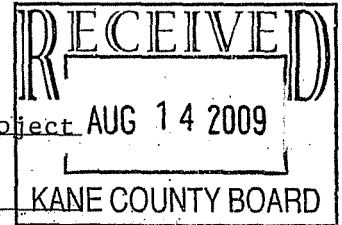


DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board



Name of Document: Standard Clinical Affiliation Agreement Project

Submitted by: Paul Kuehnert - Kane County Health Dept.

Date Submitted: 8/13/09

Examined by:

KC Shano
(Print name)

[Handwritten Signature]
(Signature)

8-14-09
(Date)

Comments: Term: 10/1/09 - 9/30/2012

Creation of a standardized form designed to minimize the extent
to which providers and educational entities need to customize
an affiliation agreement, thereby plazing students in their
clinical rotations faster.

Chairman signed: Yes No 8-25-09
(Date)

Document returned to: P. Kuehnert



**Kane County
Health Department**

Paul Kuehnert, MS, RN
Executive Director

www.kanehealth.com

Public Health Center
1240 N. Highland Avenue
Aurora, Illinois 60506
630.208.3801

Public Health Center
1330 N. Highland Avenue
Aurora, Illinois 60506
630.264.7652

Public Health Center
113 S. Grove Avenue
Elgin, Illinois 60120
847.608.2850



MEMO

TO: Jane Tallitsch
FROM: Paul Kuehnert, Health Department
DATE: August 13, 2009
SUBJECT: Documents needing legal evaluation
TITLE: Standard Clinical Affiliation Agreement Project
CONTACT: Claire Dobbins X85152

REVIEW AND COMMENT ONLY.

 X

Contract/Grant/Agreement requiring Karen McConnaughay's signature.

Need to have returned by ASAP.

December 18, 2008

To: Health Care Providers and Educational Entities Which Participate in Clinical Affiliation Relationships

From: Mary Pat Olson
Director, Workforce Development
Metropolitan Chicago Healthcare Council

Re: Standard Clinical Affiliation Agreement Project

The South Metropolitan Higher Education Consortium (SMHEC) spearheaded a project to develop the enclosed **Standard Clinical Affiliation Agreement** for use by health care providers and educational programs. This Agreement is designed to minimize the extent to which providers and educational entities need to customize an affiliation agreement for every health care program requiring a clinical rotation thereby reducing the personnel time spent on contract review, and freeing the staff to focus their efforts on other critical activities. The expeditious signing of the agreements places students in clinical rotations faster, allowing more time to plan and organize their schedules and their lives.

A task force including: SMHEC, Metropolitan Chicago Healthcare Council (MCHC), Illinois Hospital Association (IHA), Illinois Coalition for Nursing Resources (ICNR), and hospital staff and educators representing the entire metropolitan Chicago area participated in the development and review of this document. A number of hospitals and colleges in the Chicago Southland region volunteered to pilot the document for one year, beginning in the summer of 2006. As a part of the pilot process the document went through a series of reviews and revisions by attorneys, hospital and college staff. The year long pilot has just been completed and the document is now available in updated form for use in Illinois colleges, universities and health care institutions which provide clinical experiences.

The document was developed and updated by Associate General Counsel for Advocate Health Care, Mary Ellen Cherry, Northern Illinois University Vice President and General Counsel Kenneth L. Davidson and NIU Assistant University Counsel Laura Sala, Dianne M. Kronika, Assistant to General Counsel at Governors State University and Heidi Katz, General Counsel of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd; all of whom have considerable experience with affiliation agreements. The membership of the task force which developed this Agreement and the list of institutions currently using the piloted form of the Agreement are listed on the pages immediately following this memo.

Here are some of the concepts that guided the development of the Standard Clinical Affiliation Agreement, for your perspective in reviewing it:

1. The Agreement is framed both broadly and comprehensively, in hopes that it will be useful to and used by the majority of Illinois health care providers and educational programs when entering into clinical affiliation relationships. Thus, addressing a common point of concern, the Agreement contemplates that the higher education entity will provide proof to the health care

facility that students have student professional liability coverage while participating in the clinical experience. On another often discussed issue, the Agreement states, in lieu of providing for indemnification or cross-indemnification as between parties, that neither party shall be legally liable for bodily injury or property damage occasioned by an act, omission, or neglect chargeable to the other party.

2. The Agreement is intended for use with any health care program or within a healthcare system, that requires a clinical rotation. It may be used to cover multiple facilities and multiple healthcare programs of study within an educational institution by listing them as included Facility Sites and Programs in respective Exhibits A and B to the Agreement. The Agreement also includes an Exhibit C to identify program-specific requirements.

3. The drafters recognize that contracting health care providers and educational programs may on occasion need to add specific provisions to the Agreement to address unique features presented by particular affiliation arrangements. (An example would be the requirement of some religiously-affiliated providers that health care workers agree not to take actions inconsistent with ethical precepts of the church or religious entity involved.)

4. The Agreement will accommodate evolving best practices and anticipated future requirements of the accrediting bodies. For instance, paragraph A.6 includes the requirement for criminal background checks and drug screening currently in effect at a number of clinical sites.

5. *The Task Force met on September 5, 2008 and determined three changes were necessary to the document. They are:*

- *The addition of general liability insurance for non-state colleges and universities to section A.2.*
- *The addition of a reference to Exhibit C in section A.5.*
- *Option to select or waive student health insurance requirement added to Exhibit C*

Please update your records when your current contracts come due for renewal.

Any questions concerning this project or the Standard Clinical Affiliation Agreement document may be addressed to Mary Pat Olson at mpolson@mchc.com or 312-906-6020.

Standard Clinical Affiliation Agreement Task Force

Laura	Anderson Sala	Assistant University Counsel	Northern Illinois University
Rebecca	Baker-Karr	Vice President	Roseland Community Hospital
Cecilia	Beauprie		Veterans Administration
Genny	Boesen	Executive Director	South Metropolitan Higher Ed. Consortium
Nancy	Burley	Coordinator	Governors State University
Mary Ellen	Cherry	Associate General Counsel	Advocate Health Care
Kenneth L.	Davidson	Associate Vice President & General Counsel	Northern Illinois University
Jeri Lynn	Else	Director Strategic Healthcare Partnerships	College of DuPage
Dennis	Graham	Dean	Oakton Community College
Cathy	Grossi	Assistant Vice President	Illinois Hospital Association
Connie	Hardy	Faculty	Saint Xavier University
Heidi	Katz	Attorney	Robbins Schwartz Nicholas Lifton & Taylor, LTD
Mary Anne	Kelly	Vice President	Metropolitan Chicago Healthcare Council
Alexis	Kennedy	General Counsel	Governors State University
Nancy	Krier	Executive Director	ICNR
Dianne	Kronika	Asst. to General Counsel	Governors State University
Peggy	Machon	Assistant Dean	Moraine Valley Community College
Brenda	Mitchell	Director	Roseland Community Hospital
Michaelene	Nash	Chair	Joliet Junior College
Alicia	Pufundt	Staff	Metropolitan Chicago Healthcare Council
Susan	Reder	Faculty	Olivet Nazarene University
Manuela	Sawalha	Director	Kankakee Community College
Jane	Sullivan	Vice President, Patient Care Services	Little Company of Mary
Linda	Virgili	Director	Northwest Community Hospital
Kathy	Voss	Director	Our Lady of the Resurrection
Beverly	Weaver	Director	Lake Forest Hospital
Dawn	Wichmann	Director	Illinois Hospital Association
Carol	Yukich	Faculty	Saint Xavier University
Stella	Zeheralis	Organizational Learning & Development Specialist	Metro South Medical Center (formerly St. Francis, Blue Island)

Standard Clinical Affiliation Agreement (Revised)

December 12, 2008

This agreement is designed for use as a standardized form. Parties should call one another's attention to any specific changes made or proposed to be made to the template, to ensure an accurate, common understanding of their agreement.

**AFFILIATION AGREEMENT
BETWEEN
ELGIN COMMUNITY COLLEGE
AND
KANE COUNTY HEALTH DEPARTMENT**

THIS AGREEMENT (the “**Agreement**”) is entered into this ___ day of _____ 2009, by and between Kane County Health Department (“**the Facility**”) and **Elgin Community College**. (“**the School**”).

WHEREAS, the School desires to utilize various Facility sites (Kane County Community) that may be available for the purpose of providing practical learning and clinical experiences for the Elgin Community College Nursing Program in connection with students of the School.

NOW, THEREFORE, it is understood and agreed upon by the parties hereto as follows:

A. SCHOOL RESPONSIBILITIES:

1. Provision of foundational curriculum to students. The School shall have the total responsibility for planning and determining the adequacy of the educational experience of students in theoretical background, basic skill, professional ethics, attitude and behavior, and will assign to the Facility only those students who have satisfactorily completed the prerequisite didactic portion of the School’s curriculum.

2. Student professional liability insurance.

(i) State Colleges and Universities

If the School is a state college or university, the School shall require students participating in the practicum to maintain and, the School shall provide proof to the Facility, of a personal student professional liability insurance policy of at least One Million Dollars (\$1,000,000.00) per occurrence or claim and Three Million Dollars (\$3,000,000.00) in the aggregate covering the acts of such student while participating in the program at the Facility.

(a) **General Liability:** Subject to applicable state law, neither party to this Agreement shall be legally liable for the consequences, whether bodily injury or property damage, occasioned by an act, omission, or neglect chargeable to the other party.

(b) Where Worker's Compensation or other obligation for payment of benefits may arise, this Agreement shall neither enlarge nor diminish such obligation.

(c) Provided further, in the event required insurance coverage is not provided or is canceled, the Facility may terminate the placement of the student.

(ii) Other Colleges and Universities

Unless otherwise specified in Exhibit C, the School shall require students participating in the practicum to maintain, and the School shall provide proof to the Facility of, a personal student professional liability insurance policy of at least One Million Dollars (\$1,000,000.00) per occurrence or claim and Three Million Dollars (\$3,000,000.00) in the aggregate; and general liability coverage of at least One Million Dollars (\$1,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) in the aggregate covering the acts of such student while participating in the program. Such insurance coverage must be placed with an insurance carrier acceptable to the facility. Certificates of insurance evidencing coverage as specified above must be produced prior to student participation in the program. The School shall require students participating in the program to maintain comprehensive health insurance. In the event required insurance coverage is not provided or is canceled, the Facility may terminate the placement of the student.

3. Designation of liaison to Facility; communications relating to clinical placements.

The School will designate a faculty or other professional staff member to coordinate and act as its liaison to the Facility. The assignments to be undertaken by the students participating in the educational program will be mutually arranged and a regular exchange of information will be maintained by on-site visits when practical, and by letter or telephone in other instances.

The School shall notify the Facility in writing of any change or proposed change of the person(s) responsible for coordinating clinical placements with the Facility.

4. Evidence of student certifications, vaccinations, etc. Where applicable, the School shall provide evidence that student has met all requirements of CPR certification, hepatitis B vaccination, and OSHA compliance for prevention of transmission of blood borne pathogens and TB.

5. Criminal background check and drug screen compliance. Where applicable, a criminal background check and drug screen, as specified in Exhibit C, and as required by and acceptable to the Facility, are required of each placed student prior to participation in the clinical rotation. It is the School's responsibility to ensure that the background check and drug screening have been completed and that students with unacceptable results will not participate at sites where students with such results are forbidden by policy.

6. School notices to students. The School shall notify each student prior to his/her arrival at the Facility that he/she is required to:

- (a) Follow the administrative policies, standards, and practices of the Facility.
- (b) Obtain medical care at his/her own expense for any injuries or illnesses sustained as a direct or indirect result of his/her affiliation with the Facility.

(c) Provide his/her own transportation and living arrangements.

(d) Report to the Facility on time and follow all established regulations during the regularly scheduled operating hours of the Facility.

(e) Conform to the standards and practices established by the School while functioning at the Facility.

(f) Obtain prior written approval of the Facility and the School before publishing any material relating to the clinical learning experience.

(g) Meet the personal, ethical and professional standards required of employees of the Facility and consistent with the applicable professional Code of Ethics and the applicable standards of JCAHO and/or other relevant accrediting or regulatory bodies.

B. FACILITY RESPONSIBILITIES:

1. **Provision of facilities for supervised clinical experiences.** Subject to the provisions of Section C.2 of this Agreement, the Facility agrees to make the appropriate facilities available to the School in order to provide supervised clinical experiences to students. Such facilities shall include an environment conducive to the learning process of the students as intended by the terms of this Agreement and conforming to customary Facility procedures.

2. **Facility rules applicable to students during clinical assignments.** Students are to remain subject to the authority, policies, and regulations imposed by the School and, during periods of clinical assignment, students will be subject to all rules and regulations of the Facility and imposed by the Facility on its employees and agents with regard to following the administrative policies, standards, and practices of the Facility.

3. **Patient care.** While at the Facility, students are not to replace the Facility staff, and are not to render service except as identified for educational value and delineated in the jointly planned educational experiences. Any such direct contact between a student and a patient shall be under the proximate supervision of a member of the staff of the Facility. The Facility shall at all times remain responsible for patient care.

4. **Emergency treatment of students.** Emergency outpatient treatment will be available to students while in the hospital for clinical training in case of accident or illness. In case of emergency at a non-hospital site, standard procedure will be followed. It is the student's responsibility to bear the cost of the emergency treatment.

5. **Designation of liaison to School; communications relating to clinical placements.** The Facility shall designate a liaison responsible for coordinating the clinical placements. That person shall maintain contact with the School's designated liaison person to assure mutual participation in and surveillance of the clinical program. The Facility shall notify

the School in writing of any change or proposed change of the person(s) responsible for coordinating the clinical placements.

6. Identity and credentials of Facility supervising personnel. The Facility shall designate and submit in writing to the School, the name and professional and academic credentials of the individual(s) overseeing student(s) experiences.

7. School tour of Facility. The Facility shall, on reasonable request and subject to legal restrictions regarding patient health information, permit a tour of its clinical facilities and services available and other items pertaining to clinical learning experiences, by representatives of the School and agencies charged with responsibility for approval of the facilities or accreditation of the curriculum.

8. Provision of relevant Facility policies. The Facility shall provide the student(s) and the School the Facility's administrative policies, standards and practices relevant to the clinical placement.

9. FERPA compliance. The Facility shall comply with the applicable provisions of the Family Educational Rights and Privacy Act of 1974, 20 USC 1232 (g), otherwise known as FERPA or the Buckley Amendment, and shall take all measures necessary to ensure the confidentiality of any and all information in its possession regarding the School's students who train at the Facility pursuant to this agreement.

C. OTHER RESPONSIBILITIES:

1. Compliance with patient privacy laws. The School agrees to abide by and require that its faculty and students abide by all applicable state and federal laws, rules and regulations regarding patient privacy, including but not limited to, the Standards for Privacy of Individually Identifiable Health Information as required under the Health Insurance Portability and Accountability Act (HIPAA). Students shall be required to comply with the Facility's policies and procedures regarding the confidentiality of patient information and the use of all such information. The parties will notify one another if there are known breaches of this confidentiality. If during the term of this Agreement, the Department of Health and Human Services, Office of Civil Rights or any other empowered federal or state agency, court or administrative tribunal determines that the School or any other educational institution similar to the School is a Business Associate ("Business Associate"), as described in the federal privacy regulations, the School shall, upon a date mutually agreed by the parties, abide by the conditions and requirements as stated in Exhibit D through the remainder of the term of this Agreement.

2. Determination of instructional period. The course of instruction will cover a period of time as arranged between the School and the Facility. The beginning dates and length of experience shall be mutually agreed upon by the School and the Facility.

3. Determination of number of participating students. The number of students eligible to participate in the clinical placement will be determined and may be changed by mutual

agreement of the parties. Notwithstanding the foregoing, the Facility and the School agree and understand that the availability of clinical placements at Facility during the term of this Agreement may periodically be affected by a variety of factors. In such event, Facility may reduce the number of students eligible to participate in the clinical education program with prior notice to the School and adequate time for the School to reassign the student(s) to another clinical site. The Facility agrees further to accommodate students of the School who are similarly displaced from other clinical affiliates of the School to the extent that clinical space is available at the Facility.

4. Evaluation of students' clinical experiences. Evaluation of the clinical learning experiences of the students will be accomplished jointly by the School and the Facility. Appropriate School and the Facility staff will communicate on a regular basis for the purpose of reviewing and evaluating current clinical experiences offered to students.

5. Removal of students.

(a) The School has the right to remove a student from a clinical education program. The School shall notify the Facility of such removal in writing.

(b) The Facility may immediately remove any student participating in a clinical education program from the Facility's premises for behavior that the Facility deems to be an immediate threat to the health or welfare of its patients, staff members, visitors, or operations. In such event, the Facility shall notify the School in writing of its actions and the reasons for its actions as soon as practicable. If the Facility desires to remove a student for any other reason, it shall notify the School in writing of the reasons for the removal and shall consult with the School before removing the student.

D. TERM OF AGREEMENT:

The term of this Agreement shall be for three (3) years, to commence on October 1, 2009 and terminate on September 30, 2012. Either party may terminate this Agreement at any time, with or without cause, upon ninety (90) days prior written notice to the other party. In the event that this Agreement is not renewed for a subsequent term, students who are participating in the clinical learning experiences at the time of termination shall be allowed to complete such assignment under the terms and conditions herein set forth.

E. ADDITIONAL TERMS:

1. Stipulations as to liability. Subject to applicable state law, neither party to this Agreement shall be legally liable for the consequences, whether bodily injury or property damage, occasioned by an act, omission, or neglect chargeable to the other party. Where Worker's Compensation or other obligation for payment of benefits may arise, this Agreement shall neither enlarge nor diminish such obligation.

2. **Additional insurance coverage.** Any additional applicable insurance coverage requirements shall be set out by the parties in Exhibit C to this agreement.

3. **Qualifications of School faculty.** The School represents and warrants that relevant faculty members are appropriately certified and/or licensed. The School will provide the Facility with copies of evidence of certifications or licensures.

4. **Assignment of Agreement.** This Agreement may not be assigned without the prior written consent of the other party, which will not be unreasonably withheld.

5. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof. No changes or modifications of this Agreement shall be valid unless the same are in writing and signed by the parties. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the parties.

6. **Severability.** If any provision of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

7. **Non-Discrimination.** The parties hereto shall abide by the requirements of Executive Order 11246, 42 U.S.C. Section 2000d and the regulations thereto, as may be amended from time to time, the Illinois Human Rights Act, and the Rules and Regulations of the Illinois Department of Human Rights. There shall be no unlawful discrimination or treatment because of race, color, religion, sex, national origin, ancestry, military status, sexual orientation or handicap in the employment, training, or promotion of students or personnel engaged in the performance of this Agreement.

8. **Employment status.** No assigned student or School faculty member under this Agreement shall in any way be considered an employee or agent of the Facility nor shall any such student or faculty member be entitled to any fringe benefits, Worker's Compensation, disability benefits or other rights normally afforded to employees of the Facility.

9. **Notice to Parties.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly given under the earlier of (a) the date actually received by the party in question, by whatever means and however addressed, or (b) the date sent by facsimile (receipt confirmed), or on the date of personal delivery, if delivered by hand, or on the date signed for if sent by an overnight delivery service, to the following addresses, or to such other address as either party may request, in the case of the School, by notifying the Facility, and in the case of the Facility, by notifying the School:

If to the Facility:

Kane County Health Department
Administration & Public Health Center
1240 N. Highland Avenue
Aurora, IL 60506
Attention: Paul Kuehnert, MS, RN. Executive Director.
Email: kuehnertpaul@co.kane.il.us
Telephone: 630-444-3021

With a Copy to:

Facility Legal Counsel at:

Attention: _____

Facsimile: () _____

If to the School:

Elgin Community College
1700 Spartan Drive
Elgin, IL 60123
Attention: David Sam, PhD, JD, President
Email: dsam@elgin.edu
Program in Nursing
Telephone: 847-214-7374

With a Copy to:

The School Legal Counsel at:

Elgin Community College
1700 Spartan Drive
Elgin, IL 60123
Attention: Marilyn Prentice
E-mail: mprentice@elgin.edu
Telephone: 847-214-7992
Facsimile: 847-214-7375

or to such other addresses as the parties may specify in writing from time to time.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, without regard to the conflict of laws provisions thereof.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

12. **No Third-Party Beneficiaries.** This Agreement shall inure exclusively to the benefit of and be binding upon the parties hereto and their respective successors, assigns, executors and legal representatives. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

13. **Agreement binding on parties successors and assigns.** This Agreement shall be binding upon the School and the Facility, their successors, employees, agents and assigns, during the initial term of this Agreement and any extensions thereof.

14. **Captions for reference only.** The captions contained in this Agreement are for convenience of reference only and do not define, describe, or limit the scope or intent of this Agreement or any of its provisions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective corporate names by duly authorized officers, all on the day and year first set forth above.

For and on behalf of:

Facility Name

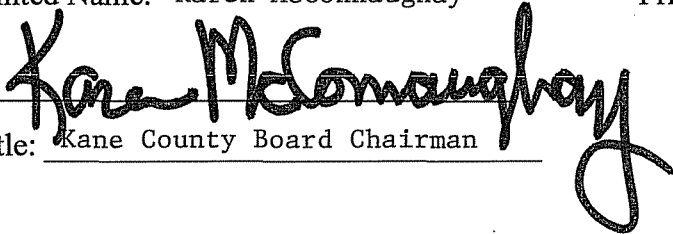
School Name

Kane County Health Department

Elgin Community College

Printed Name: Karen McConnaughay

Printed Name:


Title: Kane County Board Chairman

Title: _____

Date: _____

Date: _____

Elgin Community College Department of Nursing
(Program Name)

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

Sites to be determined based on community need

EXHIBIT B

Elgin Community College Nursing Program

EXHIBIT C

PROGRAM SPECIFIC REQUIREMENTS (Each program shall have its own program specific requirement checklist)

Facility: Kane County Health Department

School: Elgin Community College

Program: Nursing

Facility requires:

	Yes	No
1. Proof of student professional and general liability insurance (paragraph A.2)	<input type="checkbox"/>	<input type="checkbox"/>
2. Proof of comprehensive health insurance (paragraph A.2)	<input type="checkbox"/>	<input type="checkbox"/>
3. Verification that students have met requirements for: (paragraph A.4)		
a. Current CPR health care provider card	<input type="checkbox"/>	<input type="checkbox"/>
b. Hepatitis vaccination	<input type="checkbox"/>	<input type="checkbox"/>
c. OSHA compliance for prevention of transmission of blood born pathogens and TB	<input type="checkbox"/>	<input type="checkbox"/>
d. Other _____	<input type="checkbox"/>	<input type="checkbox"/>
4. Criminal background check (paragraph A.5) If yes, type of check _____	<input type="checkbox"/>	<input type="checkbox"/>
5. Drug screen (paragraph A.5) If yes, type of screening _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Acceptance of faith-based provision addendum (if included)	<input type="checkbox"/>	<input type="checkbox"/>
7. Evidence of relevant faculties' certifications or licensures (paragraph E.3)	<input type="checkbox"/>	<input type="checkbox"/>
8. Additional insurance coverage (paragraph E.2) If yes, type of insurance and coverage required _____	<input type="checkbox"/>	<input type="checkbox"/>
9. Other _____	<input type="checkbox"/>	<input type="checkbox"/>

School requires:

1. Copy of relevant Facility policies (paragraph B.8)	X	<input type="checkbox"/>
2. Evidence of academic credentials, certifications and licensures of individual(s) overseeing student(s) experiences (paragraph B.6)	X	<input type="checkbox"/>
3. Other _____	<input type="checkbox"/>	<input type="checkbox"/>

EXHIBIT D

Confidentiality of Protected Health Information

1. Definitions

The following definitions apply to this Exhibit to the Agreement.

- a. Business Associate. "Business Associate" shall mean Elgin Community College ("The School").
- b. Facility. "Facility" shall mean [Kane County Health Department] ("Facility").
- c. Individual. "Individual" shall refer to a patient and have all the same meaning as the term "individual" in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- d. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- e. Protected Health Information. Protected Health Information ("PHI") shall have the same meaning as the term "PHI" in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Facility.
- f. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.501.
- g. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- h. Capital Terms. All other capital terms referenced herein shall bear the meaning ascribed thereto in the Agreement.

2. Obligations of Business Associate

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as Required By Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of the Agreement.
- d. Business Associate agrees to report to the Facility any use or disclosure of the PHI not provided for by the Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of the Facility, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. If Business Associate obtains PHI in a Designated Record Set, Business Associate shall provide access, at the request of the Facility, and in the mutually agreed time and manner, to any such PHI in a Designated Record Set, to the Facility or, as directed by the Facility, to an Individual in order to meet the requirements under 45 CFR §164.524.

g. If Business Associate obtains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Facility directs or agrees to pursuant to 45 CFR §164.526 at the request of the Facility or an Individual, and in the mutually agreed time and manner.

h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the Facility, available to the Facility or to the Secretary, in a mutually agreed time and manner or as designated by the Secretary, for purposes of the Secretary determining the Facility's compliance with the Privacy Rule.

i. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Facility to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

j. Business Associate agrees to provide to the Facility or an Individual, in a mutually agreed time and manner, PHI obtained in accordance with this Agreement, to permit the Facility to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.

3. **Permitted Uses and Disclosures by Business Associate** Except as otherwise limited in the Agreement, Business Associate may use or disclose PHI to perform functions related to the clinical portion of the Nursing Program under the Affiliation Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the Facility or the minimum necessary policies and procedures of the Facility.

4. **Obligations of the Facility and Provisions for the Facility to Inform Business Associate of Privacy Practices and Restrictions if Relevant to Business Arrangement**

a. The Facility shall notify Business Associate of any limitation(s) in its notice of privacy practices of Facility in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

b. The Facility shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

c. The Facility shall notify Business Associate of any restriction to the use or disclosure of PHI that the Facility has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. **Permissible Requests by the Facility.** The Facility shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Facility.

6. **Term and Termination**

a. **Term.** The obligations of this Attachment shall be effective upon the same date as the Effective date of the Agreement and shall continue until all PHI provided by Facility to Business Associate, or created or received by Business Associate on behalf of the Facility, is destroyed or returned to Facility. If it is infeasible to return or destroy PHI, all protections are extended to such PHI, in accordance with the termination provisions in this Section of the Attachment.

b. **Termination for Cause.** Upon the Facility's knowledge of a material breach of this Attachment by Business Associate, the Facility shall either:

(i) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Agreement if Business Associate does not cure the breach or end the violation within the time specified by and to the satisfaction of the Facility;

(ii) Immediately terminate the Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

(iii) If neither termination nor cure is feasible, the Facility shall report the violation to the Secretary.

c. Except as provided in Section 7 of this Attachment, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all PHI received from the Facility, or created or received by Business Associate on behalf of the Facility. If Business Associate destroys all or some of the PHI, Business Associate shall deliver to the Facility an authorized and executed Affidavit, attesting to the facts of such destruction.. Business Associate shall retain no copies of the PHI. This subsection shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate

d. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to the Facility notification of the conditions that make return or destruction infeasible. Upon mutual agreement between Business Associate and the Facility, that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Attachment to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. **Interpretation.** Any ambiguity in this Attachment shall be resolved to permit the Facility to comply with the Privacy Rule.