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New Hampshire Board of Medicine

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WEB SITE: www.nh.gov/medicine

June 4, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Board of Medicine to enter into an agreement with Douglas M. Black, M.D., 156 Little Pond Road, Concord, NH 03301 (Vendor Number 152912), in an amount not to exceed \$28,800, to serve as Physician Investigator of the Medical Review Subcommittee (MRSC) for a period of two years effective July 1, 2013 through June 30, 2015. 99% General Funds: 1% Impaired Physician Program and Agency income from Xeroxing costs.

Funds shall be contingent upon the availability and continued appropriation of funds, available from the following FY 2014 and FY 2015 accounts.

	<u>FY12</u>	<u>FY13</u>
05-74-74-740510-7400, HHS Attached Boards, Board of Medicine Administration		
050-500109 Personal Service/Temp Appoint	\$14,400	\$14,400

EXPLANATION

Chapter 170 of the Laws of 1998 directs the Board to employ a physician as MRSC administrator, now MRSC investigator pursuant to Chapter 0021 of the Laws of 2008, on either a part time or full time basis at the discretion of the Board. The investigator is to assist in reviewing and investigating possible violations of the Medical Practice Act, RSA 329.

Because state employment was not provided for by Chapter 170 Laws of 1998, the Board is required to seek an independent contractor to perform the required services. Accordingly, the Board advertised for bids in the Manchester Union Leader and the Concord Monitor on March 8, 2013. The Board received a bid from Douglas M. Black, M.D. (\$1,200/month based on 30 hours per month). Dr. Black was the only bidder. The bid proposal, as submitted by Dr. Black, was accepted by the Board at its meeting on May 1, 2013. Attached is the proposal submitted by Dr. Black.

Your approval of this request will be appreciated.

Respectfully submitted,

Penny Taylor
Penny Taylor
Administrator

\pt
Enclosures

Subject: Consultant Agreement for the Board of Medicine's Physician Investigator FORM NUMBER P-37 (version 1/09)

AGREEMENT
The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Board of Medicine		1.2 State Agency Address 2 Industrial Park Drive, Suite 8, Concord, NH 03301	
1.3 Contractor Name Douglas M. Black, M.D.		1.4 Contractor Address 156 Little Pond Road, Concord, NH 03301	
1.5 Contractor Phone Number (603) 224-1535	1.6 Account Number 10-07400-74050000-500109	1.7 Completion Date 6/30/2015	1.8 Price Limitation \$28,800/2 years
1.9 Contracting Officer for State Agency Penny Taylor		1.10 State Agency Telephone Number (603) 271-1205	
1.11 Contractor Signature <i>Douglas M. Black</i>		1.12 Name and Title of Contractor Signatory Douglas M. Black, M.D., Physician	
1.13 Acknowledgement: State of <u>N.H.</u> , County of <u>Merrimack</u> On <u>5-14-13</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] <i>Dori Lefebvre</i>		DORI B. LEFEBVRE Justice of the Peace - New Hampshire My Commission Expires March 6, 2018	
1.13.2 Name and Title of Notary or Justice of the Peace Dori Lefebvre, Investigator			
1.14 State Agency Signature <i>Penny Taylor</i>		1.15 Name and Title of State Agency Signatory Penny Taylor, Administrator	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
* 1.17 Approval by the Attorney General (Form, Substance and Execution) By: <i>Jason E. Horn</i> On: <i>3 Jun 2013</i> <i>JEANNE P. HERRIN, ATTORNEY</i>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials MB
Date _____

5/14/13

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials MB
Date 5/14/13

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials DB
Date 5/14/13

RE: Physician Investigator Contractor – NH Board of Medicine

EXHIBIT A
("The Services")

SCOPE OF WORK: The Contractor is responsible for investigations concerning complaints of quality of care, unprofessional conduct, and other issues as may be assigned by the Medical Review Subcommittee, which may constitute violations of the Medical Practice Act, RSA 329.

The Contractor shall:

1. Monitor and review all investigations conducted by the Medical Review Subcommittee (MRSC) on a timely basis;
2. Conduct specific investigations as required;
3. Coordinate information flow between members of the MRSC, its staff, its attorneys, and outside consultants;
4. Analyze and evaluate medical records to identify possible areas of substandard care or unprofessional conduct, and arrange for expert consultants when appropriate;
5. Provide assistance in settling and prosecuting of misconduct allegations;
6. Work cooperatively with members of the MRSC in case resolution;
7. Attend monthly MRSC meetings;
8. Prepare written and oral reports for the MRSC and the Attorney General's Office;
9. Testify at disciplinary hearings when warranted;
10. Perform other duties as necessary within the scope and responsibilities as designated by the Board or the MRSC.

EFFECTIVE DATES: The contract shall commence on July 1, 2013, if approved by Governor and Council, and shall terminate June 30, 2015.

EXHIBIT B
(Contract Price and Payment)

The contract price shall not exceed \$28,800 during the term of the contract.

The Contractor shall be paid at an hourly rate of \$40.00 per hour with a minimum of 20 hours, and a maximum of 30 hours, of work per month. The Contractor shall submit invoices to the Board on a monthly basis in sufficient detail and will include, as a minimum, the number of hours worked and the nature of the work performed. All Board-approved invoices submitted for payment will be paid within 30 days of receipt.

EXHIBIT C
(Special Provisions)

The provisions of Paragraph 14 are deleted as inapplicable.

BIDDER'S LIST

DOUGLAS M. BLACK, M.D.
156 Little Pond Road
Concord, NH 03301

\$40 per hour

**Douglas M. Black, M.D.
156 Little Pond Road
Concord, NH 03301
(603) 224-1535**

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March 26, 2013

Mark Sullivan, P.A., President
NH Board of Medicine
2 Industrial Park Drive, Suite 8
Concord, NH 03301

Dear Mr. Sullivan:

This is in response to Ms. Penny Taylor telling me it is time to reapply for the position of Physician Investigator of the Medical Review Subcommittee ("MRSC") to the NH Board of Medicine ("Board").

I am very happy to reapply because I have very much enjoyed filling that position since October 2005.

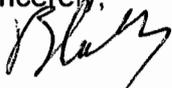
I have been associated with the Board for many years. I was president of the Board when the MRSC was established. The Board is one of my passions.

My experience and free time allows me to do a good job and I enjoy the position very much. I am proud to be associated with the Board.

My requested compensation would be \$40.00 per hour for a thirty-hour work month.

Please find attached a copy of my curriculum vitae. Thank you for your consideration.

Sincerely,



Douglas M. Black, M.D.
Physician Investigator
NH Board of Medicine

CURRICULUM VITAE
Douglas M. Black, M.D.

PERSONAL:

Over 50 years old. Married since 1957, 5 children, 4 grandchildren

TRAINING:

University of Vermont College of Medicine, 1956

Internship:

Indiana University Medical Center, 1956-1957

OB-GYN Residency:

Women's Hospital, New York, NY 1959-1963

MILITARY:

U.S. Air Force, 1957-1959, Captain

PROFESSIONAL ORGANIZATIONS:

Diplomate, American Board of OB-GYN

Fellow, American College of OB-GYN

PROFESSIONAL EXPERIENCE:

Founder & Senior Partner, Concord OB-GYN, PA

Past President, Concord Hospital Medical Staff

Past Chief of OB-GYN, Concord Hospital

Assistant Professor, OB-GYN, Dartmouth Medical School

Past President, NH Board of Registration in Medicine & Chair of Medical Review Subcommittee

GYN Consultant at New Hampshire Hospital

Impaired Physician Task Force at Concord Hospital

Past Medical Director, Concord Feminist Health Center

AWARDS:

Excellence in Teaching Award from Dartmouth Medical School, 1994, 1998 & 2000

Champion of Choice Award, 1996

Community Service Award, ACOG, 2001

COMMUNITY:

Church: Active in the Episcopal Church at local, state and national level

Board of Directors of:

The YMCA, Music School

Capital Center for the Arts

American Cancer Society

N.H. Highland Games

St. Andrews Society

Granite State Symphony Orchestra

Co-founder of the Merrimack Valley Scottish Country Dancers

Chair, Concord Area Task Force Against Racism & Intolerance

Concord City Councilor At Large

**LEGAL NOTICE
INVITATION FOR BIDS**

Physician/Consultant, New Hampshire Board of Medicine

The New Hampshire Board of Medicine (Board) is soliciting written proposals from qualified physicians to serve as a consultant/investigator to the Medical Review Subcommittee (MRSC). The Physician shall be responsible for investigating quality of care issues including, but not limited to, medical malpractice suits, matters of incompetence, unprofessional conduct, consumer complaints, and other issues which may constitute violations of the Medical Practice Act.

Qualifications

The Physician must hold a current unrestricted license to practice medicine in the State of New Hampshire. Previous experience in quality assurance, medical/legal investigations are helpful but not necessary. Must have good written and oral communication skills and be able to effectively interact with varied and diverse groups.

Instructions

Physicians interested in entering into a contract with the Board should submit a current Curriculum Vitae, anticipated compensation, and a statement setting forth a method to accomplish the objectives listed above. Each proposal submitted will be evaluated on the basis of experience and cost. The final bidders will be required to have a full Board interview.

All inquiries must be received in writing to Penny Taylor, Administrator, New Hampshire Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, NH 03301-8520. Tel. (603) 271-1205. Deadline for submitting proposals is April 15, 2013. All verbal inquiries must be followed up in writing. Hiring is dependent upon availability of funds and Governor & Council approval.

EQUAL OPPORTUNITY EMPLOYER

ORGANIZATIONAL CHART

