

Contracts: From Handshakes to Headaches

April 11, 2008

Presented to:
Annual conference of the CAPCSD
Palm Harbor, FL

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Contracts aka “Agreements”

- Common types in university-based clinical settings:
 - Between the university and off-campus practicum sites
 - Between the university clinic and an agency, vendor, or consumer of goods/services
 - Between the university clinic and a service provider/supervisor
 - Between the Program and students in the program

Our focus

- Between the university and off-campus practicum sites
- Between the university clinic and an agency, vendor, or consumer of goods/services
- Between the Program and students in the program

Definitions

The legal definition of a contract is:

- An agreement between two or more persons that creates an obligation to do or not to do a particular thing.
- The purpose of a contract is to document each party's obligation and to allocate and minimize each party's risks during the performance of the agreement.

The contract includes...

- standard terms and conditions that serve as the skeleton of the contract and
- a statement of work that serves as the substance of the contract.

In general, the standard terms and conditions can support any statement of work, with only minor modifications to some of the terms.

MOU vs. MOA

- No legal difference between these two
- Like a contract, but does not have to carry the legal weight; not intended to be legally enforceable
- Contract is intended to be legally enforceable




Arrangements were made

- Agreements were reached about
 - what would be done
 - where it would take place
 - who was involved
 - how long the arrangement was in effect
- Usually a verbal agreement between the principals, followed by a real time or virtual

HANDSHAKE

- And a "Good-to-go" understanding!

A black and white illustration of two stylized figures standing on a textured surface, shaking hands. The figures are simple, with large heads and small bodies. The background is filled with small dots.

However...

- Times have changed:
 - Litigation (and the motivation to avoid it)
 - Need for spelling out consequences when agreements fail
 - Need for accountability
 - Need for explicit statements of who will do what, when, where, why, how
 - Accreditation procedures specify the use of contracts or affiliation/placement agreements, e.g., CAA Standard 3.6A

Caveat...

- Differences public and private institutions
- UConn and Ohio University are both public institutions and are governed by laws of the state; statutory language prevails
- Before embarking on devising a contract (regardless of its purpose), we strongly recommend a consultation with your university's legal department

Required components of a contract

- Contractor name and address
- Agency's name, contact, and address
- Term of the contract
- Termination
- Amendments
- Statutory authority is referenced
- Description of services
- Cost and payment schedule and budget (as appropriate)
- Dated signatures, changes, deletions

If a federal contract...

- Include reference to HIPAA (if appropriate)

Contract *SHOULD NOT*

- Contain changes/deletions without the signatures of both parties (or in our case, without the approval of the AG's office, initials of those signing)
- Include attachments, appendices, or exhibits
- Contain duplicative language
- Assume automatic renewals

What I (SB) learned...

- Need to determine who the signatory authority is for the agency with which the contract has been arranged
- Non-discrimination language varies from state to state; some cite sexual discrimination separately
- Parties can "sue" the state (university) and there is a provision and process for this
- How to embed the other party's legal language into our own document (could not just add or append) in order to satisfy both parties

From personal experience

- Contract negotiations can be a long, arduous, and convoluted process
- Not all parties share the same beliefs about following the rules
- Documentation – ALL correspondence and all decisions need to be validated
- The rules change

Examples of contracts

- SB: sample of in-state agreement for arranging clinical practicum assignments
- DP: Introduction to contracts for services

Terms and Conditions

1. PHILOSOPHY, OBJECTIVE, NOTICE AND TERM OF THE AFFILIATION
2. FACILITY RESPONSIBILITIES
3. STUDENT/UNIVERSITY RESPONSIBILITIES
4. SHARED RESPONSIBILITIES
5. GENERAL PROVISIONS
6. REQUIRED PROVISIONS – STATE OF CONNECTICUT
- *claims, indemnification, non-discrimination, governing law*

Body of the (service) contract includes

1. TERMS
2. CIVIL RIGHTS
3. RELATIONSHIP OF PARTIES
4. INSURANCE
5. DUTIES
6. DOCUMENTATION
7. USE OF AGENTS OR ASSISTANTS
8. FEE
9. DEVOTION OF TIME
10. SOLICITATION

Body of the contract (continued)

11. ENTIRE AGREEMENT
12. ASSIGNMENT
13. SUCCESSORS AND ASSIGNS
14. GOVERNING LAW
15. AMENDMENT
16. HEALTH REQUIREMENT
17. LEGAL CONSTRUCTION
18. TERMINATION
19. PRIVACY COMPLIANCY
20. SIGNATURE PAGE

Required components of a contract for service delivery

- Contractor name and address
- Agency's name, contact, and address
- Term of the contract
- Termination
- Amendments
- Statutory authority is referenced
- Description of services
- Cost and payment schedule and budget (as appropriate)
- Dated signatures, changes, deletions

Potential variables in the standard contract

- Period of Performance
- Minimums
- Travel
- Rates
- Others as negotiated

Why develop contracts for service delivery

- Support clinical education
- Generate revenue
- Provide student clinic experiences
- Provide services in shortage areas
- Community outreach

What I (DP) have learned

- Know the Governing Laws before starting contract development
- Know university resources
- Plug into the contract development and management process at the university
- Establish the revenue stream and accounts for contracts
- Negotiation is essential

From personal experience

- Contract negotiations can be a long, arduous, and convoluted process
- Establish templates
- The community may not appreciate the role of the university as a service provider
- Documentation everything
- Establish renewal process
- The rules change

Agreements With Students

- Purpose for development
- Content of agreement
- Who, what, where, when, why, how
- Discussion of consequences
- Personal experiences

Examples of agreements with students

- Davy share an example
- Susan share an example

Our progression ...

- FROM



To:



Further discussion

- Advice from those who've done this
 - Figure how much time this process will take and quadruple it
 - Know your limits when it comes to legalese and what you can/not do
 - Track version numbers on the documents and include time of revision, if necessary
 - Don't assume that the legal department at the contractee's end shares your sense of importance or urgency
