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Final Order No. DOH-07-0193-9-MOA
FILED DATE - 2/14/07
Department of Health
By: Rachne Ben
Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF MEDICINE

DEPARTMENT OF HEALTH,

Petitioner,

vs.

DOH CASE NO.: 2005-67946
LICENSE NO.: ME0077300

HAROLD 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 February 3, 2007, in Orlando, Florida, for the purpose of considering a Settlement Agreement (attached hereto as Exhibit A) entered into between the parties in this cause. Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties, and being otherwise fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that the Settlement Agreement as submitted be and is hereby approved and adopted in toto and incorporated herein by reference with the following clarification:

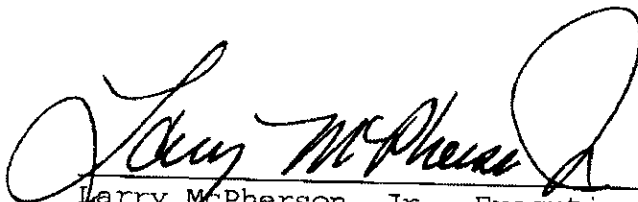
The costs set forth in Paragraph 2 of the Stipulated Disposition shall be set at \$4,311.51.

Accordingly, the parties shall adhere to and abide by all the terms and conditions of the Settlement Agreement as clarified above.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 15 day of FEBRUARY, 2007.

BOARD OF MEDICINE



Larry McPherson, Jr., Executive Director
for ROBERT CLINE, M.D., Vice-Chair

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., 2875 South Orange Avenue, Suite 500-600, Orlando, Florida 32806; and 2020 Hillside Drive, Mt. Dora, Florida 32757; to Wilson Jerry Foster, Esquire, 1342 Timberlane Road, Suite 102-A, Tallahassee, Florida 32312-1762; and by interoffice delivery to John Terrel, Department of Health, 4052 Bald Cypress Way, Bin #C-65, Tallahassee, Florida 32399-3253 this 11 day of February, 2007.



Deputy Agency Clerk

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FLORIDA DEPARTMENT OF HEALTH
LEGAL
STANDARD FORM 24

DEPARTMENT OF HEALTH,

Petitioner,

v.

DOH Case No. 2005-67946

HAROLD SMITH, M.D.

Respondent.

SETTLEMENT AGREEMENT

HAROLD SMITH, M.D., referred to as "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 a state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 458, Florida Statutes.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the

Harold Smith, M.D., Case No. 2005-67946

State of Florida having been issued license number ME 77300.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 456 and Chapter 458, Florida Statutes, and the rules adopted 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 for purposes of these proceedings only.

STIPULATED CONCLUSIONS OF LAW

1. 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. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

STIPULATED DISPOSITION

1. **Letter Of Concern** - Respondent shall receive a Letter of Concern from the Board of Medicine.

Harold Smith, M.D., Case No. 2005-67946

2. Reimbursement Of Costs - Pursuant to Section 456.072, Florida

Statutes, Respondent agrees to pay the Department for any administrative costs incurred in the investigation and preparation of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. The agreed upon amount of Department costs to be paid in this case includes but shall not exceed FIVE THOUSAND FIVE HUNDRED DOLLARS (\$5,500.00). Respondent will pay costs to the Department of Health, HMQAMS/Client Services, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Medicine Compliance Officer within six (6) months from the time Respondent is reinstated to practice medicine in the State of Florida. Any post-Board costs, such as the costs associated with probation, are not included in this agreement.

**RESPONDENT ACKNOWLEDGES THAT THE TIMELY
PAYMENT OF THE COSTS IS HIS/HER LEGAL OBLIGATION AND
RESPONSIBILITY AND RESPONDENT AGREES TO CEASE
PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS
SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN SIX (6)**

Harold Smith, M.D., Case No. 2005-67946

**MONTHS OF REINSTATEMENT TO PRACTICE MEDICINE,
RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION
THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN
RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO
CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS
RECEIVED BY RESPONDENT FROM THE BOARD.**

3. Suspension: Respondent's license shall be indefinitely suspended until the following requirements are met:

A. Respondent provides the Board with adequate evidence that Respondent is capable of practicing with reasonable skill and safety, including but not limited to, an evaluation by the Board approved impaired practitioners' treatment provider, if necessary; and

B. Respondent has a one-year period of sobriety documented by Respondent's impaired practitioners' treatment provider and/or another treating physician. This one-year period of sobriety must include random drug screens of Respondent performed by or at the instance of PRN or another licensed treatment provider; and

C. Respondent must be in full compliance with his PRN contract.

Harold Smith, M.D., Case No. 2005-67946

4. **Professional Resource Network** - Respondent shall participate and comply with the Professional Resource Network (PRN). Respondent shall enter into or remain in compliance with an advocacy contract with the PRN and shall cause the medical director of PRN to send the Board a copy of that contract. Respondent shall comply with all of the conditions of his contract with the PRN. Respondent shall execute a release for the PRN to authorize the PRN to release information and medical records (including psychiatric records and records relating to treatment for drug dependence and alcoholism) to the Board as needed to monitor the progress of Respondent in the PRN program. Respondent shall cause the director of PRN to report to the Board any problems that may occur with Respondent and any violations of Chapter 458, Florida Statutes, which occur within thirty days of the occurrence of any problems or violations of the law. Violation of the PRN contract shall constitute a violation of the terms of the Final Order.

STANDARD PROVISIONS

5. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Agreement is considered.

6. **No force or effect until final order** - It is expressly understood that this

Harold Smith, M.D., Case No. 2005-67946

Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Agreement.

7. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.

8. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 458 or 893, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice medicine. Prior to signing this agreement, the Respondent shall read Chapters 456, 458 and 893 and the Rules of the Board of Medicine, at Chapter 64B8, Florida Administrative Code.

9. **Violation of terms considered** - It is expressly understood that a violation of the terms of this Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 458, Florida Statutes.

10. **Purpose of Agreement** - Respondent, for the purpose of avoiding

Harold Smith, M.D., Case No. 2005-67946

further administrative action with respect to this cause, executes this Agreement. 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. Respondent agrees to support this Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this 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.

11. No preclusion of additional proceedings - Respondent and the Department fully understand that this Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.


12. Waiver of attorney's fees and costs - Upon the Board's adoption of this Agreement, the parties hereby agree that with the exception of costs noted

Harold Smith, M.D., Case No. 2005-67946

above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

13. Waiver of further procedural steps - 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.

SIGNED this 20 day of November, 2006


Harold Smith, M.D.

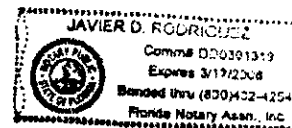
Before me, personally appeared Harold Smith, whose identity is known to me by F. (of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 20 day of November 2006.

NOTARY PUBLIC
My Commission Expires:

3/17/2008






County: Orange
State: FL

Harold Smith, M.D., Case No. 2005-67946

APPROVED this 11th day of December, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health


By: Jennifer Forshey
Assistant General Counsel

Harold Smith, M.D., Case No. 2005-67946

STATE OF FLORIDA
DEPARTMENT OF HEALTH

MAY 31 2006

DEPARTMENT OF HEALTH,

Petitioner,

v.

Case No. 2005-67946

HAROLD SMITH, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Medicine against Respondent, Harold Smith, M.D., and in support thereof alleges:

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

2. At all times material hereto, Respondent was a licensed medical doctor in the State of Florida, having been issued license number ME 77300.

3. Respondent's address of record is 2020 Hillside Drive, Mount Dora, Florida 32757. Respondent's last known address is 3054 Greenmount Road, Orlando, Florida 32806-5616.

4. Respondent practices in the area of child and adolescent psychiatry.

5. In or about March 1998, Respondent applied to the Board of Medicine ("Board") for licensure to practice medicine in the State of Florida. Based on the information provided during the application process, the Board required Respondent to undergo an independent psychiatric evaluation with an approved evaluator to assess any mental illness, chemical use and/or physical impairment.

6. On or about July 29, 1998, Respondent underwent psychiatric evaluation and was diagnosed with poly-substance dependence, in remission. Respondent was found to be able to practice medicine with reasonable skill and safety.

7. In or about November 1998, the Board approved Respondent's application to practice medicine contingent on Respondent entering into a five-year Professionals Resource Network contract.

8. The Professionals Resource Network ("PRN") is the impaired practitioners program for the Board of Medicine, pursuant to Section 456.076, Florida Statutes. PRN is an independent program that monitors the evaluation, care, and treatment of impaired healthcare professionals. PRN oversees random drug screens and provides for the exchange of information between the treatment providers, PRN, and the Department for the protection of the public.

9. On or about September 9, 1998, Respondent entered into a Chemical Dependency Advocacy Contract with PRN.

10. In or about November 2000, PRN was notified that Respondent had allegedly prescribed hydrocodone for two relatives other than in the course of his professional practice.

11. Based on the above allegations, PRN referred Respondent to a PRN approved evaluator ("evaluator") for psychiatric evaluation.

12. On or about November 27, 2000, Respondent underwent psychiatric evaluation and was diagnosed with poly-substance abuse. The evaluator recommended that Respondent continue his PRN contract, undergo a residential assessment to further address relapse issues, and

have individual therapy to address boundary issues and character issues that might continue to interfere with Respondent's success and sobriety.

13. In or about December 2000, Respondent attempted to commit suicide by taking a mixture of Benadryl and Risperdal.

14. Benadryl contains diphenhydramine, an over-the-counter antihistamine used to treat allergic reactions involving the nasal passages and also to treat motion sickness.

15. Risperdal contains risperidone, a legend drug used to treat hallucinations, delusions and thought disturbances of schizophrenia and other psychoses.

16. On or about December 27, 2000, Respondent underwent psychiatric evaluation and was diagnosed with poly-substance dependence with recent relapse on opiates, now in questionable early remission; major depressive episode with suicide attempt; and post-traumatic stress disorder.

17. In or about April 2001, Respondent entered into a five-year Dual Diagnosis Contract with PRN ("PRN contract").

18. Respondent complied with the terms of the April 2001 PRN contract until approximately August 9, 2005, at which time Respondent

ceased contact with his PRN approved monitors ("monitor(s)").

19. On or about August 16, 2005, Respondent had contact with a monitor and because of Respondent's body language and general demeanor, the monitor recommended that Respondent undergo a psychiatric evaluation. At that time, PRN requested that Respondent submit to a psychiatric evaluation and drug screen.

20. On or about September 6, 2005, PRN was advised that Respondent did not present for his urine drug screen.

21. On or about September 26, 2005, PRN was advised that Respondent was threatening suicide.

22. On or about September 29, 2005, Respondent contacted PRN and admitted to a relapse on crack cocaine and agreed to be evaluated.

23. On or about October 7, 2005, Respondent underwent evaluation with a PRN approved evaluator ("evaluator") and was diagnosed with cocaine dependence; opiod dependence, in apparent relapse; and, personality disorder NOS.

24. On or about October 7, 2005, the evaluator found that Respondent was not safe to practice medicine. The evaluator recommended that Respondent immediately enter into a structured

detoxification and stabilization unit and undergo intensive psychotherapy.

25. On or about November 17, 2005, PRN was advised that Respondent had entered into treatment as recommended by the evaluator in the October 7, 2005, evaluation.

26. PRN followed Respondent from November 17, 2005, until his completion of treatment on or about February 24, 2006. Upon completion of treatment, it was recommended that Respondent enter a halfway house, undergo intensive psychotherapy and enter into a PRN contract.

27. On or about March 17, 2006, PRN notified the Department that Respondent was refusing to enter into a halfway house, did not have the funding for urine screens and did not have a phone.

28. At that time, PRN advised that Respondent's monitors and physicians did not feel Respondent was safe to practice medicine.

29. Section 458.331(1)(s), Florida Statutes (2005), subjects a physician to discipline, including suspension, for being unable to practice medicine with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

30. Respondent has multiple substance abuse problems which require additional treatment and monitoring by PRN in order for Respondent to practice medicine safely.

31. Respondent is not currently in treatment and is not currently being monitored by PRN.

32. Based on the foregoing, Respondent violated Section 458.331(1)(s), Florida Statutes (2005), by being unable to practice medicine with reasonable skill and safety to patients due to his substance abuse problems and his unwillingness to undergo additional treatment and to be monitored by PRN.

WHEREFORE, Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action and/or any other relief that the Board deems appropriate.

Signed this 31 day of May, 2006.

M. Rony François, M.D., M.S.P.H., Ph.D.
Secretary, Department of Health

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK *Jhenna McKinn*
DATE 5-31-06

Jennifer Forshey

Jennifer Forshey
Assistant General Counsel
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DOH, Prosecution Services Unit
4052 Bald Cypress Way, Bin # C-65
Tallahassee, FL 32399-3265
850.245.4640 ext.8140
850.245.4681 Facsimile

JL/jfl

PCP: May 26, 2006
PCP Members: El-Bahri & Farmer

NOTICE OF RIGHTS

Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.

NOTICE REGARDING ASSESSMENT OF COSTS

Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.