

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

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

4 Holder of License No. **21590**  
5 For the Practice of Allopathic Medicine  
In the State of Arizona.

**Case No. MD-18-0153A**

**INTERIM CONSENT AGREEMENT  
FOR PRACTICE LIMITATION**

**(Non-Disciplinary)**

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7 **INTERIM CONSENT AGREEMENT**

8 Herman B. Smith, M.D. ("Respondent") elects to permanently waive any right to a  
9 hearing and appeal with respect to this Interim Consent Agreement for Practice Limitation;  
10 admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of  
11 this Order by the Board.

12 **INTERIM FINDINGS OF FACT**

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

15 2. Respondent is the holder of License No. 21590 for the practice of allopathic  
16 medicine in the State of Arizona.

17 3. The Board initiated case number MD-18-0153A after receiving notification  
18 that Respondent may have a health condition that impacts his ability to safely practice  
19 medicine.

20 4. The aforementioned information was presented to the investigative staff, the  
21 medical consultant and the lead Board member. All reviewed the information and concur  
22 that an interim consent agreement to limit Respondent's practice is appropriate.  
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1 **INTERIM CONCLUSIONS OF LAW**

2 1. The Board possesses jurisdiction over the subject matter hereof and over  
3 Respondent.

4 2. Pursuant to A.A.C. R4-16-509, the executive director has the authority to  
5 enter into consent agreements to limit a physician's practice if there is evidence that he is  
6 mentally unable to safely engage in the practice of medicine and the investigative staff, the  
7 medical consultant and the lead Board member concur after a review of the case that a  
8 consent agreement is appropriate.

9 3. In addition, pursuant to A.R.S. §§ 32-1405(C)(25) and 32-1451(F), the  
10 Executive Director, on behalf of the Board, has the authority to enter into consent  
11 agreements if there is evidence of danger to the public health and safety.

12 **INTERIM ORDER**

13 IT IS HEREBY ORDERED THAT:

14 1. Respondent is prohibited from engaging in the practice of medicine in the  
15 State of Arizona as set forth in A.R.S. § 32-1401(22) until he applies to the Board and  
16 receives its affirmative permission to do so.

17 2. Respondent may request, in writing, release and/or modification from this  
18 Interim Consent Agreement. The Executive Director, in consultation with the medical  
19 consultant, has the sole discretion to determine whether it is appropriate to release  
20 Respondent from this Interim Consent Agreement or take any other action that is  
21 consistent with her statutory and regulatory authority. In making the determination  
22 regarding whether Respondent is safe to practice medicine, the Executive Director may  
23 order any combination of examinations or evaluations she deems appropriate.

24 3. This Interim Consent Agreement is not a final decision by the Board  
25 regarding the pending investigative file and as such is subject to further consideration by

1 the Board. In addition, the Board retains jurisdiction and may initiate a separate  
2 disciplinary action based on the facts and circumstances that form the basis for this  
3 practice limitation or any violation of this Interim Consent Agreement.

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5 DATED this 26<sup>th</sup> day of July, 2018.

6 ARIZONA MEDICAL BOARD

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8 By Patricia E. McSorley  
9 Patricia E. McSorley  
Executive Director

10 **CONSENT TO ENTRY OF ORDER**

11 1. Respondent agrees and understands that the Board, through its Executive  
12 Director, may adopt this Interim Consent Agreement, or any part thereof, pursuant to  
13 A.R.S. §§ 32-1405(C)(25) and 32-1451(F) and A.A.C. R4-16-509.

14 2. Respondent has read and understands this Interim Consent Agreement for  
15 Practice Limitation, and has had the opportunity to discuss this Interim Consent  
16 Agreement with an attorney or has waived the opportunity to discuss this Interim Consent  
17 Agreement with an attorney.

18 3. Respondent acknowledges and agrees that this Interim Consent Agreement  
19 is entered into freely and voluntarily and that no promise was made or coercion used to  
20 induce such entry, and by doing so agrees to abide by all of its terms and conditions.

21 4. By consenting to this Interim Consent Agreement, Respondent voluntarily  
22 relinquishes any rights to a hearing or judicial review in state or federal court on the  
23 matters alleged, or to challenge this Interim Consent Agreement in its entirety as issued,  
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1 and waives any other cause of action related thereto or arising from said Interim Consent  
2 Agreement.

3 5. The Interim Consent Agreement is not effective unless and until it is  
4 approved and signed by the Executive Director.

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

11 7. Respondent understands that this Interim Consent Agreement does not  
12 constitute a dismissal or resolution of this matter or any matters that may be currently  
13 pending before the Board and does not constitute any waiver, express or implied, of the  
14 Board's statutory authority or jurisdiction regarding any other pending or future  
15 investigations, actions, or proceedings. Respondent also understands that acceptance of  
16 this Interim Consent Agreement does not preclude any other agency, subdivision, or  
17 officer of this State from instituting civil or criminal proceedings with respect to the conduct  
18 that is the subject of this Interim Consent Agreement. Respondent further does not  
19 relinquish his rights to an administrative hearing, rehearing, review, reconsideration,  
20 judicial review of any other administrative and/or judicial action, concerning the matters  
21 related to a final disposition of this matter, unless he affirmatively does so as part of the  
22 final resolution of this matter.

23 8. Upon signing this Interim Consent Agreement, and returning this document  
24 (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the  
25 consent to the entry of the Interim Consent Agreement. Respondent may not make any

1 modifications to the document. Any modifications to this original document are ineffective  
2 and void unless mutually approved by the parties.

3 9. Respondent understands and agrees that if the Board's Executive Director  
4 does not adopt this Interim Consent Agreement, Respondent will not assert in any future  
5 proceedings that the Board's consideration of this Interim Consent Agreement constitutes  
6 bias, prejudice, prejudgment, or other similar defense.

7 10. This Interim Consent Agreement is a public record that will be publicly  
8 disseminated as a formal *non-disciplinary* action of the Board.

9 11. If any part of the Interim Consent Agreement is later declared void or  
10 otherwise unenforceable, the remainder of the Interim Consent Agreement in its entirety  
11 shall remain in force and effect.

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

22 13. Any violation of this Interim Consent Agreement constitutes unprofessional  
23 conduct and may result in disciplinary action. A.R.S. §§ 32-1401(27)(s) ("[v]iolating a  
24 formal order, probation, consent agreement or stipulation issued or entered into by the  
25 board or its executive director under this chapter.") and 32-1451.

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14. Respondent has read and understands the terms of this agreement.



DATED: 7/26/2018

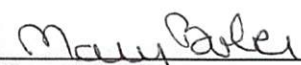
HERMAN B. SMITH, M.D.

EXECUTED COPY of the foregoing e-mailed  
this 26<sup>th</sup> day of July, 2018 to:

Herman B. Smith, M.D.  
Address of Record

ORIGINAL of the foregoing filed  
this 26<sup>th</sup> day of July, 2018 with:

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

  
Board staff