

Clinical Affiliation Agreement Review Guide

1. Purpose

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 all contractual issues that regularly arise in Clinical Agreements before submitting them to the OGC for legal review.

2. 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.

3. Legal Sufficiency

The OGC typically reviews Clinical Agreements for legal sufficiency only. As a result, 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.,

4. Common Contract Issues

The following describes common contract issues and presents solutions for how contract liaisons can resolve these issues before submitting a Clinical Agreement to OGC for review.

a. FERPA.

The agreement should include FERPA language which puts the facility on notice that it cannot re-disclose educational records provided to it by the University. If there is no FERPA language in 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.”

If the Facility refuses to make the above revisions please note in the comment section when submitting to the OGC and explain why the facility refused to do so.

b. Confidentiality.

UConn cannot agree to keep facility, program or agreement information confidential. As a Connecticut state agency, UConn must comply if disclosure of such information is requested under Chapter 14 of the Connecticut General Statutes, the Connecticut Freedom of Information Act (“CT FOIA”).

Contract liaisons should request that any provision requiring UConn to maintain information as confidential be removed and/or replaced with the phrase “Intentionally Omitted.”

If the facility refuses to make the above revisions please note in the comment section when submitting to the OGC and explain why the facility refused to do so.

c. Insurance.

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

UConn cannot name a facility as an additional insured on its professional liability policy. However, Melissa 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.

For some agreements, it may be more efficient to provide the facility with language that UConn has included in other Clinical Agreements. In such cases, the following language may be provided to the facility:

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.

The Student is responsible for their own health care insurance and the agreement should indicate so.

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 such clause with the words "Intentionally Omitted."

If the facility refuses to make the above revisions please note in the comment section when submitting to the Office of the General Counsel ("OGC") and explain why the facility refused to do so.

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 and avoid this question by agreeing in the Clinical Agreement which state's law will govern the dispute.

e. Jurisdiction of Another State.

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”.

The proper procedure for correcting such language is to request that the agreement remain silent, that is, agree not to 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.”

If the facility refuses to make the above revisions please note in the comment section when submitting to the Office of the General Counsel (“OGC”) and explain why the facility refused to do so.

f. Arbitration Clauses

All arbitration clauses must be deleted. The proper procedure for correcting such a requirement is to request the facility remove the clause entirely or replace the provision with the phrase “Intentionally Omitted.”

If the Facility refuses to make the above revisions please note in the comment section when submitting to the OGC.

g. Teachings of a certain religion.

UConn cannot require, ensure or encourage its students to follow the teachings of a particular religion. The proper procedure for correcting such a requirement is to request the facility remove the clause entirely or replace the provision with the phrase “Intentionally Omitted.”

If the Facility refuses to make the above revisions please note in the comment section when submitting to the OGC.

h. HIPAA 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.² 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 replace with the phrase “Intentionally omitted.” If the facility requests an explanation as to why UConn is not a Business Associate please provide them with the following:

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,

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 HIPAA 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.

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.

If the Facility refuses to make the above revisions please note in the comment section when submitting to the OGC and explain why the facility refused to do so.

i. Legal Fees and Cost of Enforcement.

UConn will only pay legal fees ordered by a court of competent jurisdiction. Have the facility remove any clause(s) obligating UConn to pay legal fees or other costs relative to the enforcement of the agreement or for claims arising therefrom. The proper procedure for correcting such language is to:

- i. 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;
- ii. 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;

If the Facility refuses to make the above revisions please note in the comment section when submitting to the OGC

j. Indemnify/Indemnification/ Hold harmless.

UConn has been informed by the Office of the Attorney General of the State of Connecticut that UConn may not 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 thereof³) that allocate risk to UConn (or the State of Connecticut generally) should 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 in order to present a consistent approach during the negotiation of the Clinical Agreement.

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 principle 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.

5. Required Provisions

Agreements to perform clinical work at a facility located within the state of Connecticut must include two specific provisions. 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. 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 two ways. The contract liaison can request that the facility agree to enter its information into to the attached Exhibit A and incorporated the exhibit into the agreement by reference. The second way, is to request the required provisions be included in the agreement by having the language set forth in Exhibit A inserted under the heading “REQUIRED PROVISIONS – STATE OF CONNECTICUT” directly into the agreement.

If the Facility refuses to make the above revisions please note in the comment section when submitting to the OGC.

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. 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 the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it.
2. Non Discrimination.
 - (a) For purposes of this Section, the following terms are defined as follows: (i) "Commission" means the Commission on Human Rights and Opportunities; (ii) "Contract" and "contract" include any extension or modification of the Contract or contract; (iii) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor; (iv) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose; (v) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations; (vi) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements; (vii) "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced; (viii) "mental disability" means one or more mental disorders, as defined in the most recent edition

of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders; (ix) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and (x) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and

46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

(c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

(e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights

and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes §46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

School:

[TERM USED FOR FACILITY, e.g., "Host Agency"]:

University of Connecticut _____
Initials

_____ _____
Initials