

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

In the Matter of:  
**John J. Schermerhorn, M.D.**  
**License No.: 5682**  
(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 John J. Schermerhorn, M.D. (“Dr. Schermerhorn” 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 March 7, 1977. Respondent holds license number 5682. Respondent practices anesthesiology and related services at PainCare in Somersworth, New Hampshire.
3. On or about September 10, 2013, the Board received a complaint relating to the treatment of patients by Christopher Clough, P.A. The complaint alleged that Mr.

Clough provided medically unnecessary procedures to numerous patients and that the performance of these procedures fell below the standard of care and resulted in potential patient harm. Respondent was listed as the supervising physician for Respondent Clough beginning in 2011.

4. In response to the complaint, the Board conducted an investigation and obtained information from various sources, including Respondent. As part of its investigation, the Board obtained records for a number of patients referenced in the complaint, which were subsequently reviewed by an outside expert. Based on the opinion rendered by the outside expert, the Board issued a Notice of Hearing on August 11, 2014, alleging professional misconduct by Mr. Clough and Respondent. The Notice of Hearing was subsequently amended. *See* Attachment A. The disciplinary hearing in this matter began on November 20, 2014.
5. At a disciplinary hearing, Hearing Counsel would present the following information and evidence to prove that Respondent engaged in professional misconduct, in violation of RSA 329-A:17, VI (d), Med 501.02 (h), Med 602.01 (a) and AMA Code of Ethics Opinion 3.03 (2):
  - A. Respondent has been licensed as a physician by the Board since March 7, 1977.
  - B. Respondent has worked with Christopher Clough, PA, at PainCare since 2009. Respondent was the registered supervisory physician for Mr. Clough from approximately February of 2011 until September of 2014.
  - C. In his role as Mr. Clough's registered supervisory physician, Respondent regularly consulted with Mr. Clough and reviewed his records. Respondent

also sometimes directly observed Mr. Clough performing procedures on patients and occasionally provided anesthesia services during such procedures.

- D. During the course of the Board's investigation, an outside expert reviewed records of Mr. Clough's treatment for seven patients. All of the seven patients were treated by Mr. Clough during the period in time that Respondent was his registered supervisory physician.
- E. Based on the opinion rendered by the outside expert following his review of the treatment records during the investigation in this case, the Board issued a Notice of Hearing on August 11, 2014, alleging professional misconduct by Mr. Clough and Respondent. An Amended Notice of Hearing was issued by the Board on November 12, 2014. *See Attachment A.* The Amended Notice of Hearing alleges, in part, inappropriate controlled substance prescribing and injection practices by Mr. Clough during the time period that Respondent was Mr. Clough's registered supervisory physician, and inadequate supervision of Mr. Clough by Respondent.<sup>1</sup>
- F. Based upon requests made by Mr. Clough, Respondent provided monitored anesthesia care during ten (10) procedures that Mr. Clough performed on five of the seven patients. While one of the issues in this case is whether the ordering of monitored anesthesia care by Mr. Clough was not justified and/or inappropriate under the circumstances, there is no indication that Respondent

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<sup>1</sup> As part of this Settlement Agreement, the Board dismisses the allegations against Dr. Schermerhorn set forth in Sections 9A-9D of the Notice of Hearing with prejudice.

administered anesthesia in a negligent manner during those ten (10) procedures.

- G. Under Med 601.07, a supervisory physician is responsible for the supervision and performance of the physician assistant that they are supervising. In addition to being available for consultation with the physician assistant, a registered supervisory physician is responsible for ensuring that “appropriate directions are given to, and understood and executed by the physician assistant.” *See* Med 602.01 (a).
  - H. Licensees of the Board are required to adhere to the Code of Medical Ethics Opinions adopted by the American Medical Association (“AMA”). *See* Med 501.02 (h). According to the AMA, when practicing in concert with physician’s assistants, “[p]hysicians have an ethical obligation to the patients for whom they are responsible to ensure that medical and surgical conditions are appropriately evaluated and treated.” *See* AMA Code Ethics Opinion 3.03 (2).
  - I. Respondent failed to provide adequate supervision over Mr. Clough’s performance in order to ensure (1) that appropriate directions were given to, and understood and executed by, Mr. Clough; and (2) that medical and surgical conditions were appropriately evaluated and treated by Mr. Clough.
6. The Board finds that Respondent has engaged in certain conduct, as described above, and by doing so, has committed acts that provide sufficient grounds for imposing disciplinary sanctions for engaging in unprofessional conduct under RSA 329:17, VI

(d), Med 501.01 (a) and Med 501.02 (j) through violating Med 602.01 (a) and failing to adhere to AMA Code of Ethics Opinion 3.03 (2) as required by Med 501.02 (h).

7. By entering into this *Settlement Agreement*, Respondent makes no admission of wrongdoing and nothing in this *Settlement Agreement* shall be construed as such.

8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:

A. Respondent is REPRIMANDED.

B. Before serving as a registered supervisory physician and/or an alternate registered supervisory physician in the future, Respondent will obtain prior written permission of the Board and complete any continuing education courses that the Board may deem appropriate at the time that the Respondent seeks permission to supervise.

C. 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.

D. For as long as he is licensed by this Board, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent applies 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.

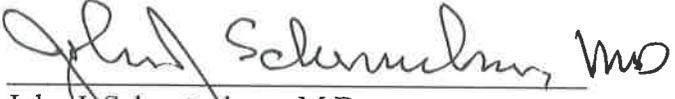
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the alleged misconduct described above, or any misconduct allegations that could have been asserted by the Board based on information known to the Board in this matter or with regard to any allegations which could be brought against Dr. Schermerhorn arising out of the procedural order issued in this matter on September 4, 2014. However, the Board may consider this misconduct as evidence in support of future discipline in the event that similar misconduct is proven against the 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 the 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 scheduled formal disciplinary hearing against Respondent.
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, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
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.

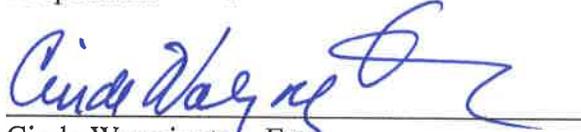
19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

**FOR RESPONDENT**

Date: 1/7/15

  
John I. Schermethorn, M.D.  
Respondent

Date: 1/7/15

  
Cinde Warmington, Esq.  
Counsel for Respondent

Date: 1/7/15

  
William E. Christie, Esq.  
Counsel for Respondent

**FOR THE BOARD/\***

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

Date: 01/07/2015

  
(Signature)

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

/\* Amy Feitelson, M.D., Lou Rosenthal, M.D., and Robert Andelman, M.D., Board members, recused.

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

In the Matter of:  
**Christopher Clough, P.A.**  
License No.: 0441

Docket No. 14-03

and

**John J. Schermerhorn, M.D.**  
License No.: 5682

(Adjudicatory/Disciplinary Proceeding)

**NOTICE OF HEARING**

1. The New Hampshire Board of Medicine ("Board") first granted a license to practice as a physician's assistant in the State of New Hampshire to Christopher Clough, P.A. ("Mr. Clough" or "Respondent Clough") on August 7, 2002. Respondent holds license number 0441. Respondent practices as a physician assistant in Somersworth, New Hampshire with Pain Care of New Hampshire.

2. The New Hampshire Board of Medicine ("Board") first granted a license to practice as a physician in the State of New Hampshire to John J. Schermerhorn ("Dr. Schermerhorn" or "Respondent Schermerhorn") on March 7, 1977. Respondent holds license number 5682. During the relevant period Respondent Schermerhorn practiced as a physician in Somersworth, New Hampshire and was likewise affiliated with Pain Care of New Hampshire.

3. On or about September 10, 2013, Joshua Greenspan, M.D. forwarded the Board a lengthy and detailed complaint relating to the treatment of patients by Respondent Clough. In pertinent part, Respondent Clough was alleged to have provided medically unnecessary procedures to numerous patients. Additionally, it was alleged that Respondent Clough's performance of these procedures fell below the standard of care and resulted in potential patient

harm. Respondent Schermerhorn was listed as the supervising physician for Respondent Clough beginning in 2011.

4. The Board commenced an investigation to determine whether Respondent Schermerhorn committed professional misconduct pursuant to RSA 329:17, VI and RSA 329:18 and whether Respondent Clough committed professional misconduct pursuant to RSA 328-D:6.

5. As part of the investigation, a licensed physician, board certified in anesthesiology and pain medicine, analyzed copies of treatment records that were obtained for a number of Respondent Clough's patients. The expert reviewer noted problematic conduct related to injection and prescribing practices on the part of Respondent Clough while he was under the supervision of Respondent Schermerhorn.

6. Based upon the information gathered during the investigation as outlined herein, as well as in the addendum attached hereto, the Board finds that there is a reasonable basis for commencing an adjudicatory/disciplinary proceeding against both Respondent Clough and Schermerhorn pursuant to RSA 329:17, I, RSA 329:18-a, RSA 328-D:7 and New Hampshire Administrative Rule ("Med") 206.

7. Given the conduct as revealed by the Investigation and the representative patient sampling, the following global issues have been identified:

- A. Respondent Clough had multiple patients placed under deep sedation on multiple occasions for various procedures where deep sedation was unnecessary and/or contraindicated and no clear and extenuating circumstances justifying deep sedation were documented in the medical records.

- B. Respondent Clough used templates to document the reasons for placing patients under deep sedation for procedures and such reasons were not applicable and/or contradicted by other parts of the record.
- C. On multiple occasions, Respondent Clough had patients placed under deep sedation despite an inadequate period of fasting. The fasting period is ordered to prevent inhaling stomach contents into the lungs under anesthesia.
- D. Respondent Clough inappropriately performed multiple injections on patients under deep sedation, without a cervical MRI and without an adequate, documented physical examination.
- E. Respondent Clough inadequately used diagnostic imaging to prevent harm to his patient and, at times, failed to use or save fluoroscopy with or without contrast in order to ascertain proper needle placement, thus risking needle damage to internal organs, nerves, and blood vessels.
- F. Respondent Clough used excessive dosages of local anesthetics for various injections on multiple patients.
- G. Respondent Clough has performed numerous medically unnecessary therapeutic injections on multiple patients and/or has done so in a negligent manner and for some procedures he has failed to insert the needle in or near the proper location, thus risking injury or reducing efficacy.

- H. Respondent Clough performed complex injection procedures on multiple patients in a mere small fraction of the time that the procedure and fluoroscopic guidance should take if properly performed.
- I. Respondent Clough failed to document the reasons for the medical decisions to perform numerous and excessive injections on patients and failed to document discussions with his patients about the procedures or other available options.
- J. Respondent Clough performed various injection procedures without documenting adequate medical justification and with little to no reported pain relief.
- K. Respondent Clough failed to use consent forms and maintain anesthesia records for multiple procedures performed on patients.
- L. Respondent Clough did not maintain notes for multiple procedures and there is a lack of documentation of follow up visits, evaluations or treatment plans.
- M. Respondent Clough performed procedures that were inappropriate for the type of reported pain without documentation of any extenuating circumstances.
- N. Respondent Clough performed inappropriate combinations of injections.
- O. Respondent Clough documented performing procedures as treatment for an undiagnosed condition.
- P. Respondent Clough failed to adequately address the medical issues of multiple patients and failed to document and asses treatment goals.

- Q. Respondent Clough inadequately documented his medical decision making.
- R. Respondent Clough maintained inaccurate and/or incomplete medical records for multiple patients and consistently carried information through a “copy and paste method” from visit to visit that was at times, inapplicable and/or inconsistent.
- S. Respondent Clough provided opioid therapy to multiple patients without conducting a thorough risk assessment, thorough family history and physical examination.
- T. The records for multiple patients of Respondent Clough lack documentation of discussions by Respondent Clough of the risks and benefits of long term opioid therapy, including abuse, misuse and addiction.
- U. Respondent Clough continually prescribed opioids to patients, and, at times, in increasing doses, without documenting adequate medical justification and with little to no reported pain relief and despite indications that the patient had historic and/or recent substance abuse issues.
- V. Respondent Clough failed to provide sufficient medical discussion or explanation in the medical records for multiple patients regarding the reasons for certain prescriptions and changes in prescription dosages or quantities.

- W. Respondent Clough failed to maintain medical records of some office visits and at times, provided opioid prescriptions to patients without a record of any office visit taking place.
- X. Respondent Clough wrote high dosage and large quantity opioid prescriptions without documented justification for such prescriptions and Respondent failed to adequately monitor his patients' compliance with such prescriptions.
- Y. Respondent Clough continued to prescribe narcotics to multiple patients even when their drug screens were positive for illicit and/or non-prescribed drugs and negative for prescribed drugs. The records for such patients do not indicate that Respondent Clough timely and/or adequately discussed problematic test results with his patients.
- Z. Respondent Clough has provided prescriptions that put patient health at risk due to current medical conditions and/or contraindications and/or increased risks of drug abuse.

8. With regard to Respondent Clough, the specific issues to be determined at the adjudicatory/disciplinary proceeding include, but are not limited to the following:

- A. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by the medically unnecessary use of deep sedation in numerous procedures in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the American

Academy of Physician Assistants Guidelines for Ethical Conduct (AAPA Guidelines) regarding competency; and/or

- B. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by utilizing deep sedation in numerous procedures when it was unnecessary or contraindicated for the particular patient and/or procedure, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- C. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by utilizing deep sedation for patients despite an inadequate period of fasting, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- D. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by using inappropriately high levels of local anesthetic for procedures, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- E. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by performing

numerous medically unnecessary injections and other procedures on multiple patients, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or

- F. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by performing numerous injection procedures on patients when such procedures were unnecessary or contraindicated for the patient's diagnosis, including, but not limited to, performing other procedures such as nerve blocks on patients who were on anticoagulation drugs, thus risking hemorrhage in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- G. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by performing numerous injection procedures without first having ordered the appropriate diagnostic testing to ensure the efficacy of the procedure, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- H. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by continuing to

perform injections on patients despite the lack of pain relief the patients experienced from earlier injections, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or

- I. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by performing an excessive amount of injections on numerous patients, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- J. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by failing to spend an adequate amount of time performing injection and block procedures, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- K. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by failing to utilize appropriate diagnostics and diagnostic imaging during the course of injection and block procedures, thereby increasing the risk of harm to patients, including, but not limited to, increasing the risk of damage to

internal organs, nerves, and blood vessels and reducing the likely efficacy of the procedures, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or

- L. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by failing to, appropriately when needed, use contrast dye to ensure the accurate placement of needles, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- M. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by repeatedly failing to perform numerous injections in the correct site, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- N. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by inappropriately combining procedures on patients, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or

Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8);  
and/or the AAPA Guidelines regarding competency; and/or

- O. Whether on or between January 1, 2007 and October 31, 2013,  
Respondent Clough engaged in professional misconduct by prescribing  
opioids to patients without first obtaining a patient history, including  
alcohol and substance abuse, or conducting a physical examination, in  
violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-  
D:6 (XI); and/or Med 501.02 (i); and/or Med 609.01 (a) (6); and/or Med  
609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines  
regarding competency; and/or
- P. Whether on or between January 1, 2007 and October 31, 2013,  
Respondent Clough engaged in professional misconduct by prescribing  
opioids to patients without first discussing the risks and benefits of such  
therapy and creating a treatment plan, in violation of RSA 328- D:6 (III);  
and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 501.02 (i);  
and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01  
(8); and/or the AAPA Guidelines regarding competency; and/or
- Q. Whether on or between January 1, 2007 and October 31, 2013,  
Respondent Clough engaged in professional misconduct by continuing to  
prescribe opioids for numerous patients despite drug screen results  
showing the patient's non-compliance with the medication regimen; in  
violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-  
D:6 (XI); and/or Med 501.02 (i); and/or Med 609.01 (a) (6); and/or Med

609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or

- R. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by failing to document any justification for the initial prescription and/or increasing the doses of multiple opioid prescriptions for numerous patients, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 501.02 (i); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- S. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by continuing to prescribe high quantities and doses of opioids when the patients are not experiencing pain relief, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 501.02 (i); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or
- T. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by writing prescriptions for controlled drugs when the patient was not seen for an appointment in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 501.02 (i); and/or Med 609.01 (a)

(6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or

- U. Whether on or between January 1, 2007 and October 31, 2013, Respondent Clough engaged in professional misconduct by writing prescriptions when such medications were contraindicated for the patient due to other medications and/or underlying health conditions, in violation of RSA 328- D:6 (III); and/or RSA-D:6 (IV); and/or RSA 328-D:6 (XI); and/or Med 501.02 (i); and/or Med 609.01 (a) (6); and/or Med 609.01 (10); and/or Med 609.01 (8); and/or the AAPA Guidelines regarding competency; and/or

9. With regard to Respondent Schermerhorn, the specific issues to be determined at the adjudicatory/disciplinary proceeding include, but are not limited to the following:

- A. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by supervising and/or administering the medically unnecessary use of deep sedation in numerous procedures in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the American Medical Association Code of Medical Ethics (AMA Code) 3.03 (2); and/or
- B. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by supervising and/or utilizing deep sedation in numerous procedures when it

was unnecessary or contraindicated for the particular patient and/or procedure, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

- C. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by supervising and/or utilizing deep sedation for patients who had recently consumed food or liquid, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- D. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by supervising and/or using inappropriately high levels of local anesthetic for medical branch blocking procedures, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- E. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by supervising numerous medically unnecessary injections and/or other procedures on multiple patients, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d);

and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

- F. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by supervising numerous injection procedures on patients when such procedures were unnecessary or contraindicated for the patient's diagnosis, including, but not limited to, performing other procedures such as nerve blocks on patients who were on anticoagulation drugs, thus risking hemorrhage, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- G. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by supervising numerous injection procedures without first having ordered the appropriate diagnostic testing to ensure the efficacy of the procedure, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- H. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by continuing to supervise injections on patients despite the lack of pain relief the patients experienced from earlier injections, in violation of RSA

329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k);  
and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a);  
and/or the AMA Code 3.03 (2); and/or

- I. Whether on or between February of 2011 and October 31, 2013,  
Respondent Schermerhorn engaged in professional misconduct by  
supervising an excessive amount of injections on numerous patients, in  
violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA  
329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or  
Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- J. Whether on or between February of 2011 and October 31, 2013,  
Respondent Schermerhorn engaged in professional misconduct by failing  
to adequately supervise PA Clough's performance of injection and block  
procedures, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI  
(d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med  
501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- K. Whether on or between February of 2011 and October 31, 2013,  
Respondent Schermerhorn engaged in professional misconduct by failing  
to adequately supervise PA Clough's utilization of appropriate diagnostic  
imaging during the course of injection and block procedures, thereby  
increasing the risk of harm to patients and reducing the likely efficacy of  
the procedures, in violation of RSA 329:17, VI (c); and/or RSA 329:17,  
VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med  
501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

- L. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough to ensure the use of contrast dye to confirm the accurate placement of needles during appropriate injection and/or other procedures, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- M. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's numerous procedures thereby allowing PA Clough to miss the correct site, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- N. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's procedures, resulting in the inappropriate combining of procedures on patients, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

- O. Whether on between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's prescribing of opioids to patients without first obtaining a patient history, including alcohol and substance abuse, or conducting a physical examination, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); Med 501.02 (i) (2) and/or Med 501.02 (i) (4); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- P. Whether on February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's prescribing of opioids to patients without first discussing the risks and benefits of such therapy and creating a treatment plan, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); Med 501.02 (i) (2) and/or Med 501.02 (i) (4); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or
- Q. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's continued prescribing of opioids for numerous patients despite drug screen results showing the patient's non-compliance with the medication regimen; in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med

501.02 (d); and/or Med 501.02 (h); Med 501.02 (i) (2) and/or Med 501.02 (i) (4); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

R. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's documentation so that there is inadequate justification for the initial prescription and/or increasing the doses of multiple opioid prescriptions for numerous patients, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); Med 501.02 (i) (2) and/or Med 501.02 (i) (4); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

S. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's continued prescribing of high quantity and doses of opioids when the patients are not experiencing pain relief, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); Med 501.02 (i) (2) and/or Med 501.02 (i) (4); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

T. Whether on or between February of 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's prescription writing for controlled drugs when the patient was not seen for an appointment, in violation of

RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); Med 501.02 (i) (2) and/or Med 501.02 (i) (4); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

- U. Whether on or between February 2011 and October 31, 2013, Respondent Schermerhorn engaged in professional misconduct by failing to adequately supervise PA Clough's writing of prescriptions when such medications were contraindicated for the patient due to other medications and/or underlying health conditions, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d); and/or Med 501.02 (h); Med 501.02 (i) (2) and/or Med 501.02 (i) (4); and/or Med 602.01 (a); and/or the AMA Code 3.03 (2); and/or

10. Complainant is not presently a party to this adjudicatory/disciplinary proceeding, but may seek leave to participate on a limited basis if Complainant files a *Motion to Intervene* no later than August 25, 2014, which establishes the Complainant's ability and willingness to participate in a meaningful manner. The motion shall describe the Complainant's position on the factual and legal issues involved, describe the role that the Complainant expects to play in the proceeding, state whether the Complainant will be represented by an attorney, and shall be filed with the Board and Board Counsel. It shall also be served upon Respondent, through his attorney, and Hearing Counsel. If the Complainant elects not to intervene, the Complainant may be expected to attend the hearing as a witness called by Hearing Counsel, and if necessary, Hearing Counsel may issue a subpoena compelling the Complainant's attendance.

THEREFORE, IT IS ORDERED that an adjudicatory/disciplinary proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 329:18-a, Med 206. To the extent that the Board's rules do not address an issue of policy or procedures, the Board shall apply the N.H. Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that information gathered during the investigation and information set forth in the Report of Investigation shall remain confidential and exempt from public disclosure, unless specifically referred to in this Notice of Hearing, unless and until such time as an adjudicatory hearing commences, at which time such information may become evidence in or the subject of the adjudicatory hearing.

IT IS FURTHER ORDERED that Respondents Clough and Schermerhorn shall appear before the Board on November 20, 2014, at 8:00 a.m., at the Board's office located at 121 South Fruit Street, Concord, N.H., to participate in this adjudicatory/disciplinary proceeding and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII, and

IT IS FURTHER ORDERED that if Respondents Clough or Schermerhorn elects to be represented by counsel, at his own expense, counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that the failure of either Respondent Clough or Schermerhorn to appear at the time and place specified above may result in the hearing being held *in absentia* of either missing Respondent and disciplinary sanctions may be imposed without further notice or an opportunity to be heard; and,

IT IS FURTHER ORDERED that Attorneys Michelle Heaton and Matthew Mavrogeorge, 33 Capitol Street, Concord, N.H., 03301 are both appointed to act as Hearing

Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Edmund J. Waters, Esquire, shall act as presiding officer in this proceeding. Attorney Waters has the authority to make independent decisions on procedural issues; and,

IT IS FURTHER ORDERED that no continuances in this matter shall be granted unless both Respondent Clough and Schermerhorn agree to the imposition of practice restrictions pending issuance of the Board's final decision; and

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents the parties intend to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and six (6) copies, and with an additional copy mailed to any party to the proceeding, and to Assistant Attorney General Lynmarie Cusack, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness list and any proposed exhibits shall be pre-marked for identification only and filed with the Board no later than November 14, 2014. Respondent Clough shall pre-mark his exhibits with the Arabic numeral one (1) and capital letters, Respondent Schermerhorn shall pre-mark his exhibits with the Arabic numeral two (2) and capital letters, and Hearing Counsel shall pre-mark their exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least five (5) days before the date of any hearing, conference, event or deadline which would be

affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least ten (10) days prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 121 South Fruit Street, Concord, New Hampshire 03301; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, 122 South Fruit Street, Concord, New Hampshire 03301, (603) 271-1203, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this hearing notice shall be served upon Respondents by certified mail addressed to the office addresses they supplied to the Board in their latest renewal applications, as well as to Respondent Clough's attorney, John Durkin, Esquire and Respondent Schermerhorn's attorneys, Cinde Warmington, Esquire and William Christie, Esquire. *See*, RSA 329:18, VI, Med. 501.02 (a) and RSA 329:16-f. A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/\*

Dated: Nov. 12, 2014

Penny Taylor

Penny Taylor, Administrator  
Authorized Representative of the  
New Hampshire Board of Medicine

/\* Amy Feitelson, MD, Louis Rosenthal, MD and Board members recused,  
Robert Ardelman, MD

## ADDENDUM

In the Matter of Clough and Schermerhorn

Docket No. 14-03

In support of this *Notice of Hearing*, the Board alleges the following facts:

A. Respondent Clough has been licensed as a Physician Assistant by the Board since August 7, 2002. Respondent Schermerhorn has been licensed as a Physician by the Board since March 7, 1977. Both Respondents Clough and Schermerhorn were employed by PainCare New Hampshire during the time periods applicable in this matter.

B. Respondent Schermerhorn has worked with Respondent Clough since 2009. Respondent Schermerhorn has officially been Respondent Clough's supervisor since February of 2011. In his role as Respondent Clough's supervisor, Respondent Schermerhorn consults with Respondent Clough on a regular basis, regularly reviews Respondent Clough's records, and directly observes Respondent Clough performing procedures on patients. Although Respondent Schermerhorn "sometimes" reviews charts of "difficult" patients and makes suggestions to Respondent Clough, such consultations are not documented. Respondent Schermerhorn is also available by phone or e-mail at all times should Respondent Clough need immediate input on a case.

C. As part of the investigation, expert review occurred on a sampling of 7 patients. Of those 7 patients, the following patients represent a further sampling of the specific treatment at issue.

D. Patient 1 was a 35 year old female when she first presented to Respondent Clough in 2011 with complaints of low back pain. Patient 1 initially rated her pain level as 8 out of 10. After almost two years of treatment by Respondent Clough, including

undergoing sixteen different injection procedures, and prescriptions of increasing doses of opioids, Patient 1 experienced little to no relief and continuously rated her pain at a level that averaged about an 8 out of 10. Respondent Clough continually prescribed opioids to Patient 1 in increasing doses and recommended that she undergo various injection procedures without providing an adequate medical justification and despite the fact that Patient 1 reported little to no pain relief.

E. For each injection that he performed on Patient 1, Respondent Clough failed to document the reason for the medical decision to perform the injection or a discussion with the patient about the procedure or other available options.

F. Also for each injection he performed on Patient 1, Respondent Clough had her placed under deep sedation without a clear explanation in the record justifying any need for deep sedation. Respondent Clough repeatedly noted the following reason for deep sedation in the record: “in order to induce a deep sedation necessary given the painful nature of the procedure, the patient’s fear and anxiety toward painful procedures and possible complications due to opioid dependence.” There is no documentation in the record that Patient 1 suffered from anxiety, had any undue or unusual fear and anxiety associated with procedures, or that Patient 1 had an opioid dependency. In some sections of the record, Respondent Clough actually noted that Patient 1 does *not* suffer from anxiety. Such a contradiction in Patient 1’s medical records was also exemplified by Respondent Clough repeatedly noting in one part the office visit notes that Patient 1 complained of depression and then noted in another part of the same notes that Patient 1 has “no depression [ ].”

G. Out of the 16 different procedures performed on Patient 1 during the period of October of 2011 to September of 2013, there are x-rays in the record for only 4 of them. Also, a number of the complex procedures performed by Respondent Clough were documented as being performed in time periods ranging from just 1 to 3 minutes, with fluoroscopic guidance time ranging from a mere 0.03 to .07 seconds.

H. The records indicate that for the medial branch blocks performed, Respondent Clough gave Patient 1 an injection of 2 ml of 0.75% bupivacaine at each injection site. Such a volume of this local anesthetic is approximately four times greater than the generally recommended level.

I. The records indicate that for the multiple sacroiliac injections performed on Patient 1, Respondent Clough performed the injection in a negligent manner by failing to make an effort to enter the joint with the needle. For the multiple cervical epidural steroid injections performed on Patient 1, Respondent Clough failed to document adequate justification for the procedures. Such cervical epidural steroid injections were inappropriately done under deep sedation, without a cervical MRI and without an adequate, documented physical examination. Respondent Clough also performed multiple medial branch block injections in a negligent manner by failing to use a contrast agent.

J. Patient 1's records lack any documentation of a discussion by Respondent Clough of the risks and benefits of long term opioid therapy, including abuse, misuse and addiction. The history that Respondent Clough obtained from Patient 1 was inadequate to perform even the most cursory of risk stratification structures. He never asked her

whether or not she personally had a history of alcoholism or drug abuse. The record lacks documentation of any discussion of goals of treatment or dose changes.

K. During a less than one month period between November 10, 2011 and December 6, 2011, Respondent Clough prescribed Patient 1 with 420 tablets of Roxicodone 15mg. Then on March 12, 2012, Respondent Clough doubled the dosage of Roxicodone for Patient 1 to 30mg without any documentation in the medical record as to why this was necessary. On April 9, 2012, Respondent gave Patient 1 a prescription for 180 tablets of Roxicodone 30mg and then gave her an identical prescription a mere 21 days later.

L. On April 25, 2013, Respondent Clough added Exalgo 8mg, a much stronger opioid, to Patient 1's oxycodone regimen without a sufficient explanation as to why this was necessary. Less than one month later, on May 23, 2014, Respondent Clough doubled the Exalgo dosage to 16mg and simply stated, "Tolerating Exalgo but not helping much with pain so we will increase." This significant dosage increase was over the recommended morphine sulfate equivalent dose described by the American Pain Society.

M. On or about June 26, 2012, Patient 1's drug screen tested negative for amphetamines, even though Respondent Clough documented in the medical record that Patient 1 reported taking Adderall (which is an amphetamine) prescribed to her by another provider. There is nothing in the medical record to indicate that Respondent Clough discussed this test result with Patient 1. Moreover, Respondent Clough subsequently inappropriately noted that Patient 1's urine drug screen from on or about July 18, 2013, was fine even though the results showed an absence of hydromorphone,

which is the opioid in Exalgo, which he was prescribing to her at the time. There is nothing in the medical record to indicate that Respondent Clough discussed this test result with Patient 1.

N. On July 18, 2014, Respondent Clough prescribed 6 capsules of Keflex 500mg to Patient 1 without documenting anything in the medical record to indicate why Keflex was being prescribed to her.

O. Patient 2 had been treating with Respondent Clough for years before abruptly stopping in April of 2008. The medical record does not document why Patient 2 stopped treatment. Three years later, Patient 2 wanted to start treatment again with Respondent Clough after she was diagnosed with shingles and another doctor refused to prescribe Percocet. On April 18, 2011, Respondent Clough saw Patient 2 for what he documents as a “routine follow-up,” even though Patient 2 had not been seen by him in three years. Respondent Clough noted that Vicodin does not help with her pain associated with shingles, and also noted, “HepC – stable, no Tylenol or ETOH.” Respondent Clough provided Patient 2 with prescriptions for 30 tablets of Oxycodone HCL 5mg and 20 tablets of Valtrex 5-500 mg. There is no documentation of a risk stratification or risk assessment for substance abuse, misuse, or addiction. There was no notation that Respondent Clough discussed the risks and benefits of opioid use with Patient 2. The history obtained was inadequate in that it did not indicate whether or not Patient 2 suffered from substance or alcohol abuse in the past.

P. Despite documenting that Patient 2 had a history of Hepatitis C and that she is not to have Tylenol (the active ingredient of which is acetaminophen), Respondent Clough wrote her multiple prescriptions of Vicodin 500mg (hydrocodone-

acetaminophen). The first of these prescriptions was written on April 29, 2011, less than two weeks after the office visit in which Respondent noted that Patient 2 stated that Vicodin does not help with her pain. Respondent Clough did not document in the record why Vicodin was being prescribed to Patient 2. On multiple visits, Respondent Clough gave Patient 2 a prescription for Vicodin 5-500mg (hydrocodone-acetaminophen) despite documenting in the record for those same visits that she had a history of Hepatitis C and that she is not to have Tylenol (acetaminophen). During a number of these visits, Respondent Clough also prescribed Percocet 5-325mg (oxycodone-acetaminophen) to Patient 2.

Q. A drug screen sample for Patient 2, collected on or about April 3, 2012, tested negative for opiates and amphetamine, despite the fact that she was being prescribed an amphetamine (Vyvanse). There is nothing in the record for Patient 2 to indicate that Respondent Clough ever reviewed or discussed this test result with Patient 2. Also, a drug screen sample for Patient 2, collected on or about August 13, 2012, tested positive for opioids and benzodiazepine, but negative for amphetamine, despite the fact that she was being prescribed an amphetamine (Vyvanse) at the time with no record of her being prescribed benzodiazepine. There is nothing in the record for Patient 2 to indicate that Respondent Clough ever reviewed, or discussed, this test result with her. Lastly, a drug screen sample for Patient 2, collected on February 5, 2013, tested positive for hydrocodone and benzodiazepine, but negative for oxycodone and amphetamine, despite the fact that she was being prescribed an amphetamine (Vyvanse) and oxycodone (Percocet) at the time with no record of her being prescribed benzodiazepine. There is

nothing in the record for Patient 2 to indicate that Respondent Clough ever reviewed, or discussed, this test result with Patient 2.

R. In the approximately 29 months-worth of records for Patient 2's treatment by Respondent Clough that were reviewed, there were notations of 11 instances in which Patient 2 either cancelled, or failed to show for, a scheduled appointment. It was documented in Patient 2's record that she called the practice on June 4, 2013, and stated that her Percocet pills were stolen out of her bottle when she had friends over. During one 17 month period (between June 7, 2011 and November 9, 2012), Respondent Clough wrote 2 - 120 tablet and 4 - 60 tablet Vicodin 5-500mg refill prescriptions for Patient 2 without seeing her for an office visit.

S. In addition to the numerous narcotic prescriptions provided to Patient 2 during office visits, on October 4, 2012, Respondent Clough provided Patient 2 with prescriptions for Vicodin and Percocet without any documentation that an office visit ever occurred and without a written explanation for the prescriptions. Similarly, on May 23, 2013, Respondent Clough wrote out a prescription for Patient 2 for 120 tablets of 5-325 Percocet without any documentation that an office visit ever occurred and without a written explanation for the prescription or the 90 tablet increase over prior similar prescriptions. This prescription was written by Respondent Clough despite the fact that he had provided Patient 2 with a prescription for 30 tablets of 5-325 Percocet just nine days earlier.

T. The medical record for Patient 2 contains an office visit note for July 17, 2013. While that note contained a prescription for Vicodin 5-500mg, there was a notation that the prescription was destroyed because Patient 2 came into the office,

rescheduled her appointment and left without being seen. The cancellation note stated, "per pts husband she needs to cancel as 'she high as a kite' and cant (sic) believe we let her leave today like that!" A phone note from the day stated, "pt husband called to cancel pts appnt for today. When asked for the reason why he stated 'cause shes (sic) as high as a god\*\*\*\* kite and I can't believe you let her leave that way today cause she almost killed three people today on her way home cause she drove there.' He also stated he was going to call her PCP and figure out what kinda stuff shes (sic) been put on!" A phone note from the next day (July 18<sup>th</sup>) indicated that Patient 2 called and stated that she wasn't seen yesterday due to being asked to reschedule per provider. According to the note, Patient 2 inquired whether Respondent Clough has written a prescription for her to leave at the front desk and that he has done this before for her.

U. On July 19, 2013, Patient 2 came with her husband for her office visit with Respondent Clough. The note indicated that Patient 2's husband is concerned about her. Respondent Clough noted in the record that it was news to him (Respondent Clough) that Patient 2 had been drinking about six months ago to deal with depression. Respondent Clough further noted that Patient 2 was sedated the other day when she came in, but that he never saw her and she claimed that she had taken Ambien by mistake. Respondent Clough noted that he and Patient 2 discussed that she cannot drink alcohol given the danger associated with that and her Hep C. At that visit, Respondent Clough gave Patient 2 a prescription for 90 pills of Buprenorphine HCL 2mg. There is no documentation in the record explaining why this prescription was written for Patient 2 or why her Vicodin prescription was discontinued. There is also no documentation to indicate that Respondent Clough discussed the risks and benefits associated with buprenorphine

treatment, especially since Patient 2 admitted to taking Ambien, which could result in a serious drug interaction.

V. Respondent Clough used template notes throughout the office visit notes in Patient 2's medical record to such a large extent that it is difficult for a reasonable person to determine what information is being entered contemporaneously with the visit. Respondent Clough inappropriately carried over a large volume of information from visit to visit. Some of the information that is documented verbatim from visit to visit is contradictory. For example, in office visit notes for multiple visits, Respondent Clough documented in one part that Patient 2 complained of depression, but then documents "no depression" in another part.

W. In addition to prescribing pain medications to Patient 2, Respondent also performed multiple injection procedures on her. A number of the records for the procedures lack x-rays. Respondent Clough indicated that he does not always use fluoroscopy for procedures, and that even when he does, it is PainCare's policy not to save all fluoro images. One of the procedures that used an x-ray was a piriformis injection performed by Respondent Clough on Patient 2 on March 29, 2013 to treat right piriformis syndrome. Respondent Clough failed to adequately document the reason for the medical decision to perform this injection or a discussion with the patient about the procedure or other available options. Although Respondent Clough noted that he had the needle tip at the ischial tuberosity, the radiograph revealed that he actually had the needle tip placed on the neck of the femur. Moreover, a piriformis muscle injection is not even properly done by placing the needle tip at the greater trochanter of the femur. While such

a procedure might be done to treat trochanteric bursitis, it is in no way useful, indicated or the proper treatment, for piriformis syndrome.

X. Other procedures in which x-rays were used were the sacroiliac joint injections. However, Respondent Clough did not use contrast dye to ensure accurate placement of the needles during these 4 procedures and 2 of the x-rays for the sacroiliac joint injections showed improper needle placement. The standard of care for such injections is to use contrast material unless there is a contraindication to using contrast material documented in the medical record. There is no contraindication to using contrast material documented in Patient 2's medical record. Respondent Clough has acknowledged not regularly using contrast.

Y. For multiple injections performed on Patient 2, Respondent Clough had her placed under deep sedation without a clear explanation in the record justifying any need for deep sedation. Each time that deep sedation was used, Respondent Clough noted the following reason for deep sedation in the record: "in order to induce a deep sedation necessary given the painful nature of the procedure, the patient's fear and anxiety toward painful procedures and possible complications due to opioid dependence." There is no documentation in the record that Patient 2 suffered from anxiety, had any undue or unusual fear and anxiety associated with procedures, or that Patient 2 had an opioid dependency. In fact, the mental status exam portion of multiple office visit notes repeatedly stated that Patient 2 has "no . . . anxiety [ ]."

Z. On August 14, 2012, Respondent Clough performed a bilateral sacroiliac joint injection in which he had Patient 2 placed under deep sedation. The pre-anesthetic assessment documented that Patient 2 had been "npo since 7am" and Respondent Clough

started the procedure at 11:47am. This was an inadequate period of time for a patient to fast before receiving deep sedation. There was no clear description in the medical record to justify such an approach.

AA. On November 8, 2012, Respondent Clough performed medial branch blocks on four levels bilaterally on Patient 2 by injecting 2ml of 1% lidocaine at each site. This dosage is excessive in that the recommended dosage range is between .25 ml and .50 ml. Respondent Clough noted in the record that this procedure was being done as a diagnostic procedure to assess Patient 2 for proceeding to radiofrequency ablation. However, injecting 2ml of lidocaine at each level does not predict a response to radiofrequency ablation, which is a dangerous and expensive procedure.

BB. Although she had been a previous patient at PainCare, Patient 4's initial office visit with Respondent Clough was on November 8, 2012, for low back, bilateral hip and knee pains. In the note for that visit, Respondent Clough documented that Patient 4 had a history of heroin use, and that her risk factors included marijuana and cocaine use. Respondent Clough also documented that Patient 4 "reports she has had a relapse since the last office visit. oxy 80mg just a few days ago." Respondent Clough noted that Patient 4 has a history of substance abuse and is at "High risk for return to illicit substance abuse." Despite all of that, he documented in the same note that she is "sober" and "doing well." That day, Respondent Clough wrote Patient 4 a prescription for 150 tablets of Roxicodone (oxycodone HCL) 30mg. There is no documentation regarding the necessity of that prescription or a discussion by Respondent Clough with Patient 4 that day of the risks and benefits of long term opioid therapy, including abuse, misuse and addiction.

CC. A drug screen sample, collected from Patient 4 on December 6, 2012, tested positive for cocaine and other non-prescribed medications. Two days earlier, Respondent Clough approved Patient 4 taking "a few extra pills" for increased pain and authorized the filling of her next prescription two days early. On December 20, 2012, Patient 4 called Respondent Clough and stated that her next office visit is beyond the date of her next refill. Despite documenting, in response to that call, that Patient 4 needed to come into the office with her mom to discuss her recent drug test results; on January 4, 2013, Respondent Clough wrote Patient 4 a prescription for 42 tablets of Roxicodone (oxycodone HCL) 30mg after only "briefly" seeing her. There was no documentation of a corresponding office visit or an explanation as to why that prescription was necessary. Further, there is no documentation that the drug test results were discussed with Patient 4 at her next office visit with Respondent.

DD. On January 10, 2013, Patient 4 disclosed during an office visit with Respondent Clough that she met with her parole officer who noted that her pills were different. She claimed that she changed her pills with her mom because her mom's pills work better. Patient 4's mom denied giving her daughter her pills. Respondent Clough documented that he instructed Patient 4 that he would no longer prescribe her Roxicodone and that he would place her on a trial of Oxymorphone and refer her to the Suboxone clinic. However, without an adequate documented justification, Respondent Clough prescribed 75 tablets of Roxicodone (oxycodone HCL) 30mg to Patient 4 just 11 days later. Also, there is no documentation to indicate that Respondent Clough referred Patient 4 to a Suboxone clinic around the time of that visit.

EE. After seeing Patient 4 on January 21, 2013, Respondent Clough transferred her to another Physician Assistant at PainCare. Just 8 days later, that new provider documented that Patient 4's story is "convoluted and changes frequently" in an "attempt to get more opiates [ ]." The provider noted that Patient 4 is on probation for "over use of her Oxycodone since she has seen [Respondent] Clough." The new provider documented that he told Patient 4 during his initial visit with her that he "must consider that she has an addiction problem." Another subsequent provider at PainCare noted the same. During the period of time that Patient 4 was not treating with Respondent Clough, it was documented in a note dated April 10, 2013, that she has "opioid dependency issues," she overused her Oxycodone 30, and she violated her opiate agreement on multiple occasions.

FF. Respondent Clough resumed treatment of Patient 4 again on April 23, 2013. Despite Patient 4's historic and recent opioid issues documented in her medical record, Respondent Clough noted in the April 23<sup>rd</sup> office visit note that Patient 4 has a history of poly-substance abuse, but "no issues recently [ ]." Although Respondent Clough documented that he discussed with Patient 4 and her mom the risk of opiate abuse and Patient 4's prior concerning drug tests, he still authorized Patient 4 to receive 5 different prescriptions for opioids that day – 3 for Oxycodone HCL (two of which were Roxicodones) and 2 for Duragesic. Respondent Clough authorized two additional opioid prescriptions for Patient 4 on May 22, 2013.

GG. Over the course of Patient 4's treatment by Respondent Clough, she overused the drugs prescribed to her by him on multiple occasions and had multiple toxicology specimens which showed the presence of non-prescribed amphetamines,

marijuana, cocaine, and non-prescribed opioids. Although Patient 4's medical record contained an opioid agreement, there is no documentation to indicate that Respondent Clough ever discussed appropriate risk stratification with her. This is despite the fact that Patient 4 had multiple issues of aberrant drug-related behavior and inconsistent urine toxicologies.

HH. It was not until July 19, 2013 that Respondent Clough referred Patient 4 to a Suboxone program. In doing so, Respondent Clough noted that Patient 4 "has a history of overuse and opioid (sic) dependence issues." The medical record indicated that things came to a head during an office visit a month earlier, on June 19, 2013, when Patient 4 informed Respondent Clough that she is out of her Roxicodone early because she took more due to dental problems. Respondent Clough documented that he told Patient 4 that he thinks she is going down the wrong road and that he will no longer write opiate prescriptions for her and would be referring her to the Suboxone clinic.

II. Patient 5 was a 56 year old male who suffered from multiple medical issues including diabetes, Hepatitis C, and renal failure. In 2010, Respondent Clough performed 69 sympathetic block injections and 6 epidural steroid injections on Patient 5. Respondent Clough performed multiple procedures on Patient 5 while he was taking Coumadin and had a documented INR of 2.4. Respondent Clough also performed injections on Patient 5 while he had infections in his lower extremities.

JJ. During the period of June 18, 2011 to June 18, 2012, Patient 5 underwent 14 different injection procedures by Respondent Clough for a total of 19 injections. These injections included lumbar sympathetic block injections under fluoroscopic guidance and stellate ganglion block injections under fluoroscopic guidance. Respondent Clough had

Patient 5 placed under deep sedation for all of these procedures. For 4 of these procedures, the record NPO time was less than 6 hours. "Possible complications due to diabetes complicated by kidney issues, chronic renal failure, and hypertensive heart disease" were cited as the reasons for deep sedation with propofol. However, deep sedation care with propofol increases the risk associated with these procedures and is inconsistent with good medical judgment.

KK. In the year prior to his death in July of 2013, Patient 5 underwent 48 different injection procedures by Respondent Clough. These injections included lumbar sympathetic block injections under fluoroscopic guidance and stellate ganglion block injections under fluoroscopic guidance. However, none of these injections were done under deep sedation.

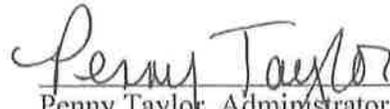
LL. The recorded procedure times for all of the injections performed on Patient 5 by Respondent Clough between June 18, 2011 and June 18, 2013 ranged from less than 1 minute to about 24 minutes, with an average procedure time of about 5 minutes. The recorded fluoroscopic time for these injections ranged from 0.05 to 1.59 seconds with an average time of around 0.30 seconds. For some of the procedures, it would be impossible to properly conduct the stated procedure in the recorded time.

MM. Despite the large number of procedures that were done on Patient 5 by Respondent (approximately 200), there are only 34 x-rays included in the record and their quality is extremely poor. Respondent Clough failed to adequately document the reasons for the medical decisions to perform these injections or any discussions with the patient about these procedures or other available options. The records do not document any discussion of the potential risks and benefits associated with each procedure. Also, there

are multiple notations in the medical record that the "surgical site was not marked by the provider." Respondent Clough estimates that he has performed more than 15,000 injections since he has been employed at PainCare.

BY ORDER OF THE BOARD/\*

Dated: Nov. 12, 2014

  
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Penny Taylor, Administrator  
Authorized Representative of the  
New Hampshire Board of Medicine

Amy Fertelson, MD, Louis Rosenthal, MD /\* Board members recused  
and Robert Ardelman, MD