

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

In the Matter of:
Michael Moharan, DPM
License No.: 0354
(Misconduct Allegations)

Docket No.:20-POD-0001

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 podiatry, the New Hampshire Board of Podiatry (“Board”) and Michael Moharan, DPM (“Respondent”), a podiatrist 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 315:9, VI; RSA 541-A and Board of Podiatry Rule (“Pod”) 212, 213, and 214, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct that arose upon the Board’s receipt of an administratively final order from the licensing authority of another jurisdiction, Massachusetts, which imposed discipline on Respondent, a podiatrist licensed in both jurisdictions. Pursuant to RSA 315:10-a, III, the Board may, at any time, dispose of such allegations by settlement.
2. The Board first granted Respondent a license to practice as a podiatrist in the State of New Hampshire on December 9, 2015. Respondent holds license number 0354. Respondent’s license was due to expire on June 30, 2022. Respondent’s license is currently revoked pending an appeal to the New Hampshire Supreme Court.
3. On or about June 10, 2019, Respondent was arrested in Massachusetts and charged with operating a vehicle under the influence of drugs, reckless operation of a motor vehicle, unlicensed operation of a motor vehicle, and multiple counts of possession of drugs. No conviction resulted from any charge.
4. On or about June 19, 2019, the Massachusetts Board of Registration in Medicine (“Massachusetts Board”) imposed a Temporary Order of Suspension of

Respondent's license to practice in Massachusetts based on the aforementioned charges. Respondent timely disclosed the Massachusetts Temporary Order of Suspension to the Board on or about June 21, 2019.

5. On or about November 1, 2019, Respondent entered into a Consent Agreement with the Massachusetts Board ("Consent Agreement"). Under the terms of the Consent Agreement, Respondent agreed to an indefinite suspension of his license to practice podiatry in Massachusetts.
6. Pursuant to the Consent Agreement, Respondent petitioned the Massachusetts Board to reinstate his license, which the Massachusetts Board unanimously granted on January 14, 2020.
7. The Massachusetts Board reinstated Respondent's license, subject to a three (3) year stayed suspension during which Respondent agreed to be bound by specific terms and conditions outlined in paragraphs 6a-6k in the Consent Agreement. *See Attachment A.*
8. On September 11, 2020, pursuant to RSA 315:9, IV, the Board issued a Notice of Hearing to Show Cause to Respondent, thereby providing Respondent with the opportunity to demonstrate why a lesser sanction should be imposed by the Board.
9. On December 9, 2020, the Show Cause Hearing before the Board was conducted by a Hearings Examiner and Respondent appeared without counsel.
10. On or about March 11, 2020, the Board issued its order on the Show Cause Hearing and revoked Respondent's license to practice podiatry in New Hampshire.
11. Respondent was not notified of the Board's decision to revoke his license until he received a copy of the Board's order in an envelope post-marked September 2, 2020.
12. On September 22, 2020, Respondent filed a Motion for Reconsideration and/or Rehearing, alleging that the Board did not consider the surrounding circumstances that led to Respondent's arrest, the lack of a conviction for any of the charges, or the ways in which Respondent addressed the circumstances surrounding his arrest in Massachusetts, which resulted in an unjust and unreasonable decision by the Board to impose a harsher judgement than what was imposed by the Massachusetts Board.

13. On or about September 29, 2021, Respondent and counsel appeared at the Board's regularly scheduled meeting despite the fact that Respondent's Motion for Reconsideration and/or Rehearing was not on the Board's agenda. No formal hearing was conducted. However, Respondent's counsel was afforded a few minutes to present a brief, but incomplete, argument on the Motion. No questions were raised by the Board. That same day, the Board issued its Order denying Respondent's Motion for Reconsideration and/or Rehearing.
14. On or about October 28, 2021, pursuant to RSA 315:10-a, VI, and RSA 541:6, Respondent filed a Notice of Appeal with the New Hampshire Supreme Court alleging multiple Due Process of Law violations by the Board.
15. Respondent cooperated throughout the proceedings before the Massachusetts and New Hampshire Boards.
16. After due consideration of the underlying allegations and the procedural history of this reciprocal disciplinary matter, the Board and Respondent have agreed to resolve this matter according to the terms of this *Settlement Agreement*.
17. The Board shall **VACATE** the Order of Revocation dated March 11, 2021, and the Order Denying Respondent's Request for Reconsideration or Rehearing dated September 29, 2021.
18. Respondent shall **WITHDRAW** his Notice of Appeal, which was filed with the New Hampshire Supreme Court on or about October 29, 2021.
19. Respondent stipulates that if a disciplinary rehearing were to take place, Hearing Counsel would introduce evidence to seek to prove that Respondent engaged in professional misconduct, in violation of RSA 315:9, II, by the following facts:
 - A. On or about June 10, 2019, Respondent was arrested in Massachusetts and charged with operating a vehicle while under the influence of drugs, reckless operation of a motor vehicle, unlicensed operation of a motor vehicle and multiple counts of possession of drugs. No conviction resulted from any charge.

- B. On or about June 19, 2019, the Massachusetts Board summarily suspended Respondent's license to practice in Massachusetts based on the aforementioned charges. Respondent timely disclosed the Massachusetts Temporary Order of Suspension to the Board on or about June 21, 2019.
 - C. On or about November 1, 2019, Respondent entered into a Consent Agreement with the Massachusetts Board. Pursuant to the terms of that Consent Agreement, Respondent's license was reinstated by the Massachusetts Board on or about January 14, 2020.
 - D. Per the terms of the Consent Agreement and as a result of the Massachusetts Board's January 14, 2020 decision, Respondent's license was reinstated subject to a three (3) year period of suspension that was stayed provided the Respondent complied with specific terms and conditions identified in paragraphs 6a-6k in the Consent Agreement. See Attachment A.
 - E. Respondent cooperated throughout the proceedings before the Massachusetts and New Hampshire Boards.
20. The Board finds that there is sufficient evidence to conclude that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent violated RSA 315:9, II (g).
21. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against Respondent's license to practice as a podiatrist in the State of New Hampshire.
22. Respondent consents to the Board imposing the following discipline, pursuant to RSA 315:9, III:
- A. Respondent's **LICENSE is SUSPENDED** for a period of three (3) years retroactive to January 14, 2020, the date the Massachusetts Board reinstated Respondent's license to practice in Massachusetts under the terms of the Massachusetts Consent Agreement. *See Attachment A.*
 - B. The entire period of suspension shall be **STAYED** on the condition that Respondent complies with all the terms and conditions of this *Settlement*

Agreement, the Consent Agreement and the Affiliated Monitors, Inc., (“AFI”) Contract for Monitoring Services (“Monitoring Contract”). If Respondent fails to comply with all the terms and conditions of this *Settlement Agreement*, the Consent Agreement or the Monitoring Contract, the Board shall schedule a show cause hearing and may impose increased discipline up to, and including, revocation of Respondent’s license to practice podiatry in New Hampshire.

- C. The terms and provisions of the Massachusetts Consent Agreement that became effective on December 4, 2019, are incorporated into this *Settlement Agreement* by reference. Respondent’s failure to comply with any of the terms and conditions of the Consent Agreement shall constitute a violation of the terms of this *Settlement Agreement*.
- D. During the entire period of the stayed suspension, Respondent is required to continue with the **INDEPENDENT MONITORING** that is currently being performed by AFI pursuant to the Monitoring Contract, which was executed by both parties and became effective on or about December 4, 2019. *See* Attachment B. The terms and conditions of the Monitoring Contract shall be incorporated into this *Settlement Agreement* by reference. Respondent’s failure to comply with any of the terms and conditions in the Monitoring Contract shall constitute a violation of the terms of this *Settlement Agreement*.
- E. Respondent shall abstain from drugs, alcohol and remain free of any new criminal charges. Respondent shall submit to random bodily fluid toxicology screenings at his own expense and at least twice monthly on average in compliance with the terms and conditions detailed in paragraph 6(c) of the Consent Agreement. AFI must provide the Board with the results of all toxicology screens on the same quarterly schedule that it provides the results to the Massachusetts Board. It is Respondent’s responsibility to assure that all toxicology screen results are timely submitted to the Board by AFI.
- F. Respondent shall not prescribe any controlled substances to himself or to any member of his family for the duration of the Stayed Suspension Period.

- G. Respondent shall provide copies of any and all medications that he prescribes to patients, to AFI for review as required by paragraph 6(f) and (g) of the Consent Agreement.
- H. Respondent's practice of podiatry, particularly as it relates to the prescribing of controlled substances shall continue to be reviewed by AFI in accordance with the requirements detailed in paragraph 6(g) of the Consent Agreement and the terms of the Monitoring Contract. The quarterly reports AFI currently submits to the Massachusetts Board shall also be submitted to this Board on the same time schedule and for the entire period of the Stayed Suspension. It is the Respondent's responsibility to assure that all written reports setting forth findings of the monitor are timely transmitted to the Board.
- I. Respondent understands and agrees that AFI may be requested to appear before the Board to provide additional information and/or answer any questions the Board may have regarding Respondent's medication prescribing practices.
- J. If, for any reason, AFI becomes unable or unwilling to complete Respondent's monitoring, Respondent shall notify the Board within ten (10) days from the date he was notified of AFI's intent to withdraw as Respondent's monitor.
- K. The terms of the Consent Agreement and the Monitoring Contract shall remain in effect for the entire period of Respondent's Stayed Suspension, even if the Massachusetts Board modifies and/or changes the terms of the Consent Agreement and Monitoring Contract before Respondent's period of stayed suspension is completed in New Hampshire. The express terms of the Consent Agreement (Attachment A) and the Monitoring Contract (Attachment B) as incorporated and attached to this *Settlement Agreement* shall control over any future amendments or changes that may occur as a result of a Massachusetts Board decision.
- L. Respondent does not currently hold a Drug Enforcement Administration ("DEA") Registration in New Hampshire. If Respondent applies for and

receives a DEA Registration in New Hampshire, he shall supply a quarterly Prescription Drug Monitoring Program ("PDMP") report to the Board beginning three (3) months after his receipt of the DEA Registration. Respondent shall continue to provide quarterly PDMP reports to the Board until the stayed suspension ends.

- M. Respondent shall immediately notify the Board in writing any time any treating physician prescribes for the Respondent a controlled substance in schedules II through IV.
- N. Respondent shall immediately notify the Board in writing if he violates any terms of this *Settlement Agreement*, the Consent Agreement, the Monitoring Contract, or fails a drug/toxicology screening. The notification must be received by the Board no more than three (3) days after the violation.
- O. Respondent shall complete any Continuing Education courses as needed to retain, reinstate or renew his license to practice podiatry in New Hampshire.
- P. 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.
- Q. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
- R. 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 podiatrist or work which requires a license in podiatry or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials podiatrists, with which Respondent is presently affiliated.
- S. For the entire period of the stayed suspension, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a Podiatrist or for work in any capacity which requires a license in

podiatry or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials podiatrists, to which Respondent may apply for any such professional privileges or recognition.

23. Should Respondent fail to comply with any of the terms or conditions 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:

- 1) 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 he receives 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 noncompliance or that he is in compliance with this *Settlement Agreement*.
- 2) Respondent has stipulated to the facts set out in 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 315:9, III.
- 3) If Respondent does not request a hearing within ten (10) days of the date he receives 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.

24. 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.
25. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
26. 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.
27. 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.
28. 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.
29. 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*.
30. 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, or by, the Board surrounding its review of this *Settlement Agreement* have prejudiced his right to a fair and impartial rehearing in the future if this *Settlement Agreement* is not accepted by the Board.
31. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
32. 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: 11/30/21

Michael Moharan
Michael Moharan, DPM
Respondent

Date: December 2, 2021

Adam B. Pignatelli
Adam B. Pignatelli, Esq.
Counsel for Respondent

FOR THE BOARD/*

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

Date: 12/8/21

Jennifer Sartori
(Signature)

Jennifer Sartori, DPM, President
(Print or Type Name) *Board of Podiatry*
Authorized Representative of the
New Hampshire Board of Podiatry

/*Board members, recused: