

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

**Case No. MD-19-0852A**

3 **ROBERT B. SMITH, M.D.**

**ORDER FOR SURRENDER  
OF LICENSE AND  
CONSENT TO THE SAME**

4 Holder of License No. 6068  
5 For the Practice of Allopathic Medicine  
6 In the State of Arizona.

7 Robert B. Smith, M.D. ("Respondent") elects to permanently waive any right to a  
8 hearing and appeal with respect to this Order for Surrender of License; admits the  
9 jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order  
10 by the Board.

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for the regulation and control of  
13 the practice of allopathic medicine in the State of Arizona.

14 2. Respondent is the holder of license number 6068 for the practice of  
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-19-0852A after receiving a complaint  
17 regarding Respondent's care and treatment of a 75 year-old male patient ("MU") alleging  
18 improper care and treatment of lung congestion and fluid retention.

19 4. On August 20, 2019, MU presented to Respondent's office with the  
20 complaint of chest congestion for five days. MU had a past medical history of diabetes,  
21 COPD, aortic valve replacement, and obesity. MU's vital signs showed a heart rate of 153,  
22 blood pressure of 132/82, and an oxygen saturation of 93. Respondent diagnosed MU with  
23 an upper respiratory infection with bronchitis. Respondent prescribed Keflex 500mg three  
24 times daily and instructed MU to follow up in two days.

25 5. MU's condition continued to worsen throughout the day and he presented to  
a Hospital for a complaint of shortness of breath. MU's vital signs showed a heart rate of

1 155, blood pressure of 147/95, and an oxygen saturation of 94. MU was admitted with  
2 diagnoses that included dyspnea, congestive heart failure exacerbation, COPD  
3 exacerbation, and new onset atrial fibrillation. A chest x-ray was performed that showed  
4 right upper lobe pneumonia. MU was discharged from the hospital on August 29, 2019 to a  
5 skilled nursing facility.

6 6. The standard of care requires a physician to perform an adequate history  
7 and physical examination. Respondent deviated from this standard of care by failing to  
8 perform an adequate history and physical examination of MU.

9 7. Actual patient harm was identified in that MU was admitted to Tucson  
10 Medical Center for congestive heart failure, atrial fibrillation, and right lung pneumonia.

11 8. There was the potential for patient harm in that if MU had followed  
12 Respondent's treatment plan, he would have been critically ill or worse in a very short  
13 time.

14 9. Respondent has requested to surrender his license.

#### 15 **CONCLUSIONS OF LAW**

16 a. The Board possesses jurisdiction over the subject matter hereof and over  
17 Respondent.

18 b. The conduct and circumstances described above constitute unprofessional  
19 conduct pursuant to A.R.S. § 32-1401(27)(e) ("Failing or refusing to maintain adequate  
20 records on a patient.").

21 c. The conduct and circumstances described above constitute unprofessional  
22 conduct pursuant to A.R.S. § 32-1401(27)(r) ("Committing any conduct or practice that is or  
23 might be harmful or dangerous to the health of the patient or the public.").

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1 d. The Board possesses statutory authority to enter into a consent agreement  
2 with a physician and accept the surrender of an active license from a physician who admits  
3 to having committed an act of unprofessional conduct. A.R.S. § 32-1451(T)(2).

4 **ORDER**

5 IT IS HEREBY ORDERED THAT Respondent immediately surrender License  
6 Number 6068, issued to Robert B. Smith, M.D., for the practice of allopathic medicine in  
7 the State of Arizona, and return his certificate of licensure to the Board.

8 DATED AND EFFECTIVE this 4<sup>th</sup> day of September, 2020.

9 ARIZONA MEDICAL BOARD

10  
11 By   
12 Patricia E. McSorley  
13 Executive Director

14 **CONSENT TO ENTRY OF ORDER**

15 1. Respondent has read and understands this Consent Agreement and the  
16 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent  
17 acknowledges he has the right to consult with legal counsel regarding this matter.

18 2. Respondent acknowledges and agrees that this Order is entered into freely  
19 and voluntarily and that no promise was made or coercion used to induce such entry.

20 3. By consenting to this Order, Respondent voluntarily relinquishes any rights to  
21 a hearing or judicial review in state or federal court on the matters alleged, or to challenge  
22 this Order in its entirety as issued by the Board, and waives any other cause of action  
23 related thereto or arising from said Order.

24 4. The Order is not effective until approved by the Board and signed by its  
25 Executive Director.

1           5. All admissions made by Respondent in this Order are solely for final  
2 disposition of this matter and any subsequent related administrative proceedings or civil  
3 litigation involving the Board and Respondent. Therefore, said admissions by Respondent  
4 are not intended or made for any other use, such as in the context of another state or  
5 federal government regulatory agency proceeding, civil or criminal court proceeding, in the  
6 State of Arizona or any other state or federal court.

7           6. Notwithstanding any language in this Order, this Order does not preclude in  
8 any way any other State agency or officer or political subdivision of this state from  
9 instituting proceedings, investigating claims, or taking legal action as may be appropriate  
10 now or in the future relating to this matter or other matters concerning Respondent,  
11 including but not limited to, violations of Arizona's Consumer Fraud Act. Respondent  
12 acknowledges that, other than with respect to the Board, this Order makes no  
13 representations, implied or otherwise, about the views or intended actions of any other  
14 state agency or officer or political subdivisions of the State relating to this matter or other  
15 matters concerning Respondent.

16           7. Upon signing this agreement, and returning this document (or a copy thereof)  
17 to the Board's Executive Director, Respondent may not revoke the consent to the entry of  
18 the Order. Respondent may not make any modifications to the document. Any  
19 modifications to this original document are ineffective and void unless mutually approved  
20 by the parties.

21           8. This Order is a public record that will be publicly disseminated as a formal  
22 disciplinary action of the Board and will be reported to the National Practitioner's Data  
23 Bank and on the Board's web site as a disciplinary action.

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1 9. If the Board does not adopt this Order, Respondent will not assert as a  
2 defense that the Board's consideration of the Order constitutes bias, prejudice,  
3 prejudgment or other similar defense.

4 10. **Respondent has read and understands the conditions of probation.**

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7 ROBERT B. SMITH, M.D.

DATED: 8-25-2020

8 EXECUTED COPY of the foregoing mailed  
9 this 4<sup>th</sup> day of September, 2020 to:

10 Dan Cavett, Esq.  
11 Cavett & Fulton, PC  
12 6035 East Grant Road  
Tucson, Arizona 85712

13 ORIGINAL of the foregoing filed  
this 4<sup>th</sup> day of September, 2020 with:

14 Arizona Medical Board  
15 1740 West Adams, Suite 4000  
Phoenix, Arizona 85007

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18 Board staff