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**BEFORE THE ARIZONA MEDICAL BOARD**

In the Matter of  
**WHITAKER M. SMITH, M.D.**  
Holder of License No. **59894**  
For the Practice of Allopathic Medicine  
In the State of Arizona.

**Case No. MD-21-1039A**  
**INTERIM CONSENT AGREEMENT**  
**FOR PRACTICE RESTRICTION**

**INTERIM CONSENT AGREEMENT**

Whitaker M. Smith, M.D. ("Respondent") elects to permanently waive any right to a hearing and appeal with respect to this Interim Consent Agreement for Practice Restriction and consents to the entry of this Order by the Arizona Medical Board ("Board").

**INTERIM FINDINGS OF FACT**

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.
2. Respondent is the holder of License No. 59894 for the practice of allopathic medicine in the State of Arizona.
3. The Board initiated case number MD-21-1039A after receiving a notification that Respondent's Tennessee medical license had been restricted by the Tennessee Board of Medical Examiners ("Tennessee Board").
4. Effective November 3, 2021, Respondent entered into a Consent Order with the Tennessee Board with terms and conditions including a provision prohibiting him from prescribing opioids from six months, pending completion of intensive, in-person continuing medical education in medical ethics and controlled substance prescribing.
5. The aforementioned information was presented to the investigative staff, the medical consultant and the lead Board member. All reviewed the information and concur

1 that the interim consent agreement to restrict Respondent's ability to prescribe opioids  
2 pending the outcome of a formal interview or formal hearing is appropriate.

3 6. The investigation into this matter is pending Board review.

4 **INTERIM CONCLUSIONS OF LAW**

5 1. The Board possesses jurisdiction over the subject matter hereof and over  
6 Respondent.

7 2. Pursuant to A.R.S. § 32-1405(C)(25) the Executive Director has authority to  
8 enter into a consent agreement when there is evidence of danger to the public health and  
9 safety.

10 3. Pursuant to A.A.C. R4-16-504, the Executive Director may enter into an  
11 interim consent agreement when there is evidence that a restriction is needed to mitigate  
12 imminent danger to the public's health and safety. Investigative staff, the Board's medical  
13 consultant and the lead Board member have reviewed the case and concur that an interim  
14 consent agreement is appropriate.

15 **INTERIM ORDER**

16 IT IS HEREBY ORDERED THAT:

17 1. Respondent is prohibited from prescribing opioids in the State of Arizona.

18 2. Respondent may request, in writing, release and/or modification of this  
19 Interim Consent Agreement. Respondent's request for release or modification must be  
20 accompanied by proof that he has completed the continuing medical education required by  
21 the Tennessee Board's Order, and has been authorized to return to full prescribing  
22 authority by the Tennessee Board. The Executive Director, in consultation with and  
23 agreement of the lead Board member and the Chief Medical Consultant, has the discretion  
24 to determine whether it is appropriate to release Respondent from this Interim Consent  
25 Agreement.

1           3.     The Board retains jurisdiction and may initiate new action based upon any  
2 violation of this Interim Consent Agreement, including, but not limited to, summarily  
3 suspending Respondent's license.

4           4.     Because this is an Interim Consent Agreement and not a final decision by  
5 the Board regarding the investigation, it is subject to further consideration by the Board.

6           5.     This Interim Consent Agreement shall be effective on the date signed by the  
7 Board's Executive Director.

8   **RECITALS**

9           Respondent understands and agrees that:

10          1.     The Board, through its Executive Director, may adopt this Interim Consent  
11 Agreement, or any part thereof, pursuant to A.R.S. § 32-1405(C)(25) and A.A.C. R4-16-  
12 504.

13          2.     Respondent has read and understands this Interim Consent Agreement as  
14 set forth herein, and has had the opportunity to discuss this Interim Consent Agreement  
15 with an attorney or has waived the opportunity to discuss this Interim Consent Agreement  
16 with an attorney. Respondent voluntarily enters into this Interim Consent Agreement and  
17 by doing so agrees to abide by all of its terms and conditions.

18          3.     By entering into this Interim Consent Agreement, Respondent freely and  
19 voluntarily relinquishes all rights to an administrative hearing on the matters set forth  
20 herein, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or  
21 any other administrative and/or judicial action, concerning the matters related to the  
22 Interim Consent Agreement.

23          4.     Respondent understands that this Interim Consent Agreement does not  
24 constitute a dismissal or resolution of this matter or any matters that may be currently  
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1 pending before the Board and does not constitute any waiver, express or implied, of the  
2 Board's statutory authority or jurisdiction regarding this or any other pending or future  
3 investigations, actions, or proceedings. Respondent also understands that acceptance of  
4 this Interim Consent Agreement does not preclude any other agency, subdivision, or  
5 officer of this State from instituting civil or criminal proceedings with respect to the conduct  
6 that is the subject of this Interim Consent Agreement. Respondent further does not  
7 relinquish his/her rights to an administrative hearing, rehearing, review, reconsideration,  
8 judicial review or any other administrative and/or judicial action, concerning the matters  
9 related to a final disposition of this matter, unless Respondent affirmatively does so as part  
10 of the final resolution of this matter.

11           5. Respondent acknowledges and agrees that upon signing this Interim  
12 Consent Agreement and returning it to the Board's Executive Director, Respondent may  
13 not revoke acceptance of this Interim Consent Agreement or make any modifications to it.  
14 Any modification of this original document is ineffective and void unless mutually approved  
15 by the parties in writing.

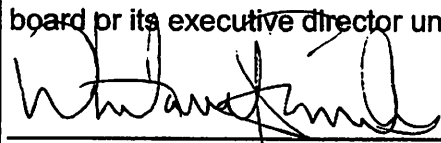
16           6. Respondent understands that this Interim Consent Agreement shall not  
17 become effective unless and until it is signed by the Board's Executive Director.

18           7. Respondent understands and agrees that if the Board's Executive Director  
19 does not adopt this Interim Consent Agreement, he will not assert in any future  
20 proceedings that the Board's consideration of this Interim Consent Agreement constitutes  
21 bias, prejudice, prejudgment, or other similar defense.  
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1 8. Respondent understands that this Interim Consent Agreement is a public  
2 record that may be publicly disseminated as a formal action of the Board, and that it shall  
3 be reported as required by law to the National Practitioner Data Bank.

4 9. Respondent understands that this Interim Consent Agreement does not  
5 alleviate Respondent's responsibility to comply with the applicable license-renewal  
6 statutes and rules. If this Interim Consent Agreement remains in effect at the time  
7 Respondent's allopathic medical license comes up for renewal, Respondent must renew  
8 the license if Respondent wishes to retain the license. If Respondent elects not to renew  
9 the license as prescribed by statute and rule, Respondent's license will not expire but  
10 rather, by operation of law (A.R.S. § 32-3202), become suspended until the Board takes  
11 final action in this matter. Once the Board takes final action, in order for Respondent to be  
12 licensed in the future, Respondent must submit a new application for licensure and meet  
13 all of the requirements set forth in the statutes and rules at that time.

14 10. Respondent understands that any violation of this Interim Consent  
15 Agreement constitutes unprofessional conduct under A.R.S. § 32-1401(27)(s) ("[v]iolating  
16 a formal order, probation, consent agreement or stipulation issued or entered into by the  
17 board or its executive director under this chapter.").

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19 \_\_\_\_\_  
20 WHITAKER M. SMITH, M.D.

DATED: December 10, 2021

21 DATED this 13<sup>th</sup> day of December, 2021.

22 ARIZONA MEDICAL BOARD

23  
24 By   
25 Patricia E. McSorley  
Executive Director

1

EXECUTED COPY of the foregoing e-mailed  
this 17<sup>th</sup> day of December, 2021 to:

3

Whitaker M. Smith, M.D.

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Address of Record

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ORIGINAL of the foregoing filed  
this 17<sup>th</sup> day of December 2021 with:

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

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Board staff

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