

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

In the Matter of:  
Gerard N. Kiernan, M.D.  
No.: 11758  
(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 Gerard N. Kiernan, M.D. (“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 commencing a disciplinary hearing.
2. The Board first granted Respondent a license to practice medicine in the New Hampshire on October 2, 2002. Respondent holds license number 11758 and practices hospital medicine at Cheshire Medical Center in Keene, New Hampshire.
3. The Board received a Writ of Summons dated July 27, 2011, in which patient R.K. alleged that Respondent failed to appropriately diagnose and treat sepsis, resulting in multi-organ failure and other complications.

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent's treatment of R.K.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would seek to prove that Respondent engaged in professional misconduct, in violation of RSA 329:17, VI(c), by the following facts:
  - A. R.K., a 75-year-old man with a history of congestive heart failure and chronic obstructive pulmonary disease, presented to the emergency room at Cheshire Medical Center at 3:12 a.m. on August 16, 2009, complaining of pain in his left shoulder.
  - B. In the emergency department, R.K. had a fever, and his oxygen saturation was 82% on room air. Blood gases showed that he had metabolic acidosis and was hypoxic. R.K.'s white blood cell count had 41% bands. Blood cultures were drawn.
  - C. At 9:41 a.m., approximately six hours after his arrival, R.K. was transferred from the emergency department to the care of Respondent.
  - D. At 12:27 p.m., Respondent learned that the blood cultures returned positive for Strep, and it was later determined to be group A streptococcal sepsis. As a result, Respondent ordered IV Levaquin.
  - E. On the morning of August 17, Respondent examined the patient, including a lung examination, and noted that the patient was afebrile. He ordered that the patient could be discharged on oral Levaquin.

- F. Prior to discharge, Respondent did not re-check R.K.'s oxygen saturation on room air, and R.K. was discharged without oxygen.
  - G. No progress notes address the acidosis. Prior to discharge, Respondent did not re-check R.K.'s blood gases to assess the acidosis.
  - H. Prior to discharge, Respondent did not order a follow-up complete blood count to assess R.K.'s bandemia.
  - I. Hearing Counsel contends that the actions enumerated in paragraphs E through H in the presence of a positive streptococcal culture constitute substandard care and professional misconduct.
  - J. Several hours after being discharged, R.K. returned to the emergency department with decreased responsiveness, and an oxygen saturation of 77%. Blood work revealed renal failure, bandemia, and electrolyte and enzyme abnormalities. R.K. was also acidotic. He became hypotensive and required intubation.
6. The Board finds that the facts described above, if proved by Hearing Counsel, would constitute misconduct subject to discipline pursuant to RSA 329:17, VI(c).
7. Respondent, in an effort to settle this matter with the Board, neither admitting nor denying the allegations or the alleged misconduct, consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
- A. Respondent is REPRIMANDED.
  - B. Respondent is required to meaningfully participate in twenty-five (25) hours of CONTINUING MEDICAL EDUCATION in the area of infectious diseases or

critical care medicine. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within one (1) year from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing these hours, Respondent shall notify the Board and provide written proof of completion.

- C. Respondent is assessed an ADMINISTRATIVE FINE in the amount of Two Thousand Dollars (\$2,000.00). 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 2 Industrial Park Drive, Suite 8, Concord, New Hampshire.
- D. Respondent shall bear all costs of education and reporting required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
- E. The Board may consider Respondent’s compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent’s license.
- F. 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.

- G. 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.
8. 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.
9. 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.
10. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.

11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
17. 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 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.

18. 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: 8/20/2012

Gerard N. Kiernan  
Gerard N. Kiernan, M.D.  
Respondent

Date: 8/20/12

[Signature]  
Michael P. Lehman, Esq.  
Counsel for Respondent

**FOR THE BOARD/\***

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

Date: 10/5/2012

Penny Taylor  
(Signature)

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

/\* Board members recused:  
Robert P. Cervenka, M.D.  
Michael Barr, M.D. 7