

**RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION**

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Under the Self-Determination Contract entered into between the Three Affiliated Tribes and pursuant to P.L. 93-638, the Three Affiliated Tribes operates a kidney dialysis unit (KDU) in New Town, North Dakota for the benefit of Tribal members and others in northwest North Dakota; and

WHEREAS, It is necessary and appropriate for the Three Affiliated Tribes Kidney Dialysis Unit to utilize the professional services of a qualified physician to serve in the position of Medical Director for the Three Affiliated Tribes Kidney Dialysis Unit at New Town, North Dakota.

WHEREAS, A contract for the provision of these services has been reviewed by the Tribes' Legal Department and is ready for the signatures of the appropriate officials of each party.

NOW, THEREFORE BE IT RESOLVED that the Tribal Business Council hereby authorizes its Tribal Chairman or Vice-Chairman to execute the attached agreement for a Medical Director of the Three Affiliated Tribes Kidney Dialysis Unit between the Three Affiliated Tribes and Mid Dakota Clinic, P.C., a North Dakota professional corporation.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of seven members of whom five constitutes a quorum, 5 were present at a Regular meeting thereof duly called, noticed, convened, and held on the 12th day of September, 1996; that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 12th day of September, 1996.

Dayton Spotted Bear
Secretary, Tribal Business Council

ATTEST:

Eden Hall
Vice Chairman, Tribal Business Council

TRIBES DIALYSIS UNIT
MEDICAL DIRECTOR AGREEMENT

AGREEMENT, made and entered into this 15th day of August, 1996, by and between the Three Affiliated Tribes, a federally recognized Indian Tribe, doing business as the Three Affiliated Tribes Dialysis Unit, [hereinafter referred to as "TDU"], with its Dialysis Unit located in New Town, North Dakota, and Mid Dakota Clinic, P.C., a North Dakota professional corporation, P. O. Box 5538, Bismarck, ND 58506 [hereinafter referred to as "Mid Dakota"].

WITNESSETH

WHEREAS, TDU owns and operates a kidney dialysis unit in New Town, North Dakota; and

WHEREAS, it is necessary and appropriate for the TDU to utilize the professional services of a qualified physician to serve in the position of Medical Director for the TDU at New Town, North Dakota; and

WHEREAS, the parties hereto desire to enter into an agreement for the provision of Medical Director services at the TDU by Mid Dakota.

NOW, THEREFORE, in consideration of these premises, the parties hereto agree as follows:

1. DESIGNATION OF MEDICAL DIRECTOR. Mid Dakota hereby agrees to designate a qualified physician to serve as Medical Director for the TDU in New Town, North Dakota. Medical Director shall assume and discharge all responsibilities required for the professional

direction of the TDU. The Medical Director shall be responsible for ensuring that the provision of medical services at the TDU are in accordance with the accepted standards and administrative policies. The Medical Director shall cooperate and be responsible to the Three Affiliated Tribes with respect to the medical management of the TDU with respect to administrative issues. The physician who performs the duties of Medical Director shall be designated by Mid Dakota in consultation with the TDU. Any replacement of the physician designated as Medical Director by Mid Dakota, whether temporary or permanent, shall require the consent of the TDU. In the event that the TDU is dissatisfied with the performance of the physician designated as Medical Director by Mid Dakota, the TDU shall give at least thirty (30) days written notice to Mid Dakota, whereupon Mid Dakota, in consultation with the TDU, shall designate a successor Medical Director. The parties hereby designate Earl J. Dunnigan, M.D. to serve as the Medical Director under the terms of this Agreement.

2. **TERM.** The term of this Agreement is four years, beginning on October 1, 1996, and ending on September 30, 2000. Thereafter, this Agreement shall be automatically renewed for additional one year terms on October 1 of each year, unless either party gives at least sixty (60) days written notice prior to the expiration of the term, or any renewal term, of intent not to renew.

3. **MEDICAL DIRECTOR QUALIFICATIONS.** The physician designated by Mid Dakota, in consultation with the TDU, must be a physician who is board eligible or board certified in Internal Medicine or

Pediatrics...and has had at least 12 months of experience or training in the care of patients at ESRD facilities or who had served at least 12 months as director of a dialysis or transplantation program prior to 1976. The Medical Director is entitled to appoint a designee to act as Medical Director in his absence for the TDU, Dr. Robert Beach shall act as said designee.

The Medical Director is expected to deal with a myriad of decisions ranging from policy decisions regarding medical management of the dialysis unit's population to the technical delivery of dialysis. In performing these duties, the Medical Director relies on his/her expertise and training as a medical problem solver who knows how to seek and retrieve the appropriate information in order to arrive at a medically acceptable solution. A trained and experienced nephrologist possesses special cognitive and technical skills in the care of dialysis patients which makes the nephrologist singularly qualified to serve as the Physician-Medical Director of a dialysis facility. The physician shall at all times be duly licensed.

4. MEDICAL DIRECTOR DUTIES AND RESPONSIBILITIES. The Medical Director is the final authority in assuring that quality medical care and technical expertise are provided in the dialysis unit. The Medical Director must supervise and be responsible for the overall medical, technical, and administrative functions of the dialysis unit. This includes the creation and enforcement of the unit's standards of care and basic operating procedures. The general duties and responsibilities of the Medical Director in

these areas include:

a. MEDICAL

- (1) Coordinates the comprehensive renal health care team to ensure quality of care. This would include the establishment and implementation of policies regarding subspecialty nephrologic care (dialysis prescription, EPO, hepatitis vaccines, frequency of physician visits, etc.) as well as policies addressing the general internal medicine or pediatric care of co-morbid conditions. For the latter, many attending nephrologists have assumed the role of primary care giver.
- (2) Assures that there are written policies which address a long-term patient care plan to select the appropriate ESRD modality.
- (3) Assures that there are written policies outlining the units' programs for in-center hemodialysis, home hemodialysis, and peritoneal dialysis modalities.
- (4) Assures that the ESRD patient has appropriate consultation with a renal dietitian, renal social worker, financial counselor, and other individuals as needed.
- (5) Assures the appropriate execution of the dialysis orders and day to day patient care policy by the nursing and technical staff.
- (6) Assures attending physician education and compliance with the unit policies on patient care and technical aspects listed below.
- (7) Conducts a monthly renal consult clinic, the exact arrangements to be mutually agreed upon by TDU representative & the Mid-Dakota Medical Director.

b. TECHNICAL

- (1) Participates in the selection of treatment modalities and dialysis supplies to be offered by the facility, and advises attending physicians regarding the compatibility of their dialysis prescriptions with the options available at the facility. The selection process may include supplies for both hemodialysis (in-center, and home-) and peritoneal dialysis.
- (2) Approves policies and procedures ensuring the adequate training of nurses and technicians in dialysis science and techniques. The Medical Director should provide continuous coverage for medical and technical questions to the patient care staff, including alternative physician coverage in the event that the Medical Director is not available.
- (3) Supervises the development of a dialysis water standards policy including implementation, monitoring, and enforcement.
- (4) Supervises the development of a unit-specific policy regarding dialyzer reuse/reprocessing including implementation, monitoring and enforcement.
- (5) Supervises the development of a unit specific policy on the adequacy of dialysis which would comply with network, state, and federal guidelines. (See Quality Improvement Program below.)
- (6) Supervises the development of a unit-specific policy on

the administration of EPO and intra dialytic medications such as calcitriol and iron dextran.

c. ADMINISTRATIVE

- (1) Assures written policies and guidelines including:
 - (a) Medical records of the dialysis patient.
 - (b) Physical environment, fire and safety, and emergency preparedness of the dialysis facility.
 - (c) Communicable disease control within the unit.
 - (d) Patient care policy and procedures manual which is unit specific. This manual should represent a written plan of organization, responsibilities, and functions of each category of all personnel employed in the facility.
 - (e) Patient education program.
 - (f) Medical staff bylaws and physician credentialing, in conjunction with the unit's governing body.
 - (g) Unit specific policies for:
 - (1) Dialyzer reuse/reprocessing
 - (2) Anemia evaluation and management including guidelines for EPO administration
 - (3) Adequacy of dialysis measures
 - (4) Dialysis water standards
 - (5) Immunization guidelines for Hepatitis B and pneumococcal vaccines
 - (6) Use of I.V. Calcitriol and monitoring of renal osteodystrophy parameters

- (2) Assures Quality Improvement programs to monitor the policies previously listed. The Medical Director should participate actively in facility Quality Improvement Programs and may initiate programs to measure performance outcomes, CQI, etc., to work toward or maintain the facility's designation as a "Center of Excellence."
- (3) The Medical Director assures that all attending physicians comply with all network, state, and federal mandates applicable to the dialysis facility.
- (4) The Medical Director establishes a documented practice goal within the facility which should exceed minimal requirements to ensure optimal patient care.

5. COMPENSATION. As compensation for the services of the physician in fulfilling the duties of Medical Director, the TDU shall pay Mid Dakota as follows:

a. Payments shall be made monthly following the provision of the services by Medical Director, with the first payment to be made on November 1, 1996.

b. As compensation for the services of the physician fulfilling the duties of Medical Director, the TDU shall pay Mid Dakota the sum of Twelve Thousand Dollars (\$12,000) per year, payable in 12 equal monthly payments of One Thousand Dollars (\$1000.00) each. Such payments shall be made monthly following the services by Medical Director.

c. It is expressly stated herein, that the compensation noted in Paragraph 5. b. does not include the Continuing Ambulatory

Peritoneal Dialysis monthly fee which shall be billed directly by Mid Dakota.

6. **RESPONSIBILITIES OF THE TDU.** The TDU shall perform for the benefit of the Medical Director the following:

a. The TDU shall furnish an up to date, appropriately staffed and properly equipped kidney dialysis unit in New Town, North Dakota.

b. The TDU shall employ a fully trained and qualified staff for the kidney dialysis unit.

c. The TDU will provide the medical Director with the necessary office space, examination rooms, and other facilities as are necessary to allow the Medical Director to provide the services contemplated by this Agreement.

7. **INSURANCE.** Mid Dakota shall maintain in force, at its sole expense throughout the term of this Agreement, all necessary insurance for the physician, including liability insurance for malpractice, in form and amount acceptable to the TDU, and the TDU shall maintain all necessary insurance for the operation of the TDU, including liability insurance for malpractice of staff personnel, in form and amount acceptable to Mid Dakota. Each party shall name the other as named insured as their interests may appear. Each party shall furnish the other with a current certificate of insurance.

8. **INDEMNIFICATION.** Mid Dakota hereby agrees to indemnify and hold the TDU, its officers, employees and agents, harmless from and against any and all claims, actions, liabilities, expenses or

losses of any kind, including reasonable attorney's fees, related to the performance of Mid Dakota or the physician designated under this Agreement to act as Medical Director. The TDU agrees to indemnify and hold Mid Dakota, its officers, directors, employees and agents, harmless from and against all claims, actions, liabilities, expenses or losses of any kind, including reasonable attorney's fees, related to the performance of the TDU under this Agreement.

9. **TERMINATION.** This Agreement may be terminated upon the occurrence of any of the following events:

a. Mid Dakota shall be entitled to immediately terminate this Agreement in the event the services, equipment, staff at the kidney dialysis unit owned and operated by the TDU fails to be maintained in a manner which is satisfactory to the Medical Director.

b. By the material breach of any of the terms and conditions of this Agreement by either party, and the failure of the breaching party to correct such breach within fifteen (15) days after written notice of such breach from the nonbreaching party.

c. At the end of the initial term or any renewal term, if this Agreement is not renewed as provided in Paragraph 2.

10. **ACKNOWLEDGEMENT OF SERVICES.** It is further agreed and acknowledged by the parties as follows:

a. The physician's services as designated by Mid Dakota to serve as the Medical Director are special and unique, valuable to the TDU and, without such, the services described herein would be unavailable.

b. That the compensation set forth within Paragraph 5 of this Agreement is fixed and is not dependent upon volume and/or referrals and will be made without regard to either.

c. In addition to the TERMINATION provision contained in Paragraph 9 of this Agreement, either party may, restructure this Agreement if federal law, legislation, regulation, policies or procedures exist or might exist which will in any way make this Agreement, or any of its terms a violation of such new law, legislation, regulation, policy or procedure. In the event a renegotiation and/or restructure for this Agreement is necessary, both parties agree to deal in good faith so as to renegotiate or restructure this Agreement and if, in the event that cannot be completed within ninety (90) days after the necessity to renegotiate and/or restructure, this Agreement shall be considered void.

d. It is the intention of the parties hereto to create a physician service arrangement, personal service contract or management contract which will comply with Section 6204, The Ethics and Patient Referrals Act of 1989, the Social Security Act as amended, and the Medicare and Medicaid Patient and Program Protection Act of 1987 and to the extent of this Agreement, or any part of it does not, this Agreement shall be amended by the parties accordingly.

11. MISCELLANEOUS.

a. **Access to Books and Records.** The parties hereto each agree to make available upon the written request for the Secretary

of Health and Human Services or the Comptroller General or their representatives, this Agreement, and such books, documents and records as may be necessary to verify the nature and extent of the costs of the services rendered hereunder to the full extent required by the Health Care Financing Administration implementing Section 952 of the Omnibus Reconciliation Act of 1980, as amended, codified at 42 U.S.C.S. 1395x(V)(1)(I), or the federal regulations related thereto, or any other applicable federal or state law or regulation.

b. **Disclaimers; No Partnership or Agency.** The parties hereto shall not by virtue of this Agreement be deemed partners or joint venturers in the operation of the TDU or in any related facility. It is further understood that both parties to this Agreement are independent contractors. Neither party is, or is to be considered as an agent of the other party for any warranties or representations on behalf of the other party. The TDU specifically represents and warrants to Mid Dakota, and Mid Dakota hereby specifically acknowledges that the amounts payable under the Agreement are not in any way conditioned, directly or indirectly, upon the admission, recommendation, referral, or any other form of arrangement by Mid Dakota for utilization by patients or others of any item or service offered by the TDU. Further, under no circumstances shall the amount or value of any benefits provided under this Agreement vary, directly or indirectly, based on the volume of business generated by Mid Dakota for the TDU.

c. **Governing Law.** This agreement has been executed and

delivered in and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of North Dakota.

d. **Assignment.** No assignment of this Agreement or any of the rights or obligations set forth herein shall be valid without the specific written consent of each of the parties.

e. **Amendments.** This Agreement may not be amended except by a duly authorized amendment in writing and signed by each of the parties.

f. **Integration.** This Agreement contains the entire agreement between the parties. Neither party has relied upon any prior or contemporaneous representations, either oral or written, that are not contained in this Agreement.

g. **Waiver of Breach.** The waiver by either party of the breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision hereof.

h. **Notice.** Any notice required under this Agreement shall be given by certified mail, postage prepaid, return receipt requested, or personal delivery to the following addresses, or to such other address as the parties may specify in writing:

Three Affiliated Tribes Dialysis Unit
New Town North Dakota 58763

Mid Dakota Clinic P C
401 North Ninth Street
Bismarck North Dakota 58501-4507

OR Mid Dakota Clinic P C

Post Office Box 5538

Bismarck North Dakota 58506-5538

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed in their corporate names of the day and year first above written.

THREE AFFILIATED TRIBES, D/B/A THREE
AFFILIATED TRIBES DIALYSIS UNIT

BY: _____

Russel D. Mason, Sr.
Its: Tribal Chairperson

MID DAKOTA CLINIC, P.C.

BY: _____

Michael J. Tomasko
Its: Administrator and
Chief Executive Officer