



# ***RISK NOTE***

## **SUBJECT: Managing Risk in Educational Affiliation Agreements**

The Health Care Protection Program (HCPP) was asked to participate in a provincial review of practice education led by the Provincial Health Services Authority. In collaboration with all of the health authorities and with the financial support of the BC Academic Health Council, the Practice Education Committee of BC was formed (PECbc). Also on the committee were representatives from a number of BC institutions and from the University, Colleges and Institutions Protection Program (UCIPP), the sister organization to HCPP. A sub-group of the committee was tasked with developing template affiliation agreements for use across the province.

Affiliation agreements are crucial in order to establish the roles and responsibilities of all parties engaged in the practice education experience. We recommend that the template attached to this risk note be used as the standard for affiliation agreements with institutions for practice education placements of students.

An affiliation agreement should specify the following points:

- 1) Each facility will designate an individual to facilitate communication between the educational facility and the health facility regarding the placement of the students for each program. This will ensure that each party has individuals responsible and knowledgeable regarding the administration and substance of the program;
- 2) The educational facility will assume responsibility for the administration of programs and instruction of the students placed at the HCA. This allows the HCA to function without added responsibility or significant workload yet still allows the students to function in a structured learning capacity;
- 3) That all students who are assigned for instruction at the HCA have met the admission criteria of the educational facility and continue to meet the standards of the educational facility as deemed appropriate by the HCA;
- 4) The educational facility will assume responsibility for the adherence by instructors, students and staff to the rules, policies and regulations of the HCA and the HCA will, in

turn, provide necessary orientation materials to familiarize the educational facility members with these policies/procedures etc. This will ensure that the students are familiar with the HCA's policies and procedures prior to engaging in activities at the facility;

- 5) Obtain proof of workers' compensation or equivalent coverage for the students and instructors while engaged in activities at the HCA. This will ensure there is coverage available for any injuries sustained by the educational facility staff, instructors or students while on the HCA premises. Under the *Worker's Compensation Act* of BC, workers are prohibited from suing any employer;
- 6) Ensure normal staffing requirements are met at the HCA regardless of the presence of students and/or instructors. This enables the HCA to function without reliance on individuals who are not employees of the HCA and helps to protect against litigation based on inadequate staffing;
- 7) Both parties agree that the students of the educational facility are not employees of the HCA for the duration of their placement;
- 8) The agreement may be terminated giving no more than 90 days notice in writing; the short period of notice will help to protect the HCA should conflict arise regarding the terms of the agreement;
- 9) The agreement may be terminated by the HCA without notice should the implementation of the agreement adversely affect the standard of patient care or student education. Obviously, the HCA must maintain responsibility for the quality of care at the facility, and for the determination of which clinical service shall or shall not be provided;
- 10) The agreement should specify how any disputes between the facilities are to be resolved. Dispute resolution terms help to resolve conflicts in cases where there is an expectation that the student placement programs will continue for a long period of time and conflicts arise;
- 11) The agreement should include mutual hold harmless and indemnification clauses. These clauses transfer the legal liability or responsibility for payment of costs and damages from legal liability from one party to the other in the case of litigation;
- 12) The agreement should specify the maintenance and levels of insurance for each of the facilities participating in the agreement. Proof of insurance coverage should also be available upon request. Proof of foreign student malpractice insurance may be difficult to verify and in some cases is not available. In addition, insurance arranged overseas is not often valid in North America and vice versa. In this case, we recommend that the HCA verify the "qualifications" of the individual student by letter. HCPP has in the past accepted these students as "unnamed" insureds under the student provision of our policy.

We attach a sample affiliation agreement which all the health authorities have adopted as their standard for affiliations with either UCIPP or Non-UCIPP Educational Institutions. The indemnity granted by the health authority in this agreement has been approved by the Executive Director of the Risk Management Branch of the Ministry of Finance as required under the Financial Administration Act. Individual approval of the indemnity is not required unless the terms of the indemnity are materially changed.

If necessary the template can be adapted. HCPP would be pleased to review any draft affiliation agreements from a risk management point of view. We are not, however, in a position to provide legal advice, therefore, you may find it helpful to have the language of any agreement you prepare be reviewed by legal counsel prior to use.

January 2008

**EDUCATIONAL INSTITUTION AFFILIATION AGREEMENT  
TEMPLATE**

BETWEEN:

**[Name]**  
Address: ♦  
Phone: ♦  
Fax: ♦  
Title of Representative:

**("Health Authority")**

AND:

**[Name of Educational Institution]**  
Address: ♦  
Phone: ♦  
Fax: ♦  
Title of Representative:

**("Institution")**

**BACKGROUND:**

The Health Authority and the Institution wish to work together to support the learning experiences of students enrolled in the Institution's educational programs, by providing them with access to practice education experiences at one or more facilities operated by the Health Authority.

**AGREEMENT:**

The Health Authority and Institution agree to be bound by the attached Terms and Conditions ("Agreement").

This Agreement may be executed in counterpart, both of which together will constitute one and the same instrument and either party may deliver an executed counterpart by facsimile transmission.

BY SIGNING BELOW THE PARTIES AGREE TO BE BOUND BY THIS AGREEMENT:

HEALTH AUTHORITY

INSTITUTION

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## TERMS AND CONDITIONS

### 1. DEFINITIONS

In this Agreement:

- (a) **“Applicable Law”** means all present and future laws, statutes and regulations, applicable to any person, property or event relating to this Agreement, and all directives, rules, guidelines, orders and policies of any governmental authority having authority over that person, property or event and all general principles of common law and equity.
- (b) **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday in British Columbia.
- (c) **“Confidential Information”** means all data, information and material relating to the Health Authority and its services, HA Staff, contractors, service providers or Patients, whether or not it is stored in written, electronic or any other form, that Students or Institution Staff receive, in connection with this Agreement, including (i) Personal Information about HA Staff and Patients, (ii) Health Records, (iii) any information about the business, affairs or operations of the Health Authority which is not generally known or available to the public.
- (d) **“Facilities”** means those facilities that are operated or administered by the Health Authority.
- (e) **“FOIPPA”** means the Freedom of Information and Protection of Privacy Act (British Columbia), and regulations thereto, as amended or substituted from time to time.
- (f) **“HA Staff”** means the officers, directors, employees, physicians, contractors, subcontractors, representatives or agents of the Health Authority.
- (g) **“Health Care Services”** means all services provided by the Health Authority to or for the benefit of members of the public whether in acute, residential care, community care, research or other sectors.
- (h) **“Health Records”** means Patient care records, clinical records and all other records and documents pertaining to the delivery of Health Care Services to Patients or Patient Personal Information.
- (i) **“Health and Safety Standards”** means all Applicable Laws, standards of practice and codes of ethics issued by any professional regulatory body, and all rules, policies and regulations in place at the Health Authority or its Facilities that apply to the Students or the Institution Staff at the Facilities, any of which relate to workplace safety, the delivery of Health Care Services or the health and safety of Patients or HA Staff.
- (j) **“Institution Staff”** means the instructors, officers, directors, employees, contractors, subcontractors, representatives or agents of the Institution.
- (k) **“Patients”** means individuals who receive Health Care Services from the Health Authority or at the Facilities.
- (l) **“Personal Information”** has the meaning set out in FOIPPA;
- (m) **“Practice Education”** means that part of a student’s educational experience which takes place in the workplace and may involve direct patient care or access to patient information. In such an experience, the student may provide services to and for the benefit of patients/families. The student provides such services under the general direction and supervision of HA Staff or

Institution Staff, who are practicing health professionals, and are authorized and qualified to provide the services.

- (n) **“Program” or “Programs”** means those educational programs offered by the Institution and recognized by the Health Authority.
- (o) **“Students”** means those students of the Institution who are selected by the Institution to participate in the Programs.

## 2. SCHEDULES

Schedule A (Insurance) attached to this Agreement, will, for all purposes, form an integral part of this Agreement.

## 3. Term *CHOOSE OPTION 1 OR 2*

### **OPTION 1 – TIME LIMITED:**

This Agreement will commence \_\_\_\_\_, 20\_\_ and shall continue for a period of \_\_\_\_ year(s) \_\_\_\_\_ month(s) to \_\_\_\_\_, 20\_\_ unless terminated earlier in accordance with Section 11. The parties shall review this Agreement from time to time and revise if necessary by mutual agreement. The parties may agree, in writing, to renew this Agreement for further periods of one or more years/month(s).

### **OPTION 2 – ‘EVERGREEN’:**

This Agreement will commence \_\_\_\_\_, 20\_\_ and shall continue thereafter until terminated in accordance with Section 11. The parties shall review this Agreement from time to time and revise if necessary by mutual agreement.

## 4. MUTUAL OBLIGATIONS AND ACKNOWLEDGEMENTS:

- (a) The Health Authority and the Institution agree:
  - (i) to work collaboratively with each other to enhance the practice education experience of the Students in the Programs;
  - (ii) to promote inter-professional practice education planning, delivery and evaluation;
  - (iii) to comply with the provisions of this Agreement and all Applicable Laws in the delivery of the Program.
- (b) The Institution and the Health Authority acknowledge that the Students’ educational program is designed and sponsored by the Institution, and the Institution acknowledges that the Health Authority provides no representations or warranties concerning the practice education experiences or its ability to provide supervision of or instruction to Students.

## 5. OBLIGATIONS OF THE HEALTH AUTHORITY:

- (a) The Health Authority agrees:
  - (i) to provide Institution Staff and Students with reasonable access to Facilities for the practice education experience and to provide supplies and equipment as reasonably required to support the practice education experiences; and
  - (ii) to provide such onsite supervision of Students engaged in the practice education experience at the Facilities, as may be agreed upon with the Institution;

- (iii) to make available to the Student, and to the Institution Staff, the Health and Safety Standards, any applicable intellectual property policy, and such other of the Health Authority's rules, regulations and policies that apply to the Program;
- (iv) to consult with the Institution in its evaluation of the Programs when reasonably requested to do so;
- (b) Notwithstanding any other provision of this Agreement, the Health Authority's obligations under this Agreement will be subject to the availability of resources, its operational and administrative needs and ensuring the safety and care of its Patients. Without limiting the foregoing, the Health Authority may, at its discretion, alter, change, re-schedule, substitute or terminate any Program or any practice education experience in order to meet its operational or administrative needs, in the event of employment or labour disputes or disruptions, to comply with Applicable Laws, in the event of emergencies or on the basis of the health or safety of Patients and HA Staff.

## 6. OBLIGATIONS OF THE INSTITUTION:

- (a) The Institution agrees:
  - (i) to work collaboratively with the Health Authority to ensure the effective operation and administration of the Programs, including scheduling the practice education experience and instruction for Students and attendance by Institution Staff;
  - (ii) to ensure all Students are duly registered at the Institution, are in good standing and satisfy all of the Institution's admission and performance standards necessary for participation in the Programs;
  - (iii) to work with the Health Authority to designate HA Staff and/or Institution Staff who will be engaged in planning of the practice education experience and instructing Students in the course of the Program;
  - (iv) to consider, and where appropriate, recognize significant involvement of members of HA Staff in the Program through academic appointments to the Institution, subject to the Institution's policies and procedures;
  - (v) to take reasonable steps to ensure that the Students and Institution Staff are aware of and comply with this Agreement, conduct themselves professionally and courteously, and that they comply with the Health and Safety Standards, any applicable intellectual property policy, and all other rules, regulations, and policies of the Health Authority that apply to the Program;
  - (vi) to acknowledge that the Health Authority may refuse to permit a Student or member of Institution Staff to attend at any of the Facilities if a student refuses to comply with the Health and Safety Standards, including any testing or screening requirements of the Health Authority; and
  - (vii) that the Institution is solely responsible for the operation of the Programs, and the form of instruction, design and delivery of educational services to Students participating in a Program or Programs.
- (b) The Institution agrees that it is an independent body, and not the agent, partner or joint venturer of the Health Authority and the Institution will not hold itself out to the public as such or make representations to Students or others that the Health Authority has approved the Programs.
- (c) The Institution will take all reasonable steps to ensure that all Students and Institution Staff are aware and understand standards of work place behaviour, including but not limited to, harassment,

discrimination, sexual misconduct, abuse, and appropriate professional and respectful work place behaviour, confidentiality, all consistent with Health Authority practice education policies and guidelines and other rules, policies and standards.

**7. DESIGNATED REPRESENTATIVES, INCIDENT REPORTING & DISPUTE RESOLUTION**

- (a) In respect of the Program or Programs, the Health Authority and the Institution will designate one or more individuals to act as their respective representative(s) in all matters relating to the operation of the applicable Program or Programs, in order to facilitate communications between the parties to this Agreement.
- (b) The Institution will immediately report to the Health Authority any incident taking place at the Facilities involving its Students or Institution Staff that causes or compromises the mental or physical health or safety of Patients, HA Staff or members of the public, including, but not limited to, breaches of the Health and Safety Standards.
- (c) If the Institution identifies a Student or Institution Staff member who poses or may potentially pose a health or safety risk to HA Staff or Patients at the Facilities, the Institution will immediately advise the Health Authority, and will, if reasonably necessary to protect others, suspend that Student's or Institution's Staff member's participation in the Program, which may not be resumed without Health Authority approval.
- (d) The Institution and the Health Authority will make good faith efforts to resolve any dispute related to this Agreement by amicable negotiations. All claims, disputes or issues in dispute between the parties that are not resolved by negotiation will, with the agreement of the parties, be decided by mediation or arbitration, or failing agreement, in a Court of competent jurisdiction within the province of British Columbia.

**8. SUSPENSION AND REMOVAL**

- (a) The Health Authority may suspend or exclude a Student or an Institution Staff member from Program activities at the Facilities, either temporarily, pending investigation or permanently, in any circumstances where the Health Authority or Institution has identified that the Student or Institution Staff member has, or there are reasonable grounds for believing that the Student or Institution Staff member has:
  - (i) failed to comply with the Health and Safety Standards or any other rules, regulations and policies of the Health Authority or any agreement with the Health Authority;
  - (ii) endangered the mental or physical health or safety of any person; or
  - (iii) otherwise interfered with or compromised the operation of the Facilities or the provision of Health Care Services.

**9. EMPLOYMENT**

The Institution agrees that the Institution Staff and Students are not, by virtue of their involvement or participation in the Programs, employees of the Health Authority, nor are they entitled to employment benefits of any kind whatsoever from the Health Authority, including but not limited to statutory programs and disability, life or other insurance coverage. The Health Authority will have no liability or responsibility for the withholding, collection or payment of income taxes, employment insurance, statutory or other taxes or payments of any nature on behalf of, or for the benefit of, the Institution, Institution Staff or the Students. The Health Authority shall be solely responsible for the employment, working conditions and any liabilities arising from its employment relationship with HA Staff participating in the Programs. For further clarification, this provision does not limit the Health Authority's ability to hire Students

independently of their participation in the Programs.

10. **PRIVACY AND CONFIDENTIALITY**

- (a) It is acknowledged that in the course of participating in the Programs, Institution Staff and Students may have access to Confidential Information, and that such information is subject to obligations of privacy and confidentiality. More particularly, the Institution acknowledges and understands that the Health Authority is a public body subject to the provisions of the FOIPPA and owes obligations of privacy and confidentiality to, among others, Patients and HA Staff.
- (b) The Institution acknowledges and agrees that all Confidential Information is deemed to be the property of the Health Authority, and that this Agreement does not grant the Institution, Institution Staff or Students any authority to use, disclose, collect or retain such information or records except to the extent strictly required for participation in a Program. Without limiting the foregoing, in no case will Students or Institution Staff be permitted to retain or remove Health Records from the Facilities without the express written consent of the Health Authority.
- (c) The Institution agrees that:
  - (i) it will take reasonable steps to ensure that all Institution Staff and Students are aware of and uphold Health Authority policies regarding privacy and confidentiality and comply and act consistently with the Health Authority's obligations under the FOIPPA and any other Applicable Laws or standards of practice;
  - (ii) it will immediately report to the Health Authority any breaches or potential breaches of this paragraph 10, and provide assistance and cooperation with any investigation conducted by the Health Authority into such breach; and,
  - (iii) on request, it will immediately return any Health Records or Confidential Information in the possession of the Institution, and will use its best efforts to facilitate the return of any Confidential Information in the possession of Institution Staff or Students.
- (d) The Institution acknowledges that this Agreement requires the Institution to make disclosure of certain information about Students and Institution Staff to the Health Authority. The Institution shall obtain all necessary consents from Students and Institution Staff, including under the Personal Information Protection Act or the FOIPPA, as applicable, to permit such disclosures.
- (e) The Health Authority shall protect the Personal Information of Students and Institution Staff that is in the custody and control of the Health Authority all in accordance with FOIPPA.
- (f) No Student will be permitted by the Institution to participate in a Program unless he or she has signed a Confidentiality Agreement in a form approved by the Health Authority.

11. **TERMINATION**

- (a) This Agreement or any one or more Programs may be terminated as follows:
  - (i) by either party with or without reason, on 90 days' written notice;
  - (ii) by the Health Authority in the event that the Institution is in breach of this Agreement and the Institution has failed to rectify such breach upon being given 14 Business Days written notice of the breach; or,
  - (iii) by the Health Authority with immediate effect if the Health Authority determines, in its sole discretion, that a breach of this Agreement has been committed by the Institution and such breach has caused or is likely to cause an adverse effect on the health or safety of its Patients.
- (b) Termination will not affect the obligations of either party with respect to any act, omission or event that occurs prior to the end of the effective date of termination.

12. **INDEMNIFICATION**

- a. The Institution shall indemnify and save harmless the Health Authority from and against all claims, demands, losses, damages, judgments, costs, liability, expenses (including reasonable legal fees and expenses), actions and other proceedings made, incurred, sustained, brought, prosecuted or threatened to be brought or prosecuted that are based upon, occasioned by or arising out of any act or omission, error, deed or other matter on the part of the Institution, Institution Staff, or Students arising out of this Agreement, excepting always liability arising from the independent negligence of the Health Authority or HA Staff.
- b. The Health Authority shall indemnify and save harmless the Institution from and against all claims, demands, losses, damages, judgments, costs, liability, expenses (including reasonable legal fees and expenses), actions and other proceedings made, incurred, sustained, brought, prosecuted or threatened to be brought or prosecuted that are based upon, occasioned by or arising out of any act or omission, error, deed or other matter on the part of the Health Authority arising out of this Agreement, excepting always liability arising from the independent negligence of the Institution, Institution Staff, or Students.

13. **INSURANCE**

The Institution and the Health Authority each agree to maintain insurance coverage in accordance with Schedule A to this Agreement.

14. **GENERAL**

- (a) This Agreement shall be for the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.
- (b) If any provision of this Agreement is unenforceable or invalid for any reason whatever, such unenforceability or invalidity shall not affect the enforceability or validity of the remaining provisions of this Agreement and such provisions shall be severable from the remainder of this Agreement.
- (c) The provisions herein and Schedules hereto constitute the entire agreement between the Parties hereto and supersede all previous expectations, understanding, communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

- (d) Any inconsistency between this Agreement, and the policies, guidelines, Schedules or documents appended to or incorporated by reference into this Agreement will be resolved in favour of the Agreement.
- (e) The failure by either party at any time to require strict performance by the other, of any term or provision of the Agreement shall not constitute a waiver or breach of such or any other term or provision of this Agreement, nor shall it constitute a waiver of any succeeding breach of any other term or provision.
- (f) No amendment to this Agreement shall be enforceable unless the same is in writing and signed by the Parties hereto.
- (g) This Agreement shall be governed by and construed according to the laws of the Province of British Columbia and the laws of Canada applicable therein, and the parties agree to attorn exclusively to the jurisdiction of the courts of British Columbia.
- (h) The Institution may not assign its rights under this Agreement.
- (i) Paragraphs 10, 11, and 12 will survive the termination of this Agreement.
- (j) Each notice to a Party must be given in writing. A notice may be delivered by hand or fax to a representative of the Party at the address or facsimile number set out on the first page of this Agreement, and will be validly given if delivered on a Business Day to the above address, or, if transmitted on a Business Day by fax addressed to the other Party :

[Insert Fax Numbers]

or to any other address, fax number or representative that the party designates in writing. Any notice if validly delivered, will be deemed to have been given when delivered.

- (k) Any party may deliver an executed copy of this Agreement by fax but that party will immediately dispatch by couriered delivery to the other parties an originally executed copy of this Agreement. This Agreement and all documents contemplated by or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

## **SCHEDULE A – INSURANCE**

### **1. UCIPP**

If the Institution is covered by the University, College and Institution Protection Program (“UCIPP”), the Institution will maintain third party liability coverage through UCIPP throughout the term of the Agreement.

### **2. Non-UCIPP**

If the Institution is covered by an insurance carrier other than UCIPP, the Institution will:

- (a) Maintain comprehensive third party liability insurance in the minimum amount of \$5,000,000 (Cdn) per occurrence, and
- (b) Maintain medical malpractice and/or professional liability insurance in the minimum amount of \$5,000,000 (Cdn) per occurrence

covering claims brought against the Institution, Institution Staff or Students who are involved in the Program for injury to or death of a person or damage to or loss of property caused by any negligent act or omission of the Institution, Institution Staff, Students, and its agents or volunteers while in attendance at the Facilities.

### **3. INJURIES TO STUDENTS AND INSTITUTION STAFF**

The Institution will arrange coverage under the *Workers Compensation Act* (BC) or equivalent coverage for Institution Staff and Students while engaged in activities at the Facilities, or, with respect to Institution Staff who are contractors or sub-contractors, will arrange and / or require such coverage

### **4. GENERAL**

- (a) The Institution will provide proof of insurance coverage upon request by the Health Authority.
- (b) The Institution will not cancel or materially alter its insurance coverage without thirty days prior written notice to the Health Authority.
- (c) The foregoing insurance will be primary and not require the sharing of any loss by any insurer of the Health Authority.

### **5. HCPP COVERAGE**

The Health Authority is covered by the Health Care Protection Program (“HCPP”); the Health Authority will maintain third party liability coverage through HCPP throughout the term of the Agreement.