

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

In the Matter of:  
**Boris O. Bergus, M.D.**  
**No.: 8665**  
(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 Boris O. Bergus, M.D. ("Dr. Bergus" 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, 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 December 4, 1991. Respondent holds license number 8665. Respondent currently practices medicine primarily in Massachusetts and Rhode Island.
3. In March of 2013, the Board received a medical license renewal application from Respondent. As outlined below, the Board initiated an investigation based on Respondent's indication in his application that he had been subject to an out of state investigation regarding the practice of medicine.

4. The Board conducted an investigation and obtained information from various sources, including Respondent.
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 (d) & (g) and Med 501.02 (b), by the following facts:
  - A. On March 19, 2013, Respondent submitted an application to the Board to renew his New Hampshire medical license. In the application, Respondent indicated that he was the subject of an ongoing investigation by the Rhode Island Board of Medical Licensure and Discipline (“Rhode Island Board”). Respondent indicated that the investigation concerned “a date inaccuracy on an application request to be a physician provider.”
  - B. In a letter to the Board, dated April 23, 2013, Respondent indicated that he was made aware of the Rhode Island Board’s investigation in August 2011. In the same letter, Respondent reported that “another issue has arisen” relating to credentialing. Respondent received a Letter of Concern from the Board for failing to timely report the initial investigation by the Rhode Island Board.
  - C. On October 4, 2013, Respondent entered into a Consent Order with the Rhode Island Board. In the Consent Order, Respondent acknowledged that he did not accurately report his credentials in several instances, including in his 1991 New Hampshire medical license application. Specifically, Respondent indicated that his Fellowship at Boston Children's Hospital was from 1991-1993, when in fact it had only lasted until September of 1992. Furthermore, Respondent indicated that he had participated in a residency at Brown University through

Rhode Island Hospital from 1989 to 1992, when in fact he left the residency in 1991 without ever completing it.

- D. Respondent acknowledged in the Consent Order that his New Hampshire physician profile incorrectly listed his internship and residency as Rhode Island Hospital: 1993. His internship should have been listed as Medical College of Toledo: 1989, while his residency should have been listed as Rhode Island Hospital: 1991. Respondent also acknowledged that he failed to list a one-year Extracorporeal Membrane Oxygenation (“ECMO”) fellowship at Boston Children's Hospital from 1991 to 1992 in his New Hampshire physician profile.
- E. Respondent further agreed in the Consent Order that in advertising a Laser-Assisted Liposuction seminar, he falsely represented that he had completed “fellowship training in a subspecialty of Cardiovascular Surgery at Boston Children’s Hospital.” He also made this claim on his website, which remained there until at least September 12, 2012. Respondent admitted in the Consent Order that his ECMO fellowship at Boston Children’s Hospital was not a cardiovascular-related fellowship. Respondent also admitted that he has not been certified by the American Board of Medical Specialties (“ABMS”) in any specialty.
- F. On the following dates, the Board received License Renewal Applications signed by Respondent, which contained the pre-printed information, “Board Certified?: (Y/N) Y”: June 3, 1998; June 10, 1999; April 19, 2000; May 1, 2001; May 28, 2002; May 21, 2003; March 18, 2005; March 26, 2007; and April 6, 2009. The pre-printed line immediately below this information stated:

“Please list ABMS Board Specialty: EM.” Although Respondent corrected the pre-printed address information on the 1998 renewal application and the pre-printed home phone numbers on the 2005 and 2009 renewal applications, and also added certain other requested information that was not pre-printed on the 1999, 2005 and 2009 renewal applications, he did not correct any of the pre-printed information regarding having an ABMS certification.

- G. On May 23, 2011, the Board received a License Renewal Application signed by Respondent with pre-printed information again indicating that he was board certified. This time, Respondent corrected the information by writing “ABPS” next to the pre-printed “Y.”
- H. In the Rhode Island Board Consent Order, Respondent agreed to a reprimand, a two (2) year probationary period, a \$10,000 administrative fine, attendance of a PROBE ethics course, and the retention of Affiliated Monitors for twelve (12) months to review accuracy for all credentialing applications and communications under his control. Respondent also agreed to disclose that he is not ABMS certified when reporting board certifications. With regard to his specialty in emergency medicine, Respondent agreed to further disclose that he is certified by the American Board of Physician Specialties (“ABPS”) and not the ABMS.
- I. In his letter to the Board, dated July 30, 2014, Respondent stated in part, “I have contracted with Affiliated Monitors (approved by the Board of Medicine of RI) and have reviewed over 20 years of documents to make sure of accuracy on all documents regarding training, resume, licenses, provider agreements, hospital affiliations, advertising or any professional correspondence. I will be working

with Affiliated Monitors on a continuous level to ensure all material relating to me is professionally accurate. I have also attended the PROBE ethics program in regards to these errors and the proper ethical behavior of physicians to the public.” (parenthesis in original).

J. Following the Rhode Island Board Consent Order, Respondent entered into Reciprocal Consent Orders with the Medical Boards of Virginia, Maryland, Illinois, and New Jersey.

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 (d) & (g) and Med 501.02 (b).

7. Respondent acknowledges that the above described 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 assessed an Administrative Fine in the amount of two thousand dollars (\$2,000). The 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.

C. Respondent’s license to practice medicine in New Hampshire is placed on probation for a period of two (2) years commencing on the effective date of this *Settlement Agreement*. Respondent may petition the Board for termination of

the probationary status imposed by this paragraph at any time after the probationary status of Respondent's Rhode Island License is terminated.

- D. Any violation of the terms and conditions of this *Settlement Agreement* during the probationary period described in the preceding paragraph shall permit the Board to issue an order forthwith suspending Respondent's license for a period of up to three (3) months. In the event that Respondent contests the factual basis underlying such suspension he may file a petition with the Board within thirty (30) days of the effective date of the suspension. The Board shall then conduct a hearing within thirty days at which the Respondent shall be afforded an opportunity to show cause why the suspension should not be imposed.
- E. Respondent shall bear all costs required by this *Settlement Agreement*, but shall be permitted to share such costs with third parties.
8. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
9. 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.
10. 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.

11. 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.
12. 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 the 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 the Respondent in the future.
13. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
14. 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.
15. 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.
16. 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.

17. 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*.
18. 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.
19. 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.
20. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
21. 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: 7/7/15

Boris O. Bergus  
Boris O. Bergus, M.D.  
Respondent

**FOR THE BOARD/\***

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

Date: 8-10-2015

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, M.D.