

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

In the Matter of:
Edward P. Durling, P.A.
License No. 463
(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 Edward P. Durling, P.A. (“Mr. Durling” or “Respondent”), a physician assistant 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 328-D:6; RSA 328-D:7; RSA 329:18; RSA 329:18-a; and Medical Administrative Rule (“Med”) 205, 408 and 609, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physician assistants. 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 the Respondent a physician assistant license in March of 2003. The Respondent holds license number 463. The Respondent most recently practiced as a physician assistant in July of 2013 in the emergency room at the Cheshire Medical Center in Keene, New Hampshire.

3. In April of 2013, the Board received information from the New Hampshire Board of Pharmacy concerning the Respondent's alleged ordering of controlled and non-controlled medications directly from a pharmaceutical supplier for delivery to his personal residence.
4. Based on the initial information it received, the Board conducted an investigation and obtained information from various sources pertaining to the Respondent's ordering of medications for delivery to his personal residence.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel could prove that the Respondent engaged in professional misconduct, in violation of RSA 328-D:6, IV; RSA 328-D:6, V; and RSA 328-D:6, IX, by the following facts:
 - A. Moore Medical LLC ("Moore") is a national distributor of medical supplies and pharmaceuticals to healthcare practices, facilities and organizations. Moore does not market or sell directly to patients. The Respondent established an account with Moore in 2003 in connection with practicing as a licensed physician assistant.
 - B. During the period between July of 2006 and July of 2013, the Respondent placed more than thirty (30) orders with Moore to purchase medications classified as controlled substances. Each controlled substance ordered from Moore was delivered to the Respondent's personal residence in New Hampshire pursuant to the shipping address on file provided by the Respondent. The controlled substances ordered by the Respondent during this

time period are listed in Attachment A to this *Settlement Agreement*, which the parties hereby incorporate by reference.

- C. During the period between July of 2006 and March of 2013, the Respondent placed more than one hundred (100) orders with Moore to purchase non-controlled prescription medications. Each non-controlled prescription medication ordered from Moore was delivered to the Respondent's personal residence in New Hampshire pursuant to the shipping address on file provided by the Respondent. The non-controlled prescription medications most frequently ordered by the Respondent are set forth in Attachment A to this *Settlement Agreement*, which the parties hereby incorporate by reference.
- D. On July 19, 2013, two agents of the United States Drug Enforcement Agency ("DEA") conducted an unannounced inspection of the Respondent's personal residence in New Hampshire because of the controlled substance medications being shipped to that location and interviewed the Respondent about his practice of ordering controlled substance medications for delivery to his personal residence. The Respondent admitted that the controlled substance medications he ordered from Moore were used to treat an immediate family member, who suffers from a disabling chronic condition. The Respondent further admitted that one of the controlled substance medications listed in Attachment A (the Phentermine-37.5mg-Tabs-Btl/30 ordered in May and July of 2013) was obtained to treat himself.

- E. When the Respondent ordered the controlled and non-controlled medications listed in Attachment A, he did not have a prescription order issued by a third-party treating provider. Instead, with the exception of the Phentermine referenced above, the Respondent ordered the controlled substance medications for purpose of serving as the treating provider for a family member, and he ordered the non-controlled prescription medications for the purpose of treating himself and one or more family members.
 - F. On July 19, 2013, the Respondent voluntarily surrendered his DEA-issued registrations that had authorized him to possess, dispense, administer and prescribe controlled substances in the States of Vermont and New Hampshire. Those registrations were surrendered because the Respondent's conduct in purchasing controlled substances for delivery to his personal residence for personal use violated federal law.
 - G. On July 23, 2013, the Respondent contacted the Board to self-report that he had surrendered his DEA registrations and the reasons therefore.
 - H. When the Respondent ordered controlled and non-controlled medications from Moore to treat himself and his wife, he was not authorized to do so by his registered supervisory physician ("RSP").
6. The Board finds that the Respondent committed the acts described above and concludes that the Respondent violated the following: (1) RSA 328-D:6, IV - by engaging in unprofessional conduct in violating federal law governing controlled substances; (2) RSA 328-D:6, V - by practicing independent of his RSP; and (3) RSA

328-D:6, IX – by repeatedly prescribing, for both himself and a family member, controlled and non-controlled substances in non-emergency situations over an extended period of time in violation of substantive rules of the Board (Med 501.02(h); 501.02(i); 609.01(a)(8); and 612.01(a)).

7. Respondent acknowledges that this conduct constitutes grounds for the Board to impose disciplinary sanctions against the Respondent's license to practice as a physician assistant in the State of New Hampshire.
8. Respondent consents to the Board imposing the following discipline, pursuant to RSA 328-D:7.
 - A. Respondent is REPRIMANDED.
 - B. Respondent shall, no later than June 30, 2014, meaningfully participate in and successfully complete the following requirements concerning CONTINUING MEDICAL EDUCATION ("CME"):
 - (i) A two-day live program in medical ethics and professionalism.
In satisfaction of this requirement, the Board accepts the Respondent's completion of the program entitled Medical Ethics and Professionalism sponsored by the University of California, Irvine School of Medicine on August 23-24, 2013;
 - (ii) A two-day live program entitled Intensive Course in Medical Record Keeping sponsored by the Case Western Reserve University School of Medicine.

- (iii) A two-day live program entitled PBI Prescribing Course: Opioids, Pain Management, and Addictions sponsored by the University of California, Irvine School of Medicine.
 - (iv) The hours of continuing education set forth above in paragraphs (i) – (iii) shall be in addition to the hours required by the Board for renewal of licensure. Within fifteen (15) days of completing these hours, the Respondent shall notify the Board and provide written proof of completion. Respondent shall bear all costs of the education and reporting required by this *Settlement Agreement*, but he is permitted to share such costs with third parties.
- C. Respondent is assessed an ADMINISTRATIVE FINE in the amount of \$2,000.00. This fine is suspended on the condition that the Respondent fully satisfy each of the CME program and reporting requirements set forth under Paragraph 8B above.
- D. The Board may consider the 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, the Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a physician assistant or work which requires his medical degree(s) and/or a medical

license or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials physician assistants, with which the Respondent is presently affiliated.

- F. For a continuing period of one (1) year from the effective date of this agreement, the Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a physician assistant or for work in any capacity which requires his medical degree(s) and/or a medical license or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials physician assistants, to which the 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 328-D:6, IV, 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 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 if any further misconduct is proven against the 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 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

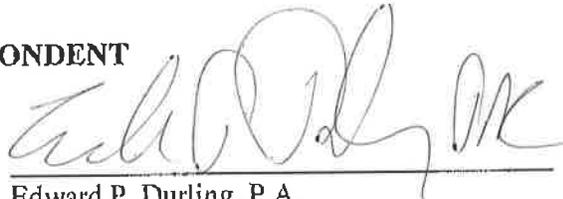
N.H. Board of Medicine and Edward P. Durling, P.A.
Settlement Agreement

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 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: October 29, 2013



Edward P. Durling, P.A.
Respondent

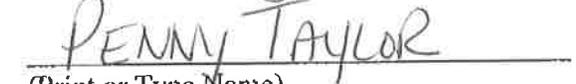
FOR THE BOARD/*

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

Date: 11/19/2013



(Signature)



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

/*Board members, recused.

ATTACHMENT A

A. Controlled Substance Medications **Orders**
(July, 2006 – July, 2013)

Zolpidem-10mg-Tabs-Btl/100	13
Triazolam-0.25mg-UU-Tab-10Btl/10	6
Carisoprodol-350mg-Tabs-Btl/100	3
Alprazolam-0.25mg-Tabs-Btl/100	3
Diethylpropion-25mg-Tabs-Btl/100	2
Phentermine-37.5mg-Tabs-Btl/30	2
Diazepam-10mg-Tabs-Btl/100	1
Flurazepam-HCL-30mg-Caps-Btl/100	1
Lorazepam-2mg-Tabs/Btl/500	1
Diphenoxylate+Atropine-Tabs-Btl/100	1
Propox+Na+Apap-100/650mg	1

B. Non-Controlled Prescription Medications **Orders**
(July, 2006 – March, 2013)

Ibuprofen-800mg-Tabs-Btl/500	26
Tramadol-50mg-Tabs-Btl/100	16
Azithromycin-250mg-Tabs-Btl/6	14
Butalbital/Apap/Caff-Tabs-Btl/100	10
Doxycycline-HY-100mg-Caps-Btl/50	10
Cyclobenzaprine-10mg-Tabs-Btl/100	8
Betameth-Dip-0.05%-Cm	8