

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

**STATE OF GEORGIA ex rel.
CHRISTOPHER M. CARR, Attorney General
of the State of Georgia,**

COMPLAINANT,

v.

**GROW SMART MARKETING, LLC,
David Neil Gass, Individually, and
Chad Howald, Individually**

RESPONDENTS.

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CIVIL ACTION FILE

2020CV340365

NO. _____

ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to O.C.G.A. Sections 10-1-390 *et seq.*, the Fair Business Practices Act ("FBPA"), Christopher M. Carr, the Attorney General of the State of Georgia ("Attorney General"), has initiated an investigation and examination of certain acts or practices of the Respondent, Grow Smart Marketing, LLC (hereinafter "Grow Smart"). This Assurance of Voluntary Compliance ("Assurance" or "AVC") is entered into pursuant to the Attorney General's authority under the FBPA, and is being agreed to by the parties in lieu of the Attorney General pursuing claims against Grow Smart, David Neil Gass ("Gass"), Individually, and Chad Howald ("Howald"), Individually (collectively "Respondents") for the conduct described below, pursuant to O.C.G.A. § 10-1-402. It is therefore stipulated and agreed as follows:

I.

Grow Smart has for a period of time engaged in the business of providing marketing services on behalf of medical practices operating in Georgia that solicit consumers to purchase stem cell therapy or regenerative medicine products and/or services. Grow Smart has therefore engaged in consumer acts or practices in the conduct of trade or commerce in part or wholly within the State of Georgia, as set forth in O.C.G.A. § 10-1-392.

II.

Grow Smart is a Georgia limited liability company, having its principal place of business at 1350 Wooten Lake Road, Suite 303, Kennesaw, Cobb County, Georgia 30144. Grow Smart's registered agent for service of process is David Neil Gass, 2625 Gladstone Terrace, Woodstock, Cherokee County, Georgia 30189.

III.

David Neil Gass ("Gass") is an individual residing at 2625 Gladstone Terrace, Woodstock, Cherokee County, Georgia 30189. Gass is an owner and the CEO of Grow Smart. Chad Howald ("Howald") is an individual believed to be residing at 378 Stonewood Creek Drive, Dallas, Paulding County, Georgia 30132. Howald is an owner and the President of Grow Smart.

IV.

[RESERVED]

V.

Respondents consent to the personal jurisdiction of the Superior Court of Fulton County and acknowledge that subject matter jurisdiction and venue in connection with issues involving the subject matter of this AVC are proper and shall lie in the Superior Court of Fulton County.

VI.

The Attorney General contends that Respondents, while providing marketing services on behalf of two Georgia medical practices, Superior Healthcare, LLC ("Superior") and Elite Integrated Medical, LLC f/k/a Superior Healthcare of Woodstock, LLC ("Elite"), had actual

knowledge of and directly participated in the following unfair and deceptive business practices declared unlawful by O.C.G.A. § 10-1-393 *et seq.* Specifically, the Attorney General alleges that Respondents have engaged in the following acts or practices and that the acts or practices violate the following sections of the FBPA:

- A. Making false and/or misleading representations, expressly or by implication, that the stem cell therapy or regenerative medicine products and/or services offered by various healthcare providers, cure, treat, or mitigate specific diseases or health conditions, including, but not limited to Parkinson's Disease, COPD, cystic fibrosis, rheumatoid arthritis, congestive heart failure, cervical pain, cervical joint degeneration, cervical arthritis, shoulder injury, rotator cuff tears, shoulder degeneration, shoulder bursitis, facet syndrome, degenerative disc disease, lumbar arthritis, osteoarthritis, carpal tunnel syndrome, wrist arthritis, lateral epicondylitis, golfer's elbow, distal biceps tendon tear, labrum tear, hip osteoarthritis, hip degeneration, hip bursitis, meniscus tear, knee degeneration, ACL or PCL injury, chondromalacia, and plantar fasciitis. Respondents do not possess and/or rely on competent and reliable scientific evidence that substantiates the representations. This practice violates O.C.G.A. § 10-1-393(a), the FBPA's general proscription against unfair or deceptive acts and practices, and O.C.G.A. § 10-1-393(b)(5), which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.
- B. Making false and/or misleading representations, expressly or by implication, that the stem cell therapy and regenerative medicine products and/or services offered by various healthcare providers are comparable to or superior to conventional

medical treatments in curing, mitigating, or treating specific diseases or health conditions, including COPD, Parkinson's Disease, Cystic Fibrosis, Rheumatoid Arthritis, Congestive Heart Failure, cervical pain, cervical joint degeneration, cervical arthritis, shoulder injury, rotator cuff tears, shoulder degeneration, shoulder bursitis, facet syndrome, degenerative disc disease, lumbar arthritis, osteoarthritis, carpal tunnel syndrome, wrist arthritis, lateral epicondylitis, golfer's elbow, distal biceps tendon tear, labrum tear, hip osteoarthritis, hip degeneration, hip bursitis, meniscus tear, knee degeneration, ACL or PCL injury, chondromalacia, and plantar fasciitis. Respondents do not possess and/or rely on competent and reliable scientific evidence that substantiates the representations. This practice violates O.C.G.A. § 10-1-393(a), the FBPA's general prohibition against unfair and deceptive acts and practices, and O.C.G.A. § 10-1-393(b)(5), which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.

- C. Making false and/or misleading representations, expressly or by implication, that the stem cell therapy and regenerative medicine products offered by various healthcare providers are approved by the Federal Food and Drug Administration ("FDA") and/or do not require FDA approval to treat, cure, or mitigate diseases and health conditions. This practice violates O.C.G.A. § 10-1-393(a), the FBPA's general prohibition against unfair and deceptive acts and practices; O.C.G.A. § 10-1-393(b)(2) that prohibits causing actual confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods and services; O.C.G.A. § 10-1-393(b)(3) that prohibits causing actual confusion or actual misunderstanding

as to affiliation, connection, or association with or certification by another; and O.C.G.A. § 10-1-393(b)(5), which prohibits representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.

- D. Using customer testimonials without possessing and/or relying on competent and reliable scientific evidence regarding the effectiveness of stem cell therapy and regenerative medicine products offered by various healthcare providers. This practice violates O.C.G.A. § 10-1-393(a), the FBPA's general prohibition against unfair and deceptive acts and practices; O.C.G.A. § 10-1-393(b)(2) that prohibits causing actual confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods and services; and O.C.G.A. § 10-1-393(b)(3) that prohibits causing actual confusion or actual misunderstanding as to affiliation, connection, or association with or certification by another.
- E. Creating and publishing a testimonial of Gass on websites used to promote stem cell therapy and regenerative medicine products and/or services offered by various healthcare providers, without disclosing the existence of material connections between Gass and the healthcare providers. This practice violates O.C.G.A. § 10-1-393(a), the FBPA's general prohibition against unfair and deceptive acts and practices; O.C.G.A. § 10-1-393(b)(2) that prohibits causing actual confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods and services; and O.C.G.A. § 10-1-393(b)(3) that prohibits causing actual confusion or actual misunderstanding as to affiliation, connection, or association with or certification by another.

- F. Making false and/or misleading representations, expressly or by implication, that a healthcare provider has medical doctors that will be present at and deliver seminars promoting stem cell therapy and regenerative medicine products and/or services offered by the healthcare provider, and that the healthcare provider has medical doctors that will be directly involved in the providing of stem cell therapy and regenerative medicine products and/or services that it offers. This practice violates O.C.G.A. § 10-1-393(a), the FBPA's general prohibition against unfair and deceptive acts and practices; O.C.G.A. § 10-1-393(b)(3) that prohibits causing actual confusion or actual misunderstanding as to affiliation, connection, or association with or certification by another; O.C.G.A. § 10-1-393(b)(5) that prohibits representing that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; and O.C.G.A. § 10-1-393(b)(9) that prohibits advertising goods or services with intent not to sell them as advertised.
- G. Making false and/or misleading representations, expressly or by implication, about stem cell therapy and regenerative medicine products and/or services offered by various healthcare providers in internet websites, and through email and social media, with the targeted demographic being elder persons and disabled persons within the meaning of O.C.G.A. § 10-1-850. This practice violates O.C.G.A. § 10-1-393(a), the FBPA's general prohibition against unfair and deceptive acts and practices and O.C.G.A. § 10-1-393.5(b)(2) that prohibits engaging in any act or practice that operates as a deceit upon any person through the use of a computer or computer network.

VII.

Notwithstanding the foregoing, Respondents expressly deny the Attorney General's allegations herein and pursuant to O.C.G.A. § 10-1-402, this AVC shall not be considered an admission of violation of the FBPA for any purpose. Respondents hereby enter into this AVC in order to resolve this matter without the necessity of formal legal action. The Attorney General's acceptance of this AVC does not constitute his approval of any of Respondents' practices.

VIII.

By accepting this Assurance, the Attorney General agrees not to initiate any legal action against Respondents concerning the matters covered herein, subject, however, to the provisions of O.C.G.A. § 10-1-402, and Respondents' full compliance with all the terms and conditions set forth herein.

IX.

Upon breach of any of the provisions of this Assurance by Respondents and/or the Company's officers, directors, employees, agents, or successor business enterprises, the Attorney General reserves the right to initiate formal legal action against Respondents concerning the subject matter of this AVC.

X.

Respondents hereby acknowledge their awareness and understanding of the FBPA and the respective provisions thereof.

XI.

For purposes of this AVC, these terms and phrases shall be defined as follows:

- A. **"Stem Cell Therapy"** means any product or therapy that is derived from bone marrow, adipose tissue, amniotic tissue, umbilical cord blood, umbilical cord tissue, and/or Wharton's jelly.

- B. **“Covered Product”** means any Stem Cell Therapy product derived from amniotic tissue, umbilical cord blood, umbilical cord tissue, and/or Wharton’s jelly.
- C. **“Healthcare Provider”** means any business located in Georgia that advertises and offers a Covered Product to consumers residing either within the state of Georgia or elsewhere, and any business located outside the state of Georgia that advertises and offers a Covered Product within the state of Georgia to consumers residing within the state of Georgia.
- D. **“Competent and Reliable Scientific Evidence”** shall consist of human clinical testing of the Covered Product, or of an Essentially Equivalent Product, that is sufficient in quality and quantity based on standards generally accepted by experts in the relevant disease, condition, or function to which the representation relates, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing must be: (1) randomized, double-blind, and placebo-controlled; and (2) conducted by researchers qualified by training and experience to conduct such testing. For purposes of this definition, Essentially Equivalent Product means any product that is derived from the same source and contains the same ingredients as the Covered Product, is processed or manufactured using the same processes and procedures as the Covered Product, and the route of administration is the same as the Covered Product.
- E. **“Endorsement”** means any advertising message, including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, including testimonials.

XII.

Respondents further agree that, from and after the effective date of this AVC, they shall abide by the following conditions:

- A. Respondents shall make every reasonable effort to fully comply with the FBPA and any other applicable Georgia or federal laws.
- B. Respondents shall not make any representation on behalf of a Healthcare Provider, whether expressly or by implication, including through the use of an Endorsement, depiction, video, or illustration, that a Covered Product treats, cures, or mitigates any disease or health condition, unless the representation is non-misleading, and, at the time of making such representation, they possess and rely upon Competent and Reliable Scientific Evidence; provided, however, that Respondents shall not be liable for any such misrepresentations, expressly or by implication, independently made by any Healthcare Provider. In instances where Respondents make such representations regarding a Covered Product and Respondents do not: (1) have an ownership interest in such Covered Product; or (2) own or license the right to advertise such Covered Product; or (3) derive royalties or payments generated from the sale of such Covered Product, it shall be a defense hereunder if Respondents can establish, after reasonable inquiry, that Respondents neither knew nor had reason to know that any representation covered by this Section was not supported by competent and reliable scientific evidence as required under this Section.
- C. Respondents shall not make any representation on behalf of a Healthcare Provider, whether expressly or by implication, including through the use of an Endorsement, depiction, video, or illustration, that a Covered Product is comparable to and/or

superior to any conventional medical treatment to cure, treat, or mitigate any disease or health condition, unless the representation is non-misleading, and, at the time of making such representation, they possess and rely upon Competent and Reliable Scientific Evidence; provided, however, that Respondents shall not be liable for any such misrepresentation, expressly or by implication, independently made by any Healthcare Provider. In instances where Respondents make such representations regarding a Covered Product and Respondents do not: (1) have an ownership interest in such Covered Product; or (2) own or license the right to advertise such Covered Product; or (3) derive royalties or payments generated from the sale of such Covered Product, it shall be a defense hereunder if Respondents can establish, after reasonable inquiry, that Respondents neither knew nor had reason to know that any representation covered by this Section was not supported by competent and reliable scientific evidence as required under this Section.

- D. Respondents shall not make any misrepresentation on behalf of a Healthcare Provider, whether expressly or by implication, as to the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research regarding Stem Cell Therapy; provided, however, that Respondents shall not be liable for any such misrepresentation, expressly or by implication, independently made by any Healthcare Provider.
- E. Respondents shall not make any misrepresentation on behalf of a Healthcare Provider, whether expressly or by implication, that a Covered Product is either approved by the FDA or does not require approval by the FDA, to treat, cure, or mitigate any diseases or health conditions; provided, however, that Respondents

shall not be liable for any such misrepresentations, expressly or by implication, independently made by any Healthcare Provider.

- F. Respondents shall not engage in any practices that are inconsistent with the Federal Trade Commission's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255, including publishing or disseminating on behalf of a Healthcare Provider any Endorsements regarding a Covered Product without disclosing the existence of material connections between the endorser and the Healthcare Provider, if such connections are known or should be known by Respondents.
- G. Respondents shall not make any false and/or misleading representations, expressly or by implication, that Healthcare Providers have medical doctors that will be present at and deliver seminars promoting a Covered Product and/or that Healthcare Providers have medical doctors that will be directly involved in the providing of a Covered Product; provided, however, that Respondents shall not be liable for any such misrepresentation, expressly or by implication, independently made by any Healthcare Provider.
- H. Notwithstanding the foregoing, if the Georgia legislature, any Georgia or federal regulatory agency, or any other controlling legal authority establishes a different definition of and/or standard for "Competent and Reliable Scientific Evidence" with respect to a Covered Product, or an Essentially Equivalent Product as contemplated by this AVC, then the definition of and/or standard for "Competent and Reliable Scientific Evidence" for purposes of this AVC shall be interpreted

and/or automatically modified to be consistent with such different definition and/or standard.

- I. Respondents must respond in a timely manner, but in no case later than ten (10) days, to all written inquiries from the Consumer Protection Division (“CPD”) related to the subject of this Assurance.

XIII.

Respondents shall pay the following simultaneous with the execution of this AVC:

- A. A filing fee in the amount of **ONE HUNDRED TWENTY-FIVE AND NO 00/100 (\$125.00)**, which shall be paid by certified check or money order made payable to the “Georgia Department of Law” and shall be delivered to the Consumer Protection Division of the Georgia Department of Law upon submission of this Assurance to the Attorney General.
- B. The amount of **FORTY THOUSAND DOLLARS (\$40,000.00)** by certified check or money order payable to “Georgia Department of Law” and delivered to the Consumer Protection Division of the Georgia Department of Law. This payment shall be used by the Attorney General for purposes that may include, but are not limited to, attorneys’ fees, and other costs of investigation and litigation, or may be placed in, or applied to, any consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney General. Respondents may pay the payment with installments as follows:

1. The first installment of **FIVE THOUSAND DOLLARS (\$5,000.00)** must be paid upon submission of this Assurance to the Attorney General;
2. A second installment of **FIVE THOUSAND DOLLARS (\$5,000.00)** must be paid no later than **Thursday, October 1, 2020**;
3. A third installment of **FIVE THOUSAND DOLLARS (\$5,000.00)** must be paid no later than **Tuesday, December 1, 2020**;
4. One final installment of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)** must be paid no later than **Wednesday, September 1, 2021**. Respondents shall not be required to pay the Final Installment if the following conditions below have been met as of 5:00 PM Eastern Time on September 1, 2021:

- a) The Attorney General, in his sole discretion, determines that Respondents have not defaulted on the terms of this Assurance by violating any provision of this Assurance; and
- b) The Attorney General has received from Respondents a certification, under penalty of perjury, that Respondents have fully complied with all provisions of this Assurance, and a request that the Final Installment be waived. Said certification and request shall be submitted to the Attorney General no earlier than Monday, August 2, 2021. If the Attorney General determines that all conditions for waiver have been met, he shall notify Respondents, with a copy to Respondents' counsel, Matthew Flower, Esq. via

email, at mflower@taylorenghish.com, on or before September 1, 2021 that payment of the Final Installment has been waived.

- C. Respondents acknowledge that the obligation imposed in Section XIII.B. represents an agreed administrative resolution that is in the nature of relief that may be requested by the Attorney General pursuant to O.C.G.A. § 10-1-397(b)(2)(B) and is not compensation for actual pecuniary loss. Therefore, the obligation is not subject to be discharged or set aside in any proceedings filed under Title 11 of the United States Code, pursuant to the provisions of 11 U.S.C. § 523(a)(7).

XIV.

- A. **DEFAULT PROCEDURES.** In the event the Attorney General believes Respondents are not in compliance with any provision(s) of this Assurance and therefore considers Respondents in default of that provision(s), the Attorney General shall provide notice to Respondents identifying Respondents' actions that constitute a default of a provision(s) of this Assurance and shall provide Respondents ten (10) business days to explain why a default has not occurred. The default notice shall be sent to Respondents with a copy via email to Respondents' counsel, Matthew Flower, Esq. at mflower@taylorenghish.com.
- B. After reviewing the Respondents' explanation, if any, the Attorney General shall decide in his sole discretion whether a default has occurred and his decision shall be binding. If the Attorney General determines that a default of this Assurance has occurred, any and all remaining installment payments under this Assurance will become immediately due and payable to the Georgia Department of Law.

- C. In the event the Attorney General determines that a default of this Assurance has occurred, the Attorney General may immediately take any and all action available to pursue enforcement and collection of amounts owed to the Attorney General less any payments received by the Attorney General.
- D. In the event the Attorney General determines that a default of this Assurance has occurred, the Attorney General may pursue all rights and remedies available under the laws of the State of Georgia to compel Respondents' compliance with the relevant provisions of this Assurance.

XV.

This Assurance, when accepted by the Attorney General, will bind Respondents and their successors and/or assigns who take notice of the terms and provisions of this Assurance. Respondents hereby agree to give notice of this Assurance to their successors and/or assigns, principals, officers, directors, owners, employees, and agents up to and until the Attorney General waives the Final Installment or the Final Installment is paid.

This Assurance, made and entered into by and between the undersigned parties, is effective upon the date of acceptance by the Attorney General.

[SIGNATURES ON NEXT PAGE]

Proposed, consented and agreed to by:

David Neil Gass
on behalf of Grow Smart Marketing, LLC
David Neil Gass
Printed Name
CEO
Title
Date: 9/4/20

Sworn to and subscribed before me, this

4 day of Sept, 2020

Pamela K. Barnaby
NOTARY PUBLIC

My commission expires: 03.23.2021



[SIGNATURES CONTINUED ON NEXT PAGE]

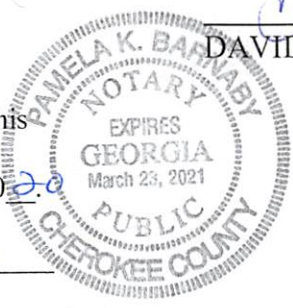
David Neil Gass
DAVID NEIL GASS

Sworn to and subscribed before me, this

4 day of Sept, 2020

Pamela K Barnaby
NOTARY PUBLIC

My commission expires: 03.23.2021



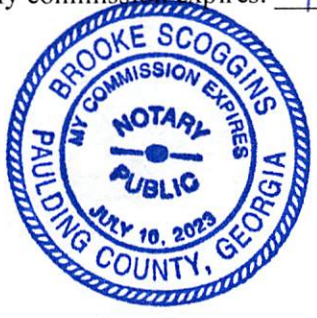
Chad Howald
CHAD HOWALD

Sworn to and subscribed before me, this

8th day of September, 2020

[Signature]
NOTARY PUBLIC

My commission expires: 7.10.2023



ACCEPTED BY:

Christopher M. Carr
CHRISTOPHER M. CARR, Attorney General

Date: Sept. 10, 2020