

COMMONWEALTH OF MASSACHUSETTS

Middlesex, SS.

Board of Registration in Medicine

Adjudicatory Case No. 2017-002

In the Matter of)
)
)
FRANK A. FEDELE, M.D.)
_____)

STATEMENT OF ALLEGATIONS

The Board of Registration in Medicine (Board) has determined that good cause exists to believe the following acts occurred and constitute a violation for which a licensee may be sanctioned by the Board. The Board therefore alleges that Frank A. Fedele, M.D. (Respondent) has practiced medicine in violation of law, regulations, or good and accepted medical practice as set forth herein. The investigative docket number associated with this order to show cause is Docket No. 15-134.

Biographical Information

1. The Respondent was born on November 11, 1957. He graduated from the Cornell University Medical College in 1983. He is certified by the American Board of Internal Medicine in Internal Medicine with subspecialty certification in Interventional Cardiology and Cardiovascular Disease. He has been licensed to practice medicine in Massachusetts under certificate number 150975 since 1996. He has privileges at Portsmouth Regional Hospital.

Factual Allegations

1. The Respondent is licensed to practice medicine in New Hampshire.

2. On June 5, 2015, the New Hampshire Board of Medicine disciplined the Respondent. The New Hampshire Board of Medicine's Settlement Agreement, which sets forth the basis for discipline, is attached hereto at Attachment A and incorporated herein by reference.

Legal Basis for Proposed Relief

A. Pursuant to 243 CMR 1.03(5)(a)12, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has been disciplined in another jurisdiction in any way by the proper licensing authority for reasons substantially the same as those set forth in M.G.L. c. 112, § 5 or 243 CMR 1.03(5). More specifically, in Massachusetts, the Board may discipline a physician upon proof satisfactory to a majority of the Board, that said physician has:

1. Pursuant to *Levy v. Board of Registration in Medicine*, 378 Mass. 519 (1979); *Raymond v. Board of Registration in Medicine*, 387 Mass. 708 (1982), engaged in conduct that undermines the public confidence in the integrity of the medical profession.

Nature of Relief Sought

The Board is authorized and empowered to order appropriate disciplinary action, which may include revocation or suspension of the Respondent's license to practice medicine. The Board may also order, in addition to or instead of revocation or suspension, one or more of the following: admonishment, censure, reprimand, fine, the performance of uncompensated public service, a course of education or training or other restrictions upon the Respondent's practice of medicine.

Order

Wherefore, it is hereby **ORDERED** that the Respondent show cause why the Board should not discipline the Respondent for the conduct described herein.

By the Board of Registration in Medicine,

Candace Lapidus Sloane, MD

Candace Lapidus Sloane, M.D.
Board Chair

Date: January 5, 2017

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

In the Matter of:
Frank A. Fedele, MD
License No. 8499
(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 Frank A. Fedele, MD ("Dr. Fedele" 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 commencing a disciplinary hearing.
2. The Board first granted the Respondent a license to practice medicine in the State of New Hampshire in March of 1991. The Respondent holds license number 8499. At all relevant times, the Respondent practiced as a cardiologist in Portsmouth, New Hampshire.

3. In October of 2012, the Board received information indicating that the Respondent may have engaged in professional misconduct by informally treating a co-worker before and during a romantic relationship. In response, the Board conducted an investigation and obtained information from various sources pertaining to the Respondent's alleged conduct as well as other conduct discussed below.
4. The Respondent stipulates that if a disciplinary hearing was held in this matter, the following information and evidence could be presented in support of proving professional misconduct under RSA 329:17, VI:
 - A. In May of 2010, the Respondent agreed to perform, without charge, a courtesy cardiac auscultation on a female co-worker, a licensed nurse, to evaluate a cardiac murmur that had been heard by another physician. The Respondent prepared a medical record to document his findings. At that time, the Respondent also agreed to issue the co-worker a prescription for Alprazolam (Xanax) and included multiple refills. The co-worker had been previously prescribed the medication for anxiety related to airline travel. The Respondent documented his justification for the prescription in the medical record.
 - B. Beginning in approximately August of 2010, the Respondent entered into a romantic relationship with the co-worker. Then, between October of 2010 and September of 2011, he prescribed certain non-controlled medications for the co-worker, at her request, for minor medical issues.

- C. The Respondent did not examine the co-worker before prescribing the non-controlled medications. He accepted the co-worker's report of symptoms and previous prescriptions for these medications. The Respondent did not charge her. He maintained a medication list of what was prescribed, but he did not maintain a separate medical record to document his reasons for issuing the prescriptions.
- D. Neither the Respondent nor the co-worker believed they had established a patient-physician relationship. Nevertheless, the Respondent's conduct in treating the co-worker shortly before and during a romantic relationship violated Med 501.02(h) and the AMA Code of Ethics Opinion 8.14.
- E. In December of 2013, the Board's Investigator sent the Respondent a letter requesting a written response concerning two Xanax prescriptions. In January of 2014, the Respondent provided the Board Investigator with a written response that withheld material information about the subject prescriptions from the Board, in violation of Med 501.02(b).
- F. On April 9, 2014, the Respondent was voluntarily interviewed by the Board Investigator concerning the two Xanax prescriptions in question. During that interview, he admitted that on or about July 8, 2011, he forged a Xanax prescription (0.5 mg; #60; 4 refills) by creating the false impression that the prescription was issued to him by another physician. During that same interview, the Respondent admitted that

on or about January 12, 2012, he forged a Xanax prescription (0.5 mg; #60; 5 refills) by creating the false impression that the prescription was issued to him by another physician. The prescriptions were within the therapeutic range.

- G. The Board's investigation revealed no evidence that the Respondent's conduct, in any manner, affected patient care or patient outcomes.
- 5. The Board finds that the Respondent has engaged in the conduct described above and, by doing so, has committed acts that provide sufficient grounds for imposing disciplinary sanctions pursuant to the following provisions: RSA 329:17, VI(d); RSA 329:17, VI(i); and RSA 329:17, VI(k).
 - 6. The Respondent acknowledges that the conduct summarized above constitutes grounds for the Board to impose disciplinary sanctions against his license to practice as a physician in the State of New Hampshire.
 - 7. The Respondent consents to the Board imposing the following discipline under RSA 329:17, VII:
 - A. The Respondent is reprimanded.
 - B. The Respondent's license is suspended for a period of six (6) months. This suspension shall be stayed provided the Respondent satisfies the following conditions:
 - i. The Respondent shall meaningfully participate in the NHPHP and must follow all recommendations of the Director of the NHPHP or her designee;

ii. The Respondent shall meaningfully participate in eight (8) hours of Continuing Medical Education focused on ethics. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within six (6) months from the effective date of this *Settlement Agreement*. Within fifteen (15) days of completing these hours, the Respondent shall notify the Board and provide written proof of completion. On February 4, 2015, the Respondent completed an online 8 hour course entitled The Fundamentals of Medical Ethics. This course was offered by the Norwegian Medical Association, and it satisfies the requirements of this paragraph.

iii. The Respondent shall pay an administrative fine in the amount of \$6,000. The Respondent shall pay this fine in full within three (3) months from the effective date of this *Settlement Agreement* by delivering a money order or bank check, made payable to "Treasurer, State of New Hampshire," to the Board's office at 121 South Fruit Street, Concord, New Hampshire 03301.

C. The Respondent shall meaningfully participate in an intensive live program of Continuing Medical Education focused on controlled substance prescribing, for a total of thirty (30) hours. On May 7-10, 2013, the Respondent completed a Continuing Medical Education program, entitled Intensive Course in Controlled Substance Management. This program was

offered by the Case Western University School of Medicine in Cleveland, Ohio, and it satisfies the requirements of this paragraph.

D. The Respondent shall meaningfully participate in an intensive live program of Continuing Medical Education focused on professional boundaries, for a total of at least twenty-four (24) hours. On February 7-9, 2014, the Respondent completed a Continuing Medical Education program entitled PBI Professional Boundaries Course. The program was offered by the University of California, Irvine School of Medicine in Atlanta, Georgia, and it satisfies the requirements of this paragraph.

8. The Board may consider the Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding the Respondent's license.
9. Within ten (10) days of the effective date of this agreement, the Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom the 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 the Respondent is presently affiliated.
10. For a continuing period of two (2) years from the effective date of this agreement, the Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which the 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 the Respondent may apply for any such professional privileges or recognition.

11. The Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and provide a separate and sufficient basis for further disciplinary action by the Board.
12. 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 in support of future discipline 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 should any further misconduct be proven against Respondent in the future.
13. This *Settlement Agreement* shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.
14. The 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.
15. The Board agrees that in return for the Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.

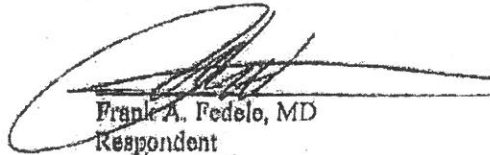
16. The Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
17. The Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this *Settlement Agreement*.
18. The 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. The Respondent specifically waives any claim 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, in the event this *Settlement Agreement* is not accepted by the Board.
19. The Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.
20. The Respondent certifies that he has read this document titled *Settlement Agreement*. The 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 seek judicial review of a final Board decision. Further, the Respondent fully understands the nature, qualities and dimensions of these rights. The Respondent understands that by signing this *Settlement*

Agreement, he waives these rights as they pertain to the misconduct described herein.

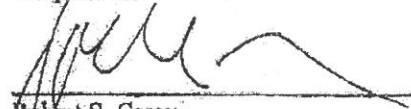
21. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date: 2/12/2015


Frank A. Fedele, MD
Respondent

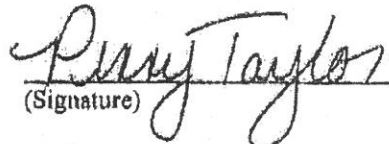
Date: 2/25/15


Robert S. Carey
Counsel for the Respondent

FOR THE BOARD/*

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

Date: 6/5/2015


(Signature)

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

/*Recused Board Members not participating:

Robert Andelman, M.D.
Mark Sullivan, P.A.
Louis Rosenthal, M.D.