

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

In the Matter of:
Mary J. Montanarella, M.D.
No.: 8358
(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 Mary J. Montanarella, M.D. (“Dr. Montanarella” 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 June 6, 1990. Respondent holds license number 8358. Respondent has her own obstetrics and gynecology practice and holds privileges at the Elliot Hospital in Manchester, New Hampshire.
3. On or about May 28, 2013, the Board’s Investigator received a letter from Elliot Hospital Chief Medical Officer W. Gregory Baxter, M.D., reporting that Elliot Health

System had imposed a temporary precautionary suspension of Respondent's staff privileges while it investigates Respondent's care of a patient ("KT").

4. In response to this information, the Board conducted a formal investigation.
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(c), by the following facts:
 - A. In January 2013, a twelve year old severely autistic child named KT was referred to Respondent by her primary care physician at KT's parents' request to discuss methods to control KT's menstruation so that it would not adversely impact her.
 - B. KT's primary care physician subsequently discussed the case with Respondent and sent Respondent a letter supporting a hysterectomy.
 - C. Respondent met with KT and her parents on January 28, 2013, to discuss possible interventions. Respondent recommended a hysterectomy, which would permanently address KT's menstruation, but would also result in permanent lost of fertility. Respondent reported that KT's parents, who are her legal guardians, were in support of a hysterectomy and understood its implications.
 - D. KT's parents, as her guardians, signed a consent form for the surgery. The consent form signed by KT's parents was a general consent form that did not expressly reference all of the implications of a hysterectomy.

- E. RSA 464-A:25(I)(d) states in part that “[n]o guardian may give consent for . . . sterilization . . . unless the procedure is first approved by order of the probate court.” On March 14, 2013, Respondent performed the hysterectomy on KT without obtaining the probate court order required by law.
 - F. Both the American College of Obstetricians and Gynecologists and the American Academy of Pediatrics emphasize that physicians contemplating sterilization/hysterectomy in a female patient with disabilities must be familiar with the applicable local laws. Respondent acknowledged that she was not familiar with RSA 464-A:25(I)(d).
 - G. In order to advance appropriate patient advocacy, current guidelines set forth that a hysterectomy for the purpose of cessation of normal menses may be considered only after attempting other reasonable alternative interventions that are the least invasive, reversible and the least harmful. While Respondent discussed other alternatives with KT’s parents, they decided on surgical intervention, and other alternatives to a hysterectomy were not attempted.
 - H. In May 2013, Respondent’s medical staff privileges at the Elliot Hospital were temporarily suspended on a precautionary basis. Respondent’s privileges were subsequently restored.
6. The Board finds that Respondent committed the acts as described above and concludes that, by engaging in such conduct, Respondent displayed medical practice incompatible with the basic knowledge and competence expected of persons licensed

to practice medicine, specifically obstetrics and gynecology, and therefore violated RSA 329:17, VI(c).

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. The Board may consider Respondent's compliance with the terms and conditions herein and with the recommendations of a qualified obstetric, or treating mental health, professional in any future proceeding before the Board regarding Respondent's license.
 - C. 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.
 - D. 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* would 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 conduct described above. However, the Board may consider this matter 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 of it, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claim that any disclosures made to the Board for its review of this *Settlement Agreement*, and any guidance or explanations provided to the parties by the Board resulting from that review, has prejudiced her right to a fair and impartial hearing, in the event this *Settlement Agreement* is not accepted by the Board and no other *Settlement Agreement* is presented to the Board thereafter.
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: 1/29/14

Mary J. Montanarella, M.D.
Mary J. Montanarella, M.D.
Respondent

Date: 1/29/14

Bradley D. Holt
Bradley D. Holt, Esq.
Counsel for Respondent

FOR THE BOARD/*

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

Date: 2/11/2014

Penny Taylor
(Signature)

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

/* Louis Rosenthal, MD, Board Member, recused.