BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

HERMAN B. SMITH, M.D.

Case No. MD-18-0153A

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

INTERIM CONSENT AGREEMENT

Herman B. Smith, M.D. ("Respondent") elects to permanently waive any right to a
hearing and appeal with respect to this Interim Consent Agreement for Practice Limitation;
adopts the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of
this Order by the 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. 21590 for the practice of allopathic
medicine in the State of Arizona.

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

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

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

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

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

INTERIM ORDER

IT IS HEREBY ORDERED THAT:

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

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

3. This Interim Consent Agreement is not a final decision by the Board regarding the pending investigative file and as such is subject to further consideration by
the Board. In addition, the Board retains jurisdiction and may initiate a separate
disciplinary action based on the facts and circumstances that form the basis for this
practice limitation or any violation of this Interim Consent Agreement.

DATED this 26th day of July, 2018.

ARIZONA MEDICAL BOARD
By Patricia E. McSorley
Executive Director

CONSENT TO ENTRY OF ORDER

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

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

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

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

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

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

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

8. Upon signing this Interim Consent Agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the consent to the entry of the Interim Consent Agreement. Respondent may not make any
modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

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

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

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

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

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

HERMAN B. SMITH, M.D.

DATED: 7/26/2018

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

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

ORIGINAl of the foregoing filed this 26th day of July, 2018 with:

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

Mary Parker
Board staff