

**State of New Hampshire  
Board of Medicine  
Concord, New Hampshire 03301**

**In the Matter of:  
Whitaker M. Smith, M.D.,  
Compact Physician License #20120  
(Reciprocal Board Action)**

**Docket No.: 22-MED-009**

**SETTLEMENT AGREEMENT**

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, the New Hampshire Board of Medicine ("Board") and Whitaker M. Smith, M.D. (the "**Respondent**"), a physician licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 329:17, I; RSA 329:18; RSA 329:18-a; RSA 310-1-j, and Medical Administrative Rule ("Med") 206, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct. Pursuant to RSA 329-17-c and Med 410.01, after receiving notice that the licensee has been subjected to disciplinary action by a licensing authority of another jurisdiction, the Board may impose reciprocal discipline provided the licensee is given an opportunity to demonstrate why discipline should not be imposed. Pursuant to RSA 329:18-a, III and RSA 310-A:1-I, III, the Board may, at any time, dispose of such allegations by settlement and without commencing a hearing.
2. On 11/14/2019, the Board first granted Respondent a Compact Physician License #20120 to practice medicine in the State of New Hampshire. At all times since the issue date, the Respondent's License #20120 has remained current. Respondent's License #20120 will expire on 06/30/2023.

3. After receiving notice that the Respondent entered a *Consent Order* with the Tennessee Board of Medical Examiners, the Board issued *Notice of Show Cause Hearing 06/01/22 @ 1:00 PM* to provide the Respondent with an opportunity to demonstrate why reciprocal discipline should not be imposed.
4. Respondent stipulates that if a show cause/disciplinary hearing were to take place, the parties would be able to prove the following facts:
  - A. On 11/4/2021, Respondent entered into a *Consent Order* (“*Consent Order*”) with the Tennessee Board of Medical Examiners which imposed disciplinary actions against his Tennessee medical license.
  - B. At the time the Respondent entered the *Consent Order*, Respondent was licensed in New Hampshire by the Board.
  - C. Stipulation of Fact paragraphs 1-11 contained within the *Consent Order* are incorporated into this *Settlement Agreement* as written in the *Consent Order*. (See Attachment 1).
  - D. Respondent has demonstrated compliance with the terms of the *Consent Order*.
5. The Board finds that, if proven, the forgoing facts could form a basis for discipline under RSA 329:17-c and RSA 329:17, VI (b) and (l).
6. Wherefore, the Respondent consents to the Board imposing the following discipline and terms pursuant to RSA 329:17, VII:
  - A. The Respondent is REPRIMANDED.
  - B. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any

current employer or health care facility for whom Respondent performs services that require a medical license or directly or indirectly involves patient care.

- C. For a continuing period of one (1) year from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a physician or for work in any capacity which requires a medical license or directly or indirectly involves patient care.
- D. Pursuant to Med 411.02, Respondent shall reimburse the Board a non-disciplinary fee for investigation/prosecution costs in the sum of two hundred and fifty dollars (\$250.00). All payments shall be in the form of a check or money order made payable to the Treasurer, State of New Hampshire and shall specify on the memo line that the payment is for "Investigative/Prosecution Costs". The payment of two hundred and fifty dollars (\$250.00) shall be sent with a copy this *Settlement Agreement*. Payment shall be made within thirty (30) days of the effective date of this *Settlement Agreement*. Payment shall be sent to:

ATTN: OPLC Finance and Board of Medicine  
Office of Professional Licensure and Certification  
7 Eagle Sq.  
Concord, NH 03301

A separate mailed copy of the payment shall also be sent to:

ATTN: Jessica Kennedy, Administrator, and Collin Phillips, Attorney II  
Office of Professional Licensure and Certification  
7 Eagle Sq.  
Concord, NH 03301

- E. Respondent shall fully comply with the terms and conditions of any order by a licensing authority of another jurisdiction. Respondent has the affirmative duty to

inform the Board of any non-compliance with any order by a licensing authority of another jurisdiction.

7. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
8. The Board may consider Respondent's compliance with the terms and conditions herein in any subsequent proceeding before the Board regarding Respondent's license.
9. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the conduct described above. However, the Board may consider this conduct as evidence of a pattern of conduct in the event that similar conduct is proven against Respondent in the future. Additionally, the Board may consider this conduct as a factor in determining appropriate discipline in any future matter.
10. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
11. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
12. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
13. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.

14. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.
15. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
16. Respondent is not under the influence of any drugs or alcohol and is otherwise of sound mind at the time he signs this *Settlement Agreement*.
17. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities, and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.
18. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

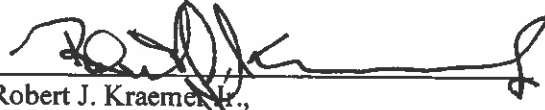
**FOR RESPONDENT**

Date: June 01, 2022



Whitaker M. Smith, MD  
Respondent  
New Hampshire Med. Lic. #20120

Date: June 1, 2022



Robert J. Kraemer, Jr.,  
Attorney at Law  
Counsel for Respondent  
1209 Cedarbend Dr.  
Mt. Juliet, TN 37122-2484

**FOR THE BOARD**

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 8/23/2022

  
(Signature)

Christine L. Senko  
(Print or Type Name)  
Authorized Representative of the  
New Hampshire Board of Medicine

Attachment 1: *Consent Order*

STATE OF TENNESSEE  
DEPARTMENT OF HEALTH

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

CONSENT ORDER

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. In May of 2014, Respondent's employer, Mountain Regional Family Medicine Group, required Respondent to obtain an evaluation from the Tennessee Medical Foundation (TMF) because of a noticeable pattern of cancelling or missing scheduled work days.



3. In January of 2015, Respondent underwent a comprehensive evaluation with the Center for Professional Excellence at the request of TMF secondary to a complaint that he was abusing alcohol.
4. On or about January 27, 2015, Respondent signed his first contract with TMF. Respondent signed his second contract on March 3, 2017 after completing treatment at Positive Sobriety Institute in Chicago. Respondent is currently compliant with all of the terms of his TMF contract. Respondent's contract terminates on March 17, 2022.
5. In addition, to Respondent's use of alcohol, Respondent wrote several prescriptions for Concerta, a schedule II controlled substance, for his son, D.S. from approximately April 2010 through April 2014. During approximately the same time period, Respondent also wrote prescriptions for non controlled substances for D.S. including prescriptions for antibiotics, although the vast majority of the prescriptions were for Concerta.
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 his daughter 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. On February 20, 2014, Respondent sent T.Q. a patient discharge letter stating that she was in violation of her controlled substance agreement.

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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 TENN. CODE ANN. § 63-6-214 (b)(5):

Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, controlled substance analogues or other drugs or stimulants in such manner as to adversely affect the person's ability to practice medicine

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.
18. Respondent shall maintain the advocacy of the TMF;
  - a. Respondent shall maintain one hundred percent (100%) compliance with all provisions of the TMF monitoring/advocacy contract, or extension thereto he has entered with the TMF;
  - b. During the length of his TMF contract, Respondent shall authorize the TMF to provide compliance reports to the Board's Medical Consultant every 3 months detailing Respondent's compliance with the terms of his TMF contract with the first report due three months following the effective date of this Order;
  - c. Cause the TMF to notify the Board's Disciplinary Coordinator in writing of any violation of the TMF contract;
  - d. Immediately notify the Board's Medical Consultant if at any time Respondent no longer has the advocacy of TMF.
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.

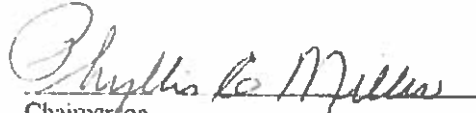
21. Respondent shall successfully complete within one hundred and twenty (120) days of entry of this Order, the equivalent of a two (2) day medical course entitled "*Medical Ethics, Boundaries and Professionalism*" offered at The Case Western Reserve University Continuing Medical Education Program at 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 to his children 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 3rd day of November, 2021.


  
Chairperson  
Tennessee Board of Medical Examiners

APPROVED FOR ENTRY:

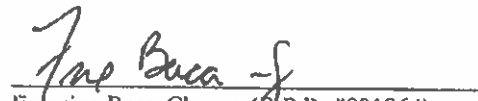
  
Whitaker M. Smith  
Respondent  
Tennessee Medical License No. 31792

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

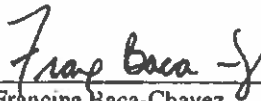
  
Francine Baca-Chavez (B.P.R. #031864)  
Deputy General Counsel  
Office of General Counsel  
Tennessee Department of Health  
665 Mainstream Drive, 2nd Floor  
Nashville, Tennessee 37243  
(615) 741-1611

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 7329, return receipt requested, United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination and via email at robkrmr@mkraemer.com.

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

  
Francine Baca-Chavez  
Deputy General Counsel