

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

In the Matter of:
Genesio W. Biesek, M.D.
License No.: 7536
(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 Genesio W. Biesek, M.D. (“Dr. Biesek” 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 conducting a disciplinary hearing.
2. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on April 1, 1987. Respondent holds license number 7536. During the relevant time period (2002 – 2008) of the alleged misconduct set forth herein, the Respondent was practicing medicine at Manchester Internal Medical Associates (“MIMA”) in Manchester, New Hampshire. Subsequently, the Respondent practiced with Allied Health at Catholic Medical Center in Manchester. The Respondent last



- practiced medicine in the State of New Hampshire in August of 2010. The Respondent currently resides in California and is not licensed in any other state.
3. In 2009, the Board learned that the Respondent had entered a civil settlement with the United States government in January of 2009 to resolve his alleged liability for certain billings to federal healthcare programs during the period between January of 2002 and March of 2008.
 4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's alleged practice of unnecessary billing and testing.
 5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel could prove that Respondent engaged in professional misconduct, in violation of RSA 329: 17, VI (d), Med 501.02 (h), and the American Medical Association ("AMA") Code of Ethics 2.19 by the following facts:
 - A. Respondent billed numerous patients for somatosensory testing but performed a completely different test. Respondent's practice did not have the necessary equipment to perform the somatosensory testing.
 - B. On numerous occasions, Respondent billed for direct LDL testing in addition to a full lipid panel that includes calculated LDL results. In order to ensure payment, Respondent submitted claims in a way that incorrectly indicated that it was medically necessary to measure patients' LDL cholesterol correctly when patients' LDL cholesterol was being calculated in the lipid panel.

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- C. Respondent did not always require patients to fast before the lipid panel, which compromised the accuracy of the results.
 - D. Without admitting any liability, Respondent entered into a Settlement Agreement with the OIG, in which he agreed to pay \$265,000 to resolve the allegations against him.
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; RSA 329: 17, VI (d); Med 501.02 (h); and the AMA Code of Ethics 2.19.
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's license is SUSPENDED for a period of one (1) year, commencing on the effective date of this *Settlement Agreement* as defined at paragraph 19, and subject to the terms and conditions set forth below in subparagraph B.
 - B. Respondent is required to meaningfully participate in twenty hours (20) hours of CONTINUING MEDICAL EDUCATION ("CME") in the area of ethics, of which, sixteen hours (16) shall be in addition to the hours required by the Board for renewal of licensure and shall be completed no later than September 30, 2014. Within thirty (30) days of completing these hours, Respondent shall

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notify the Board and provide written proof of completion. Upon the Respondent's completion of this CME requirement to the Board's satisfaction, he may petition the Board to terminate the final three (3) months of the suspension period set forth in subparagraph A.

- C. Respondent is assessed an ADMINISTRATIVE FINE in the amount of Fifteen Hundred Dollars (\$1,500.00). Respondent shall pay this fine in full within sixty (60) 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. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
- 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 two (2) years from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement* to

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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.
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 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 his 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 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 right 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 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.

FOR RESPONDENT

Date: 07/29/2013

Genesio Biesek
Genesio W. Biesek, M.D.
Respondent

Date: 7/29/2013

Chet G. Alci
Counsel for Respondent

FOR THE BOARD/*

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

Date: 8/13/2013

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

/* Amy Feitelson, MD, Board member, recused.

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