

Affiliation Agreements in British Columbia (BC): Frequently Asked Questions

What is an affiliation agreement?

- A legal contract that defines the roles and responsibilities of a health authority and education institution in providing practice education*
- Addresses the risks in the relationship for both organizations and their employees, patients, faculty and students

*Practice education is that part of a student's education which takes place in the workplace and may involve direct patient/client care

When is an affiliation agreement needed in BC?

- BC health authorities require a current affiliation agreement to be in place with sponsoring education institutions before students engage in practice education activities in health authority programs or facilities

Is there a standard affiliation agreement template for BC?

- Yes, it is available at http://www.hspscanada.net/docs/aam/aa_template.pdf
- It is a legal document that can be used to develop agreements between health authorities and public or private post-secondary education institutions
- While each organization ultimately decides which template to use, and whether or not to adapt it, there is consensus in BC's practice education community that the standard template will be used and adaptations will only be pursued when there is a strong reason to do so (e.g. the scope of the partnership between the health authority and the educational institution is significant and requires attention to research as well as educational activities)

How was the BC standard template developed?

- Via a 2006/07 project funded by the Practice Education Innovation Fund of the BC Academic Health Council.
- The project was informed by the following expertise representing both health and education sectors: legal, risk management, contract management, education and practice. Reports available at: <http://www.hspscanada.net/managing/aam.asp>

What does the standard affiliation agreement template do?

- The agreement includes:
 - Definitions
 - Insurance requirements for both third party liability and personal accidents
 - Start and end dates of the agreement
 - Responsibilities of the health authority related to practice education (e.g. to provide faculty and students with reasonable access to facilities)
 - Constraints on the health authority that may limit its ability to support practice education (e.g. operational requirements, a need to ensure the safety and care of patients, or a lack of resources)
 - Responsibilities of the educational institution (e.g. to design and deliver student learning programs, and take reasonable steps to ensure that students comply with health authority policies and standards of workplace behaviour)
 - Designating representatives and mechanisms to facilitate communication on behalf of each organization
 - Reporting requirements for health and safety incidents
 - Circumstances under which the institution's students or faculty may be required to withdraw from the practice education experience
 - Clarifying that post-secondary students and faculty involved in practice education are not health authority employees, and are not entitled to employment benefits from the health authority
 - Provisions to protect privacy and confidentiality
 - Conditions under which the agreement may be terminated
 - Mutual indemnification clauses which protect the health authority and the educational institution against third party liability arising from the negligence of the other
 - General terms relating to how the agreement may be applied, along with authorized signatures
- The agreement does not cover observation visits to the health authority by individuals who are not sponsored by an education institution.

How can I get information to clarify key clauses in the template?

Based on our experience with the template in BC, we have found that most questions arise in relation to following clauses:

Clauses 4(b) and 5(b)

Although these clauses are in the agreement, BC health authorities are clear that every effort is made to support students, faculty and their practice education learning/teaching experiences. BC health authorities value students and faculty, and have a long track record of working effectively with educational institutions from within and outside the province. In recent years, BC health authorities have been working together to build quality in practice education environments. For example, guided by evidence based resources and tools, health authorities are working to strengthen their management of practice education.

<http://www.hspscanada.net/managing/resources.asp>

Nonetheless, health authorities cannot guarantee student placements and learning experiences (eg. in the event of a disaster, SARS outbreak) and clauses 4(b) and 5(b) in the template address that.

Clause 12

In BC, the mutual indemnification clause has been a standard component of affiliation agreements for many years. It is included in the recent updated standard template which was developed with extensive legal and risk management input representing health and education sector perspectives. The indemnity language in the template was approved by the BC Ministry of Finance. The indemnity granted by the Health Authorities to the institutions insured by the University, College and Institution Protection Program (UCIPP) and non-UCIPP institutions is approved under Indemnity No. 080257 and the indemnity granted by the UCIPP institutions to the Health Authorities is approved under indemnity No. 080263.

Indemnification is an agreement between parties to protect one of them from any loss, hurt or damage that they may incur. An agreement to indemnify is voluntary and may create obligations beyond those imposed by negligence. The intent of an indemnification agreement should be to allocate risk to the party who is best able to prevent a loss.

A mutual indemnification clause typically protects each party from claims, demands, losses, damages etc., which arise as a result of the acts or omissions, errors or deeds of the other party.

Appendix A

Definition and Examples of Indemnification from the Health Care Protection Program, Risk Management Branch & Government Security Office
(March 25, 2009)

Definition:

Indemnification is an agreement between parties to protect one of them from any loss, hurt or damage that they may incur. An agreement to indemnify is voluntary and may create obligations beyond those imposed by negligence. The intent of an indemnification agreement should be to allocate risk to the party who is best able to prevent a loss.

For example:

- 1) *B agrees to lend her mountain bike to C. C takes the mountain bike up into the hills with a group of friends for a ride. They stop for a rest on the edge of a cliff and C inadvertently knocks B's mountain bike and it falls over the side of the cliff. Most legal systems would impose liability upon C to pay for the damages to B's mountain bike. C's obligation to pay for the damages in this case arises from common law and exists whether C agreed to compensate B or not.*
- 2) *B agrees to lend her mountain bike to D, on the condition that D sign the following indemnity agreement: "D shall indemnify and save harmless B from and against all claims, demands, losses, damages, judgement, costs, liability, expenses (including reasonable legal fees and expenses), actions and other proceeding 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 D arising out of the agreement to allow D to use B's mountain bike, excepting always liability arising from the independent negligence of B".*

D rides B's mountain bike up into the hills with a group of friends. They stop for a rest on the edge of a cliff and one of the other members of the biking group (F) inadvertently knocks B's mountain bike and it falls over the side of the cliff. Even though D is not responsible for knocking the bike over the cliff and has not been negligent, the indemnity agreement that D signed with B obligates D to pay for the damages to B's mountain bike.

Given that D had control of the mountain bike prior to the incident occurring it was reasonable for B to transfer the risk of something going wrong with the bike to D through the indemnity agreement. Without the indemnity agreement B would have to pursue F (or both D and F) in order to obtain compensation for the damages to the bike.

A mutual indemnification clause typically protects each party from claims, demands, losses, damages etc., which arise as a result of the acts or omissions, errors or deeds of the other party.

For example:

- 1) *B agrees to lend her mountain bike to C. Prior to lending the bike to C, B had just finished working on the bike, including removing and resetting the front wheel. In the process of reinstalling the wheel, B gets distracted and fails to tighten the front wheel adequately. C is riding the mountain bike up in the hills with a few of her friends when the front wheel suddenly comes off and C loses control. C crashes into another biker in the group, F. F is seriously injured, breaking her right arm.*

F commences a lawsuit to obtain compensation for her injury and she names both C (as operator) and B (as owner) of the bicycle. Both C and B will incur expenses to investigate and defend this action.

- 2) *B agrees to lend her mountain bike to D, on the condition that D and B sign the following mutual indemnity agreement: "D shall indemnify and save harmless B from and against all claims, demands, losses, damages, judgement, costs, liability, expenses (including reasonable legal fees and expenses), actions and other proceeding 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 D arising out of the agreement to allow D to use B's mountain bike, excepting always liability arising from the independent negligence of B" and "B shall indemnify and save harmless D from and against all claims, demands, losses, damages, judgement, costs, liability, expenses (including reasonable legal fees and expenses), actions and other proceeding 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 B arising out of the agreement to allow D to use B's mountain bike, excepting always liability arising from the independent negligence of D"*

Prior to lending the bike to D, B had just finished working on the bike, including removing and resetting the front wheel. In the process of reinstalling the wheel, B gets distracted and fails to tighten the front wheel adequately. D is riding the mountain bike up in the hills with a few of her friends when the front wheel suddenly comes off and D loses control. D crashes into another biker in the group, F. F is seriously injured, breaking her right arm.

F commences a lawsuit to obtain compensation for her injury and she names both D (as operator) and B (as owner) of the bicycle. Due to the mutual indemnity agreement, B will be solely responsible for all costs related to the investigation, defense and settlement of this claim as the injury to F arose from B's negligence in failing to adequately re-secure the front wheel to the bicycle. D, while named in the action will have her costs covered by B.