

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

In the Matter of:  
**Roy M. Barnes, II, M.D.**  
**License No: 7721**  
**(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 Roy Barnes, II, M.D. (“Dr. Barnes” or “Respondent”), a family practice 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 conducting a disciplinary hearing.
2. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on October 7, 1987. Respondent holds license number 7721. At all relevant times, Respondent was practicing family medicine at Valley Family Physicians, PLLC, in Claremont, New Hampshire.
3. On or about May 20, 2015, the Board received a copy of a complaint that had been filed in New Hampshire Superior Court, alleging that Respondent breached the

standard of care in his treatment of Patient ER. Upon receiving the copy of the complaint, the Board conducted an investigation and obtained information from various sources, including Respondent.

4. Respondent stipulates that if a disciplinary hearing were held in this matter, Hearing Counsel would prove that Respondent engaged in professional misconduct under RSA 329:17, VI (c), RSA 329:17, VI (d) for violating Med 501.02 (d), and RSA 329:17, VI (k), by the following:
  - A. Respondent had been treating Patient ER for diabetes, which he was diagnosed with in 2012.
  - B. On January 18, 2013, Patient ER was seen by Respondent's colleague for trochanteric bursitis, at which time he was prescribed an eleven (11) day steroid taper with prednisone starting at 60 mg per day and ending at 20 mg on day eleven (11).
  - C. On January 22, 2013, Respondent adjusted Patient ER's prednisone taper to 20 mg for January 22 and 10 mg for January 23. The medical record did not include any further instructions regarding prednisone dosing; however, Respondent continued to list prednisone as a current medication in the notes for Patient ER's subsequent office visits on January 29, 2013, February 6, 2013, and February 13, 2013. The medical records maintained by Respondent do not indicate whether, or when, Patient ER was told to stop the prednisone or when the taper was completed.
  - D. On January 27, 2013, Patient ER went to the Emergency Department at Valley Regional Hospital with complaints of right foot pain after he slipped and fell on

ice. X-rays were negative for a fracture in his right lower extremity, which was swollen. Patient ER was given a Velcro ankle brace and discharged home with a right ankle sprain.

- E. On January 29, 2013, Patient ER followed up with Respondent after he slipped and fell for a second time. The office visit note indicates that Patient ER fell onto his right ankle and re-twisted it, causing him discomfort. Respondent ordered another X-ray, but there is no documentation in the office visit note of Respondent interpreting the X-ray. Respondent assessed a right ankle sprain and applied a short leg fiberglass cast to Patient ER's right ankle. However, there is no documentation of him examining Patient ER's right lower extremity. The office visit note does not mention neurovascular status, skin integrity, or degree of edema.
- F. On February 6, 2013, Patient ER followed up with Respondent who noted that Patient ER is "tolerating [the] short leg cast and crutches." Respondent asked Patient ER to return in one (1) week for removal of the cast. Respondent did not examine Patient ER's right lower extremity and the office visit note does not mention neurovascular status, skin integrity, or degree of edema. The fiberglass cast did not allow for the necessary visualization of the right ankle.
- G. On February 13, 2013, Respondent removed Patient ER's cast, upon which Respondent noted that Patient ER was toxic with right lateral malleolus pressure necrosis. Respondent referred Patient ER to the Emergency Department for

- evaluation of sepsis. In Respondent's response to the Board, dated June 30, 2015, he noted that Patient ER was "clearly very ill" at that office visit.
- H. That same day, the nurse at the Emergency Department noted that Patient ER had been placed in a cast and that he has experienced pain every day to the inner and outer aspect of his right ankle. She further noted that following the removal of Patient ER's cast today, he had an open ulcer to his outer ankle, a deep tissue injury to the inner aspect of his right ankle, a swollen right foot, and blistering/draining deep purple wound areas. Patient ER was noted as being "ill appearing" and in pain with any movement.
- I. The consulting physician in the Emergency Department examined Patient ER and noted edema from the right knee down with erythema of the mid-calf to the dorsum of the foot with cellulitic gangrenous ulcers on the medial and lateral aspects of the foot. Due to Patient ER's septicemia and extremely high risk of developing compartment syndrome, the consulting physician recommended either an ICU admission or a transfer to Dartmouth-Hitchcock Medical Center (DHMC).
- J. The attending Emergency Department physician noted that Patient ER has a fever, chills and fatigue in addition to ulcerations and maceration, and right calf swelling tender to palpation. Patient ER was diagnosed with compartment syndrome and transferred to DHMC. Patient ER's blood cultures returned positive for a Staph infection and he underwent a right below the knee amputation.
- K. In Respondent's response to the Board, he stated, "[Patient ER] developed issues with his cast after his [February 6, 2013] appointment. He is known to have

called the office after hours [on] February 8, 2013 and is said to have asked about it at the [Veterans Affairs Medical Center] on [ ] February 11, 2013.” However, in his notes for Patient ER’s office visit with him on April 24, 2013, Respondent noted that Patient ER “[ ] states clearly that his cast was painful yet this was not made clear to me or any healthcare provider seen between the time of [the] cast application and February 13th.”

5. 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 under RSA 329:17, VI (c), engaged in unprofessional conduct under RSA 329:17, VI (d) by failing to maintain complete and accurate medical records as required by Med 501.02 (d), and failed to maintain adequate medical record documentation under RSA 329:17, VI (k).
6. 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. Respondent consents to the Board imposing the following discipline under RSA 329:17, VII:
  - A. Respondent is Reprimanded.
  - B. Respondent is required to meaningfully participate in (a) four (4) hours of Continuing Medical Education (“CME”) in the area of treating diabetic patients (and the ABFM Self-Assessment Module on Diabetes completed by Respondent on February 15, 2015 shall satisfy this requirement); (b) four (4)

hours of CME in the area of medical record documentation (and the credits earned by Respondent on August 14 and 29, 2015 from completing four separate AHIMA lessons on medical record documentation shall satisfy this requirement); and (c) four (4) hours of CME in the area of casting and immobilization of diabetic patients (and, due to a lack of availability of in-person and online CMEs, reading two published, peer reviewed medical journal articles on this subject shall satisfy this requirement). These twelve (12) hours shall be in addition to the hours required by the Board for renewal of licensure and, if not already completed, shall be completed within six (6) months from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing these hours if not already completed, Respondent shall notify the Board and provide written proof of completion. For CME hours required under this section, including those referenced above, that have already been completed, Respondent shall submit proof of completion of these hours to the Board within three (3) days of his signing this *Settlement Agreement*.

- C. Respondent is assessed an Administrative Fine in the amount of five hundred dollars (\$500). 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 121 South Fruit Street, Concord, New Hampshire 03301.

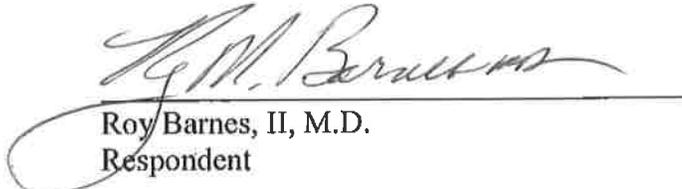
7. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
8. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement 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.
9. 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.
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. However, the Board may consider this misconduct as evidence in support of future

- discipline 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.
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.
  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 claim 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, in the event this *Settlement Agreement* is not accepted by the Board.

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-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to seek judicial review of a final Board decision. 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.

**FOR RESPONDENT**

Date: 2-20-16

  
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Roy Barnes, II, M.D.  
Respondent

**FOR THE BOARD/\***

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

Date: 4/12/2016

Penny Taylor  
(Signature)

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

**/\*Recused Board Members not participating:**

Louis Rosenthal, MD and Amy Feste Kus, MD