

**STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF OSTEOPATHIC PHYSICIANS AND SURGEONS**

IN RE:	)	
MARK F. GUILFOYLE	)	Docket No. 2020-122
License No. 032.0109673	)	

STIPULATION AND CONSENT ORDER

STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Traci Leibowitz, and the respondent in this matter, Mark F. Guilfoyle, who stipulate and agree as follows:

Board Authority

1. The Vermont Board of Osteopathic Physicians and Surgeons (the “Board”) has jurisdiction to investigate and adjudicate allegations of unprofessional conduct, to license and renew licenses, pursuant to 3 V.S.A. §§ 129, 129a and 814; 26 V.S.A. Chapter 33, the Administrative Rules of the Board of Osteopathic Physicians and Surgeons, and the Rules of the Board and the Office of Professional Regulation.

Stipulated Facts

2. Mark F. Guilfoyle (“Respondent”) of Jefferson, New Hampshire, is licensed in the State of Vermont as an Osteopathic Physician. Respondent’s license, number 032.0109673, was originally issued on April 28, 2015 and is set to expire on September 30, 2022.
3. Respondent is licensed as a Physician in New Hampshire, license no. 17059. That license was first issued in 2015.
4. In 2019, Respondent’s New Hampshire license was subject to discipline.
5. On August 22, 2019, Respondent entered into a Settlement Agreement with the New Hampshire Board of Medicine (the “Settlement Agreement”). *See* Attachment 1.
6. The Settlement Agreement was based on the following facts:
7. In 2018, Respondent was employed as a radiologist at Dartmouth-Hitchcock Medical Center (“DHMC”). A DHMC “Quality Assurance Peer Review,” as well as a subsequent investigation by the New Hampshire Board of Medicine, indicated that Respondent had failed to detect evidence of breast cancer in a number of patients who were eventually diagnosed with breast cancer.

8. The New Hampshire Board imposed sanctions on Respondent's license including a formal reprimand, a \$750.00 fine, and an agreement that Respondent "will not resume the reading and interpretation of mammograms for as long as he is licensed as a physician in New Hampshire."
9. In September 2019 Respondent self-reported the New Hampshire discipline to the Vermont Office of Professional Regulation.
10. Presently, Respondent practices radiology and is currently contracted with two companies which provide teleradiology services.

Violation One: 3 V.S.A §129a(b)(1) Failure to practice competently by reason of any cause on a single occasion or on multiple occasions may constitute unprofessional conduct, whether actual injury to a client, patient, or customer has occurred. Failure to practice competently includes: (1) performance of unsafe or unacceptable patient or client care.

11. The State re-alleges and incorporates Paragraphs 2 through 10 above.
12. As a licensed Osteopathic Physician, Respondent has an obligation to provide safe and acceptable patient care.
13. Respondent provided unsafe and unacceptable patient care by engaging in the conduct described in paragraphs 2 through 10 above and the attachment referenced therein.
14. The act(s), omission(s), and/or circumstance(s) described above constitute grounds for discipline because Respondent has committed unprofessional conduct in violation of 3 V.S.A. §129a(b)(1).

Understandings

15. Respondent admits that the facts above are true and that the conditions below are necessary to protect the public.
16. Respondent understands that the Board must review and may accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.
17. Respondent specifically waives any claims that any disclosures made to the full Board during its review of this agreement have prejudiced his rights to a fair and impartial hearing in future hearings if this agreement is not accepted by the Board.
18. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

19. Respondent is not under the influence of any drugs or alcohol at the time he signs this Stipulation and Consent Order.
20. Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.
21. Respondent voluntarily waives his right to a contested hearing before the Board of Osteopathic Physicians and Surgeons and waives any right to appeal from this Stipulation and Consent Order.
22. Respondent agrees that the Order set forth below may be entered by the Board.

ORDER

Based on the Stipulation above, it is **ORDERED AND ADJUDGED** as follows:

- A. The Board of Osteopathic Physicians and Surgeons hereby places a **REPRIMAND** on Respondent's license.
- B. **A MONETARY FINE IN THE AMOUNT OF TWO HUNDRED DOLLARS (\$200.00)** is imposed on Respondent. This penalty shall be paid within ninety (90) days of the date of entry of this Order.
- C. Respondent's license is hereby **CONDITIONED** as follows: Respondent voluntarily agrees to neither read nor interpret mammograms. Respondent agrees not to petition the Board to remove this condition unless and until his privileges to read and interpret mammograms in the State of New Hampshire is restored.

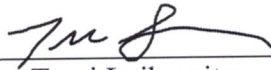
To seek removal of this condition, Respondent must file a petition to remove conditions with the Board. Respondent bears the burden and must present proof that Respondent's privileges have been fully restored in New Hampshire, and that the afore stated condition is no longer necessary to protect the public. The Board and impose any conditions or restrictions deemed appropriate at the time, and may require Respondent to demonstrate current competency by any reasonable means.

- D. Notwithstanding any provision above, the Respondent must continue to meet all requirements for maintaining a license, license renewal, and license reinstatement.
- E. This Stipulation and Consent Order is a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. § 129(a).
- F. This Stipulation and Consent Order will remain part of Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

AGREED TO:

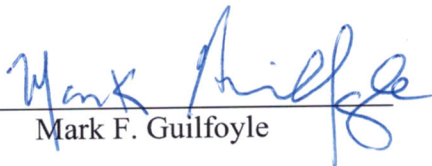
STATE OF VERMONT
SECRETARY OF STATE

Dated: Jan. 4, 2021

By: 
Traci Leibowitz
State Prosecuting Attorney

MARK F. GUILFOYLE
RESPONDENT

Dated: 1/10/2021

By: 
Mark F. Guilfoyle

APPROVED AS TO FORM ONLY:

SHIREEN HART, ESQ.
ATTORNEY FOR RESPONDENT

Dated: 1/11/21

By: /s/ Shireen T. Hart
Shireen Hart, Esq.

APPROVED AND SO ORDERED:

VERMONT BOARD OF OSTEOPATHIC
PHYSICIANS AND SURGEONS

Dated: _____

By: _____
Chairperson

Date of Entry: 2/5/2021

There being a declared state of emergency, the Director of Professional Regulation finds that the Board cannot reasonably, safely, and expeditiously convene a quorum to transact business. By her signature, the Director enters the above Order on behalf of the Board.

Act 91 (2020), Sec. 20(a) (eff. March 30, 2020)

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

In the Matter of:
Mark F. Guilfoyle, DO
No.: 17059
(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 Mark F. Guilfoyle, DO ("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, 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 6, 2015. Respondent holds license number 17059. Respondent practices radiology.
3. In 2018, the Dartmouth-Hitchcock Medical Center ("DHMC") conducted a "quality assurance peer review" of mammogram interpretations that Respondent had performed for DHMC patients. During that review, Dr. Guilfoyle resigned his

clinical privileges as a member of the professional staff of Mary Hitchcock Memorial Hospital. DHMC reported this event to the Board.

4. In response to this, the Board, through its Medical Review Subcommittee, conducted an investigation and obtained information from various sources pertaining to Respondent's reading of mammogram images.
5. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would introduce evidence to seek to prove that Respondent engaged in professional misconduct, in violation of RSA 329:17, VI (c) by the following facts:
 - A. Dr. Guilfoyle is a physician licensed by the Board. He practices as a general diagnostic radiologist.
 - B. Prior to 2018, Respondent provided general diagnostic radiology services to DHMC patients, including interpretation of mammogram imagery.
 - C. In 2018, DHMC conducted a quality assurance peer review of mammogram interpretations that Respondent had performed between 2015 and 2018.
 - D. During DHMC's review, Respondent resigned his clinical privileges as a member of the professional staff of Mary Hitchcock Memorial Hospital, which mandated a report to this Board and triggered the Board's investigation.
 - E. The Board's investigation and review of a select number of mammogram studies indicated that Respondent had failed to detect evidence of breast cancer in a number of patients who were eventually diagnosed with breast cancer.

- F. No concerns have been raised about Dr. Guilfoyle's interpretation of, or ability to provide, any other type of radiologic services or studies.
- 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).
- 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 assessed an ADMINISTRATIVE FINE in the amount of seven hundred and fifty dollars (\$750.00). 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 121 South Fruit Street, Concord, New Hampshire, 03301-2412.
 - C. Prior to this *Settlement Agreement*, Respondent voluntarily ceased his reading and interpretation of mammograms. Respondent agrees that he will not resume the reading and interpretation of mammograms for as long as he is licensed as a physician in New Hampshire.

- D. 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.
- E. 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*, including 8.C., 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.

*N.H. Board of Medicine and Mark F. Guilfoyle, DO
Settlement Agreement*

FOR RESPONDENT

Date: 8/22/2019

Mark F. Guilfoyle D.O.
Mark F. Guilfoyle, DO
Respondent

Date: 8/22/2019

N. Casolaro
Nicholas Casolaro, Esq.
Counsel for Respondent

FOR THE BOARD/*

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

Date: Sept. 10, 2019

Penny Taylor
(Signature)

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

/* N/A, Board members, recused.