



**CHARTER**  
**for the**  
**AUDIT COMMITTEE of the BOARD OF DIRECTORS**  
**of**  
**NPS PHARMACEUTICALS, INC.**  
*(as of November 2005)*

**PURPOSE OF THE COMMITTEE**

The purpose of the Audit Committee (the “Committee”) of the Board of Directors of NPS Pharmaceuticals, Inc. (the “Company”) is to assist the Board in fulfilling its oversight of the accounting and financial reporting processes of the Company and audits of the financial statements of the Company.

While the Committee has the responsibilities and powers set forth in this Charter, it is not the duty of the Committee to plan or conduct audits or to determine that the Company’s financial statements are complete and accurate and are in accordance with generally accepted accounting principles. Management is responsible for preparing the Company’s financial statements, and the Company’s independent registered public accounting firm (“independent auditor”) is responsible for auditing those financial statements.

The Committee has the authority to undertake the specific duties and responsibilities listed below and such other duties as the Board may from time to time prescribe. It is acknowledged, however, that all of the areas of oversight listed below may not be relevant to all of the matters and tasks that the Committee may consider and act upon from time to time, and the members of the Committee in their judgment may determine the relevance thereof and the attention such items will receive in any particular context.

**COMMITTEE MEMBERSHIP, ORGANIZATION AND GOVERNANCE**

**Composition.** The Committee members will be appointed by, and will serve at the discretion of, the Board. The Committee will consist of at least three (3) members of the Board. Members of the Committee must meet the following criteria (as well as any additional criteria required by the U.S. Securities and Exchange Commission (“SEC”):

- Each member must be an “Independent Director,” as defined in (a) Rule 4200 and Rule 4350 of the National Association of Securities Dealers (the “NASD”) listing standards, and (b) Section 10A(m)(3) of the Securities Exchange Act of 1934 and Rule 10A-3 thereunder.
- Each member must be able to read and understand fundamental financial statements, in accordance with Rule 4350(d) of the NASD’s audit committee requirements for companies listed on the Nasdaq National Market.
- At least one (1) member shall have past or current employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience

or background which results in the individual's financial sophistication, including being or having been a chief executive officer, the chief financial officer or other senior officer with financial oversight responsibilities.

- At least one (1) member shall, in the judgment of the Board, be an audit committee financial expert in accordance with the rules and regulations of the SEC.

**Chairperson.** The Board shall designate one (1) member of the Committee to serve as its chairperson.

**Meetings and Procedures.** The Committee will meet at least once each fiscal quarter. The Committee may establish its own schedule and call additional meetings as it deems necessary to fulfill its responsibilities. The Committee shall fix its own rules of procedure, which shall be consistent with the Certificate of Incorporation and Bylaws of the Company and this Charter. Such meetings may be attended in person or by telephone or video conferencing or any other electronic means of communication. The Committee may request that any directors, officers or employees of the Company, or other persons whose advice and counsel are sought by the Committee, attend any meeting to provide such information as the Committee requests.

The Committee will meet separately with the Chief Executive Officer and separately with the Chief Financial Officer of the Company at such times as it deems appropriate to review the financial affairs of the Company. The Committee will meet separately with the independent auditors of the Company, at such times as it deems appropriate, but not less than quarterly, to fulfill the responsibilities of the Committee under this Charter. The Committee may take action by unanimous written consent when deemed necessary or desirable by the Committee or its chairperson.

**Minutes.** The Chairman of the Committee shall arrange with the Corporate Secretary's office and corporate counsel for the completion of an official set of minutes of each Committee meeting. The official minutes shall be approved by the Committee members, signed by the Chairman, and shall be given to the Corporate Secretary for filing with the corporate records.

**Reports.** In addition to preparing the Audit Committee Report in the Company's proxy statement each year in accordance with the rules and regulations of the SEC, the Committee will summarize its examinations and recommendations to the Board as may be appropriate, consistent with this Charter.

**Compensation.** Members of the Committee shall receive such fees, if any, for their service as Committee members as may be determined by the Board in its sole discretion. Such fees may include retainers or per meeting fees. Fees may be paid in such form of consideration as is determined by the Board. Members of the Committee shall not receive any compensation from the Company except the fees that they receive for service as a member of the Board or any committee thereof.

## **RESPONSIBILITIES AND AUTHORITY**

In addition to other responsibilities given to the Committee by the Board from time to time, the responsibilities of the Committee shall include:

1. Reviewing on a continuing basis the adequacy of the Company's system of internal controls over financial reporting and disclosure controls and procedures, including meeting periodically with the Company's management, the independent auditors and the Disclosure Committee to review the adequacy of such controls and to review before release the disclosure regarding such system of internal controls and disclosure controls required under

SEC rules to be contained in the Company's periodic filings and the attestations or reports by the independent auditors relating to such disclosure.

2. Selecting, appointing, compensating, retaining and overseeing the work of the independent auditors (including resolving disagreements between management and the independent auditors regarding financial reporting).
3. Pre-approving all audit and permitted non-audit services provided to the Company by the independent auditors and establish policies and procedures for the engagement of the independent auditors to provide permitted non-audit services.
4. Reviewing and providing guidance with respect to the external audit and the Company's relationship with its independent auditors by (a) reviewing the independent auditors' proposed audit scope, approach and independence; (b) obtaining on a periodic basis a formal written statement from the independent auditors delineating all relationships between the independent auditors and the Company consistent with Independence Standards Board Standard; being actively engaged in dialogue with the independent auditor with respect to any disclosed relationship or services with the Company which may impact objectively and independence of the independent auditor, and presenting this statement to the Board, and to the extent there are relationships, monitoring and investigating them; (c) reviewing the independent auditors' peer review conducted every three (3) years and any publicly available inspection report on the independent auditor issued by the Public Company Accounting Oversight Board; (d) discussing with the Company's independent auditors the financial statements and audit findings, including any significant adjustments, management judgments and accounting estimates, significant new accounting policies and disagreements with management and any other matters described in SAS No. 61, as may be modified or supplemented; and (e) reviewing reports submitted to the audit committee by the independent auditors in accordance with the applicable SEC requirements.
5. Reviewing and discussing with management and the independent auditors the annual audited financial statements and quarterly unaudited financial statements, including the Company's disclosures under "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," prior to filing the Company's annual report on Form 10-K and quarterly reports on Form 10-Q, respectively, with the SEC.
6. Reviewing and discussing with the Disclosure Committee the disclosures contained in the Company's filings with the SEC prior to filing and the processes and procedures followed to ensure the accuracy of such disclosure.
7. Directing the Company's independent auditors to review before filing with the SEC the Company's interim financial statements included in quarterly reports on Form 10-Q, using professional standards and procedures for conducting such reviews.
8. Conducting a post-audit review of the financial statements and audit findings, including any significant suggestions for improvements provided to management by the independent auditors.
9. Reviewing before release the unaudited quarterly operating results in the Company's quarterly earnings release.

10. Overseeing compliance with the requirements of the SEC for disclosure of auditor's services and audit committee members, member qualifications and activities.
11. Reviewing, approving and monitoring the Company's code of ethics for its senior financial officers as provided for under Section 406 of the Sarbanes Oxley Act and Item 406 of Regulation S-K under the Securities Exchange Act of 1934.
12. Reviewing, in conjunction with counsel, any legal matters that could have a significant impact on the Company's financial statements.
13. Engage, as appropriate, independent counsel and other advisors, with (a) the authority to retain such counsel or other advisors as the Committee may deem appropriate in its sole discretion, and (b) the sole authority to determine funding, approve fees and retention terms for such counsel and advisors.
14. Reviewing and approving in advance any proposed related-party transactions.
15. Reviewing the Audit Committee charter, structure, processes and membership requirements on at least an annual basis.
16. Establishing procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls or auditing matters and establish procedures for the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters.
17. Reviewing, approving and monitoring the Company's investment portfolio, cash management objectives, and exposure to market risk.

#### **DELEGATION OF AUTHORITY**

The Committee may delegate to one or more designated members of the Committee the authority to pre-approve audit and permitted non-audit services, provided that such pre-approval decision is presented to the full Committee at its scheduled meetings.

#### **RESOURCES AND ADDITIONAL AUTHORITY OF THE COMMITTEE**

The Committee shall have the resources and authority appropriate to discharge its duties and responsibilities in accordance with this Charter.