

IN THE MATTER OF	*	BEFORE THE MARYLAND
WHITAKER M. SMITH, M.D.	*	STATE BOARD OF
Respondent	*	PHYSICIANS
License Number: D88480	*	Case Number: 2222-0072

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

The Maryland Board of Physicians (the “Maryland Board”) received information that Whitaker M. Smith, M.D., (the “Respondent”) License Number D88480, was disciplined by the Tennessee Board of Medical Examiners (the “Tennessee Board”). In a Consent Order dated November 3, 2021, the Tennessee Board reprimanded the Respondent and imposed certain conditions with which the Respondent had to comply.

Based on the above referenced Tennessee Board sanction, the Maryland Board has grounds to charge the Respondent with violating the following provisions of the Maryland Medical Practice Act (the “Act”), under H. O. § 14-404(a):

- (a) 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:
 - (21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veteran’s Administration for an act that would be grounds for disciplinary action under this section,

Disciplinary Panel B (“Panel B”) has determined that the acts for which the Respondent was disciplined in Tennessee would be grounds for disciplinary action under

H.O. § 14-404(a). The grounds for disciplinary action under H.O. § 14-404(a) are as follows:

- (3) Is guilty of:
 - (ii) Unprofessional conduct in the practice of medicine;
- (7) Habitually is intoxicated;
- (40) Fails to keep adequate medical records as determined by appropriate peer review.

Based on the action taken by the Tennessee Board, the Respondent agrees to enter into this Consent Order with Panel B, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order and Consent.

FINDINGS OF FACT

Panel B makes the following findings of fact:

1. At all times relevant hereto, the Respondent was a physician licensed to practice medicine in the State of Tennessee and in the State of Maryland. The Respondent was initially licensed in Maryland on or about October 31, 2019.
2. The Tennessee Board and the Respondent stipulated to the following, which the Board accepts and adopts. The following summarizes the Stipulations of Fact:
 - a. Based on a noticeable pattern of the Respondent cancelling or missing scheduled work days, the Respondent's employer referred the Respondent to the Tennessee Medical Foundation ("TMF") in May of 2014 for an evaluation. This evaluation resulted in the Respondent signing a contract with TMF which terminates on March 17, 2022.
 - b. From approximately March 2010 to June 2014, the Respondent wrote several controlled substance prescriptions and non-controlled substance

prescriptions for family members. Although the Respondent maintained a medical record for his family members, the record did not contain periodic visits to coincide with the prescriptions written.

- c. The Respondent also had a relationship with an individual outside of the office that was sexual in nature prior to seeing her as a patient. The Respondent subsequently wrote prescriptions for alprazolam and oxycodone for this patient.

3. By Order dated November 3, 2021, the Tennessee Board reprimanded the Respondent subject to terms and conditions.

A copy of the Tennessee Board Consent Order is attached hereto and incorporated by reference into the body of this document.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel B concludes as a matter of law that the Respondent is subject to discipline under Health Occ. § 14-404(a)(21) for the disciplinary action taken by the Tennessee Board against the Respondent for an act or acts that would be grounds for disciplinary action under Health Occ. §14-404(a)(3)(ii), (7) and (40).

ORDER

It is, thus, by Panel B, hereby:

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

ORDERED that the Respondent shall comply with the terms and conditions of the November 3, 2021 Consent Order he entered into with the Tennessee Board; and be it 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 or her designee 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 Respondent's license with appropriate terms and conditions, or revoke the Respondent's license. 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).

01/06/2022
Date

Signature on File

Christine A. Farrelly
Executive Director
Maryland Board of Physicians

CONSENT

I, Whitaker M. Smith, MD, acknowledge that I have consulted with legal 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 this Consent Order. 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

12/17/2021
Date

Whitaker M. Smith, MD
Respondent

NOTARY

STATE OF TENNESSEE

CITY/COUNTY OF JEFFERSON

I HEREBY CERTIFY that on this 17 day of DECEMBER, 2021, before me, a Notary Public of the State and City/County aforesaid, personally Whitaker M. Smith, MD, and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS my hand and notarial seal.

[Signature]
Notary Public

My Commission expires: AUG 14 2024



**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE
)	BOARD OF MEDICAL EXAMINERS
WHITAKER M. SMITH, M.D.)	
RESPONDENT)	CASE NO.: 201401172
)	
KINGSPORT, TN)	
TENNESSEE LICENSE NO. 31792)	

CONSENT ORDER

The Division of Health Related Boards of the Tennessee Department of Health (“State”), by and through the Office of General Counsel, and Respondent, Whitaker Smith, M.D. (“Respondent”), by and through counsel, respectfully move the Tennessee Board of Medical Examiners (“Board”) for approval of this Consent Order affecting Respondent’s medical license in the State of Tennessee.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee. *See Tennessee Medical Practice Act, TENN. CODE ANN. §§ 63-6-101, et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Medical Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-6-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the *Official Compilation Rules and Regulations of the State of Tennessee* (“TENN. COMP. R. & REGS.”).

Respondent, acting through his conservator, by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Consent Order by the Board for

ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against the Respondent in any subsequent proceeding unless independently obtained and entered into evidence or introduced as admissions.

Respondent understands the nature of the charges herein alleged and that if proved at a hearing, such charges and allegations would constitute cause for imposing discipline upon Respondent's license issued by the Board. Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. Respondent acknowledges that this is a formal disciplinary action and will be reported to the Healthcare Practitioner Data Bank and/or a similar agency. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

STIPULATIONS OF FACT

1. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor, having been granted license number 31792 on June 28, 1999. Respondent's medical license will expire on November 30, 2023.
2. In May of 2014, Respondent's employer, Mountain Regional Family Medicine Group, required Respondent to obtain an evaluation from the Tennessee Medical Foundation (TMF) because of a noticeable pattern of cancelling or missing scheduled work days.

3. In January of 2015, Respondent underwent a comprehensive evaluation with the Center for Professional Excellence at the request of TMF secondary to a complaint that he was abusing alcohol.
4. On or about January 27, 2015, Respondent signed his first contract with TMF. Respondent signed his second contract on March 3, 2017 after completing treatment at Positive Sobriety Institute in Chicago. Respondent is currently compliant with all of the terms of his TMF contract. Respondent's contract terminates on March 17, 2022.
5. In addition, to Respondent's use of alcohol, Respondent wrote several prescriptions for Concerta, a schedule II controlled substance, for his son, D.S. from approximately April 2010 through April 2014. During approximately the same time period, Respondent also wrote prescriptions for non-controlled substances for D.S. including prescriptions for antibiotics, although the vast majority of the prescriptions were for Concerta.
6. Respondent maintained a medical record for D.S., although the record does not contain periodic visits to coincide with the prescriptions written.
7. From approximately March 2010 through June 2014, Respondent wrote several prescriptions for Concerta, a schedule II controlled substance, for his daughter S.S. During approximately the same time period, Respondent also wrote prescriptions for non-controlled substances for S.S. although the vast majority of the prescriptions were for Concerta.
8. Respondent maintained a medical record for S.S., although the record does not contain periodic visits to coincide with the prescriptions written.
9. Respondent had a relationship with T.Q. outside the office that was sexual in nature prior to seeing her as a patient. Respondent first saw T.Q. for dysuria. T.Q. also had a history of arthritis, fibromyalgia, and anxiety.

10. From approximately August 2013 through February 2014, Respondent wrote T.Q. approximately ten (10) prescriptions for Alprazolam, a schedule IV controlled substance, and approximately (8) prescriptions for Oxycodone, a scheduled II controlled substance.
11. On February 20, 2014, Respondent sent T.Q. a patient discharge letter stating that she was in violation of her controlled substance agreement.

GROUNDS FOR DISCIPLINE

Respondent's acts as described in the Stipulations of Fact section of this Consent Order are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.* and *TENN. COMP. R & REGS.*) for which disciplinary action before and by the Board is authorized:

12. Respondent's actions/omissions as articulated in paragraph two (2) through four (4) of the Stipulations of Fact, *supra*, constitute violations of TENN. CODE ANN. § 63-6-214 (b)(5):

Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the person's ability to practice medicine

13. Respondent's actions/omissions as articulated in paragraph two (2) through ten (10) of the Stipulations of Fact, *supra*, constitute violations of TENN. CODE ANN. § 63-6-214 (b)(1):

Unprofessional conduct, dishonorable or unethical conduct.

14. The facts stipulated in paragraphs five (5) through ten (10), *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(12):

Dispensing, prescribing or otherwise distributing any controlled substance of any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition.

15. The facts stipulated in paragraphs five (5) through ten (10), *supra*, constitute a violation of TENN. COMP. R & REGS. 0880-2-.14(7)(a):

Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and
2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and
3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and
4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

16. The facts stipulated in paragraphs five (5) and ten (10), *supra*, constitute a violation of the Code of Medical Ethics of the American Medical Association, which constitutes a violation of TENN. COMP. R. & REGS., Rule 0880-02-.14(8):

Code of Ethics – The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its code of medical ethics the “Code of Medical Ethics” published by the A.M.A. Council on Ethical and Judicial Affairs as it may, from time to time, be amended.

POLICY STATEMENT

The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of the citizens of the State of Tennessee and ensure that the public confidence in the integrity of the medical profession is preserved.

ORDER

Therefore, the Board ORDERS and Respondent AGREES to the following:

17. The Tennessee medical license of Whitaker Smith, M.D., license number 31792, is hereby **REPRIMANDED**, effective the date of entry of this Order.
18. Respondent shall maintain the advocacy of the TMF;
 - a. Respondent shall maintain one hundred percent (100%) compliance with all provisions of the TMF monitoring/advocacy contract, or extension thereto he has entered with the TMF;
 - b. During the length of his TMF contract, Respondent shall authorize the TMF to provide compliance reports to the Board's Medical Consultant every 3 months detailing Respondent's compliance with the terms of his TMF contract with the first report due three months following the effective date of this Order;
 - c. Cause the TMF to notify the Board's Disciplinary Coordinator in writing of any violation of the TMF contract;
 - d. Immediately notify the Board's Medical Consultant if at any time Respondent no longer has the advocacy of TMF.
19. Within ninety (90) days of the entry of this Order, Respondent must provide proof to the Board's medical consultant that he has notified any physicians, podiatrists, advanced practice registered nurses, or physicians assistants with whom he collaborates of the discipline.
20. Respondent shall not prescribe opioids for at least six (6) months, effective the date of entry of this Order, and until successful completion of the continuing education contained in paragraph twenty-two (22) of this Order. During the time period in which Respondent is

restricted from prescribing opioids, Respondent shall not collaborate with any advanced practice registered nurses or physician assistants for issuing opioids. The restriction imposed by this paragraph is only applicable to opioid prescriptions.

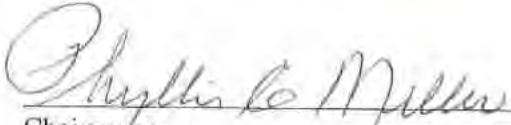
21. Respondent shall successfully complete within one hundred and twenty (120) days of entry of this Order, the equivalent of a two (2) day medical course entitled "*Medical Ethics, Boundaries and Professionalism*" offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio, or an equivalent course approved in advance by the Board's medical consultant that he has heretofore not taken. Within thirty (30) days after completion of such course, Respondent shall email proof of compliance with this course requirement to: disciplinary.coordinator@tn.gov. Any Continuing Medical Education (hereinafter "CME") course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure.
22. Respondent shall successfully complete within one hundred and twenty (120) days of entry of this Order, the three (3) day medical course entitled, "*Prescribing Controlled Drugs: Critical Issues and Common Pitfalls*" offered by Vanderbilt University Medical Center or an equivalent course approved in advance by the Board's medical consultant. Within thirty (30) days after completion of such course, Respondent shall email proof of compliance with this course requirement to: disciplinary.coordinator@tn.gov. Any Continuing Medical Education (hereinafter "CME") course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure.
23. Respondent must pay four (4) "Type A" civil penalties, in the amount of one thousand dollars (\$1,000.00) each for a total of \$4,000 representing a civil penalty for each year that

Respondent prescribed to his children as outlined in the Stipulations of Fact, *supra*. Respondent must also pay one (1) "Type A" civil penalty in the amount of one thousand dollars (\$1,000.00) for his relationship with and for prescribing to T.Q. as outlined in the Stipulations of Fact, *supra*. The total civil penalties to be paid are five thousand dollars (\$5,000). Any and all civil penalties shall be paid within thirty (30) days of the effective date of this Consent Order. Any and all civil penalty payments shall be paid by **certified check, cashier's check, or money order** payable to the **State of Tennessee**, which shall be mailed or delivered to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243.** A notation shall be placed on said check that it is payable for the civil penalty of **WHITAKER SMITH, M.D., COMPLAINT NO. 2014011721.**


24. Respondent must pay the actual and reasonable costs associated with the investigation and prosecution of this case, in accordance with TENN. CODE ANN. §§ 63-1-144, 63-6-214 and TENN. COMP. R. & REGS 0880-02-.12. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. The maximum assessment of costs shall be limited to three thousand dollars (\$3000.00). Any and all costs shall be paid in full within sixty (60) days from the issuance of the Assessment of Costs by submitting a **certified check, cashier's check, or money order** payable to the **State of Tennessee**, which shall be mailed or delivered to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243.** A notation shall be placed on said check that it is payable for the costs and civil penalties of **WHITAKER SMITH, M.D., COMPLAINT NO. 2014011721.**
25. Failure to comply with any of the terms of this Order shall be considered a Board Order violation, which may result in further discipline against Respondent.

26. Respondent understands that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (N.P.D.B.) and/or similar agency.

This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 3rd day of November, 2021.

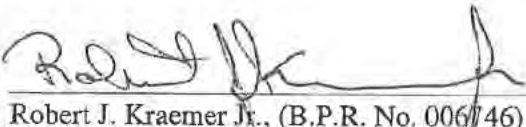

Chairperson
Tennessee Board of Medical Examiners

APPROVED FOR ENTRY:



Whitaker M. Smith
Respondent
Tennessee Medical License No. 31792

November 02, 2021

DATE


Robert J. Kraemer Jr., (B.P.R. No. 006746)
Respondent's attorney
1209 Cedarbend Drive
Mount Juliet, Tennessee 37122-2484

November 2, 2021
DATE

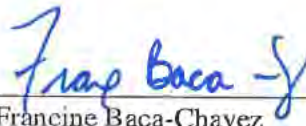

Francine Baca-Chavez (B.P.R. #031864)
Deputy General Counsel
Office of General Counsel
Tennessee Department of Health
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

November 3, 2021
DATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, through his attorney, Robert J. Kraemer, Jr. 1209 Cedarbend Drive, Mount Juliet, Tennessee 37122-2484 by delivering same in the United States Mail, Certified Number 7021 0950 0001 8066 7329, return receipt requested, United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination and via email at robkrmr@tnkraemer.com.

This 4th day of November, 2021.



Francine Baca-Chavez
Deputy General Counsel