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STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION
OFFICE OF THE EXECUTIVE DIRECTOR

Deanna E. Jurius
Executive Director

Heather A. Kelley
Director

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November 13, 2024

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Office of Professional Licensure and Certification (OPLC), to enter into a contract with Andrew S. Wu, MD (VC# 515577), of Manchester, NH, in an amount up to and not to exceed \$30,000.00, for Expert Physician Consultant services, with the option to renew for up to an additional four (4) years, effective upon Governor and Executive Council approval through August 31, 2026.

Funds are available in the following account for Fiscal Year 2025, and are anticipated to be available in Fiscal Year 2026, upon the availability of continued appropriation of funds in the future operating budget, with the authority to adjust encumbrances between fiscal years within the price limitation through the Budget Office, if needed and justified:

01-21-21-211010-24040000	Division of Administration	<u>FY 2025</u>	<u>FY2026</u>
46-500462 – Consultants		\$15,000	\$15,000

EXPLANATION

This OPLC solicited applications for expert physician consultants with differing specialties in the medical field through a request for applications (RFA) 2024-04-DBMED, which was released on May 8, 2024, with responses due on June 7, 2024. There was only one compliant response received, from Andrew S. Wu, a physician specializing in the areas of general, laparoscopic, robotic, and bariatric surgery, with twenty years in the medial field, and currently licensed in New Hampshire.

As a physician consultant, the contractor will provide OPLC’s Enforcement Division with expert analysis of complaints and cases relating to their specific field of medicine, to ensure thorough investigation of quality of care issues which may constitute violations of NH Revised Statutes Annotated (RSA) 329:Physicians and Surgeons, 328-D:Physician Assistants, and the Administrative Rules of the Board of Medicine, MED 100-600. The Contractor shall assist OPLC staff as needed, in the timely and proficient review process of complaints, claims, suits, and other issues involving licensees where the safety of the public could be adversely affected.

In the event that Agency funds become no longer available, General Funds will not be requested to support this program.

Based on the foregoing, I am respectfully recommending approval of the contract with Andrew S. Wu, MD, of Manchester, NH.

Respectfully submitted,

Deanna E. Jurius
Executive Director

Subject: Expert Physician Consultant—General Surgery

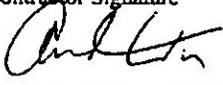
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

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

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name Office of Professional Licensure and Certification		1.2 State Agency Address 7 Eagle Square Concord, NH 03301	
1.3 Contractor Name Andrew S. Wu, MD		1.4 Contractor Address Manchester, NH 03102	
1.5 Contractor Phone Number	1.6 Account Unit and Class 27046000-046	1.7 Completion Date August 31, 2026	1.8 Price Limitation \$30,000
1.9 Contracting Officer for State Agency Jesse G. Wilcox, Contracts Administrator		1.10 State Agency Telephone Number (603) 271-6049	
1.11 Contractor Signature  Date: 9/24/24		1.12 Name and Title of Contractor Signatory Andrew Wu, MD	
1.13 State Agency Signature  Date: 10/3/24		1.14 Name and Title of State Agency Signatory Deanna E. Jurius, Executive Director	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: Sheri Phillips, AAG On: 10/7/2024			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

2. 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 B 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, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("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.

3.3 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. 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 by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source 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 C which is incorporated herein by reference.

5.2 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. 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.

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 The State's liability under this Agreement shall be limited to monetary damages not to exceed the total fees paid. The Contractor agrees that it has an adequate remedy at law for any breach of this Agreement by the State and hereby waives any right to specific performance or other equitable remedies against the State.

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 applicable 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 employment opportunity laws and the Governor's order on Respect and Civility in the Workplace, Executive order 2020-01. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of age, sex, sexual orientation, race, color, marital status, physical or mental disability, religious creed, national origin, gender identity, or gender expression, and will take affirmative action to prevent such discrimination, unless exempt by state or federal law. The Contractor shall ensure any subcontractors comply with these nondiscrimination requirements.

6.3 No payments or transfers of value by Contractor or its representatives in connection with this Agreement have or shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.

6.4. The Contractor 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 this Agreement and all rules, regulations and orders pertaining to 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 The Contracting Officer specified in block 1.9, or any successor, shall be the State's point of contact pertaining to this Agreement.

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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) calendar days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) calendar 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 give the Contractor a written notice specifying the Event of Default and 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 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) calendar days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) calendar 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. In addition, at the State's discretion, the Contractor shall, within fifteen (15) calendar days of notice of early termination, develop and submit to the State a transition plan for Services under the Agreement.

10. PROPERTY OWNERSHIP/DISCLOSURE.

10.1 As used in this Agreement, the word "Property" shall mean all data, 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.

10.2 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.

10.3 Disclosure of data, information and other records shall be governed by N.H. RSA chapter 91-A and/or other applicable law. Disclosure requires prior written approval of the State.

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.

12.1 Contractor shall provide the State written notice at least fifteen (15) calendar days before any proposed assignment, delegation, or other transfer of any interest in this Agreement. No such assignment, delegation, or other transfer shall be effective without the written consent of the State.

12.2 For purposes of paragraph 12, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.3 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State.

12.4 The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. INDEMNIFICATION. The Contractor shall indemnify, defend, and hold harmless the State, its officers, and employees from and against all actions, claims, damages, demands, judgments, fines, liabilities, losses, and other expenses, including, without limitation, reasonable attorneys' fees, arising out of or relating to this Agreement directly or indirectly arising from death, personal injury, property damage, intellectual property infringement, or other claims asserted against the State, its officers, or employees caused by the acts or omissions of negligence, reckless or willful misconduct, or fraud by the Contractor, its employees, agents, or subcontractors. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

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14. INSURANCE.

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

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all Property subject to subparagraph 10.2 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 any successor, a certificate(s) of insurance for all insurance required under this Agreement. At the request of the Contracting Officer, or any successor, the Contractor shall provide certificate(s) of insurance for all renewal(s) of insurance required under this Agreement. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

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. The Contractor shall furnish the Contracting Officer identified in block 1.9, or any 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. A State's failure to enforce its rights with respect to any single or continuing breach of this Agreement shall not act as a waiver of the right of the State to later enforce any such rights or to enforce any other or any subsequent breach.

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 unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CHOICE OF LAW AND FORUM.

19.1 This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire except where the Federal supremacy clause requires otherwise. 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.

19.2 Any actions arising out of this Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be brought and maintained in the Merrimack County Superior Court of New Hampshire which shall have exclusive jurisdiction thereof.

20. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and any other portion of this Agreement including any attachments thereto, the terms of the P-37 (as modified in EXHIBIT A) shall control.

21. THIRD PARTIES. This Agreement is being entered into for the sole benefit of the parties hereto, and nothing herein, express or implied, is intended to or will confer any legal or equitable right, benefit, or remedy of any nature upon any other person.

22. 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.

23. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

24. FURTHER ASSURANCES. The Contractor, along with its agents and affiliates, shall, at its own cost and expense, execute any additional documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the transactions contemplated hereby.

25. 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.

26. 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 with respect to the subject matter hereof.

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EXHIBIT A

Revisions/Modifications to Standard Terms and Conditions

1. Modifications to Form P-37, General Provisions:

1.1. Paragraph 3, Effective Date: Completion of Project, is amended by adding Subparagraph 3.4 as follows:

3.4. The parties may extend the Agreement for up to four (4) additional years from the Completion Date, contingent upon satisfactory delivery of services, available funding, agreement of the parties, and approval of the Governor and Executive Council.

1.2 Paragraph 14, Insurance is deleted in its entirety.

2. Definitions:

2.1. Day(s) - For the purposes of this agreement, all references to "day" or "days" shall mean business days, which are Monday through Friday excluding State and Federal Holidays, from 8:00 A.M. to 4:00 P.M. (ET).

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EXHIBIT B

Scope of Services

1. Scope of Work:

- 1.1 The purpose of this Agreement is to specify the framework and terms, conditions, safeguards, and procedures under which Andrew S. Wu (hereinafter "Contractor") agrees to assist the Office of Professional Licensure and Certification (hereinafter "OPLC") staff and the New Hampshire Board of Medicine (hereinafter "Board") by providing expert consulting services in the practice of medicine, to include the area of general surgery, to ensure thorough investigations of quality-of-care issues including:
 - 1.1.1 Malpractice Lawsuits
 - 1.1.2 Matters of Incompetence
 - 1.1.3 Unprofessional conduct allegations
 - 1.1.4 Consumer complaints
 - 1.1.5 Other issues that may constitute violations of:
 - 1.1.5.1 New Hampshire Revised Statutes Annotated (NH RSA) RSA 329: Physicians and Surgeons and NH RSA 310:12 Sanctions;
 - 1.1.5.2 The Administrative Rules of the Board of Medicine, MED CH. 100-600.
- 1.2 The Contractor must be able to receive electronic case files, as prepared and sent by OPLC.
- 1.3 The Contractor must sign an attestation that confirms no conflict of interest with the parties involved in each investigation, as assigned by OPLC.
- 1.4 The Contractor must review case file records which may include, but are not limited to:
 - 1.4.1 Office records.
 - 1.4.2 Responses to communications.
 - 1.4.3 Radiographic films.
 - 1.4.4 Reports from other agencies or states.
- 1.5 The Contractor must use report formats provided by the OPLC to complete investigations of licensees, as appropriate. The Contractor must:
 - 1.5.1 Ensure reports are completed accurately and according to the requirements of the investigation being conducted.
 - 1.5.2 Ensure completed reports are legible and any comments are clear, concise, and objective.
 - 1.5.3 Provide completed reports and supporting documentation, as applicable, to the OPLC no later than forty-five (45) days after receiving case files, unless—within thirty (30) days of the Contractor receiving the case files—an extension of time is requested by the Contractor in writing, and subsequently granted by the OPLC.
- 1.6 If a case investigated by the Contractor is scheduled for a hearing, the Contractor must be available to testify as an expert witness.
- 1.7 The Contractor must be available to meet with the Board of Medicine and other OPLC staff to discuss case lists and other matters pertaining to the cases assigned to the Contractor.

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EXHIBIT C

Method of Payment

1. Contract Price

1.1 The Contractor hereby agrees to provide expertise in complete compliance with the terms and conditions specified in EXHIBIT B for consideration of payment in an amount up to and not to exceed the amount established by Form P-37, Block 1.8, Price Limitation of this agreement.

1.2 This Agreement is funded with 100% Agency Funds.

2. Pricing Structure:

2.1 Payment will be on an hourly reimbursement rate \$150.00 per hour, inclusive of travel, for actual hours worked while accomplishing the services detailed in EXHIBIT B, Scope of Services.

3. Invoicing:

3.1 The Contractor shall submit an invoice in a form satisfactory to the OPLC once the Board has reached a decision on a case, and the Contractor's services for that case have been completed. The Contractor must:

3.1.1 Ensure each invoice is completed, signed, dated, and returned to the OPLC to initiate payment.

3.1.2 Keep detailed records of activities related to contract services, including but not limited to the dates worked, hours worked, and activities conducted during work hours.

3.2 The final invoice is due to the OPLC no later than forty (40) days after the contract completion date, as specified in Form P-37, Block 1.7.

3.3 In lieu of hard copies, all invoices may be assigned an electronic signature and emailed to finance@oplc.nh.gov; hard copies of invoices may be mailed to:

Director of Operations
Office of Professional Licensure and Certification
7 Eagle Square
Concord, NH 03301

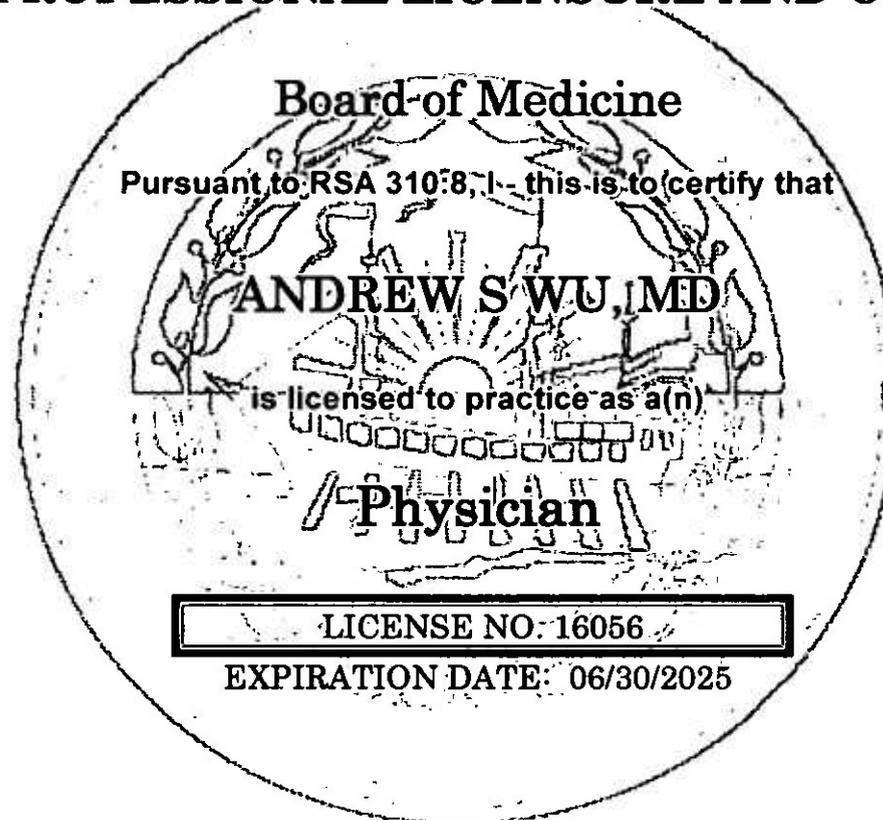
4. Payment:

4.1 The OPLC will make payment to the Contractor within thirty (30) days of receipt of each invoice, subsequent to approval of the submitted invoice and if sufficient funds are available.

4.2 Payments may be withheld pending receipt of required reports, other documentation, or testimony identified in EXHIBIT B, Scope of Services.



State of New Hampshire
OFFICE OF PROFESSIONAL LICENSURE AND CERTIFICATION



Always verify licenses online at <https://forms.nh.gov/licenseverification/>