

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

4
5 **In the Matter of Charges and Complaint**

Case No. 24-51857-1

6 **Against:**

7 **WHITAKER MICHAEL SMITH, M.D.,**

8 **Respondent.**

FILED

JUL 17 2024

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**
By: _____

9
10 **COMPLAINT**

11 The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through William P. Shogren, Deputy General Counsel and attorney for the IC,
13 having a reasonable basis to believe that Whitaker Michael Smith, M.D. (Respondent) violated the
14 provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC)
15 Chapter 630 (collectively, the Medical Practice Act), hereby issues its Complaint, stating the IC's
16 charges and allegations as follows:

17 1. Respondent was at all times relative to this Complaint a medical doctor holding an
18 active license to practice medicine in the State of Nevada (License No. 19408). Respondent was
19 originally licensed by the Board on November 14, 2017.

20 2. On November 3, 2021, the Tennessee Board of Medical Examiners (Tennessee
21 Board) adopted a Consent Order against Respondent in Case No. 201401172. *See Exhibit 1.*
22 This Consent Order issued a reprimand of Respondent's Tennessee medical license and imposed
23 several conditions, including a provision prohibiting him from prescribing opioids for six (6)
24 months.

25 3. The Tennessee Board Consent Order was based on Respondent entering into a
26 monitoring agreement with the Tennessee Medical Foundation after Respondent's employer noted
27

28 ¹ The Investigative Committee of the Nevada State Board of Medical Examiners, at the time this formal
Complaint was authorized for filing, was composed of Board members Aury Nagy, M.D., Ms. Maggie Arias-Petrel,
and Nicola (Nick) M. Spirtos, M.D., F.A.C.O.G.

1 a pattern of canceled or missed scheduled workdays, and Respondent writing prescriptions,
2 including prescriptions for controlled substances, for his two children and a person with whom he
3 had a prior sexual relationship.

4 4. Respondent failed to self-report this disciplinary action to the Nevada Board within
5 thirty (30) days as required under NRS 630.306(1)(k).

6 **COUNT I**

7 **NRS 630.301(3) - Disciplinary Action by Another State Medical Board**

8 5. All of the allegations contained in the above paragraphs are hereby incorporated by
9 reference as though fully set forth herein.

10 6. NRS 630.301(3) provides that any disciplinary action, including, without
11 limitation, the revocation, suspension, modification or limitation of a license to practice any type
12 of medicine, taken by another state ... [o]r the surrender of the license or discontinuing the
13 practice of medicine while under investigation by any licensing authority is grounds for initiating
14 disciplinary action or denying licensure.

15 7. Respondent was disciplined by another state when the Tennessee Board of Medical
16 Examiners entered its Consent Order, reprimanding Respondent's Tennessee medical license and
17 requiring Respondent follow several specific conditions, such as a six-month prohibition on the
18 prescription of opioids. *See Exhibit 1.*

19 8. By reason of the foregoing, Respondent is subject to discipline by the Board as
20 provided in NRS 630.352.

21 **COUNT II**

22 **NRS 630.306(1)(k) - Failure to Report Disciplinary Action**

23 9. All of the allegations contained in the above paragraphs are hereby incorporated by
24 reference as though fully set forth herein.

25 10. NRS 630.306(1)(k) provides that the failure by a licensee to report in writing,
26 within thirty (30) days, any disciplinary action taken against the licensee by another state is
27 grounds for initiating disciplinary action or denying licensure.

28 ///

1 11. Respondent did not report to the Board in writing within thirty (30) days the
2 disciplinary action taken by the Tennessee Board of Medical Examiners.

3 12. By reason of the foregoing, Respondent is subject to discipline by the Nevada
4 Board as provided in NRS 630.352.

5 **WHEREFORE**, the Investigative Committee prays:

6 1. That the Board give Respondent notice of the charges herein against him and give
7 him notice that he may file an answer to the Complaint herein as set forth in
8 NRS 630.339(2) within twenty (20) days of service of the Complaint;

9 2. That the Board set a time and place for a formal hearing after holding an Early
10 Case Conference pursuant to NRS 630.339(3);

11 3. That the Board determine what sanctions to impose if it determines there has been
12 a violation or violations of the Medical Practice Act committed by Respondent;

13 4. That the Board award fees and costs for the investigation and prosecution of this
14 case as outlined in NRS 622.400;

15 5. That the Board make, issue and serve on Respondent its findings of fact,
16 conclusions of law and order, in writing, that includes the sanctions imposed; and

17 6. That the Board take such other and further action as may be just and proper in these
18 premises.

19 DATED this 17th day of July, 2024.

20 INVESTIGATIVE COMMITTEE OF THE
21 NEVADA STATE BOARD OF MEDICAL EXAMINERS

22 By:



23 WILLIAM P. SHOGREN

24 Deputy General Counsel

25 9600 Gateway Drive

26 Reno, NV 89521

27 Tel: (775) 688-2559

28 Email: shogrenw@medboard.nv.gov

Attorney for the Investigative Committee

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521
(775) 688-2559

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VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

Aury Nagy, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

DATED this 17th day of July, 2024.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: 
AURY NAGY, M.D.
Chairman of the Investigative Committee

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CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Nevada State Board of Medical Examiners and that on the 18th day of July, 2024, I served a file-stamped copy of the foregoing **COMPLAINT**, via USPS Certified Mail, postage pre-paid, to the following parties:

WHITAKER MICHAEL SMITH, M.D.
366 Meadowlake Circle
Seymour, TN 37865

Tracking No.: 9171 9690 0935 0254 6114 62

DATED this 18th day of July, 2024.



MERCEDES FUENTES
Legal Assistant
Nevada State Board of Medical Examiners

EXHIBIT 1

EXHIBIT 1

**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.

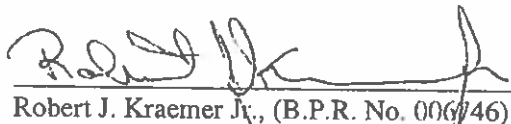
This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 3rd day of November, 2021.


Chairperson
Tennessee Board of Medical Examiners

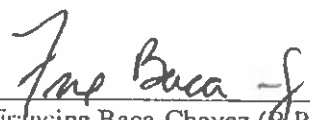
APPROVED FOR ENTRY:


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@tkraemer.com.

This 4th day of November, 2021.


Francine Baca-Chavez
Deputy General Counsel