

LICENSE NO. J-2341

IN THE MATTER OF
THE LICENSE OF
HOWARD BRIAN SMITH, M.D.

BEFORE THE
TEXAS MEDICAL BOARD

AGREED ORDER

On the 21 day of August, 2009, came on to be heard before the Texas Medical Board (the "Board"), duly in session, the matter of the license of Howard Brian Smith, M.D. ("Respondent").

On November 19, 2008, Respondent appeared in person, with counsel Michael Blaise, at an Informal Show Compliance Proceeding and Settlement Conference in response to a letter of invitation from the staff of the Board. The Board's representatives were Julie Attebury, a member of the Board, and Leah R. Mabry, M.D., a member of a District Review Committee. Ursula Keen, J.D., represented Board staff.

Upon the 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 Agreed Order.

FINDINGS OF FACT

The Board finds that:

1. Respondent received all notice required by law. All jurisdictional requirements have been satisfied. Respondent waives any defect in notice and any further right to notice or hearing under the Medical Practice Act, Title 3, Subtitle B, Texas Occupations Code (the "Act") or the Rules of the Board.
2. Respondent currently holds Texas Medical License No. J-2341. Respondent was originally issued this license to practice medicine in Texas on November 14, 1992. Respondent is not licensed to practice in any other state.
3. Respondent is primarily engaged in the practice of psychiatry. Respondent is board certified by the American Board of Psychiatry and Neurology, a member board of the American Board of Medical Specialties.

4. Respondent is 43 years of age.
5. Respondent has not received a prior disciplinary order from the Board.
6. Respondent first saw Patient who presented with complaints of alcohol dependency, generalized anxiety disorder, and Attention Deficit Hyperactivity Disorder.
7. Respondent did not do, or document performance of, adequate history and physical, and associated lab work-up, as prerequisite work-up to prescribing for Patient.
8. Respondent's medical records were inadequate as to substantive documentation and legibility.
9. Respondent treated Patient with Levitra, which was inconsistent with Food and Drug Administration guidelines for the use of that drug for the complaints that Patient presented with to Respondent.
10. Respondent's decision to depart from standard Food and Drug Administration guidelines in prescribing was not an inappropriate medical decision, but it obligated Respondent to follow-up and monitor Patient more closely with lab work, which Respondent failed to do.
11. Respondent inappropriately departed from his area of medical expertise in prescribing Patient the drug, Levitra.
12. Respondent has cooperated in the investigation of the allegations related to this Agreed Order. Respondent's cooperation, through consent to this Agreed Order, pursuant to the provisions of Section 164.002 the Act, will save money and resources for the State of Texas. To avoid further investigation, hearings, and the expense and inconvenience of litigation, Respondent agrees to the entry of this Agreed Order and to comply with its terms and conditions.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes that:

1. The Board has jurisdiction over the subject matter and Respondent pursuant to the Act.
2. Section 164.051(a)(3) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's violation of a Board rule, specifically Board Rule 165.1, which requires the maintenance of adequate medical records.
3. Section 164.051(a)(6) of the Act authorizes the Board to take disciplinary action against Respondent based on Respondent's failure to practice medicine in an acceptable professional manner consistent with public health and welfare, as defined by Board Rule: 190.8(1)(A), failure

to meet the standard of care; 190.8(1)(C), failure to use proper diligence in one's professional practice; and 190.8(1)(G), failure to disclose reasonably foreseeable side effects.

4. Section 164.001 of the Act authorizes the Board to impose a range of disciplinary actions against a person for violation of the Act or a Board rule. Such sanctions include: revocation, suspension, probation, public reprimand, limitation or restriction on practice, counseling or treatment, required educational or counseling programs, monitored practice, public service, and an administrative penalty.

5. Section 164.002(a) of the Act authorizes the Board to resolve and make a disposition of this matter through an Agreed Order.

6. Section 164.002(d) of the Act provides that this Agreed Order is a settlement agreement under the Texas Rules of Evidence for purposes of civil litigation.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Board ORDERS that Respondent shall be subject to the following terms and conditions:

1. Within one year from date of the entry of this Order, Respondent shall enroll in and successfully complete the medical recordkeeping course offered by the University of California San Diego Physician Assessment and Clinical Education ("PACE") program, or an equivalent course approved in advance by the Executive Director. To obtain approval for a course other than the PACE course, Respondent shall submit in writing to the Board information on the course, to include at least a reasonably detailed description of the course content, faculty, course location, and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Director of Enforcement for the Board on or before the expiration of the time limit set forth for completion of the course. This course shall be in addition to any other Continuing Medical Education ("CME") required for licensure maintenance.

2. Within one year from date of the entry of this Order, Respondent shall enroll in and successfully complete the PACE physician prescribing course, or an equivalent course approved in advance by the Executive Director. To obtain approval for a course other than the PACE course, Respondent shall submit in writing to the Board information on the course, to include at least a reasonably detailed description of the course content, faculty, course location,

and dates of instruction. Respondent shall submit documentation of attendance and successful completion of this requirement to the Director of Enforcement for the Board on or before the expiration of the time limit set forth for completion of the course. This course shall be in addition to any Continuing Medical Education ("CME") or any other CME required herein for licensure maintenance.

3. The time period of this Order shall be extended for any period of time that: (a) Respondent subsequently practices exclusively outside the State of Texas; (b) Respondent's license is subsequently cancelled for nonpayment of licensure fees; (c) this Order is stayed or enjoined by Court Order; or (d) for any period of time longer than 60 consecutive days that Respondent does not actively practice medicine. If Respondent leaves Texas to practice elsewhere or ceases active practice for more than 60 consecutive days, Respondent shall immediately notify the Board in writing. Upon Respondent's return to active practice or return to practice in Texas, Respondent shall notify the Board in writing. When the period of extension ends, Respondent shall be required to comply with the terms of this Order for the period of time remaining on the Order. Respondent shall pay all fees for reinstatement or renewal of a license covering the period of extension or tolling.

4. Respondent shall comply with all the provisions of the Act and other statutes regulating the Respondent's practice.

5. Respondent shall fully cooperate with the Board and the Board staff, including Board attorneys, investigators, compliance officers, consultants, and other employees or agents of the Board in any way involved in investigation, review, or monitoring associated with Respondent's compliance with this Order. Failure to fully cooperate shall constitute a violation of this order and a basis for disciplinary action against Respondent pursuant to the Act.

6. Respondent shall inform the Board in writing of any change of Respondent's office or mailing address within 10 days of the address change. This information shall be submitted to the Permits and Registration Department and the Compliance Department of 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 the Act. Respondent agrees that 10 days notice of a Probationer Show Compliance Proceeding to address any allegation of non-compliance of this Agreed Order is adequate and reasonable notice prior to the initiation of formal disciplinary action. Respondent waives the 30-day notice requirement provided by §164.003(b)(2) of the

Medical Practice Act and agrees to 10 days notice, as provided in 22 Texas Administrative Code §187.44(4).

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

8. Respondent shall be permitted to supervise and delegate prescriptive authority to physician assistants and advanced practice nurses and to supervise surgical assistants.

9. This Order shall automatically terminate upon the successful completion of the requirements in Ordering Paragraph Nos. 1 and 2.

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. RESPONDENT AGREES THAT THIS IS A FINAL ORDER.

THIS ORDER IS A PUBLIC RECORD.

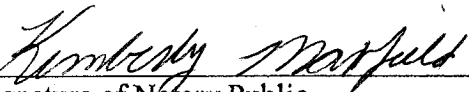
I, HOWARD BRIAN SMITH, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AGREED ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY. I UNDERSTAND THIS AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: August 10, 2009.

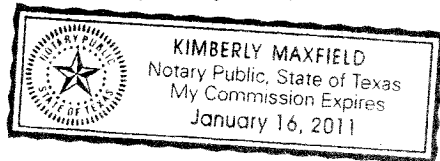

HOWARD BRIAN SMITH, M.D.
Respondent

STATE OF Texas §
COUNTY OF Dallas §

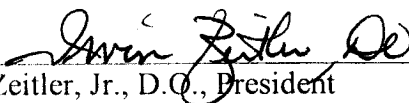
SWORN TO AND ACKNOWLEDGED BEFORE ME, the undersigned Notary Public, on this 10 day of August, 2009.


Signature of Notary Public

(Notary Seal)



SIGNED AND ENTERED by the presiding officer of the Texas Medical Board on this
21 day of August, 2009.



Irvin E. Zeitler, Jr., D.O., President
Texas Medical Board