

IN THE MATTER OF	§	BEFORE THE
THE LICENSE OF	§	TEXAS STATE BOARD
ART GLENN SMITH, M.D.	§	OF MEDICAL EXAMINERS

AGREED ORDER

On this the 13th day of October, 1995, came on to be heard before the Texas State Board of Medical Examiners ("the Board" or "the Texas Board"), duly in session the matter of the license of Art Glenn Smith, M.D. ("Respondent"). On September 29, 1995, Respondent appeared in person with counsel, Mark Foster, at an Informal Settlement Conference/Show Compliance Proceeding in response to a letter of invitation from the staff of the Board.

The Board was represented at the Informal Settlement Conference/Show Compliance Proceeding by William H. Fleming, III, M.D., and Paul G. Meyer, M.D., members of the Board. Upon recommendation of the Board's representatives, and with the consent of Respondent, the Board makes the following findings of fact and conclusions of law and enters this Order as set forth herein:

FINDINGS OF FACT

1. Respondent, Art Glenn Smith, M.D., holds Texas medical license H-3344.
2. The Board has jurisdiction over the subject matter and Respondent. Respondent received all notice which may be required by law and by the rules of the Board. All jurisdictional requirements have been satisfied.
3. Respondent is not certified by the American Board of Medical Specialties, but is primarily engaged in the practice of psychiatry.
4. Respondent has been licensed to practice medicine in Texas for approximately seven (7) years.
5. On November 9, 1993, a hearing was conducted by the Disciplinary Panel of the board to consider an Application for Temporary Suspension of License relating to Respondent's Texas medical license and

based on allegations raising concerns regarding whether Respondent suffered from a mental or emotional condition which would cause an inability to practice medicine with reasonable skill and safety to patients.

6. On November 9, 1993, the Disciplinary Panel of the Board entered a Temporary Suspension Order relating to Respondent's Texas medical license, a copy of which Order is attached hereto as Exhibit "A" and incorporated herein by reference as if set forth fully herein at length.

7. On January 11, 1994, Respondent appeared in person, without counsel, at an Informal Settlement Conference/Show Compliance Proceeding ("ISC") before Board representative Clyde R. Danks, M.D., a District Review committee member, who recommended that all issues be referred to a contested hearing.

8. Subsequent to January 11, 1994, Respondent retained legal representation through attorney Mark Foster.

9. Based on agreement between Respondent's counsel and Board staff, the contested hearing was delayed and Respondent was afforded a second opportunity to appear at an ISC.

10. On September 7, 1994, Respondent appeared at a second ISC before Board representatives Carlos Campos, M.D., and Carol Barger, both of whom were members of the Board, and who recommended that Respondent be allowed to reappear before Board representatives at an ISC following a complete neuropsychological evaluation of Respondent.

11. Respondent was delayed in obtaining the required evaluation because of the need to make arrangements for payment of the associated costs.

12. On March 3, 1995, Respondent underwent evaluation by Robert G. Braun, Ph.D., a licensed psychologist.

13. On June 14, 1995, Dr. Braun issued a written report of evaluation indicating that Respondent was capable of practicing medicine with reasonable skill and safety to patients and recommending that Respondent should continue in psychotherapy.

14. Respondent reports that he has been under the care of Stephen

K. Brannon, M.D., who is certified by the American board of Medical Specialties in psychiatry and neurology, since March, 1994.

15. So as to avoid the expense and inconvenience of litigating the allegations, in lieu of further investigation or a hearing, Respondent agrees to the entry of this Agreed Order, and further agrees to comply with the terms and conditions set forth herein.

16. Respondent has entered into this Agreed Order pursuant to the provisions of Sections 4.02(h) and (i) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b.

CONCLUSIONS OF LAW

1. Respondent is subject to action by the Board under Section 3.08(16) of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, due to inability to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

2. Section 4.02(h) of the Act authorizes the Board to resolve and make a disposition of this matter through an agreed order.

3. Section 4.02(i) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Civil Evidence for purposes of civil litigation.

4. Section 4.12 of the Act authorizes the Board to take action in regard to Respondent and Respondent's medical license as set forth below.

ORDER

Based on the above findings of fact and conclusions of law, the Board ORDERS that Respondent's Texas medical license is hereby SUSPENDED; however, the suspension is STAYED and Respondent is placed on PROBATION under the following terms and conditions for five (5) years from the date of the signing of this Agreed Order by the presiding officer of the Board:

1. Respondent shall abstain from the consumption of alcohol,

dangerous drugs, or controlled substances in any form unless prescribed by another physician to Respondent for a legitimate and therapeutic purpose. In the event that Respondent receives alcohol, dangerous drugs, or controlled substances from another physician for the purpose of treating Respondent, Respondent shall cause the treating physician to immediately report in writing to the Board the medical condition being treated, the substance prescribed, dispensed or administered, the amount of such substance and any refills authorized, or shall have the treating physician provide the Board with a copy of Respondent's medical record which substantially reflects this information. Respondent shall give the treating physician a copy of this Agreed Order and shall ensure that a report to the Board is made by the treating physician or that a copy of Respondent's medical record is provided by the treating physician to the Board. Respondent shall immediately report by telephone to Respondent's compliance officer, the Director of Hearings, or the Assistant Administrator of Hearings and Compliance of the Board, to be followed by a letter within twenty-four (24) hours, an explanation of any incident in which Respondent ingests any alcohol, controlled substances, or dangerous drugs in any manner not prescribed by another physician for a legitimate medical purpose.

2. Respondent shall submit himself for appropriate examinations, including screening for alcohol or drugs either through a urine, blood, or hair specimen, at the request of a representative of the Board, without prior notice, to determine chemically through laboratory analysis that Respondent is free of prohibited drugs and alcohol. Respondent shall pay for the costs of these chemical analyses. A positive screen for drugs or alcohol consumed in violation of the terms of this Agreed Order, or a refusal to submit to random screenings shall constitute a violation of this Agreed Order and may result in further disciplinary action pursuant to Sections 4.01(a) and 3.08 of the Medical Practice Act.

3. Respondent shall be solely responsible for the payment of all costs and charges by any facility which conducts screens on Respondent pursuant to this Agreed Order to determine whether or not Respondent has

ingested alcohol or drugs in violation of the terms set forth herein. Respondent shall promptly pay all such costs and charges. Respondent's failure to promptly pay the legitimate costs and charges associated with such screens shall constitute unprofessional and dishonorable conduct, a violation of this Agreed Order, and grounds for disciplinary action under Sections 3.08(4), 4.01, 4.11, and 4.12 of the Act.

4. Respondent shall continue to receive care and treatment from Stephen K. Brannon, M.D., San Antonio, Texas, and beginning January 1, 1996, shall see this approved physician no less than once per month. Respondent shall authorize and request in writing that the approved physician provide written periodic reports no less than quarterly during Respondent's treatment which reflect the status of Respondent's physical and mental condition, as well as Respondent's efforts at cooperation with treatment. Respondent shall authorize and participate in alcohol or drug screens directed by the approved physician and shall authorize in writing the approved physician to immediately provide the positive results of any such screens to Board staff. Respondent shall authorize and request in writing that the approved physician immediately provide such other written or oral reports as Board representatives and staff may request regarding Respondent's care and treatment. Respondent shall follow all recommendations of the approved physician to the extent that the recommendations are consistent with the terms of this Agreed Order. Respondent shall not unilaterally withdraw from treatment, and shall request and authorize in writing that the approved physician immediately report to the Board any unilateral withdrawal from treatment by Respondent. A copy of this Agreed Order shall be provided by Respondent to the approved physician as a reference for evaluation and treatment, and as authorization for the physician to provide to the Board any and all records and reports related to the evaluation and treatment conducted pursuant to this paragraph. Respondent shall execute any and all releases for medical records necessary to effectuate the provisions of this paragraph.

5. Respondent shall not unilaterally withdraw from the evaluation, care, or treatment required by this Agreed Order, and shall

request and authorize in writing that Respondent's physician or any other individuals involved in Respondent's care and treatment immediately report to the Board any unilateral withdrawal from treatment by Respondent.

6. Respondent shall immediately notify the Director of Hearings for the Board or a Board Compliance Officer or Investigator upon discontinuation for any reason of any care and treatment required by the terms of this Agreed Order.

7. Respondent's unilateral withdrawal from evaluation, treatment, or medical care required by this Agreed Order shall constitute unprofessional and dishonorable conduct, a violation of this Agreed Order, and grounds for disciplinary action under Sections 3.08(4), 4.01, 4.11, 4.12 and 4.13 of the Act. Section 4.13 authorizes the Board to temporarily suspend the license of a physician who in the determination of the Disciplinary Panel of the Board constitutes a continuing threat to the public welfare.

8. When requested by the Board or Board staff, Respondent shall provide to Board staff complete legible written reports regarding any aspect of Respondent's physical or mental condition and Respondent's compliance with the terms of this Agreed Order.

9. Respondent shall practice medicine only in an institutional or group practice setting approved in advance in writing by the Executive Director of the Board.

10. Respondent's medical practice, including any office and surgical practice, shall be monitored by a licensed Texas physician approved in advance in writing by the Executive Director of the Board based on the monitoring physician's licensure status and history, general qualifications, area of specialty, business affiliation with Respondent, and specialty certifications and training. Respondent shall provide a copy of this Agreed Order to the monitoring physician and shall allow the monitoring physician random access to Respondent's patient medical records, patient billing records, and offices. The monitoring physician shall review Respondent's medical practice and shall counsel Respondent on any perceived deficiencies. Respondent

shall follow the appropriate guidance provided by the monitoring physician and shall ensure that quarterly reports from the monitoring physician are routed in a timely manner to Board representatives through the Director of Hearings for the Board. Any costs incurred by the monitoring physician shall be the responsibility of Respondent and shall not be charged to patients.

To request approval of a monitoring physician, Respondent shall submit in writing to the Director of Hearings of the Board the names and practice addresses of at least three physicians who are willing and able to effectively monitor Respondent's office and surgical practice. The monitoring physician may be changed at any time by the Executive Director of the Board pursuant to a written request by Respondent based upon good cause shown by Respondent for such a change.

11. Respondent shall maintain adequate medical records on all patient office visits, consultations, surgeries performed, drugs provided, and treatment rendered by Respondent. These records will include at a minimum, the patient's name and address, vital signs and statistics, chief complaints, history and physical findings, diagnosis and basis for diagnosis, treatment plan for each patient visit or operative procedure, a notation of all medications prescribed or otherwise provided to the patient including the quantity, dosage, and rationale for providing the medications, and detailed records of all follow-up visits. Each visit shall be noted in the patient record and dated accordingly. Respondent shall make all patient medical records available for inspection and copying upon the oral or written request of Board consultants, investigators, compliance officers, attorneys, or the Executive Director of the Board.

12. Respondent shall obtain at least fifty (50) hours per year of Continuing Medical Education (CME) approved for Category I credits by the American Medical Association or by the American Osteopathic Association. Each year Respondent shall submit to the Board proof of the prior year's CME attendance by the Order's anniversary date. Respondent shall submit proof to the Board of CME hours attended in the current year even though such may not meet the 50 hour requirement. A

copy of the attendance certificate issued or a detailed report which can be readily verified by the Board shall satisfy this requirement.

13. Respondent shall personally appear before the Board, a committee of the Board, or a panel of Board representatives, at least two (2) times each year that Respondent is under the terms and conditions of this Agreed Order. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Agreed Order.

14. Respondent shall personally appear before the Board, a committee of the Board, or panel of Board representatives, upon written request mailed to Respondent's last known address on file with the Board at least ten (10) calendar days before the requested appearance date. Such appearances shall be for the purpose of reporting on and addressing issues related to Respondent's compliance with the terms and conditions of this Agreed Order.

15. To verify that Respondent has complied with and is in compliance with the terms and conditions of this Agreed Order, Respondent shall fully cooperate with the Board and the Board staff, including but not limited to, Board attorneys, investigators, compliance officers, consultants, and other such employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Agreed Order. Failure to cooperate as required by this paragraph and the terms of this Agreed Order shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

16. Upon request by the Board or a member of the Board staff, Respondent shall immediately execute, and provide as needed, any and all medical releases as may be requested by the Board or Board staff to obtain copies of medical treatment records of Respondent to include, but not limited to, any such releases required to obtain treatment records of Respondent protected by 42 C.F.R. subchapter A, part 2, and any subsequent amendments. Failure to execute and provide such releases shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

17. Upon request by the Board or a member of the Board staff, Respondent shall immediately execute, and provide as needed, any and all releases as may be requested by the Board or Board staff to obtain copies of peer review records pertaining to Respondent maintained by any facility at which Respondent has privileges. Failure to execute and provide such releases shall constitute a basis for disciplinary action against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

18. Respondent shall give a copy of this Agreed Order to all hospitals, nursing homes, treatment facilities, and other health care entities where Respondent has privileges, has applied for privileges, or applies for privileges.

19. Respondent shall ensure that any inquiries which are made by any person or entity through any means to Respondent or Respondent's employees regarding Respondent's Texas medical licensure status are answered by accurate reference to this Agreed Order.

20. Upon request by any person or entity, either orally or in writing, Respondent shall provide a complete and legible copy of this Agreed Order to the requesting party within ten (10) calendar days of the request.

21. The time period of this Order shall be extended for any period of time in which Respondent subsequently resides or practices medicine outside the State of Texas, is in official retired status with the Board, or for any period during which Respondent's license is subsequently cancelled for nonpayment of licensure fees. If Respondent leaves Texas to live or practice medicine elsewhere, Respondent shall immediately notify the Board in writing of the dates of Respondent's departure from and subsequent return to Texas. Upon Respondent's return to practice in Texas or Respondent's relicensure, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order when Respondent left the practice of medicine in Texas, retired, or had his license cancelled for nonpayment of licensure fees.

22. Respondent shall comply with all the provisions of the Medical Practice Act ("the Act"), V.A.C.S., article 4495b, and other statutes

regulating the practice of medicine, as is required by law for physicians licensed by the Board.

23. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within ten (10) days of the address change. This information shall be submitted to the Verification Department and the Director of Hearings for the Board. Failure to provide such information in a timely manner shall constitute a basis for disciplinary action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act.

24. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute a basis for disciplinary action by the Board against Respondent pursuant to Sections 3.08, 4.01, and 4.11 of the Act. Any violation of the terms, conditions, or requirements of this Order by Respondent shall constitute evidence of unprofessional or dishonorable conduct likely to deceive or defraud the public or injure the public.


25. The above-referenced conditions shall continue in full force and effect without opportunity for amendment, except for clear error in drafting, for 12 months following entry of this Order. If, after the passage of the 12 month period, Respondent wishes to seek amendment or termination of these conditions, Respondent may petition the Board in writing. The Board may inquire into the request and may, in its sole discretion, grant or deny the petition. Petitions for modifying or terminating may be filed only once a year thereafter.

RESPONDENT WAIVES ANY FURTHER HEARINGS OR APPEALS TO THE BOARD OR TO ANY COURT IN REGARD TO ALL TERMS AND CONDITIONS OF THIS AGREED ORDER. NOTHING IN THIS ORDER SHALL BE DEEMED A WAIVER OF RESPONDENT'S RIGHTS UNDER STATUTE OR THE UNITED STATES OR TEXAS CONSTITUTIONS TO APPEAL AN ORDER OR ACTION OF THE BOARD SUBSEQUENT TO THIS AGREED ORDER EXCEPT AS RESPONDENT MAY HAVE OTHERWISE AGREED TO HEREIN. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

I, ART GLENN SMITH, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: Oct. 12, 1995

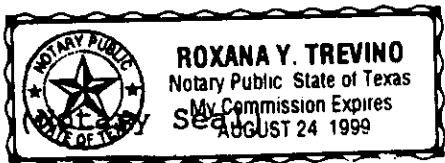

ART GLENN SMITH, M.D.
RESPONDENT

STATE OF Texas
COUNTY OF Bexar

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BEFORE ME, the undersigned Notary Public, on this day personally appeared ART GLENN SMITH, M.D., known to me to be the person whose name is subscribed to this instrument, an Agreed Order, and who after being by me duly sworn, on oath, stated that he executed the same for all purposes expressed therein.

Given under my hand and official seal and office this 12th day of October, 1995.



Roxana Y. Trevino
Signature of Notary Public

Roxana Y. Trevino
Printed or typed name of Notary Public

My commission expires: August 24, 1999

SIGNED AND ENTERED by the presiding officer of the Texas State Board of Medical Examiners on this 3rd day of November, 1995.

William H. Fleming, III
William H. Fleming, III, M.D.
President, Texas State Board of
Medical Examiners