

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

In the Matter of:
Zarina Memon, M.D.
No.: 11570
(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 Zarina Memon, M.D. (“Dr. Memon” 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. Pursuant to RSA 329:17-c and Med 410.01, the Board also has jurisdiction to proceed with a reciprocal proceeding against a physician upon receipt of an administratively final order from the licensing authority of another jurisdiction which imposed disciplinary sanctions against the physician.
3. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on May 3, 2002. Respondent holds license number 11570. Respondent

practiced as an anesthesiologist prior to signing a Preliminary Agreement for Practice Restrictions which was issued by the Board on December 12, 2007.

4. If a reciprocal proceeding were conducted, the Board would be authorized to impose any disciplinary sanction permitted by RSA 329:17, VI; RSA 329:17-c; and Med 410.01(b).
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-c and Med 410.01, by the following facts:
 - A. On or about October 13, 2006 Berkshire Medical Center (“BMC”) summarily suspended Respondent’s privileges. This action was based on an October 3, 2006 incident in which Respondent announced to a surgeon her intention to perform a “deep extubation” prior to a patient breathing on his own. Earlier that month, Respondent had repeatedly allowed a patient to become extremely hypotensive in the operating room.
 - B. Following the BMC action, Respondent underwent an independent psychiatric evaluation which recommended that she not be allowed to practice medicine in any capacity.
 - C. On August 14, 2007 Respondent entered into a Voluntary Agreement Not to Practice with the Massachusetts Board. On December 12, 2007 Respondent entered into a Preliminary Agreement for Practice Restrictions with the New Hampshire Board.

- D. On April 7, 2011 a final order was entered by the Massachusetts Board. (See **Attachment 1**). Respondent was disciplined and her license was revoked.
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-c and Med 410.01.
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's license is REVOKED.
- B. Pursuant to the terms of the Massachusetts Board Order, any petition for reapplication shall require Respondent to demonstrate that she is fit to practice medicine. Such a demonstration shall include, but is not limited to, submission of the results of an independent psychiatric evaluation by a board-approved psychiatrist. Respondent shall also undergo a Board approved clinical skills assessment prior to filing for reapplication.
- C. Respondent shall bear all costs of complying with this *Settlement Agreement*, but she shall be permitted to share such costs with third parties.
- D. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.

- E. 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.
- F. 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, 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 her 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 her choosing in connection with her 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 her 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 she signs this *Settlement Agreement*.

18. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her 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*, she 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: May 4, 2011

Zarina Memon, M.D.
Zarina Memon, M.D.
Respondent

Date: 5/4/11

Barbara Hayes Bull
Counsel for Respondent

FOR THE BOARD/*

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

Date: June 6, 2011

Penny Taylor
(Signature)

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

/* Amy Feitelson, M.D., Board member, recused.

Robert P. Cervenka, MD and
Robert Vidaver, MD did not participate.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

BOARD OF REGISTRATION
IN MEDICINE

ADJUDICATORY NO. 2010-009

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In the Matter of)
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Zarina G. Memon, M.D.)
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CONSENT ORDER

Zarina G. Memon, M.D. (Respondent) and the Complaint Counsel agree that the Board of Registration in Medicine (Board) may issue this Consent Order with all the force and effect of a Final Decision within the meaning of 801 C.M.R. 1.01(11)(d). The Respondent admits to the findings of fact described below and agrees the Board may make conclusions of law and impose a sanction in resolution of Docket No. 07-434.

BIOGRAPHICAL INFORMATION

1. The Respondent was born on March 23, 1963 and graduated from the Medical College of Wisconsin in 1993. She is a board-certified anesthesiologist and has been licensed to practice medicine in Massachusetts since 1997 under certificate number 150029. The Respondent holds medical licenses in the District of Columbia (in March 2008, she entered a an agreement not to practice); New Hampshire (on December 12, 2007, she entered a Preliminary Agreement for Practice Restrictions); Rhode Island (inactive); and Vermont (inactive).
2. On August 14, 2007, the Respondent entered a Voluntary Agreement Not to Practice.

FINDINGS OF FACT

3. From June 2006 to October 4, 2006, the Respondent was a staff anesthesiologist affiliated with Berkshire Medical Center (BMC).

4. On June 14, 2007, the Board received a Health Care Facility Disciplinary Action Report from BMC regarding the Respondent's behavior while caring for patients in late September/early October 2006.
5. On October 1, 2006, the Respondent repeatedly allowed a patient to become extremely hypotensive in the operating room.
6. On October 3, 2006, the Respondent announced to a surgeon her intention to perform a "deep extubation" which is the removal of the breathing tube prior to the patient breathing on his own. The surgeon and another anesthesiologist prevented the Respondent from performing the deep extubation.
7. On October 4, 2006, BMC instructed the Respondent to stay home from work.
8. On October 13, 2006, BMC summarily suspended the Respondent's privileges.
9. The Respondent underwent an independent psychiatric evaluation ("Evaluation"). The Evaluation recommended that the Respondent not be allowed to practice medicine in any capacity.

CONCLUSIONS OF LAW

- A. The Respondent has violated G.L. c. 112, §5, ninth par.(c) and 243 C.M.R. 1.03(5)(a) 3 in that she engaged in conduct which calls into question her competence to practice medicine.
- B. The Respondent has violated G.L. c. 112, §5, ninth par.(d) and 243 CMR 1.03(5)(a)(4) in that she practiced medicine while her ability to do so was impaired.

SANCTION

The Respondent's license is hereby revoked, retroactive to August 17, 2007, the date on which she entered a Voluntary Agreement Not to Practice (VANP). Any petition for reinstatement should require Dr. Memon to demonstrate that she is fit to practice medicine, including submitting the results of an independent psychiatric evaluation by a board-approved psychiatrist and a board-approved skills assessment. The granting of any subsequent license, limited or full, should be

contingent upon her entry into a Probation Agreement, under terms and conditions the Board deems appropriate at that time including, but not limited to worksite monitoring.

This sanction is imposed for Conclusions of Law A and B individually and not for a combination of the two.

EXECUTION OF THIS CONSENT ORDER

The parties agree that the approval of this Consent Order is left to the discretion of the Board. The signature of the Respondent and Complaint Counsel are expressly conditioned on the Board accepting this Consent Order. If the Board rejects this Consent Order in whole or in part, then the stipulations contained herein shall be null and void; thereafter neither of the parties nor anyone else may rely on these stipulations in this proceeding. As to any matter that this Consent Order leaves to the discretion of the Board, neither the Respondent, nor anyone acting on his behalf, has received any promises or representations regarding the same.

The Respondent waives any right of appeal that she may have resulting from the Board's acceptance of this Consent Order.

The Respondent shall provide a complete copy of this Consent Order within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which she practices medicine; any in- or out-of-state health maintenance organization with whom she has privileges or any other kind of association; any state agency, in- or out-of-state, with which she has a provider contract; any in- or out-of-state medical employer, whether or not she practices medicine there; the state licensing boards of all states in which she has any kind of license; the Drug Enforcement Administration Boston Diversion Group; and the Massachusetts Department of Public Health Drug Control Program. The Respondent shall also provide this notification to any such designated entities with which she becomes associated

following the date of imposition of this permanent license restriction. The Respondent is further directed to certify to the Board within ten (10) days that she has complied with this directive.

The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it has taken.

Zarina G. Memon, M.D.
Zarina G. Memon, M.D.
Respondent

3/8/10
Date

Barbara Hayes Buell
Barbara Hayes Buell, Esq.
Attorney for Respondent

3/9/10
Date

Tracy Morong
Tracy Morong
Complaint Counsel

3/10/10
Date

So ordered by the Board of Registration in Medicine this 7th day of April, 2010.

J. PAIGE

Peter Paige, M.D.
Chairman

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4. In March 2008, the Respondent entered an agreement not to practice in the District of Columbia.

FACTUAL ALLEGATIONS

5. From June 2006 to October 4, 2006, the Respondent was a staff anesthesiologist affiliated with Berkshire Medical Center (BMC).

6. On June 14, 2007, the Board received a Health Care Facility Disciplinary Action Report from BMC regarding the Respondent's behavior while caring for patients in late September/early October 2006.

7. On October 1, 2006, the Respondent repeatedly allowed a patient to become extremely hypotensive in the operating room.

8. On October 3, 2006, the Respondent announced to a surgeon her intention to perform a "deep extubation" which is the removal of the breathing tube prior to the patient breathing on his own. The surgeon and another anesthesiologist prevented the Respondent from performing the deep extubation.

9. On October 4, 2006, BMC instructed the Respondent to stay home from work.

10. On October 13, 2006, BMC summarily suspended the Respondent's privileges.

11. The Respondent underwent an independent psychiatric evaluation ("Evaluation"). The Evaluation recommended that the Respondent not be allowed to practice medicine in any capacity.

LEGAL BASIS FOR PROPOSED RELIEF

A. Pursuant to G.L. c. 112, §5, ninth par.(c) and 243 C.M.R. 1.03(5)(a) 3, the Board may discipline a physician upon proof satisfactory to a majority of the Board that the physician engaged in conduct which calls into question her competence to practice medicine.

B. Pursuant to G.L. c. 112, §5, ninth par.(d) and 243 CMR 1.03(5)(a)(4), the Board may discipline a physician upon proof satisfactory to a majority of the Board that the physician practiced medicine while her ability to do so was impaired.

The Board has jurisdiction of this matter pursuant to G.L. c. 112, §§ 5, 61 and 62. This proceeding will be conducted according to the provisions of G.L. c. 30A and 801 C.M.R. 1.01 et seq.

NATURE OF RELIEF SOUGHT

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may, in addition to or instead of revocation or suspension, order one or more of the following: admonishment, reprimand, censure, fine, the performance of uncompensated public service, a course of education or training, or other limitation on the Respondent's practice of medicine.

ORDER

Wherefore, it is hereby ORDERED that the Respondent show cause why she should not be disciplined for the conduct described herein.

By the
Board of Registration in Medicine,



Peter Paige, M.D.
Chairman

Date: 4/7/2010

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