

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

In the Matter of
Donald R. McGee, M.D.
No.: 8784
(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 Donald R. McGee, M.D. ("Dr. McGee" 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 August 5, 1992. Respondent holds license number 8784. Respondent practiced general practice medicine and offered office based opioid dependence treatment at a single practice in Seabrook, New Hampshire. In July 22, 2005 the Respondent signed and the Board issued a "Preliminary Agreement For Practice Restrictions" whereby Respondent agreed not to practice medicine until such time as

he received prior approval from the Director of the New Hampshire Physician Health Program (“NH PHP”).

3. Upon the effective date of this *Settlement Agreement*, the July 2005 *Preliminary Agreement for Practice Restrictions* shall be ended and cease to be in effect. This *Settlement Agreement* shall supercede the *Preliminary Agreement* and shall be of no further effect.
4. The Board's inquiry into Respondent's practice commenced when the Board received information that Respondent had hired MT, a convicted felon, to assist Respondent with the administration of the office based opioid dependence treatment. The investigation revealed information that raised questions about MT's qualifications, competence and the scope of MT's responsibilities in the practice. The investigation raised further questions relating to Respondent's personal and professional relationship with MT and its impact on Respondent's professional judgment and supervision of MT in the practice, as well as Respondent's social relationship with a patient MJ whom Respondent treated for opioid dependence, depression and anxiety. The Board also received information that Respondent was convicted of a driving while intoxicated offense.
5. In response to this information, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's general practice; his office based opioid dependence treatment practice; the nature of his relationships with MT and MJ; and his own possible alcohol dependence.

6. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would produce evidence that Respondent engaged in professional misconduct, in violation of RSA 329:17 (b) and (d) by the following facts:
 - A. From 1992 through July of 2005, Respondent practiced general medicine as a sole practitioner in New Hampshire.
 - B. On or between November of 2003 and January of 2004, Respondent expanded his general medical practice to include office based opioid dependence treatment. This practice offered the medication Suboxone as treatment for opioid dependent patients. The practice was authorized by the Drug Enforcement Administration ("DEA").
 - C. For a period of approximately six weeks in early 2004, Respondent employed MT, with whom he had a personal and professional relationship, to assist Respondent with the administration of the office based opioid dependence treatment practice.
 - D. MT, who had a history of drug abuse, had no formal training as a medical assistant but was allowed to provide patients with services that were outside the scope of MT's qualifications and competence.
 - E. Respondent terminated MT from the practice when it was discovered that MT had relapsed and was using illegal drugs.
 - F. Respondent's personal relationship with MT clouded his judgment in allowing MT to provide services in the practice.

- G. In the period preceding July, 2004, Respondent maintained medical records in a location in his office where a patient or other third party could obtain, but was not known to have obtained, unauthorized access to confidential patient records.
 - H. From January, 2004 to June 2005, Respondent treated MJ in the opioid addiction treatment practice and treated MJ for anxiety and depression in his general medical practice.
 - I. During a portion of this treatment period, Respondent also engaged in a social relationship with MJ that involved after-hours social interaction including engaging in alcohol consumption with MJ. On at least one occasion, MJ was known to be drinking to excess while in Respondent's company.
 - J. On or about November 24, 2004, Respondent was arrested for a driving under the influence offense. Respondent eventually pleaded guilty to this charge.
7. The Board finds that Respondent engaged in professional misconduct as described above and concludes that by such conduct, Respondent violated RSA 329:17 (b) and (d).
8. 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.
9. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:

- A. Respondent's license to practice medicine is **suspended** for a period of (18) eighteen months. The commencement of the period of suspension is retroactive to July 22, 2005.
- B. During the first two (2) years in which Respondent returns to the practice of medicine, his license shall be limited to practice in the following work settings:
 - 1. Respondent may practice as an employee in a healthcare facility or medical practice; or
 - 2. Respondent may practice as an employee, or co-owner of a multi-practitioner (more than three physicians) medical practice; or
 - 3. Respondent may practice as an independent practitioner providing services only:
 - a. within a hospital setting; or
 - b. within a nursing home setting;
- C. Respondent shall provide documentation of his return to practice and of the location of his practice to the Board within (10) days of his return to practice.
- D. Respondent's practice shall not focus or specialize in substance abuse treatment of patients except as this treatment may arise out of other treatment issues and does not constitute the focus of Respondent's ongoing treatment of the patient unless and until further order of the Board.

- E. Respondent shall have his supervisor within the practice or within the medical facility provide the Board with letters on a quarterly basis that inform the Board of Respondent's practice.
- F. Respondent has entered into a five year contract with the NH PHP ("PHP Contract"). Respondent shall comply with the terms of the PHP Contract and follow recommendations for monitoring, treatment or counseling made pursuant to the PHP Contract, including but not limited to the requirement that Respondent continue to treat with and follow the recommendations of his psychiatrist.
1. Respondent's psychiatrist shall file quarterly reports, under seal, with the Board. Reports shall outline Respondent's attendance and provide general information regarding Respondent's progress in treatment. Quarterly reports shall be filed for a period of (24) months commencing upon issuance of this *Settlement Agreement*.
 2. These reports shall be maintained under seal by the Board and not maintained in Respondent's public licensure file.
- G. The terms and conditions of Respondent's PHP Contract shall be incorporated by reference herein. Any breach of the terms and conditions of the PHP Contract may be construed as a violation of this *Settlement Agreement*.
- H. Respondent has engaged in treatment and education programs regarding boundary violations.

- I. Respondent shall bear all costs of any continuing education, counseling, treatment and reporting required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
 - J. Within ten (10) days of the effective date of this *Settlement 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.
 - K. For a continuing period of one (1) year from the effective date of this *Settlement 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.
- 10. 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,

or any other facts or information known to the Board as a result of its inquiry or investigation. 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 is proven against Respondent in the future.

12. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
13. 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 Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein or any other facts or information now known as a result of this inquiry and investigation conducted by the Board.
15. 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. 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. 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 agreement have prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.

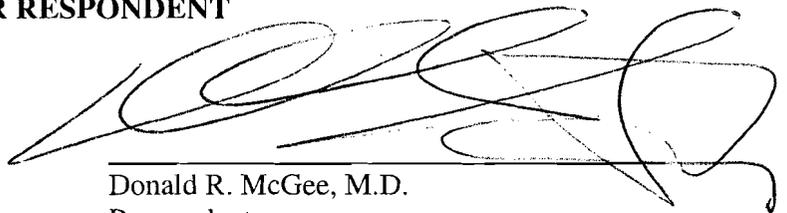
18. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.

19. Respondent certifies that he has read this *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 right 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.

20. This 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: _____



Donald R. McGee, M.D.
Respondent

Date: 5/30/07



Cinde Warmington, Esq.
Counsel for Respondent

FOR THE BOARD/*

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

Date: 6/13/07

Penny Taylor
(Signature)

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

/* Kevin Costin, PA, Board member, recused.

176350