

COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1402

FILED OF RECORD

MAR -7 2013

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF  
KENTUCKY HELD BY DAVID E. SMITH, M.D., LICENSE NO. 36603, 230  
WAVERLY PLACE, PADUCAH, KENTUCKY 42001

**AGREED ORDER**

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, and David E. Smith, M.D. ("the licensee"), and, based upon their mutual desire to allow the licensee to resume the practice of medicine, hereby ENTER INTO the following **AGREED ORDER**:

**STIPULATIONS OF FACT**

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order:

1. At all relevant times, David E. Smith, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is family medicine.
3. On or about March 8, 2011, the licensee presented a prescription for a controlled substance to CVS Pharmacy and asked the pharmacist not to claim it through his insurance.
4. The pharmacist, Edwin Allbritten, became suspicious because the signature did not match that of Terri Telle, M.D. (the alleged-prescribing physician and the licensee's colleague), and he knew that Dr. Telle did not write for the type or amount of medication very often. Mr. Allbritten then called Dr. Telle and left her a message to return his call that afternoon.

5. Before Dr. Telle could return Mr. Allbritten's phone call, the licensee disclosed to her that he had become addicted to prescription pain medications and that he had been using Dr. Telle's name and forging her signature on controlled substance prescriptions made out to his own name, his wife's name and other patient names on several occasions, beginning as far back as 2009.
6. A review of KASPER reports on both the licensee and his wife's names, revealed that the licensee had obtained 4,989 units of controlled substances from February 11, 2009 through April 27, 2011.
7. Dr. Telle reported these events to the Kentucky State Police and the licensee was charged with several counts of Forgery of a Prescription for a Controlled Substance.
8. On or about June 8, 2011, the licensee reported to the Kentucky Physicians Health Foundation ("the Foundation") and, at its direction, on June 27, 2011, entered residential treatment at Metro Atlanta Recovery Residences ("MARR").
9. On or about June 20, 2011, the licensee entered into an Interim Agreed Order (Treatment) with the Board. Pursuant to the Treatment Order, the licensee was prohibited from the practice of medicine until further order of the Board and consideration of the Board's investigation into the above-described events would be held in abeyance until such time as the licensee completed residential treatment.
10. On or about September 30, 2011, the licensee successfully completed residential treatment at MARR and was discharged with an Axis I diagnosis of Opioid Dependence.

11. Upon discharge, MARR concluded that the licensee was “physically and mentally fit and competent to fully retire any and all responsibilities as a Medical Doctor.”
12. On or about October 7, 2011, the licensee entered into an Aftercare Contract with the Foundation.
13. On or about November 11, 2011, Lourdes Hospital (Paducah, Kentucky) suspended the licensee’s privileges in that facility pending final outcome of the criminal proceedings.
14. In February 2012, the criminal charges were amended so that the licensee was indicted on
  - Three (3) counts of First Degree Possession of a Controlled Substance – Oxycodone (a Schedule II narcotic controlled substance);
  - Two (2) counts of First Degree Possession of a Controlled Substance – Endocet (a Schedule II narcotic controlled substance);
  - Twenty-three (23) counts of Second Degree Possession of a Controlled Substance – Hydrocodone (a Schedule III controlled substance); and
  - Four (4) counts of Third Degree Possession of a Controlled Substance – Tramadol (a Schedule IV controlled substance).

The prosecution of the indictment was postponed and suspended pending the outcome of the licensee’s compliance with an agreement of deferred prosecution, not to exceed two (2) years or upon the licensee’s successful completion of Drug Court.

15. In May 2012, the licensee entered into an Agreed Order of Indefinite Restriction, under which he agreed to not practice medicine for at least six (6) months and only upon Panel approval.

16. In January 2013, the licensee completed the "Prescribing Controlled Drugs" course at The Center for Professional Health at Vanderbilt University Medical Center, Nashville, Tennessee.
17. In February 2013, the licensee completed and unconditionally passed the ProBe, an ethics program offered through the Center for Personalized Education for Physicians (CPEP).
18. In February 2013, the Kentucky Physicians Health Foundation reported that the licensee maintained sobriety, remained compliant with the Foundation's directives and that the licensee's return to practice would not present a danger to patients or the public or otherwise compromise his personal recovery.
19. On February 21, 2013, the Panel allowed the licensee to resume the practice of medicine pursuant to the terms and conditions stated in this Agreed Order.

#### STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(6), (8), (10), (21) and (9), as illustrated by KRS 311.597(1)(a), (c) and (d) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.

3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve a grievance without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

### AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to allow the licensee to resume the practice of medicine, the parties hereby ENTER INTO the following **AGREED ORDER**:

1. The license to practice medicine in the Commonwealth of Kentucky held by David E. Smith, M.D., SHALL BE SUBJECT to this Agreed Order for a period of FIVE (5) YEARS from the date of filing of the Agreed Order;
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
  - a. The licensee shall maintain a "controlled substances log" for all controlled substances prescribed. The controlled substances log must include date, patient name, patient complaint, medication prescribed, when it was last prescribed and how much on the last visit. Note: All log sheets will be consecutively numbered, legible i.e. printed or typed, and must reflect "call-in" and refill information. Prescriptions should be maintained in the following manner: 1) patient; 2) chart; and 3) log;
  - b. The licensee SHALL permit the Board's agents to inspect, copy and/or obtain the controlled substance log and other relevant records, upon request, for review by the Board's agents and/or consultants;

- c. The licensee SHALL reimburse the Board fully for the costs of each consultant review performed pursuant to this Agreed Order. Once the Board receives the invoice from the consultant(s) for each review, it will provide the licensee with a redacted copy of that invoice, omitting the consultant's identifying information. The licensee SHALL pay the costs noted on the invoice within thirty (30) days of the date on the Board's written notice. The licensee's failure to fully reimburse the Board within that time frame SHALL constitute a violation of this Agreed Order;
- d. The licensee understands and agrees that at least one favorable consultant review must be performed, on terms determined by the Panel or its staff, before the Panel will consider a request to terminate this Agreed Order;
- e. The licensee shall maintain his contractual relationship with the Kentucky Physicians Health Foundation and shall fully comply with all requirements of that contractual relationship;
- f. The licensee shall completely abstain from the consumption of mood-altering substances, including alcohol, except as prescribed by a duly licensed practitioner for a documented legitimate medical purpose. The licensee must ensure that any such medical treatment and prescribing is reported directly to the Board in writing by my treating physician within ten (10) days after the date of treatment. The licensee must inform the treating physician of this responsibility and ensure timely compliance. The licensee's failure to inform the treating physician of this responsibility shall be considered a violation of this Agreed Order;



and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

SO AGREED on this 7<sup>th</sup> day of March, 2013.

FOR THE LICENSEE:

David E. Smith, MD  
DAVID E. SMITH, M.D.

Brian R. Good  
BRIAN R. GOOD  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:

C. William Briscoe, MD  
C. WILLIAM BRISCOE, M.D.  
CHAIR, INQUIRY PANEL A

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COMMONWEALTH OF KENTUCKY  
BOARD OF MEDICAL LICENSURE  
CASE NO. 1402

MAY 31 2012

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF KENTUCKY HELD BY DAVID E. SMITH, M.D., LICENSE NO. 36603, 230 WAVERLY PLACE, PADUCAH, KENTUCKY 42001

**AGREED ORDER OF INDEFINITE RESTRICTION**

Come now the Kentucky Board of Medical Licensure ("the Board"), acting by and through its Inquiry Panel A, and David E. Smith, M.D. ("the licensee"), and, based upon their mutual desire to fully and finally resolve this pending grievance without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION**:

**STIPULATIONS OF FACT**

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order of Indefinite Restriction:

1. At all relevant times, David E. Smith, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is family medicine.
3. On or about March 8, 2011, the licensee presented a prescription for a controlled substance to CVS Pharmacy and asked the pharmacist not to claim it through his insurance.
4. The pharmacist, Edwin Allbritten, became suspicious because the signature did not match that of Terri Telle, M.D. (the alleged-prescribing physician and the licensee's colleague), and he knew that Dr. Telle did not write for the type or

amount of medication very often. Mr. Allbritten then called Dr. Telle and left her a message to return his call that afternoon.

5. Before Dr. Telle could return Mr. Allbritten's phone call, the licensee disclosed to her that he had become addicted to prescription pain medications and that he had been using Dr. Telle's name and forging her signature on controlled substance prescriptions made out to his own name, his wife's name and other patient names on several occasions, beginning as far back as 2009.
6. A review of KASPER reports on both the licensee and his wife's names, revealed that the licensee had obtained 4,989 units of controlled substances from February 11, 2009 through April 27, 2011.
7. Dr. Telle reported these events to the Kentucky State Police and the licensee was charged with several counts of Forgery of a Prescription for a Controlled Substance.
8. On or about June 8, 2011, the licensee reported to the Kentucky Physicians Health Foundation ("the Foundation") and, at its direction, on June 27, 2011, entered residential treatment at Metro Atlanta Recovery Residences ("MARR").
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10. On or about September 30, 2011, the licensee successfully completed residential treatment at MARR and was discharged with an Axis I diagnosis of Opioid Dependence.
11. Upon discharge, MARR concluded that the licensee was “physically and mentally fit and competent to fully retire any and all responsibilities as a Medical Doctor.”
12. On or about October 7, 2011, the licensee entered into an Aftercare Contract with the Foundation.
13. On or about November 11, 2011, Lourdes Hospital (Paducah, Kentucky) suspended the licensee’s privileges in that facility pending final outcome of the criminal proceedings.
14. In February 2012, the criminal charges were amended so that the licensee was indicted on
  - Three (3) counts of First Degree Possession of a Controlled Substance – Oxycodone (a Schedule II narcotic controlled substance);
  - Two (2) counts of First Degree Possession of a Controlled Substance – Endocet (a Schedule II narcotic controlled substance);
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  - Four (4) counts of Third Degree Possession of a Controlled Substance – Tramadol (a Schedule IV controlled substance).

The prosecution of the indictment was postponed and suspended pending the outcome of the licensee’s compliance with an agreement of deferred prosecution, not to exceed two (2) years or upon the licensee’s successful completion of Drug Court.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order of Indefinite Restriction:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(6), (8), (10), (21) and (9), as illustrated by KRS 311.597(1)(a), (c) and (d) and (4). Accordingly, there are legal grounds for the parties to enter into this Agreed Order of Indefinite Restriction.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending grievance without an evidentiary hearing by entering into an informal resolution such as this Agreed Order of Indefinite Restriction.

AGREED ORDER OF INDEFINITE RESTRICTION

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve this pending grievance without an evidentiary hearing, the parties hereby ENTER INTO the following **AGREED ORDER OF INDEFINITE RESTRICTION:**

1. The license to practice medicine in the Commonwealth of Kentucky held by David E. Smith, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Order;
2. During the effective period of this Agreed Order of Indefinite Restriction, the licensee's Kentucky medical license SHALL BE SUBJECT TO THE

FOLLOWING TERMS AND CONDITIONS OF RESTRICTION/LIMITATION

for an indefinite term, or until further order of the Board:

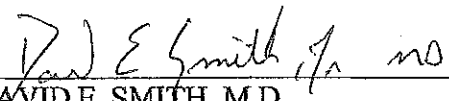
- a. The licensee SHALL NOT perform any act within the Commonwealth of Kentucky which would constitute the “practice of medicine or osteopathy,” as that term is defined by KRS 311.550(10) – the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities,” unless and until approved to do so by the Panel;
  - b. The Panel will not consider a request by the licensee to resume the practice of medicine in the Commonwealth of Kentucky for a minimum period of six (6) months from the date of filing of this Agreed Order of Indefinite Restriction;
    - i. Any request by the licensee to resume the practice of medicine in the Commonwealth of Kentucky must be accompanied by a favorable recommendation by the Kentucky Physicians Health Foundation, which shall include a statement that the licensee has been compliant with the Foundation’s directives and affirming that the licensee’s return to practice would not present a danger to his patients or the public;
  - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order of Indefinite Restriction, the licensee’s practice will constitute

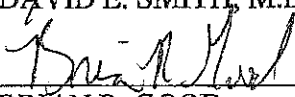
an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Agreed Order of Indefinite Restriction, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order of Indefinite Restriction would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order of Indefinite Restriction.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order of Indefinite Restriction would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13), and may provide a legal basis for criminal prosecution.

SO AGREED on this 22 day of May, 2012.

FOR THE LICENSEE:

  
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DAVID E. SMITH, M.D.

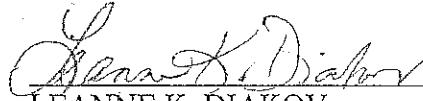
  
\_\_\_\_\_  
BRIAN R. GOOD  
COUNSEL FOR THE LICENSEE

FOR THE BOARD:



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C. WILLIAM BRISCOE, M.D.  
CHAIR, INQUIRY PANEL A



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