

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

In the Matter of:
John M. O'Day, MD
License No.: 5507
(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 M. O'Day, MD ("Dr. O'Day" 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 April 23, 1976. Respondent holds license number 5507. Respondent practices otolaryngology in Somersworth, New Hampshire.
3. On November 18, 2015, the Board received information alleging that Respondent had failed to appropriately respond to a patient who had recently undergone a tonsillectomy and was experiencing bleeding, while on call doctor at Portsmouth Regional Hospital on the evening of the incident.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's alleged abandonment of the patient.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would present evidence to seek to prove that Respondent engaged in professional misconduct, in violation of RSA 329:17, VI, by the following facts:
 - A. On October 8, 2015, Patient underwent a direct laryngoscopy and tonsillectomy. The surgery was uneventful and Patient went home later that evening.
 - B. Due to an extensive cardiac history, Patient was taking Plavix. The doctor who performed the surgery on October 8, 2015, ("Dr. S.") got cardiac clearance for cessation of Patient's Plavix 5 days before and 3 days after surgery. Patient resumed taking Plavix 4 days after surgery.
 - C. On October 16, 2015 at approximately 8:30 p.m., Patient began coughing up clots of blood every 5 to 10 minutes. Patient's wife called Dr. S's office and was referred to Respondent who was the on call physician that night.
 - D. Respondent promptly returned the call from Patient's wife. After learning the patient was taking clopidogrel and was having oropharyngeal bleeding following tonsillectomy, Respondent initially recommended oropharyngeal lavage with ice chips and ice water, and advised that he would call back in 15 minutes.
 - E. When Respondent called Patient back in 15 minutes, he was still experiencing bleeding. Respondent advised the patient that he would need tertiary care due

to his use of Plavix and recommended the patient's wife drive him to Maine Medical Center (a 55 mile drive from the Patient's home). Patient and his wife were uncomfortable with the recommendation and chose to go to Portsmouth Regional Hospital.

- F. Upon arrival in the emergency department of Portsmouth Regional Hospital, Patient was attended to by the emergency room physician, ("Dr. D"). Dr. D noted slow but continuous bleeding from the right tonsillectomy site. The emergency room doctor contacted Respondent, as the on call Ears, Nose, Throat (ENT) doctor. Respondent recommended the Patient be transferred to a tertiary care center such as Maine Medical Center.
- G. Respondent and Dr. D spoke to the ENT physician at Maine Medical Center and were told they would not accept Patient in transfer. Respondent suggested to Dr. D that she try a Boston hospital, but when this contact was made the transfer was also refused as it was thought to be unsafe to transport an actively bleeding patient in an ambulance to a distant hospital, especially when the definitive treatment for the clinical problem was felt to be available at Portsmouth Regional Hospital.
- H. Dr. D then contacted the hospital administrator, who was able to reach Dr. S. Dr. S then came to the emergency room, evaluated the patient and then ultimately returned the patient to the operating room in the early hours of October 17, 2015, where he controlled the right tonsillar fossa bleeding

without difficulty using cautery. Patient's subsequent recovery was uneventful.

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 (d).
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.
 - A. Respondent is required to meaningfully participate in 6 hours of continuing medical education in the area of medical ethics, which may be met by taking the Patient Safety & Health Care Quality Improvement course, Harvard University, September 26-27, 2016 (10.5 AMA credits); 6 hours of continuing education in the area of managing postoperative bleeding after tonsillectomy, which may be met under Med 402.01 through reading 12 journal articles located by Respondent (list attached hereto) (6.0 CME Category II credits); and 3 hours of continuing education in the area of managing patients taking anticoagulants which may be met by taking the Anticoagulation Boot Camp, October 6-7, 2016 (9.75 AMA credits). These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed

within six (6) months from the effective date of this *Settlement Agreement*. Any hours above the stated requirements may count toward the hours required by the Board for renewal of licensure. Within fifteen (15) days of completing these hours, Respondent shall notify the Board and provide written proof of completion.

- B. Respondent is assessed an ADMINISTRATIVE FINE in the amount of \$1,000. 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.
- 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 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 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: 9/14/16

[Signature]
John M. O'Day, MD
Respondent

Date: 10/4/16

[Signature]
Adam Pignatelli, Esquire
Counsel for Respondent

FOR THE BOARD/*

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

Date: 10/7/2016

[Signature]
(Signature)

PENNY TAYLOR
(Print or Type Name)

Authorized Representative of the
New Hampshire Board of Medicine

/*Board members, recused:
Louis Rosenthal, MD
Robert Andelman, MD