

**STATE OF TENNESSEE  
DEPARTMENT OF HEALTH**

<b>IN THE MATTER OF:</b>	)	<b>BEFORE THE TENNESSEE BOARD</b>
	)	<b>OF MEDICAL EXAMINERS</b>
<b>LESLIE E. SMITH, JR., M.D.</b>	)	
<b>RESPONDENT</b>	)	<b>CASE NO: 2011024011</b>
	)	
<b>MEMPHIS, TENNESSEE</b>	)	
<b>TENNESSEE LICENSE NO. 24682</b>	)	

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**CONSENT ORDER**

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Come now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Respondent Leslie E. Smith, Jr., M.D. (hereinafter "Respondent"), who would respectfully move the Tennessee Board of Medical Examiners (hereinafter the "Board") for approval of this Consent Order affecting Respondent's medical license in the State of Tennessee.

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**I. AUTHORITY AND JURISDICTION**

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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, Tennessee Code Annotated Section (hereinafter "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 (hereinafter "TENN. COMP. R. & REGS.").

Respondent Leslie E. Smith, Jr., M.D., 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 Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

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 Health Integrity and Protection Data Bank and/ or 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.

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## II. STIPULATIONS OF FACT

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1. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number

24682 by the Board on July 12, 1993. Respondent's license will expire on March 31, 2013.

2. From at least January 2008 to July 2012, Respondent prescribed controlled substances to himself and immediate family members. Respondent did not document these prescriptions or the prerequisite medical need for the medications.

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### III. GROUNDS FOR DISCIPLINE

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The facts stipulated to in the Stipulations of Fact 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.*) for which disciplinary action before and by the Board is authorized:

3. The facts stipulated in paragraph 2, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(1):

Unprofessional, dishonorable or unethical conduct;

4. The facts stipulated in paragraph 2, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(4):

Gross malpractice or a pattern of continued or repeated malpractice, ignorance, negligence or incompetence in the course of medical practice;

5. The facts stipulated in paragraph 2, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(12):

Dispensing, prescribing or otherwise distributing to any controlled substance or 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;

6. The facts stipulated in paragraph 2, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to 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.

7. The facts stipulated in paragraph 2, *supra*, constitute a violation of the Principles of Medical Ethics 8.19, Self-Treatment or Treatment of Immediate Family Members, of the Code of Medical Ethics of the American Medical Association, which states:

Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. Physicians may fail to probe sensitive areas when taking the medical history or may fail to perform intimate parts of the physical examination. Similarly, patients may feel uncomfortable disclosing sensitive information or undergoing an intimate examination when the physician is an immediate family member. This discomfort is particularly the case when the patient is a minor child, and sensitive or intimate care should especially be avoided for such patients. When treating themselves or immediate family members, physicians may be inclined to treat problems that are beyond their expertise or training. If tensions develop in a physician's professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member's personal relationship with the physician.

Concerns regarding patient autonomy and informed consent are also relevant when physicians attempt to treat members of their immediate family. Family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician. In particular, minor children will generally not feel free to refuse care from their parents. Likewise, physicians may feel obligated to provide care to immediate family members even if they feel uncomfortable providing care.

It would not always be inappropriate to undertake self-treatment or treatment of immediate family members. In emergency settings or isolated settings where there is no other qualified physician available, physicians should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems. Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members.

8. The facts stipulated in paragraph 2, *supra*, constitute a violation of TENN. COMP. R. & REGS. Rule 0880-02-.15(4)(a):

Duty to Create and Maintain Medical Records – As a component of the standard of care and of minimal competency a physician must cause to be created and cause to be maintained a medical record for every patient for whom he or she, and/or any of his or her professionally licensed supervisees, performs services or provides professional consultation;

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#### IV. POLICY STATEMENT

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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.

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#### V. ORDER

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**NOW THEREFORE**, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

9. The Tennessee medical license of Leslie E. Smith, Jr., M.D., license number 24682, is hereby **REPRIMANDED**, effective the date of entry of this Consent Order.

10. Respondent is assessed four (4) Type "A" Civil Penalties in the amount of five hundred dollars (\$500.00) each for a total of two thousand dollars (\$2,000.00), representing each family member, including himself, that he prescribed controlled substances to.
11. Respondent must pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-02-.12(1)(j) of the Official Compilation Rules and Regulations of the State of Tennessee, the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. The maximum amount for the assessment of costs shall be One Thousand Five Hundred Dollars (\$1,500.00).
12. Respondent understands that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank (H.I.P.D.B.) and/or similar agency.

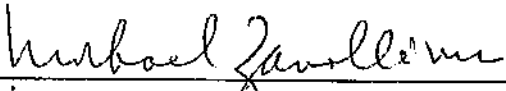
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## VI. NOTICE

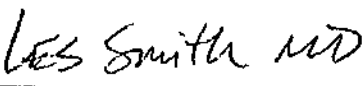
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13. Any and all civil penalties and/or costs shall be paid in full within sixty (60) days from the issuance of the Assessment of Costs by submitting a **certified check, cashier's check, or money order** payable to the State of Tennessee, which shall be mailed or delivered to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 227 French Landing, Suite 201, Heritage Place Metro Center, Nashville, Tennessee 37243**. A notation shall be placed on said check that it is payable for the civil penalties and/or costs of **Leslie E. Smith, Jr., M.D., Case No. 2011024011**.

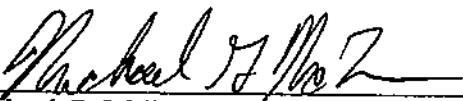
This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 30 day of January, 2013.

  
Chairperson  
Tennessee Board of Medical Examiners


**APPROVED FOR ENTRY:**

  
Leslie E. Smith, Jr., M.D.  
Respondent  
5050 Poplar, Suite 1632  
Memphis, Tennessee 38157

1/9/2013  
DATE

  
Michael G. McLaren (B.P.R. #005100)  
Attorney for Respondent  
530 Oak Court Drive, Suite 360  
Memphis, Tennessee 38117

1/11/13  
DATE

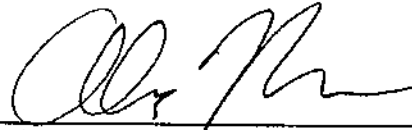
  
Alex Munderloh (B.P.R. #030274)  
Assistant General Counsel  
Office of General Counsel  
Tennessee Department of Health  
220 Athens Way, Suite 210  
Nashville, Tennessee 37243  
(615) 741-1611

2/4/13  
DATE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, Leslie E. Smith, Jr., M.D., 5050 Poplar, Suite 1632, Memphis, Tennessee 38157 and 1540 Appling Care Lane, #100, Cordova, Tennessee 38016 and through his attorney, Michael G. McLaren, Esq., 530 Oak Court Drive, Suite 360 Memphis, Tennessee 38117, by delivering same in the United States Mail, Certified Numbers 7011 1150 0001 5218 4043 and 7011 1150 0001 5218 4050 and 7011 1150 0001 5218 4067, return receipt requested, and United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination.

This 5<sup>TH</sup> day of February, 2013.



Alex Munderloh  
Assistant General Counsel