

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

In the Matter of:  
**Kenneth D. Call, MD**  
**License No.: 13791**  
(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 Kenneth D. Call, MD (“Dr. Call” 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 November 11, 2008. Respondent holds license number 13791. Respondent practices Emergency Medicine in Lebanon, New Hampshire.
3. On May 11, 2015, the Board received information alleging in part that Respondent inadequately and improperly treated “Patient” for Lyme disease.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's alleged negligent diagnosis and treatment of Patient in August 2014.
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 under RSA 329:17, VI, 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 did not treat 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 [P]atient's right ribcage below axilla." The triage nurse's notes recorded normal temperature, but noted that Patient was taking Tylenol at the time. The treating physician's emergency room notes indicated that while Patient denied any obvious tick bite, Patient did cede a possible insect bite. The treating physician did not order a Lyme titer during this visit. The treating physician diagnosed Patient with cellulitis, prescribed Keflex and Bactrim, and discharged Patient.
  - B. On July 26, 2014, Patient returned to the same emergency room and was treated again by the same physician he had seen on July 7. Patient complained of persistent headaches (8/10 pain) along with a skin rash on his upper back. The physician noted that "[Patient] recently had a spider bite and was treated

with antibiotics.” These notes further indicate that the “spider bite” was over his “right chest wall.” The treating physician also noted a “15/cm area of edema on his upper right back,” with no obvious abscess or insect bite. Patient’s white blood cell count was recorded at “12,” with otherwise normal electrolytes. No Lyme titer was ordered during this visit. Patient was diagnosed with as “upper back cellulitis,” treated with IV fluids and Toradol and prescribed Bactrim and Keflex.

- C. On August 11, 2014, Patient returned again to the same emergency room complaining of a fever, chills, headache (7/10 pain), as well as lower back, leg, and elbow pain. The triage nurse’s report indicated that Patient “thinks he has Lyme’s,” and that “[Patient] states he is not leaving until we test him for Lyme’s disease.” Respondent treated Patient during this visit. Patient was involved with a heated altercation with the triage nurse before Respondent became involved. In his notes, Respondent indicated that Patient thought his symptoms indicated chronic Lyme disease. Respondent noted that Patient had been diagnosed with cellulitis twice before and that “he does not have any evidence of tick bites.” Respondent further documented under the treatment plan that he declined to test for Lyme despite the Patient’s request to do so, stating, “I think this is best managed in a primary care office.” Respondent also stated that “[Patient] may have chronic Lyme disease but with no history of tick bites or tick exposure, no fever, no history of a Bull’s Eye rash, I see no reason to start him on doxycycline empirically.” Following Respondent’s

refusal to order a Lyme disease test, Patient became angry and left the Emergency Room without further treatment.

- D. Ten hours later, Patient returned to the same emergency room, and again requested a Lyme disease test. A Lyme titer was ordered in addition to other tests. Patient's tests returned positive for Lyme disease and meningitis. Patient was subsequently admitted for treatment 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.
6. The Board finds that Respondent committed the acts as described above, constituting gross negligence under RSA 329:17, VI (d) by failing to diagnose the patient's symptomatic Lyme disease and denial of Patient's request for a Lyme titer.
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 required to meaningfully participate in four (4) hours of CONTINUING MEDICAL EDUCATION, consisting of two (2) hours of continuing medical education in the area of Diagnosis and Treatment of Lyme Disease and two (2) hours of continuing medical education in the area of

Diagnosis and Treatment of Infectious Diseases. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within one (1) year from the effective date of this *Settlement Agreement*. Respondent may apply the credit hours he earned from a course of continuing education completed on October 5, 2016, including 2.75 credit hours in Diagnosis and Treatment of Lyme Disease and ten (10) separate credit hours in Diagnosis and Treatment of Infectious Diseases. Respondent has already provided proof of completion of these credit hours to the Board.

- C. 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 03301.
- D. 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.

- E. 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. 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 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 Agreement* shall be null and void.
17. Respondent is not under the influence of any drugs or alcohol at the time they 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 they would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on their 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: 12/12/2016

Kenneth D. Call, MD  
Kenneth D. Call, MD  
Respondent

**FOR THE BOARD/\***

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

Date: 1/11/2017

Penny Taylor  
(Signature)

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

\*Board members, recused:

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