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

In the Matter of:
Michelle F. Lackovic, M.D.
No.: 8314
(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 Michelle F. Lackovic, 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 State of New Hampshire on May 5, 1990. She holds license number 8314. Respondent is a "traveling physician" who performs insurance physicals for paramedical companies. In 2009, she also treated chronic pain patients for an internet-based health company, and relied at least in part upon that company to maintain and/or retain treatment records. The internet-based health company is now defunct and Respondent is unable to obtain any of the records that it may have maintained and/or retained.

3. The Board received information relating to Respondent's treatment of three chronic pain patients referred to her by the internet-based health company. She treated M.M. from approximately June 5, 2009 until sometime in October of 2009, C.H. from approximately May 30, 2009 until sometime in June of 2009, and J.R. from approximately April 21, 2009 until sometime in June of 2009.

4. In response to this information, the Board conducted an investigation and obtained information from various sources.

5. The Board's investigation revealed and Respondent freely admits to the following facts:

   A. On June 11, 2009, Respondent evaluated M.M., who complained of sleep disturbance and chronic pain. She failed to maintain and/or retain records documenting a physical exam.

   B. On June 5, 2009, six days before her initial visit with M.M., Respondent prescribed generic Hydrocodone/apap 10-325 mg, #21. Although Respondent conducted no further evaluations, she ordered additional generic Hydrocodone prescriptions for M.M. Respondent failed to maintain and/or retain records documenting a treatment plan.

   C. On October 12, 2009, Respondent prescribed Lortab 10 mg, #120 for M.M., but the pharmacist refused to fill the prescription. The pharmacist informed Respondent that M.M. had recently received multiple controlled drug prescriptions from multiple doctors and filled them at multiple pharmacies. After learning this information, Respondent informed the internet-based health

company employing her that she recommended discontinuing caring for M.M. Respondent failed to maintain and/or retain records showing that she provided M.M. with 30 days' notice of termination of the doctor-patient relationship.

D. On May 30, 2009, Respondent evaluated C.H. at his home for chronic pain and anxiety. Respondent failed to maintain and/or retain records documenting a physical exam.

E. On May 30, 2009, Respondent prescribed Xanax, Percocet, and Buspar for C.H. She subsequently communicated to the internet-based health company employing her that C.H. "sent up alarms, bells and whistles within 15 minutes after meeting him." On June 3, 2009, Respondent informed her employer that she was not comfortable prescribing for C.H. in the future. Despite Respondent's concerns about prescribing controlled drugs for C.H., she failed to maintain and/or retain records documenting her use, if any, of screening tools such as requiring pain contracts, requesting urine drug tests, obtaining a complete medical record that includes prior treatments, or communicating with prior doctors.

F. In June of 2009, C.H. requested more medications. Respondent declined to prescribe and had no further contact with C.H. She failed to maintain and/or retain records documenting that she provided C.H. with 30 days' notice of termination of the doctor-patient relationship.

G. Respondent evaluated J.R. on April 21, 2009. She failed to maintain and/or retain records documenting a physical exam.

H. Although Respondent questioned the extent of J.R.'s pain, she prescribed Lortab on April 21, 2009. When J.R. called on May 4, 2009 to request an early refill, Respondent declined. When J.R. called on May 15, 2009 to say that her prescription was stolen, Respondent refilled the prescription. When J.R. called on June 22, 2009 to request another refill, Respondent again called in the prescription. The next day, J.R. asked Respondent to call in the same prescription to a different pharmacy. Respondent called the first pharmacy and learned that the pharmacy had put the prescription on hold because J.R. had refilled the original prescription on June 1, 2009, and again on June 10, 2009. On June 25, 2009, Respondent informed the internet-based health company employing her that J.R. is very manipulative and that Respondent is "a sucker for a good actress that can cry so very convincingly." Despite Respondent's distrust of J.R. concerning her use of controlled drugs, Respondent failed she failed to maintain and/or retain records documenting her use, if any, of screening tools such as requiring pain contracts, requesting urine drug tests, obtaining a complete medical record that includes prior treatments, or communicating with prior doctors.

I. Although Respondent had informed the internet-based health company employing that she did not intend to continue treatment of J.R. and she did not write any more prescriptions for him, Respondent failed to maintain and/or retain records documenting that she provided J.R. with 30 days' notice of termination of the doctor-patient relationship.

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 (c) and (k) and Med. 501.02 (d), (e) and (i).

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 is required to complete the Case Western Reserve School of Medicine Continuing Education Course on Controlled Substance Management, or its equivalent if pre-approved by the Board. Failure to complete this course within six months from the effective date of this agreement shall result in the suspension of Respondent's license to prescribe Schedule II and III narcotics. Within fifteen (15) days of completing this course, Respondent shall notify the Board and provide written proof of completion.

   C. Respondent is assessed an ADMINISTRATIVE FINE in the amount of $3,000.00 to be paid in six installments of $500.00 each. The first payment shall be due within thirty (30) days of the effective date of this agreement. The remaining payments shall be due within thirty (30) days of the previous payment. All payments shall be made in the form of a money order or bank

check, made payable to "Treasurer, State of New Hampshire," delivered to the Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, NH.

D. Respondent shall bear all costs of the training, supervision and reporting required by this *Settlement Agreement*, but she shall be permitted to share such costs with third parties.

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 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 her 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 her 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 her choosing in connection with her 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 her 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 she signs this *Settlement Agreement*.

18. Respondent certifies that she has read this document titled *Settlement Agreement*. Respondent understands that she has the right to a formal adjudicatory hearing concerning this matter and that at said hearing she would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on her 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*, she 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: 8/17/10

Michelle F. Lackovic, MD
Respondent

FOR THE BOARD/*

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

Date: September 3, 2010

Penny Taylor
(Signature)

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

/* Board members, recused:
Amy Feitelson, M.D.