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MAR 12 2009

**BEFORE THE BOARD OF HEALING ARTS  
OF THE STATE OF KANSAS**

**KS State Board of Healing Arts**

In the Matter of )  
 )  
**STEWART R. GROTE, D.O.** )  
Kansas License No. 5-22108 )  
\_\_\_\_\_ )

Docket No. 09-HA-*00160*

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts ("Board"), by and through Stacy Bond, Associate Litigation Counsel ("Petitioner"), and Steward Grote, D.O. ("Licensee"), by and through his counsel, Mark Lynch, move the Board for approval of a Consent Order affecting Licensee's license to practice osteopathic medicine and surgery in the State of Kansas. The parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is 712 1<sup>st</sup> Terrace, Lansing, Kansas 66043.
2. Licensee is or has been entitled to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having been issued License number 5-22108 on December 4, 1987. Licensee has held a current active license to engage in the practice of osteopathic medicine and surgery in the State of Kansas, having last renewed his license on October 1, 2008.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of osteopathic medicine and surgery as defined by K.S.A. 65-2801 *et seq.*
4. All pending investigation materials regarding Licensee were fully reviewed and considered by the Board members who served on the Board's Disciplinary Panel #22. The Disciplinary Panel authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

5. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter in to the Consent Order as provided by K.S.A. 65-2838.

6. Upon approval, the provisions in this Consent Order shall constitute the findings of the Board, and this Consent Order shall be the Board's Final Order.

7. The Kansas Healing Arts Act is constitutional on its face and as applied in this case.

8. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

9. Licensee voluntarily and knowingly waives his right to a hearing in this matter in that Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible and substantive and procedural motions and defenses that could be raised if an administrative hearing in this matter were held.

10. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until and authorized signature is affixed at the end of this document.

Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

11. At all relevant times hereto. Licensee has been actively practicing osteopathic medicine and surgery in Lansing, Kansas.

12. The Board has received information and investigated the same, and has reason to believe that Licensee prescribed controlled substances, specifically Actiq, to approximately ten (10) patients in an inappropriate manner and outside the accepted standard of care. Licensee agrees that he prescribed Actiq to said patients but denies that he did so inappropriately or below the standard of care.

13. Licensee's acts, if proven, constitute unprofessional conduct as defined by K.S.A. 65-2837(b)(23), and pursuant to K.S.A. 65-2836(b), the Board has authority to discipline Licensee's license.

14. According to K.S.A. 65-2838(b), the Board has the authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

15. In lieu of conclusion of formal proceedings and/or the making of findings by the Board, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following non-disciplinary measures to address the Board's concerns, as expressed above.

### **MONITORING**

- a. Licensee's controlled substance prescribing shall be monitored for at least one (1) year by another Kansas-licensed and board-certified physician at Licensee's own expense. The monitoring physician must be pre-approved by the Board or the Board's designee;
- b. On or before March 15, 2009, Licensee must submit the curriculum vitae of a proposed monitoring physician who is agreeable to serving in that role;
- c. The Board designates Dr. Ronald Whitmer, D.O. to approve/disapprove of the proposed monitoring physician and the DVD course on prescribing.
- d. Licensee shall maintain a log of all controlled substance prescriptions and refills in a format provided by Board staff. The

controlled substance log shall be subject to random inspection by Board investigators;

- e. On a monthly basis, the monitoring physician shall review the controlled substance log and select five (5) patient charts to review. Licensee shall then provide copies of such patient charts to the monitoring physician for review. On the 30<sup>th</sup> day of the following month, the monitoring physician shall submit a report to the Board that includes an assessment for each patient chart as to whether Licensee is prescribing medications in a manner which is recognized by a reasonably prudent practitioner as being acceptable under similar conditions and circumstances, and whether Licensee is following the Guidelines for the Use of Controlled Substances in the Treatment of Pain (if applicable).
- f. The monitoring physician shall immediately notify the Board staff if he/she finds any patient case in which he/she reasonable believes Licensee is inappropriately prescribing to any patient;
- g. Licensee is responsible for ensuring the timely submission of the monitoring physician's reports to Board staff. Board staff must receive at least twelve (12) reports. After twelve (12) reports have been submitted by the monitor, Licensee may request termination of the monitoring;

#### **RECORD-KEEPING**

- h. Licensee shall adhere to the Board's Pain Management Guidelines;
- i. Licensee must used a numbered duplicate prescription pad for all controlled substance prescriptions and maintain a copy of all controlled substances prescriptions in the patient chart;

#### **EDUCATION**

- j. On or before June 30, 2009, Licensee shall successfully complete a Board approved DVD course on prescribing and provide proof of completion to the Board.

16. Licensee's failure to comply with the provisions of this Consent Order may result in the Board taking further disciplinary action as the Board deems appropriate in accordance with the Kansas Administrative Procedure Act.

17. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the healing arts act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Healing Arts Act.

18. Licensee hereby releases the Board, its employees and agents, from any and all claims, including but not limited to, those damages, actions, liabilities and causes of action, both administrative and civil, including the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* This release shall forever discharge the Board of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Board, its employees or agents, arising out of acts leading to the execution of this Consent Order or the content of this Consent Order.

19. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record, and shall be reported to the Federation of State Medical Boards and any other reporting entities required to receive disclosure of this Consent Order.

20. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

21. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

22. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceeding on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

23. Licensee acknowledges that he has read this Consent Order, fully understands the contents and acknowledges that this Consent Order has been entered into freely and voluntarily.

24. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas State

Board of Healing Arts, Attn: Compliance Coordinator, 235 S. Topeka Blvd., Topeka, Kansas 66603-3068.

25. Licensee shall obey all federal, state and local laws and rules governing the practice of osteopathic medicine and surgery in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

26. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order. This Consent Order shall constitute the Board's Order when filed with the Office of the Executive Director for the Board and no further Order is required.

27. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board, and is the Order of the Board.

**IT IS FURTHER ORDERED** that:

**MONITORING**

- a. Licensee's controlled substance prescribing shall be monitored for at least one (1) year by another Kansas-licensed and board-certified physician at Licensee's own expense. The monitoring physician must be pre-approved by the Board or the Board's designee;
- b. On or before March 15, 2009, Licensee must submit the curriculum vitae of a proposed monitoring physician who is agreeable to serving in that role;

- c. The Board designates Dr. Ronald Whitmer, D.O. to approve/disapprove of the proposed monitoring physician and the DVD course on prescribing.
- d. Licensee shall maintain a log of all controlled substance prescriptions and refills in a format provided by Board staff. The controlled substance log shall be subject to random inspection by Board investigators;
- e. On a monthly basis, the monitoring physician shall review the controlled substance log and select five (5) patient charts to review. Licensee shall then provide copies of such patient charts to the monitoring physician for review. On the 30<sup>th</sup> day of the following month, the monitoring physician shall submit a report to the Board that includes an assessment for each patient chart as to whether Licensee is prescribing medications in a manner which is recognized by a reasonably prudent practitioner as being acceptable under similar conditions and circumstances, and whether Licensee is following the Guidelines for the Use of Controlled Substances in the Treatment of Pain (if applicable).
- f. The monitoring physician shall immediately notify the Board staff if he/she finds any patient case in which he/she reasonable believes Licensee is inappropriately prescribing to any patient;
- g. Licensee is responsible for ensuring the timely submission of the monitoring physician's reports to Board staff. Board staff must receive at least twelve (12) reports. After twelve (12) reports have been submitted by the monitor, Licensee may request termination of the monitoring;

#### **RECORD-KEEPING**

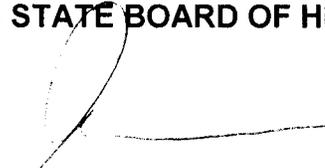
- h. Licensee shall adhere to the Board's Pain Management Guidelines;
- i. Licensee must used a numbered duplicate prescription pad for all controlled substance prescriptions and maintain a copy of all controlled substances prescriptions in the patient chart;

#### **EDUCATION**

- j. On or before June 30, 2009, Licensee shall successfully complete a Board approved DVD course on prescribing and provide proof of completion to the Board.

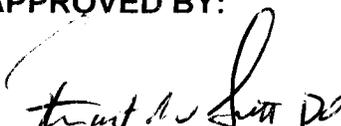
IT IS SO ORDERED.

KANSAS STATE BOARD OF HEALING ARTS

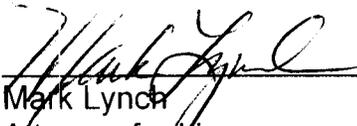
  
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Jack Confer  
Executive Director

3-12-09  
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Date

APPROVED BY:

  
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Stewart Grote  
Licensee

2 Feb 09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mark Lynch  
Attorney for Licensee

3/7/09  
\_\_\_\_\_  
Date

PREPARED AND APPROVED BY:

  
\_\_\_\_\_  
Stacy Bond, #17673  
Litigation Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603  
(785) 296-3268  
*Attorney for Petitioner*

**CERTIFICATE OF SERVICE**

I, hereby certify that I served a true and correct copy of the above **CONSENT ORDER** by United States mail, first-class, postage prepaid, on the 12<sup>th</sup> day of March, 2009, and addressed to:

Stewart R. Grote, D.O.  
712 1<sup>st</sup> Terrace  
Lansing, Kansas 66043

Mark Lynch  
Hollbrook & Osborn P.A.  
Commerce Plaza II  
7400 W 110<sup>th</sup>, Suite 600  
Overland Park, KS 66210-2362

and a copy was hand-delivered to:

Stacy Bond  
Associate Litigation Counsel  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603

Melissa Massey  
Compliance Coordinator  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, KS 66603

and the original was hand-delivered for filing to:

Jack Confer  
Executive Director  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068



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Cathy Brown  
Executive Assistant