

# LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

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## BEFORE THE LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

(504) \_\_\_\_\_

No. 2021-I-1370

IN THE MATTER OF:

CONSENT ORDER

WHITAKER M. SMITH, M.D.:

(Credential No.328366),

*Respondent*

Whitaker M. Smith, M.D. (“Dr. Smith”) is a physician holding a Physician and Surgeon Compact License in the State of Louisiana pursuant to the Interstate Medical Licensure Compact (the “Compact”), La. R.S. 37:1310.1, as evidenced by credential No.328366. Dr. Smith designated Tennessee as his “state of principal license” under the Compact and is principally engaged in the practice of telemedicine in the State of Louisiana. The above-captioned matter was docketed for investigation by the Louisiana State Board of Medical Examiners (the “Board”) following the receipt of apparently reliable information indicating that the Tennessee Board of Medical Examiners had imposed discipline on Dr. Smith’s Tennessee medical license on November 3, 2021.

Investigation of the captioned matter was assigned to Lawrence H. Cresswell, III, D.O., J.D., Director of Investigations (the “Investigating Officer”) for the Board. In the course of the investigation, the Investigating Officer learned that Dr. Smith has been licensed as a physician in Tennessee since June 28, 1999, and subsequently obtained a Louisiana Physician and Surgeon Compact License via the Compact on August 9, 2021, which license expires on November 30, 2022. According to a consent order between the Tennessee Board of Medical Examiners and Dr. Smith entered into on November 3, 2021 (the “Tennessee Order”),<sup>1</sup> Dr. Smith prescribed controlled dangerous substances (“CDS”) to two of his children on multiple occasions from 2010–2014 while practicing as a physician in Tennessee. Further, in 2013–2014, Dr. Smith prescribed CDS to a female patient with whom he had a personal relationship prior to her becoming a patient. Dr. Smith also had signed monitoring contracts with the Tennessee Medical Foundation on January 27, 2015, and March 3, 2017, in relation to a substance use disorder. By consent, Dr. Smith agreed

<sup>1</sup> See Consent Order, In the Matter of Whitaker M. Smith, M.D., Respondent, Case No. 201401172, Tenn. Bd. of Med. Ex. (Nov. 3, 2021). The Board is aware of at least one other consent order between Dr. Smith and another state medical licensing agency imposing reciprocal discipline based on the Tennessee Order. See Interim Consent Agreement, In the Matter of Whitaker M. Smith, M.D., Case No. MD-21-1039A, Ariz. Med. Bd. (Dec. 13, 2021).

to resolve charges related to this conduct through the discipline imposed in the Tennessee Order, namely:

- Maintaining 100% compliance with his contract with the Tennessee Medical Foundation and immediately notifying the Tennessee Board of Medical Examiners if he no longer has the advocacy of the Tennessee Medical Foundation;
- Authorizing the Tennessee Medical Foundation to provide to the Tennessee Board of Medical Examiners: (1) compliance reports every three months, and (2) notification of any violations of the contract;
- Notifying any physicians, podiatrists, advanced practice registered nurses, or physicians assistants with whom he collaborates of the discipline within ninety (90) days of the entry of the Tennessee Order;
- Not prescribing opioids for at least six (6) months, effective as of the date of entry of the Tennessee Order;
- Completing, within 120 days of the effective date of entry of the Tennessee 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 and providing proof of compliance thereof;
- Completing, within 120 days of the effective date of entry of the Tennessee 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 and providing proof of compliance thereof;
- Paying civil penalties totaling \$5,000.00 within thirty (30) days of the effective date of entry of the Tennessee Order; and
- Paying the actual and reasonable costs associated with the investigation and prosecution of the investigation and adjudication by the Tennessee Board of Medical Examiners.

The Investigating Officer met with Dr. Smith on January 18, 2022. At that meeting, Dr. Smith represented that he has fully complied with his contract with the Tennessee Medical Foundation and also has taken the appropriate steps to comply with the Tennessee Order. At this meeting, Dr. Smith also acknowledged that he understood that the Tennessee Order rendered him ineligible to renew his Louisiana Physician and Surgeon Compact License and that he would be required to apply for a license by reciprocity under the Board’s Rules if he wished to continue practicing medicine in Louisiana after November 30, 2022.<sup>2</sup>

As evidenced by his subscription hereto, Dr. Smith acknowledges the substantial accuracy of the foregoing information and that proof of such information upon administrative evidentiary

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<sup>2</sup> See La. R.S. 37:1310.1 § 7; La. Admin. Code tit. 46 pt. XLV §§ 351–53.

hearing would establish sufficient cause to take action with respect to his medical license pursuant to La. R.S. 37:1285(A)(5)<sup>3</sup>, (12)<sup>4</sup>, (13)<sup>5</sup>, and (29).<sup>6</sup>

Recognizing his right to have notice and administrative adjudication of any charges that may be asserted against him in these proceedings, at which time Dr. Smith would be entitled to be represented by legal counsel, to call witnesses and to present evidence on his own behalf in defense or in mitigation of the charges made and to a decision thereon by the Board based upon written findings of fact and conclusions of law pursuant to La. R.S. 49:955–65, Dr. Smith, nonetheless, hereby waives his right to notice and formal adjudication and pursuant to La. R.S. 49:955(D) consents to entry of the Order set forth hereinafter. Dr. Smith acknowledges that he hereby waives any right to which he may be entitled pursuant to the Louisiana Administrative Procedure Act, La. R.S. 49:951 *et seq.*, or which may be afforded to him by any other law to contest or appeal his agreement to or the force and effect of the Board’s investigation or this Order in any court or other forum. By his subscription hereto, Dr. Smith also hereby authorizes the Investigating Officer designated by the Board with respect hereto to present this Order to the Board for its consideration and to fully disclose to and discuss with the Board the nature and results of the investigation and he waives any objection to such disclosures under La. R.S. 49:960. Dr. Smith expressly acknowledges that the disclosure of such information to the Board by the Investigating Officer shall be without prejudice to the Investigating Officer’s authority to proceed with the adjudication of an administrative complaint against him or to the Board’s capacity to adjudicate such complaint should the Board decline to approve this Order.

Based upon the information provided, and upon the recommendation of the Investigating Officer, the Board hereby concludes that, consistent with its mandate under La. R.S. 37:1261, the interests of public health, safety, and welfare will be effectively served by entry of the Order set

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<sup>3</sup> Pursuant to La. R.S. 37:1285(A), “[t]he board may refuse to issue, or may suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit issued pursuant to this Part for the following causes: . . . (5) Habitual or recurring abuse of drugs, including alcohol, which affect the central nervous system and which are capable of inducing physiological or psychological dependence.”

<sup>4</sup> Pursuant to La. R.S. 37:1285(A), “[t]he board may refuse to issue, or may suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit issued pursuant to this Part for the following causes: . . . (12) An inability to practice medicine with reasonable skill or safety due to mental illness or deficiency, including but not limited to deterioration through the aging process or the loss of motor skills or excessive use or abuse of drugs, including alcohol.”

<sup>5</sup> Pursuant to La. R.S. 37:1285(A), “[t]he board may refuse to issue, or may suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit issued pursuant to this Part for the following causes: . . . (13) Unprofessional conduct”; *see also* La. Admin Code tit. 46 pt. XLV § 7603 (defining “unprofessional conduct” to include “*Self-Treatment; Treatment of Immediate Family Members*--except in cases of emergency, physicians shall not prescribe controlled substances for themselves or their immediate family members. As respects a physician, *immediate family members* include the physician's spouse, children, parents, and siblings”) (emphasis in original).

<sup>6</sup> Pursuant to La. R.S. 37:1285(A), “[t]he board may refuse to issue, or may suspend or revoke any license or permit, or impose probationary or other restrictions on any license or permit issued pursuant to this Part for the following causes: . . . (29) The refusal of a licensing authority of another state to issue or renew a license, permit, or certificate to practice medicine in that state or the revocation, suspension, or other restriction imposed on a license, permit, or certificate issued by such licensing authority which prevents or restricts practice in that state, or the surrender of a license, permit, or certificate issued by another state when criminal or administrative charges are pending or threatened against the holder of such license, permit, or certificate.”

forth hereinafter by consent. Accordingly, in consideration of the foregoing and pursuant to the authority vested in the Board by La. R.S. 37:1285, La. R.S. 37:1310.1 §10(a), and La. R.S. 49:955(D);

**IT IS ORDERED** that Whitaker M. Smith, M.D., is hereby **OFFICIALLY REPRIMANDED**.

**IT IS FURTHER ORDERED** that Dr. Smith shall comply with the terms, conditions, and stipulations set forth in the Tennessee Order, and shall fully satisfy any term or condition imposed by the Tennessee Board of Medical Examiners. In particular, Dr. Smith shall attend all courses and complete all CME requirements outlined in paragraphs 21-22 of the Tennessee Order, and shall provide proof of completion of those requirements to the Board or its designee

**IT IS FURTHER ORDERED** that Dr. Smith shall continue in, abide by and strictly adhere to all recommendations for ongoing treatment and monitoring which are contained in his contract with the Tennessee Medical Foundation, as well as those recommended by his treating physicians and those prescribed by any other health care provider involved in his care to the extent that they continue to follow him. For as long as he is under contract with the Tennessee Medical Foundation, Dr. Smith shall, in addition, authorize and cause the Tennessee Medical Foundation to submit to the Board or its designee, not less frequently than quarterly, written reports and/or verbal reports, should the Board or its designee desire the latter, on his compliance with the terms, conditions and restrictions of his monitoring contract.

**IT IS FURTHER ORDERED** that Dr. Smith shall, within one hundred and twenty (120) days of the date of this Order, pay to the Board a fine in the amount of One Thousand Dollars and No/100 (\$1,000.00).

**IT IS FURTHER ORDERED** that, consistent with paragraph 20 of the Tennessee Order, Dr. Smith shall not prescribe opioids for as long as he is prohibited from doing so under the Tennessee Order. During the time period in which Dr. Smith is so restricted from prescribing opioids, Dr. Smith shall not collaborate with any advanced practice registered nurses or physician assistants for the purpose of issuing prescriptions for opioids. The restriction imposed by this paragraph is only applicable to opioid prescriptions.


**IT IS FURTHER ORDERED** that this Consent Order shall be effective as of the date it is approved and accepted by the Board as shown by the signature of the Board's representative below.

**IT IS FURTHER ORDERED** that any violation of or failure of strict compliance with any of the terms set forth by this Order by Dr. Smith shall be deemed adequate and sufficient cause, upon proof of such violation or failure, for such other action against Dr. Smith's Physician and Surgeon Compact License in the state of Louisiana as the Board may deem appropriate as if such violations were enumerated among the causes provided in La. R.S. 37:1285.

**IT IS FURTHER ORDERED** that this Consent Order shall be, and shall be deemed to be, a public record.

New Orleans, Louisiana, this 21<sup>st</sup> day of Feb., 2022.

LOUISIANA STATE BOARD  
OF MEDICAL EXAMINERS

By:   
LESTER W. JOHNSON, M.D.  
*President*

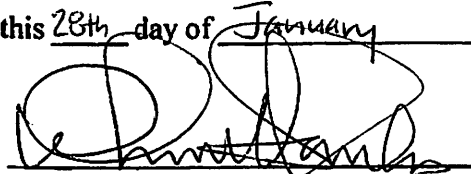
*Acknowledgment and Consent on Following Page*

**ACKNOWLEDGMENT  
AND CONSENT**

STATE OF TENNESSEE

COUNTY OF Sevier

I, WHITAKER M. SMITH, M.D., hereby acknowledge that I have had the opportunity to seek the advice and guidance of legal counsel with respect to this Consent Order and that all of its terms and conditions have been fully explained to me and/or that I fully understand them. I further acknowledge that I approve, accept, and consent to entry of the above and foregoing Order without duress and of my own free will and accord, this 28th day of January, 2022.

  
WHITAKER M. SMITH, M.D.

WITNESSES:

Chelsea Smith  
Signature

Chelsea Smith  
Typed Name

11403 Chapman Hwy  
Street Address

Seymour TN 37865  
City/State/Zip Code

Jessica Maiden  
Signature

Jessica Maiden  
Typed Name

11403 Chapman Hwy  
Street Address

Seymour TN 37865  
City/State/Zip Code

Sworn to and subscribed before me this 28 day of Jan., 2022, in the presence of the two stated witnesses.

Kelly Lowery  
Notary Public (Signature)

Name: Kelly Lowery

Notary/Bar No.: \_\_\_\_\_

Commission expires: 4/20/22

