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NH BOARD

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

In the Matter of:  
**Jeffrey E. Hubley, M.D.**  
**License No: 8083**  
(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 E. Hubley, M.D. (“Dr. Hubley” 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 conducting a disciplinary hearing.
2. The Board first granted the Respondent a license to practice medicine in the State of New Hampshire in May of 1989. The Respondent holds license number 8083. At all relevant times, the Respondent was practicing obstetrics and gynecology at the Dartmouth-Hitchcock Nashua Department of Obstetrics and Gynecology.
3. In May of 2012, the Board received information indicating that a medical injury case had been filed against the Respondent in a New Hampshire Superior Court alleging that he provided inadequate care in his management of a patient’s labor and delivery,

which resulted in substantial and permanent injuries to the child. In response, the Board conducted an investigation and obtained information from various sources pertaining to the Respondent's alleged inadequate care.

4. The Respondent stipulates that if a disciplinary hearing was held in this matter, Hearing Counsel would prove that the Respondent engaged in professional misconduct in violation of RSA 329:17, VI (c):
  - A. On April 24, 2010, the patient was admitted for the delivery of her child. The Respondent was the attending OB-GYN on duty.
  - B. Upon admission, the patient was treated with two doses of Misoprostol and Pitocin and progressed to 5 cm. She then received an epidural and underwent AROM by a medical resident after rapidly progressing to full dilation.
  - C. After the AROM, the fetus experienced a 22-minute bradycardia during which a fetal scalp electrode was placed. The Respondent arrived in the patient's room 13 minutes into the bradycardia, during which time the documented interventions included IV fluids, O2 and position changes. There was no preparation for an operative delivery.
  - D. Category 3 FHR tracings are abnormal and are characterized by an absence of baseline FHR variability plus bradycardia and/or variable decelerations and/or recurrent late decelerations. Category 3 FHR tracings are associated with abnormal fetal acid-base status at the time of observation and require prompt evaluation.

- E. The medical record indicates that the fetal heart rate (“FHR”) tracing was relatively unremarkable until bradycardia began (at 23:04) and did not return to baseline for 22 minutes (at 23:26), but was then followed by persistent late and variable decelerations with tachycardia to 170 - 180 bpm as well as loss of variability.
- F. When the FHR temporarily recovered to the baseline line range of 140 - 150 bpm following the bradycardia, the Respondent decided to manage the patient expectantly, anticipating a rapid second stage and delivery. After a 167 minute second stage, the baby was delivered and transferred to DHMC-NICU.
- G. Despite the fact that the Respondent submitted the expert opinion of an independent obstetrician that the tracing representing a Category 2 pattern, the Board finds that it was in fact an unrecognized persistent Category 3 tracing and that the Respondent did not move to expeditiously deliver the baby when the attempted interventions (IV fluid, O2, position changes) failed.
5. The Board finds that the Respondent committed the acts as described above and concludes that, by engaging in such conduct, the Respondent displayed medical practice incompatible with the basic knowledge and competence expected of persons licensed to practice medicine and, therefore, violated RSA 329:17, VI (c).
6. The Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against the Respondent’s license to practice as a physician in the State of New Hampshire. The Respondent consents to the Board imposing the following discipline under RSA 329:17, VII:

- A. The Respondent is Reprimanded.
  - B. The Respondent is required to meaningfully participate in eight (8) hours of Continuing Medical Education (“CME”) focused on FHR interpretation and an additional twelve (12) CME hours that focus on creating a culture of safety. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within nine (9) months from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing these hours, the Respondent shall notify the Board and provide written proof of completion.
  - C. The Respondent is assessed an Administrative Fine in the amount of \$1,000. The 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, Concord, New Hampshire 03301.
7. The Board may consider the Respondent’s compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding the Respondent’s license.
8. Within ten (30) days of the effective date of this agreement, as defined further below, the 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 the Respondent is presently affiliated.

9. For a continuing period of one (1) year from the effective date of this agreement, the Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which the 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 the Respondent may apply for any such professional privileges or recognition.
10. The 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.
11. 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 support of future discipline in the event that similar misconduct is proven against the 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 the Respondent in the future.
12. This *Settlement Agreement* shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

13. The 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.
14. The Board agrees that in return for the Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
15. The 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.
16. The 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*.
17. The 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. The Respondent specifically waives any claim 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, in the event this *Settlement Agreement* is not accepted by the Board.
18. The 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 seek judicial

review of a final Board decision. Further, the Respondent fully understands the nature, qualities and dimensions of these rights. The 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: 10-9-2014

Jeffrey E. Hubley, M.D.  
Respondent

Date: 10/9/2014

Michael P. Lehman, Esquire  
Counsel for the Respondent

**FOR THE BOARD/\***

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

Date: 11/13/14

Penny Taylor  
(Signature)

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

/\*Recused Board Members not participating:

Emily Baker, M.D.  
Louis Rosenthal, M.D.