

BEFORE THE GEORGIA COMPOSITE MEDICAL BOARD  
GEORGIA COMPOSITE MEDICAL BOARD

STATE OF GEORGIA

SEP 03 2009

IN THE MATTER OF:

THEODORE WILLIAMS SMITH, MD  
License No. 032303  
Respondent

**DOCKET NUMBER**  
Docket # 95-1151

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PUBLIC ORDER TERMINATING PROBATION

**WHEREAS**, the Georgia Composite Medical Board entered a Public Consent Order ("Order") in the above-styled matter on August 5, 1999 which placed on probation Respondent's license to practice medicine in the State of Georgia, and

**WHEREAS**, Respondent has petitioned to have the probation terminated, and

**WHEREAS**, the Board has determined that the Respondent has complied with all the terms and conditions of the Order.

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the probation of Respondent's license to practice medicine in the State of Georgia be **TERMINATED**.

**SO ORDERED THIS 3rd DAY OF September 2009**

GEORGIA COMPOSITE MEDICAL BOARD

BY: \_\_\_\_\_

John W. Perry, MD  
Chairperson

ATTEST: \_\_\_\_\_

LaSHARN HUGHES  
Executive Director

(BOARD SEAL)

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

AUG 05 1999

STATE OF GEORGIA

DOCKET NUMBER

95-1151

IN THE MATTER OF:

THEODORE W. SMITH, M.D.,

License No. 032303,

Applicant.

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\* DOCKET NO. 95-1151  
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PUBLIC CONSENT ORDER REINSTATING LICENSE

Pursuant to O.C.G.A. § 43-1-19, the Composite State Board of Medical Examiners (the "Board"), in its discretion, has considered the request for restoration and reissuance of the license of Theodore W. Smith, M.D., to practice medicine in the State of Georgia. In conjunction therewith, the Board hereby enters its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1.

Applicant obtained his license to practice medicine in the State of Georgia on or about August 10, 1989.

2.

On or about June 12, 1995 following an administrative hearing, an Initial Decision was entered recommending the Applicant's license be revoked. This recommendation was based on Applicant's felony conviction on two counts of Medicaid Fraud for which he received a ten year sentence to serve one year in prison.

3.

On or about December 7, 1995, the Board entered a Final Order suspending Applicant from the practice of medicine for a period of not less than three years.

4.

Applicant is currently serving nine years of criminal probation.

5.

Applicant waives any further findings of fact with respect to the above-styled matter.

### **CONCLUSIONS OF LAW**

Applicant's prior conduct constitute sufficient grounds for the Board to impose conditions upon reinstatement of Applicant's license to practice medicine in the State of Georgia under O.C.G.A. Chs. 1 and 34, T. 43, as amended. Applicant hereby waives any further conclusions of law with respect to the above-styled matter.

### **ORDER**

The Composite State Board of Medical Examiners, having considered the particular facts and circumstances of this case, hereby orders, and Applicant hereby agrees, that Applicant's license to practice medicine in the State of Georgia is hereby restored and reinstated, subject to the following terms and conditions:

1.

Commencing on the effective date of this Consent Order, Applicant's license shall be placed on probation until discharged by the Board, with the following conditions of probation:

(a) **PRACTICE RESTRICTION**. Applicant shall only practice in a setting approved in writing by the Board or the Medical Coordinator for the Board. Applicant shall submit the name of a practice to the Board on Attachment A hereto for approval in conjunction with this consent order. A solo practice is not an acceptable proposed setting. Applicant shall not practice in any other setting or see any patients outside of the approved setting. Applicant shall not be allowed to petition for lifting of this restriction until he has practiced in an approved setting for one year. Applicant must obtain prior approval in writing from the Medical Coordinator before changing practice settings.

(b) **SUPERVISION.** Applicant shall designate an acceptable supervising physician ("Supervising Physician"), who will supervise his practice as a physician and his billing procedures. Applicant's Supervising Physician shall practice on the same premises as the Applicant, unless Applicant obtains written approval from the Medical Coordinator. Applicant shall provide a copy of this Consent Order to his Supervising Physician. Applicant shall have the Supervising Physician sign a statement in the form of Attachment A hereto as evidence of having read and understood this Consent Order and having agreed to serve as Applicant's Supervising Physician. Such statement shall be submitted in conjunction with this Consent Order.

Applicant shall meet with his Supervising Physician at least once a month to review Applicant's practice and billing procedures. The Supervising Physician shall review at least five percent (5 %) of Applicant's medical records and billing records that he has completed that month. The method for selecting the patient records and billing records to be reviewed shall be within the Supervising Physician's discretion. Applicant shall submit or cause to be submitted monthly reports from his Supervising Physician regarding Applicant's practice as a physician and his billing practices by the last day of every month. In the Supervising Physician's monthly reports, the Supervising Physician shall opine whether Applicant's treatment of the subject patient complied with the minimum standard of acceptable and prevailing medical practice and whether Applicant's billing practices are acceptable.

Should the Applicant want or need to change his Supervising Physician, Applicant shall obtain prior written approval from the Board through the medical coordinator or executive director. Applicant shall have a Supervising Physician at all times while under this restriction. Applicant may petition for lifting or modification of this restriction after practicing one year in an approved setting. Should Applicant's request for lifting or modifying this restriction be denied, he may petition at six month intervals following the Board's denial.

(c) **COMMUNITY SERVICE.** Applicant shall provide 300 hours of community service in the area of child psychiatry in a setting and location pre-approved by the Medical Coordinator. Applicant shall obtain prior written approval of the practice setting and location from the Medical Coordinator before providing community service at a location. Applicant shall submit the name and address of the location where he will be providing the community service and the name of a contact person at the location where he intends to provide community service to the Medical Coordinator. Applicant shall keep a log documenting his hours of community service. Applicant's log shall contain the following information: (1) dates community service performed; (2) time community service was performed; (3) total hours per session of community session; (4) initials of contact person for each session of community service performed completed at the time community service was performed.

(d) **COMPLIANCE WITH CRIMINAL PROBATION.** Respondent shall comply with and be subject to all conditions of his criminal probation received as a first offender for the felony offense of Medicaid fraud (Superior Court of DeKalb County, Georgia, Indictment No. 95-CR-1767). The Respondent shall also submit a copy of this Consent Order, once approved and docketed, to his probation officer within thirty (30) days of the docket date. As proof of submission, the Respondent shall obtain a signed and notarized statement from his probation officer stating that (1) the probation officer has received a copy of the docketed Consent Order and has read and understood the same and (2) whether Respondent is in compliance with his probation. Within sixty (60) days of the docket date of this Consent Order, Respondent shall submit or caused to be submitted the probation officer's statement to the attention of Dr. Jim McNatt, Medical Coordinator, Composite State Board of Medical Examiners, 166 Pryor Street, S.W., Atlanta, Georgia 30303. If the Respondent does not submit or cause to be submitted to the Board the statement by the 60th day, it shall be considered a

violation of this Consent Order, and Respondent's license to practice medicine may be further sanctioned, including revocation, upon substantiation thereof after notice and hearing.

(e) **PROBATION REPORTS.** By agreeing to this Order, the Respondent authorizes and requests his criminal probation officer to report to the Board any failure to comply with the requirement of Respondent's criminal probation or parole. The receipt of a report that the Respondent has failed to comply with such requirements shall be grounds for further sanction or revocation of Respondent's license. Upon discharge from criminal probation or parole, the Respondent shall provide proof of discharge to the Board within 30 days of such discharge. Additionally, if the Respondent's criminal probation is extended or revoked at any time by order of a Georgia court of competent jurisdiction, the Respondent's license to practice medicine shall be subject to further sanction, including revocation, upon substantiation thereof after notice and hearing. Reports of compliance or non-compliance shall be submitted to the attention of Dr. Jim McNatt, Medical Coordinator, Composite State Board of Medical Examiners, 166 Pryor Street, S.W., Atlanta, Georgia 30303.

(f) **FURTHER EVALUATION.** At any time during the period of probation, the Board shall also have the authority to order Applicant to undergo a physical or mental evaluation by physicians designated by the Board. Applicant shall execute such releases as may be required for the Board to obtain the results of such evaluations.

(g) **USE OF PHYSICIAN'S ASSISTANT OR NURSE PRACTITIONER.** Applicant shall not employ a physician's assistant and/or or nurse practitioner in his practice. Applicant shall not be able to petition for lifting of this restriction until he has practiced in an approved setting for at least one year. Lifting of this restriction is within the Board's discretion. Should the Board lift this restriction, Applicant shall not utilize the physician's assistant and/or nurse practitioner to perform tasks which are otherwise prohibited by the terms of this Consent Order, or otherwise utilize the services of the

physician's assistant and/or nurse practitioner in such a way as to circumvent any restriction, term or condition outlined herein. Applicant expressly agrees to disclose this Consent Order to any physician's assistant or nurse practitioner that Applicant employs or associates with, and Applicant shall have that individual sign a statement in the form of Attachment B hereto indicating his or her willingness to comply with the consent order requirements. Applicant, prior to associating with or employing the individual, shall submit a copy of the signed statement to the Board.

(h) **PERIODS OF RESIDENCY OUTSIDE GEORGIA.** In the event Applicant should leave Georgia to reside or practice outside of Georgia for periods longer than thirty (30) consecutive days, Applicant shall notify the Board in writing of the dates of departure and return within thirty (30) days of such departure and return. Periods of residency or practice outside of Georgia as well as periods when Applicant is not actively engaged in practicing medicine shall not apply to the reduction of Applicant's probationary period, except as authorized by the Board. Applicant shall advise the Board of any change in address of record or employment status within thirty (30) days of such change. Service at the last address of record with the Board shall be deemed adequate service for any future notices.

(i) **DISCLOSURE.** In addition to other disclosures required by this Consent Order, Applicant shall supply a copy of this Consent Order, once approved and docketed, and within ten (10) days from receipt of the docketed copy by Applicant, to each hospital or other institution in Georgia where Applicant maintains staff privileges of any kind, and to any person with whom Applicant is associated in practice, including other physicians or physician's assistants or nurse practitioners or to any person or entity for whom Applicant is employed as a physician in the State of Georgia. Applicant shall also be required to disclose the existence of and provide a copy of this Consent Order to such

individuals or entities in connection with any future application for institutional appointment, associated practice, employment as a physician in the state of Georgia, or utilization of a physician's assistant or nurse practitioner while this Consent Order is in effect. By executing this Consent Order, Applicant specifically consents to any such individuals or entities reporting to the Board information which would affect Applicant's ability to practice medicine with reasonable skill and safety to patients or which constitutes a violation of the laws and rules regulating Applicant's practice as a physician or a violation of this Consent Order, notwithstanding any privilege provided by state or federal law, and agrees to provide to the Board any release or other documentation which may be necessary for the Board to obtain such information.

(j) **REPORTING RESPONSIBILITY.** It shall be the responsibility of the Applicant to ensure that all reports, other documentation, and information required by this Consent Order are submitted to the Dr. Jim McNatt, Medical Coordinator, Composite State Board of Medical Examiners, 166 Pryor Street, S.W., Atlanta, Georgia 30303 or any subsequent address of the Board. Applicant's failure to submit or cause to be submitted any required report, other documentation, or information in a timely manner shall be deemed a violation of this Consent Order and shall be grounds for further disciplinary action against Applicant's license.

(k) **ABIDE BY ALL LAWS.** Applicant shall abide by all federal and state laws regulating the practice of medicine or relating to drugs, the Rules and Regulations of the Composite State Board of Medical Examiners, the terms of any order issued by another lawful licensing authority or consent agreement entered between Applicant and another lawful licensing authority, and the terms of this Consent Order.

(l) **TERMINATION OF PROBATION.** Applicant shall not be eligible to petition for termination of probation until five (5) years from the effective date of this Consent Order. At such time, Applicant may petition for termination by certifying under oath before a

notary public that he has complied with all of the terms of his probation and by providing any documentation supporting discharge from probation. At such time, the Board shall be authorized to restore all rights and privileges incident to the license of Applicant, unless the Board has received information that Applicant has not complied with the terms of probation or has otherwise failed to comply with the laws and rules regulating his practice as a physician. Should the Board determine that reasonable cause exists for maintaining Applicant's license on a probationary status, the Board shall notify Applicant of its intent to extend the probationary period, and Applicant may respond to such notification in writing or request an appearance before the Board or its representative as in a non-contested case. In any event, this Consent Order shall remain in effect pending a final determination and written notification by the Board that the probationary period is terminated.

3.

In addition to and in conjunction with any other sanction contained herein, this Consent Order and dissemination thereof shall serve as a public order to the Applicant for his conduct.

4.

Nothing in this Consent Order shall be construed as approval by the Board of Applicant's conduct, and shall not be construed as a waiver of any of the lawful rights possessed by the Board.

5.

Applicant acknowledges that he has read this Consent Order and understands its contents. Applicant also understands that he has already exercised his right to appear before the Board in this matter. He understands that this Consent Order will not become effective until approved by the Board and docketed. He further understands and agrees that a representative of the Department of Law may be present during presentation of this Consent Order to the Board and that the Board shall have the authority to review the investigative file and all relevant evidence in considering this Consent Order. Applicant further understands that this Consent Order, once approved, shall constitute a public record which may be disseminated. However, if the Consent

Order is not approved, it shall not constitute an admission against interest in this proceeding, or prejudice the right of the Board to adjudicate this matter. Applicant consents to the terms and conditions contained herein.

Approved this 7<sup>th</sup> day of August, 1999.

COMPOSITE STATE BOARD OF  
MEDICAL EXAMINERS

BY: *[Signature]*

President

ATTEST:

*[Signature]*  
~~WILLIAM G. MILLER, JR.~~ *Karen Mason*  
~~Joint Secretary~~ *Executive Director*  
~~State Examining Board~~

(BOARD SEAL)

CONSENTED TO: *Theodore W. Smith, M.D.*  
THEODORE W. SMITH, M.D.  
Applicant

Sworn to and subscribed  
Before me this 27 day  
of July, 1999.

*Aida Walker*  
NOTARY PUBLIC

My Commission Expires: 09-24-2001

(SEAL)

**PROPOSED PRACTICE SETTING**

Name of Practice: SETH A. POPE, M.D., PC  
Practice Location: 2150-Q PEACHFORD RD.  
ATLANTA GA. 30338  
Practice Phone No. 770-455-1277  
Fax No. 770-451-6130

**SUPERVISING PHYSICIAN STATEMENT**

The undersigned Supervising Physician acknowledges that he/she has read the attached Consent Order and agrees to serve as Applicant's Supervising Physician.

Sworn to and subscribed  
before me this 27 day  
of July, 1999.

Kusal Walker  
NOTARY PUBLIC

My commission expires: 09-24-2001  
(SEAL)

(Signed)

Seth A. Pope, M.D.  
Name (please print): Seth A. Pope, M.D.  
Supervising Physician  
Georgia Medical License No.: 023710/12-31  
Address: 2150-Q Peachford Rd., Atlanta GA 30338  
Telephone: 770-455-1277

Fax: 770-451-6130

**ATTACHMENT A**

BEFORE THE COMPOSITE STATE BOARD OF MEDICAL EXAMINERS

STATE OF GEORGIA

Composite State Board  
of Medical Examiners

MAR 07 2003

IN THE MATTER OF:

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THEODORE W. SMITH, M.D.  
License No. 032303,  
  
Respondent

DOCKET NO. 95-1151

DOCKET NUMBER  
95-1151

AMENDMENT TO PUBLIC ORDER REINSTATING LICENSE

WHEREAS, on or about August 5, 1999, Theodore W. Smith, M.D., Respondent, entered into a Public Consent Order with the Composite State Board of Medical Examiners ("Board"), Docket Number 95-1151, which limited his practice of medicine, and placed his license on probation with terms and conditions.

WHEREAS, on or about November 2002, Respondent sent a letter to the Board to request that his Consent Order be amended to lift the practice restriction.

NOW THEREFORE, the Board hereby amends the PUBLIC CONSENT ORDER REINSTATING LICENSE as follows:

1.

Order, Paragraph 1(a) on Page 2 of the PUBLIC CONSENT ORDER REINSTATING LICENSE, imposing a practice restriction on Respondent's practice of medicine, is amended by deleting one sentence relating to the restriction on solo practice, so that it now reads as follows:

"(a) PRACTICE RESTRICTION. Respondent shall only practice in a setting approved in writing by the Board or the Medical Coordinator for the Board. Respondent shall submit the name of a practice to the Board on Attachment A hereto for approval in conjunction with this consent order. Respondent shall not practice in any other setting or see any patients

outside of the approved setting. Respondent shall not be allowed to petition for lifting of this restriction until he has practiced in an approved setting for one year. Respondent must obtain prior approval in writing from the Medical Coordinator before changing practice settings.”

2.

Except as provided herein, the Respondent shall remain subject to all of the remaining terms and conditions as set forth in the Public Consent Order Reinstating License of August 5, 1999. A violation of this Amendment to Public Consent Order Reinstating License shall be considered a violation of a lawful order of the Board as if it were a violation of the August 5, 1999 Consent Order.

3.

This Amendment to Public Consent Order Reinstating License shall become effective upon its acceptance by the Composite State Board of Medical Examiners and its docketing by the Executive Director of the Composite State Board of Medical Examiners.

Approved this 7<sup>th</sup> day of March, 2003.

COMPOSITE STATE BOARD OF MEDICAL  
EXAMINERS

BY:

E. R. Cheeks, M.D.  
EDDIE R. CHEEKS, M.D.  
President

ATTEST:

Karen A. Mason  
KAREN A. MASON  
Executive Director

DEC - 7 1995

**BEFORE THE COMPOSITE STATE BOARD  
OF MEDICAL EXAMINERS  
STATE OF GEORGIA**

DOCKET NUMBER

95-1151

**IN THE MATTER OF :**

**THEODORE WILLIAMS SMITH , M.D.**

License No. 032303  
Respondent.

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DOCKET NO. 95-1151

**FINAL ORDER**

An **INITIAL DECISION** (decision) of Administrative Law Judge Mark Cohen was filed in the above matter on June 12th, 1995. The Respondent filed an **APPLICATION FOR REVIEW** of the decision on July 14th, 1995.

Pursuant to this motion, a hearing was scheduled before the Composite State Board of Medical Examiners (the Board ) at 10:30 A.M., October 5th, 1995.

The parties hereto were given notice of the hearing and the hearing was conducted. As a consequence of the hearing the Board finds as follows:

**FINDINGS OF FACT**

The Findings of Fact found by the Administrative Law Judge in the decision are hereby adopted and incorporated by reference herein.

## CONCLUSIONS OF LAW

The Conclusions of Law reached by the Administrative Law Judge in the decision are hereby adopted and incorporated by reference herein.

## ORDER

The sanctions recommended by the Administrative Law Judge in the decision are hereby amended and the Respondents license to practice medicine, license No. 014216 is **SUSPENDED** for a period of not less than three years pursuant to the authority of the Board granted by Official Code of Georgia Annotated Section 43-1-19.

(1) During the period of **SUSPENSION**, Respondent shall abide by all State and Federal laws concerning the practice of medicine, the rules and regulations of the Board, and the terms of this order. If the Respondent shall fail to abide by such laws, rules or terms, or if it should appear that the Respondent is otherwise unable to practice his profession with reasonable skill and safety, the Respondent's license shall be subject to further discipline, including revocation, upon substantiation thereof after notice and hearing, and if revoked, the Board, in its discretion, may determine that the license should be permanently revoked and not subject to reinstatement.

(2) Within sixty (60) days of the scheduled date of termination of the suspension, Respondent <sup>may</sup> shall petition for termination of his status by certifying under oath before a Notary Public that Respondent has complied with all

conditions of this Order before the Board considers lifting the suspension. The Board shall review and evaluate the practice of the Respondent prior to lifting the suspension. Should the Board determine that reasonable cause exists for maintaining Respondent's license on a suspended status, the Board shall notify the Respondent of its intent to extend the period of suspension or probation and the Respondent may respond to such notification in writing and request an appearance before the Board as in a non-contested case. In any event, this Order shall remain in effect pending a final determination by the Board and notification that the suspension period has terminated.

(3) This order and the dissemination thereof shall constitute a **PUBLIC REPRIMAND**.

The **SUSPENSION** becomes effective thirty days from the date of this order.

So ordered this the 7th day of December 1995.

**THE COMPOSITE STATE BOARD  
OF MEDICAL EXAMINERS**

Larry E. Brightwell, MD  
LARRY E. BRIGHTWELL, M.D.  
President

William G. Miller  
WILLIAM G. MILLER  
Joint Secretary State Examining Boards

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS

STATE OF GEORGIA

On Behalf of the Composite State Board of Medical Examiners

IN THE MATTER OF:

THEODORE WILLIAM SMITH, M.D.,  
License No. 032303,  
Respondent.

DOCKET NO. OSAH-SEB-95-110

**FILED**

JUN 12 1995

INITIAL DECISION

OFFICE OF STATE  
ADMINISTRATIVE HEARINGS

This matter came before the undersigned Administrative Law Judge for hearing pursuant to O.C.G.A. §§ 50-13-41(a), 43-1-19, and 43-34-37 on May 25, 1995. The Respondent was present and was represented by Willie E. Robinson, Attorney at Law. Melanie D. Wilson and Helen O'Leary, Assistant Attorneys General, appeared on behalf of the Composite State Board of Medical Examiners ("the Board").

Procedural History

On April 25, 1995, a notice of hearing was issued to the Respondent setting forth matters asserted which, if proven, would constitute sufficient grounds to impose disciplinary sanctions upon his license to practice medicine in the State of Georgia. Specifically, it was alleged that: (1) on or about March 25, 1995, Respondent was convicted of two counts of Medicaid fraud in the Superior Court of DeKalb County, and (2) the basis of that criminal conviction was that Respondent knowingly obtained and accepted medical assistance payments from the State Of Georgia, Department of Medical Assistance, without rendering services which would entitle him to such payments.

On May 8, 1995, Respondent filed an answer in which he admitted the allegations against him, admitted that the criminal conviction constituted sufficient grounds to impose sanctions against his license, but contended that there are "significant mitigating factors" which would justify a sanction less than a revocation of his license to practice medicine.

#### The May 25, 1995 Hearing

The hearing was conducted on May 25, 1995. In support of its allegations, the Board introduced into evidence two exhibits. State's Exhibit 1 is a certification from the Executive Director of the Board establishing that Respondent is presently licensed to practice medicine in Georgia and was so licensed at all times relevant to the allegations against him. State's Exhibit 2 is a certified copy of the two-count accusation against Respondent for Medicaid fraud, the March 25, 1995, jury verdict of guilty against Respondent on both counts, and the April 11, 1995, sentencing order of the Superior Court of DeKalb County.

Testifying on behalf of Respondent were Drs. Crit R. Cooksey and Darvin Hege, who were offered as character witnesses, as well as Respondent himself.

#### Findings of Fact

1.

Respondent Theodore William Smith is 41 years of age and a 1982 graduate of Meharry Medical College. Respondent has been licensed to practice medicine in the State of Georgia since August, 1989. [State's Exhibit 1; Tr. 49, 61-3).

2.

On March 25, 1995, Respondent was convicted in the Superior Court of DeKalb County, after a trial by jury, of two felony counts of knowingly and willfully accepting medical assistance payments to which he was not entitled; more specifically, of accepting medical assistance reimbursements between January 1, 1993 and November 30, 1993, from the State of Georgia Department of Medical Assistance, for individual and group psychotherapy services which were not rendered by Respondent, in violation of O.C.G.A. § 49-4-146.1(b)(2). State of Georgia v. Helen Battle Malone and Theodore W. Smith, Superior Court of DeKalb County, Criminal Action No. 95-CR-1767-6 [State's Exhibit 2; Answer of Respondent].

3.

Respondent was sentenced by the Superior Court of DeKalb County to ten (10) years imprisonment to serve two (2) years, the balance to be served on probation. However, the imposition of the judgment and sentence was withheld under the provisions of the Georgia First Offender Act, and Respondent is to serve ten (10) years on probation pursuant to those provisions. In addition, as a condition of probation, Respondent was also ordered to pay restitution in the amount of \$235,717.90. [State's Exhibit 2].

4.

Respondent has been practicing adult, adolescent, and child psychiatry since his licensure in Georgia. During the time of the unlawful acts for which Respondent has been adjudged guilty, Respondent was medical director of Life Options, Inc. He testified

that he "had no idea" that filing claims for medical assistance reimbursements for psychotherapy services which had not been rendered by him "was illegal or that [he] could have been arrested or charged for that behavior," that a fellow psychiatrist advised him such conduct was legal, and that, if he "had it to do all over again," he would "consult with an attorney" to ensure that he was practicing legally. [Tr. 49-52].

5.

Since the date of his conviction, Respondent has continued to practice medicine, although he has not submitted any bills for medical assistance reimbursement. As of the date of the hearing, the Department of Medical Assistance had not excluded Respondent from its list of Medicaid providers. [Tr. 60-70, 73].

6.

Dr. Crit Cooksey, who has practiced medicine in the State of Georgia since September, 1994, has known Respondent for a period of four to five months. Respondent assisted Dr. Cooksey in getting established in Atlanta and Dr. Cooksey testified he has heard nothing negative about Respondent's character. However, Dr. Cooksey admitted that he has no direct knowledge of Respondent's billing practices and that it would be unlawful in Georgia to submit a bill for medical services which were not performed. [Tr. 25-7, 38-9, 44].

7.

Dr. Darvin Hege, who has practiced medicine in the State of Georgia for the past 17 years, has known Respondent for the last

five of those years. Dr. Hege testified that Respondent is known in the medical community as a "competent" physician who gets along with staff and patients. However, Dr. Hege admitted that he has no knowledge of Respondent's billing practices. [Tr. 46-8].

8.

I find that Respondent has presented no relevant or material evidence to support his contention that there are mitigating factors which would support the imposition of limited sanctions upon his license to practice medicine. I further find that, even though Respondent professed ignorance of the Medicaid fraud law at the time he committed the crimes, Respondent, as a licensed Georgia physician, certainly should have known that the acceptance of medical assistance payments for services which he did not perform constituted a crime and conduct violative of the licensing statute. Indeed, the jury found Respondent guilty of knowingly and willfully making a false statement.

#### Conclusions of Law

1.

O.C.G.A. § 43-34-37(a)(3) authorizes the Board to discipline a physician licensed to practice medicine in Georgia for being convicted of a felony in the courts of this state, and "conviction" is defined to include a verdict of guilt, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon.

2.

Respondent's felony conviction on two counts of Medicaid fraud

in the Superior Court of DeKalb County, in which there was a verdict of guilt, even though the adjudication of guilt or sentence has been withheld under the First Offender Act, constitutes an act for which the Board may take disciplinary action against his license. O.C.G.A. § 43-34-37(a)(3).

3.

O.C.G.A. § 43-34-37(a)(4) authorizes the Board to discipline a physician licensed to practice medicine in Georgia who has been committed a crime involving moral turpitude. The conviction of such crime is deemed evidence of its commission, and "conviction" has the same meaning prescribed in O.C.G.A. § 43-34-37(a)(3).

4.

Respondent argues that his conviction for Medicaid fraud is not one for a crime involving moral turpitude. In Georgia, crimes involving "moral turpitude" are "said to be the gravest offenses, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind." O'Neal v. Kammin, 263 Ga. 218, 219 (1993), quoting Lewis v. State, 243 Ga. 443, 444 (1979). The term "moral turpitude," therefore, encompasses most, if not all, felonies, and certainly those that are "contrary to justice, honesty, modesty, good morals, or man's duty to man." Jarrard v. Clayton County Board of Registrars, 262 Ga. 759, 760-61 (1993); see also Hall v. Hall, 261 Ga. 188 (1991); Lewis, 243 Ga. at 445. For example, the crime of false swearing is a felony involving dishonesty and, consequently, a crime involving moral turpitude. Ramsey v. Powell, 244 Ga. 745 (1979).

5.

By his conviction of obtaining medical assistance payments from the State of Georgia Department of Medical Assistance for psychotherapy services which were not rendered, a felony involving dishonesty and a willful making of a false statement, Respondent committed a crime involving moral turpitude, which authorizes the Board to take disciplinary action against his license to practice medicine. O.C.G.A. § 43-34-37(a)(4).

6.

Respondent's conviction on two counts of Medicaid fraud also constitutes the violation of a law of the State of Georgia, which in part relates to the practice of medicine, and which Respondent should have known was violative of state law. This also authorizes the Board to take disciplinary action against Respondent's license to practice medicine. O.C.G.A. §§ 43-34-37(a)(10) and 43-1-19(a)(8).

7.

Respondent's conviction on two counts of Medicaid fraud also constitutes deceptive conduct which materially affects the fitness of Respondent to practice medicine, and involves an act indicative of untrustworthiness (since it involves dishonest conduct), authorizing the Board to take disciplinary action against Respondent's license to practice medicine. O.C.G.A. §§ 43-1-19(a)(6); 43-34-37(a)(11).

Recommended Disciplinary Sanction

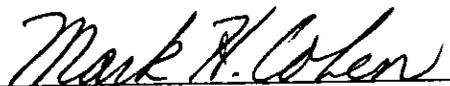
Based upon the foregoing findings of fact and conclusions of

law, it is hereby RECOMMENDED that the Respondent's license to practice medicine in the State of Georgia be REVOKED.

Right of Review

Pursuant to O.C.G.A. § 50-13-41(e)(1), the Composite State Board of Medical Examiners, as the reviewing agency, shall have a period of 30 days following the entry of this initial decision in which to reject or modify this decision, unless the Board enters an order extending the time for its review in accordance with O.C.G.A. § 50-13-41(e)(2). In addition, in accordance with O.C.G.A. § 50-13-17(a), Respondent shall have 30 days from the date of notice of the initial decision to apply to the Board for review of said decision. If the Respondent fails to seek a timely review of this initial decision or the Board fails to reject or modify this initial decision within the statutory period, then this decision shall become the final agency decision by operation of law.

SO RECOMMENDED this 12 day of June, 1995.

  
\_\_\_\_\_  
MARK H. COHEN  
Administrative Law Judge

cc: Willie E. Robinson, Esq.  
P. O. Box 7484  
Atlanta, GA 30357-0484

Michael R. Hauptman, Esq.  
34 Peachtree Street, N.W.  
Suite 2200  
Atlanta, GA 30303

Ms. Melanie D. Wilson  
Assistant Attorney General  
40 Capitol Square, S.W.  
Suite 132  
Atlanta, GA 30334

APR 25 1995

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS  
OFFICE OF STATE ADMINISTRATIVE HEARINGS  
On Behalf of the Composite State Board of Medical Examiners

IN THE MATTER OF:

THEODORE WILLIAM SMITH, M.D.,  
License No. 032303,

Respondent.

\*  
\*  
\*  
\*  
\*  
\*

DOCKET NO. OSAH-SEB-95-10

STATE EXAMINING BOARDS  
By: L. Hartzler

TO: Theodore William Smith, M.D.  
2150 Peachford Road  
Building II, Suite R  
Atlanta, Georgia 30338

APR 28 1995

Michael R. Hauptman, Esq.  
34 Peachtree Street., N.W.  
Suite 2200  
Atlanta, Georgia 30303-2337

NOTICE OF HEARING

You are hereby notified that the Office of State Administrative Hearings will hold a hearing for the Composite State Board of Medical Examiners at the offices of the Board, 166 Pryor Street, S.W., Atlanta, Georgia 30303, at 9:30 o'clock, a.m., on the 25<sup>th</sup> day of May, 1995, for the purpose of hearing charges that, if proven, may result in the denial, suspension, revocation, or other sanctioning of your license to practice as a physician in the State of Georgia. You are also notified of the following matters:

LEGAL AUTHORITY FOR HEARING

This hearing will be held under the authority and jurisdiction conferred upon the Office of State Administrative Hearings and the Composite State Board of Medical Examiners by

O.C.G.A. Chs. 1 and 34, T. 43, as amended, O.C.G.A. §§ 43-1-19, and in accordance with the Administrative Procedure Act, codified in O.C.G.A. Ch. 13, T. 50, as amended, the Rules and Regulations of the Composite State Board of Medical Examiners, the Rules and Regulations of the Joint Secretary, and the Rules and Regulations of the Office of State Administrative Hearings.

HEARING OFFICER

Pursuant to the provisions of O.C.G.A. Title 50, Ch. 13, the Chief Administrative Law Judge hereby appoints the administrative law judge designated below as administrative law judge for the above-styled matter.

NAME:

Mark H. Cohen

ADDRESS:

Floyd Towers East, Suite 1254

205 Butler Street, SE

Atlanta, GA 30334

TELEPHONE:

(404) 656-3508

The administrative law judge shall have the authority to exercise those powers on behalf of the Office of State Administrative Hearings enumerated in O.C.G.A. § 50-13-13(a)(6) or elsewhere in the Georgia Administrative Procedure Act or the rules of the Office of State Administrative Hearings in conducting the hearing.

RIGHTS OF RESPONDENT

You have the following rights in connection with this hearing:

- (1) To respond and to present evidence on any relevant issue;

- (2) to be represented by counsel at your expense;
- (3) to subpoena witnesses and documentary evidence through the Board by filing a request with the Joint Secretary;
- (4) such other rights as are conferred by the Rules and Regulations of the Board and the Rules and Regulations of the Joint Secretary, State Examining Boards.

FILING OF ANSWER AND OTHER PLEADINGS

An Answer to this Notice of Hearing must be filed within fourteen (14) days after receipt or service of this Notice. The original and one duplicate of the Answer and any subsequent pleading or response, each designed as "Original" and "Duplicate" by appropriate marking or stamp, should be filed with the Docket Clerk of the Office of State Administrative Hearings, East Tower, Suite 1254, 205 Butler Street, S.E., Atlanta, Georgia 30334. An additional copy of the Answer and any subsequent pleading or response should also be sent to or served upon counsel for the Board, whose name, title, address and telephone number are as follows:

MELANIE D. WILSON  
40 Capitol Square S.W.  
ATLANTA, GEORGIA 30334-1300  
(404) 657-3977

STATUTES AND RULES INVOLVED

Sanction of the Respondent's license is sought pursuant to the following provisions of O.C.G.A. § 43-34-37:

(a) The board shall have authority to refuse to grant a license to an applicant or to discipline a physician licensed under this chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

(3) Been convicted of a felony in the courts of this state or any other state, territory, country, or of the United States;

(4) Committed a crime involving moral turpitude, without regard to conviction; the conviction of a crime involving moral turpitude shall be evidence of the commission of such crime.

(10) Violated or attempted to violate a law, rule or regulation of this state, any other state, the board, the United States, or any other lawful authority without regard to whether the violation is criminally punishable, which law, rule, or regulation relates to or in part regulates the practice of medicine, when the licensee or applicant knows or should know that such action is violative of such law, rule or regulation; or violated a lawful order of the board, previously entered by the board in a disciplinary hearing;

(11) Committed any act or omission which is indicative of bad moral character or untrustworthiness.

O.C.G.A. § 43-1-19(a) provides that a state examining board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the state examining board regulating the business or profession licensed under this title, the United States, or any other lawful authority; without regard to whether the violation of criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action if violative of such statute, law, or rule.

MATTERS ASSERTED

1.

The Respondent is licensed to practice medicine in the State of Georgia and was so licensed at all times relevant to the matters asserted herein.

2.

On or about March 25, 1995, the Respondent was convicted of two felony counts of Medicaid fraud in the Superior Court of DeKalb County, State of Georgia, Criminal Action No. 95-CR-176-6.

The basis of Respondent's criminal conviction was that he knowingly and willfully obtained and accepted medical assistance payments from the State of Georgia, Department of Medical Assistance, without rendering services which would entitle him to such payments. True and correct copies of documents relating to Respondent's criminal conviction in DeKalb County are attached hereto as Exhibit "A," pp. 1-4.

ISSUES INVOLVED

Whether Respondent's conduct, as set forth above in the Matters Asserted, constitutes sufficient grounds for the imposition of sanctions upon the Respondent as a doctor licensed to practice medicine in the State of Georgia.

The foregoing, if correct, constitutes sufficient grounds for the imposition of sanctions upon the Respondent's license to practice medicine in the State of Georgia, under O.C.G.A. §§ 43-34-37 and/or 43-1-19.

This Notice of Hearing is issued by the Office of State Administrative Hearings on behalf of the Composite State Board of Medical Examiners.

This 25<sup>th</sup> day of April, 1995.

OFFICE OF STATE ADMINISTRATIVE  
HEARINGS

IN THE SUPERIOR COURT OF DEKALB COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

v.

HELEN BATTLE MALONE  
THEODORE W. SMITH,

Defendants.

)  
)  
) Criminal Action  
) No. 95-CR-1767-6  
)  
)  
)

VERDICT

COUNT I: We, the jury, find Helen Battle Malone guilty.

We, the jury, find Theodore W. Smith guilty.

COUNT II: We, the jury, find Helen Battle Malone guilty.

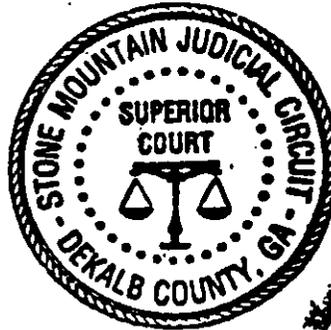
We, the jury, find Theodore W. Smith guilty.

[Signature]  
Foreperson

[Signature]  
2-25-95  
Date

State of Georgia, DeKalb County:  
The undersigned officer of DeKalb Superior Court certifies that this is  
a true and correct copy of the original document which is on file and of  
record in the Office of the Clerk of Superior Court. Witness my hand  
and seal of the Superior Court of DeKalb County Georgia.

This 4th day of April, 1995.  
Signature: [Signature]  
Deputy Clerk, DeKalb County Superior Court



MAR 25 5 38 PM '95  
[Handwritten initials]

COUNT TWO

STATE OF GEORGIA, DEKALB COUNTY

I, J. TOM MORGAN, District Attorney of the Stone Mountain Judicial Circuit, in the name and behalf of the citizens of Georgia, charge and accuse

HELEN BATTLE MALONE

THEODORE W. SMITH

of the County and State aforesaid, with the offense of

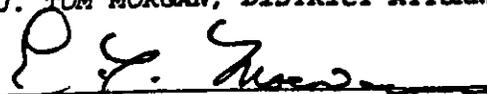
MEDICAID FRAUD

for that the said accused person, in the County aforesaid, on the between the 1st day of January, 1993 and the 30th day of November, 1993 unlawfully

the accused knowingly and willfully accepted medical assistance payments to which they were not entitled, to-wit: the accused accepted medical assistance reimbursements from the State of Georgia Department of Medical Assistance, for individual and group psychotherapy services which had not been rendered, in violation of O.C.G.A. § 49-4-146.1 (b) (2)

contrary to the laws of said State, the good order, peace and dignity thereof.

J. TOM MORGAN, DISTRICT ATTORNEY

  
Prosecutor.

FILED  
DEKALB COUNTY, GA  
MAR 6 11 27 AM '95  
CLERK OF SUPERIOR COURT

ACCUSATION

NO. 95-CR-1761 **6**

DEKALB SUPERIOR COURT

March Term, 1995

THE STATE

VS.

HELEN BATTIE MALONE

THEODORE W. SMITH

D01010862

DEKALB SUPERIOR COURT

The Defendant pleads

NOT Guilty

This 5th day of March, 1995

Gregory B. Winston  
District Attorney

[Signature]  
Defendant's Attorney

Theodore W. Smith  
Defendant

MEDICAID FRAUD (TWO COUNTS)

The Defendant pleads

NOT Guilty

This 6th day of March, 1995

Gregory B. Winston  
District Attorney

[Signature]  
Defendant's Attorney

[Signature]  
Defendant

STATE OF GEORGIA, DeKALB COUNTY

I, J. TOM MORGAN, District Attorney of the Stone Mountain Judicial Circuit, in the name and behalf of the citizens of Georgia, charge and accuse

HELEN BATTLE MALONE

THEODORE W. SMITH

of the County and State aforesaid, with the offense of  
MEDICAID FRAUD

for that the said accused person, in the county aforesaid,  
between the 1st day of January, 1993 and the  
30th day of November, 1993,

unlawfully the accused obtained medical assistance payments from the State of Georgia Department of Medical Assistance, to which they were not entitled to knowingly and willfully making a false statement, to-wit: the accused filed claim for medical assistance reimbursements for individual and group psychotherapy services which had not been rendered, in violation of O.C.G.A. § 49-4-146.1 (1)

contrary to the laws of said State, the good order, peace and dignity thereof.

J. TOM MORGAN, District Attorney

 Prosecute