

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:)	BEFORE THE TENNESSEE BOARD
)	OF MEDICAL EXAMINERS
ARTHUR HAMILTON SMALL, M.D.)	
RESPONDENT)	CASE NO: 2011020201
)	
BRENTWOOD, TENNESSEE)	
TENNESSEE LICENSE NO. 37042)	

CONSENT ORDER

Comes now the Division of Health Related Boards of the Tennessee Department of Health ("Department") by and through the Office of General Counsel, and Respondent Arthur H. Small, M.D. (hereinafter "Respondent"), who would respectfully move the Tennessee Board of Medical Examiners ("Board") for approval of this Consent Order affecting Respondent's medical license in the State of Tennessee.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee. *See* Tennessee Medical Practice Act, Tennessee Code Annotated Section ("TENN. CODE ANN. §") 63-6-101 *et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Medical Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-6-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the *Official Compilation Rules and Regulations of the State of Tennessee* ("TENN. COMP. R. & REGS.").

Respondent Arthur H. Small, M.D., by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their 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 Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. Respondent acknowledges that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank and/ or similar agency. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

I. STIPULATIONS OF FACT

1. Respondent 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 37042 by the Board on November 22, 2002, which has a current expiration date of August 31, 2015.

2. From at least 2006 until 2011, Respondent provided psychiatric care and other medical services for Patient DW in Nashville, Tennessee. Respondent prescribed Patient DW very high doses of controlled opioids and benzodiazepines, such as oxycodone 300 mg per day, morphine 300 mg per day, and Xanax 16 mg per day.
3. Respondent prescribed monthly high doses of controlled substances to Patient DW without obtaining a complete history of the patient's pain, performing physicals; ordering diagnostic tests; creating a complete treatment plan justifying the types, amounts, combinations, and continued prescribing of controlled substances; or monitoring the patient for compliance with such tools as urine drug screens, pill counts or Controlled Substance Monitoring Database (CSMD) checks. The CSMD shows that this patient sometimes received multiple prescriptions for opioids and benzodiazepines from multiple providers within the same month.
4. Respondent continued to prescribe these high doses of controlled substances to Patient DW when he should have suspected that the patient was addicted to opioids and benzodiazepines and abused or misused prescription drugs. After referring this patient to Parthenon Pavilion for opioid and benzodiazepine addiction and other psychiatric issues, Respondent continued to prescribe the patient high doses of opioids and benzodiazepines without adequate justification or monitoring for compliance.

II. GROUNDS FOR DISCIPLINE

The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the

following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

5. The facts stipulated in paragraphs 2 through 5 constitute a violation of TENN. CODE ANN. § 63-6-214(b)(1):

Unprofessional, dishonorable or unethical conduct.

6. The facts stipulated in paragraphs 2 through 5 constitute a violation of TENN. CODE ANN. § 63-6-214(b)(4):

Gross health care liability or a pattern of continued or repeated health care liability, ignorance, negligence or incompetence in the course of medical practice.

7. The facts stipulated in paragraphs 2 through 5 constitute a violation of TENN. CODE ANN. § 63-6-214(b)(12):

Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and /or for durations not medically necessary, advisable or justified for a diagnosed condition.

8. The facts stipulated in paragraphs 2 through 5 constitute a violation of TENN. COMP. R. & REGS. 0880-02-.14(6)(e)(3), which authorizes disciplinary action against a Respondent who prescribes, orders, administers or dispenses dangerous drugs or controlled substances without observing the following guidelines:

(i) After a documented medical history, which may be provided orally or in writing by the patient, and physical examination by the physician providing the medication including an assessment and consideration of the pain, physical and psychological function, any history and potential for substance abuse, coexisting diseases and conditions, and the presence of a recognized medical indication for the use of a dangerous drug or controlled substance;

(ii) Pursuant to a written treatment plan tailored for the individual needs of the patient by which treatment progress and success can be evaluated with stated objectives such as pain relief and/or improved physical and

psychosocial function. Such a written treatment plan shall consider pertinent medical history and physical examination as well as the need for further testing, consultations, referrals, or use of other treatment modalities;

(iii) The physician should discuss the risks and benefits of the use of controlled substances with the patient or guardian;

(iv) Subject to documented periodic review of the care by the physician at reasonable intervals in view of the individual circumstances of the patient in regard to progress toward reaching treatment objectives which takes into consideration the course of medications prescribed, ordered, administered, or dispensed as well as any new information about the etiology of the pain;

(v) Complete and accurate records of the care provided as set forth in parts (i)-(iv) of this paragraph should be kept. When controlled substances are prescribed, names, quantities prescribed, dosages, and number of authorized refills of the drugs should be recorded, keeping in mind that pain patients with a history of substance abuse or who live in an environment posing a risk for medication misuse or diversion require special consideration. Management of these patients may require closer monitoring by the physician managing the pain and consultation with appropriate health care professionals.

9. The facts stipulated in paragraphs 2 through 5 constitute a violation of TENN. COMP.

R. & REGS. 0880-02-.14(7)(a):

Except as provided in subparagraph (b), it shall be a prima facie violation of T.C.A. § 63-6-214 (b) (1), (4), and (12) for a physician to prescribe or dispense any drug to any individual, whether in person or by electronic means or over the Internet or over telephone lines, unless the physician, or his/her licensed supervisee pursuant to appropriate protocols or medical orders, has first done and appropriately documented, for the person to whom a prescription is to be issued or drugs dispensed, all of the following:

1. Performed an appropriate history and physical examination; and
2. Made a diagnosis based upon the examinations and all diagnostic and laboratory tests consistent with good medical care; and
3. Formulated a therapeutic plan, and discussed it, along with the basis for it and the risks and benefits of various treatments options, a part of which might be the prescription or dispensed drug, with the patient; and
4. Insured availability of the physician or coverage for the patient for appropriate follow-up care.

III. POLICY STATEMENT

The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of the citizens of the State of Tennessee by ensuring that physicians safely prescribe controlled substances and utilize available tools to monitor patients for compliance.

IV. ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

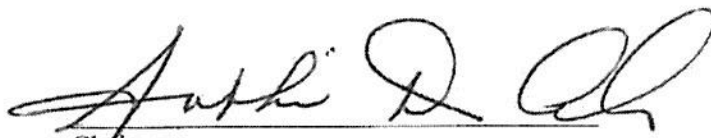
10. The Tennessee medical license of Arthur H. Small, M.D., license number 37042, is hereby **REPRIMANDED**.
11. Within six (6) months of the entry of this order, Respondent must enroll in and successfully complete the three-day medical course entitled "**Prescribing Controlled Drugs**" offered at The Center for Professional Health at Vanderbilt University Medical Center located in Nashville, Tennessee, or an equivalent course *pre-approved* by the Board's Medical Director. Respondent shall immediately provide proof of successful completion to the Department of Health Disciplinary Coordinator at the address listed under Part IV below.
12. Respondent is hereby assessed six (6) Type A civil penalties of \$1,000 each, for a total **civil penalty of \$6,000**, representing one penalty for each year of Respondent's treatment of Patient DW from 2006 through 2011.

13. Respondent must pay, pursuant to TENN. CODE ANN. § 63-6-214(k) and Rule 0880-2-.12(1)(j) of the Official Compilation Rules and Regulations of the State of Tennessee, 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 Office of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. The maximum amount for the assessment of costs shall be \$2,500.

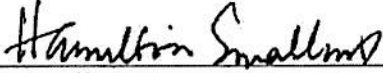
V. NOTICE

14. Any and all costs shall be paid in full within sixty (60) days 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, 2nd Floor, Nashville, Tennessee 37243.** A notation shall be placed on said check that it is payable for the costs of Arthur H. Small, M.D.

This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 18th day of March, 2015.

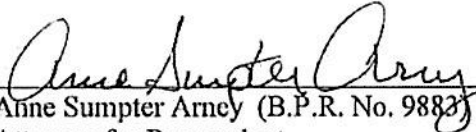

Chair
Tennessee Board of Medical Examiners

APPROVED FOR ENTRY:



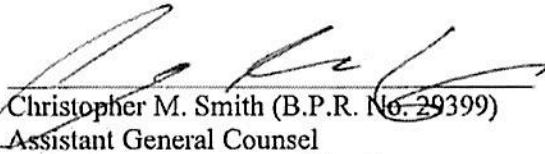
Arthur H. Small, M.D
Respondent
Tennessee Medical License No. 37042
1140 Banbury Lane
Brentwood, TN 37027

3/6/15
DATE



Anne Sumpter Arney (B.P.R. No. 9883)
Attorney for Respondent
Bone McAllester Norton PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219
(615) 238-6300

3/11/15
DATE



Christopher M. Smith (B.P.R. No. 29399)
Assistant General Counsel
Tennessee Department of Health
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

3/18/15
DATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, through Respondent's attorney, Anne Sumpter Arney, by regular U.S. Mail, with sufficient postage thereon to reach its destination, at the following address:

Anne Sumpter Arney
Bone McAllester Norton, PLLC
511 Union Street, Suite 1600
Nashville, Tennessee 37219

This the 19th day of March, 2015.

Christopher Smith by permission Dana Bratt

Christopher M. Smith
Assistant General Counsel
Tennessee Department of Health