

**EFFECTIVE AS A FINAL ORDER**

**DATE:** 4/10/2024

**FILED**

**MAR 22 2024**

**BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

<b>In the Matter of</b>	)	
	)	<b>KSBHA Docket No. 24-HA <u>00038</u></b>
<b>Whitaker Smith, M.D.</b>	)	
<b>Kansas License No. 04-42730</b>	)	

**SUMMARY ORDER**

**NOW ON THIS** 22<sup>nd</sup> day of March, 2024, this matter

comes before Susan Gile, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings under K.S.A. 77-537.

Under K.S.A 77-537 and K.S.A. 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within 15 days of service. Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

**Findings of Fact**

1. Whitaker Smith, M.D. ("Licensee") is or has been entitled to be engaged in the practice of medicine and surgery in Kansas, having been granted an Active license on November 15, 2019. Licensee's current license designation is Cancelled – Failure to Renew, having had his license canceled for failure to renew on or about July 31, 2022.

2. Licensee's last mailing address known to the Board is: **CONFIDENTIAL**,  
**CONFIDENTIAL**. Licensee's last email address known to the board is  
**CONFIDENTIAL**.

**Whitaker Smith, M.D.  
License No. 04-42730  
Summary Order**

3. On or about November 3, 2021, Licensee entered into a Consent Order with the Tennessee Board of Medical Examiners (“Tennessee Order”). (Bd. Ex. 1 – Tennessee Order).

a. At the time Licensee entered into the Tennessee Order, Licensee held an Active license to practice medicine and surgery in Kansas.

4. In issuing the Tennessee Order, Licensee was found to have violated a number of violations of Tennessee law, including but not limited to:

a. “Unprofessional conduct, dishonorable or unethical conduct”; and

b. “Dispensing, prescribing or otherwise distributing any controlled substance of 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.” (*Id.*)

5. By the terms of the Tennessee Order, Licensee agreed to the Tennessee Board of Medical Examiners imposing a number of sanctions, including, but not limited to:

a. Licensee was publicly reprimanded;

b. Licensee was prohibited from prescribing opioid medication for a minimum of six months, including prohibition of collaboration with any advanced practice registered nurses or physician assistants for issuing opioids;

c. Licensee was required to complete the equivalent of a two (2) day continuing medical education course on ethics, boundaries, and professionalism; and complete the equivalent of a three (3) day continuing medical education course prescribing controlled substances; and

- d. Licensee was assessed \$5,000 in civil penalties, and assessed the costs of the investigation.

#### **Applicable Law**

6. Under K.S.A. 65-2836(j) of the Kansas Healing Arts Act, a licensee's license may be revoked, suspended, or limited, or the licensee may be publicly censured or placed under probationary conditions, where "[t]he licensee has had a license to practice the healing arts revoked, suspended or limited, has been censured or has had other disciplinary action taken, or an application for a license denied, by the proper licensing authority of another state, territory, District of Columbia, or other country."

#### **Conclusions of Law**

7. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

8. Based on the facts and circumstances set forth herein, the use of summary proceedings in this matter is appropriate, in accordance with the provisions of K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law and the protection of the public interest does not require the Board to give notice and opportunity to participate to non-parties.

9. The Board finds Licensee violated K.S.A. 65-2836(j), in that Licensee's license to practice medicine in Tennessee was limited, and Licensee was censured and otherwise subject to disciplinary action by the Tennessee Board of Medical Examiners, the proper licensing authority

of another state. The Board therefore has authority to revoke, suspend, or limit Licensee's license, or to publicly censure or place Licensee under probationary conditions.

**IT IS HEREBY ORDERED** that Licensee is **PUBLICLY CENSURED** for his violation of K.S.A. 65-2836(j).

**PLEASE TAKE NOTICE** that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 22<sup>nd</sup> day of March, 2024.

**KANSAS STATE BOARD  
OF HEALING ARTS**

*Susan Gile*

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Susan Gile  
Executive Director

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**Whitaker Smith, M.D.**  
**License No. 04-42730**  
**Summary Order**

**FINAL ORDER NOTICE OF RIGHTS**

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Susan Gile, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I served a true and correct copy of the above and foregoing **FINAL ORDER** by depositing the same in the United States Mail, postage prepaid, on this 10<sup>th</sup> day of April 2024, addressed and emailed to:

Whitaker Smith, M.D.  
**CONFIDENTIAL**

*Licensee*

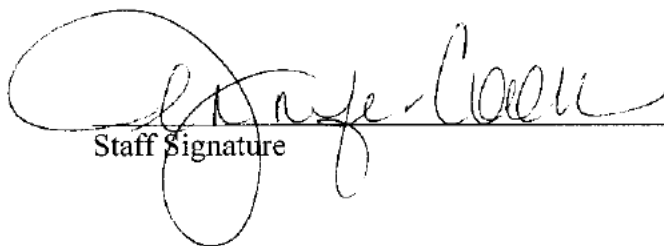
And a copy was hand-delivered to:

Matthew Gaus, Deputy Litigation Counsel  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612  
Matthew.gaus@ks.gov

Licensing Administrator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

Compliance Coordinator  
Kansas State Board of Healing Arts  
800 SW Jackson, Lower Level-Suite A  
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.

  
Staff Signature

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**BOARD EXHIBIT # 1**

Tennessee Order

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**In the matter of** Whitaker Smith, MD  
**Docket No.** TBD

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**STATE OF TENNESSEE  
DEPARTMENT OF HEALTH**

<b>IN THE MATTER OF:</b>	)	<b>BEFORE THE TENNESSEE</b>
	)	<b>BOARD OF MEDICAL EXAMINERS</b>
<b>WHITAKER M. SMITH, M.D.</b>	)	
<b>RESPONDENT</b>	)	<b>CASE NO.: 201401172</b>
	)	
<b>KINGSPORT, TN</b>	)	
<b>TENNESSEE LICENSE NO. 31792</b>	)	

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**CONSENT ORDER**

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The Division of Health Related Boards of the Tennessee Department of Health ("State"), by and through the Office of General Counsel, and Respondent, Whitaker Smith, M.D. ("Respondent"), by and through counsel, 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, 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, acting through his conservator, 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 the Respondent in any subsequent proceeding unless independently obtained and entered into evidence or introduced as admissions.

Respondent understands the nature of the charges herein alleged and that if proved at a hearing, such charges and allegations would constitute cause for imposing discipline upon Respondent's license issued by the Board. 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 Healthcare Practitioner Data Bank and/or a 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.

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#### STIPULATIONS OF FACT

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1. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor, having been granted license number 31792 on June 28, 1999. Respondent's medical license will expire on November 30, 2023.

- 2.

**CONFIDENTIAL**

3 **CONFIDENTIAL**

4.

5.

6. Respondent maintained a medical record for D.S., although the record does not contain periodic visits to coincide with the prescriptions written.

7. From approximately March 2010 through June 2014, Respondent wrote several prescriptions for Concerta, a schedule II controlled substance, for **CONFIDENTIAL** S.S. During approximately the same time period, Respondent also wrote prescriptions for non-controlled substances for S.S. although the vast majority of the prescriptions were for Concerta.

8. Respondent maintained a medical record for S.S., although the record does not contain periodic visits to coincide with the prescriptions written.

9. Respondent had a relationship with T.Q. outside the office that was sexual in nature prior to seeing her as a patient. Respondent first saw T.Q. for dysuria. T.Q. also had a history of arthritis, fibromyalgia, and anxiety.

10. From approximately August 2013 through February 2014, Respondent wrote T.Q. approximately ten (10) prescriptions for Alprazolam, a schedule IV controlled substance, and approximately (8) prescriptions for Oxycodone, a scheduled II controlled substance.
11. **CONFIDENTIAL**

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### GROUNDS FOR DISCIPLINE

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Respondent's acts as described in the Stipulations of Fact section of this Consent Order 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.* and *TENN. COMP. R & REGS.*) for which disciplinary action before and by the Board is authorized:

12. Respondent's actions/omissions as articulated in paragraph two (2) through four (4) of the Stipulations of Fact, *supra*, constitute violations of **CONFIDENTIAL**

# CONFIDENTIAL

13. Respondent's actions/omissions as articulated in paragraph two (2) through ten (10) of the Stipulations of Fact, *supra*, constitute violations of TENN. CODE ANN. § 63-6-214 (b)(1):

Unprofessional conduct, dishonorable or unethical conduct.

14. The facts stipulated in paragraphs five (5) through ten (10), *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(12):

Dispensing, prescribing or otherwise distributing any controlled substance of 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.

15. The facts stipulated in paragraphs five (5) through ten (10), *supra*, constitute a violation of TENN. COMP. R & REGS. 0880-2-.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.

16. The facts stipulated in paragraphs five (5) and ten (10), *supra*, constitute a violation of the Code of Medical Ethics of the American Medical Association, which constitutes a violation of TENN. COMP. R. & REGS., Rule 0880-02-.14(8):

Code of Ethics – The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its code of medical ethics the “Code of Medical Ethics” published by the A.M.A. Council on Ethical and Judicial Affairs as it may, from time to time, be amended.

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#### POLICY STATEMENT

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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 and ensure that the public confidence in the integrity of the medical profession is preserved.

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**ORDER**

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Therefore, the Board **ORDERS** and Respondent **AGREES** to the following:

17. The Tennessee medical license of Whitaker Smith, M.D., license number 31792, is hereby **REPRIMANDED**, effective the date of entry of this Order.

**CONFIDENTIAL**

19. Within ninety (90) days of the entry of this Order, Respondent must provide proof to the Board's medical consultant that he has notified any physicians, podiatrists, advanced practice registered nurses, or physicians assistants with whom he collaborates of the discipline.
20. Respondent shall not prescribe opioids for at least six (6) months, effective the date of entry of this Order, and until successful completion of the continuing education contained in paragraph twenty-two (22) of this Order. During the time period in which Respondent is

restricted from prescribing opioids, Respondent shall not collaborate with any advanced practice registered nurses or physician assistants for issuing opioids. The restriction imposed by this paragraph is only applicable to opioid prescriptions.

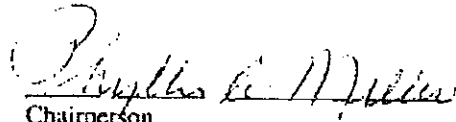
21. Respondent shall successfully complete within one hundred and twenty (120) days of entry of this Order, the equivalent of a two (2) day medical course entitled "*Medical Ethics, Boundaries and Professionalism*" offered at The Case Western Reserve University Continuing Medical Education Program at The Case Western Reserve University School of Medicine located in Cleveland, Ohio, or an equivalent course approved in advance by the Board's medical consultant that he has heretofore not taken. Within thirty (30) days after completion of such course, Respondent shall email proof of compliance with this course requirement to: [disciplinary.coordinator@tn.gov](mailto:disciplinary.coordinator@tn.gov). Any Continuing Medical Education (hereinafter "CME") course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure.
22. Respondent shall successfully complete within one hundred and twenty (120) days of entry of this Order, the three (3) day medical course entitled, "*Prescribing Controlled Drugs: Critical Issues and Common Pitfalls*" offered by Vanderbilt University Medical Center or an equivalent course approved in advance by the Board's medical consultant. Within thirty (30) days after completion of such course, Respondent shall email proof of compliance with this course requirement to: [disciplinary.coordinator@tn.gov](mailto:disciplinary.coordinator@tn.gov). Any Continuing Medical Education (hereinafter "CME") course hours earned from attendance and completion of the course required by this paragraph shall be in addition to the CME hours required to maintain licensure.
23. Respondent must pay four (4) "Type A" civil penalties, in the amount of one thousand dollars (\$1,000.00) each for a total of \$4,000 representing a civil penalty for each year that

Respondent prescribed **CONFIDENTIAL** as outlined in the Stipulations of Fact, *supra*. Respondent must also pay one (1) "Type A" civil penalty in the amount of one thousand dollars (\$1,000.00) for his relationship with and for prescribing to T.Q. as outlined in the Stipulations of Fact, *supra*. The total civil penalties to be paid are five thousand dollars (\$5,000). Any and all civil penalties shall be paid within thirty (30) days of the effective date of this Consent Order. Any and all civil penalty payments shall be paid by 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, 2<sup>nd</sup> Floor, Nashville, Tennessee 37243. A notation shall be placed on said check that it is payable for the civil penalty of WHITAKER SMITH, M.D., COMPLAINT NO. 2014011721.


24. Respondent must pay the actual and reasonable costs associated with the investigation and prosecution of this case, in accordance with TENN. CODE ANN. §§ 63-1-144, 63-6-214 and TENN. COMP. R. & REGS 0880-02-.12. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. The maximum assessment of costs shall be limited to three thousand dollars (\$3000.00). 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, 2<sup>nd</sup> Floor, Nashville, Tennessee 37243. A notation shall be placed on said check that it is payable for the costs and civil penalties of WHITAKER SMITH, M.D., COMPLAINT NO. 2014011721.
25. Failure to comply with any of the terms of this Order shall be considered a Board Order violation, which may result in further discipline against Respondent.

26. Respondent understands that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (N.P.D.B.) and/or similar agency.

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 3<sup>rd</sup> day of November, 2021.

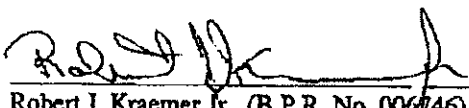
  
Chairperson  
Tennessee Board of Medical Examiners

**APPROVED FOR ENTRY:**

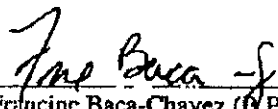
  
Whitaker M. Smith  
Respondent  
Tennessee Medical License No. 31792

November 02, 2021

DATE

  
Robert J. Kraemer Jr., (B.P.R. No. 006746)  
Respondent's attorney  
1209 Cedarbend Drive  
Mount Juliet, Tennessee 37122-2484

November 2, 2021  
DATE

  
Francine Baca-Chavez (O.P.R. #031864)  
Deputy General Counsel  
Office of General Counsel  
Tennessee Department of Health  
665 Mainstream Drive, 2<sup>nd</sup> Floor  
Nashville, Tennessee 37243  
(615) 741-1611


November 3, 2021  
DATE



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, through his attorney, Robert J. Kraemer, Jr. 1209 Cedarbend Drive, Mount Juliet, Tennessee 37122-2484 by delivering same in the United States Mail, Certified Number 7021 0950 0001 8066 9329, return receipt requested, United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination and via email at robkraem@lukraemer.com.

This 4<sup>th</sup> day of November, 2021.

  
Francine Baca-Chavez  
Deputy General Counsel