

IN THE MATTER OF
KYLE A. SMITH, M.D.

* BEFORE THE
* MARYLAND STATE

Respondent

* BOARD OF PHYSICIANS

License Number: D80285

* Case Number: 2017-0446A

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On August 22, 2017, Disciplinary Panel A ("Panel A") of the Maryland State Board of Physicians (the "Board") charged **KYLE A. SMITH, M.D.** (the "Respondent"), License Number D80285, with violating the Maryland Medical Practice Act (the "Act"), Md. Code Ann., Health Occ. II ("Health Occ. II") §§ 14-101 *et seq.* (2014 Repl. Vol.), Md. Code Ann., Health Occ. I ("Health Occ. I") § 1-101 *et seq.* (2014 Repl. Vol. and 2016 Supp.) and the Board's sexual misconduct regulations, codified at Md. Code Regs. ("COMAR") 10.32.17.01 *et seq.*

Specifically, Panel A charged the Respondent with violating the following provisions of the Act under Health Occ. II § 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 is:

- (3) Is guilty of:
 - (i) Immoral conduct in the practice of medicine; or
 - (ii) Unprofessional conduct in the practice of medicine[.]

The pertinent provisions of Health Occ. I § 1-212 provide as follows:

(a) *Adoption of regulations.* – Each health occupations board authorized to issue a license or certificate under this article shall adopt regulations that:

- (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 provisions of COMAR 10.32.17 provide as follows:

.02 Definitions.

B. Terms Defined.

- (2) Sexual impropriety.
 - (a) "Sexual impropriety" means behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or key third party regardless of whether the sexual impropriety occurs inside or outside of a professional setting.
 - (b) "Sexual impropriety" includes, but is not limited to:
...
 - (iii) Using the health care practitioner-patient relationship to initiate or solicit a dating, romantic, or sexual relationship[.]
- (3) "Sexual misconduct" means a health care practitioner's behavior toward a patient, former patient, or key third party, which includes:
 - (a) Sexual impropriety;
 - (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.

.03 Sexual Misconduct.

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

On October 11, 2017, the Respondent appeared before Panel A, sitting as a Disciplinary Committee for Case Resolution. As a result of negotiations occurring before Panel A, the Respondent agreed to enter into the following Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law, Order, Consent and Notary.

FINDINGS OF FACT

Panel A makes the following Findings of Fact:

I. BACKGROUND

1. At all times relevant hereto, the Respondent was and is a physician licensed to practice medicine in the State of Maryland. The Respondent was initially licensed to practice medicine in Maryland on August 19, 2015, under License Number D80285. The Respondent's Maryland medical license is active through September 30, 2017.
2. The Respondent is board-certified in family medicine.

II. THE COMPLAINT

3. On or about January 3, 2017, the Board received a complaint from a medical director (the "Complainant")¹ of a health care facility (the

¹ For confidentiality reasons, the names of complainants, health care facilities or patients will not be disclosed in this document. The Respondent is aware of the identity of all individuals and health care facilities referenced herein.

"Facility") regarding the Respondent, a former Facility physician and employee. The Complainant stated that three of the Respondent's patients reported that after he saw them for office visits, he sent them inappropriate texts.

4. The Complainant stated that the Facility began having concerns about the Respondent in the early fall of 2016 after receiving an anonymous complaint from a patient ("Patient A") who reported that the Respondent sent her inappropriate texts. The Complainant stated that after receiving this complaint, he counseled the Respondent, who acknowledged his actions and assured the Complainant that it would not recur. The Facility then received a second complaint in mid-November 2016 against the Respondent from another patient ("Patient B") who was also affiliated with the Facility in a professional capacity. Patient B reported that after she saw the Respondent for an office visit, he sent her inappropriate texts that involved sexual matters. The Complainant reported that after receiving this complaint, he counseled the Respondent again.

5. The Complainant reported that in December 2016, the Facility received a complaint from a third patient ("Patient C"), who reported, "Dr. Smith called me repeatedly, texted. I felt sexually harassed." The Complainant stated that he spoke to Patient C, who repeated her concerns and stated that although the Respondent did not make sexual advances against her, he did ask her out repeatedly.

6. Thereafter, the Board initiated an investigation of this matter.

III. BOARD INVESTIGATION

7. As part of its investigation, the Board obtained relevant documents from the Facility, obtained a written response from the Respondent,

interviewed the identified individuals who filed complaints against the Respondent, and interviewed the Respondent. The Board's investigative findings are set forth *infra*.

Patient A

8. The Respondent contacted Patient A by text message following an office visit on or about August 18, 2016. In the text message to Patient A, the Respondent made inquiries about personal matters. Patient C submitted an anonymous complaint to the Facility and requested that the Respondent stop contacting her. The Complainant contacted the Respondent, who admitted that he contacted Patient A. The Complainant advised the Respondent not to contact patients in this manner.

Patient B

9. The Respondent contacted Patient B by text message in or around October 2016, shortly after she saw him for a medical consultation. At the time, Patient B was affiliated with the Facility in a professional capacity. The Respondent contacted Patient B without her prior permission, purportedly to discuss a medical issue. The Respondent's text messages became increasingly personal and referenced sexual matters, which made Patient B "extremely uncomfortable." In his texts to Patient B, the Respondent disclosed personal medical information about himself and encouraged her to disclose "ridiculous" things that patients had told her. Patient B reported that the Respondent's texts to her were "clearly inappropriate" and "weird," such that she blocked the Respondent from her cell phone. Patient B contacted the Complainant to report the Respondent, stating that his actions were inappropriate and that "someone needs to speak with him." After receiving this complaint, the Complainant met with the

Respondent and explained to him that his comments to Patient B were inappropriate and that he needed to be careful not to cross boundaries. The Complainant warned the Respondent "that such conduct could put his license at risk if repeated."

Patient C

10. Patient C contacted the Facility on or about December 1, 2016, and reported, "I would caution . . . [the Facility] . . . that Dr. Smith may have an issue encroaching in patient's personal space in an inappropriate way. I won't return to this office b/c it made me uncomfortable"; and "Dr. Smith called me repeatedly; texted I felt sexually harassed." Patient C saw the Respondent as a patient on two occasions in 2016. After the first office visit, the Respondent contacted Patient C by text, which she found odd because she did not give him her telephone number. The Respondent contacted Patient C again after her second office visit. In these text messages, the Respondent became increasingly personal, suggested a closer relationship and referenced sexual matters, which made Patient C feel uncomfortable. After receiving these texts, Patient C informed the Respondent by text message that she felt that his text messages were inappropriate and asked him to stop contacting her.

The Respondent's written response to the complaint

11. By letter dated April 13, 2017, the Respondent provided a written response to the Board in which he admitted the truth of the allegations that Patients A, B and C made about him. The Respondent admitted that on various occasions, he "reached out to female patients by text message without obtaining prior consent from them," and that his texts were "of a social nature (*i.e.*, not medically-related)." The Respondent stated, "there were occasions where the conversations via

text message became overtly sexual over time." The Respondent acknowledged that his texts messages were inappropriate.

Interview of the Respondent

12. On July 11, 2017, Board investigators interviewed the Respondent under oath. The Respondent stated that on several occasions, he contacted female patients without their prior consent and that on a few occasions, his texts became "flirtatious and/or sexual in nature." The Respondent stated that in addition to the patient complaints the Facility received, he contacted other patients and staff members with whom he had texting relationships. Board investigators specifically questioned the Respondent about the allegations Patients A, B and C made against him. The Respondent acknowledged that they were true and that his actions were improper. The Respondent stated, "I'm aware of what I did wrong in terms of communicating with people without their consent, and abusing the doctor-patient trust relationship, and selfishly seeking some form of personal gratification at the expense of that relationship. I am sorry for my actions"

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, Panel A concludes as a matter of law that the Respondent violated the following provisions of the Act: Health Occ. II § 14-404(a): (3) Is guilty of: (i) Immoral conduct in the practice of medicine; (ii) Unprofessional conduct in the practice of medicine. Panel A also concludes as a matter of law that the Respondent violated Health Occ. I § 1-212 and COMAR 10.32.17.03, (prohibiting sexual misconduct).

ORDER

It is, on the affirmative vote of a majority of the quorum of Panel A, hereby:

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

ORDERED that the Respondent is placed on probation for a minimum period of

TWO (2) YEARS,² subject to the following:

1. The Respondent shall enroll in the Maryland Professional Rehabilitation Program ("MPRP"). Within **five (5) business days**, the Respondent shall contact MPRP to schedule an initial consultation for enrollment. Within **fifteen (15) business days**, the Respondent shall enter into a Participant Rehabilitation Agreement and Participant Rehabilitation Plan with MPRP. The Respondent shall fully and timely cooperate and comply with all of 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 into with MPRP, and shall fully participated and comply with all therapy, treatment, evaluations, and toxicology screenings as directed by MPRP;

2. The Respondent shall sign and update the written release/consent forms requested by the Board and MPRP. The Respondent shall sign the release/consent forms to authorize MPRP to make verbal and written disclosures to the Board, including disclosure of any and all MPRP records and files possessed by MPRP. 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 treatment records;

3. Within **six (6) months**, the Respondent shall successfully complete a Board disciplinary panel-approved course in maintaining appropriate physician-patient boundaries. The Board disciplinary panel will not accept a course taken over the Internet. The course may not be used to fulfill the continuing medical education credits required for license renewal. The Respondent must provide documentation to the Board that the Respondent has successfully completed the course; and

4. The Respondent shall comply with the Maryland Medical Practice Act, Md. Code Ann., Health Occ. §§ 14-101 – 14-702, and all laws and regulations governing the practice of medicine in Maryland.

AND IT IS FURTHER ORDERED that after **two (2) years**, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the

² The suspension will not be terminated if the Respondent fails to renew his license. If the Respondent's license expires while the license is suspended, the suspension period will be tolled.

Board or Panel A. The Respondent may be required to appear before the Board or Panel A to discuss his petition for termination. The Board or Panel A will grant the petition to terminate the probation if the Respondent has complied with all of the probationary terms and conditions and there are no pending complaints related to the charges; and it is further

ORDERED that if the Respondent allegedly fails to comply with any term or condition of probation or the 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. If there is no genuine dispute as to a material fact, the Respondent shall be given a show cause hearing before the Board or Board panel; and it is further

ORDERED that, after the appropriate hearing, if the Board or Board disciplinary panel determines that the Respondent has failed to comply with any term or condition of probation or this Consent Order, the Board or Board 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 Board or Board disciplinary panel may, in addition to one or more of the sanctions set forth above, impose a civil monetary fine upon the Respondent; and it is further

ORDERED that, unless stated otherwise in the order, any time period prescribed in this order begins when the Consent Order goes into effect. The Consent Order goes into effect upon the signature of the Board's Executive Director, who signs on behalf of Panel A; and it is further

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

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

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.* (2014).

10/31/2017
Date

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

CONSENT

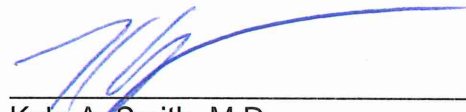
I, Kyle A. Smith, M.D., acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I agree and accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact, Conclusions of Law and Order.

I acknowledge the validity of this Consent Order as if entered into 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 own behalf,

and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of Disciplinary Panel A to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of Disciplinary Panel B that might have followed any such hearing.


I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

10/27/17
Date



Kyle A. Smith, M.D.
Respondent

Read and approved:



Elliott A. Alman, Esquire
Counsel for Dr. Smith

NOTARY

STATE OF Maryland
CITY/COUNTY OF Montgomery

I HEREBY CERTIFY that on this 27th day of Oct.

2017, before me, a Notary Public of the foregoing State and City/County, did personally appear Kyle A. 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 notary seal.



Notary Public

My commission expires:

**Elliott A. Alman
Notary Public
Montgomery County, Maryland
Commission Expires 6/7/19**