

IN AND BEFORE THE OKLAHOMA STATE BOARD  
OF MEDICAL LICENSURE AND SUPERVISION  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.*, )  
 THE OKLAHOMA STATE BOARD )  
 OF MEDICAL LICENSURE AND )  
 SUPERVISION, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 WHITAKER MICHAEL SMITH, M.D., )  
 LICENSE NO. MD 38296, )  
 )  
 Defendant. )

**FILED**

SEP 15 2022

OKLAHOMA STATE BOARD OF  
MEDICAL LICENSURE & SUPERVISION

Case No. 22-01-6087

**ORDER ACCEPTING  
VOLUNTARY SUBMITTAL TO JURISDICTION**

The State of Oklahoma, *ex rel.* Oklahoma State Board of Medical Licensure and Supervision (“Board”), by and through the undersigned counsel for the Plaintiff, as represented by the Secretary of the Board, Billy H. Stout, M.D., and the Executive Director of the Board, Lyle Kelsey, along with Whitaker Michael Smith, M.D. (“Defendant”), Oklahoma medical license no. 38296, who appears not, by agreement (collectively, the “Parties”), and offer this Order Accepting Voluntary Submittal to Jurisdiction (herein, “Order” or “Agreement”) for acceptance by the Board. Okla. Admin. Code § 435:5-1-5.1.

By voluntarily submitting to jurisdiction and entering into this Order, Defendant acknowledges that a hearing before the Board could result in some sanction under the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act (“Act”). 59 O.S. § 480, *et seq.*

Defendant, Whitaker Michael Smith, M.D., states that he is of sound mind and is not under the influence of, or impaired by, any medication or drug and that he fully recognizes his right to appear before the Board for an evidentiary hearing on the allegations made against him. Defendant hereby voluntarily waives his right to a full hearing, admits to certain allegations below, submits to the jurisdiction of the Board, and agrees to abide by the terms and conditions of this Order. Defendant acknowledges that

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he has read and understands the terms and conditions stated herein, and that this Agreement may be reviewed and discussed with him by legal counsel prior to execution.

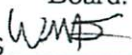
If the Board does not accept this Order the Parties stipulate that it shall be regarded as null and void. Admissions by Defendant herein, if any, shall not be regarded as evidence against him in a subsequent disciplinary hearing. Defendant will be free to defend himself and no inferences will be made from his willingness to have this Order accepted by the Board. The Parties stipulate that neither the presentation of this Order nor the Board's consideration of this Order shall be deemed to have unfairly or illegally prejudiced the Board or its individual members and, therefore, shall not be grounds for precluding the Board nor any individual Board member from further participation in proceedings related to the matters set forth herein.

### Findings of Fact and Recognition of Allegations

The Plaintiff, Defendant, and the Board staff each stipulate that the Plaintiff has made the following allegations against Defendant:

1. In Oklahoma, Defendant holds medical license no. 28296.
2. On November 2, 2021, Defendant signed a Consent Order with the Tennessee Board of Medical Examiners wherein he agreed to discipline by that body for acts that, had they been done in Oklahoma or while engaging in the practice of medicine or surgery pursuant to his Oklahoma medical license, would constitute violations of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act. The acts for which Defendant was disciplined in Tennessee included the following:
3. Defendant wrote several prescriptions for Concerta, a schedule II controlled substance, for his son from approximately April 2010 through April 2014. Defendant maintained a medical record for his son, although the record did not contain periodic visits to coincide with the prescriptions written.
4. Defendant wrote prescriptions for Concerta, a schedule II controlled substance, for his daughter from approximately March 2010 through June 2014. Defendant maintained a medical record for his daughter, although the record did not contain periodic visits to coincide with the prescriptions written.
5. The Board in Tennessee also included allegations of substance abuse by Defendant and an inappropriate sexual relationship with a patient to whom he wrote approximately ten (10) prescriptions of Alprazolam (schedule IV) and eight (8) prescriptions of Oxycodone (schedule II).
6. The Tennessee Board reprimanded defendant. They further required him to maintain the advocacy of TMF (equivalent of OHPP) and authorize quarterly reports to the Board. Defendant was further ordered not to prescribe opioids for at least six (6)

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months, and until successful completion of specified continuing education. Those courses consist of a two (2) day medical course entitled "Medical Ethics, Boundaries and Professionalism offered at the Case Western Reserve University Continuing Medical Education Program or equivalent course with prior approval. Defendant was also required to complete the three (3) day medical course entitled Prescribing Controlled Drugs: Critical Issues and Common Pitfalls offered by Vanderbilt University Medical Center or equivalent course with prior approval. Defendant was also fined \$5,000 and made to pay costs.

### Conclusions of Law

5. The Board has jurisdiction over the subject matter and is a duly authorized agency of the State of Oklahoma empowered to license and oversee activities of physicians and surgeons in Oklahoma. 59 O.S. § 480 *et seq.* and Okla. Admin. Code §§ 435:5-1-1 *et seq.*
6. Notice was provided as required by law and the rules of the Board. 75 O.S. § 309; 59 O.S. § 504; Okla. Admin. Code §§ 435:3-3-5, 435:3-3-6.
7. The Board is authorized to suspend, revoke, or order any other appropriate conditions against the license of any physician or surgeon holding a license to practice medicine in the State of Oklahoma for unprofessional conduct. 59 O.S. §§ 503, 513(A)(1). The Board's action is authorized by 59 O.S. § 509.1.
8. The Board is authorized to accept voluntary submittals to jurisdiction mutually agreed to by parties to a disciplinary action to resolve the action without need for a hearing. 75 O.S. § 309(E); Okla. Admin. Code § 435:5-1-5.1.
9. Based on the foregoing, the Defendant is guilty of unprofessional conduct as follows:
  - a. Any disciplinary action taken by any member board against a physician licensed through the compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the Medical Practice Act or regulations in that state, in violation of 59 O.S. § 493.7(10)(a)
  - b. 59 O.S. § 493.7(10)(c): If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:
    - (1) impose the same or lesser sanction(s) against the physician so long as such sanction(s) are consistent with the Medical Practice Act of that state, or

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(2) pursue separate disciplinary action against the physician under its respective Medical Practice Act, regardless of the action taken in other member states.

Orders

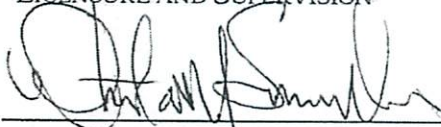
**IT IS THEREFORE ORDERED** by the Oklahoma State Board of Medical Licensure and Supervision as follows:

1. The Board hereby adopts the Agreement of the Parties in this Order Accepting Voluntary Submittal to Jurisdiction, including the findings of fact and conclusions of law stated herein.
2. Defendant is hereby **REPRIMANDED**.
3. Defendant is fined \$3,500, to be paid within 120 days of this Order.
4. Promptly upon receipt of an invoice, Defendant shall pay all costs of this action authorized by law, including without limitation, legal fees, investigation costs, staff time, salary and travel expenses, witness fees and attorney's fees.
5. A copy of this Order shall be provided to Defendant as soon as it is processed.

Dated this 15<sup>th</sup> day of September, 2022.



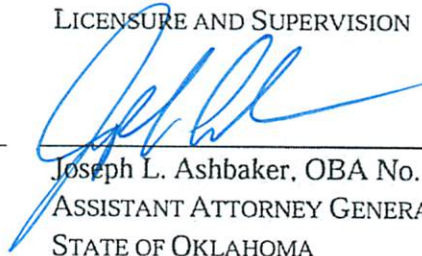
Billy H. Stout, M.D., Board Secretary  
OKLAHOMA STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION



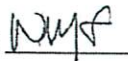
Whitaker Michael Smith, M.D.  
*Defendant, Pro Se*



Clayton Bullard, M.D., President  
OKLAHOMA STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION



Joseph L. Ashbaker, OBA No. 19395  
ASSISTANT ATTORNEY GENERAL  
STATE OF OKLAHOMA  
OFFICE OF ATTORNEY GENERAL  
*Attorney for Plaintiff,*  
*Oklahoma State Board of Medical*  
*Licensure and Supervision*

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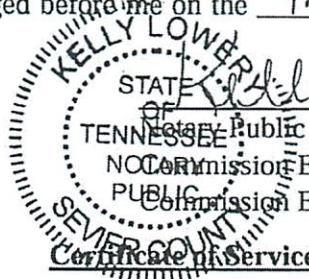




**ACKNOWLEDGMENT**

STATE OF TENNESSEE )  
 ) ss.  
COUNTY OF Sevier )

This instrument was acknowledged before me on the 9th day of ~~August~~ September 2022, by Whitaker Michael Smith, M.D.

  
STATE OF TENNESSEE  
Notary Public  
KELLY LOWER  
TENNESSEE  
NOTARY PUBLIC  
Commission Expiration: 4/22/26  
PUBLIC  
Commission Expiration: \_\_\_\_\_  
Certificate of Service

This is to certify that on the 14th day of September, 2022, a true and correct copy of this Order Accepting Voluntary Submittal to Jurisdiction was transmitted as indicated, postage prepaid, to the following:

U.S. Certified Mail

Whitaker Michael Smith, M.D.  
366 MEADOWLAKE CIRCLE  
SEYMOUR TN 37865

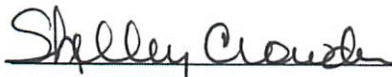
***Defendant***

U.S. First Class Mail, and E-Mail

c/o Robert J. Kraemer, Jr.  
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***Attorney for Defendant,  
Whitaker M. Smith, M.D.***

E-Mail

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***Attorney for Plaintiff,  
Oklahoma State Board of Medical  
Licensure and Supervision***

  
Shelley Crowder

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