

RECEIVED

JUL 23 2016

NH BOARD

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

In the Matter of:  
**Bradley N. Libenson, D.O.**  
**License No.: 10305**  
(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 Bradley N. Libenson, D.O. ("Dr. Libenson" 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 Rules ("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 June 3, 1998. Respondent holds license number 10305. Respondent practices family medicine at Berwick Family Health Center in Berwick, Maine. Respondent has been practicing substance misuse treatment for

JUL 20 2016

*N.H. Board of Medicine and Bradley N. Libenson, D.O.  
Settlement Agreement*

NH BOARD

- nearly thirty years, and has treated narcotic dependent patients with Suboxone since approximately 2005.
3. On or about January 9, 2015, the Board received a letter questioning a note written by Respondent to a patient with a history of substance abuse ("Patient").
  4. In response to this letter, the Board conducted an investigation and obtained information pertaining to Respondent's treatment of Patient.
  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) and (k) by the following facts:
    - A. Since 2007, Respondent has treated Patient, who suffers from several psychiatric diagnoses. Patient has an approximately fifteen (15) year history of polysubstance abuse and chemical dependency.
    - B. Over the seven (7) years of treatment, Respondent has consistently treated Patient with Suboxone, which is a drug containing buprenorphine and naloxone that is used to treat opioid dependence.
    - C. Throughout his treatment of Patient, Respondent entered into three (3) Suboxone contracts with Patient, including one that was in effect during the pertinent time period. These contracts were not initially provided in response to the Board investigator's subpoena for a complete copy of Patient's medical records.

JUL 23 2016

NH BOARD

- D. During his treatment of Patient, Respondent ordered five (5) urine toxicology screens (“DAU”) in each of the following years: 2008 and 2009. On March 15, 2010, Respondent tested Patient and found that she tested positive for opiates and methadone, in addition to the Suboxone that Respondent was prescribing. Respondent documented the qualitative DAU results by writing, “DAU + [positive] benzos [benzodiazepine] + [positive] opiates, methadone Sub[oxone] + [positive].” Respondent diagnosed Patient with “substance abuse” and noted that he agreed to give Patient “one more chance.” In the ensuing three months, Respondent randomly tested Patient another three times and then again at the end of 2010. In each of these DAUs, Patient tested positive only for prescribed medications.
- E. Despite diagnosing Patient with substance abuse, Respondent ordered only one (1) urine toxicology screen for Patient in each of the following years: 2011, 2013, and 2015. Respondent did not order any urine toxicology screens for Patient in 2012 or 2014, although the patient was pregnant during 2012-2013, and Respondent understood that Patient’s OB/GYN was performing DAUs throughout the pregnancy and would have notified Respondent if a DAU showed any controlled substance other than Suboxone. However, Respondent did not request or receive the DAU results from Patient’s OB/GYN. Respondent acknowledges that based on

JUL 29 2016

## NH BOARD

the guidelines in place at the time, as adopted by the Board in 2004, Med 501.02 (i)(5), he should have conducted more frequent urine toxicology screens for Patient.

- F. When urine toxicology screens were performed, Respondent made brief, qualitative, handwritten notes of the DAU results in Patient's progress notes. Respondent's medical records for Patient are terse, handwritten, and not entirely legible to someone other than Respondent. The records do not include a separate medication list for Patient, although the medications Patient was taking were documented throughout the progress notes.
- G. On January 26, 2015, Respondent documented Patient's drug test results as "DAU - + [positive] suboxone, THC, neg. [negative] all else." Three weeks earlier, on January 5, 2015, Patient informed Respondent that she had smoked marijuana, explained the reasons why she used it, and told Respondent that she had taken an employment related drug test. At Patient's request, Respondent provided Patient with a note for her employer, which he wrote on his tamper proof, self-duplicating prescription paper. The note, which was not intended or found to be a prescription, stated, "Please note that [Patient] will occasionally use marijuana (THC) in order to help her sleep, stimulate her appetite, or calm her down." The medical record did not document that Respondent counseled Patient against using marijuana while being treated for substance abuse.

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 (k).
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 eleven (11) hours of Continuing Medical Education, specifically three (3) hours in the area of medical record documentation, five (5) hours in the area of substance abuse treatment, and three (3) hours in the area of ethics. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within twelve months (12) 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. Respondent is assessed an Administrative Fine in the amount of three thousand dollars (\$3,000). Respondent shall pay this fine in full within ninety (90) days of the effective date of this *Settlement Agreement*, as

JUL 21 2016

NH BOARD

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.

- 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 a basis for a finding of unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.

JUL 23 2016

NH BOARD

10. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the conduct described above. However, the Board may consider this conduct as evidence in the event that similar conduct 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 conduct 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 her 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*

N.H. Board of Medicine and Bradley N. Libenson, D.O.  
Settlement Agreement

*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: 7/22/16

  
\_\_\_\_\_  
Bradley N. Libenson, D.O.  
Respondent

JUL 29 2016

N.H. Board of Medicine and Bradley N. Libenson, D.O.  
Settlement Agreement

NH BOARD

Date: July 25, 2016

Ovide Lamontagne  
BERNSTEIN SHUR  
By: Ovide Lamontagne, Esq.  
Counsel for Respondent

**FOR THE BOARD/\***

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

Date: 8/8/2016

Penny Taylor  
(Signature)

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

/\*Board members, recused:  
Louis Rosenthal, M.D.