IN THE MATTER OF	*	**BEFORE THE**
MARK J. SMITH, M.D.	*	**MARYLAND STATE**
Respondent	*	**BOARD OF PHYSICIANS**
License Number: D57969	*	**Case Number: 2217-0095B**

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CONSENT ORDER

On August 3, 2018, Disciplinary Panel B ("Panel B") of the Maryland State Board of Physicians (the "Board") charged Mark J. Smith, M.D. (the "Respondent"), License Number D57969, with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 14-404(a) (22) and (40) (2014 Repl. Vol. & 2017 Supp.).

The pertinent provisions of the Act provide:

> (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:
>
> ...
>
> (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[.]

On October 17, 2018, Panel B 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 B finds:

A. BACKGROUND

1. At all times relevant to these charges, the Respondent was a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed in Maryland on or about August 22, 2001. The Respondent's license is scheduled to expire on September 30, 2019.

2. In 2005, the Respondent was licensed to dispense controlled substances in the State of Maryland.

3. The Respondent is board-certified in psychiatry and neurology.

4. At all times relevant to these charges, the Respondent practiced psychiatry at a private practice, Practice A, in Gaithersburg, Maryland. The Respondent has never held any hospital privileges in Maryland.

5. On or about May 22, 2017, the Board received a complaint from a State agency ("Complainant A"), explaining that one of its investigators, a pharmacist, performed a data analysis and found unusual prescribing activity by the Respondent. Complainant A alleged that there was a trend in the Respondent's prescribing of higher doses that exceeded the standards for controlled drugs; and therapeutic duplication of medications.[1]

[1] Prescribing duplicate classifications of medications simultaneously such as benzodiazepines and stimulants.

6. On or about August 3, 2017, the Board sent a letter to the Respondent notifying him it had initiated full investigation into his medical practice.

7. The Board subsequently subpoenaed and received twelve patient medical records from the Respondent, chosen randomly from a PDMP[2] report. Also, as requested by the Board, the Respondent provided care summaries for the twelve patients.

8. On or about September 3, 2017, the Respondent submitted a written response to the Board. The Respondent stated that he was not engaging in unusual prescribing activity and denied any and all allegations regarding the deficiencies.

9. On or about November 14, 2017, Board staff interviewed the Respondent. The Respondent stated that he treats patients with ADHD,[3] anxiety, depression, bipolar disorder, opioid dependence, and schizophrenia.

10. During the interview, the Respondent denied any unusual prescribing activity. He stated that dosage is subjective based on the patient and that different combinations of drugs work differently depending on the person.

11. On or about January 9, 2018, Panel B referred the case to a peer review organization, requesting a peer review be conducted on the twelve patient records and other relevant documents from the Board's file. The peer review organization assigned the peer review to two reviewers who were board-certified in psychiatry and neurology.

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[2] PDMP - Prescription Drug Monitoring Program. In Maryland, the PDMP is Chesapeake Regional Information Center for our Patients ("CRISP").

[3] Attention Deficit Hyperactivity Disorder.

12. Following receipt of the peer review reports, on or about May 8, 2018, Board staff provided the Respondent an opportunity to respond to the deficiencies cited in the peer review reports.

B. PATIENT-RELATED FINDINGS

STANDARD OF CARE VIOLATIONS

13. The peer reviewers found the following deficiencies relating to eleven patients (Patients 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 12) that relate in whole or in part to the Respondent's failure to meet the standard of quality of care for patients receiving Suboxone/buprenorphine and/or amphetamines/stimulants[4] and/or benzodiazepines[5] and/or psychiatric medications. The peer reviewers found:

- The Respondent prescribed high doses of stimulants that exceeded the recommended daily doses without adequately documenting the rationale, risk and safety concerns (Patients 1, 2, 3, 5, 7, 8, 9, 10, 12);

- The Respondent failed to follow recommended dose titration schedules for stimulants and benzodiazepines (Patients 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12);

- The Respondent engaged in therapeutic duplication of medications without documenting the rationale. (Patients 1, 2, 3, 4, 5, 8, 9, 10, 12) For example, the Respondent prescribed to Patient 1 Xanax and Klonopin,[6] and methylphenidate ER and Vyvanse simultaneously; and on May 21, 2016, the Respondent prescribed to Patient 5 Concerta, Ritalin, Evekeo, and Adderall, all stimulants used to treat ADHD;[7]

- The Respondent prescribed without therapeutic indication or rationale. (Patients 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12) For example, in Patient 1's records, the Respondent prescribed Marinol without documenting an indication, and stimulants were

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[4] Amphetamines –Schedule II stimulant used in the treatment of ADHD. Can cause increased blood pressure and pulse rates.
[5] Benzodiazepines – Schedule IV CDS used to treat anxiety, induce sleep, and produce sedation.
[6] Both are Schedule IV benzodiazepines.
[7] Concerta, Ritalin, Vyvanse, Evekeo and Adderall – all are Schedule II CDS stimulants that can cause rapid or irregular heartbeat.

prescribed with no documentation of diagnostic or therapeutic indication. He prescribed buprenorphine to Patient 5 without documentation of a diagnosis of opioid dependence;

- The Respondent continued to prescribe benzodiazepines in the context of opioid abuse and benzodiazepine misuse (Patients 4, 6, 8);

- The Respondent prescribed stimulants to patients without objective documentation supporting a diagnosis of ADHD (Patients 1, 4, 5, 8, 9, 12);

- The Respondent failed to adjust the treatment regimen of a patient despite evidence of elevated blood pressure and pulse (Patient 3);

- The Respondent failed to adequately develop a plan to address anxiolytic dependence (Patient 4);

- The Respondent inadequately monitored patients for drug diversion or ongoing substance use (Patient 4, 6, 12);

- The Respondent prescribed or continued to prescribe CDS without documentation of considering contraindications for patients despite evidence of substance abuse (Patients 1, 4, 5, 8, 9, 12); and

- The Respondent failed to adequately treat patients on buprenorphine including conducting adequate follow-up[8] while prescribing and did not provide adequate warnings regarding concomitant use of benzodiazepines and buprenorphine (Patients 4, 7, 8, 9, 12).

INADEQUATE MEDICAL RECORDKEEPING

14. The peer reviewers found the Respondent's record keeping was inadequate for six patients reviewed (Patients 4, 5, 8, 9, 10, and 12), for reasons in whole or in part as follows:

- The Respondent failed to document the rationale for therapeutic duplication of medications and/or doses exceeding the maximum recommended dose (Patients 5, 8, 9, 10, 12);

[8] The American Society of Addiction Medicine's National Guidelines state, "stable patients can be seen less frequently, but should be seen at least monthly." (June 1, 2015, p. 34)

- The Respondent failed to adequately document signs and symptoms that the prescribed drugs were intended to target and/or the rationale for treatment selection (Patients 4, 5, 8, 9, 10, 12);
- The Respondent failed to adequately document symptoms and signs to support patients' diagnoses (Patients 4, 5, 8, 9, 10, 12);
- The Respondent failed to document the consideration/discussion of risk and possible harm vs. benefit of treatment choices such as with the concomitant use of benzodiazepines and opioids or exceeding the recommended dosages of stimulants (Patients 4, 5, 8, 9, 10);
- The Respondent failed to adequately document the consideration of safety risk with prescribing CDS including stimulants in the context of ongoing substance abuse (Patients 4, 8, 9, 12);
- The Respondent failed to document that he had discussed with the patient, treatment choices or consideration of alternatives (Patients 5, 8, 9, 10, 12);
- The Respondent failed to document the lack of incremental dose increase and failure to adhere to recommended titration schedule (Patient 5, 9, 10);
- The Respondent initiated medications without documenting a therapeutic or diagnostic indication (Patients 4, 5, 9, 10, 12); and
- The Respondent failed to document the rationale for prescribing particular medications that might be contraindicated or relatively contraindicated to prescribe in the context of opioid dependence (Patient 8).

II. CONCLUSIONS OF LAW

Based on the Findings of Fact, Panel B concludes as a matter of law that the Respondent's conduct constitutes a failure to meet standards of care for the delivery of quality medical or surgical care in violation of Health Occ. § 14-404(a)(22) and failed to keep adequate medical records in violation of Health Occ. § 14-404(a)(40).

III. ORDER

It is thus by Panel B, hereby:

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

ORDERED that **within SIX (6) MONTHS** of the date of this Consent Order, the Respondent is permanently prohibited from prescribing and dispensing Suboxone and medications containing buprenorphine. The Respondent may retain patients who are being prescribed Suboxone or buprenorphine by other providers but shall refer out and coordinate their Suboxone or buprenorphine treatment with other providers; 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 or dispensed medications containing Suboxone or buprenorphine 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 period of **EIGHTEEN (18) MONTHS.**[9] During probation, the Respondent shall comply with the following terms and conditions:

[9] If the Respondent's license expires while the Respondent is on probation, the probationary period and any probationary conditions will be tolled.

1. The Respondent is required to take a comprehensive course in controlled dangerous substance ("CDS") prescribing that includes but is not limited to the prescribing of stimulants and benzodiazepines. 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 shall enroll in and successfully complete a panel-approved course within six months;

   (d) the Respondent must provide documentation to the disciplinary panel that the Respondent has successfully completed the course;

   (e) the course may not be used to fulfill the continuing medical education credits required for license renewal;

   (f) the Respondent is responsible for the cost of the course.

2. The Respondent shall be subject to supervision by a disciplinary panel-approved supervisor who is board-certified in psychiatry / neurology as follows:

   (a) within 30 calendar days, the Respondent shall provide the disciplinary panel with the name, pertinent professional background information of the supervisor whom the Respondent is offering for approval, and written notice to the disciplinary panel from the supervisor confirming his or her acceptance of the supervisory role of the Respondent and attestation that there is no personal or professional relationship with the supervisor;

(b) The Respondent's proposed supervisor, to the best of the Respondent's knowledge, should not be an individual who is currently under investigation, and has not been disciplined by the Board within the past five years;

(c) if the Respondent fails to provide a proposed supervisor's name within 30 days from the effective date of the order, the Respondent's license shall be automatically suspended from the 31st day until the Respondent provides the name and background of a supervisor;

(d) the disciplinary panel, in its discretion, may accept the proposed supervisor or request that the Respondent submit a name and professional background, notice of confirmation, and attestation of a different supervisor;

(e) the supervision begins after the disciplinary panel approves the proposed supervisor;

(f) the disciplinary panel will provide the supervisor with a copy of this Consent Order and any other documents the disciplinary panel deems relevant;

(g) the Respondent shall grant the supervisor access to patient records selected by the supervisor, which shall, to the extent practicable, focus on the type of treatment at issue in the Respondent's charges;

(h) if the supervisor for any reason ceases to provide supervision, the Respondent shall immediately notify the Board and shall not practice

medicine beyond the 30th day after the supervisor has ceased to provide supervision and until the disciplinary panel the Respondent has submitted the name and professional background, notice of confirmation, and attestation of a proposed replacement supervisor to the disciplinary panel;

(i) it shall be the Respondent's responsibility to ensure that the supervisor:

(a) review the records of 10 patients each month, such patient records to be chosen by the supervisor and not the Respondent;

(b) meet in-person with the Respondent at least once each month and discuss in-person with the Respondent the care the Respondent has provided for these specific patients;

(c) be available to the Respondent for consultations on any patient;

(d) maintain the confidentiality of all medical records and patient information;

(e) provide the Board with quarterly reports which detail the quality of the Respondent's practice, any deficiencies, concerns, or needed improvements, as well as any measures that have been taken to improve patient care; and

(f) immediately report to the Board any indication that the Respondent may pose a substantial risk to patients.

3. The disciplinary panel may issue administrative subpoenas to the Maryland Prescription Drug Monitoring Program on a quarterly basis for the Respondent's Controlled Dangerous Substances ("CDS") prescriptions. The administrative

subpoena will request the Respondent's CDS prescriptions from the beginning of each quarter;

4. Within five business days of the date of this Consent Order, the Respondent shall inform the Board in writing of his or her current employer or employers, the employer's or employers' address or addresses, and of all locations including hospitals at which the Respondent provides health care services. The Respondent shall keep the Board informed of any subsequent employment changes within five business days of the change; and

5. The Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101—14-702, and all federal and state laws and regulations governing the practice of medicine in Maryland; and it is further

ORDERED the Respondent shall not apply for early termination of probation; and it is further

ORDERED that after the Respondent has complied with all terms and conditions of probation and the minimum period of probation imposed by the Consent Order has passed the Respondent may submit a written petition for termination of probation. After consideration of the petition, the probation may be terminated through an order of the disciplinary panel. The Respondent may be required to appear before the disciplinary panel to discuss his or her petition for termination. The disciplinary panel may grant the petition to terminate the probation, through an order of the disciplinary panel if there are no pending complaints relating to the charges; and it is further

ORDERED that a violation of probation constitutes a violation of the 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 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 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 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 the effective date of the Consent Order is the date the Consent Order is signed by the Executive Director of the Board or her designee. 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 his Consent Order is a public document. *See* Md. Code Ann., Health Occ. §§ 1-607, 14-411.1(b)(2) and Gen. Prov. § 4-333(b)(6).

11/13/2018
Date

Christine A. Farrelly
Christine A. Farrelly, Executive Director
Maryland State Board of Physicians

CONSENT

I, Mark J. Smith, M.D., 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 these rights 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 their 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 understands the language and meaning of its terms. ***Signature on File***

11-6-18
Date

Mark J. Smith, M.D.

STATE/ DISTRICT OF Columbia

CITY/COUNTY OF: N/A

I HEREBY CERTIFY that on this 6th day of November, 2018, before me, a Notary Public of the State/District and County aforesaid, personally appeared Mark J. Smith, M.D., and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.

Notary Public

My commission expires: June 30, 2020