

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

In the Matter of:
Ruth E. O'Mahony, M.D.
No.: 13223
(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 Ruth E. O'Mahony, M.D. ("Dr. O'Mahony" 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 August 2, 2006. Respondent holds New Hampshire license number 13223. Respondent is also licensed in Maine and practices medicine at Mayo Surgical Associates, 891 West Main Street, Suite 700, Dover-Foxcroft, ME 04426.
3. On December 10, 2007, the Board received notice from the National Practitioner's Databank ("NPDB") that on November 28, 2007, Respondent resigned her privileges

in general surgery at Southern New Hampshire Medical Center ("SNHMC"). The notice indicated that Respondent's privileges had been temporarily suspended prior to the resignation on the basis of clinical and patient safety concerns.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to the treatment and care Respondent provided to six (6) patients while she had privileges at SNHMC. Four of the six cases reviewed constituted either a pattern of incompetent practice or repeated instances of simple negligence.
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); and/or RSA 329:17, VI (d); and RSA 329:17, VI (k) and Med 501.02 (d), by the following facts:
 - A. On or about January 17, 2007 Respondent performed a colonoscopy of Patient MH while the patient was under general anesthesia and not conscious sedation. Patient MH suffered a perforation of the colon during Respondent's performance this procedure.
 - B. On or about February 22, 2007 Respondent performed a colonoscopy of Patient CS while the patient was under general anesthesia and not conscious sedation. Patient CS suffered a perforation of the colon during Respondent's performance of the procedure.
 - C. On or between January 17, 2007 and February 22, 2007, on the basis of her treatment of Patient MH and Patient CS, Respondent displayed a pattern of

behavior which is incompatible with the basic knowledge and competence expected of persons licensed to practice medicine, and/or was repeatedly negligent in the performance of the two colonoscopies.

- D. On or about June 28, 2007, Respondent performed a removal of a tubular adenomatus polyp by open polypectomy on Patient RC. Respondent failed to adequately identify and protect the ureter from damage during the surgery and/or failed to adequately document in the operative note her identification of the ureter and the steps she took to protect the ureter from damage during the surgery. The patient developed a postoperative high-grade hydronephrosis requiring a second surgery in order to recover from the injury.
- E. On or about August 31, 2007, Respondent performed an elective, hand-assisted laparoscopic sigmoid resection on patient BO. Respondent failed to adequately identify and protect the ureter from damage during the surgery and/or failed to adequately document in the operative note her identification of the ureter and the steps she took to protect the ureter from damage during the surgery. Patient BO encountered a long postoperative stay in the hospital and developed a hydronephrosis resulting from a divided ureter.
- F. On or between June 28, 2007 and August 31, 2007, on the basis of her treatment of Patient RC and Patient BO, Respondent displayed a pattern of behavior which is incompatible with the basic knowledge and competence expected of persons licensed to practice medicine, and/or was repeatedly negligent by failing to adequately identify and protect the ureter during

surgery, and/or by failing to document in the operative notes of each surgical patient, her identification of the ureter and the steps she took to protect the ureter during the surgery.

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 (c); and/or RSA 329:17, VI (d); and RSA 329:17, VI (k) and Med 501.02 (d).
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 has successfully completed a preceptorship under the direction of physicians at her current practice location and has addressed the concerns brought to the Board's attention by the NPDB notice and the review of the six patient files.
 - 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.
- E. Respondent shall bear all costs of reporting required by this *Settlement Agreement*, but she shall be permitted to share such costs with third parties.
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: Aug 18, 2009

Ruth O'Mahony
Ruth E. O'Mahony, M.D
Respondent

FOR THE BOARD/*

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

Dated: September 9, 2009

Penny Taylor
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Medicine

/* Board members, recused:
James Sise, MD
Amy Feitelson, MD