

**State of New Hampshire  
Board of Chiropractic Examiners  
Concord, New Hampshire 03301**

In the Matter of:  
**David M. McCarthy, D.C.**  
License No.: 002-1289  
(Misconduct Allegations)

Docket No. 2015-001

**SETTLEMENT AGREEMENT**

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of chiropractic, the New Hampshire Board of Chiropractic Examiners ("Board") and David M. McCarthy, D.C., ("Dr. McCarthy" or "Respondent"), a chiropractor licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 316-A:22, 316-A:23-a and Chapters 202 and 211 of the Board's Administrative Rules ("Ch") the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by chiropractors. Pursuant to RSA 316-A:22, V and RSA 541-A:31, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing. *See* RSA 541-A:38.
2. The Board first granted Respondent a license to practice as a chiropractor in the State of New Hampshire on December 18, 1989. Respondent holds license number 002-1289. Respondent practices at chiropractic under the business name CCM Chiropractic, PLLC, which is located in Wolfeboro, New Hampshire.

3. On or about February 11, 2015, the Board received information from the New Hampshire Insurance Department alleging that Respondent might be involved in insurance fraud.
4. In response to this, the Board conducted an investigation. During the course of the investigation, the Board received information indicating that Respondent might have engaged in witness tampering, which would constitute professional misconduct under RSA 316-A:22, II. Accordingly, on June 4, 2015, the Board issued a Notice of Hearing on the witness tampering issue and scheduled a hearing for July 9, 2015. The scheduled hearing was continued by an Order dated July 2, 2015.
5. If a disciplinary hearing were to take place, Hearing Counsel would present evidence supporting the following allegations of professional misconduct by Respondent:
  - A. In early October 2014, the N.H. Insurance Department ("Insurance Department") opened a criminal investigation into Respondent after receiving a complaint alleging that he billed for treatment visits that never took place.
  - B. Following the execution of a search warrant at Respondent's practice on February 10, 2015, the Insurance Department delivered a copy of the search warrant to the Board, which opened a misconduct investigation into Respondent.
  - C. On February 19, 2015, the Board issued an order for an inspection of Respondent's practice and records. The order was carried out on April 10, 2015, at which time Respondent was provided with a list of fifteen (15) patients whose records were obtained that day by investigators.

- D. A review of the records obtained revealed that Respondent did not maintain adequate treatment notes. In many cases, the "treatment notes" consisted of only billing codes and a date handwritten on plain white paper. Respondent told investigators during the inspection that if a patient required a copy of their treatment record he would dictate more detailed notes solely from memory on a case by case basis.
- E. A review of the records obtained also revealed that personal information from some patients was intermingled with other (unrelated) patients' files. This was, in part, due to the fact that Respondent was using assorted "scrap" paper to print records and that the "scrap" paper used often had unrelated information printed on the opposite side.
- F. Witness interviews revealed that, over a span of multiple years and for multiple patients, Respondent fraudulently billed insurance companies thousands of dollars for patient treatment visits that never took place.
- G. Following the Board ordered inspection of his practice, Respondent began calling patients, whose records were obtained by investigators. Respondent told these patients to confirm, when questioned, that they went to all the treatment visit dates that the investigators ask about. Respondent knew that these patients did not actually have treatment visits for all of the dates that he billed their insurance companies for. Respondent also told at least one patient to inform the investigators that she always paid a co-pay when in fact she only paid a co-pay for her initial visit with Respondent. Respondent engaged in witness tampering

by attempting to induce the patients he called to provide false information to investigators when questioned during the course of an investigation that he knew was pending.

6. By entering into this *Settlement Agreement*, Respondent makes no admission of wrongdoing, but he acknowledges that, if proven, the alleged conduct constitutes grounds upon which the Board could take disciplinary action against his license to practice as a chiropractor in the State of New Hampshire.
7. The Board finds that the conduct alleged above supports a finding of professional misconduct in violation of RSA 316-A:22, II (c), Ch 403.01 (c) (3), Ch 403.01 (g), Ch 403.04 (d) and Ch 406.02 (a).
8. Respondent agrees to a permanent voluntary surrender of his license to practice chiropractic in the State of New Hampshire. Respondent understands that acceptance by the Board of a *permanent* voluntary surrender of a license while misconduct allegations are pending constitutes disciplinary action by the Board under RSA 316-A:22, III.
9. Respondent acknowledges that upon the Board's acceptance of this *Settlement Agreement*, this document shall be reported and distributed to all relevant licensing authorities and professional societies in the same manner as a final decision making a specific finding of professional misconduct. Respondent recognizes that the fact of his voluntary permanent license surrender will be reported and distributed by the Board as a disciplinary action.
10. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer,

individual or entity for whom Respondent performs services as a chiropractor or work which requires a chiropractic degree and/or license or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials chiropractors, with which Respondent is presently affiliated.

11. For a continuing period of five (5) years from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a chiropractor or for work in any capacity which requires a chiropractic degree and/or chiropractic license or directly involves patient care, and to any agency or authority that licenses, certifies or credentials chiropractors from whom Respondent seeks licensure, certification or credentialing.
12. In the event of a breach of any terms or conditions of this *Settlement Agreement* by Respondent, the Board reserves its rights to take all necessary steps to enforce its terms.
13. The Board agrees that this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the alleged misconduct described above, or any misconduct allegations that could have been asserted by the Board based on the investigation conducted in this matter.
14. Respondent acknowledges that this *Settlement Agreement* constitutes a voluntary *permanent* surrender of his license, and as such, he will not be eligible to become licensed ever again by the Board.
15. While Respondent agrees that he will not again seek licensure by this Board, he acknowledges that in the event that he ever does submit a licensure application, the Board may deny such application solely on the basis of the voluntary permanent

surrender of license in this *Settlement Agreement*. In the event that the Board, for some reason, does not deny such application on that basis, Respondent acknowledges that the above pending misconduct allegations shall be resolved in any such future licensure application process before the Board, and that he hereby specifically waives any statute of limitations or laches defense, which might then be available as to the above pending misconduct allegations.

16. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
17. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
18. Respondent understands that his action in entering into this *Settlement Agreement*, and the acceptance of it by the Board, is a final act and not subject to reconsideration or judicial review or appeal.
19. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this *Settlement Agreement*.
20. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion of it, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claim that any disclosures made to the Board for its review of this *Settlement Agreement*, and any guidance or explanations provided to the parties by the Board resulting from that review, has prejudiced his right to a fair and impartial hearing. In the event this

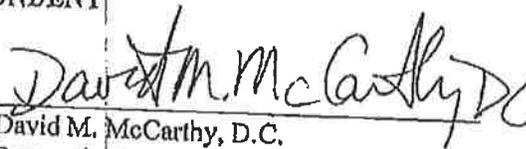
*Settlement Agreement* is not accepted by the Board and no other *Settlement Agreement* is presented to the Board thereafter.

21. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
22. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.
23. This *Settlement Agreement* shall take effect as an Order of the Board on August 6, 2015, so that, prior to that date, Respondent can wind down his practice and refer current patients out to other chiropractors.

FOR RESPONDENT

Date:

7-8-15

  
David M. McCarthy, D.C.  
Respondent

Date:

7/8/15

  
Mark L. Sisti, Esq.  
Counsel for Respondent

**FOR THE BOARD/\***

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: July 9, 2015

Carole A. Richardson  
(Signature)

Carole A. Richardson  
(Print or Type Name)  
Authorized Representative of the  
New Hampshire Board of  
Chiropractic Examiners

/\* \_\_\_\_\_, Recused Member(s)