UCONN
UNIVERSITY OF CONNECTICUT

Clinical Affiliation Agreement Review Guide

This Clinical Affiliation Agreement Review Guide (Guide) has been developed by the Office of the General Counsel (OGC) to help UConn employees review and revise clinical affiliation agreements (Clinical Agreements). By following the advice provided below, UConn employees should be able to effectively identify and resolve most contractual issues that regularly arise in Clinical Agreements before submitting them to the OGC for legal review.

1. Program Terms

Clinical Agreements help UConn programs secure and successfully administer clinical work assignments with unaffiliated hospitals and clinics. Agreement terms and conditions should accurately reflect how the clinical practicum will be coordinated and administrated by UConn and the facility. Each facility will have its own distinct standards and requirements. It is important that the contract liaison review each agreement's terms and conditions to confirm that both the student and UConn can fulfill their individual obligations.

Contract liaisons are also responsible for ensuring that any terms and conditions required for the program they administer are included in Clinical Agreements. For example, accrediting organizations may require certain terms and conditions to be included in a program's Clinical Agreements. Contract liaisons should be mindful of those requirements and ensure that they are included in all Clinical Agreements for their program.

2. Legal Sufficiency

The OGC typically reviews Clinical Agreements for legal sufficiency only. As a result, except for state-required provisions, the OGC generally does not require that UConn programs include any specific terms or conditions in Clinical Agreements.

The following guidelines should be used to ensure a Clinical Agreement is legally sufficient:

a. Identification of the Contracting Parties.

UConn and the facility should be properly identified as parties to the Clinical Agreement and each party should include a physical legal address and not a P.O. Box.

The facility should be identified by its full legal name, business entity type (e.g., for-profit corporation, Limited Liability Company, etc.), and the state in which it was incorporated (e.g., Connecticut, if a Connecticut legal entity). If the facility is an individual acting as a sole proprietor, the facility should be identified by that individual's first and last name.

When describing UConn, use "University of Connecticut" not "School of Nursing, University of Connecticut." UConn is <u>not</u> a corporation, non-profit entity, or political subdivision, but instead should be identified as "a constituent unit of the State of Connecticut System of Higher Education." Practically speaking, this reference describes UConn as an agency of the State of Connecticut.

b. Amendments.

It is important that all agreements include a provision that requires amendments be (1) in writing and (2) signed by both parties to be effective. No Clinical Agreement should allow a facility to unilaterally change the terms of an agreement. If an agreement does not include an amendment provision, request that the facility revise the agreement to include the following language:

"Amendments. No amendment to this Agreement shall be effective unless in writing and signed by authorized representatives of both parties."

c. Notice.

A "Notice" provision must be included in each agreement. This provision ensures each party has identified a specific person or office to contact regarding issues that arise under the agreement. Notice information should include the name/office, address and an email for each party. All notices being sent to UConn should go to an employee familiar with the agreement, with an email copy to the OGC at generalcounsel@uconn.edu.

If an agreement does not have a conforming Notice provision, request that the facility revise the agreement to include the following language:

> Notice. All notices and demands required or permitted by this Agreement shall be in writing and mailed, postage prepaid, or delivered by overnight delivery service to the following addresses:
>
> To UConn: University of Connecticut Proper Person
> 123 Mansfield Rd. Unit 1234
> Storrs, CT 06269-1234
>
> With a Copy to: generalcounsel@uconn.edu
>
> To Facility: Proper Person
> 123 Hospital Rd. Unit 1234
> Bolton, CT 06043-1234
>
> With a copy to: Proper Person
> 123 Hospital Rd. Unit 1234
> Bolton, CT 06043-1234

3. Common Contract Issues

The following describes issues that often arise and presents contract liaisons with resolutions that should be implemented before submitting a Clinical Agreement to OGC for review. If a facility refuses to make any of the revisions described below, please make a note highlighting this issue in the comment section of the OGC submission form and, if known, state the reason for the facility's opposition. The contract liaison should make best efforts to understand the facility's refusal before submitting a contract to OGC to avoid delay.

a. FERPA.

The agreement should include FERPA language which puts the facility on notice that it cannot disclose educational records provided to it by the University. If specific FERPA language is absent from the agreement, request that the following provision be added:

"Student Education Records. The Facility acknowledges that it may be given access to student education records in the course of performing its obligations pursuant to this Agreement. The Facility acknowledges that such information is subject to the Family Educational Rights and Privacy Act ("FERPA") and agrees that it will utilize such information only to perform the services required by this Agreement and for no other purpose. The Facility further agrees that it will not disclose such information to any third party without the prior written consent of the Student to whom such information relates."

b. Confidentiality.

Facilities often want assurance that information exchanged in connection with a clinical program will be kept confidential. However, as a Connecticut state agency, UConn must comply with the Connecticut Freedom of Information Act (CT FOIA), if disclosure of such information is requested. Contracts held by state agencies are generally public records under CT FOIA. Contract liaisons should familiarize themselves with FOIA and assure facilities that confidential information will never be disclosed without a sufficient legal basis (and notice to the facility?).

Any language requiring UConn to maintain information as confidential should be removed and/or replaced with the phrase "Intentionally Omitted."

c. Insurance.

Pay careful attention to any provisions regarding insurance. Any questionable insurance language should be reviewed by Melanie Savino before the agreement is submitted to the OGC for review. Email the language to Melanie at: Melanie.Savino@uconn.edu.

Most agreements will require students to carry professional liability insurance (i.e., malpractice insurance). UConn carries professional liability insurance in the amount of $1,000,000 per occurrence and $5,000,000 in the aggregate. Agreements requiring less coverage are acceptable but agreements requiring more coverage, e.g., $2,000,000 per occurrence or $6,000,000 in the aggregate, must be revised accordingly.

Generally, UConn does not name a facility as an additional insured on its professional liability policy. If a facility requires such coverage as a prerequisite to placement, the UConn department placing the student must pay for the coverage. The fee is typically a percentage of UConn's annual premium. Notwithstanding, Melanie can provide a certificate of insurance (COI) so the facility will be a certificate holder. UConn does not maintain workers' compensation insurance. UConn is self-insured for workers' compensation and cannot "purchase and/or maintain" such insurance nor can UConn issue a certificate of insurance for workers' compensation coverage. Language requiring such should be deleted.

Because this issue is unique to public institutions like UConn, it may be more efficient to provide the facility with language that UConn has included in other Clinical Agreements. The following language may be provided to the facility to expedite resolution of insurance issues:

Insurance. During the term of this Agreement, UConn shall maintain professional liability insurance, in the amount of $1,000,000 per occurrence and $5,000,000 in the aggregate, to cover each student for his or her acts or omissions while participating in student curriculum activity at the Facility. A Certificate of Insurance will be provided to the Facility, indicating State professional liability coverage.

Worker's Compensation. UConn and Facility agree that the Facility is not responsible for any Workers' Compensation or disability claim filed by a Student or Faculty. The Facility and UConn agree that the students are not employees of the Facility or UConn and are not covered by Workers' Compensation. The Faculty are employees of UConn and are covered accordingly under Workers' Compensation. With

respect to employee compensation for services provided in connection with this Agreement, the Facility and UConn agree each shall be responsible their own employees' withholding taxes, Workers' Compensation, and other employment-related taxes.

All agreements should expressly state that the Student is responsible for their own health care insurance. Contract liaisons can inform facilities that all UConn students are required to provide proof of insurance or obtain coverage to matriculate and thus have coverage.

d. Governing Law of Another State.

UConn should never agree in a Clinical Agreement to allow the law of a state other than Connecticut to govern a dispute.[1] These provisions are often found under headings such as "Applicable Law," "Jurisdiction," "Governing Law," or "Choice of Law." Contract liaisons should address this issue by requesting that the facility remove a clause providing for the application of the law of a state other than Connecticut or to replace the clause with the words "Intentionally Omitted."

e. Jurisdiction of Another State.

Like Choice of Law provisions, UConn should never agree to be sued in a jurisdiction outside of Connecticut. These provisions are often found under headings such as "Choice of Venue" or "Jurisdiction". This provision is often combined with the governing law language in an agreement.

The proper procedure for addressing jurisdictional issues is to request that the agreement remain silent. Remaining silent means that the agreement will not include any language regarding jurisdiction. This can be accomplished by having the facility remove the clause entirely or replacing the entire clause with the phrase "Intentionally Omitted."

f. Arbitration Clauses.

All arbitration clauses must be deleted. To correct this issue, the facility must remove the clause entirely or replace the provision with the phrase "Intentionally Omitted."

g. Religious Teachings or Adherence.

UConn cannot require, ensure or encourage its students to follow the teachings of a particular religion. The facility must remove the clause entirely or replace the provision with the phrase "Intentionally Omitted."

h. HIPAA[2] and Business Associate Clauses.

UConn, like most universities, does not consider itself to be a business associate of facilities offering clinical practicums to UConn students. As a result, all references in Clinical Agreements to UConn as a business associate or otherwise requiring UConn to comply with HIPAA should be removed and/or

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[1] When disputes arise from Clinical Agreements with out-of-state facilities, courts are often faced with a question as to which state's law will govern the dispute: Connecticut's or the law of the state where the facility is located. Parties typically try to avoid this question by agreeing in the Clinical Agreement which state's law will govern the dispute.

[2] The term "HIPAA" refers to the Health Insurance Portability and Accountability Act of 1996. HIPAA regulates the use and disclosure of "Protected Health Information" by "covered entities." Most of the facilities that accept UConn students for clinical practicums are covered entities and subject to the requirements of HIPPA in their business, and some may include HIPAA-related language in Clinical Agreements. For example, some facilities may refer to UConn as a "business associate" of the facility or may require that UConn comply with HIPAA's Privacy Rule.

replaced with the phrase "Intentionally omitted." If the facility requests an explanation as to why UConn is not a Business Associate, the contract liaison can provide the following explanation to the facility:

Pursuant the U.S. Department of Health and Human Services "The definition of 'health care operations' in the Privacy Rule provides for 'conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers.'"

UConn students are, pursuant to the clinical affiliation agreement, engaged in clinical training and are part of the facility/host agency's workforce for HIPAA compliance purposes. UConn students also come within the "minimum necessary requirements" for access to patient medical information and may participate in training under the direct supervision of a covered entity without requiring a Business Associate Agreement.

i. Legal Fees and Cost of Enforcement.

As a state agency, UConn is only permitted to pay legal fees ordered by a court of competent jurisdiction. If an agreement contains language shifting the burden for legal fees to UConn, has prevailing party language, or otherwise obligates UConn to pay legal fees or other costs relative to the enforcement of the agreement or for claims arising from the agreement, the contract liaison may:

- Request the facility remove any language or clause which suggests that a party is entitled to costs incurred in the enforcement of the agreement or for claims arising therefrom;

- Request the facility remove any language or clause which suggests that the prevailing party shall be entitled to recover court costs and attorney's fees in the event of litigation;

j. Indemnify/Indemnification/Hold harmless.

The Office of the Attorney General of the State of Connecticut has informed UConn that the University cannot agree to an indemnification clause that allocates risk to UConn (or the State of Connecticut generally).

Because of UConn's legal limitations, all indemnification clauses (and variations thereof[3]) that allocate risk to UConn (or the State of Connecticut generally) must be removed and/or replaced with the words "Intentionally omitted."

Nothing prohibits UConn, however, from agreeing to an indemnification clause in favor of UConn, i.e., clauses where the other party(ies) to the contract agree to indemnify and/or hold harmless UConn from certain events of actions. This recommended action does not require that indemnification clauses in favor of UConn be removed from Clinical Agreements, but contract liaisons may do so, so a consistent approach is achieved.

[3] While these clauses vary widely, they generally involve a commitment by one party to "indemnify," "hold harmless," "assume liability," and/or otherwise "be responsible" for certain events or actions. The principal function of such clauses is to allocate responsibility and risk. Indemnification clauses are a common and important feature of a contract because they represent the typical mechanism by which parties allocate risk.

4. Required Provisions

In addition to the requirements described above, all Agreements to perform clinical work at a facility located within the state of Connecticut must include two specific provisions. Like the other terms, if the facility refuses to include these state required provisions, please make a note highlighting this issue in the comment section of the OGC submission form and state the reason for the facility's opposition.

The first provision requires a facility to acknowledge that the agreement is subject to certain applicable executive orders. Each potentially applicable executive order is listed in attached Exhibit A.

The second provision is a nondiscrimination clause that UConn is statutorily mandated to include, verbatim, in agreements for clinical work to be performed in Connecticut. We recommend that the statutory authority and claims language be included as well. The exact required language is also included in Exhibit A.

If an agreement does not include the two required provisions, request that the facility revise the agreement to include such provisions. This can be accomplished in one of three ways.

- The contract liaison can request that the facility agree to include a link to the Qualified version of the contract terms in the agreement (https://uconncontracts.uconn.edu/wp-content/uploads/sites/458/2022/08/Qualified-Contract-State-Terms-Conditions-07.01.2022.updates-rev.-2022.08.04.pdf);
- The Agreement can include the information in an attached Exhibit, and incorporate the exhibit into the agreement by reference; or
- The contract liaison can request the required provisions be included within the agreement by having the language set forth in Exhibit A (below) inserted under the heading "REQUIRED PROVISIONS – STATE OF CONNECTICUT" directly in the agreement.

EXHIBIT A

REQUIRED PROVISIONS – STATE OF CONNECTICUT

References in this Exhibit to "contract" shall mean the _____ [TITLE OF THE CLINICAL AFFILIATION AGREEMENT] and references to "Contractor" shall mean the _____ [TERM USED FOR THE FACILITY IN THE AGREEMENT].

1. Executive Orders and Other Enactments.

a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its term, or that may be made applicable to the Contract during its term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to perform under this Contract if it chooses to contest the applicability of the Enactments or the University's authority to require compliance with the Enactments.

b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.

c. This Contract may be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services. If applicable, Executive Order No. 14 is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

2. Nondiscrimination. Each party agrees, as required by sections 4a-60 and 4a-60a of the Connecticut General Statutes, not to discriminate against any person on the basis of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, sexual orientation, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such party that such disability prevents performance of the work involved. Each party agrees to comply with all applicable federal and state of Connecticut nondiscrimination and affirmative action laws, including, but not limited to, sections 4a-60 and 4a-60a of the Connecticut General Statutes.

3. Statutory Authority. Connecticut General Statutes sections 4a-52a, 10a-104, 10a-108, 10a-114a, and/or 10a-151b provide the University with authority to enter into contracts in the pursuit of its mission.

4. Claims. The Contractor acknowledges that the presentation of any claim against the State of Connecticut or the University arising from this Agreement must be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Contractor agrees not to initiate any legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings.