

**State of New Hampshire
Board of Medicine
Concord, New Hampshire 03301**

In the Matter of:
Christopher Kirby, M.D.
No.: 8450
(Misconduct Allegations)

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 medicine, the New Hampshire Board of Medicine (“Board”) and Christopher Kirby, M.D. (“Dr. Kirby” or “Respondent”), a physician 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 329:17, I; RSA 329:18; RSA 329:18-a; and Medical Administrative Rule (“Med”) 206 and 210, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physicians. Pursuant to RSA 329:18-a, III, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on October 10, 1990. Respondent holds license number 8450.
3. It was brought to the attention of the Board on June 25, 2012, and on July 2, 2012, that Respondent twice violated an alcohol-monitoring contract. In response to this, the Board took emergency action and Respondent subsequently agreed not to practice medicine until further order of the Board.
4. Respondent has been sober since February 8, 2013.

5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that Respondent engaged in professional misconduct as described at RSA 329:17, VI (d), by the following facts:
 - A. Respondent is a party to an October 7, 2010 Settlement Agreement with the Board. Pursuant to that Settlement Agreement, Respondent entered into a ten-year contract with the New Hampshire Professionals Health Program (NHPHP) under which Respondent was monitored for alcohol use.
 - B. The NHPHP informed the Board by letters dated June 25, 2012, and July 2, 2012, that Respondent tested positive for alcohol use on or about June 14, 2012, and again on or about June 26, 2012.
 - C. Respondent did not voluntarily report his alcohol consumption prior to testing or upon receipt of the test results.
 - D. On July 13, 2012, in response to the positive test results and Respondent's failure to report, the Board, on an emergency basis, suspended Respondent's license to practice medicine pursuant to RSA 329:18-b.
 - E. Respondent subsequently executed a Preliminary Agreement for Practice Restrictions under which Respondent agreed not to practice medicine in the State of New Hampshire until further order of the Board.
6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 329:17, VI (d).
7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a physician in the State of New Hampshire.

8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
 - A. Respondent is REPRIMANDED.
 - B. Respondent's LICENSE SUSPENSION IS LIFTED SUBJECT TO THE FOLLOWING RESTRICTIONS:
 1. Respondent cannot be a solo practitioner for as long as he holds a New Hampshire medical license;
 2. Respondent cannot work as a physician in addiction medicine until he has successfully completed a fellowship training program in addiction medicine;
 3. Respondent cannot be self employed as a physician for as long as he holds a New Hampshire medical license; and
 4. Respondent must remain under the treatment and monitoring of the NHPHP for as long as he holds a New Hampshire medical license.
 - C. Respondent must comply with all requirements for renewal of his medical license required by the Board's rules and practice act before he can return to practice subject to the above restrictions.
 - D. Respondent shall bear all costs of complying with the terms of this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
 - E. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.

- F. 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 for whom Respondent performs services as a physician or work which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials physicians, with which Respondent is presently affiliated.
- G. For a continuing period of ten (10) year 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 physician or for work in any capacity which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials physicians, to which Respondent may apply for any such professional privileges or recognition.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
12. 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.
13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. 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 agreement.
16. 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.
17. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.

18. 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.
19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

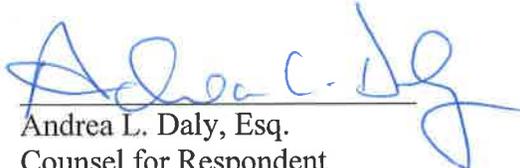
FOR RESPONDENT

Date: 6/11/14



Christopher Kirby, MD
Respondent

Date: 6-17-14

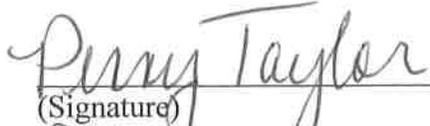


Andrea L. Daly, Esq.
Counsel for Respondent

FOR THE BOARD*

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

Date: 7/8/2014



(Signature)
PENNY TAYLOR

(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Medicine

* Recused Board members not participating: Amy Fetzelson, M.D. and John
Wheeler, D.D.