

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	SECURITY INTEREST
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CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Pinnacle Medicine, Inc.		11/24/2004	CORPORATION: ARIZONA

RECEIVING PARTY DATA	
Name:	First International Bank & Trust
Street Address:	6840 E. Indian School Road
City:	Scottsdale
State/Country:	ARIZONA
Postal Code:	85251
Entity Type:	Bank: NORTH DAKOTA

PROPERTY NUMBERS Total: 1		
Property Type	Number	Word Mark
Serial Number:	75193566	NEXTCARE

CORRESPONDENCE DATA	
Fax Number:	(602)256-4486
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	602-256-4486
Email:	Lwedeward@gblaw.com
Correspondent Name:	Lori A. Wedeward
Address Line 1:	2 N. Central Avenue
Address Line 2:	18th Floor
Address Line 4:	Phoenix, ARIZONA 85004

ATTORNEY DOCKET NUMBER:	2888-34 KRM
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NAME OF SUBMITTER:	Kevin R. Merritt
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Total Attachments: 9  
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**INTELLECTUAL PROPERTY**  
**SECURITY AGREEMENT**

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Security Agreement") is made and entered into as of November 24, 2004, by Pinnacle Medicine, Inc., an Arizona corporation ("Debtor"), in favor of First International Bank & Trust, a bank organized and existing under the laws of the State of North Dakota ("Secured Party"). This Security Agreement is entered into pursuant to that certain Loan Agreement of even date herewith by and among Debtor, certain affiliates of Debtor (Debtor and all such affiliates as are co-Borrower parties to the Loan Agreement shall be collectively referred to herein as the "Borrowers"), and Secured Party (as the same may hereafter be amended or modified, the "Loan Agreement").

1. **Definitions.** All terms used herein which are defined in the Arizona Uniform Commercial Code (the "Code") shall have the same meanings herein as in the Code unless the context in which such terms are used herein indicates otherwise. All capitalized terms defined in the Loan Agreement and which are used as defined terms in this Security Agreement, unless otherwise defined herein, shall have the meanings ascribed to them in the Loan Agreement.

2. **Obligations Secured.** This Security Agreement and the security interest granted hereby shall secure, in such order of priority as Secured Party may elect:

(a) Payment in cash of all principal, interest and any other fees, late charges, prepayment premiums, and attorneys' fees related to the obligations of Borrowers to Secured Party pursuant to the Loan Agreement and pursuant to that certain Promissory Note of even date herewith, in the original principal amount of Two Million Nine Hundred Twenty-Two Thousand Nine Hundred Ninety Dollars (\$2,922,990.00) (such Promissory Note, together with all modifications, renewals, restatements and replacements thereof, shall be collectively referred to herein as the "Note"); and

(b) Payment, performance and observance by Borrowers of each and every covenant, condition, provision and agreement contained in the Loan Agreement and of all monies expended or advanced by Secured Party pursuant to the terms thereof, or to preserve any right of Secured Party thereunder; and

(c) Payment, performance and observance by Debtor of each and every covenant, condition, provision and agreement contained herein and of all monies expended or advanced by Secured Party pursuant to the terms

hereof, or to preserve any right of Secured Party hereunder, or to protect or preserve the Collateral (as hereafter defined) or any part thereof; and

(d) Any and all other obligations of Borrowers to Secured Party arising in any manner in connection with the issuance of and performance under the Note.

All of the foregoing shall be collectively referred to herein as the "Obligations".

3. **Security Interest.** To secure the complete and timely satisfaction of all of the Obligations, the Debtor hereby grants to Secured Party, as and by way of a security interest having priority over all other security interests, with power of sale to the extent permitted by law upon the occurrence of an Event of Default, all of the Debtor's right, title and interest in and to the following assets (collectively, the "Collateral"):

(i) all trademarks, trademark registrations, trade names, trade name registrations, service marks, service mark registrations, and trademark or trade name or service mark applications of the Debtor now existing or hereafter arising, including without limitation such as are listed on Exhibit A attached hereto and made a part hereof, as the same may be amended from time to time, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, (d) all rights corresponding thereto throughout the world, and (e) the goodwill of the business operated by the Debtor connected with and symbolized by any trademarks or trade names (all of the foregoing trademarks, trademark registrations, trade names, trade name registrations, and applications, together with the items described in clauses (a) - (e), are sometimes herein individually and/or collectively referred to as the "Trademarks"); and

(ii) all improvements, inventions, works of authorship, trade secrets, "know-how," and all other intellectual property of the Debtor now existing or hereafter arising and not described above (collectively, the "Other IP"); and

(iii) all license agreements now existing or hereafter arising, including without limitation such as are listed on Exhibit B attached hereto and made a part hereof, pursuant to which the Debtor has licensed the right to use the Trademarks and/or the Other IP (all of the foregoing are hereinafter referred to collectively as the "Licenses").

4. Representations, Warranties and Covenants. The Debtor hereby represents, warrants and covenants to Secured Party as follows:

4.1 The Debtor is the owner of all rights in the Collateral, except the portion thereof consisting of after-acquired property, and the Debtor will be the owner of such after-acquired property, free from any lien, except permitted liens.

4.2 There is listed in Exhibit C attached hereto the state of incorporation of the Debtor, the location of the chief place of business of the Debtor and, if different, the location(s) where the books and records of the Debtor are kept. Except as set forth on Exhibit C, the Debtor shall not (a) change its state of incorporation, (b) change any such location(s), (c) change its corporate name, or (d) conduct a business under any other names or use any trade names or fictitious names without, in each case, giving to Secured Party thirty days' prior written notice of any such change.

5. Covenants re Existing and Future Trademarks. If, before the Obligations have been satisfied in full, the Debtor shall obtain rights to any other trademarks or trade names, or registrations thereof or applications, licenses or grants therefor, or any other intellectual property, the provisions of this Security Agreement shall automatically apply thereto, the Debtor shall be deemed to have granted and does hereby grant to Secured Party a first priority security interest therein to secure the complete and timely satisfaction of all of the Obligations, and the Debtor shall give Secured Party prompt written notice thereof. During the term of this Security Agreement and at its own expense, the Debtor will diligently prosecute and seek to obtain all existing trademark applications worldwide and will apply for registration with the U.S. Patent and Trademark Office and do all things necessary to obtain and maintain such registrations with respect to all future Trademarks used in the United States which, in the reasonable exercise of the Debtor's business judgment, are material to the Debtor's business. The Debtor will notify Secured Party of any unauthorized use by others of the Trademarks which may have a material adverse effect on the Debtor's business promptly as it comes to the Debtor's attention (meaning the attention of any executive officer possessing familiarity with the Trademarks). In the event of any unauthorized use of a Trademark by a third party, the Debtor will diligently pursue all appropriate action, as determined by the Debtor in the reasonable exercise of its business judgment, including, but not limited to, diligent efforts to persuade the alleged infringer or violator to desist, and/or the bringing and prosecuting of an appropriate suit or other proceeding against the infringer.

6. **Insurance.** The Debtor shall maintain such insurance, written by such insurers and in such amounts and on such forms as are reasonable and customary in the circumstances and satisfactory to Secured Party.

7. **Protection of Collateral.** In the event of the failure of the Debtor to (a) maintain in force and pay for any insurance which the Debtor is required to provide pursuant to this Security Agreement, (b) keep the Collateral free from any and all liens, and (c) pay when due all taxes, levies and assessments on or in respect of the Collateral, Secured Party, at its option, may (but shall not be required to) procure and pay for such insurance, or otherwise make good any other aforesaid failure of the Debtor. All sums advanced by Secured Party, with interest thereon at the "Default Rate," as defined in the Note, following an Event of Default, shall be part of the Obligations, payable on demand.

8. **Financing Statements; Further Assurances.** By its authentication of this Security Agreement, the Debtor authorizes Secured Party to file such financing statements, continuation statements, amendments to financing statements and other documents, in form satisfactory to Secured Party, as Secured Party may deem appropriate to perfect and continue in effect the lien of Secured Party including, without limitation, such filings with the U.S. Patent and Trademark Office as may be deemed appropriate by Secured Party. The Debtor irrevocably hereby authorizes Secured Party to execute (if necessary) and to file or otherwise make a matter of public record, and hereby appoints Secured Party its attorney-in-fact, in the name of the Debtor or Secured Party, to execute and file from time to time, any such financing statements, continuation statements and amendments thereto, which appointment shall be deemed to be a power coupled with an interest.

9. **Events of Default.** The Debtor shall be in default under this Security Agreement upon the occurrence of an Event of Default as defined in the Loan Agreement.

10. **Remedies Upon Default.** Upon the occurrence of an Event of Default and the acceleration of the Obligations, Secured Party shall have all the rights and remedies of a secured party under the Arizona Uniform Commercial Code and all other rights and remedies accorded to a secured party in equity or law. Any notice of sale or other disposition of the Collateral given not less than ten (10) days prior to such proposed action shall constitute reasonable and fair notice of such action. The Debtor shall be liable for any deficiency. The Debtor expressly waives any right to have the Collateral marshalled on any foreclosure, sale or other enforcement hereof.

11. **Secured Party's Right to Sue in Certain Circumstances.** In addition to any other remedies as may be available to Secured Party, from and after the occurrence of an Event of Default and the giving by Secured Party of written notice to the Debtor of Secured Party's intention to enforce its rights and claims

against any of the Trademarks, Licenses, or Other IP, Secured Party shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses, Trademarks, or Other IP, and any licenses or grants thereunder, and, if Secured Party shall commence any such suit, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement, and the Debtor shall promptly, upon demand, reimburse and indemnify Secured Party for all costs and expenses incurred by Secured Party in the exercise of its rights under this Section 11.

**12. Power Of Attorney re Intellectual Property.** The Debtor hereby authorizes Secured Party to make, constitute and appoint any officer or agent of Secured Party as Secured Party may select, in its sole discretion, as the Debtor's true and lawful attorney-in-fact, with power (i) from and after the occurrence of an Event of Default or to prevent abandonment or cancellation of the Collateral, after ten (10) days written notice and the Debtor's failure to take such action, to (a) endorse the Debtor's name on all applications, documents, papers and instruments necessary or desirable for Secured Party to seek to obtain or to maintain the registration thereof or otherwise to use the Trademarks, Licenses, or Other IP, or (b) take any other actions with respect to the Trademarks, Licenses, or Other IP, as the Secured Party deems in the best interest of the Secured Party, and (ii) from and after the occurrence of an Event of Default and the giving by Secured Party of written notice to the Debtor of Secured Party's intention to enforce its rights and claims against any of the Trademarks, Licenses, or Other IP, to (a) grant or issue any exclusive or nonexclusive license under the Trademarks or Other IP to anyone, or (b) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, Licenses, or Other IP to anyone. Secured Party hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid and performed in full or the security interests granted to the Debtor by this Security Agreement have been released. The foregoing power of attorney shall include any filings, applications, documents, papers and instruments which Secured Party may desire to file either with the U.S. Patent and Trademark Office or with the comparable authority of any foreign jurisdiction.

**13. Debtor Rights.** Except as otherwise provided herein, the Debtor shall be entitled to exploit and commercialize the Collateral in connection with its current or future business interests, including the granting of licenses or the assignment of all rights thereto to customers, distributors, partners and other persons in the ordinary course of business, to the extent permitted under the Loan Agreement as being in the ordinary course of the Debtor's business.

**14. Notices.** All notices, communications and waivers under this Security Agreement shall be in writing and shall be given in accordance with the Loan Agreement.

15. Successors and Assigns. This Security Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of Secured Party and the Debtor.

16. Applicable Law. THIS SECURITY AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA, EXCEPT TO THE EXTENT SUCH LAWS ARE SUPERSEDED BY FEDERAL LAW OR THAT APPLICABLE LAW REQUIRES THAT THE LAWS OF ANOTHER JURISDICTION GOVERN THE PERFECTION AND ENFORCEMENT OF THE SECURITY INTERESTS GRANTED TO SECURED PARTY.

17. Termination. This Security Agreement shall terminate upon the payment in full of the Obligations.

This Security Agreement has been executed and delivered by each of the parties hereto by a duly authorized officer of each such party on the date first set forth above.

**DEBTOR:**

PINNACLE MEDICINE, INC., an Arizona corporation

By: 

Name: John J. Shufeldt

Title: President

**SECURED PARTY:**

FIRST INTERNATIONAL BANK & TRUST, a bank organized and existing under the laws of the State of North Dakota

By: 

Name: David L. Cherry

Title: President - Scottsdale Office



EXHIBIT A

U.S. TRADEMARKS

Registered Marks:

<u>Mark</u>	<u>Serial No.</u>	<u>Filing Date</u>
"NextCare"	75193566	9-11-2003

EXHIBIT B

LICENSE AGREEMENTS

None.

EXHIBIT C

State of Incorporation of the Debtor: Arizona

Chief Place of Business of the Debtor and Location of Books and Records of the Debtor:

2550 N. Thunderbird Circle, Suite 303  
Mesa, Arizona 85215