

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

In the Matter of:
Craig MacLean, M.D.
License No. 12308
(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 Craig MacLean, M.D. (“Dr. MacLean” 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 May 5, 2004. Respondent holds license number 12308. Respondent practices medicine at Exeter Hospital in Exeter, New Hampshire.
3. On or about January 13, 2017, an action for medical injury was filed in Rockingham County Superior Court. The Board received notice of this action pursuant to RSA 329:17, II. The complaint alleged that Respondent had negligently failed to test for a

kidney stones infection and administer antibiotics treatment for an infected and obstructing kidney stone, and that such failures resulted in the patient's death.

4. In response to this, the Board conducted an investigation and obtained information from various sources, including Respondent.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would submit evidence from which the Board could conclude that Respondent engaged in professional misconduct, in violation of RSA 329:17, VI (c), by the following facts:
 - A. On October 24, 2016, a 67-year-old female patient ("Patient") presented to the Exeter Hospital Emergency Department with the complaint that she had a kidney stone and could not urinate. Patient had a history of kidney stones, and reported that she had passed "over 20" stones. Patient complained of significant pain, rating it "15/10." Patient was noted to be "pale and diaphoretic" and appeared "uncomfortable".
 - B. The EMR nurse noted that Patient "reports a fever over the weekend 101.5." However, Respondent's notes state "No fevers, chills, changes, abdominal pain, rash, swollen joints, sore throat."
 - C. Respondent reported being unaware of Patient's previous 101.5 temperature. Respondent explained that he did not recognize the need to scroll down on the computer screen to view the portion of the triage note referencing the fever. Respondent asked Patient a group question regarding whether she had "fevers, chills, nausea, and vomiting." However, after Patient responded affirmatively

to symptoms of vomiting, Respondent did not return to the other symptoms, including fevers.

- D. Respondent's examination revealed that Patient had a temperature of 98.6 and 99.9, blood pressure was 121/81 and 100/57, and Patient's pulse was 66 and 79. Patient showed tenderness on the right costovertebral angle.
- E. An Ultrasonogram and subsequent CT Scan indicated hydronephrosis. The CT Scan further showed bilateral nephrolithiasis, moderate right hydronephrosis and hydroureter due to a distal ureteral calculus (stone) and a non-obstructing calculus (stone) at the ureteropelvic junction.
- F. Respondent obtained a urinalysis, which showed "some white blood cells" and "few bacteria". However, a complete urinalysis was not obtained to explore the possibilities of complicated kidney stone and renal insufficiency. The medical record also did not document any specific queries about Patient's urine output amounts during the course of her illness.
- G. Respondent consulted with the on-call urologist about whether to prescribe antibiotics to Patient. Respondent informed urologist that Patient had a temperature of 99, and relayed the findings of the microscopy as resulted by the lab and the fact that a dip stick test was not performed. The urologist, who was not made aware of Patient's previous temperature of 101.5, suggested that the findings represented inflammation rather than infection. Respondent agreed to that interpretation and antibiotic treatment was not chosen.
- H. Respondent ordered the intravenous administration of morphine and Toradol, which provided pain relief. Respondent discharged Patient with instructions to

“return immediately for fever, uncontrolled pain, vomiting.” The medical record does not indicate that Respondent explored indications for admitting Patient when developing a safe disposition.

- I. Two days later, on October 26, 2016, Patient returned to Exeter Hospital Emergency Department complaining of weakness, malaise, vomiting, and diarrhea. A complete urinalysis was done, revealing nitrite and many bacteria. Patient was hypotensive and had an elevated white blood cell count. A new CT scan showed additional perinephric stranding and unchanged calculi position.
 - J. Patient was admitted to the hospital and diagnosed with acute renal failure, sepsis, and acute pyelonephritis. Despite continued treatment, Patient died on October 27, 2016.
 - K. Respondent has informed the Board that he has changed his practice as a result of this case. Respondent now reviews triage notes in a new visual format, which displays the entire page of triage information at once. Respondent has also slowed his questioning in that he now asks patients individual questions about fevers, chills, nausea, and vomiting symptoms. Finally, Respondent has introduced a “discharge time out” to his practice to enable greater deliberation on discharge decisions.
6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent displayed medical practice incompatible with the basic knowledge and competence of an emergency department physician, in violation of RSA 329:17, VI (c).

7. Respondent acknowledges that the above described conduct constitutes grounds for the Board to impose disciplinary sanctions against his 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 eight (8) hours of CONTINUING MEDICAL EDUCATION in the areas of nephrolithiasis diagnosis and management, patient safety and medical mistakes. These hours must 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*. Within fifteen (15) days of completing these hours, Respondent shall notify the Board and provide written proof of completion.
 - 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 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.
13. 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.
14. 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.

15. 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 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.
16. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
17. 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.
18. 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: 18 APR 2018



Craig A. MacLean, M.D.
Respondent

Date: 4-18-18

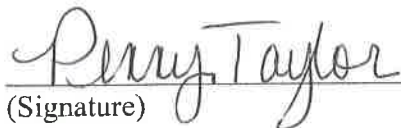


William Joseph Flanagan, Esq.
Counsel for Respondent

FOR THE BOARD/*

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

Date: May 7, 2018



(Signature)

PENNY TAYLOR

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

/* Nunia Gardner, Board members, recused.