Online Programs & Clinical Agreements with Out of State Facilities

- » Generally, contracts are only for one student.
- » Identify potential sites with out of state student/online early in admission/enrollment process.
- » Offer Mn State template well in advance of sending student. If they offer a contract, read it, determine what works or not, and send for legal review with your feedback. (Avoid saying “please review” or “can we sign this?”).
- » Issues continue: Other states’ law, additional or expanded background studies pursuant to a law, or policy, requiring Minnesota State to register the academic program, or get approval by other State regulatory board or agency.
- » Colorado is problematic (requires workers’ comp for students)
- » No guarantees we can get to “yes.” Have alternative sites available.

“Reverse” Agreements: Taking on Non-Minnesota State Students

» Clinicals

- Walden, Augsburg University, UMN, Universities in Iowa, Utah, in past year
 - Why might a campus agree to this?
 - A degree program requirement
- Student Supervisor/faculty member of “HR twist” and HR needs to be consulted
- Non-Minnesota State students are not covered by our agreements to go to our clinical sites

» Non-Allied Health

- Student internships/experiences for non-Minnesota State students at Minnesota State

“Reverse” Agreements: Issues to Spot & Navigate for Non-Allied Health “Internships”

- » Not a degree or program requirement
- » What is the purpose?
- » Demands on campus personnel
- » “HR twist”
- » Should not displace or do work of employee or student workers
- » Access to data and data systems
- » What value is the “experience?”
- » Ok to ask “why are we doing this?”

Clinical Agreements: Update and Alerts

» Pre-negotiated agreements

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

■ In the works:

- CommonSpirit national agreement (f/k/a CHI)
- Hennepin County- NorthPoint Clinic (different from Henn. HealthCare)
- CentraCare (one contract for entire system, including faculty)

» **Alert:** Counties with FERPA and other issues in contracting with Minnesota State

» **Alert:** Expanded background studies, drug and alcohol testing, requiring Minnesota State to agree to their policies (including religious), or another state laws, regulations or registration.

Other Common Issues to Identify & Navigate- Don't Trip! Find your helpers!

- » Risks - Physical, Financial, Reputational.
 - What happens “if”?
 - Decision-maker decides.
 - Risk Management can help.
- » Subject matter experts– ensure appropriate divisions are engaged and knowledgeable about the expectations and responsibilities.
- » Not knowing your campus contract process, or who has authority can slow you down!
- » How are you/others managing the contract terms, dates, deliverables?
- » Avoid inconsistent dealing, language and contracts with third parties for same things.
- » Unrealistic timelines or deadlines.

Example: Common Contract Provisions Which are Business Decisions

COMMON CONTRACT PROVISIONS THAT REQUIRE BUSINESS DECISIONS AS OPPOSED TO LEGAL DECISIONS

» Cancellation Provisions

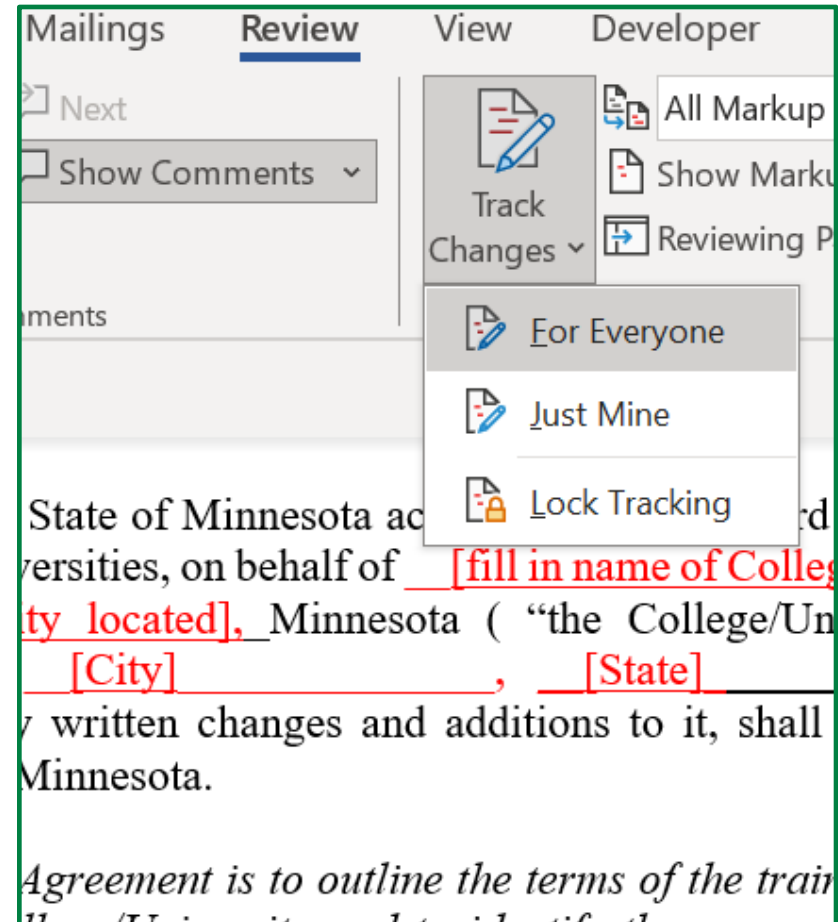
- Contracts ordinarily should contain a clause allowing the College/University to cancel the contract early upon notice to the other party. Should the notice period to cancel early be 30 days? 60 days? 90 days? A Year?
- Should the College/University be required to reimburse the other party for extraordinary costs incurred by the other party up front if the contract is terminated early?
- Should the contract allow the other party to cancel the contract early, and if so, under what terms and conditions?

Sending Documents For Legal Review --- What is “Redlining”

- » Send a Word document.
- » Avoid sending pdf and ask for Word version (unlocked).
- » If making any changes/edits track your changes by redlining.
- » Redlining is a built-in function in Microsoft Word.
- » Track changes/redline allows for editing it in a way that shows revisions or comments. It involves adding, deleting, and modifying text, as well as highlighting or underlining areas that require attention.
- » Previous OGC webinars include helpful instructions on tracking changes/redlining.

How To Redline/Track Changes

- » Open the document in Word.
- » Go to the “Review” tab.
- » Select “Track Changes” from the drop-down arrow in the “Tracking” section.
- » Make your edits and watch them appear as red markup.
- » Review March 2024 OGC webinar Student Agreements for more instructions.



Practical Tips And Things To Think About

- » We want to help college/universities “GET TO YES.”
- » Read entire agreement prior to asking for legal review.
- » Send word version, not PDF. Ask for word version if necessary. Use “Track Changes”/”Redline function for any changes, including just filling in the blanks.
- » One agreement per college/university academic program with the other party is appropriate.
- » 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.
 - Does the Agreement meet programmatic, academic, accreditation, and licensing requirements? If not, what is needed (use comment function in redlining to provide information).
 - 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, if applicable.
- » Alternative sites for students?
- » On-site student supervision expectation and 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 other party, contact OGC/AGO. Do not share emails, text messages or the like, with the vendor/contractor.**

Resources: OGC Contract Related Webinars

Review again and share!

- » <https://www.minnstate.edu/system/ogc/webinars.html>
- » November 14, 2024 [Facilities Use Agreements- What You Need to Know](#)
- » March 14, 2024 [Contracts: Academic Focused and Student Experience Agreements \(not allied health\)](#) **Note: Includes info on “redlining” documents**
- » November 9, 2023 [Checking Up on Clinical Affiliation Agreements](#)
- » March 9, 2023 [Grants and Grant Agreements](#)
- » November 10, 2022 [Filling Your Contract Toolbox: Don't Forget the Nuts and Bolts](#)
- » Review other webinar subjects related to contracts including Data, and Data Sharing, Intellectual Property and other topics on OGC website .

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- » Not every contract can be an emergency!

Minnesota State Contact Information

Mary Al Balber

Assistant General Counsel

Maryal.balber@minnstate.edu

Teams number: 651-724-9640

Office of General Counsel

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

Gary Pihlstrom

Assistant Attorney General

Gary.Pihlstrom@ag.state.mn.us

651-757-1314

Office of General Counsel

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

Thank you.



MINNESOTA STATE

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

651-201-1800
888-667-2848

[MinnState.edu](https://www.minnstate.edu)

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