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

In the Matter of:
Joshua Greenspan, M.D.
**No.: 13011**
(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 Joshua Greenspan, M.D. ("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 March 1, 2006. Respondent holds license number 13011. Respondent is board certified in anesthesiology and pain management and practices at the American Pain Institute in Portsmouth, New Hampshire.

3. On June 5, 2018, the Board received a complaint from a former patient ("Complainant") of Respondent. The complaint alleged that Respondent, after treating him for years and prescribing the same dosages of pain medications, suddenly

reduced his pain medications, which led to increased pain and anxiety, and suicidal ideations. Complainant also alleged that Respondent had failed to treat his new and/or worsening symptoms over a period of years.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's management of the treatment of Complainant for chronic pain, including his decision to reduce the dosage of Complainant's pain medication and to terminate Complainant from his practice.

5. Respondent neither admits nor denies the conduct alleged herein, but stipulates that if a disciplinary hearing were to take place, Hearing Counsel would seek to introduce evidence from which the Board could conclude that Respondent engaged in professional misconduct, by the following facts:

   A. Complainant became a patient of Respondent in May of 2014. Complainant had suffered from chronic pain for many years, stemming from a number of different sources, including back and leg pain from a fall, testicular pain after a surgery, neck and back pain from a motor vehicle accident, and chest and shoulder pain following coronary bypass surgery. Complainant was already taking 80 mg of Oxycontin twice daily and 30 mg of Oxycodone four times a day, which had been prescribed by a prior physician. Complainant was also already taking Klonopin for anxiety, which was prescribed by his primary care physician, who had reportedly been treating his anxiety for years. Respondent continued to prescribe Oxycontin and Oxycodone at the same levels, and began to see Complainant monthly. At every other office visit, Respondent

performed urine toxicology testing and checked the Prescription Drug Monitoring database; Respondent also conducted yearly random pill counts.

B. There is no evidence in Complainant's records that Respondent used any risk assessment tool to assess the risk that Complainant would misuse the prescribed opioid medications, although Respondent contends that he did assess and document this risk at the beginning of Complainant's treatment and at every monthly appointment. From May of 2014 until December of 2015, Complainant's records indicate that Respondent placed him at "moderate" risk of abuse. From December of 2015 until June of 2016, Respondent changed this assessment to "moderate to high" risk. There is no indication as to how Respondent arrived at this conclusion. In June of 2016, after Complainant failed a pill count and was placed on probation for four weeks, Respondent changed the risk assessment to "high," and it remained so until treatment was terminated in June of 2018.

C. Although Complainant's records did contain both treatment plans and signed treatment agreements, there is little evidence in the records that there was ever a re-evaluation as to the use and/or level of opioids in the four-year course of Complainant's treatment, until April of 2018, when Respondent began reducing the dosage of the prescribed Oxycontin. Respondent contends that a discussion of how the opioids were enabling Complainant to perform household chores was repeatedly documented in the records, indicating that the opioids were having appositive impact on Complainant's functionality.

D. During the course of Complainant's treatment, Respondent recommended that he receive lumbar facet joint blocks, and Respondent administered two of these. Respondent also recommended radiofrequency neurolysis of the lumbar facet joints to provide pain relief, as an alternative to opioids. Complainant refused this treatment due to anxiety and/or the cost associated with the procedure. Respondent also recommended lumbar epidural steroid injections, cervical facet joint blocks, glenohumeral joint injections, acromioclavicular joint injections, subacromial bursa injections, and a back brace as alternative treatments. Complainant also refused these due to anxiety and/or the costs associated with them.

E. The records of the physician who referred Complainant to Respondent's practice in 2014 indicate that Complainant had previously tried both acupuncture and physical therapy for his pain, but that these treatments had not been effective. Complainant's 2014 self-report, on a "Pain Treatment History" form, indicated that he had tried other (unspecified) medications for his pain that had not been effective. Respondent's records do not reflect any additional discussion of non-opioid pain treatments, despite the fact that Complainant's record indicated that he suffered from anxiety which was untreated and which was believed to be interfering with his pain management. Respondent made no referrals for cognitive behavior therapy and/or psychiatric treatment, made no referral to any other addiction specialist, and did not suggest that Complainant try non-opioid medications for his pain, such

as anti-inflammatory, anti-depressant, and/or anti-seizure medications. However, as of July 3, 2017, Complainant had begun to take an anti-coagulant, so anti-inflammatories would have been contra-indicated at that time.

F. Complainant continued to take Klonopin, prescribed by his primary care physician, during the entire time he was treated by Respondent. Respondent was treating Complainant for pain and did not prescribe any benzodiazepines for him. However, Klonopin is a benzodiazepine, and a "strong warning" against combining benzodiazepines with opioids was issued by the FDA in August of 2016.

G. In December of 2015, Respondent increased Complainant's dosage of 30 mg of Oxycodone from four times per day to five times per day because Complainant reported increased pain due to the winter weather. The Oxycodone dosage remained at this level for the rest of Complainant's treatment, because it appeared that this heightened dosage was effective in managing Complainant's pain and was allowing him to do things he had not been able to do in years.

H. On April 9, 2018, Respondent informed Complainant that "CMS" (Medicare) had issued new guidelines that were effective January 1, 2019, and that allowed only 90 mgs of morphine equivalents daily. Respondent informed Complainant that he was going to begin tapering his opioids down to come into compliance with this guideline. Respondent reduced Complainant's dosage of Oxycontin by 40 mg/day, a decrease of 13%. The new CMS rule,

which was issued on April 2, 2018, did not in fact set an upper per-day dosage limit, but required any pharmacist filling prescriptions for more than 90 mgs of morphine equivalents per day to document a discussion with the prescribing doctor.

I. After the April 9th office visit, Respondent received a phone call from Complainant, who stated that his pain was not controlled by the new dosage. Respondent's notes of this conversation indicate that he explained the CMS and CDC guidelines to Complainant. CDC guidelines regarding prescribing opiates had been issued on August 3, 2016. These guidelines recommended that practitioners carefully assess benefits and risks when increasing a dosage to more than 50 mgs of morphine equivalents per day, and should avoid increasing dosages to more than 90 mgs of morphine equivalents per day.

J. On April 17, 2018, Respondent received a phone call from Complainant's primary care physician, inquiring about the reduction in pain medication. On April 30, 2018, Respondent received another phone call from Complainant, who stated that his pain was "terrible." Respondent offered, for the first time, to refer Complainant for cognitive behavioral therapy, but Complainant refused this.

K. On his next office visit, on May 7, 2018, Complainant reported that his pain was 7 out of 10, and that he was having a "tough emotional time" with the decrease in dosage. He further stated that he had gone to the hospital for emotional distress. Respondent made no referrals or recommendations

regarding these issues, but instead reduced Complainant's dosage of Oxycontin by another 20 mgs.

L. Following the May, 2018 office visit, Complainant failed a random pill count and was later admitted to a hospital due to threats of suicide unless he was given a higher dosage of opioids. On June 2, 2018, during a phone conversation between Respondent and Complainant, Respondent notified Complainant that, in light of recent threats of suicide, Respondent was no longer comfortable prescribing opioids to Complainant, and he was being discharged from his practice. Complainant threatened to sue Respondent and report him to the Board. After this conversation, Respondent reported his concerns about Complainant's well-being to the local police department, and to Complainant's primary care physician. Respondent also sent a prescription for withdrawal medications to Complainant's pharmacy.

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 (c), and/or Med 501.01 (a), and/or Med 501.02 (e), and/or (h), and/or (i), and/or (j), and/or Med 502.05 (b), and/or (d), and/or (g), and/or (h), and/or (i), and/or (j), and/or (k), and/or the AMA Code of Ethics.

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 at least twelve (12) hours of **CONTINUING MEDICAL EDUCATION**, with six (6) hours each in the areas of (1) pain management record keeping and (2) prescribing opioids for pain management. 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*. Within fifteen (15) days of completing these hours, Respondent shall notify the Board and provide written proof of completion.

C. Respondent is assessed an **ADMINISTRATIVE FINE** in the amount of ONE-THOUSAND DOLLARS ($1,000.00). 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, Suite 301, Concord, New Hampshire.

D. 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.

E. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.

F. 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.

G. 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 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. Respondent acknowledges that no undue influence, coercion, or duress from any source has influenced his decision to sign this *Settlement Agreement.*

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: 5-21-2019

Joshua Greenspan, M.D.
Respondent

Date: 5/21/19

Jason Gregoire, Esq., Counsel for Respondent

**FOR THE BOARD/***

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

Date: June 18, 2019

Penny Taylor
(Signature)

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

/* N/A, Board members, recused.