

**STATE OF NEW HAMPSHIRE
BOARD OF MECHANICAL SAFETY AND LICENSING
CONCORD, NH**

In the matter of:
Elwin Sidney
Lic. #GF1809660 – Gas Fitter

DOCKET #23-MECH-001

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public, the New Hampshire Mechanical Safety and Licensing Board (“Board”) and Elwin Sidney (“Respondent”) do hereby stipulate and agree to resolve certain allegations of unprofessional conduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 153:27-a, RSA 153:32, RSA 541-A, and Board Administrative Rule Saf-Mec 202.01, 204.01, and 205.01, the Board has jurisdiction to investigate and adjudicate allegations of unprofessional conduct committed by licensees. Pursuant to Saf-Mec 213.01, the Board may, at any time, dispose of such allegations by settlement and without commencing an adjudicative hearing.
2. The Respondent holds Gas Fitter License #GF1809660. The license is currently active and expires on March 31, 2024.
3. The Respondent stipulates that the Board could make the following factual findings:
 - A. On October 26, 2022, the Respondent had a positive drug test screen related to his CDL.
 - B. On December 8, 2022, the Respondent had a second positive drug test screen related to his CDL.
 - C. The Respondent’s employer, Foley Oil, reported the positive tests to the Board.

- D. On or about January 30, 2023, Board Inspector Earl Middlemiss interviewed the Respondent. The Respondent told Inspector Middlemiss that he believed that his heart medication may have created a false positive in the tests.
 - E. Inspector Middlemiss directed the Respondent to provide documentation to support his statement.
 - F. On or about February 26, 2023, the Respondent provided a letter to Inspector Middlemiss purporting to be from Physician Assistant Diana O'Neill. The letter stated that the Respondent's particular heart medication is known to give false positive drug screen results and stated that the author was "convinced" that the Respondent tested positive because of this.
 - G. On or about March 17, 2023, Inspector Middlemiss contacted Ms. O'Neill and forwarded her a copy of the letter for verification. Ms. O'Neill responded that she did not recognize or write the letter.
4. Based on these facts, the Board could find that the Respondent violated RSA 153:32, II(c) and (g), and Saf-Mec 603.01(c) by failing to provide truthful information when asked to do so as part of an investigation by the OPLC Division of Enforcement.
5. Respondent consents to the Board imposing the following discipline, pursuant to Saf-Mec 604.02(a)(2) and RSA 153:32, III(b):
- A. Respondent's license will be **RESTRICTED** and subject to a period of **PROBATION** for 24 months provided the Respondent does not violate the provisions of RSA 153 or the Board's administrative rules.
 - 1) During the period of probation, Respondent shall submit performance reports of all gas-fitting jobs requiring a license to the Office of

Professional Licensure and Certification (“OPLC”) on a monthly basis. The report shall be submitted to the OPLC on the last day of each month with the first report due the last day of the month that the Board enters this *Settlement Agreement* as the Board’s order. The last report is due 24 months after the execution of this *Settlement Agreement*. A report shall be filed each month even if no work is performed in New Hampshire.

The report shall contain the following information:

- a. Customer name;
 - b. Customer address;
 - c. Dates of work performed; and
 - d. Scope of work performed.
- 2) Monthly reports shall be emailed to the Chief Mechanical Safety Inspector, currently Marc Prindiville at marc.a.prindiville@oplc.nh.gov.
 - 3) Customer names and addresses contained in each report shall be exempt from public disclosure pursuant to RSA 91-A:5, IV because identifying information about private citizens is confidential and disclosure would constitute an invasion of privacy.
 - 4) During the period of probation, OPLC and the Chief Mechanical Safety Inspector shall have the right to randomly audit jobs performed in New Hampshire and inspect job sites in New Hampshire to confirm that the work complies with all applicable laws, rules, and standards adopted by the Mechanical Safety and Licensing Board.

- 5) The Chief Mechanical Safety Inspector shall provide regular updates to the Board regarding the Respondent's compliance with this probationary term.
6. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant RSA 153:32, II, and a separate and sufficient basis for further disciplinary action by the Board.
7. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the unprofessional conduct described above. However, 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.
8. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
9. 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. Respondent further agrees that no coercion or duress from any person has caused him to sign this *Settlement Agreement*.
10. 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. This *Settlement Agreement* shall constitute a final Board action on this matter.
11. Respondent understands that his execution of this *Settlement Agreement* is a final act and not subject to reconsideration, judicial review, or appeal.

12. Respondent acknowledges that he has had the opportunity to seek and obtain the advice of an attorney of his choosing prior to signing this *Settlement Agreement*.
13. 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 or by 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.
14. Respondent is not under the influence of any drugs or alcohol and is otherwise of sound mind and judgment at the time he signs this *Settlement Agreement*.
15. Respondent certifies that he has read this and understands all of the terms of this *Settlement Agreement*.
16. 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 under RSA 153:33. 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 unprofessional conduct described herein.
17. This *Settlement Agreement* shall take effect as an Order of the Board when it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date: 10/2/23

Elwin R. Sidney
Elwin Sidney

FOR THE BOARD/*

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

Date: 10/11/23

Jesse Doucette
(Signature)
Jesse Doucette Chair
(Print Name and Title)
Authorized Representative of the
New Hampshire Mechanical Safety
and Licensing Board