IN THE MATTER OF	*	BEFORE THE
STEPHEN R. SMITH, M.D.	*	MARYLAND STATE
Respondent	*	BOARD OF PHYSICIANS
License Number: D14957	*	Case Numbers: 2218-0253 A 2219-0014 A

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CONSENT ORDER

On July 18, 2019, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **STEPHEN R. SMITH, M.D.** (the "Respondent"), License Number D14957, with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. §§ 14-101 *et seq.* (2014 Repl. Vol. and 2018 Supp.).

Disciplinary Panel A charged the Respondent with violating the following provisions of the Act under **Health Occ. § 14-404**:

(a) *In general.* -- Subject to the hearing provisions of § 14-405 of this subtitle, a disciplinary panel, on the affirmative vote of a majority of the quorum of the disciplinary panel, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(3) Is guilty of:

. . .

(ii) Unprofessional conduct in the practice of medicine;

(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;

(40) Fails to keep adequate medical records as determined by appropriate peer review[.]

In addition, Panel A charged the Respondent with violation of the Board's regulations that were enacted pursuant to **Health Occ. § 1-212** which provides as follows:

> (a) *Adoption of regulations.* – Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:
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> (1) Prohibit sexual misconduct; and
>
> (2) Provide for the discipline of a licensee or certificate holder found to be guilty of sexual misconduct.

The pertinent regulations which the Board adopted at **COMAR 10.32.17**[1] provide:

.01 This chapter prohibits sexual misconduct against patients or key third parties by individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland.

.02 A. In this chapter, the following terms have the meanings indicated.

. Terms Defined.

. . .

(2) "Sexual misconduct: means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes:

(a) ...

(b) Sexual violation; or

(c) Engaging in a dating, romantic, or sexual relationship which violates the code of ethics of the American Medical Association, American Osteopathic Association, American Psychiatric Association, or other standard recognized professional code of ethics of the health care practitioner's discipline or specialty.

(3) Sexual Violation.

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[1] These regulations were amended effective May 20, 2019; however, the Respondent's conduct occurred prior to the amendments.

(a) "Sexual violation" means health care practitioner-patient or key third party sex, whether or not initiated by the patient or key third party, and engaging in any conduct with a patient or key third party that is sexual or may be reasonably interpreted as sexual, regardless of whether the sexual violation occurs inside or outside of a professional setting.

(b) "Sexual violation" includes, but is not limited to:

(i) . . .
(ii) . . .
(iii) . . .
(iv) Kissing in a romantic or sexual manner;
(v) Touching the patient's breasts, genitals, or any sexualized body part;
(vi) Actively causing the patient or key third party to touch the health care practitioner's breasts, genitals, or any sexualized body part[.]

.03 A. Individuals licensed or certified under Health Occupations Article, Titles 14 and 15, Annotated Code of Maryland, may not engage in sexual misconduct.

B. Health Occupations Article, §§ 14-404(a)(3) and 15-314(3), Annotated Code of Maryland, includes, but is not limited to sexual misconduct.

On October 16, 2019 Panel A was convened as a Disciplinary Committee for Case Resolution ("DCCR") in this matter. Based on negotiations occurring as a result of this DCCR, the Respondent agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Panel A finds:

I. Background Information

1. At all times relevant, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on March 15, 1973, under License Number D14957. The Respondent's license is currently active and will expire on September 30, 2021.

2. The Respondent also holds an active license to practice medicine in Texas, which will expire on February 28, 2021.

3. In October 1969, the Respondent achieved lifetime board-certification in internal medicine, and in October 1977, he was recertified. In October 1973, he also became board-certified in the sub-specialty of endocrinology, diabetes and metabolism.

4. The Respondent practiced medicine internationally as well as in California and Texas.

5. The Respondent has been in private practice of internal medicine, and endocrinology and metabolism, in Baltimore City since approximately 1988. At all times relevant, the Respondent has been and is a solo practitioner.

6. The Respondent holds hospital privileges at Hospital A.

II. Complaints One, Two and Three

A. Complaint One

7. On or about April 6, 2018, the Board initiated an investigation of the Respondent after receiving an anonymous complaint from an individual ("Complainant 1") who stated he/she was "a local pharmacist." Complainant 1 expressed concern with the prescribing pattern of the Respondent, including the use of pain medications as well as his use of alprazolam 2 mg. Complainant 1 described one patient for whom the Respondent, within one thirty-day period, wrote prescriptions for Adderall[2], oxycodone, methadone, diazepam[3], alprazolam[4], and promethazine[5] with codeine. Complainant 1 added, "our pharmacy does not accept narcotics [prescriptions] from Dr. Smith."

B. Complaint Two

8. On or about May 8, 2018, the Board received a second anonymous complaint about the Respondent from an individual ("Complainant 2") who stated he/she is a "health care professional." Complainant 2 stated that in the absence of supporting diagnoses, the Respondent was writing new prescriptions of oxycodone and alprazolam in high doses to patients enrolled in a methadone clinic.[6]

C. Complaint Three

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[2] Adderall, a Schedule II controlled dangerous substance ("CDS"), is a stimulant drug used to treat attention deficit/hyperactivity disorder.

[3] Diazepam, a Schedule IV CDS, is a sedative/anxiolytic and muscle relaxant agent in the benzodiazepine class.

[4] Alprazolam, a Schedule IV CDS, is a sedative/anxiolytic and muscle relaxant agent in the benzodiazepine class.

[5] Promethazine is an antihistamine often used to treat nausea and vomiting.

[6] Because Complaint 2 did not include specific information, the Board was unable to investigate the aspect of the complaint pertaining to prescribing to patients who are enrolled in a methadone clinic.

9. On or about July 30, 2018, the Board received a complaint from the United States Drug Enforcement Agency ("DEA") submitted by a detective with the DEA (the "Detective")[7]. This complaint was in the form of a "Report of Investigation" which described an ongoing investigation of the Respondent based "on improper and unusual controlled substance activity." The Report of Investigation also detailed an interview that the Detective conducted on June 27, 2018, with a patient of the Respondent ("Patient 11[8]"). Patient 11 stated that the Respondent would call her cell phone to have her come to the office for a patient visit after all other patients had been seen and no other people were present in the office. She stated that the Respondent would put his arm around her and place his hand through the collar of her shirt and "grap(sic)/brush over my breast." The Detective further informed the Board that on July 11, 2018, the Respondent voluntarily surrendered his DEA registration.

III. Findings of Failure to Meet Standards of Quality Care and Inadequate Documentation

10. On May 10, 2018, as part of its investigation of Complaints one and two, the Board sent a subpoena to the Prescription Drug Monitoring Program ("PDMP") for a report of all prescriptions written by the Respondent during the period from May 1, 2017 through May 10, 2018.

11. On May 31, 2018, the Board contacted the Respondent to notify him of complaints one and two and requested a response to the complaints. The Board also

[7] For confidentiality purposes, the names of patients have not been identified in this document. The Respondent is aware of the identity of all patients referenced herein.
[8] Patients 1-10 are discussed below in the standard of care and documentation section. Complaints One and Two temporally preceded Complaint Three; therefore, this last patient is designated as Patient 11.

requested ten patient records of individuals selected from the PDMP Report, as well as case summaries of his care of the ten patients.

12. On June 14, 2018, the Board received a response from the Respondent wherein he supported the care he provided to these patients, specifically justifying his concurrent prescribing of diazepam "for relief of muscle strain" and alprazolam "for control of anxiety;" or his combination of Vyvanse "for binge eating" with Adderall for "attention disorder."

13. On July 3, 2018, Board investigative staff interviewed the Respondent under oath. The Respondent stated that:

a. he sees approximately 20 patients a day;

b. he treats patients for chronic pain management and "there have been more of those recently than in the past;"

c. approximately half of his patients see him for pain management and other medical conditions; and

d. although he realizes patient contracts covering narcotic prescriptions and urine drug screens are recommended for pain management patients, he has chosen not to implement those practices in his office.

14. On August 10, 2018, the Board sent the case to an independent peer review entity for a practice review of the ten patients. The Board provided Complaints one and two, Respondent's written response to Complaints one and two, Respondent's typed summaries of care which Respondent prepared as requested during the investigation, the transcript of Respondent's interview, medical records of Patients 1 through 10 provided by the Respondent, and the PDMP.

15. The two Peer Reviewers, one board-certified in anesthesiology with sub-

specialty certification in pain medicine and the other board-certified in physical medicine and rehabilitation with sub-specialty certification in pain medicine, concurred that the Respondent failed to meet the standards for quality medical care in six of the ten cases and failed to maintain adequate medical records in ten of the ten cases.

16. On September 11, 2018, the Board sent copies of the peer reviewers' reports, with the names of the reviewers redacted, to the Respondent and requested a supplemental response.

17. On September 25, 2018, the Board received the supplemental response from the Respondent. In his letter, the Respondent stated that he had stopped prescribing all CDS as of July 12, 2018, and he defended the care he provided to the ten specified patients. The Respondent, however, focused more on his management of the endocrinology issues in these patients, rather than the issues raised by the reviewers regarding his prescribing of CDS.

18. The Respondent's supplemental response was subsequently reviewed by the two Peer Reviewers. This review did not alter the opinions of the Peer Reviewers.

IV. Summary of Standard of Care and Documentation Violations

19. The Respondent failed to meet appropriate standards for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22) of the Act, with respect to Patients 3 through 8, and failed to keep adequate medical records, in violation of Health Occ. § 14-404(a)(40) of the Act, with respect to Patients 1 through 10, in that the Respondent:

a. prescribed opiates to patients without any objective physical findings to substantiate the need for opiates, or trying non-pharmacologic therapy such as physical therapy (Patients 6, 7, 8[9]);

b. failed to appreciate the high-risk nature of opiates when selecting patients for opioid therapy and to monitor them more intensively with urine toxicology screens, pill counts, and frequent rechecks (Patients 3, 4);

c. failed to wean patients from chronic opioid use or document a clear rationale for maintaining patients on long term high dose opioid regimens (Patients 4, 5[10]);

d. continued to prescribe long term opioids to a patient who had previously achieved relief from pain with a spinal cord stimulator, rather than ensuring that the stimulator battery was replaced and functional (Patient 5);

e. chronically co-prescribed high dose opioids and benzodiazepines without attempting to substitute anti-depressants for benzodiazepines (or tapering and discontinuing benzodiazepines) or ensuring that the patient was engaged with a mental health provider to treat the anxiety (Patients 5, 6, 7, 8);

f. co-prescribed high dose opioids and benzodiazepines without documenting that he discussed the risks of co-prescription with the patients (Patients 5, 6, 7, 8);

g. failed to order medication compliance assessment measures, such as urine toxicology screening, at appropriate intervals (Patients 3, 4, 5, 6, 8);

h. failed to utilize agreement for chronic opioid prescriptions in each patient's medical record (Patients 3, 4, 5, 6, 7, 8);

i. failed to document an initial comprehensive chronic pain management treatment plan (Patients 1-10);

j. provided limited documentation of the actual functional improvement in his patients to support the appropriateness of

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[9] Patients 6 and 7 have the same last name. They are possibly wife and husband, respectively.

[10] Patients 4 and 5 have the same last name. They are possibly daughter and mother, respectively.

continued chronic prescription of high doses of these agents (Patients 1-10);

k. failed to complete handwritten chart notes in a manner which was clear and legible (Patients 1-10); and

l. failed to document meaningful content in the progress note, or to integrate the findings of consultant physicians into a plan of care (Patients 6, 10).

IV. Findings of Unprofessional Conduct in the Practice of Medicine and Sexual Misconduct.

20. On October 18, 2018, the Board requested the Respondent to respond to Complaint Three. The Board also issued a subpoena to the Respondent for his medical and billing records of Patient 11.[11]

21. On October 30, 2018, the Board received the Respondent's written reply. The Respondent acknowledged that he treated Patient 11 between January 3, 2017 and June 29, 2018 "for a variety of significant medical conditions." The Respondent admitted that during the first half of 2017, he "made the mistake of accepting the establishment of a friendly personal relationship" with Patient 11.

22. On January 28, 2019, the Board interviewed the Respondent under oath. The Respondent admitted that he:

a. conducted approximately 15 office visits with Patient 11 commencing January 3, 2017 and ending June 29, 2018;

b. treated Patient 11 initially for "chronic pain caused by endometriosis," "anxiety," and a hematoma on her knee due to a fall;

[11] The Respondent did not provide the billing records for Patient 11.

c. also treated her for back pain, diarrhea, urinary tract infection, right upper quadrant pain, loss of appetite, weight loss, nausea and vomiting;

d. prescribed oxycodone and alprazolam, which she had previously been prescribed to her by another provider;[12]

e. reduced Patient 11's oxycodone "quickly" on Patient 11's last visit because she was pregnant. Patient 11 was "upset" and did not return for any further medical appointments;

f. treated Patient 11 as late as 11:00 p.m., when staff were not present in the office;

g. "had a bit of a relationship" with Patient 11 and "things like that (touching her breasts) might've happened elsewhere…"

h. socialized with Patient 11 outside the medical office "a number of times" and had a sexual relationship with her "to a mild extent" and "with limitations;"

i. engaged in the sexual relationship from spring of 2017 for approximately one year;

j. did not refuse Patient 11 when she initiated the sexual relationship, although he recognized that his decision was "a mistake;"

k. met Patient 11 in "restaurants . . . parking lots, and my house," where Patient 11 stayed with the Respondent at night;

l. characterized the nature of the sexual relationship as intimate, but with "no intercourse;" and

m. engaged in this intimate, sexual relationship while he was treating Patient 11.

[12] The Respondent stated that Patient 11 said she would provide records of prior treatment, "but she didn't."

23. The Respondent's medical records document that the Respondent conducted 17 medical office visits in which he provided medical care to Patient 11 during the period from January 3, 2017 through June 29, 2018.

24. Pharmacy records obtained from Pharmacy A document that between January 3, 2017 and June 30, 2017, Patient 11 filled CDS prescriptions written by the Respondent including six prescriptions for oxycodone 15 mg. three times per day; seven prescriptions for alprazolam 2 mg. three times per day; and seven prescriptions for zolpidem[13] 10 mg. daily.

25. Pharmacy records obtained from Pharmacy B document that between July 31, 2017 and May 22, 2018, Patient 11 filled CDS prescriptions written by the Respondent including nine prescriptions for oxycodone 15 mg. four times per day.

V. Summary of Findings of Unprofessional Conduct and Sexual Misconduct

26. The Respondent engaged in unprofessional conduct in the practice of medicine in violation of Health Occ. § 14-404(a)(3)(ii), and committed sexual misconduct in violation of Health Occ. § 1-212 and COMAR 10.32.17 in that the Respondent:

a. Participated in a sexual relationship with Patient 11, which constitutes sexual misconduct and sexual violation, for a period of approximately one year; and

b. During the time of this sexual relationship with Patient 11, the Respondent was actively treating Patient 11 in the office and was prescribing CDS to her on a regular basis.

[13] Zolpidem, a Schedule IV CDS, is a hypnotic agent which is not in the benzodiazepine class.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes that the Respondent engaged in unprofessional conduct in the practice of medicine in violation of Health Occ. § 14-404(a)(3)(ii), failed to meet appropriate standards for the delivery of quality medical care, in violation of Health Occ. § 14-404(a)(22), failed to keep adequate medical records, in violation of Health Occ. § 14-404(a)(40); and committed sexual misconduct in violation of Health Occ. § 1-212 and COMAR 10.32.17.

ORDER

It is thus by Disciplinary Panel A of the Board, hereby:

ORDERED that the Respondent is **REPRIMANDED;** and it is further

ORDERED that the Respondent is **permanently prohibited** from prescribing and dispensing all Controlled Dangerous Substances (CDS); and it is further

ORDERED that on every January 31st thereafter if the Respondent holds a Maryland medical license, the Respondent shall provide the Board with an affidavit verifying that the Respondent has not prescribed CDS in the past year; and it is further

ORDERED that if the Respondent fails to provide the required annual verification of compliance with this condition:

(1) there is a presumption that the Respondent has violated the permanent condition; and
(2) the alleged violation will be adjudicated pursuant to the procedures of a Show Cause Hearing; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **ONE (1) YEAR**. During probation, the Respondent shall comply with the following terms and conditions of probation:

1. Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP") as follows:

(a) Within 5 business days, the Respondent shall contact MPRP to schedule an initial consultation for enrollment;
(b) Within 15 business days, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP;
(c) the Respondent shall fully and timely cooperate and comply with all MPRP's referrals, rules, and requirements, including, but not limited to, the terms and conditions of the Participant Rehabilitation Agreement(s) and Participant Rehabilitation Plan(s) entered with MPRP, and shall fully participate and comply with all therapy, treatment, evaluations, and screenings as directed by MPRP;
(d) the Respondent shall sign and update the written release/consent forms requested by the Board and MPRP, including release/consent forms to authorize MPRP to make verbal and written disclosures to the Board and to authorize the Board to disclose relevant information from MPRP records and files in a public order. The Respondent shall not withdraw his/her release/consent;
(e) the Respondent shall also sign any written release/consent forms to authorize MPRP to exchange with (i.e., disclose to and receive from) outside entities (including all of the Respondent's current therapists and treatment providers) verbal and written information concerning the Respondent and to ensure that MPRP is authorized to receive the medical records of the Respondent, including, but not limited to, mental health and drug or alcohol evaluation and treatment records. The Respondent shall not withdraw his/her release/consent;
(f) the Respondent's failure to comply with any of the above terms or conditions including terms or conditions of the Participant Rehabilitation Agreement(s) or Participant Rehabilitation Plan(s) constitutes a violation of this Consent Order.

2. Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete a board-approved course in medical recordkeeping. The following terms apply:
(a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
(b) the disciplinary panel will not accept a course taken over the internet;
(c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;
(d) the course may not be used to fulfill the continuing medical education credits required for license renewal; and
(e) the Respondent is responsible for the cost of the course.

3. Within **SIX (6) MONTHS**, the Respondent is required to take and successfully complete a board-approved course in professional boundaries. The following terms apply:
(a) it is the Respondent's responsibility to locate, enroll in and obtain the disciplinary panel's approval of the course before the course is begun;
(b) the disciplinary panel will not accept a course taken over the internet;
(c) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;
(d) the course may not be used to fulfill the continuing medical education credits required for license renewal; and
(e) the Respondent is responsible for the cost of the course.

ORDERED that the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board. The Executive Director signs the Consent Order on behalf of the disciplinary panel which has imposed the terms and conditions of this Consent Order; and it is further

ORDERED that the Respondent is responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and it is further

ORDERED that, if the Respondent allegedly fails to comply with any term or condition imposed by this Consent Order, the Respondent shall be given notice and an opportunity for a hearing. If the disciplinary panel determines there is a genuine dispute as to a material fact, the hearing shall be before an Administrative Law Judge of the Office of Administrative Hearings followed by an exceptions process before a disciplinary panel; and if the disciplinary panel determines there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before a disciplinary panel; and it is further

ORDERED that after the appropriate hearing, if the disciplinary panel determines that the Respondent has failed to comply with any term or condition imposed by this Consent Order, the disciplinary panel may reprimand the Respondent, place the Respondent on probation with appropriate terms and conditions, or suspend with appropriate terms and conditions, or revoke the Respondent's license to practice medicine in Maryland. The disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine on the Respondent; and it is further

ORDERED that this Consent Order is a public document. *See* Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6); and it is further

11/08/2019
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland State Board of Physicians

CONSENT

I, Stephen R. Smith acknowledge that I have consulted with counsel before signing this document.

By this Consent, I agree to be bound by this Consent Order and all its terms and conditions and understand that the disciplinary panel will not entertain any request for amendments or modifications to any condition.

I assert that I am aware of my right to a formal evidentiary hearing, pursuant to Md. Code Ann., Health Occ. § 14-405 and Md. Code Ann., State Gov't §§ 10-201 et seq. concerning the pending charges. I waive this right and have elected to sign this Consent Order instead.

I acknowledge the validity and enforceability of this Consent Order as if entered after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my behalf, and to all other substantive and procedural protections as provided by law. I waive those procedural and substantive protections. I acknowledge the legal authority and the jurisdiction of the disciplinary panel to initiate these proceedings and to issue and enforce this Consent Order.

I voluntarily enter into and agree to comply with the terms and conditions set forth in the Consent Order as a resolution of the charges. I waive any right to contest the Findings of Fact and Conclusions of Law and Order set out in the Consent Order. I waive all rights to appeal this Consent Order.

I sign this Consent Order, without reservation, and fully understand the language and meaning of its terms.

Signature on File

11-6-19
Date

Stephen R. Smith, M.D.
Respondent

NOTARY

STATE OF Maryland
~~CITY~~/COUNTY OF Baltimore

I HEREBY CERTIFY that on this 6th day of November 2019, before me, a Notary Public of the foregoing State and City/County, personally appeared Stephen R. Smith, M.D., and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Karen J. Miller
Notary Public

My Commission expires: 12/2/23