BEFORE THE IOWA BOARD OF MEDICINE

****

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

DENICE N. SMITH, M.D., RESPONDENT

FILE No. 02-13-413

****

STATEMENT OF CHARGES and SETTLEMENT AGREEMENT (Combined)

****

COMES NOW the Iowa Board of Medicine (Board) and Denice N. Smith, M.D., (Respondent), on July 10, 2015, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) and 653 IAC 25.3, enter into this combined Statement of Charges and Settlement Agreement to resolve this matter.

STATEMENT OF CHARGES

1. Respondent was issued Iowa medical license no. 36396 on October 25, 2005.

2. Respondent's Iowa medical license is active and will next expire on April 1, 2017.

3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.

COUNT I

4. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery disciplined by a licensing authority of another state. A certified copy of the order of disciplinary action is prima facie evidence.

STATEMENT OF THE MATTERS ASSERTED

5. **Practice Setting:** Respondent is an Iowa-licensed physician who formerly practiced family medicine in Morrison, Illinois, and currently practices in Clinton, Iowa.

6. **Illinois Disciplinary Action:** On October 28, 2013, Respondent entered into a Consent Order with the Illinois Department of Financial and Professional Regulation (Illinois Board). The Illinois Board alleged that Respondent surrendered her DEA Registration for cause based on her prescribing of controlled substances to several patients in her practice in Morrison, Illinois. The Illinois Board placed Respondent on indefinite probation for a minimum of one (1) year subject to Board monitoring, including a practice monitor, and ordered her to pay a $5,000 fine. The Illinois Board also ordered her to complete 10 category I continuing medical education credits directly related to proper prescribing of controlled substance and 10 credits directly related to addiction disorders. See Attachment A.

SETTLEMENT AGREEMENT

7. **CITATION AND WARNING:** Respondent is hereby **CITED** for being disciplined by the Illinois Board based on her prescribing of controlled substances to several patients in her medical practice in Illinois. Respondent is hereby **WARNED** that such practice in the future may result in further disciplinary action, including suspension or revocation of her Iowa medical license.

8. **CIVIL PENALTY:** Respondent shall pay a **$1,000 civil penalty** within twenty (20) days of the date of this order. The civil penalty shall be paid by delivery of a check or money order, payable to the Treasurer of Iowa, to the executive director of the Board. The civil penalty shall be deposited into the State General Fund. The Board noted that Respondent paid a $5,000 fine in Illinois.

9. **PROHIBITION - CHRONIC PAIN MANAGEMENT:** Respondent is prohibited from prescribing, administering or dispensing narcotics for the treatment of chronic pain under her Iowa medical license. Pursuant to 653 IAC 13.2(1), "*Chronic pain* means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient. If pain

persists beyond the anticipated healing period of a few weeks, patients should be thoroughly evaluated for the presence of chronic pain." This prohibition does not prohibit Respondent from prescribing, administering or dispensing controlled substances for the treatment of acute pain, the treatment of terminally ill patients, or the provision of comfort or palliative care to patients in a nursing home or hospice setting under her Iowa medical license. Respondent may seek termination of this prohibition upon a showing that she has successfully completed appropriate remediation and she is able to prescribe, administer or dispense narcotics for the treatment of chronic pain with reasonable skill and safety.

10. **PROFESSIONAL ETHICS PROGRAM:** Respondent shall successfully complete the Professional/Problem Based Ethics Program (PROBE) (303-577-3232) within ninety (90) days of the date of this order. Respondent shall ensure that a report is sent directly to the Board. Respondent is responsible for all costs associated with the program.

11. **THREE YEARS PROBATION**: Respondent is placed on **probation for a period of three (3) years** subject to the following terms and conditions:

A. **Board Monitoring Program**: Within thirty (30) days of the date of this Order, Respondent shall establish a Board monitoring program with Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686, Ph.#515-

281-5525. Respondent shall fully comply with all requirements of the monitoring program.

B. **Prescribing Audits:** Respondent shall fully comply with Board-approved audits of her controlled substance prescribing during the period of this Order. Respondent shall submit the names of all patients she has prescribed controlled substances for each quarter. From that list, the Board shall select 10 patients quarterly. Respondent shall provide the Board copies of the medical records for each patient selected. The Board shall compare this information with information from the Iowa Prescription Monitoring Program.

C. **Quarterly Reports:** Respondent shall file sworn quarterly reports attesting to her compliance with all the terms of this Order no later than 1/10, 4/10, 7/10 and 10/10 of each year for the duration of the period of this Order.

D. **Board Appearances:** Respondent shall appear before the Board annually or upon request of the Board during the period of this order. Respondent shall be given notice of the date, time and location of the appearances. The appearances shall be subject to the waiver provisions of 653 IAC 24.2(5)(e)(3).

E. **Monitoring Fee:** Respondent shall make a payment of $300 to the Board each quarter for the duration of his probation to cover the

Board's monitoring expenses in this matter. The monitoring fee shall be received by the Board with each quarterly report required during the period of probation. The monitoring fee shall be sent to: Mary Knapp, Compliance Monitor, Iowa Board of Medicine, 400 SW 8th Street, Suite C, Des Moines, IA 50309-4686. The check shall be made payable to the Iowa Board of Medicine.

12. Respondent voluntarily submits this Order to the Board for consideration.

13. Respondent agrees that the State's counsel may present this Order to the Board for consideration.

14. This Order constitutes the resolution of a contested case proceeding.

15. Respondent shall submit a written statement to the Board which demonstrates that she has shared a copy of this order with all medical licensing boards where Respondent holds a license, whether active or not, within thirty (30) days of the date of this order.

16. Respondent shall submit a written statement to the Board which demonstrates that she has shared a copy of this order with all locations where Respondent practices medicine within thirty (30) days of the date of this order.

17. Respondent understands that by entering into this Order, she has a right to legal counsel in this matter, voluntarily waives any rights to a contested

case hearing on the allegations in the Statement of Charges, and waives any objections to the terms of this Order.

18. Respondent understands that by entering into this Order, Respondent cannot obtain a copy of the investigative file. Pursuant to Iowa Code section 272C.6(4), a copy of the investigative file may only be provided to a licensee after a Statement of Charges is filed but before the final resolution of those charges.

19. Periods in which Respondent does not practice medicine under her Iowa medical license, does not practice medicine or fails to fully comply with the terms established in this Order shall not apply to the duration of this Order unless Respondent obtains prior written approval from the Board.

20. Respondent understands that the Board is required by Federal law to report this Order to the National Practitioner Data Bank.

21. This Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

22. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

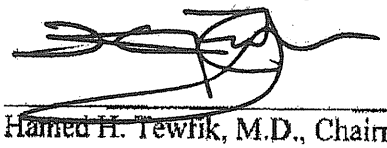
23. The Board's approval of this Order shall constitute a **Final Order** of the Board.

Denice N. Smith, M.D., Respondent

Subscribed and sworn to before me on _____, 2015.

Notary Public, State of _____.

This Order is approved by the Board on July 10, 2015.



Hamed H. Tewfik, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686

Attachment 'A'

STATE OF ILLINOIS
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois,	Complainant,	)
v.		) No. 2011-01550
Denice N. Smith, M.D. License No. 036-119205,	Respondent.	)

CONSENT ORDER

The Department of Financial and Professional Regulation, Division of Professional Regulation, of the State of Illinois, by Vladimir Lozovskiy, one of its attorneys, (hereinafter the "Department") and Denice N. Smith, M.D., (hereinafter the "Respondent"), hereby agree to the following:

STIPULATIONS

Denice N. Smith, M.D. is licensed as a Physician and Surgeon in the State of Illinois, holding Illinois Physician and Surgeon License No. 036-119205. Said license is in Active status. At all times material to the matter(s) set forth in this Consent Order, the Department of Financial and Professional Regulation, Division of Professional Regulation, of the State of Illinois had jurisdiction over the subject matter and parties herein.

Information has come to the attention of the Department that alleges that Respondent surrendered DEA Registration for cause based on her prescribing of Controlled Substances to several patients of her practice. The allegation(s) as set forth herein, if proven to be true, would constitute grounds for suspending, revoking or other discipline of Respondent's license as a Physician and Surgeon, on the authority 255 Illinois Compiled Statutes, Paragraph 60/22(A)(33).

The Department filed a Formal Complaint in this matter. On August 22, 2013, the Prehearing was held in this matter and subsequently, the Department and Respondent, through her attorney Mark C. Meyer, engaged in negotiations to amicably resolve this matter. During the negotiations, Respondent provided information that her DEA Registration was already restored.

For purposes of this Consent Order only, Respondent acknowledges that should this matter proceed to a contested hearing, the Illinois Medical Disciplinary Board (the "Board") could find a violation of the Medical Practice Act. The Department and Respondent stipulate that the above acknowledgement is made only for the purposes of this Consent Order. In the event that this Consent Order is not approved by the Board or is not approved by the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation ("Director"), this acknowledgement shall not be admissible in any proceeding and the matter will be set for an evidentiary hearing on the merits as if this Consent Order had not been submitted. In addition, upon approval of this Consent Order, neither this acknowledgement nor this Consent Order may be utilized in any other proceeding, except one to enforce this Agreement.

Respondent has been advised of the right to have pending allegations reduced to written charges, the right to a hearing, the right to contest any charges brought, and the right to administrative review of this Consent Order. Respondent knowingly waives each of these rights, as well as the right to administrative review of this Consent Order. Such waiver ceases if this Consent Order is rejected by either the Medical Disciplinary Board or the Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation.

Respondent and the Department have agreed, in order to resolve this matter, that Respondent, Denice N. Smith, M.D., be permitted to enter into a Consent Order with the

Department, providing for the imposition of disciplinary measures which are fair and equitable under the circumstances and which are consistent with the best interests of the people of the State of Illinois.

CONDITIONS

WHEREFORE, the Department, through Vladimir Lozovskiy, its attorney, and Denice N. Smith, M.D., Respondent, agree:

A. Illinois Physician and Surgeon License of Denice N. Smith, M.D., license No. 036-119205, is hereby placed on indefinite probation for minimum of one (1) year from the final approval of this Consent Order by the Director of the Division of Professional Regulation;

B. While Respondent's Illinois Physician and Surgeon License is on Probation, Respondent shall provide the Department with quarterly reports which include: (i) current residential address and contact telephone number as well as current practice location address and contact telephone number; (ii) address and contact information for each healthcare entity where Respondent has admitting privileges and/or employed; (iv) information, regarding any arrests, criminal, or civil actions filed, including DUI and/or other similar offenses against the Respondent;

C. While Respondent's Illinois Physician and Surgeon License is on Probation, Respondent shall notify the Department's Chief of Probation Investigations in writing of any change in employment and/or home address and/or telephone number within ten (10) days;

D. While Respondent's Illinois Physician and Surgeon License is on Probation, Respondent shall request the Department's Chairperson and/or Department's Chairperson's designated person from any hospital(s), where Respondent is holding admitting privileges, to submit

quarterly reports to the Department regarding Respondent's clinical performance, attendance record and any and all other issues arising out of Respondent's practice of medicine;

E. While Respondent's Illinois Physician and Surgeon License is on Probation, Respondent shall obtain a practice monitor, who is a licensed Physician and Surgeon in the State of Illinois. The practice monitor shall be hired at the expense of Respondent and shall be pre-approved by the Chief Medical Coordinator of the Department. Respondent shall request that her practice monitor submit quarterly reports about scope and performance appraisals. On a quarterly basis the practice monitor shall meet with Respondent and randomly select and review ten (10) charts of patients who have been seen by Respondent during the quarter. The practice monitor shall review the charts of those patients and submit independent quarterly reports to the Department evaluating the scope, appropriateness, and quality of medical care rendered by Respondent;

F. The practice monitor shall agree to inform the Department immediately if there is evidence of inappropriate behavior, professional misconduct, a violation of Respondent's probation;

G. Respondent shall immediately notify the Department should her relationship with any practice monitor cease and immediately take actions to select a new monitor and obtain the approval of the Chief Medical Coordinator;

H. While Respondent's Illinois Physician and Surgeon License is on Probation, Respondent shall take and complete ten (10) category I Continuing Medical Education credits directly related to proper prescribing of Controlled Substances. Said CMEs cannot be used as a part of annually required CMEs;

I. While Respondent's Illinois Physician and Surgeon License is on Probation,

Respondent shall take and complete ten (10) category I Continuing Medical Education credits directly related to addiction disorders. Said CMEs cannot be used as a part of annually required CMEs;

J. All the reports required to be submitted under the terms of this Probation shall be filed with the Department no later than 1/20, 4/20, 7/20 and 10/20 of each year during the full term of the Probation.

K. Respondent agrees that a violation of the terms and conditions of this Consent Order or a violation of the terms of probation is a violation of 225 ILCS 60/22(A)(15);

L. Respondent shall not violate the Illinois Medical Practice Act of 1987, any other federal and state laws related to the practice of medicine as well as any other federal and state laws;

M. Respondent shall pay a Fine in the amount of $5000.00 dollars (five thousand dollars) being due within six (6) months of the effective date of this Consent Order. Said fine shall be mailed to Illinois Dept. of Financial and Professional Regulation, Attention: CMU/Accounts Receivable - Fine Payments, 320 W. Washington St., 3rd Floor, Springfield, Illinois 62786. In the event that Respondent shall fail to pay the fine, and the Department is forced to initiate a collection effort to retrieve the fine, the Respondent will be responsible for all costs and fees incurred by the collection process;

N. The Department and Respondent agree that if Respondent chooses to file a Petition for Restoration of his Physician and Surgeon License No. 036-119205, the Department will hold an Informal Conference prior to the Formal Hearing in order to attempt to amicably resolve Respondent's Petition for Restoration;

O. This Consent Order shall become effective immediately after it is approved by the Director of the Division of Professional Regulation of the Illinois Department of

Financial and Professional Regulation.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois
Division of Professional Regulations

9/23/13
DATE

Vladimir Lozovskiy
Vladimir Lozovskiy
Attorney for the Department

9/20/13
DATE

Denice N. Smith, M.D.
Respondent

9/20/13
DATE

Mark C. Meyer, Esq.
Attorney for Respondent

10/2/13
DATE

Member, Medical Disciplinary Board

The foregoing Consent Order is approved in full.

DATED THIS 28th day of October, 2013.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois
Division of Professional Regulations

Jay Stewart
DIRECTOR

REF: Case No. 2011-01550/ License No. 036-119205