

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

In the Matter of:  
Frank Penna, MD  
No.: 17727  
(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 Frank Penna, MD (“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 408, 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 July 6, 2016. Respondent held license number 17727. His license lapsed on June 30, 2020. Respondent currently practices urology in another state.
3. On January 6, 2020, The Board received information from the Dartmouth-Hitchcock Medical Center (“DHMC”) alleging that Respondent had violated DHMC workplace policies by engaging in a romantic relationship with a resident he supervised.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's conduct.
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, by the following facts:
  - A. Between 2016 and 2019, Respondent was a physician employed by DHMC. His duties included supervising and evaluating trainees in the hospital's residency program.
  - B. Between 2017 and 2018, Respondent was involved in a consensual sexual relationship with one of the trainees in the residency program.
  - C. DHMC management became aware of the relationship and confronted respondent in December of 2017. Respondent denied the existence of the relationship at that time even though he was, in fact, still engaged in the relationship.
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) and RSA 329:17, VI (i).
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, and complete, ten (10) hours in a program of CONTINUING EDUCATION in the area of professional boundaries. 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 two thousand dollars (\$2,000.00). 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 7 Eagle Square, Concord, New Hampshire.
- D. Respondent shall bear all costs of continuing education and reporting required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
- E. 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.

- F. For a continuing period of five (5) 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.
9. Should Respondent fail to comply with any of the terms of this *Settlement Agreement*, the Board reserves the right to suspend Respondent's license or impose other authorized discipline, in accordance with the following process: The Board will notify Respondent, in writing, of the Board's finding of Respondent's non-compliance and the suspension and/or additional discipline it intends to impose for such non-compliance. Respondent will have ten (10) days, from the date of the Board's notification of non-compliance, to request a show cause hearing before the Board. If Respondent timely requests such a hearing, the Board will schedule a show-cause hearing for its next available hearing slot. At the hearing, Respondent will have the burden of demonstrating to the Board either why his license should not be suspended or additional discipline imposed for non-compliance or that they are in compliance with this *Settlement Agreement*. Respondent has stipulated to the facts set out in Section 5 of this *Settlement Agreement* and acknowledges and agrees that those

facts cannot be challenged in any hearing regarding enforcement of this *Settlement Agreement*. After the hearing, the Board will issue an order explaining its reasons for imposing, or not imposing, a suspension of Respondent's license, and/or any other discipline within the terms of RSA 329:17, VII. If Respondent does not request a show cause hearing within ten (10) days of the date of the Board's notification of non-compliance, the license suspension and/or additional discipline outlined in the notice of non-compliance shall be imposed. Any imposed suspension or additional discipline shall remain in effect until Respondent comes into compliance with this *Settlement Agreement* and the Board notifies Respondent in writing that the suspension or additional discipline has been lifted, unless such discipline is a license revocation.

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 *Settlement 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: 9/28/2020



Frank Penna, MD  
Respondent

Date: 10/13/2020



Jon Meyer, Esq.  
Counsel for Respondent

**FOR THE BOARD/\***

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

Date: 12/11/2020

  
(Signature)

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

/\* [recused member(s)], Board members, recused.

