

STATE OF FLORIDA
BOARD OF MEDICINE

By: Heather Coleman
Deputy Agency Clerk

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2000-12434
LICENSE NO.: ME0077300

HAROLD E. SMITH, M.D.,

Respondent.

FINAL ORDER

THIS CAUSE came before the BOARD OF MEDICINE (Board) pursuant to Sections 120.569 and 120.57(4), Florida Statutes, on August 2, 2003, in Orlando, Florida, for the purpose of considering a Consent Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Consent Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises, the Board rejected the Consent Agreement and offered a Counter Consent Agreement which was accepted on the record by the parties. The Counter Consent Agreement incorporates the original Consent Agreement with the following amendments:

1. The fine set forth in paragraph 2 of the Stipulated Disposition shall be increased to \$5,000.
2. Respondent's license to practice medicine is restricted as follows: The Respondent must remain in compliance with any and all terms of the FRN contract. Failure to do so shall constitute

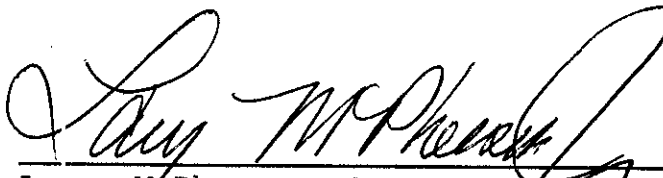
a violation of this Final Order and shall be grounds for further discipline.

3. Respondent is prohibited from writing prescriptions for controlled substances for any family member.

IT IS HEREBY ORDERED AND ADJUDGED that the Consent Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the amendments set forth above. Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Consent Agreement as amended.

DONE AND ORDERED this 14 day of AUGUST, 2003.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for Elisabeth Tucker, M.D., Chair-Elect

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to HAROLD SMITH, M.D., 525 N. Tremain Street, Apt. 102, Mt. Dora, Florida 32757; to Wilson Jerry Foster, Esquire, 1342 Timberlane Rd.,

Suite 102-A, Tallahassee, Florida 32312; and by interoffice
delivery to Ephraim Livingston and Pamela Page, Department of
Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida
32399-3253 this 16 day of August, 2003.

Shawn Dylles

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**STATE OF FLORIDA
DEPARTMENT OF HEALTH
BOARD OF MEDICINE**

PRACTITIONER REGULATION
LEGAL

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DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH CASE NUMBER 2000-12434

HAROLD EDWARD SMITH, M.D.,

Respondent.

CONSENT AGREEMENT

Harold Edward Smith, M.D., referred to as the "Respondent," and the Department of Health, referred to as "Department," stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state department charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, the Respondent was a licensed physician in the State of Florida having been issued license number ME 0077300.
2. The Respondent was charged by an Administrative Complaint filed by the Department and properly served upon the Respondent with violations of Chapter 458,

Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

1. The Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 456 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. The Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent admits that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **FUTURE CONDUCT.** The Respondent shall not in the future violate Chapters 456, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto. Prior to signing this agreement, the Respondent shall read Chapters 456, 458, 893 and the Rules of the Board of Medicine, at Section 64B8, Florida Administrative Code.

2. **ADMINISTRATIVE FINE.** The Board shall impose an administrative fine in the amount of Two Thousand dollars (\$2,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within **thirty (30) days** of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT**

THE TIMELY PAYMENT OF THE FINES IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND THE RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN THIRTY (30) DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

3. REIMBURSEMENT OF COSTS. In addition to the amount of any fine noted above, the Respondent agrees to reimburse the Department for any administrative costs incurred in the investigation, prosecution, and preparation of this case, including costs assessed by the Division of Administrative Hearings, if applicable, and by the Board of Medicine office. The agreed upon Agency costs to be reimbursed in this case is FOUR thousand, seven hundred seventy-six dollars and fifty-eight cents (\$4,776.58). The costs shall be paid by the Respondent to the Board of Medicine within thirty (30) days of its imposition by Final Order of the Board. **THE RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS CONSENT AGREEMENT, SPECIFICALLY: IF THE RESPONDENT HAS NOT RECEIVED WRITTEN**

CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE WITHIN THIRTY (30) DAYS OF THE FILING OF THIS FINAL ORDER, THE RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY THE RESPONDENT FROM THE BOARD. (SEE EXHIBIT B OF THIS CONSENT AGREEMENT FOR BOARD ADDRESS AND STANDARD TERMS).

4. **UNIVERSITY OF SOUTH FLORIDA DRUG COURSE.** Respondent shall complete the course, "Protecting Your Medical Practice, Clinical, Legal and Ethical Issues in Prescribing Abusable Drugs," sponsored by the Florida Medical Association and the University of South Florida, or a Board-approved equivalent, within one (1) year of the filing of the Final Order of the Board. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical education course within one (1) year of the Final Order incorporating this Agreement. All such documentation shall be sent to the Board of Medicine, regardless of whether some or any of such documentation was previously provided during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to those required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education courses shall consist of a live, lecture format.

5. **MITIGATING FACTORS:** Respondent has fully cooperated with the Department in this case. The terminal condition of Respondent's mother understandably contributed to poor judgment for the time he provided prescriptions for her.

STANDARD PROVISIONS

1. It is expressly understood that this Agreement is subject to the approval of the Board and the Agency. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

2. Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

3. Respondent and the Agency fully understand that this joint agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

4. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

5. Respondent waives the right to seek any attorney's fees or costs from the Agency in connection with this matter.

6. This agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Furthermore,

should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration, or resolution of these proceedings.

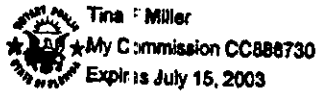
SIGNED this 18th day of June, 2003.



Harold Edward Smith, M.D.

Before me, personally appeared Harold E. Smith MD whose identity is known to me by personally known (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 18th day of June, 2003.



Tina Miller
NOTARY PUBLIC
My Commission Expires:

APPROVED this 27th day of June, 2003.

John O. Agwunobi, M.D., M.B.A.,
Secretary, Department of Health

By: Wings S. Benton
Wings S. Benton
Deputy General Counsel
Department of Health

**STATE OF FLORIDA
DEPARTMENT OF HEALTH**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO. 2000-12434

HAROLD E. SMITH, M.D.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

Petitioner, the Department of Health for its Complaint against Harold E. Smith states as follows:

PARTIES

1. The Department of Health is the state department charged with regulating the practice of medicine under Florida Law.

2. Respondent, whose address of record is 525 N. Tremain St., Apt. 102, Mount Dora, Florida 32757, was issued license number ME 77300 on January 13, 1999, and is board certified in Psychiatry.

GENERAL ALLEGATIONS

3. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida.

4. From on or about July 24, 1999 to on or about August 14, 2000, Respondent wrote prescriptions for hydrocodone for an individual identified as J.R.S.

5. J.R.S. was a relative of Respondent's for whom Respondent did not keep records of Respondent's examinations, diagnoses, treatment or record of drugs prescribed.

6. From on or about January 14, 2000 to on or about June 30, 2000, Respondent wrote prescriptions for hydrocodone for an individual identified as L.L.S.

7. L.L.S. was a relative of Respondent's for whom Respondent did not keep records of Respondent's examinations, diagnoses, treatment or record of drugs prescribed.

8. Hydrocodone is a legend drug as defined by Section 465.003(7), Florida Statutes, and a Schedule II controlled substance listed in Chapter 893, Florida Statutes. Hydrocodone is a narcotic analgesic indicated for the relief of moderate to severe pain. Hydrocodone carries a high potential for abuse and dependence.

COUNT ONE
IMPROPER PRESCRIBING – J.R.S.

9. Petitioner realleges and incorporates paragraphs one (1) through eight (8), as if fully set forth herein this Count One.

10. Respondent prescribed medication for J.R.S other than in the course of Respondent's professional practice.

11. Based on the foregoing Respondent violated Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice.

COUNT TWO
MEDICAL RECORDS – J.R.S.

12. Petitioner realleges and incorporates paragraphs one (1) through eight (8) as if fully set forth herein this Count Two.

13. Respondent failed to keep medical records regarding J.R.S.

14. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible medical records that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of

drugs prescribed, dispensed or administered; and reports of consultations and hospitalizations.

**COUNT THREE
IMPROPER PRESCRIBING – L.L.S.**

15. Petitioner realleges and incorporates paragraphs one (1) through eight (8), as if fully set forth herein this Count Three.

16. Respondent prescribed medication for L.L.S other than in the course of Respondent's professional practice.

17. Based on the foregoing Respondent violated Section 458.331(1)(q), Florida Statutes, by prescribing, dispensing, administering, mixing or otherwise preparing a legend drug, including any controlled substance, other than in the course of the physician's professional practice.

**COUNT FOUR
MEDICAL RECORDS – L.L.S.**

18. Petitioner realleges and incorporates paragraphs one (1) through eight (8) as if fully set forth herein this Count Four.

19. Respondent failed to keep medical records regarding L.L.S.

20. Based on the foregoing, Respondent violated Section 458.331(1)(m), Florida Statutes, by failing to keep legible medical records that justify the course of treatment of the patient, including, but not

limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed or administered; and reports of consultations and hospitalizations.

WHEREFORE, Petitioner requests that, in order to protect the health and safety of the People of the State of Florida, Respondent be found responsible for the violations alleged, and each of them, and that one or more of the following disciplines be entered against Respondent:

- (A) Permanent Revocation of Respondent's license;
- (B) Suspension of Respondent's license for an appropriate period of time;
- (C) Restriction of Respondent's practice;
- (D) Imposition of an administrative fine;
- (E) Issuance of a reprimand;
- (F) Placement of Respondent on probation, with appropriate conditions;
- (G) Assessment of the costs for investigation and prosecution of this case; and,
- (H) Such other and further relief as is appropriate.

SIGNED this 18th day of October

2002.

John O. Agwunobi, M.D., M.B.A.
Secretary, Department of Health

Wings S. Benton
Wings S. Benton
Deputy General Counsel
Department of Health

COUNSEL FOR DEPARTMENT:

Bruce A. Campbell
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Tallahassee, Florida 32399-3265
Florida Bar # 191163
BAC
PCP: October 11, 2002
PCP Members: Ashkar, Vijayanagar, Beebe

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Nicki R. Kenon*
DATE 10/18/02