RESOLUTION - ACTION REQUESTED 2017-553

MEETING: August 15, 2017

TO: The Board of Supervisors

FROM: Eric Sergienko, Health Officer

RE: University of Phoenix Affiliation Agreement

RECOMMENDATION AND JUSTIFICATION:
Approve an Affiliation Agreement with the University of Phoenix to Allow a Bachelor’s of Science Registered Nurse Student Work Practicum Public Health Hours at the Mariposa County Health Department, and Authorize the Health Department Director to Sign the Agreement.

The Field Practicum allows nursing students to gain valuable experience in the Health Department setting under the supervision of the Public Health Nurse Manager. The Field Practicum is a standard requirement of university education programs. The availability of student interns is beneficial in developing future nurses and developing workforce for the Department and the community.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
This is a new activity and there are no previous Field Practicum Agreement with University of Phoenix.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
If this Agreement is not approved, students from University of Phoenix will not be place at Mariposa County Health Department and the Department will not benefit from their assistance.

FINANCIAL IMPACT:
There is no financial impact to the County General Fund.

ATTACHMENTS:
CA_MARIPosa_COUNTy_HEALTH_Department_STD_WITH_CHANGES_6.5.2017_ONGOING (DOCX)

CAO RECOMMENDATION
Requested Action Recommended
RESULT: ADOPTED [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Rosemarie Smallcombe, District I Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
AFFILIATION AGREEMENT
NURSING PROGRAMS

THIS AFFILIATION AGREEMENT ("Agreement") effective the 15th day of June, 2017 is made and entered by and between The University of Phoenix, Inc., an Arizona for profit corporation, hereinafter referred to as the ("University") and Mariposa County Health Department, an entity domiciled in the State of California hereinafter referred to as the ("Agency").

WHEREAS, University is a duly accredited institution of higher learning that grants degrees in the field of Nursing to students who have satisfactorily completed its course of instruction; and

WHEREAS, University desires the cooperation of Agency and its staff in the development and implementation of a Nursing Educational Experience for its students ("Students") that is an integral component of the University’s Nursing Program; and

WHEREAS, Agency is willing to allow Students access to its premises under the terms and conditions referred to herein; and

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

Part I
DEFINITIONS

1. University Representative shall mean the member of the University faculty designated by the University who coordinates a Student’s Nursing Educational Experience.

2. University Personnel shall mean employees and other agents of the University, including, but not limited to, the University’s Representative and faculty members associated with the evaluation of the Student’s Nursing Educational Experience.

3. Preceptor shall mean the designated, qualified health care professional who contracts with the Agency (either as an employee or as an independent contractor) and who has entered into an agreement with the University.

4. Student Shall mean the individual enrolled in the University’s Nursing program who is participating in his/her Nursing Educational Experience.

5. Agency shall mean the hospital, clinic, or any health care office or facility where the Student will participate in his/her Nursing Educational Experience.

6. University shall mean the University of Phoenix.
7. **Nursing Educational Experience** shall mean the portion of the Nursing program in which the Student receives training under the supervision of the Agency.

**PART II.\nRIGHTS AND OBLIGATIONS OF THE UNIVERSITY**

1. **Responsibility for Nursing Educational Experience.** University is responsible for providing educational programs accredited by appropriate agencies that include the Nursing Educational Experience; and for determining the hours, standards, administration, matriculation and promotion of the Nursing Educational Experience. University is responsible for the selection, testing, placement, and/or removal, and final grading of each Student placed with the Agency.

2. **Student Placements.** University will plan with the Agency, in advance, its schedule of Student placement to the designated areas, including dates and numbers of Students.

3. **Advise Students of Their Obligations.** University agrees to inform Students that Students shall be responsible for following Agency regulations, policies, and procedures.

4. **Responsibility University Personnel.** Except as otherwise set forth herein, University agrees that it shall remain solely responsible for the acts or omissions of University Personnel.

5. **Program Objectives and Program Handbook.** University agrees to provide to Agency a copy of the course objectives and skills checklist (if appropriate) for the Nursing Educational Experience and a copy of the appropriate Nursing Program Handbook.

6. **Health Standards.** Participating University Personnel and Students shall be required to comply with the minimum lawful health standards set forth in writing by the Agency and provided to the University.

7. **Availability of University Personnel.** University shall ensure that University Personnel are reasonably available to the Agency for consultation during a Student Nursing Educational Experience in a manner that is acceptable to both parties. University shall designate a University Representative and shall provide Agency and, if applicable, Preceptor notice of the name of the University Representative.

8. **Communication.** University shall maintain ongoing communications with the Agency during the Student Nursing Educational Experience at Agency.

**PART III.\nRIGHTS AND OBLIGATIONS OF AGENCY**

1. **Learning Experiences.** Agency agrees to cooperate with University in providing learning experiences for Students that meet the standards of professional accrediting agencies and State agencies, that meet the stated objectives of the University's Nursing Educational Experiences, and that effectively facilitate the Students' learning process.

2. **Supervision.** Agency agrees that all Nursing Educational Experiences will be under the supervision of the agency or, if applicable, a Preceptor. If the Nursing Educational Experience requires a Preceptor, Agency shall provide the Preceptor or other personnel approved by the Agency to supervise Students. The Preceptor will be the resource person for the Students in the clinical setting and will: (a) supervise and observe the Nursing Educational Experience of the Student; (b) instruct the Student regarding all applicable Agency policies and procedures; (c) facilitate adequate exchange of information between University Personnel and Agency staff; and (d) instruct Students regarding changes in Agency regulations, policies and procedures.
3. **Notice of Changes in Health Standards.** Agency shall promptly provide to University written notice of any changes in Agency’s minimum health standards.

4. **Compliance with Agency Policy and Procedures.** Students are subject to the authority, policies, and regulations of the University, provided, however, that during the Nursing Educational Experience Students also are subject to applicable Agency regulations, policies and procedures. Agency agrees to provide to University Personnel and Students the Agency’s policies, procedures and other relevant materials that will allow Students to safely and effectively participate in the treatment of Agency patients. Agency policies, procedures, and/or regulations will govern in the event that such policy, procedure, and/or regulation conflicts with a University policy, procedure and/or regulation until such time as the parties develop a mutually agreeable policy, procedure and/or regulation.

5. **Access to Library Facilities.** Agency shall permit Students access to library facilities available to Agency personnel. Students may not remove materials from the Agency without appropriate approval.

6. **Patient Care and Liability.** Agency understands and agrees that it shall be solely responsible for providing health care services for all its patients including patients involved in the Nursing Educational Experience with Students. Agency shall not approve nor allow any direct, hands-on patient care by any Student without the approval and consent of the patient and unless said care is provided under the direct supervision of qualified Agency health care staff and in conformance with all applicable laws, rules, regulations, statutes, ordinances and policies. Additionally, Agency shall be solely responsible for health care services rendered by individuals who contract with the Agency (either as employees or as independent contractors). Agency will assume and maintain complete control and supervision over all its administrative and staff personnel. University shall not be liable for any claims or damages arising from patient care provided by Agency, whether or not University Personnel or Students have participated in the care at issue in the claim or suit.

7. **Inspection for Accreditation.** Agency shall, upon reasonable request, permit the University or its accrediting agencies to inspect Agency clinical facilities, records and other items pertaining to the Nursing Educational Experience.

8. **Student Progress.** Upon the reasonable request of University, Agency agrees to submit to University a written evaluation, on the form provided by the University, of each Student’s performance during the Nursing Educational Experience.

9. **Removal from Premises.** Agency shall retain the right, in its sole discretion, to request the removal from Agency premises of any University Personnel or Students.

10. **Communication.** Agency shall maintain ongoing communications with the University during the Student Nursing Educational Experience at Agency.

**PART IV. TERM OF AGREEMENT**

1. **Term.** This Agreement shall become effective on 06/15/2017 and shall remain in effect until terminated by either party in accordance with this section. 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. Notwithstanding any such termination, all Students already enrolled in and participating in the Nursing Educational Experience at the time of the notice of termination shall be given a period of time not to exceed six (6) months from the date of the notice of termination during which to complete the current course in their Nursing Educational Experience at Agency.

2. **Request for Withdrawal of Unsatisfactory Students.** Agency may request that the University withdraw from the Nursing Educational Experience any Student whose conduct or appearance inhibits desirable relationships within Agency, whose health status is a detriment, despite a reasonable accommodation, to the Student’s successful completion of the Nursing Educational
Experience, or whose performance after appropriate instruction and counseling continues to fall below the level required to maintain appropriate practice standards. University agrees to withdraw such Student at the Agency’s request.

PART V.
RECORDS

1. Confidentiality of Student Records. Agency shall keep confidential and shall not disclose to any person or entity (a) Student applications; (b) Student health records or reports; and/or (c) any student records as defined in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232G, concerning any Student participating in the Nursing Educational Experience, unless such disclosure is authorized by the Student or is ordered by a court of competent jurisdiction. Agency shall adopt and enforce policies and procedures necessary to protect the confidentiality of Student records as defined herein.

2. Maintenance of Records. University will maintain documentation on each Student’s Nursing Educational Experience for a period of at least four (4) years after said Student has completed his/her Nursing Educational Experience.

3. Confidentiality of Patient Records. University shall direct Students and University Personnel to respect the confidential nature of all health or personnel information relating to the Agency. The University shall advise all Student and University Personnel of the importance of complying with all relevant state and federal confidentiality laws, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), to the extent applicable.

PART VI.
INDEMNIFICATION

1. Indemnification. Each party (the "Indemnifying Party") shall indemnify, hold harmless, and, at the request of the other party, defend the other party (the "Indemnified Party") from and against any and all claims, losses, liabilities, costs, and expenses including reasonable attorney’s fees, established by judgment or alternative resolution award, arising from any breach of any provision of this Agreement by the Indemnifying Party or any employee, agent, or other representative of the Indemnifying Party.

2. Mutual Cooperation. University and Agency shall provide prompt notification to one another of and, to the extent allowed by law, shall reasonably cooperate with one another in the defense of, any lawsuits, claims, or threatened claims that pertain to services provided pursuant to this Agreement.

PART VII.
INSURANCE

1. University and Agency Insurance. University and Agency each shall maintain, as a minimum, Commercial General Liability Insurance written on an occurrence basis with insurance companies acceptable to the other party for limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate, as assurance of its accountability for any such losses, claims, liabilities, or expenses.

2. Student Insurance. University shall provide for each Student assigned to the Agency evidence of professional liability insurance coverage of not less than $1,000,000 per occurrence and $3,000,000 in the aggregate.

3. Evidence of Coverage. Upon written request, any party shall provide the other party with a certificate evidencing such insurance coverage.
4. **Self-Insurance.** All insurance required by University to be maintained hereunder may be provided under: (a) an individual policy; (b) a blanket policy or policies which may include other liabilities, properties and locations of University or its affiliates; (c) a plan of self-insurance, provided that University or any guarantor of University’s obligations under this Agreement maintains, during the period of such self-insurance, a net worth of at least Fifty Million Dollars ($50,000,000); or (d) a combination of any of the foregoing insurance programs.

**PART VIII. REPRESENTATIONS AND WARRANTIES**

1. Each party to this Agreement represents and warrants that (i) it has the full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby applicable to it; and (ii) it has taken all action necessary to authorize the execution, delivery and performance of this Agreement, and this Agreement has been duly executed and delivered to such party.

**PART IX. GENERAL TERMS AND CONDITIONS**

1. **Student and University Personnel Status.** This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, landlord/tenant, or association between the University and the Agency and their employees, Students, or agents, but rather is an agreement by and between two independent contractors. Each Student is placed with the Agency to receive Nursing Educational Experience as part of his/her academic curriculum; duties performed by a Student are not performed as an employee of Agency but rather in fulfillment of the academic requirements of his/her Nursing Educational Experience and are performed exclusively under direct supervision by Agency personnel. To the extent allowed under state law, neither the Agency nor the University is required to provide workers’ compensation coverage for the Students participating in the Nursing Educational Experience. University acknowledges that nothing in this Agreement shall be construed to confer any right upon the University or University Personnel to participate in, control, or direct operations at the Agency.

2. **Employment of Student by Agency.** If a Student is also an employee of Agency, such employment shall be separately negotiated by Agency and each Student. The parties agree that a Student cannot earn hours toward his/her Nursing Educational Experience during the same hours he/she is working as an Agency employee.

3. **Non-Discrimination.** Each party shall be separately responsible for compliance with all laws, including anti-discrimination laws, which may be applicable to their respective activities during the Nursing Educational Experience.

4. **Accreditation, Licensing and Credentials.** Each party to this Agreement shall be responsible for accreditation, licensing, and credentials of its entities and employees, as applicable, and each party agrees to furnish to the other evidence of such accreditation, licensing and credentials upon written request by the other.

5. **No Compensation for Services.** Each party shall pay all of its own costs associated with its participation in the Nursing Educational Experience.

6. **Interpretation.** This Agreement constitutes the entire agreement as to the rights and obligations of the parties hereto and supersedes all prior and contemporaneous agreements and undertakings of the parties pertaining to the referenced subject matter.

7. **Amendment and Assignment.** Amendments to this Agreement may be made at any time, provided, however, that any amendments, modifications or alterations shall be made only in writing and shall become effective only upon the written approval of both the Agency and the University.
Further, this Agreement may not be assigned by either party without prior written approval of the other party.

8. **Waiver.** No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

9. **Severability.** In the event that any provision of this Agreement shall be held void, voidable, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect in accordance with its terms disregarding such unenforceable or invalid provision.

10. **No Establishment of Third Party Rights.** This Agreement is not intended to create any rights or interests for any other person or entity other than the Agency or the University.

11. **Applicable Law.** This Agreement will be governed by the laws of the State of Arizona and shall in all respects be interpreted, enforced, and governed by Arizona laws.

12. **Disputes.** In the event any dispute or controversy ("Dispute") arising out of this Agreement cannot be settled by the parties, such Dispute shall be submitted to arbitration in Mariposa County, California. In the event the parties cannot mutually agree upon an arbitrator and procedure to settle their Dispute within fifteen (15) days after written demand by one of the parties for arbitration, then the Dispute shall be arbitrated by a single arbitrator chosen pursuant to the applicable rules of the National Health Lawyers Association Dispute Resolution Service ("DRS") (or, if not then in existence, the American Arbitration Association ("AAA"). The decision of the arbitrator shall be final, binding and non-appealable for all purposes and judgment to enforce any such binding decision may be entered in Superior Court, Mariposa County, California and for this purpose, each party expressly and irrevocably consents to the jurisdiction of said court. In all other respects, the arbitration shall be conducted pursuant to the then existing rules and regulations of the DRS (or, if not then in existence, the AAA) to the extent such rules and regulations are not inconsistent with such Act or this Agreement.

13. **Counterparts and Electronic Signatures.** The Agency and the University may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. This Agreement may be executed by facsimile or PDF. Said facsimile or PDF shall be deemed an original and fully enforceable and admissible in any legal proceeding. Delivery of an executed counterpart signature page by facsimile or PDF is as effective as executing and delivering this Agreement in the presence of the other party to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party(ies). In proving this Agreement, the Agency or the University must produce or account only for the executed counterpart of the party to be charged.

Notwithstanding the foregoing, the Agency and the University may consent to the use of electronic signatures for the purpose of executing this Agreement by email or other electronic means, subject to compliance with any applicable laws, rules or regulations. Any such documents that are delivered electronically and accepted are deemed to be “in writing” to the same extent and with the same effect as if the Agreement had been signed manually. In no event will electronic execution expand such assent to include any terms other than those explicitly set for in this Agreement.

14. **Notices.** Any notice given under this Agreement may be given by personal delivery, overnight air express, or certified United States mail, return receipt requested. Notice shall be deemed to be given either (a) upon actual receipt, if the notice is by personal delivery or by overnight air express; or (b) five (5) business days after mailing, if the notice is by United States mail, return receipt requested. Notice under this Agreement shall be given in writing to the parties at the following addresses or to such other persons or places as either party may from time to time designate by written notice to the other party.
School of Nursing
1625 Fountainhead Parkway, CF-SX07
Tempe, AZ 85282-2371

With a copy to:
University of Phoenix
Apollo Legal Services
4025 S. Riverpoint Parkway
Mail Stop CF-K612
Phoenix, AZ 85040

If to the Agency:
Mariposa County Health Department
5085 Bullion Street (P.O. Box 5)
Mariposa, CA 95338

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first subscribed above.

UNIVERSITY:

Lisa Radesi, DNP, RN
Name

Academic Dean, School of Nursing
Title

8/30/2017
Date

AGENCY:

Signature

Dr. Eric Sergiento
Name

Health Officer
Title

8/31/2017
Date

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL