**STATE OF TENNESSEE**
**DEPARTMENT OF HEALTH**

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| **IN THE MATTER OF:** | ) | **BEFORE THE TENNESSEE BOARD OF MEDICAL EXAMINERS** |
| | ) | |
| **DAN NICOLAU, M.D.** | ) | |
| **RESPONDENT** | ) | **CASE NO: 201602805** |
| | ) | |
| **JOHNSON CITY, TENNESSEE** | ) | |
| **TENNESSEE LICENSE NO.: 49214** | ) | |

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## CONSENT ORDER

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Come now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Dan Nicolau, M.D. (hereinafter "Respondent"), who would respectfully move the Tennessee Board of Medical Examiners (hereinafter the "Board") for approval of this Consent Order affecting Respondent's medical license in the State of Tennessee.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee. *See* Tennessee Medical Practice Act, Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 63-6-101, *et seq*. It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Medical Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-6-101, *et seq*. or the Rules and Regulations promulgated by the Board and recorded in the *Official Compilation Rules and Regulations of the State of Tennessee* (hereinafter "TENN. COMP. R. & REGS.").

Respondent, by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that

presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. Respondent acknowledges that this is a formal disciplinary action and will be reported to the Health Integrity and Protection Data Bank and/ or similar agency. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

## I. STIPULATIONS OF FACT

1. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 49214 by the Board on October 3, 2012, which expires on May 31, 2018.
2. On or about September 2015, Respondent wrote one (1) prescription for Percocet 10/325 mg for acquaintance C.B. that was not pursuant to a doctor-patient relationship. On or about November 2015, Respondent wrote C.B. one (1) prescription for Oxycodone 30 mg that was not pursuant to a doctor-patient relationship.

3. On or around June 2016, Respondent and C.B. entered into a romantic relationship that ended in August 2016.

4. On or about August 27, 2016, C.B. received text messages from another user's Facebook account after C.B. had blocked the Respondent from her Facebook.

5. Later that same evening, C.B. was awakened by the Respondent in her bedroom.

6. C.B. had recently been out of town and had left a key under the mat for her neighbor to have access to her home in to feed her dog. The Respondent was aware that C.B. would leave a key under the mat for the neighbor to feed the dog.

7. Respondent used the key and entered C.B.'s home. He approached C.B. and began to grab her and attempt to hug and kiss her.

8. C.B. screamed for the Respondent to leave, called 911 and ran outside of her home to meet Johnson City police officers who responded to the call.

9. The Johnson City police officers moved the Respondent to another area so they could speak with each person individually. During this time, the Respondent used his cell phone to call and text C.B. as she spoke with officers.

10. On or about August 23, 2017, Respondent appeared before the Criminal Court for Washington County, Tennessee and was placed on judicial diversion for 11 months and 29 days for one (1) count of aggravated criminal trespassing and one (1) count of stalking.

11. The judicial diversion ordered by the Court also required the Respondent to pay costs, complete a treatment plan established by the Tennessee Board of Medical Examiner and have no contact with C.B.

12. Prior to the Court placing the Respondent on judicial diversion, Respondent completed a multidisciplinary assessment with Acumen Assessments on or about June 2017.

13. The assessment stated that the Respondent was fit to practice medicine and recommended the following:

a. Respondent enter into a monitoring agreement with the Tennessee Medical Foundation for a period of time deemed appropriate by the TMF;

b. Respondent refrain from consuming alcohol for one year;

c. participate in a TMF approved boundary course within six months;

d. participate in a continuing medical education prescription boundaries course within 6 months;

e. utilize a chaperon when seeing females in an addiction/Suboxone treatment context;

f. engage in weekly, individual psychotherapy with a TMF approved psychologist;

g. continue to be under the care of a TMF approved psychiatrist;

h. receive hormone replacement treatment from a physician at a medical office where he is being treated and that physician there review the report

14. On or about August 3, 2017 Respondent entered into a two (2) year contract with the Tennessee Medical Foundation.

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## II. GROUNDS FOR DISCIPLINE

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The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

15. The facts stipulated in paragraph 2 *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(12):

> Dispensing, prescribing or otherwise distributing any controlled substance or any other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justifiable for a diagnosed condition

16. The facts stipulated in paragraphs 2 through 10, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(1):

> Unprofessional, dishonorable or unethical conduct

17. The facts stipulated in paragraph 10, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(2):

> Violation or attempted violation, directly or indirectly, assisting or abetting the violation, or conspiring to violate any provision of this chapter or, any lawful order of the board issued pursuant thereto or any criminal statue of the state of Tennessee

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## III. POLICY STATEMENT

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The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of the people of the State of Tennessee and ensure that the public confidence in the integrity of the medical profession is preserved.

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## IV. ORDER

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**NOW THEREFORE,** Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

18. The Tennessee medical license of Dan Nicolau, M.D., license number 49214, is hereby placed on **PROBATION** for two (2) years effective the date of entry of this Order.

19. Respondent shall comply with all recommendations of the Acumen assessment. IN addition to the Acumen assessment recommendations, Respondent shall comply with all recommendation and requirements of the Tennessee Medical Foundation. Respondent must submit a quarterly report to the Board's Medical Director showing compliance with all recommendations and requirements.

20. Respondent shall pay two (2) 'Type A' civil penalties in the amount of one thousand dollars ($1,000.00) each; representing each prescription the Respondent wrote not pursuant to a doctor-patient relationship in violation of Section II, Grounds for Discipline; for a total of two thousand dollars ($2,000.00). Any and all civil penalties shall be paid within thirty (30) days of the effective date of this Consent Order. Any and all civil penalty payments shall be paid by **certified check, cashier's check, or money order**, payable to the **State of Tennessee**, which shall be mailed or delivered to: **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, 2nd Floor, Nashville, Tennessee 37243.** A notation shall be placed on said check that it is payable for the civil penalties of **Dan Nicolau, M.D., COMPLAINT NO. 201602805.**

21. Respondent must pay, pursuant to TENN. CODE ANN. §§ 63-6-214 (k) and 63-1-144(a)(4), the actual and reasonable costs of prosecuting this case to the extent allowed by law, including all costs assessed against the Board by the Division's Bureau of Investigations in connection with the prosecution of this matter. These costs will be established by an Assessment of Costs prepared and filed by counsel for the Department. Said costs shall not exceed three thousand dollars ($3,000.00).

22. Any and all costs shall be paid in full within thirty (30) days after the issuance of the Assessment of Costs unless Respondent makes arrangements for an extended payment plan for the assessed costs through the Disciplinary Coordinator of the Division of Health Related Boards. Payment shall be made by certified check, cashier's check, or money order, payable to the State of Tennessee, Department of Health. Any and all payments shall be forwarded to the **Disciplinary Coordinator, The Division of Health Related Boards, Tennessee Department of Health, 665 Mainstream Drive, 2nd floor, Nashville, Tennessee 37243**. A notation shall be placed on said money order or such check that it is payable for the costs of **Dan Nicolau, M.D., COMPLAINT NO. 201602805.**

23. Upon expiration of the two (2) year probationary period, and continued compliance with all recommendations of the TMF, Respondent may request an Order of Compliance to have the probation of Respondent's license to practice medicine lifted. Respondent must personally appear before the board to have the probation lifted.

24. Respondent understands that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank (N.P.D.B.) and/or similar agency.

This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 27th day of September, 2017.

Chairperson
Tennessee Board of Medical Examiners

**APPROVED FOR ENTRY:**

Dan Nicolau, M.D.
Respondent

9-27-17
DATE

Jennifer L. Putnam (B.P.R. #029890)
Assistant General Counsel
Office of General Counsel
Tennessee Department of Health
665 Mainstream Drive, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1611

9-27-17
DATE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of this document has been served upon Respondent, Dan Nicolau, M.D., by and through counsel, Tom Jessee, Esq., Jessee & Jessee, 412 East Unaka Avenue, Johnson City, Tennessee 37605, by delivering same in the United States Mail, Certified Number 7016 1970 0001 1321 8528, return receipt requested, and United States First Class Postage Pre-Paid Mail, with sufficient postage thereon to reach its destination and via email at jjlaw@jesseeandjessee.com .

This 29th day of September, 2017.

Jennifer L. Putnam
Assistant General Counsel