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DEC 10 2008

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

**KS State Board of Healing Arts**

In the Matter of )  
Marty L. Schmidt, **M.D.**, )  
Kansas License No. 4-22840 )  
\_\_\_\_\_ )

Docket No. 09-HA-00091

**CONSENT ORDER**

**COMES NOW**, the Kansas State Board of Healing Arts ("Board") by and through Stacy R. Bond, Associate Counsel ("Petitioner"), and Marty L. Schmidt, M.D. (Licensee), and move the Board for approval of a Consent Order affecting Licensee's license to practice 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 1107 W. 6<sup>th</sup> St., #B, Ft. Scott, KS 66701-2498.

2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-22840 on approximately June 16, 1989. Licensee's license status is active, and his specialty as reported to the Board is Pediatrics.

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 medicine and surgery. K.S.A. 65-2801 *et seq.*; K.S.A. 65-2869.

4. All pending investigative materials regarding the Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel. The Disciplinary Panel authorized and directed Board counsel

to seek settlement of this matter within 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 into the Consent Order as provided by K.S.A. 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

6. The Kansas Healing Arts Act is constitutional on its face and as applied in this case. Licensee agrees that, in considering this matter, the Board is not beyond its jurisdiction as provided by law.

7. Licensee voluntarily and knowingly waives his right to a hearing. 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 substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

8. 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 an 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.

9. At all relevant times hereto, Licensee has held a license authorizing the active practice of medicine and surgery in Kansas.

10. On or about June 4, 2001, the Board received a complaint alleging instances of conduct constituting professional incompetency and or unprofessional conduct, which if proven would violate provisions of K.S.A. 65-2836 and K.S.A. 65-2837 of the Healing Arts Act.

11. During the course of the investigation it was determined that the Licensee excessively prescribed approximately 295 vials of Nubain from February 1, 2001 to May 27, 2001, to a patient and failed to maintain adequate medical records for the treatment provided, violations of K.S.A. 65-2837(b)(23) and K.S.A. 65-2837(b)(25).

12. In a statement provided by the Licensee, he confirmed that he had infact prescribed the Nubain to the patient, that he refilled the Nubain at request ; and did not keep medical records for the patient.

13. Pursuant to K.S.A. 65-2836(b), as amended by HB 2620, July 1, 2008, the Board has authority to revoke, suspend, censure, place under probationary conditions, impose a fine or otherwise limit Licensee's license due to the fact that Licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency.

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

15. In lieu 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 action against his license to engage in the practice of medicine and surgery in Kansas:

- a. Licensee shall, at his expense, attend the “Intensive Course in Controlled Substance Management”, conducted by Case Western Reserve University School of Medicine, May 19-22, 2009, and provide documentation of successful completion of all sessions.
- b. Licensee shall follow the Guidelines for the Use of Controlled Substances for the Treatment of Pain, approved by the Board, October 17, 1998. (Attachment A)
- c. Licensee shall at his expense attend a Board approved Medical Record-Keeping Course for physicians within three (3) months of the effective date of this order.

16. Licensee’s failure to comply with the provisions of the 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 any reporting entities authorized 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 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 and fully understands the contents.

24. All correspondence or communication between Licensee and the Board relating to this Consent Order shall be by certified mail addressed to the Kansas 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 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 during the probationary period. Any such violation will be deemed a violation of this Order and may be subject to further action by the Board.

26. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. 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.

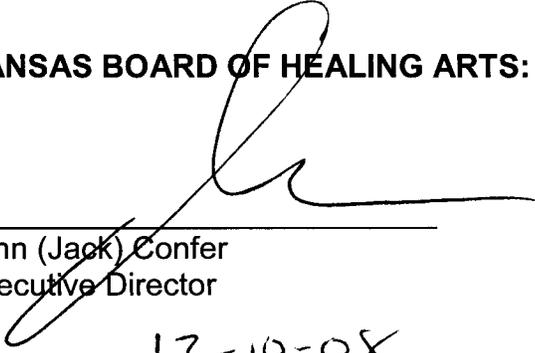
**IT IS THEREFORE ORDERED** that the Consent Order and agreement of the parties contained herein is adopted by the Board, and is the Order of the Board.

**IT IS FUTHER ORDERED** that in lieu of concluding the presently pending formal proceedings, Licensee by his signature affixed to this Consent Order; voluntarily agrees to the following provisions related to his license to practice medicine and surgery in Kansas:

- a. Licensee shall, at his expense, attend the “Intensive Course in Controlled Substance Management”, conducted by Case Western Reserve University School of Medicine, May 19-22, 2009, and provide documentation of successful completion of all sessions.
- b. Licensee shall follow the Guidelines for the Use of Controlled Substances for the Treatment of Pain, approved by the Board, October 17, 1998. (Attachment A)
- c. Licensee shall at his expense attend a Board approved Medical Record-Keeping Course for physicians within three (3) months of the effective date of this order.

**IT IS SO ORDERED.**

**KANSAS BOARD OF HEALING ARTS:**

  
\_\_\_\_\_  
John (Jack) Confer  
Executive Director

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Marty L. Schmidt, M.D.

\_\_\_\_\_  
Date

**PREPARED BY:**

  
\_\_\_\_\_  
Stacy R. Bond #17673  
Associate Counsel (785) 296-3268  
Kansas State Board of Healing Arts  
235 S. Topeka Boulevard  
Topeka, Kansas 66603-3068

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing CONSENT ORDER was served this 10<sup>th</sup> day of December, 2008, by depositing the same in the United States mail, postage prepaid, and addressed to the following:

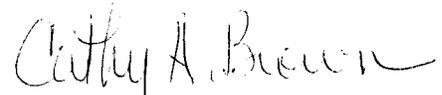
Marty L. Schmidt, M.D.  
1107 W. 6<sup>th</sup> St., #B American Medical Group  
Ft. Scott, KS 66701-2498 2410 N. Fowler, Suite B  
Hobbs, NM 88240

and a copy was hand-delivered to:

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

and the original was hand-delivered for filing to:

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



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Cathy Brown  
Executive Assistant