

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE BOARD
)	OF MEDICAL EXAMINERS
MELVYN A. LEVITCH, M.D.)	
RESPONDENT)	CASE NO: 2013004491
)	
MEMPHIS, TN)	
TENNESSEE LICENSE NO. 3686)	

CONSENT ORDER

Come now the Division of Health Related Boards of the Tennessee Department of Health ("Department"), by and through the Office of General Counsel, and Respondent, Melvyn A. Levitch, M.D. ("Respondent"), and respectfully move the Tennessee Board of Medical Examiners ("Board") for approval of this Consent Order.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee pursuant to Tennessee Code Annotated § 63-6-101, et seq. ("the Practice Act"). It is the policy of the Board to require strict compliance with the laws of this State and to apply the laws to preserve the quality of medical care provided in Tennessee. It is the Board's duty to enforce the Practice Act in such a manner as to promote and protect public health, safety and welfare in every practical way, including disciplining licensees who violate the Practice Act and the rules and regulations promulgated pursuant to the Practice Act.

The Respondent, by signature to this Consent Order, expressly waives all further procedural steps and all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. 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 shall be prejudiced to the extent that requires 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 entered into evidence or introduced as admissions.

Respondent understands that by signing this Consent Order Respondent is allowing the Board to issue this order without further process. In the event the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

I. Allegations of Fact

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 3686 by the Board on January 1, 1959.

2. Pursuant to a complaint, the Department conducted an investigation that included the review of eighteen (18) patient records prepared and kept by Respondent, reflecting treatment from 2009 to the present with controlled substances. Respondent consistently failed to appropriately document encounters, perform or obtain histories, perform physical examinations for patients receiving prescriptions for non-psychiatric drugs, document diagnoses, and document therapeutic plans for his patients.

3. With reference to Respondent's prescribing, Respondent did not generally prescribe large amounts of controlled substances and generally prescribed Schedule III or IV substances, with Schedule II substances prescribed less frequently. While Respondent's charts did occasionally reflect a diagnostic work-up, including testing, such testing often did not establish a legitimate basis for the prescriptions written. Respondent incorporates detailed intake forms to assist him in treating patients, and respondent consistently maintained pharmacy records and received reports from pharmacies if a patient was attempting to fill a prescription from

another provider. Respondent was diligent in requiring a contract with patients which included treatment guidelines and allowed for termination of treatment if patient was in violation of the contract. However, Respondent did not consistently and appropriately document his response to evidence of abuse and diversion by patients.

4. Respondent avers that he has implemented and will continue to enforce the following policies for any patient receiving controlled substances:

- a. Check the "Controlled Substance Monitoring Database" at the beginning of any course of treatment, at or before every patient encounter with a patient receiving controlled substances and at or before every refill of controlled substances, to ensure the patient is not receiving controlled substances from multiple providers, and take appropriate action if controlled substances are being received from someone else;
- b. Provide the necessary counseling on the side effects and risks of such controlled substances;
- c. Periodically require patients receiving long-term controlled substances to undergo a drug screen;
- d. Include a medication list for controlled substances prescribed; and
- e. Appropriately and frequently refer patients to other specialists when necessary.

II. Stipulations of Law

The Allegations of Fact herein constitute grounds for disciplining Respondent's medical license. Specifically, Respondent has violated the following provisions of the Practice Act, giving the Board authorization to take disciplinary action.

5. The facts stipulated in paragraphs 2 and 3 constitute a violation of Tenn. Code Ann. § 63-6-214(b)(1), which provides that "unprofessional, dishonorable or unethical conduct" is a ground for licensure discipline.

6. The facts stipulated in paragraphs 2 and 3 constitute a violation of Tenn. Comp. R. & Reg. Rule 0880-02-.14(7)(a), which provides prerequisites to issuing prescriptions. The following must have been done and appropriately documented:

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.

III. Policy Statement

The Tennessee Board of Medical Examiners has a duty to protect the health, safety, and welfare of the citizens of Tennessee. The Board takes action against the Respondent to ensure both public confidence and the integrity of the medical profession are preserved.

IV. Order

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

7. Respondent's Tennessee medical license number 3686 is hereby *reprimanded*.

8. Respondent must enroll in and successfully complete within six (6) months after entry of this Consent Order the Mississippi Professionals Health Program 2013 Summit on *Prescribing Controlled Substances*. Upon completion, the Respondent shall mail or deliver proof of compliance of this course requirement to: Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243. Any continuing medical education course hours earned from attendance and completion of the courses required by this paragraph shall be in addition to the hours required to maintain licensure.

9. Respondent must engage a practice monitor through Affiliated Monitors, Inc. of Boston, Massachusetts within thirty (30) days of entry of this Order. Respondent shall be required to comply with all recommendations of Affiliated Monitors, and he shall be responsible for all costs relating to the monitoring agreement. The monitoring agreement shall require the following:

- a. The monitoring shall continue for a period of three (3) years.
- b. Respondent shall have ten (10) patients' records reviewed quarterly by the practice monitor. The charts shall consist of patients seen within the prior (3) months and receiving controlled substances. The practice monitor shall randomly determine which records to review from a list of patients that meet the required criteria.
- c. Respondent shall comply with all recommendations of Affiliated Monitors.
- d. Respondent shall cause the practice monitor to issue a report of each review to:
Tennessee Board of Medical Examiners, Attn: Medical Director, 227 French

Landing Drive, Suite 300, Heritage Place Metro Center, Nashville, Tennessee
37243.

e. The report must detail the practice monitor's findings, specifically relating to the Respondent's medical record keeping pertaining to the following:

- 1) Respondent's documentation of appropriate physical examinations and histories, diagnostic testing, and alternative specialists consultations;
- 2) Respondent's documentation of the patient's prior medical history, including prior medical records;
- 3) Respondent's prescribing practices; including efforts to monitor for and appropriately respond to evidence of abuse and diversion; and
- 4) Respondent's documentation of treatment plans, including periodic review of the necessity for and effectiveness of treatment with controlled substances.

10. Pursuant to Tenn. Comp. R. & Reg. Rule 0880-02-.12, Respondent shall pay eighteen (18) Type B civil penalties of one hundred dollars (\$100.00) each, one for each patient chart reviewed by the Department, for a total amount of one thousand eight hundred dollars (\$1,800.00). These civil penalties are due within twelve (12) months of the entry of this order.

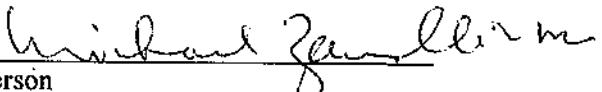
11. Respondent must pay, pursuant to T.C.A. § 63-6-214(k), the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Department's Office of Investigations in connection with the prosecution of this matter. These costs shall 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 five thousand dollars (\$5,000.00). Costs are due within twelve (12) months of the issuance of the Assessment of Costs.

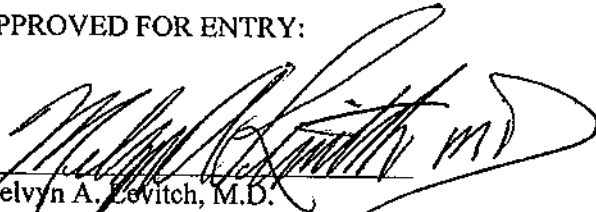
V. Notice

Any and all civil penalties and costs shall be paid in full within twelve (12) months 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 300, Heritage Place Metro Center, Nashville, Tennessee 37243. On or after October 1, 2013, any form of payment of costs should be mailed or delivered to: Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243. A notation shall be placed on said check that it is payable for the costs of Melvyn A. Levitch, M.D.

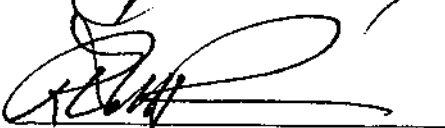
This Consent Order was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 18 day of September, 2013.


Chairperson
Tennessee Board of Medical Examiners

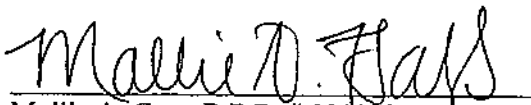
APPROVED FOR ENTRY:


Melvyn A. Levitch, M.D.

9/16/13
Date


Robert Wayne McPherson
McPherson Law Firm
1621 Carr Avenue
Memphis TN 38104-5015
Phone: (901) 276-0716

9/16/13
Date


Mollie A. Gass, B.P.R. # 031130
Assistant General Counsel
Tennessee Department of Health
Office of General Counsel
220 Athens Way, Suite 210
Nashville, Tennessee 37243
Phone: (615) 741-1611

9/18/13
Date

CERTIFICATE OF SERVICE

I do hereby certify that a true and exact copy of the forgoing has been served via U.S. Mail, U.S. Certified Mail, and E-mail upon the following on the 10th day of September, 2013:

Melvyn A. Levitch
3960 Knight Arnold, Ste. 301
Memphis, TN 38118

Robert Wayne McPherson
McPherson Law Firm
1621 Carr Avenue
Memphis TN 38104-5015
Attorney for Respondent



Mollie A. Gass
Assistant General Counsel