

52-13



# New Hampshire Veterans Home

139 Winter Street  
Tilton, NH 03276



Margaret D. LaBrecque  
Commandant

Phone: (603) 527-4400  
Fax : (603) 527-4402

June 6, 2014

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

*Retroactive*

### REQUESTED ACTION

Authorize the New Hampshire Veterans Home to exercise a **retroactive** contract renewal option with Tilton Medical Associates, P.L.L.C. (Vendor # 155230), 243 East Main Street, Tilton NH 03276, by increasing the contract amount by \$352,745.28 from \$523,896.48 to \$876,641.76 for the sole purpose of providing medical care to the residents of the New Hampshire Veterans Home effective the date of Governor and Council or July 1, 2014, whichever is later through June 30, 2016. Funding source is 38% Federal, 44% Agency Income, and 18% General Funds.

Funds are available in account titled 05-43-43-430010-5359, New Hampshire Veterans Home, Professional Services, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified.

	<u>FY 2015</u>	<u>FY2016</u>	<u>Total</u>
#-046-500462 Non Benefited Med-Consultants	\$176,372.64	\$176,372.64	\$352,745.28

### EXPLANATION

This contract is retroactive due to the time it took to get all paperwork processed. This contract provides for medical director services to the residents of the Veterans Home. Tilton Medical Associates, P.L.L.C. has provided physician services and has been responsible for the 24/7 medical care of our residents in conformance with the Department of Veterans Affairs' level of care. These services have been provided satisfactorily for twenty nine years resulting in a well-established professional relationship with the residents.

This contract has been approved by the Attorney General's Office as to form, substance and execution.

Respectfully Submitted,

*Margaret D LaBrecque*

Margaret D. LaBrecque  
Commandant



AMENDMENT OF AGREEMENT BETWEEN  
THE NEW HAMPSHIRE VETERANS HOME  
AND  
Tilton Medical Associates, P.L.L.C.

This Amendment to Agreement (hereinafter called the "Amendment"), dated this 8th day of May, 2014, by and between the State of New Hampshire, acting by and through the New Hampshire Veterans Home (hereinafter called "NHVH"), and Tilton Medical Associates, P.L.L.C., 243 East Main Street, Tilton, NH , 03276, vendor number 155230 (hereinafter called the "Contractor").

WHEREAS, pursuant to an Agreement dated May 31, 2011, the Contractor has agreed to provide certain services upon the terms and conditions specified in the agreement, in consideration of payment by NHVH of certain sums specified therein; and

WHEREAS, pursuant to Contract Terms of the agreement may be amended, waived or discharged only be an instrument in writing signed by the parties thereto and only after such approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

WHEREAS, NHVH and the Contractor have agreed to amend the agreement in certain respects;

NOW THEREFORE, in consideration of the foregoing and of the covenants and conditions contained in the agreement and set forth herein, the parties hereto agree as follows:

1. Amendment and Modification of Agreement

The Contract is hereby amended as follows:

Paragraph 1.7, Completion Date is revised as follows:

Changed from June 30, 2014 to June 30, 2016

Paragraph 1.8, Price Limitation is revised as follows:

Increased by \$352,745.28 from \$523,896.48 to \$876,641.76

2. Amendment and Modification of Exhibit B

The Contract is hereby amended to include the following:

B.1 will now read:

The Home agrees to pay the Contractor the sum of \$352,745.28 over a two year period, each fiscal year is payable in 12 monthly installments not to exceed the total dollar per fiscal year.

	<u>010-043-5359-046-0112</u>
FY2015	\$176,372.64
FY2016	\$176,372.64

3. Effective Date of Amendment

The effective date if this action is from the date of Governor and Council approval or July 1, 2014, whichever is later.

4. Continuance of Agreement

Except as specifically amended and modified by the terms and conditions of this Agreement, the Agreement and the obligations of the parties thereunder shall remain in full force and effect in accordance with the terms and conditions set forth therein.



IN WITNESS WHEREOF, the parties have hereunto set their hands as the day and year written below.

Margaret D LaBrecque

Margaret D. LaBrecque, Commandant, NH Veterans Home

5/8/14

Date

[Signature]

Contractor, M. Jonathan Mishcon, M.D.

5/8/14  
Date

STATE OF NEW HAMPSHIRE

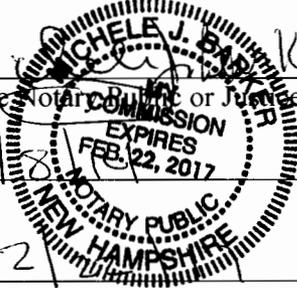
County of

The foregoing instrument was acknowledged before me on this 8<sup>th</sup> day of May, 2014, by M. Jonathan Mishcon, M.D.

[Signature]  
 Signature, Notary Public or Justice of Peace

5/8/14  
 Date

2  
 Commission Expires



Approved to as form, execution, and substance:  
OFFICE OF THE ATTORNEY GENERAL

By: [Signature]

5/28/14

Date



# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Tilton Medical Associates, P.L.L.C. is a New Hampshire limited liability company formed on July 12, 2006. I further certify that it is in good standing as far as this office is concerned, having filed the annual report(s) and paid the fees required by law; and that a certificate of cancellation has not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 1<sup>st</sup> day of May, A.D. 2014

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



**M. Jonathan Mishcon, MD, Tilton Medical Associates, PLLC**

243 East Main Street  
Professional Building  
Tilton, New Hampshire, 03276

Phone 603-286-8907  
Fax 603-286-8860

5/6/2014

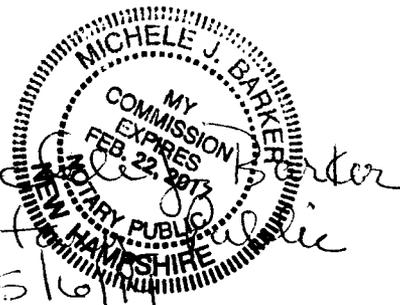
To; whom it may concern

Re: contract

Dear sir or maam

Dr Mishcon is authorized to enter into contracts for Tilton  
Medical Associates

Thank you



*JM Roy* 5-6-14  
Jason M Roy



# Medical Mutual

INSURANCE COMPANY OF MAINE  
One City Center - P.O. Box 15275 - Portland, Maine 04112-5275

## CERTIFICATE OF INSURANCE

INSURED: Merrit Jonathan Mishcon, MD  
ADDRESS: 243 East Main Street  
Tilton, NH 03276

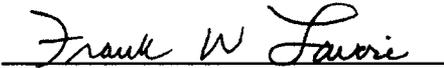
This is to certify that Medical Mutual Insurance Company of Maine has issued to the named insured the policy identified herein by policy number, policy term and limits of liability which affords Medical Professional Liability Insurance, on a claims-made policy. Actual policy limits may exceed those stated on this document. This certificate of insurance does not amend, extend or otherwise alter the terms, conditions, or limits of the insurance afforded by the policy.

RATING TERRITORY: NH  
POLICY PERIOD: 06/18/2014 to 06/18/2015 at 12:01 a.m. Standard Time  
POLICY NUMBER: NH PLP 002324  
POLICY LIMITS: \$1,000,000 Each Claim  
\$3,000,000 Annual Aggregate  
DEDUCTIBLE: None  
SPECIALTY: FP/GP - No Surgery  
RETROACTIVE DATE: 06/18/1986

ADDITIONAL INSURED:

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS:

CANCELLATION: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 10/30 days written notice to the certificate holder named below, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative.

  
Authorized Representative

CERTIFICATE HOLDER:

New Hampshire Veterans Home  
139 Winter Street  
Tilton, NH 03276-5415

Issue Date: 05/07/2014  
MM 371 (01/05)



NEW HAMPSHIRE VETERANS HOME

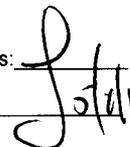
STANDARD EXHIBIT D  
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT  
BUSINESS ASSOCIATE AGREEMENT

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall mean the Contractor and subcontractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the State of New Hampshire, Veterans Home.

BUSINESS ASSOCIATE AGREEMENT

(1) Definitions.

- a. "Breach" shall have the same meaning as the term "Breach" in Title XXX, Subtitle D. Sec. 13400.
- b. "Business Associate" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- c. "Covered Entity" has the meaning given such term in section 160.103 of Title 45, Code of Federal Regulations.
- d. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.
- e. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.
- f. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.
- g. "HITECH Act" means the Health Information Technology for Economic and Clinical Health Act, Title XIII, Subtitle D, Part 1 & 2 of the American Recovery and Reinvestment Act of 2009.
- h. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160, 162 and 164.
- i. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).
- j. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.



- k. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- l. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.
- m. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.
- n. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C, and amendments thereto.
- o. "Unsecured Protected Health Information" means protected health information that is not secured by a technology standard that renders protected health information unusable, unreasonable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute.
- p. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time, and the HITECH Act.

**(2) Use and Disclosure of Protected Health Information.**

- a. Business Associate shall not use, disclose, maintain or transmit Protected Health Information (PHI) except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use, disclose, maintain or transmit PHI in any manner that would constitute a violation of the Privacy and Security Rule.
- b. Business Associate may use or disclose PHI:
  - I. For the proper management and administration of the Business Associate;
  - II. As required by law, pursuant to the terms set forth in paragraph d. below; or
  - III. For data aggregation purposes for the health care operations of Covered Entity.
- c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to notify Business Associate, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402 of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying Covered Entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.



- e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions over and above those uses or disclosures or security safeguards of PHI pursuant to the Privacy and Security Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions and shall abide by any additional security safeguards.

**(3) Obligations and Activities of Business Associate.**

- a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving Covered Entity data, in accordance with the HITECH Act, Subtitle D, Part 1, Sec. 13402.
- b. The Business Associate shall comply with all sections of the Privacy and Security Rule as set forth in, the HITECH Act, Subtitle D, Part 1, Sec. 13401 and Sec.13404.
- c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy and Security Rule.
- d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)b and (3)k herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's intended business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this Agreement for the purpose of use and disclosure of protected health information.
- e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a Designated Record Set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.
- g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

- h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.
- i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.
- j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy and Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.
- k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity, all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, 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. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity 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.

*Handwritten initials/signature*

(5) **Termination for Cause**

In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit D. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(6) **Miscellaneous**

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy and Security Rule, and the HITECH Act as amended from time to time. A reference in the Agreement, as amended to include this Exhibit D, to a Section in the Privacy and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy and Security Rule, and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, the Privacy and Security Rule and the HITECH Act.
- e. Segregation. If any term or condition of this Exhibit D or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit D are declared severable.
- f. Survival. Provisions in this Exhibit D regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3D, the defense and indemnification provisions of section 3D and standard contract provision #13, shall survive the termination of the Agreement.

Contractor Initials: \_\_\_\_\_  
Date:  \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit D.

NEW HAMPSHIRE VETERANS HOME  
The State Agency Name

TILTON MEDICAL ASSOCIATION P.L.L.C.  
Name of the Contractor

Margaret D Labrecque  
Signature of Authorized Representative

J 5/6/14  
Signature of Authorized Representative

MARGARET D. LABRECQUE  
Name of Authorized Representative

M? JONATHON MISHCON  
Name of Authorized Representative

COMMANDANT  
Title of Authorized Representative

OWNER/ M.D.  
Title of Authorized Representative

5/8/14  
Date

5/6/14  
Date



# New Hampshire Veterans Home

139 Winter Street  
Tilton, NH 03276



Barry E. Conway  
Commandant

Phone: (603) 527-4400  
Fax : (603) 527-4402

June 28, 2011

G+C 7/13/11  
# 99

His Excellency, Governor John H. Lynch  
And the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Authorize the New Hampshire Veterans Home to enter into a retroactive contract with Tilton Medical Association P.L.L.C. (Vendor # 155230), 243 East Main Street, Tilton NH 03276, in the amount of \$ 523,896.48 for the sole purpose of providing medical care to the residents of the New Hampshire Veterans Home effective July 1, 2011 through June 30, 2014. Funding source is 38% Federal, 44% Agency Income, and 18% General Funds.

Funds are available in account titled 05-43-43-430010-5359, New Hampshire Veterans Home, Professional Services, as follows with the authority to adjust encumbrances in each of the State fiscal years through the Budget Office if needed and justified.

	<u>FY 2012</u>	<u>FY2013</u>	<u>FY2014</u>	<u>Total</u>
#-046-500462 Non Benefited Med -Consultants	\$172,897.44	\$174,626.40	\$176,372.64	\$523,896.48

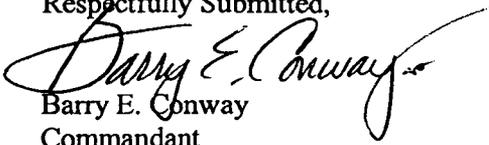
### EXPLANATION

This contract provides for medical director services to the residents of the Home. In May 2011, the New Hampshire Veterans Home advertised for bids on the State of NH Purchase and Property web site as well as the New Hampshire Veterans Home web site for Medical Director Services. Tilton Medical Association P.L.L.C. was the only vendor to respond to this RFP. M. Jonathan Mishcon, M.D., has been our Home Physician responsible for the 24/7 medical care of our residents to conform to the Department of Veterans Affairs' level of care. Dr. Mishcon has provided this service satisfactorily for twenty seven years and has developed a professional relationship with the residents. The Home is confident in the credentials of this contractor and as such feels comfortable awarding this contract. This contract includes a two-year extension option that may be exercised at the end of the three year term with Governor and Council approval

This contract is retroactive due to the time it took for the Home to put the contract out to bid and the contractor to gather all necessary documents.

This contract has been approved by the Attorney General's Office as to form, substance and execution. Your favorable action on this request would be appreciated.

Respectfully Submitted,

  
Barry E. Conway  
Commandant



Subject:

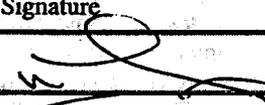
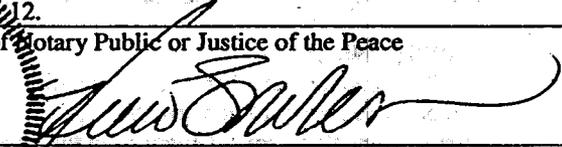
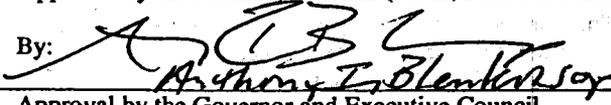
Medical Director Services for the NH Veterans Home residents

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NEW HAMPSHIRE VETERANS HOME		1.2 State Agency Address 139 WINTER STREET, TILTON, NH 03276	
1.3 Contractor Name Tilton Medical Association P.L.L.C.		1.4 Contractor Address 243 Main Street, Tilton NH 03276	
1.5 Contractor Phone Number 603-286-8907	1.6 Account Number 10-04300-5359-046-500462	1.7 Completion Date 6/30/2014	1.8 Price Limitation 523,896.48
1.9 Contracting Officer for State Agency Margaret D. LaBrecque		1.10 State Agency Telephone Number 603-527-4840	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory M. JOVANOVIC M.D. MICHON, D	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>BELKNAP</u> On <u>5/31/2011</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proved 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 			
1.13.2 Name and Title of Notary or Justice of the Peace JAMES OWEN NOTARY PUBLIC			
1.14 State Agency Signature Margaret D LaBreeque		1.15 Name and Title of State Agency Signatory Margaret D. LaBrecque, Business Administrator IV	
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:  On: 8/25/2011			
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 \_\_\_\_\_  
Date 5/31/06



**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

5/3/11  
Date



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 \_\_\_\_\_  
Date \_\_\_\_\_



**EXHIBIT A**  
**SCOPE OF SERVICES**

**A. Scope Of Services:**

The New Hampshire Veterans Home proposes to enter into an agreement with a contractor to provide primary care and medical director services, a contractor who will establish policies for medical practice, coordinates medical care and who assures the appropriateness of medical care to all residents within the facility. All services provided by the contractor under this contract shall be provided by M. Jonathon Mishcon MD, unless otherwise agreed to by the parties.

1. The Contractor shall provide the following services:

*S 6/29/11*

- a) Perform all duties and render such services required to maintain the health and physical welfare and potential rehabilitation of all residents at the Home. Contractor shall maintain the necessary charts, orders and other adequate records pertaining thereto determine the medical eligibility of each applicant for admission and advise the Home as to any diagnosis of applicants which, in his opinion, would be appropriate for admission to the Home.
- b) Hold sick call five times a week and insure that all residents are examined once a month if their physical and mental condition warrants. Such record of examination shall include the ordering of lab work and chest x-rays, if deemed necessary in the physician's opinion. Such record to be on file in the Home.
- c) Be on call 24 hours per day and or provide comparable medical coverage in his absence by a licensed physician who has been credentialed and pre-approved in writing by the New Hampshire Veterans Home.
- d) Respond to every call within 2 ½ hours and be able to come to the New Hampshire Veterans Home within 2 ½ hours for an emergency.
- e) Confirm and countersign within 24 hours, any emergency orders received by telephone by the Charge Nurse. Assure all orders meet OBRA and U.S. Department of Veterans Affairs standards of nursing home care.
- f) Be responsible for setting up emergency drug trays and cooperate with the Director of Nursing in preparation of any in-service training program.
- g) Participates in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services. Serve on Quality Assurance Committee and provide consultation for Infection Control.
- h) Shall be able to admit to Franklin Regional Hospital and or Lakes Region General Hospital and a Skilled Nursing Facility and provide care in Franklin Regional Hospital and or Lakes Region General Hospital and Skilled Nursing Facility care at no charge to resident and provide comprehensive discharge instructions on hospital/SNF discharge (that covers diet, activity, Vital Signs, laboratory, medications, code status, O2 and New Hampshire Veterans Home standard orders.)
- i) Shall maintain communication with the appropriate family member or guardian every day while residents are in the physician's care at the hospital.



**EXHIBIT A**  
**SCOPE OF SERVICES cont.**

- j) Shall have advanced gero-pharmacology knowledge. Membership with the American Geriatrics Society and the American Medical Director Societies for Nursing Homes are preferred.
  - k) Evaluate the Home's equipment and services and make recommendations to the Administrator whenever patient care might be improved.
  - l) Conduct annual physicals on all residents and provide pre-employment physicals for all prospective employees.
  - m) Provide oversight of additional contracted and credentialed physicians.
2. The Contractor shall conduct his work so as to interfere as little as possible with State business, determine the State's normal working conditions and activities in progress and shall conduct the work in the least disruptive manner.
  3. The Contractor shall sign in and out every day as well as wear a contractors ID badge, provided by State.
  4. The New Hampshire Veterans Home reserves the right to terminate this contract at any given time with a 30 day written notice.
  5. This contract includes a two-year extension option that may be exercised at the end of the three-year term with Governor and Council approval.
  6. The contract and all obligations of the parties there under, shall become effective upon acceptance by the State and shall be completed in their entirety prior to a specified date (Block 1.6). Any work undertaken by the contractor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Contractor for any such work. The term of the contract shall be effective upon Governor and Executive Council Approval through June 30, 2014. With the option of extending for one (1) two (2) year period.





**EXHIBIT B**  
**BUDGET AND METHOD OF PAYMENT**

Contractor hereby offers to provide medical director services to the NHVH in accordance with all of the requirements of this contract at the following prices for the entire contract term:

Year 1 (Total amount invoiced monthly) \$ <u>14,408.12 x 12 months =</u>	\$ <u>172,897.44</u>
Year 2 (Total amount invoiced monthly) \$ <u>14,552.20 x 12 months =</u>	\$ <u>174,626.40</u>
Year 3 (Total amount invoiced monthly) \$ <u>14,697.72 x 12 months =</u>	\$ <u>176,372.64</u>
<b>Total not to exceed amount</b>	\$ <u>523,896.48</u>

The Contractor is also authorized to receive third party payments for services rendered to residents above and beyond that which is covered by this contract to the extent of any applicable insurance coverage.

The Contractor is not authorized to seek reimbursement directly from residents for services rendered.

**A. Invoicing:**

The contractor shall agree to invoice the New Hampshire Veterans Home the amount equal to the total contract price divided by 36 months on a monthly basis. Please include one original invoice and one copy. Payment will not be due until thirty (30) days after the invoice has been received at the NH Veterans Home business office.

**B. Payment:**

**Payment may be withheld if work is not performed as described under SCOPE OF SERVICES, and the immediate termination of this contract could occur.**

Unless otherwise noted on the proposal, payment will be due thirty (30) days after invoicing. A check will be issued through the State Treasurer and forwarded to the Vendor within fourteen (14) days after processing begins at the agency level. Payments will be for only what has been agreed to in the RFP. The NHVH does not pay late charges or interest.

*fsh*



**EXHIBIT C**  
**SPECIAL PROVISIONS**

1. Contractor represents and warrants that he has obtained and maintained in force all licenses and permits required by federal, state and local authorities for the performance of medical services.
2. This agreement may be cancelled by either party at any time without cause by giving a 30 day notice in writing to the other party.
3. Treatment of any injury sustained by a member or patient, which in the opinion of the Commandant, was caused by such member or patient's wanton or reckless conduct, will not be covered by this contract. These incidents will be treated as personal liabilities of the member or patient for the services rendered.
4. Contractor is aware of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and agrees to comply with its regulations concerning privacy and security.
5. Insurance and Bond: Subparagraph 14.1.1 of the General Provisions of this contract is deleted and the following subparagraph is added: "14.1.1 professional liability insurance:
  - Professional liability insurance in amounts of not less than \$1,000,000 per claim and \$3,000,000 per incident.

JSTB



## STANDARD EXHIBIT D

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164. As defined herein, "Business Associate" shall mean the Contractor and sub contractors and agents of the Contractor that receive, use or have access to protected health information under this Agreement and "Covered Entity" shall mean the New Hampshire Veterans Home.

### BUSINESS ASSOCIATE AGREEMENT

#### (1) Definitions.

a. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR Section 164.501.

b. "Data Aggregation" shall have the same meaning as the term "data aggregation" in 45 CFR Section 164.501.

c. "Health Care Operations" shall have the same meaning as the term "health care operations" in 45 CFR Section 164.501.

d. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

"HITECH ACT" means the Health Information Technology for Economic and Clinical Health. Regulations announced in Federal Register August 24, 2009 in effect as of September 23, 2009.

e. "Individual" shall have the same meaning as the term "individual" in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.501(g).

f. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, promulgated under HIPAA by the United States Department of Health and Human Services.

g. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

h. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR Section 164.501.

i. "Secretary" shall mean the Secretary of the New Hampshire Veterans Home or his/her designee.

j. Other Definitions - All terms not otherwise defined herein shall have the meaning established under 45 C.F.R. Parts 160, 162 and 164, as amended from time to time.

*gts/lf*



**(2) Use and Disclosure of Protected Health Information.**

a. Business Associate shall not use or disclose PHI except as reasonably necessary to provide the services outlined under Exhibit A of the Agreement. Further, the Business Associate shall not, and shall ensure that its directors, officers, employees and agents, do not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if so used by Covered Entity.

b. Business Associate may use or disclose PHI:

- (i) for the proper management and administration of the Business Associate;
- (ii) as required by law, pursuant to the terms set forth in paragraph d. below; or
- (iii) for data aggregation purposes for the health care operations of Covered Entity.

c. To the extent Business Associate is permitted under the Agreement to disclose PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

d. The Business Associate shall not, unless such disclosure is reasonably necessary to provide services under Exhibit A of the Agreement, disclose any PHI in response to a request for disclosure on the basis that it is required by law, without first notifying covered entity so that Covered Entity has an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.

e. If the Covered Entity notifies the Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to the Privacy Rule, the Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

**(3) Obligations and Activities of Business Associate.**

a. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, of which it becomes aware, within two (2) business days of becoming aware of such unauthorized use or disclosure.

b. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by the Agreement.

c. Business Associate shall make available all of its internal policies and procedures, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of Covered Entity to the Secretary for purposes of determining Covered Entity's compliance with HIPAA and the Privacy Rule and HITECH ACT and the Security Rule.

d. Business Associate shall require all of its business associates that receive, use or have access to PHI under the Agreement, to agree in writing to adhere to the same restrictions and



conditions on the use and disclosure of PHI contained herein, including the duty to return or destroy the PHI as provided under Section (3)k. herein. The Covered Entity shall be considered a direct third party beneficiary of the Contractor's business associate agreements with Contractor's business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates who shall be governed by standard provision #13 of this agreement for the purpose of use and disclosure of protected health information.

e. Within five (5) business days of receipt of a written request from Covered Entity, Business Associate shall make available during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI to the Covered Entity, for purposes of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.

f. Within ten (10) business days of receiving a written request from Covered Entity, Business Associate shall provide access to PHI in a designated record set to the Covered Entity, or as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR Section 164.524.

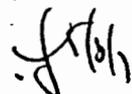
g. Within ten (10) business days of receiving a written request from Covered Entity for an amendment of PHI or a record about an individual contained in a Designated Record Set, the Business Associate shall make such PHI available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under 45 CFR Section 164.526.

h. Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

i. Within ten (10) business days of receiving a written request from Covered Entity for a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill its obligations to provide an accounting of disclosures with respect to PHI in accordance with 45 CFR Section 164.528.

j. In the event any individual requests access to, amendment of, or accounting of PHI directly from the Business Associate, the Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or the Business Associate to violate HIPAA and the Privacy Rule or HITECH ACT and the Security Rule, the Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

k. Within ten (10) business days of termination of the Agreement, for any reason, the Business Associate shall return or destroy, as specified by Covered Entity; all PHI received from, or created or received by the Business Associate in connection with the Agreement, and shall not retain any copies or back-up tapes of such PHI. If return or destruction is not feasible, or the disposition of the PHI has been otherwise agreed to in the Agreement, Business Associate shall continue to extend the protections of the Agreement, 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. If Covered Entity, in its sole discretion, requires that the Business Associate destroy any or all PHI, the Business Associate shall certify to Covered Entity that the PHI has been destroyed.

**(4) Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR Section 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals whose PHI may be used or disclosed by Business Associate under this Agreement, pursuant to 45 CFR Section 164.506 or 45 CFR Section 164.508.
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of PHI that Covered Entity 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) Termination for Cause**

In addition to standard provision #10 of this agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Exhibit D. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

**(6) Miscellaneous**

- a. Definitions and Regulatory References. All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the Privacy Rule and Security Rule, as amended from time to time. A reference in the Agreement, as amended to include this Exhibit D, to a Section in the Privacy Rule and Security Rule means the Section as in effect or as amended.
- b. Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for Covered Entity to comply with the changes in the requirements of HIPAA, the Privacy Rule, HITECH ACT, the Security Rule and applicable federal and state law.
- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be resolved to permit Covered Entity to comply with HIPAA, HITECH ACT and the Privacy Rule and Security Rule.
- e. Segregation. If any term or condition of this Exhibit D or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions

*JST/11*



which can be given effect without the invalid term or condition; to this end the terms and conditions of this Exhibit D are declared severable.

f. Survival. Provisions in this Exhibit D regarding the use and disclosure of PHI, return or destruction of PHI, extensions of the protections of the Agreement in section 3 k., the defense and indemnification provisions of section 3 d. and standard contract provision #13, shall survive the termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Exhibit D.

NEW HAMPSHIRE VETERANS HOME  
The State

Signature of Authorized Representative

BARRY E. CONWAY  
Name of Authorized Representative

COMMANDANT  
Title of Authorized Representative

6/29/11  
Date

MISKCO, N. JONATHAN  
Name of the Contractor

Signature of Authorized Representative

Name of Authorized Representative

Title of Authorized Representative

Date



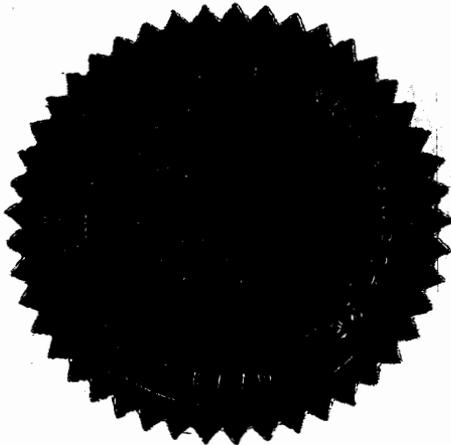
DATE BELKNAP COUNTY, STATE OF N.H.  
ON THIS 31 DAY OF MAY 2011  
BEFORE ME JONATHAN MISKCO DID PERSONALLY APPEAR  
THE PERSON SIGNING THE ABOVE SWEARS THAT IT IS  
TRUE TO THE BEST OF HIS KNOWLEDGE AND BELIEF



State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that Tilton Medical Associates, P.L.L.C. is a New Hampshire corporation duly incorporated under the laws of the State of New Hampshire on July 12, 2006. I further certify that all fees and annual reports required by the Secretary of State's office have been received and that articles of dissolution have not been filed.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 24<sup>th</sup> day of May, A.D. 2011

A handwritten signature in cursive script, appearing to read "William M. Gardner", is written over a faint, circular embossed seal.

William M. Gardner  
Secretary of State



TILTON MEDICAL ASSOCIATES, PLLC  
M. JONATHAN MISHCON M.D.

243 East Main Street  
Tilton, New Hampshire 03

---

May 20, 2011

To Whom It May Concern:

M. Jonathan Mishcon, M.D. is the sole proprietor of Tilton Medical Associates, PLLC.

M. Jonathan Mishcon, M.D. is authorized to enter into contracts on behalf of Tilton Medical Associates, PLLC.

Sincerely,



Debbie Beaudet

5/23/2011 DATE BELKNAP COUNTY, STATE OF N.H.  
ON THIS 23 DAY OF May 2011  
DEBBIE BEAUDET DID PERSONALLY APPEAR  
BEFORE ME KIM SOWLES  
THE PERSON SIGNING THE ABOVE SWEARS THAT IT IS  
TRUE TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEFS





# Medical Mutual

INSURANCE COMPANY OF MAINE  
One City Center - P.O. Box 15275 - Portland, Maine 04112-5275

## MASTER CERTIFICATE OF INSURANCE

INSURED: Merrit Jonathan Mishcon, MD  
ADDRESS: 243 East Main Street.  
Tilton, NH 03276

This is to certify that Medical Mutual Insurance Company of Maine has issued to the named insured the policy identified herein by policy number, policy term and limits of liability which affords Medical Professional Liability Insurance, on a claims made policy. This certificate of insurance does not amend, extend or otherwise alter the terms, conditions, or limits of the insurance afforded by the policy.

RATING TERRITORY: NH  
POLICY PERIOD: 06/18/2011 to 06/18/2012 at 12:01 A.M. Standard Time  
POLICY NUMBER: NH PLP 002324  
POLICY LIMITS: 1M/3M  
DEDUCTIBLE: None  
SPECIALTY: FP/GP - No Surgery  
RETROACTIVE DATE: 06/18/1986

ADDITIONAL INSURED:

DESCRIPTION OF OPERATIONS/LOCATIONS/SPECIAL ITEMS:

CANCELLATION: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 10/30 days written notice to the certificate holder named below, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representative.

CERTIFICATE HOLDERS: Anthem BCBS Of New Hampshire, Cigna HealthCare, Franklin Regional Hospital, United Health Care, New Hampshire Veterans Home, CAQH Credentialing





# State of New Hampshire 2011 ANNUAL REPORT

The following information shall be given as of January 1  
preceeding the due date Pursuant to RSA 304-C:80.

**REPORT DUE BY April 1, 2011**

ANNUAL REPORTS RECEIVED AFTER THE DUE DATE  
WILL BE ASSESSED A LATE FEE.

Filed  
Date Filed: 02/09/2011  
Business ID: 560926  
William M. Gardner  
Secretary of State

Tilton Medical Associates, P.L.L.C.

243 East Main Street  
Tilton, NH 03276

ENTITY TYPE:	PROFESSIONAL LLC
BUSINESS ID:	560926
STATE OF DOMICILE:	NEW HAMPSHIRE

<b>ADDRESS OF PRINCIPAL OFFICE:</b>
243 East Main Street Tilton, NH 03276
<b>REGISTERED AGENT AND OFFICE:</b>
Mishcon, M Jonathan 243 East Main Street Tilton, NH 03276

2  If changing the mailing or principal office address, please check the appropriate box and fill in the necessary information.

The new mailing address \_\_\_\_\_

The new principal office address \_\_\_\_\_

PO Box is acceptable.

MANAGERS	MEMBERS
NAME AND BUSINESS ADDRESS (P.O. BOX ACCEPTABLE). <u>LIST AT LEAST ONE MANAGER BELOW OR MEMBER ON RIGHT</u> <b>A</b>	NAME AND BUSINESS ADDRESS (P.O. BOX ACCEPTABLE). <u>MUST LIST AT LEAST ONE MEMBER BELOW IF NO MANAGERS</u> <b>B</b>
NAME _____	NAME <u>M. Jonathan Mishcon, M.D.</u>
STREET _____	STREET <u>243 East Main Street</u>
CITY/STATE/ZIP _____	CITY/STATE/ZIP <u>Tilton, NH 03276</u>
NAME _____	NAME _____
STREET _____	STREET _____
CITY/STATE/ZIP _____	CITY/STATE/ZIP _____
NAME _____	NAME _____
STREET _____	STREET _____
CITY/STATE/ZIP _____	CITY/STATE/ZIP _____
NAME _____	NAME _____
STREET _____	STREET _____
CITY/STATE/ZIP _____	CITY/STATE/ZIP _____
NAMES AND ADDRESSES OF ADDITIONAL MANAGERS/MEMBERS ARE ATTACHED	

4 To be signed by the manager, if no manager, must be signed by a member for the entity type of a PLLC.  
I, the undersigned, do hereby certify that the statements on this report are true to the best of my information, knowledge and belief.  
All the members and managers are qualified persons with respect to the professional limited liability company.

Sign here: \_\_\_\_\_ *M. Mishcon* 2/7/11

Please print name and title of signer: M. Jonathan Mishcon, M.D. / Member

NAME TITLE

FEE DUE: \$100.00 E-MAIL ADDRESS (OPTIONAL): \_\_\_\_\_



056092620111003

WHEN THIS FORM IS ACCEPTED BY THE SECRETARY OF STATE, BY LAW IT WILL BECOME A  
PUBLIC DOCUMENT AND ALL INFORMATION PROVIDED IS SUBJECT TO PUBLIC DISCLOSURE  
REQUIRED INFORMATION MUST BE COMPLETE OR THE REGISTRATION REPORT WILL BE REJECTED  
MAKE CHECK PAYABLE TO SECRETARY OF STATE  
RETURN COMPLETED REPORT AND PAYMENT TO:  
New Hampshire Department of State, Annual Reports, P.O. Box 9529, Manchester, NH 03108-9529



NEW HAMPSHIRE  
Corporation Division

- Search
- By Business Name
- By Business ID
- By Registered Agent
- Annual Report
- File Online

**Date:** 5/24/2011 **Filed Documents**  
(Annual Report History, View Images, etc.)

**Business Name History**

Name	Name Type
Tilton Medical Associates, P.L.L.C.	Legal

**Professional Limited Liability Company - Domestic - Information**

**Business ID:** 560926  
**Status:** Good Standing  
**Entity Creation Date:** 7/12/2006  
**Principal Office Address:** 243 East Main Street  
 Tilton NH 03276  
**Principal Mailing Address:** No Address  
**Last Annual Report Filed Date:** 2/9/2011 8:00:00 AM  
**Last Annual Report Filed:** 2011

**Registered Agent**

**Agent Name:** Mishcon, M Jonathan  
**Office Address:** 243 East Main Street  
 Tilton NH 03276  
**Mailing Address:**



FACILITY: NEW HAMPSHIRE VETERANS HOME  
SECTION: ADMINISTRATIVE AND NURSING P&P  
SUBJECT: NHVH MEDICAL DIRECTOR

POLICY

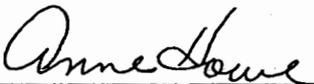
The facility management must designate a primary care physician to serve as medical director.

RATIONALE

The facility must have a medical director who establishes policies for medical practice, coordinates medical care services, and assures the appropriateness of medical care.

RESPONSIBILITIES

1. Participates in establishing policies, procedures, and guidelines to ensure adequate, comprehensive services.
2. Oversees the quality of medical care of the NHVH residents.
3. Serves as liaison to the medical community.
4. Arranges continuous physician coverage.
5. Provides emergency physician services when attending physicians and their back-ups are not available.
6. Provides oversight of additional contractors and all attending physicians.
7. Participates in managing the NHVH environment by reviewing and evaluating incident reports, identifying hazards to health and safety, and making recommendations to the administrator.
8. Monitors employees' health status and advises the administrator on employee health policies.
9. Participates in Quality Assurance and related meetings.
10. Participates in surveys by external provider and regulatory agencies.

  
\_\_\_\_\_  
Anne Howe, MS, RNC  
Director Resident Care Services

Effective Date: 12/20/07  
Revised Date: \_\_\_\_\_

Review Date: 12/2009

---

Date of Implementation: 12/20/07

