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NH BOARD

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

In the Matter of:
Adnan S. Khan, MD
License No.: 13404
(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 Adnan S. Khan, MD ("Dr. Khan" 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.
2. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on February 7, 2007. Respondent holds license number 13404. Respondent practices medicine in Lebanon and New London, New Hampshire.
3. On May 11, 2015, the Board received information alleging, in part, that Respondent inadequately and improperly treated a patient ("Patient") for Lyme disease.
4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's treatment of Patient in July 2014. On May 5, 2016 the Board issued a Notice of Hearing for Respondent and Dr.

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Kenneth Call (docket no. 16-05) to determine whether either party committed professional misconduct in their treatment of Patient in July and/or August 2014.

5. Respondent neither admits nor denies the alleged conduct, but stipulates that if a disciplinary hearing were to take place, Hearing Counsel may present evidence upon which the Board could conclude that Respondent engaged in professional misconduct under RSA 329:17, VI, (c) by the following facts:

- A. On July 7, 2014, Patient presented at the hospital emergency room complaining of a three-day fever, headaches, and a rash on his chest. Respondent treated Patient during this visit. The triage nurse's notes indicated that Patient reported a "circular near Bull's Eye lesion" on the right lateral ribcage and noted a possible insect bite. The triage nurse's assessment notes an "area of redness on patient's right ribcage below axilla." The triage nurse's notes recorded normal temperature, but noted that Patient was taking Tylenol at the time. Respondent's emergency room notes indicated that while Patient denied any obvious tick bite, Patient did cede a possible insect bite. Respondent did not order a Lyme titer during this visit. Respondent diagnosed Patient with cellulitis, prescribed Keflex and Bactrim, and discharged Patient.
- B. On July 26, 2014, Patient returned to the same emergency room complaining of persistent headaches (8/10 pain) along with a skin rash on his upper back. Respondent treated Patient during this visit. Respondent noted that "[Patient] recently had a spider bite and was treated with antibiotics." Respondent's notes further state that this "spider bite" was over his "right chest wall."

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Respondent also noted a "15/cm area of erythema on [Patient's] upper right back," with no obvious abscess or insect bite. Patient's white blood cell count was recorded at "12," with otherwise normal electrolytes. Once again, no Lyme titer was ordered. Respondent diagnosed Patient's rash as "upper back cellulitis" and treated Patient with IV fluids and Toradol. Respondent again prescribed Bactrim and Keflex and discharged Patient, advising him to follow up with his doctor in three to five days.

- C. On August 11, 2014, Patient returned to the hospital emergency room complaining of fever, chills, headache, as well as lower back, leg, and elbow pain. Patient reported that he thought he had Lyme's disease and requested testing for Lyme's disease. No Lyme titer was order at this visit. At a subsequent visit, another physician ordered a Lyme titer along with a number of other tests for Patient. The tests returned positive results for Lyme disease and meningitis. Patient was subsequently admitted to the hospital and treated with IV antibiotics and opiates. Patient developed numerous other symptoms due to Lyme disease over the next few months including imbalance, hearing loss, tinnitus, and severe joint pain.
- D. Previously, on April 7, 2014, Respondent entered into a settlement agreement with the Board based on allegations that he was grossly negligent in his treatment of a patient with tachycardia.
- E. On or about April 7, 2016, Respondent voluntarily agreed to undergo a Clinical Competency Assessment with Affiliated Monitors, Inc., of Boston,

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MA ("AMI") in order to evaluate Respondent's competency in the field of Emergency Medicine. Following this assessment AMI provided a Report of Clinical Competency Assessment ("Report"), dated July 15, 2016, identifying a number of areas relating to patient care that Respondent needed to improve, and outlining a number of education and oversight recommendations for Respondent to implement in order to assure patient safety.

6. The Board finds that Respondent committed the acts as described above, which demonstrate practice incompatible with the basic knowledge and competence expected of persons licensed to practice medicine under RSA 329:17, VI (c) by his failure to diagnose and treat Patient's symptomatic Lyme disease.
7. Respondent acknowledges that this alleged conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a physician in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
 - A. Respondent is REPRIMANDED.
 - B. Respondent's license to practice is RESTRICTED in that he shall not practice Emergency Medicine or in an emergency care setting without direct supervision from a supervisor approved by the Board. Respondent must have a supervision agreement on file with the Board. Respondent shall also not act in a supervisory capacity or as a medical director of any medical facility, unit, or department. Respondent may petition the Board to lift or modify these

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restrictions after he completes the monitoring contract as outlined below.

Respondent shall have the burden of demonstrating why these restrictions should be lifted or modified. Whether to lift or modify these restrictions on Respondent's license is up to the sole discretion of the Board.

- C. Respondent has completed six and a half (6.5) hours of continuing medical education, consisting of one and a half (1.5) hours on January 25, 2016 completing the Infectious Disease Society of America's CME "Lyme Disease Case Study Course" and five (5) hours on January 7, 2015 completing the American Academy of Family Physician's course on "Respiratory Infections." These hours were completed in addition to the hours required by the Board for renewal of licensure.
- D. Respondent is assessed an ADMINISTRATIVE FINE in the amount of \$2,000. 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 121 South Fruit Street, Concord, New Hampshire 03301.
- E. Respondent shall adhere to the recommendations made in AMI's July 15, 2016 Report. Respondent shall work with AMI to develop and implement and education program with monitoring as described in the Report. All educational program(s) and/or monitoring plan(s) must be approved by the Board before it is implemented.

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- a. Respondent's education and monitoring agreement with AMI shall also include the following provisions outlined herein.
- b. The monitoring period shall be eighteen (18) months. The monitor shall review Respondent's treatment of patients and provide written reports to the Board and to Respondent every sixty (60) days. The monitor shall review Respondent's treatment of patients to determine Respondent's compliance with accepted medical practices and all applicable states and federal laws, regulations, and administrative rules, as well as the American Medical Association's Code of Medical Ethics.
- c. Every sixty (60) day period, the monitor shall review the treatment provided by Respondent of fifteen (15) separate patients. The patient care reviewed shall be patients seen by Respondent since the monitor's prior visit. The monitor shall review records and clinical care provided by Respondent in the areas identified in the AMI's Report as requiring, "further education."
- d. The written reports submitted to the Board every sixty (60) days shall:
 - i) Evaluate Respondent's clinical care in the areas identified as needing further education in AMI's Report;
 - ii) Identify any deficiencies in Respondent's care which reasonably warrant corrective action; and
 - iii) Provide an assessment of Respondent's progress in implementing recommendations for his clinical care.

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- e. Respondent shall take any and all corrective actions that are reasonably necessary to correct any and all deficiencies identified in any review by the monitor. Not later than thirty (30) days after Respondent's receipt of the monitor's report, Respondent shall submit to the Board a detailed written report identifying the steps that have been taken, or are being taken, to correct the deficiencies cited in the monitor's report, and the dates by which such corrective actions will be completed.
- f. The Board, in its discretion, may request at any time during the period of monitoring that AMI select a different monitor. If the monitor becomes unable to serve or fulfill his/her obligations, AMI may nominate a different monitor who is acceptable to the Board. In the event that the monitor is unable to complete his/her review or report in a timely fashion due to the monitor's own personal and/or professional commitments, Respondent shall notify the Board in writing of the reasons the monitor is unable to complete his/her review or the report by that date, and the Board, for good cause shown, may extend the deadline for completion of the review and report.
- g. The terms and provisions of Respondent's contract with AMI shall be incorporated into this *Settlement Agreement* by reference. Respondent's failure to comply with any AMI contract terms shall constitute a violation of the terms of the *Settlement Agreement*. It is the responsibility of Respondent to provide information to AMI in a timely

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and complete manner and to assure that all written reports setting forth findings of the monitor are timely transmitted to the Board every sixty (60) days.

- F. Respondent shall bear all costs of evaluation, monitoring, and reporting required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
- G. 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.
- H. For a continuing period of two (2) years 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.

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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. 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 them 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 their choosing in connection with their 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*

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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 their 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 right 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: _____


7/29/16



Adnan S. Khan, MD
Respondent

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Date: 8/11/16


Chad P. Brouillard, Esq.
Counsel for Respondent

FOR THE BOARD/*

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

Date: 9/14/2016


(Signature)

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

*Board members, recused:

Louis Rosenthal, MD
Frank Dibble, Jr., MD
