

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

In the Matter of:
Christopher Kirby, M.D.
No.: 8450
(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 Christopher Kirby, M.D. (“Dr. Kirby” 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, 329:18 and 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 State of New Hampshire on October 10, 1990. Respondent holds license number 8450. Until August 12, 2008 Respondent practiced medicine at Parkland Internal Medicine in Derry, New Hampshire.
3. On or about August 12, 2008, Dr. Sally Garhart, Director, New Hampshire Professionals Health Program (“NH PHP”), reported to the New Hampshire Board of

Medicine (“Board”) that Respondent, who was under contract with the NH PHP, had “relapsed on alcohol.”

4. In response to this, the Board conducted an investigation and obtained information from various sources pertaining to Respondent’s alcohol dependence and fitness for practice.
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 (b) and (d), by the following facts:
 - A. On or about February 1, 2007, Respondent entered the NH PHP program voluntarily and signed an Evaluation, Treatment and Monitoring Contract with the NH PHP to address his alcohol abuse issues.
 - B. Dr. Sally Garhart, NH PHP Director, informed the Board by letter dated July 17, 2007, that Respondent had admitted violating his NH PHP contract.
 - C. In October and November of 2007, Respondent again relapsed, as reported by Dr. Garhart in a letter to the Board dated November 26, 2007.
 - D. At that time, Respondent reached an agreement with Dr. Garhart to voluntarily discontinue practicing medicine and not to return to the practice of medicine until his treatment providers recommended that he do so. Respondent did comply with this agreement.
 - E. On or about August 12, 2008, Dr. Garhart reported to the Board that Respondent had again “relapsed on alcohol.”

- F. On March 12, 2009, Respondent entered into a Preliminary Agreement for Practice Restrictions and voluntarily agreed to not practice medicine in the State of New Hampshire during the pendency of this matter. The above-mentioned conduct occurred while Respondent possessed an active medical license.
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 (b) and (d).
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 is REPRIMANDED.
 - B. Respondent shall successfully complete a fifteen-month residential drug and alcohol treatment program. Respondent may use his treatment with Teen Challenge New England from November 2008 to February 2010 to fulfill this requirement.
 - C. Respondent shall engage in a ten-year contract for monitoring by the New Hampshire Professionals Health Program ("NHPHP").
 - i. Respondent shall forward a copy of this contract to the Board within fifteen (15) days of the effective date of this Settlement Agreement.

- ii. The terms of Respondent's NHPHP program shall include at least five (5) years of random testing for alcohol.
 - iii. Respondent shall provide the Board with all releases necessary for NHPHP to communicate with the Board regarding Respondent's compliance with that contract.
- D. Upon the successful completion of the requirements in Paragraph 8 above, Respondent may request reinstatement of his New Hampshire license.
- E. Respondent shall bear all costs of the treatment, evaluation, monitoring and reporting required by this *Settlement Agreement*, but he shall be permitted to share such costs with third parties.
- F. The Board may consider Respondent's compliance with the terms and conditions herein and with the recommendations of NHPHP in any subsequent proceeding before the Board regarding Respondent's license.
- G. 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.
- H. 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.

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 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 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: 10/7/10


Christopher Kirby, MD
Respondent

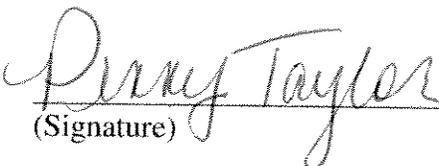
Date: _____

Counsel for Respondent

FOR THE BOARD/*

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

Date: November 8, 2010


(Signature)

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

/* Board members, recused:
Amy Fertelson, MD
John Wheeler, DO