

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

In the Matter of:
Jeffrey B. Byer, MD
No.: 7268
(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 Jeffrey B. Byer, MD (“Dr. Byer” 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; 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 February 6, 1986. Respondent holds license number 7268. Respondent is a board certified otolaryngologist practicing at Ear, Nose and Throat Physicians and Surgeons located at 130 Tarrytown Road, Manchester, NH 03103.
3. In April of 2008, the Board received Notification of a Writ filed in Hillsborough County Superior Court, Northern District, relating to Respondent’s diagnosis and follow-up treatment of a parotid tumor observed in patient RD.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's two-year delay in providing follow-up treatment of the parotid tumor observed in patient RD.
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, VI (d), by the following facts:
 - A. Respondent performed a general ear, nose and throat (ENT) evaluation of patient RD on June 6, 2003.
 - B. On June 6, 2003, Respondent diagnosed patient RD with a parotid tumor measuring approximately 1.5 cm.
 - C. After a thorough evaluation of patient RD, Respondent took a "wait and watch" approach with regard to the tumor, but failed to conduct appropriate follow-up treatment in a timely fashion as would be required for such an approach.
 - D. Respondent conducted no biopsy of the mass and failed to schedule a follow-up appointment in a reasonable period of time for patient RD.
 - E. Patient RD did not return to Respondent for treatment until June 8, 2005 at which time patient RD was diagnosed with a tumor of approximately 3.0-3.5 cm which was recommended for surgery.
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 Med 501.02(e).

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 assessed an ADMINISTRATIVE FINE in the amount of two thousand dollars (\$2,000.00). Respondent shall pay this fine in two installments of one thousand dollars (\$1,000.00) each. The first payment shall be due within thirty (30) days of the effective date of this agreement. The final payment shall be due within thirty (30) days of the first payment. All payments shall be made in the form of a money order or bank check made payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at 2 Industrial Park Drive, Suite 8, Concord, New Hampshire.
 - C. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
 - 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. 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 and 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 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: 6/23/09

Jeffrey Byer MD
Jeffrey B. Byer, MD
Respondent

FOR THE BOARD/*

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

Date: August 7, 2009

Penny Taylor
(Signature)

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

/* Amy Feitelson, MD, Board member, recused.

Robert Cervento, MD, Board member, recused.