

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

In the Matter of:
Arnold D. Scheller, Jr., M.D.
License No.: 8835
(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 Arnold D. Scheller, Jr., M.D. (“Dr. Scheller” or “Respondent”), a physician licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 329:17, I; RSA 329:18; RSA 329:18-a; and Medical Administrative Rule (“Med”) 206 and 210, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physicians. Pursuant to RSA 329:18-a, III, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on October 7, 1992. Respondent holds license number 8835. Respondent practices orthopedic medicine in Waltham, MA.
3. On, or about July 24, 2012, the Board received a complaint from a doctor alleging that Ericka McCarron, RN was conducting procedures that are considered practicing medicine at her business called “About Face.” Arnold D. Scheller Jr., M.D., was

listed as the medical director of About Face. However, the complainant questioned whether Respondent was present when the procedures were being performed, since Dr. Scheller's business address was listed in Waltham, MA.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's lack of supervision.
5. 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; Med 501.02; and AMA Code of Ethics 3.01, by the following facts:
 - A. Ms. McCarron operates About Face Medical Aesthetics, PLLC in Stratham, New Hampshire. The business purpose is described as "Professional Registered Nurse providing medical aesthetic services."
 - B. Ms. McCarron stated that at this business she performed Botox, dermal fillers, IPL, chemical peels, and general skin care. In doing so, Ms. McCarron would determine how much product or medication to use on her clients without any input from a physician. While Ms. McCarron performed these procedures, there was no physician onsite.
 - C. The website for About Face Medical Aesthetics listed and described the procedures offered. The site indicated that "Juvederm," is to be injected by a doctor.
 - D. Starting April 30, 2012, Respondent was the medical director of About Face.

- E. Respondent did not treat patients at About Face. Respondent's primary practice is located in Brookline and Waltham, Massachusetts. He was available to Ms. McCarron by phone and email.
- F. Prior to accepting the position, Respondent observed Ms. McCarron engaging patients, analyzing patients' aesthetic issues and developing treatment plans.
- G. Respondent was confident in Ms. McCarron's abilities and expertise.
- H. Respondent would visit the About Face facility at least once a month to review and sign off on medical records without ever meeting patients. Respondent used this time to answer any questions that Ms. McCarron had.
- I. Respondent acknowledged allowing Ms. McCarron to use his BNDD number to request the necessary amount of Botox. The amount of Botox Ms. McCarron would use on a patient was based on standing orders for dosage parameters approved by Respondent.
- J. The Board of Nursing entered into a settlement agreement with Ms. McCarron after it found that she was practicing outside her scope by providing independent consultations and treatment plans without a physician. Ms. McCarron was reprimanded and required to have a medical director onsite at About Face or within 15 miles away that has a background in cosmetic dermatology.
- K. Under Ms. McCarron's settlement agreement with the Board of Nursing, Dr. Scheller is no longer qualified to continue as the Medical Director for About Face.

6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 329:17, VI; Med 501.02; and AMA Code of Ethics 3.01 by allowing Ms. McCarron to practice outside of the scope her practice without a medical license and by failing to evaluate or treat the patients at Ms. McCarron's facility himself.
7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a physician in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
 - A. Respondent is REPRIMANDED.
 - B. Respondent is assessed an ADMINISTRATIVE FINE in the amount of \$8,000. Respondent shall pay this fine in full within thirty (30) days of the effective date of this *Settlement Agreement*, as defined further below, by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 2 Industrial Park Drive, Suite 8, Concord, New Hampshire.
 - 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 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.
9. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.
11. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.

12. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
14. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
15. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.
16. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board, and any guidance or explanations provided to the parties by the Board resulting from 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 and no other *Settlement Agreement* is presented to the Board hereafter.
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: 8-01-13

Arnold D. Scheller, Jr., M.D.
Arnold D. Scheller, Jr., M.D.
Respondent

FOR THE BOARD/*

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

Date: 11/12/2013

Renny Taylor
(Signature)

*N.H. Board of Medicine and Arnold D. Scheller, Jr., M.D.
Settlement Agreement*

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

Louis Rosenthal, MD,
/* [~~recused member(s)~~], Board members, recused.