



STATE OF NEW HAMPSHIRE
NEW HAMPSHIRE BOARD OF NURSING

21 S FRUIT ST STE. 16
CONCORD NH 03301-2431

Webpage: <http://www.state.nh.us/nursing>

TDD Access: Relay NH 1-800-735-2964

43
62

Nursing 603-271-2323

Nurse Asst. 603-271-6282

November 16, 2012

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

REQUESTED ACTION

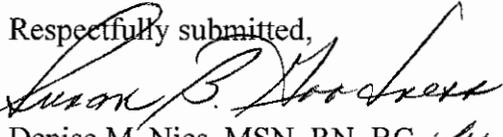
Authorize the Board of Nursing enter into a **RETROACTIVE, SOLE SOURCE** contract with the National Council of State Boards of Nursing (NCSBN), (Vendor Number 168797), Chicago, IL, in the amount of \$3,000.00 for the Board's participation in the National Licensing Compact Administrators (NLCA) from October 1, 2012 through September 30, 2013. 100% general funds.

05-74-74-743010-74300000 HEALTH AND SOCIAL SERVICES, HHS ADMIN ATTACHED BOARDS, BOARD OF NURSING

026 – 500251 MEMBERSHIP	<u>FY 2013</u>
	3,000.00

EXPLANATION

The Board of Nursing is statutorily required, pursuant to RSA 326-B:46, to be a participant in the NLCA as a multi-state compact licensing state. NCSBN is the only entity that provides NLCA in the country, thus sole source. NCSBN is a non-profit agency therefore no registration certificate from the Secretary of State is attached. This item is retroactive due to a misunderstanding by the Board of Nursing regarding Governor and Council approval.

Respectfully submitted,

Denise M. Nies, MSN, RN, BC
Executive Director *for Denise Nies*

1. How long has this organization been in existence and how long has this agency been a member of this organization

Nurse Compact Licensure Administrators (NCLA) was first implemented in Texas, Utah, and Wisconsin in January 2000. The NH Board of Nursing joined NCLA in January 2006.

2. Is there any other organization which provides the same or similar benefits which your agency belongs to?

No

3. How many other state's belong to this organization and is your agency the sole New Hampshire state agency that is a member?

NCLA has 24 Member Boards. The NCSBN membership comprises boards of nursing in: Idaho, Utah, Arizona, Colorado, New Mexico, North Dakota, South Dakota, Nebraska, Iowa, Missouri, Texas, Wisconsin, Arkansas, Mississippi, Tennessee, Kentucky, Virginia, North Carolina, South Carolina, New Hampshire, Maine, Rhode Island, Maryland and Delaware.

4. How is the dues structure established?

Standard fee for all participating States

5. What benefit does the state receive from participating in this membership?

As the collective voice of nursing regulation in the U.S. and its territories, NCLA's work encompasses:

- **Ensuring and encouraging cooperation of party states to hold each party state and nurse accountable.**
- **Promoting uniformity in regulation of nursing practice.**
- **Promoting uniform licensure requirements for nurses through the NLC framework policy and procedures that are created and approved by the NLC members.**
- **Providing greater mobility for nurses and elimination of duplication, redundancy and cost associated with application for multiple state licenses.**
- **Serving as a forum for information exchange and problem solving for members regarding nurse licensee discipline for to 1.6 million nurses within the compact states.**
- **Allowing Boards of Nursing that are NLC member states are to "flag" licensees who are under investigation. The "flag" is viewable in the database by all other NLC states. This is a public protection feature.**
- **Provision of information, under the Nursys system, related to open investigative cases as allowed by state law; whereby boards may be alerted of a person who may represent a high risk but not yet disciplined.**
- **Providing opportunities for collaboration among its members and other nursing and health care organizations, particularly in time of disaster. Hospital and hospital associations across the nation support the NLC because of this membership benefit.**

6. Are training or educational/research materials included in the membership? If so, is the cost included?

Yes.

7. Is the membership required to receive any federal grants: **No**
or required in order to receive or participate in licensing or certification exams? **No**

8. Is there any travel included with this membership fee? Explain in detail any travel to include the number of employees involved, the number of trips, destination if known, and purposes of membership supported trips. **Yes**

DELEGATE ASSEMBLY (NCLA meets the afternoon before the Assembly)

Executive Director/Board member (1 a year to different US destinations)

Mid Year Conference (NCLA meets the afternoon before the Conference)

Executive Director (1 year to different East Coast destinations)

Operations Conference Administrative Supervisor, 1 support staff member (1 yearly, usually Chicago Il.

9. Which state agency employees are directly involved with this organization?
(Indicate if they are members, voting members, committee members, and/or officers of the organization.)

All Board of Nursing Board members and Executive Director (voting members) (ED can be a committee member or officer) and Nursing Board support staff.

10. Explain in detail any negative impact to the State if the Agency did not belong to this organization.

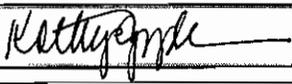
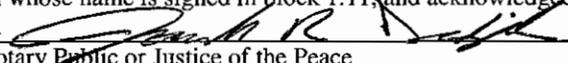
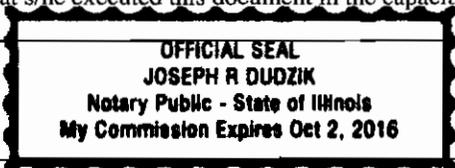
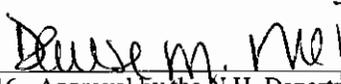
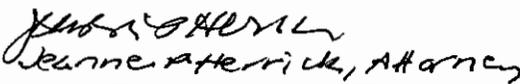
- **NH could not be a compact licensure state as stated in RSA 326 B:46.**
- **State and facility access to licensed nurses during a disaster or other time of great need for qualified nursing services would decrease without access to Nursys.**
- **NH would not benefit from the public protection features associated with Nursys and other compact member states.**

Subject: NCSBN CONTRACT (ANNUAL DUES) 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 <u>NH BOARD OF NURSING</u>		1.2 State Agency Address <u>21 S. Fruit St., Ste 16, Concord, NH 03301</u>	
1.3 Contractor Name <u>National Council State Boards of Nursing</u>		1.4 Contractor Address <u>111 E. Wacker Dr., Ste. 2900, Chicago, Illinois 60601</u>	
1.5 Contractor Phone Number <u>1-(312) 525 3600</u>	1.6 Account Number <u>10-07400-7430000-500251</u>	1.7 Completion Date <u>June 30, 2013</u>	1.8 Price Limitation <u>\$3,000.00</u>
1.9 Contracting Officer for State Agency <u>Denise M. Nies, MSN, RN, BC</u>		1.10 State Agency Telephone Number <u>(603) 271-0741</u>	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory <u>Kathy Apple, CEO</u>	
1.13 Acknowledgement: State of <u>ILLINOIS</u> , County of <u>COOK</u> On <u>SEPT. 24, 2012</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]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>JOSEPH R. DUDZIK</u>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory <u>Denise M. Nies, MSN, RN, BC Executive Director</u>	
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: <u>16 Nov. 2012</u>			
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.

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

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.

Corporate Resolution

Chief Financial Officer

I, Robert Clayborne, hereby certify that I am duly elected ~~Clerk~~^{Secretary} of
(Name)

National Council of State Boards of Nursing. I hereby certify the following is a true copy of a vote taken at
(Name of Corporation or LLC)

a meeting of the Board of Directors/shareholders, duly called and held on September 5, 2012
at which a quorum of the Directors/shareholders were present and voting.

VOTED: That Kathy Apple, CEO is duly authorized to enter a
(Name and Title)

contract on behalf of NCSBN with the
(Name of Corporation or LLC)

Board of Nursing State of New Hampshire and further is
(Name of State Agency)

authorized to execute any documents which may in his/her judgment be
desirable or necessary to effect the purpose of this vote.

I hereby certify that said vote has not been amended or repealed and remains in full
force and effect as of the September 5, 2012. I further certify that it is understood that the
State of New Hampshire will rely on this certificate as evidence that the person listed above
currently occupies the position indicated and that they have full authority to bind the
corporation to the specific contract indicated.

DATED: 11/16/2012

ATTEST: Robert Clayborne
(Name & Title)

Chief Financial Officer

NATIONAL COUNCIL OF STATE BOARDS OF NURSING

**Unanimous Written Consent
of
Directors**

The undersigned, being all of the Directors of National Council of State Boards of Nursing, a Pennsylvania not-for-profit corporation ("NCSBN"), hereby consent and agree to the following corporate actions:

1. With respect to a depository of the funds of NCSBN,

RESOLVED, that the Chief Executive Officer of NCSBN be authorized, directed and empowered to establish and maintain banking investment and brokerage accounts in the name of NCSBN with certain financial institutions (each, a "Bank"); that the officers of NCSBN be, and each of them hereby is, authorized to prepare, execute and deliver in the name and on behalf of NCSBN such resolutions, designations, applications, certificates and other documents or instruments as may be necessary to open such account; and that the Secretary of NCSBN shall deliver to the Bank a certified copy of such resolutions.

This Unanimous Written Consent of the Directors is made pursuant to applicable Pennsylvania corporate laws and shall have the same force and effect as a unanimous vote of all Directors at a duly called and constituted meeting of the Board of Directors.

* * * * *

This Unanimous Written Consent of the Directors may be executed in counterparts, and all counterparts together shall constitute a single written consent.

Dated as of September 5, 2012



Myra Broadway
President



Shirley Brekken
Vice President

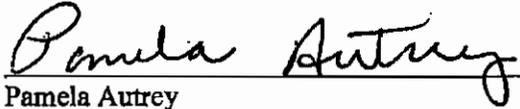
Julia George
Treasurer



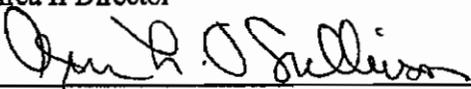
Debra Scott
Area I Director



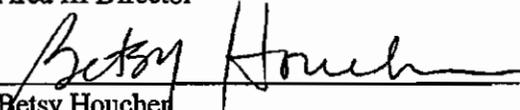
Lanette Anderson
Area II Director



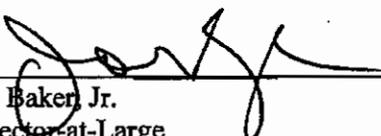
Pamela Autrey
Area III Director



Ann L. O'Sullivan
Area IV Director



Betsy Houchen
Director-at-Large



Joe Baker Jr.
Director-at-Large



Emmaline Woodson
Director-at-Large



Gloria Damgaard
Director-at-Large

NCSBN
 (NATIONAL COUNCIL OF STATE BOARDS OF NURSING, INC.)
 111 E. WACKER DRIVE, SUITE 2900
 CHICAGO, IL 60601-4277
 312.525.3600

168797 9765

Invoice	DATE	NUMBER
	6/20/2012	9765

JUN 25 2012

Billing Address
 NEW HAMPSHIRE BOARD OF NURSING
 ATTN: DENISE NIES, EXECUTIVE DIRECTOR
 21 S FRUIT STREET - SUITE 16
 CONCORD, NH 03301-2341

Service Address
 NEW HAMPSHIRE BOARD OF NURSING

FY 2013 NLCA FEE

Charge Date	Charge Code	Description	Fixed Charge	Quantity	Unit Price	Amount	Sales Tax
6/20/2012	NLCA	OCT 1, 2012 - SEPT 30, 2013	\$3,000.00	0.00	\$0.00	\$3,000.00	

7430-0251

Payment Terms: Net 30 Days

Sales Tax: \$0.00

Total: \$3,000.00

Customer ID NH
 Customer Name NEW HAMPSHIRE BOARD OF NURSING

Invoice ID 9765
 Invoice Date 6/20/2012

Charge Date	Charge Code	Description	Fixed Charge	Quantity	Unit Price	Amount	Sales Tax
6/20/2012	NLCA	OCT 1, 2012 - SEPT 30, 2013	\$3,000.00	0.00	\$0.00	\$3,000.00	

Payment Terms: Net 30 Days

Sales Tax: \$0.00

FY 2013 NLCA FEE

Total: \$3,000.00

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

OCTOBER 23, 2012

TO ALL WHOM THESE PRESENTS SHALL COME, GREETING:

I DO HEREBY CERTIFY THAT,

NATIONAL COUNCIL OF STATE BOARDS OF NURSING, INC.

is duly incorporated as a Pennsylvania Corporation under the laws of the Commonwealth of Pennsylvania and remains a subsisting corporation so far as the records of this office show, as of the date herein.

I DO FURTHER CERTIFY THAT, This Subsistence Certificate shall not imply that all fees, taxes, and penalties owed to the Commonwealth of Pennsylvania are paid.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Seal of the Secretary's Office to be affixed, the day and year above written.

Carol A. D'Amico

Secretary of the Commonwealth

Certification Number: 10821890-1

Verify this certificate online at <http://www.corporations.state.pa.us/corp/soskb/verify.asp>



111 E. Wacker Drive, Suite 2900 • Chicago, IL 60601-4277
Phone: 312.525.3601 • Fax: 312.279.1032
www.ncsbn.org/nlc

MEMORANDUM

TO: Denise M. Nies, Executive Director, NH Board of Nursing

FROM: Richard L. Masters, Special Counsel, NLCA

RE: NH Dues Explanation

DATE: 9-18-12

This memorandum is in response to your request for an explanation regarding the legal status of the Nurse Licensure Compact ("NLC"). I understand the concerns about the NLC dues payment by the State of New Hampshire and in an effort to provide appropriate explanation of the status of the governing entity of the compact and the dues requirements submit the following:

The NLC is an interstate compact which the State of New Hampshire and twenty-three (23) other states have legislatively enacted into state law. The purpose of the compact is to allow New Hampshire nurses the option of multi-state practice by providing reciprocal recognition of the privilege to practice in all compact member states under the authority of the nurse compact licensure statute. While assuring that all nurses practicing pursuant to the statute are subject to the same professional obligations and regulation by the Board of Nursing as any other nurse, the compact provides enhanced employment opportunities for New Hampshire nurses seeking to practice in other member states without being subjected to duplicative and expensive additional administrative requirements. However, because New Hampshire has enacted the provisions of the interstate compact into law, it already has a statutory obligation under the provisions of the compact statute which the legislature adopted for 'implementation of this Compact,' including the financial support of the State's participation in the governance of the compact by the Nurse Licensure Compact Administrators ('NLCA').

Unlike the National Council of State Boards of Nursing, or other such entities, the NLCA is not a private association or not for profit corporation, but is instead an interstate administrative body established under the authority of the state compact statutes to carry out the purposes of the compact. Therefore the "agreement" which binds the State of New Hampshire to the Nurse Licensure Compact is the compact statute which was enacted when New Hampshire became a compact member state.

The compact statute is actually the "contract" under which the State of New Hampshire and all other member states are obligated to pay the required dues. While an invoice from the NLCA and appropriate tax documents acknowledging the payment are certainly necessary, I am concerned that by creating and signing a separate 'contract' agreement, we would be implying that the compact statute is not enforceable or that such an additional agreement might be 'required' of all other compact member states. Instead the proffered Memorandum of Payment which has been discussed with the Office of the Attorney General of New Hampshire appears to be in keeping with the above described legal status of the compact.

ATTACHMENT B

TITLE XXX
OCCUPATIONS AND PROFESSIONS

CHAPTER 326-B
NURSE PRACTICE ACT

Section 326-B:46

326-B:46 Nurse Licensure Compact. – The nurse licensure compact is adopted and entered into with all other jurisdictions that legally join the compact, which is substantially as follows:

ARTICLE I

Findings and Declaration of Purpose

(a) The party states find that:

- (1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
- (2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
- (3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
- (4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and
- (5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are to:

- (1) Facilitate the states' responsibility to protect the public's health and safety;
- (2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- (3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;
- (4) Promote compliance with the laws governing the practice of nursing in each jurisdiction; and
- (5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

In this compact:

- (a) "Adverse action" means a home or remote state action.
- (b) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.
- (c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.
- (d) "Current significant investigative information" means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state which is the nurse's primary state of residence.

(f) "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(i) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(j) "Party state" means any state that has adopted this compact.

(k) "Remote state" means a party state, other than the home state:

(1) Where the patient is located at the time nursing care is provided; or

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(l) "Remote state action" means:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state; and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards hereof.

(m) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. The term state practice laws does not include the initial qualifications for licensure or requirements necessary to obtain and retain license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their states and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to

the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between 2 party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(b) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located;

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their states;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII

Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII

Compact Administration and Interchange of Information

(a) The head of the nurse licensing board, or his or her designee, of each party state shall be the administrator of this compact for his or her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI (d).

ARTICLE IX

Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this compact are liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article does not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

Entry into Force, Withdrawal, and Amendment

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal affects the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact may be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(d) This compact may be amended by the party states. No amendment to this compact becomes effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance may not be affected thereby. If this compact is held contrary to the constitution of any state party thereto, the compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an

individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state or states involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(2) The decision of a majority of the arbitrators shall be final and binding.

Source. 2005, 293:1, eff. July 1, 2005 at 12:01 a.m.