

**RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT****Santa Ana College -- Human Services and Technology Division**

To:	Board of Trustees	Date: July 15, 2019
Re:	Approval of Educational Affiliation Agreement Renewal with TheraGen, LLC	
Action:	Request for Approval	

**BACKGROUND**

The Occupational Therapy Assistant Program of Santa Ana College is required to offer all program students fieldwork opportunities at sites throughout the community in order to gain practical field experience. This is necessary to apply the knowledge and skills they have learned in their college classes. The Occupational Therapy Assistant Program will place no students at the site prior to Board approval.

**ANALYSIS**

This educational affiliation agreement renewal with TheraGen, LLC covers the scope of program operations at the facility, as well as insurance and other issues relating to the liability of both parties. This educational affiliation agreement renewal with TheraGen, LLC shall be effective for five (5) years or until termination by written notice of either party. Dr. Simon B. Hoffman and college staff have reviewed this educational affiliation agreement renewal with TheraGen, LCC. It carries no costs or other financial arrangements.

**RECOMMENDATION**

It is recommended that the Board of Trustees approve this educational affiliation agreement renewal with TheraGen, LLC, located in Santa Ana, California, as presented.

Fiscal Impact:	None	Board Date: July 15, 2019
Prepared by:	Jeffrey N. Lamb, Ph.D., Vice President, Academic Affairs Timothy Winchell, Ph.D., Acting Dean, Human Services & Technology	
Submitted by:	Linda D. Rose, Ed.D., President, Santa Ana College	
Recommended by:	Marvin Martinez, Chancellor, RSCCD	

## **EDUCATIONAL AFFILIATION AGREEMENT**

### **Occupational Therapy Assistant Program**

This Agreement is made and entered into between the Rancho Santiago Community College District, a public educational agency ("District") located at 2323 North Broadway, Santa Ana, California on behalf of the Santa Ana College Occupational Therapy Assistant Program ("College") and TheraGen, LLC ("Clinical Facility"), located at 6 Hutton Centre Drive Suite 400, Santa Ana CA 92707

#### **PART I. BASIS AND PURPOSE OF AGREEMENT**

**WHEREAS**, District and Clinical Facility acknowledge a public obligation to contribute to Occupational Therapy Assistant Program education for the benefit for students and to meet community needs.

**WHEREAS**, District provides programs in Occupational Therapy Assistant Program education, which require clinical experience for students, enrolled in these programs.

**WHEREAS**, the Clinical Facility has facilities suitable for the clinical needs of the District programs in the Occupational Therapy Assistant Program.

**WHEREAS**, it is to the benefit of both District and Clinical Facility that Occupational Therapy Assistant Program students have opportunities for clinical experience to enhance their capabilities as practitioners.

**NOW, THEREFORE**, District and Clinical Facility do covenant and agree as follows:

#### **PART II. GENERAL RESPONSIBILITIES OF DISTRICT**

##### **A. For the Program in General**

1. District will assume full responsibility for offering Occupational Therapy Assistant Program education programs eligible for accreditation by the appropriate State Board.
2. District shall inform The Occupational Therapy Assistant Program students of any requirement for background checks and their responsibility of payment.
3. College agrees to designate a coordinator for program.

##### **B. For Program Planning**

1. District will initiate the development of mutually acceptable clinical instruction plans for using the Clinical Facility's areas to meet the educational goals of Occupational Therapy Assistant Program curricula. These plans will be made available to the Clinical Facility at a mutually agreed upon time prior to the beginning of the school

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*SAC OTA Standard Agreement\_01-2019*

term and subject to revision in instances of conflicts with Clinical Facility patient care responsibilities and/or District interests.

2. District has the privilege of regularly scheduled meetings with Clinical Facility staff, including both selected Clinical Facility personnel and administrative level representatives for the purpose of interpreting, discussing, and evaluating the educational program in occupational therapy.

C. For Occupational Therapy Assistant Program Students

1. District will be responsible for assuring that Occupational Therapy Assistant Program students assigned to the Clinical Facility for clinical instruction meet both District and Clinical Facility standards of health and physical fitness, and shall provide certification that the Occupational Therapy Assistant Program students have been immunized against the common communicable diseases.

**PART III. GENERAL RESPONSIBILITIES OF THE CLINICAL FACILITY**

A. For the Program in General

1. Will serve as a clinical laboratory, which meets the standards of generally recognized professional accrediting agencies, including all laws and regulations governing the practice of occupational therapy and shall provide an adequate number of qualified staff for the clinical education activities of students selected for clinical experience at facility
2. The administration of the service and patient care at the Clinical Facility shall be the responsibility of and under the control and supervision of the Clinical Facility and shall be administered through the Clinical Facility and shall be administered through the Clinical Facility staff.
3. The Clinical Facility will designate a staff member who will function as Education Coordinator for Occupational Therapy Assistant Program education uses of the Clinical Facility facilities, including joint planning and representatives of all involved Occupational Therapy Assistant Program programs.
4. The Clinical Facility will provide orientation for students and faculty to familiarize them with Clinical Facility policies and facilities before assigning them to duties at the Clinical Facility.
5. The Clinical Facility will permit its employees to participate in the educational program as resource persons and clinical experts provided such participation does not interfere with assigned duties.
6. The Clinical Facility will permit the faculty and students of the District to use its

patient care and patient service facilities for clinical education according to approved curricula.

7. The Clinical Facility will confer with the District prior to making a commitment for new or expanded use of its clinical facilities by any other Occupational Therapy Assistant Program that interfere with current student placement.

B. For Services and Facilities

1. The Clinical Facility will permit the educational use of such supplies and equipment as are commonly available for patient care.
2. The Clinical Facility will permit use of the following facilities and services by District Occupational Therapy Assistant Program students and faculty at such times and to the degrees considered feasible by the Clinical Facility.
  - a. Parking areas.
  - b. Locker, storage and dressing facilities.
  - c. Same food services as are available for Clinical Facility staff.
  - d. First aid treatment with written consent required for minors.
  - e. Access to sources of information for education purposes such as:
    1. Patient's chart.
    2. Procedure guides policy manuals.
    3. Medical dictionaries, pharmacology references, and other references suitable to the clinical area.
    4. Books and periodicals in the Medical library.

C. For the Control of District Personnel

1. The Clinical Facility may refuse access to its clinical areas to Occupational Therapy Assistant Program students or district faculty who do not meet its employee standards for safety, health, cooperation, or ethical behavior pending investigation and resolution of the matter by the Clinical Facility and the District.

PART IV. **JOINT RESPONSIBILITIES AND PRIVILEGES**

A. Insurance:

1. Insurance Carried by the District. District shall, at its sole cost and expense, insure or self-insure its activities in connection with this Agreement and obtain, keep in force and maintain a program of insurance as follows
  - a. Comprehensive general liability insurance covering personal injury, property damage, and general liability claims in the amount of at least one million

dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.

- b. Professional liability insurance for each student participating in the rotation of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate,
- c. Statutory Workers' Compensation coverage for staff and students participating in the rotation.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, modified, or reduced except after thirty (30) days' prior to written notice.
- e. District will provide Clinical Facility Certificates of Insurance evidencing such coverage upon request.

2. Insurance Carried by Clinical Facility. Clinical Facility shall, at its sole cost and expense, insure or self-insure its activities in connection with this Agreement and obtain, keep in force and maintain a program of insurance as follows:

- a. Comprehensive general liability insurance covering personal injury, property damage, and general liability claims in the amount of at least three million dollars (\$3,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.
- b. Professional liability insurance for itself and each of its employee(s), partners, and/or representatives providing professional services at Clinical Facility, in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate
- c. Workers' Compensation insurance covering Clinical Facility's full liability as required by California law.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, modified, or reduced except after thirty (30) days' prior to written notice.
- e. Clinical Facility will provide District Certificates of Insurance evidencing such coverage upon request.

C. Indemnification

The District shall defend, indemnify and hold Clinic Facility harmless from and against any and all liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the District, its officers, agents, employees, Students, or District Instructors (if applicable).

Clinic Facility shall defend, indemnify and hold the District harmless from and against any and all liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, reasonable attorneys' fees, or claims for injury or damages are

caused by or result from the negligent or intentional acts or omissions of Clinical Facility, its officers, agents, or employees.

**PART V. STATUS OF OCCUPATIONAL THERAPY ASSISTANT STUDENTS**

- A. Occupational Therapy Assistant Program students shall have the status as learners and shall not be considered to be Clinical Facility employees nor shall they replace Clinical Facility staff. Any service rendered by the student during the experience is to be considered in addition to planned patient care in that area. Clinical experience will be conducted as a laboratory learning experience. The Clinical Facility will provide regular staffing for patient care in areas where students are obtaining clinical experience.
- B. Occupational Therapy Assistant Program students are subject to the authority, policies, and regulations of the district. They are also subject, during clinical assignment, to applicable Clinical Facility regulations and must conform to the same standards as are for Clinical Facility employees in matters relating to the welfare of patients and general Clinical Facility operations.

**PART VI. PERIOD OF AGREEMENT, TERMINATION**

- A. This agreement shall be binding and deemed effective on the date which this Agreement first becomes fully executed by all Parties hereto and shall remain in effect for five (5) years after that date unless sooner terminated by either party in accordance with this section.
- B. Either party may terminate this Agreement without cause by giving thirty (30) days prior written notice to the other party of its intention to terminate. In the event a rotation is in progress, any written notice to terminate with or without cause shall become effective at the expiration of the rotation.
- C. In the event of a material breach of this Agreement, the aggrieved party may terminate this Agreement by giving thirty (30) days' prior written notice of termination to the breaching party. If the breach is not cured, the Agreement shall terminate at the end of the thirty day period.
- D. Notwithstanding the foregoing, in the event the Program is discontinued by District during its Term, this Agreement shall immediately terminate without further action by the parties hereto.

**PART VII OTHER TERMS**

- A. Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of California.
- B. Nondiscrimination. The parties agree not to discriminate in the selection, placement or evaluation of any student or faculty member because of race, creed, national origin, religion,

sex, marital status, age, handicap, and/or medical condition. The Rancho Santiago Community College District complies with all Federal and state rules and regulations and does not discriminate on the basis of race, color, national origin, gender or disability. This holds true for all students who are interested in participating in educational programs and/or extracurricular school activities. Harassment of any employee/student with regard to race, color, national origin, gender or disability is strictly prohibited. Inquiries regarding compliance and/or grievance procedures may be directed to District's Title IX Officer and/or Section 504/ADA Coordinator

- C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. Any such counterpart containing an electronic or facsimile signature shall be deemed an original.
- D. Notices. Any notices to be given hereunder by either party to the other may be effectuated only in writing and delivered either by personal deliver, or by U. S. mail. Mailed notices shall be addressed to the persons at the addresses set forth below, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of three (3) days after mailing.

**To Clinical Facility:**

TheraGen, LLC  
6 Hutton Centre Drive Suite 400  
Santa Ana, CA 92707

**To College:**

Santa Ana College  
Attn: OTA Academic Fieldwork Coordinator  
1530 West 17th Street  
Santa Ana, CA 92706

**With a copy to:**

Rancho Santiago Community College District  
ATTN: Vice Chancellor Business Operations/Fiscal Services  
2323 North Broadway  
Santa Ana, CA 92706

- E. Entire Agreement. This Agreement and all attachments hereto, constitute the entire agreement of the parties. There are no representations, covenants or warranties other than those expressly stated herein. No waivers or modification of any of the terms hereof shall be valid unless in writing and signed by both parties.

IN WITNESS WHEREOF, the said parties have hereunto set their hands:

**District:**

**Rancho Santiago Community College**

**District**

2323 N. Broadway  
Santa Ana, CA 92706



Peter J. Hardash  
Vice Chancellor  
Business Operations/Fiscal Services

**Clinical Facility:**

TheraGen, LLC  
6 Hutton Centre Drive  
Suite 400  
Santa Ana, CA 92707



Lois A Mastrocola  
CFO

Date

7/16/19

Date

5/22/19

### Addendum to Agreement

Notwithstanding anything contained in the attached Agreement to the contrary, the following terms and conditions shall prevail and apply and all parties to the Agreement shall be bound thereby:

1. Program Coordination and Supervision. The District, School, University or College that is a party to this Agreement will furnish a fieldwork coordinator, program director or equivalent person who will be accountable for the students while at the subject skilled nursing facility and will also be responsible for planning and coordinating the activities of said students with the appropriate designated supervisor of the subject skilled nursing facility.
2. Termination. Either party to this Agreement may, in its sole discretion, terminate this Agreement with or without cause by giving the other party at least 30 days' prior written notice. In the event the Agreement is terminated for cause, all of the obligations of the terminating party shall be waived immediately upon written notice of termination. In the event of termination without cause, the parties agree to fulfill their respective obligations associated with the current term or semester prior to such termination becoming effective.
3. Course Postponement. Under certain circumstances, such as during a government survey, the Facility shall have the right in its sole discretion to cancel fieldwork for certain days in the facility.
4. Physical Requirements. The District, School, University or College shall require (i) that any students subject to this Agreement successfully complete Cardiopulmonary Resuscitation (CPR) certification prior to their clinical participation at the subject facility, (ii) that any students subject to this Agreement undergo a physical examination within twelve (12) months prior to their clinical participation at the subject facility including the following : (a) PPD or Tine test, which if positive, will be followed with a chest x-ray to exclude the possibility of active tuberculosis, and (b) evidence of current immunizations including measles and a positive titer to Rubella or vaccination against same.
5. District, School or College Insurance. The District, School, University or College shall carry and maintain (i) a commercial general liability insurance policy with limits of liability equal to at least Three Million Dollars (\$3,000,000) per occurrence covering faculty members and students of the District, School, University or College during assignment in the subject facility, and (ii) Workers' Compensation insurance with statutory limits of liability covering faculty and employees of the District, School, University or College during assignment in the subject facility. A certificate of insurance shall be provided to the subject facility as evidence of the above insurance coverage.
6. Student Insurance. Each student of the District, School, University or College who enters the subject facility shall carry professional malpractice insurance with a limit of liability of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. The District, School, University or College shall verify that the student has an insurance certificate on file and shall indemnify the subject facility against any losses resulting to the subject facility as a result of any student not having current, valid professional malpractice insurance. A certificate of insurance shall be provided to the subject facility as evidence of the above insurance coverage.

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7. **Indemnification.** The District, School, University or College agrees to defend, indemnify and hold the subject facility (including its owners, officers, directors, agents and employees) harmless from any and all liabilities, losses, costs, citations, damages, obligations, claims, settlements, payments, awards, judgments, fines, interest, charges, expenses (including attorney's fees and costs), disbursements, damages, deficiency, or other charges incurred or required to be paid due to any claim arising out of or resulting from (i) any failure by District, School, University or College (including its students, employees, contractors or agents) to perform its obligations hereunder, (ii) any failure by District, School, University or College (including its students, employees, contractors or agents) to perform its obligations herein in accordance with all applicable requirements of federal, state or local law, rule or regulation, or (iii) any negligence or misconduct by the District, School, University or College (including its students, employees, contractors or agents).

The subject facility agrees to indemnify and hold the District, School, University or College (including its employees, contractors or agents) harmless from any and all liabilities, losses, costs, citations, damages, obligations, expenses (including attorney's fees and costs) arising out of or resulting from (i) any failure by the subject facility or its employees to perform its obligations hereunder, (ii) any failure of the subject facility or its employees to perform its obligations herein in accordance with all applicable requirements of federal, state or local law, rule or regulation, or (iii) any negligence or misconduct of the subject facility or its employees.

8. **HIPAA Compliance.** Both parties agree to comply with the applicable provisions of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d through d-8 ("HIPAA"), and the requirements of any regulations promulgated there under including without limitation the federal privacy regulations as contained in 45 CFR Part 164 (the "Federal Privacy Regulations") and the federal security standards as contained in 45 CFR Part 142 (the "Federal Security Regulations"). Both parties agree not to use or further disclose any protected health information, as defined in 45 CFR 164.504, or individually identifiable health information, as defined in 42 U.S.C. § 1320d (collectively, the "Protected Health Information"), concerning a patient other than as permitted by this Agreement and the requirements of HIPAA or regulations promulgated under HIPAA including without limitation the Federal Privacy Regulations and the Federal Security Regulations. Both parties will implement appropriate safeguards to prevent the use or disclosure of a patient's Protected Health Information other than as provided for by this Agreement. The District, School, University or College agrees to educate its students relating the foregoing HIPAA requirements and inform them of their legal obligations thereto.

9. **Return of Executed Contract.** A copy of a fully executed Agreement, including this Addendum, must be delivered by the District, School or College to 6 Hutton Centre Drive, St 400, Santa Ana, CA 92707 (att: Legal Counsel) prior to the commencement of this Agreement.

10. **Non-Employee Status.** This Agreement is not intended and shall not be construed to create any relationship of agency, servant, employee, partnership, joint venture or association between the parties.

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