

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

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NH BOARD

In the Matter of:
James Olswang M.D.
No.: 9498
(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 James Olswang M.D. ("Dr. Olswang" 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 July 5, 1995. Respondent holds license number 9498. At the relevant time, Respondent practiced emergency medicine at New London Hospital, located at 273 County Road, New London, New Hampshire.
3. The Board received notification from the Merrimack County Superior Court that a writ of summons had been filed against Respondent by patient K.W. The writ alleged that Respondent had misdiagnosed a case of acute angle closure glaucoma during a New London Hospital Emergency Room evaluation of K.W.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's treatment of K.W.
5. Respondent stipulates that if a disciplinary hearing were to take place, the allegations would be that Respondent engaged in professional misconduct, in violation of RSA 329:17, VI (d), Med 501.02 (d) and Med 501.02 (e) (1) by the following facts:
 - A. At approximately 2:00 a.m. on February 16, 2005, K.W. presented to the New London Hospital Emergency Room with severe eye pain, vision change, headache, photophobia, dizziness, and nausea.
 - B. The record indicated that K.W. reported that the severity of the eye pain had woken her at approximately 11:30 pm. During triage K.W. described her pain level as a 10 out of 10. Respondent, practicing as an emergency department physician, treated K.W. during this visit.
 - C. Respondent failed to adequately document his examination of K.W. Respondent performed a brief visual acuity exam. This exam was not documented.
 - D. K.W. brought her MRI with her and described a history of blurry vision and mild headaches. There is no documentation regarding how her acute presentation differed from those for which she was seeing a neurologist. There is no documentation to indicate that Respondent reviewed the MRI or investigated whether there was a radiologist report with it.
 - E. Respondent took a patient history of K.W., conducted a physical examination, and diagnosed acute headache. Respondent performed a brief visual acuity examination, but failed to check K.W.'s intraocular pressure during this

examination. Respondent did not examine the condition of K.W.'s conjunctiva or cornea.

- F. Respondent misdiagnosed K.W. with an acute headache. He checked in with K.W. at 4:05 a.m. and noted that K.W. was feeling better and her pain had improved to 6-7 out of 10. At 6:00 a.m., K.W.'s pain was almost gone but she was still complaining of blurry vision and head fullness. K.W. departed the emergency room at approximately 7:00 a.m. on February 16, 2005 in improved condition but with continuing complaints of eye pain. Respondent instructed K.W. to follow up with her neurologist/ophthalmologist that day.
- G. K.W. returned to the New London Hospital Emergency Room later that day for the same symptoms. At approximately 5:25 p.m., K.W. was diagnosed with topamax induced angle closure glaucoma. Although Respondent was aware that K.W. was taking topamax, he did not use this information to guide his decision-making and treatment.
6. Respondent neither admits nor denies the facts set forth in paragraph 5 above.
7. Respondent acknowledges that the Board finds that Respondent committed the acts as described above and that the Board alleges that, by engaging in such conduct, Respondent violated RSA 329:17, VI (d), Med 501.02 (d) and 501.02 (e) (1), which would constitute 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 acknowledges that the Board has made findings as set forth in paragraph 5 above and consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII and Med. 411.02:

- A. Respondent is REPRIMANDED.
- B. Respondent is required to meaningfully participate in a program of CONTINUING MEDICAL EDUCATION in the areas of documentation and ophthalmic emergency medicine. Respondent is required to complete four (4) credits on each topic, for a total of eight (8) credits. Pre-approval from the Board is required for the course on ophthalmic emergency medicine. Respondent may complete these requirements by taking an eight (8) credit course which covers both ophthalmic emergency medicine and documentation. The requirement for four credits on documentation may be completed through an on-line program. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within one (1) year 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 Two Thousand Dollars (\$2,000.) 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 2 Industrial Park Drive, Suite 8, Concord, New Hampshire.
- D. Respondent shall bear all costs of complying with the requirements of this Settlement Agreement, but he shall be permitted to share such costs with third parties.

- 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.

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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 his 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 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-

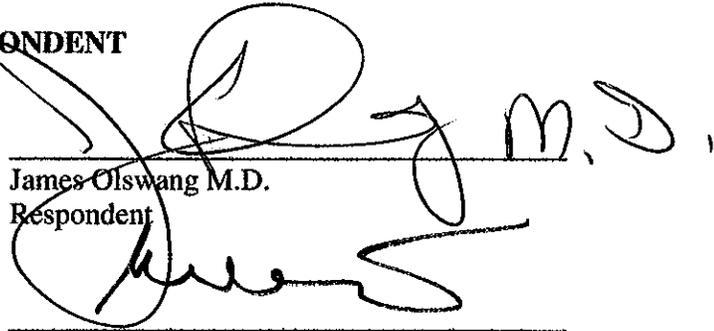
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examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.

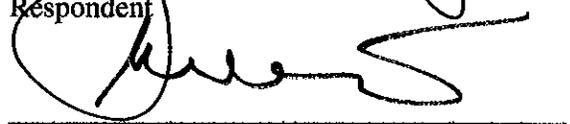
19. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

Date: 8/24/2010

FOR RESPONDENT


James Olswang M.D.
Respondent

Date: 9/13/10


Gregory G. Peters, Esquire

FOR THE BOARD/*

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

Date: 9/13/2010


(Signature)

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

/* Board member(s), recused: Amy Fentelson, M.D.