

STATE OF TENNESSEE  
DEPARTMENT OF HEALTH

2015 JAN 13 PM 3:49

SECRETARY OF STATE

IN THE MATTER OF:  
  
MELVYN A. LEVITCH, M.D.  
RESPONDENT  
  
MEMPHIS, TN  
TENNESSEE LICENSE NO. 3686

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BEFORE THE TENNESSEE BOARD  
OF MEDICAL EXAMINERS

DOCKET NO.: 17.18-127970A

AGREED ORDER

This matter came to be heard before the Tennessee Board of Medical Examiners (hereinafter the "Board") on January 13, 2015, pursuant to a Notice of Charges and Memorandum for Assessment of Civil Penalties issued against Respondent, Melvyn A. Levitch, M.D., (hereinafter "Respondent"). The Division of Health Related Boards of the Tennessee Department of Health was represented by Mollie A. Gass, Assistant General Counsel. The Respondent was represented by Robert Moore.

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 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 Agreed Order, expressly waives all further procedural steps and all rights to seek judicial review of or to challenge or contest the validity of this Agreed Order. Respondent agrees that presentation to and consideration of this Agreed 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 is aware of each of Respondent's rights, including the right to a hearing on the charges and allegations, the right to appear personally and by counsel, the right to confront and cross-examine witnesses who would testify against Respondent, the right to testify and present evidence on Respondent's own behalf, as well as to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to contest the charges and allegations, and other rights which are accorded to Respondent pursuant to the Administrative Procedures Act and other applicable laws, including the right to seek reconsideration, review by the Chancery Court and appellate review

In order to avoid the expense and uncertainty of a contested case hearing, Respondent admits truth to the facts contained herein. Respondent understands that by signing this Agreed Order Respondent is allowing the Board to issue order without further process. In the event the Board rejects this Agreed Order for any reason, it will be of no force or effect for either party.

#### **I. Findings of Fact**

1. Dr. Levitch 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, which was last renewed on March 4, 2013 and has a current expiration date of February 28, 2015.

2. Dr. Levitch entered into a Consent Order ratified on September 18, 2013 reprimanding his license and requiring a three year practice monitor through Affiliated Monitors, Inc., which requires quarterly reports be sent to the Tennessee Board of Medical Examiners' Medical Director. The reports shall specifically include details of Respondent's medical record keeping pertaining to documentation of physical examinations and histories, diagnostic testing, alternative specialist consultations, medical history, prescribing practices, efforts to monitor and appropriately respond to evidence of abuse and diversion for patients receiving controlled substances, and treatment plans.

3. Dr. Levitch left six (6) pre-signed, blank prescriptions dated for January 22, 2014 to be completed by his unlicensed office manager for controlled substances, such as Adderall, that could not be called in. Dr. Levitch maintains the reason for leaving pre-signed, blank prescriptions was that his wife was having surgery on January 22, 2014, and this behavior is not his typical practice.

4. Dr. Levitch underwent an evaluation by Vanderbilt Comprehensive Assessment Program ("VCAP") during July 2014. The VCAP recommendations suggest Respondent cease prescribing controlled substances.

5. Respondent failed to obtain sufficient continuing education in compliance with the continuing education requirements for the calendar years of 2011 and 2012.

## II. Conclusions of Law

The facts above are sufficient to establish violations by Respondent of the following statutes or rules which are part of the provisions of the Tennessee Medical Practice Act (Tenn. Code Ann. § 63-6-101, *et seq.*), for which disciplinary action before and by the Board of Medical Examiners is authorized:

6. The findings of fact in Section II, paragraphs 1 through 5, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to a violation of Tenn. Code Ann. § 63-6-214(b)(1), which provides that "unprofessional, dishonorable or unethical conduct" be a ground for licensure discipline.

7. The findings of fact in Section II, paragraph 3, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to a violation of Tenn. Code Ann. § 63-6-214(b)(2), which provides that violations of the Practice Act shall be a ground for licensure discipline.

8. The findings of fact in Section II, paragraph 3, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to a violation of Tenn. Code Ann. § 63-6-236, which requires the prescribing physician to sign the handwritten prescription order on the day it is issued.

9. The findings of fact in Section II, paragraph 5, *supra*, constitute grounds for disciplinary action against Respondent's license to practice as a medical doctor in the State of Tennessee pursuant to violation of Tenn. Comp. R. & Reg. Rule 0880-02-.19 requiring forty (40) hours of continuing medical education coursework during the two (2) calendar years that precede the licensure renewal year.

### 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 believes this action is necessary and is taken against the Respondent to ensure both public confidence and the integrity of the medical profession are preserved.

#### IV. Order

THEREFORE, in consideration of the above Findings of Fact and Conclusion of Law, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

10. The Tennessee medical license of Melvyn A. Levitch, M.D. is hereby on probation,<sup>1</sup> effective at the time of ratification of this Order, for a period of no less than five years.

11. Respondent shall relinquish any and all Drug Enforcement Administration (D.E.A.) registrations to prescribe or dispense controlled substances within seven (7) days of the ratification of this Order, and he shall not reapply, reactive, or otherwise obtain any D.E.A. registration.<sup>2</sup>

12. Within sixty (60) days of this Order, Respondent shall retire from his individual private psychiatric practice and abstain from practicing medicine in a solo practitioner setting. Respondent may still practice medicine in a group or volunteer setting.

13. Respondent shall obtain forty (40) hours of continuing medical education for the 2011 – 2012 cycle. Proof of such hours shall be submitted within one (1) year of entry of this Order to: Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243. These hours are in addition to the continuing education hours required to maintain a license with the Board of Medical Examiners.<sup>3</sup>

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<sup>1</sup> Probation is defined as a formal disciplinary action which places a licensee on close scrutiny for a period of time. Tenn. Comp. R. & Regs. 0880-02-.12(1)(c).

<sup>2</sup> Should Respondent obtain any form of D.E.A. registration after his current D.E.A. registration has been relinquished, it shall be considered a violation of this Order, and Respondent may be subject to further disciplinary action.

<sup>3</sup> Respondent is required by Tenn. Comp. R. & Reg. Rule 0880-02-.19 to obtain forty (40) hours of continuing medical education coursework during the two (2) calendar years that precede the licensure renewal year, in addition to the forty (40) hours required by this Order.

14. Pursuant to Tenn. Comp. R. & Reg. Rule 0880-02-.12, Respondent shall pay six (6) Type B civil penalties of two hundred fifty dollars (\$250.00) each, one for each pre-signed, blank prescription, for a total amount of one thousand five hundred dollars (\$1,500.00). These civil penalties are due within one (1) year of the entry of this order.

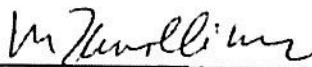
15. Respondent shall pay, pursuant to Tenn. Code Ann. § 63-1-144, Tenn. Code Ann. § 63-6-214(k), and Tenn. Comp. R. & Regs. 0880-02-.12(1)(j), the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. The costs will be established by an Affidavit of Costs prepared and filed by Department's counsel. Pursuant to Tenn. Code Ann. § 63-1-144(b) the maximum amount of costs to be assessed shall not exceed five thousand dollars (\$5,000.00).

#### V. Notice

Any and all costs and civil penalties shall be paid in full within one (1) year 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, 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.

\* \* \*

So **ORDERED** by the Tennessee Board of Medical Examiners this 13<sup>th</sup> day of January, 2015.

  
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Chairperson  
Tennessee Board of Medical Examiners

Approved for Entry:

Mollie A. Gass

Mollie A. Gass, B.P.R. 031130  
Assistant General Counsel  
Office of General Counsel  
Tennessee Department of Health  
665 Mainstream Drive  
Nashville, Tennessee 37243  
(615) 741-1611

Melvyn A. Levitch

Melvyn A. Levitch, M.D.  
Respondent  
License No. 3686

Robert L. Moore

Robert L. Moore  
Heaton and Moore, P.C.  
44 North Second Street, Suite 1200  
Memphis, TN 38103

**CERTIFICATE OF FILING**

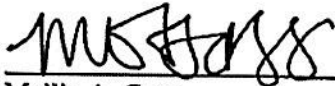
This Order was received for filing in the Office of the Secretary of State, Administrative Procedures Division, and became effective on the 13<sup>th</sup> day of January, 2015.

J. Richard Collier  
Richard Collier, Director *unc*  
Administrative Procedures Division

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and exact copy of the forgoing has been served via U.S. Mail and U.S. Certified Mail upon the following on the 19<sup>th</sup> day of January, 2014:

Robert L. Moore  
Heaton and Moore, P.C.  
44 North Second Street, Suite 1200  
Memphis, TN 38103

  
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Mollie A. Gass  
Assistant General Counsel