

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
Stewart Grote, D.O.)
License No. 05-22108)
_____)

Docket No. 09-HA00160

FINAL ORDER
(Pursuant to K.S.A. 77-501 et seq.)

Pursuant to the authority granted to the Kansas State Board of Healing Arts (“Board”) by K.S.A. 65-2801 et seq. and in accordance with the provisions of the Kansas Administrative Procedure Act K.S.A. 77-501 et seq., the Board hereby enters this Final Order in the above-captioned matter. Members of the Board serving on the Disciplinary Panel for this matter were recused from participation.

I. Findings of Fact

The Board has been shown the following facts:

1. Stewart R. Grote (“Licensee”), Associates in Family Health Care, 712 First Terrace, Lansing, Kansas 66043, is licensed in the State of Kansas, License No. 05-22108, and has been so licensed since December 4, 1987.
2. On or about March 12, 2009, Licensee entered into a Consent Order with the Board in lieu of disciplinary proceedings. The Consent Order was entered into between the Board and the Licensee to resolve concerns regarding inappropriate prescribing of narcotic pain medication.
3. Pursuant to the terms of the Consent Order, the Licensee agreed to monitoring of his controlled substance prescriptions by a board-certified and Kansas licensed physician for a period of at least one (1) year.

4. Since March of 2009 Licensee's controlled substance prescriptions have been monitored by Steven Simon, M.D. ("Dr. Simon") who reviews documentation of Licensee's examination, medical decision-making, and compliance with the Board's Pain Management Guidelines for five patient charts of Licensee each month.
5. Licensee has submitted twelve monitoring reports from Dr. Simon to the Board.
6. Licensee has completed the Mini Residency in Appropriate Prescribing DVD Program presented by the University of Medicine and Dentistry of New Jersey.
7. Pursuant to the terms of the Consent Order entered March 12, 2009, upon submission of the twelve (12) reports by Dr. Simon, Licensee could request termination of the monitoring.
8. On May 18, 2010, Licensee requested termination of the controlled substance prescription monitoring provisions contained in the Consent Order of March 12, 2009.

II. Applicable Law

K.S.A. 65-2801 states:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

K.S.A. 65-2836 states, in pertinent part:

A licensee's license may be revoked, suspended or limited, or the licensee may be publicly or privately censured or placed under probationary conditions, or an application for a license or for reinstatement of a license may be denied upon a finding of the existence of any of the following grounds:

- (b) The licensee has committed an act of unprofessional or dishonorable conduct or professional incompetency, except that the board may take appropriate disciplinary action or enter into a non-disciplinary resolution when a licensee has engaged in any conduct or professional practice on a single occasion that, if continued, would reasonably be expected to constitute an inability to practice the healing arts with reasonable skill and safety to patients or unprofessional conduct as defined in K.S.A. 65-2837, and amendments thereto.

K.S.A. 65-2837 states, in pertinent part:

(b) Unprofessional conduct means:

- (23) Prescribing, dispensing, administering or distributing a prescription drug or substance, including a controlled substance, in an improper manner, or for other than a valid medical purpose, or not in the course of the licensee's professional practice.

III. Public Policy Statement

The public policy of regulating the practice of healing arts in the State of Kansas is set forth in K.S.A. 65-2801:

Recognizing that the practice of the healing arts is a privilege granted by legislative authority and is not a natural right of individuals, it is deemed necessary as a matter of policy in the interests of public health, safety and welfare, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of the healing arts and from unprofessional conduct by persons licensed to practice under this act.

IV. Conclusions of Law

Based upon the Findings of Fact enumerated in Paragraphs #1 through #8, the Applicable Law and the Public Policy Statement set forth above:


THE BOARD HEREBY CONCLUDES AS FOLLOWS:

9. Pursuant to the terms of the Consent Order entered March 12, 2009, upon submission of the twelve (12) reports by Dr. Simon, Licensee could request termination of the monitoring. Twelve reports have been submitted to the Board by Dr. Simon.
10. On May 7, 2009, Licensee successfully completed the Mini Residency in Appropriate Prescribing DVD Program presented by the University of Medicine and Dentistry of New Jersey.
11. The one (1) year monitoring by a board certified, Kansas licensed physician set forth in the Consent Order of March 12, 2009 has elapsed.

IT IS THEREFORE ORDERED, BY THE KANSAS STATE BOARD OF HEALING ARTS:

12. The controlled substance prescription monitoring provision contained in the March 12, 2009 Consent Order is hereby **TERMINATED**.
13. The Board shall maintain jurisdiction over this matter to issue any Order(s) deemed necessary and appropriate.

IT IS SO ORDERED THIS 28 DAY OF June, 2010, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.


Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts

NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a final order. A final order is effective upon service. A party to an agency proceeding may seek judicial review of a final order by

filing a petition in the District Court as authorized by K.S.A. 77-601, et seq.

Reconsideration of a final order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the final order. A copy of any petition for judicial review must be served upon Kathleen Selzler Lippert, the Board's Executive Director, at 235 SW Topeka Blvd., Topeka, KS 66603.

CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the foregoing Final Order was served this 27th day of June, 2010 by depositing the same in the United States Mail, first-class postage prepaid and addressed to:

Stewart Grote, D.O.
Associates in Family Healthcare
712 1st Terrace
Lansing, KS 66043

Mark Lynch
Holbrook & Osborn, P.A.
Commerce Plaza II
7400 W. 110th, Suite 600
Overland Park, KS 66210-2362

And a copy was hand delivered to the office of:

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

The original filed with:

Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts
235 SW Topeka Blvd.
Topeka, KS 66603



Cathy Brown
Executive Assistant