

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

In the Matter of:
Thomas D. Wells, D.O.
No.: 9206
(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 Thomas D. Wells, D.O. ("Dr. Wells" 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 June 1, 1994. Respondent holds license number 9206. Respondent entered into a Preliminary Agreement for Practice Restrictions which was issued on June 8, 2010. He has not practiced medicine since that time.
3. On or about February 16, 2010, the New Hampshire Professionals' Health Program ("NHPHP") contacted the Board to report that Respondent had exhibited concerning behavior which may impact his ability to practice medicine.

4. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would prove that Respondent engaged in professional misconduct, in violation of RSA 329:17, VI (a); RSA 329:17, VI (b); RSA 329:17, VI (c); and RSA 329:17, VI (d), by the following facts:
 - A. On or about March 7, 2009, Respondent was arrested and charged with simple assault for punching his thirteen-year old son in the face. According to the police reports, Respondent's son had first slapped him during a family dispute concerning Respondent's marijuana use. Respondent was later convicted of simple assault.
 - B. Subsequent to this incident, Respondent voluntarily entered into a contract with NHPHP to address behavioral and substance abuse issues, which he successfully completed. He also voluntarily underwent an evaluation at the Professional Renewal Center ("PRC") which prompted his diagnosis and treatment for underlying sleep disorders and cervical disc disease.
 - C. Respondent worked at Weeks Medical Center Emergency Room during this time period. His colleagues began to voice concerns about Respondent's demeanor while working. Respondent was described as "exceedingly slow" and "out-of-it." Weeks Medical Center ordered Respondent to undergo a fitness-for-duty evaluation.
 - D. Respondent then went on a medical leave. While on leave, he sent an inappropriate e-mail to the staff at Weeks Medical Center, soliciting support for his application for disability benefits.

- E. Respondent provided inaccurate information to the Board on his 2010 renewal application. He responded in the negative to question 5 (Have you had any emotional disturbance or mental or physical illness which has impaired your ability to practice medicine?) and question 9 (Have any hospital privileges been suspended, limited or denied other than for medical records violations or have you been placed on administrative or medical leave?). Respondent contends that he acted in good faith at the time of his license renewal; however he now appreciates the inaccuracies of these responses.
5. 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 (a); RSA 329:17, VI (b); RSA 329:17, VI (c); and RSA 329:17, VI (d).
6. 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.
7. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
- A. Respondent is REPRIMANDED.
- B. Respondent shall undergo a complete assessment of his clinical skills at KSTAR. As part of this assessment, KSTAR shall review the following documents:
1. Respondent's Professional Renewal Center Assessment.

2. Respondent's Center for Personalized Education for Physicians Assessment.
 3. Police reports from the March 2009 simple assault arrest.
 4. Respondent's February 10, 2010 e-mail to Weeks Medical Center staff.
 5. All of Respondent's correspondence with the Board.
 6. Respondent's personal treatment records from the following providers and/or facilities:
 - i. Dr. Sorscher with Alice Peck Day Memorial Hospital;
 - ii. Dr. Paul Lidstrom;
 - iii. Dr. Alta Chase; and
 - iv. Fitness-to-practice assessment conducted at Hampstead Hospital.
- C. Respondent shall sign any and all releases necessary to allow KSTAR to review the above-mentioned documents. Respondent shall also sign a release allowing the NHPHP staff to communicate with KSTAR about Respondent's participation in that program.
- D. Respondent shall sign all necessary releases to allow KSTAR to share any and all information, including but not limited to the assessment, with the Board. This release shall also allow KSTAR to respond to any questions or concerns that the Board may have.
- E. Respondent shall comply with all KSTAR recommendations and requirements. He shall execute all necessary releases to allow the Board to

communicate with individuals and/or facilities that provide these services. Respondent shall submit proof of his compliance with all KSTAR recommendations within thirty (30) days of completion.

- F. The Preliminary Agreement for Practice Restrictions shall remain in effect until further order of the Board. Respondent shall not ask to have the Preliminary Agreement for Practice Restrictions vacated until the KSTAR Program approves his return to the practice of medicine.
- G. When Respondent returns to the practice of medicine, he shall refrain from night shifts.
- H. Respondent shall bear all costs of the treatment, evaluation, and reporting required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
- I. 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.
- J. For a continuing period of one (1) 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.

8. 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.
9. 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.
10. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
11. 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.
12. 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.

13. 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.
14. 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.
15. 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.
16. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
17. 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.
18. 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: January 16, 2013

Thomas D. Wells DO
Thomas D. Wells, D.O.
Respondent

Date: _____

Counsel for Respondent

FOR THE BOARD/*

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

Date: 2-8-2013

Penny Taylor
(Signature)

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

/* Board members, recused:
Amy Feitelson, M.D.
Robert P. Cervenka, M.D.