

**BEFORE THE MINNESOTA  
BOARD OF VETERINARY MEDICINE**

In the Matter of  
Paul S. Berger, D.V.M.  
License No. 05493

**STIPULATION AND ORDER**

**I.**

**STIPULATION**

Paul S. Berger, D.V.M. ("Licensee"), and the Minnesota Board of Veterinary Medicine Complaint Review Committee ("Committee") agree that the above-referenced matter may be resolved without trial of any issue or fact as follows:

**II.**

**JURISDICTION**

A. The Minnesota Board of Veterinary Medicine ("Board") is authorized pursuant to Minnesota Statutes chapter 156 to license and regulate veterinarians and to take disciplinary action as appropriate.

B. Licensee holds a license from the Board to practice veterinary medicine in the State of Minnesota and is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation and Order.

**III.**

**COMPLAINT REVIEW COMMITTEE**

The Complaint Review Committee that negotiated this Stipulation with Licensee is composed of Meg Glattly, D.V.M., John Lawrence, D.V.M., and John King, D.V.M., Executive Director of the Board. Daphne A. Lundstrom, Assistant Attorney General, represented the

Committee in this matter. Licensee was advised of his right to be represented by legal counsel and knowingly and voluntarily waived that right.

#### IV.

#### FACTS

For purposes of Board of Veterinary Medicine proceedings only and without prejudice to Licensee in a proceeding in any other forum, the Board may consider the following as true:

A. Licensee is licensed by the Board to practice veterinary medicine in the State of Minnesota.

B. Veterinarians licensed in Minnesota must renew their licenses biennially. Licensees on active status must, at the time of license renewal, certify their completion of 40 hours of veterinary continuing education ("CE") for the previous two-year period.

C. On January 2, 2007, Licensee submitted an online Application for Biennial License Renewal for the 2007-2009 renewal period ("Application"). On the Application, Licensee certified that he completed 40 hours of veterinary CE during the licensure period of March 1, 2005, through February 29, 2007.

D. Pursuant to Minn. R. 9100.1000, on June 20, 2007, the Board initiated a routine audit of Licensee's CE compliance. Licensee failed to respond to the Board.

E. On September 6, 2007, the Board sent Licensee a certified letter at his last address on file. Licensee signed a return receipt accepting the Board's letter on or about September 18, 2007. The Board did not receive a response from Licensee.

F. On August 26, 2008, the Board served Licensee with a Notice of Conference directing him to appear at a conference with the Complaint Review Committee on September 9, 2008. Licensee did not respond to the Notice of Conference or attend the conference as scheduled.

G. On October 10, 2008, the Board served Licensee with a Notice and Order for Prehearing Conference and Hearing. However, the parties have determined that this matter may be resolved by mail without a hearing as set forth in this Stipulation and Order.

**V.**

**LAWS**

Licensee acknowledges that the facts and conduct described in section IV above constitute violations of Minn. Stat. § 156.081, subd. 2(12), and Minn. R. 9100.1000, subp. 8.C.2., and are sufficient grounds for the remedy set forth below.

**VI.**

**REMEDY**

Based on the foregoing facts and violations, the Board takes the following disciplinary action against Licensee:

A. Licensee shall pay to the Board a \$500 administrative penalty. Licensee must mail payment to the Board of Veterinary Medicine c/o John King, D.V.M., Executive Director, 2829 University Avenue S.E., Suite 540, Minneapolis, MN 55414, within 60 days of the date of this Order. The payment may be made in two installments, but checks for both installments must be mailed concurrently, one of which may be postdated to within 90 days of the date of this Order.

B. The Board, in its discretion, may audit Licensee's CE compliance for the March 1, 2007, through February 29, 2009, licensure period.

**VII.**

**CONSEQUENCES OF A VIOLATION**

A. *Hearing Before the Board.* If the Committee determines that Licensee has violated any term or condition of this Stipulation and Order, the Committee may schedule a

hearing before the Board and serve on Licensee a Notice of Hearing for Alleged Non-Compliance With Stipulation and Order (“Notice”), which sets forth the allegations against Licensee and provides Licensee notice of the date, time, and place of the hearing before the Board. The procedures set forth in paragraph VII.B. below shall apply to the hearing.

B. *Hearing Procedures.* The following procedures shall apply:

1. *Response to Allegations in Notice.* At least seven days before the hearing, Licensee shall submit a written response to the allegations set forth in the Notice. If Licensee does not submit a timely response to the Board, the allegations may be deemed admitted.

2. *Hearing Before Board.* The Board shall hold a hearing before its own members in accordance with the procedures set forth in paragraph VII.B.3. below to determine whether the allegations are true and, if so, whether to take additional disciplinary action against Licensee, which may include any of the forms of disciplinary action set forth in Minn. Stat. § 156.127.

3. *Evidence at Hearing/Burden of Proof/Waiver of Hearing Before Administrative Law Judge.* At the hearing before the Board, the Committee and Licensee may present affidavits made on personal knowledge or authenticated documents and may present argument based on such evidence in support of their positions. The record before the Board shall be limited to such affidavits, documents, and this Stipulation and Order. The Committee shall file with the Board all evidence it intends to present at the hearing and shall serve a copy on Licensee at least 14 days before the hearing. Licensee shall file with the Board all evidence he intends to present at the hearing and shall serve a copy on the Committee at least seven days before the hearing. The Committee must prove by a preponderance of the evidence that Licensee has violated this Stipulation and Order. The Board shall issue a final order within 30 days of the hearing. Licensee waives a hearing before an administrative law judge and waives discovery,

cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

4. *Costs.* If the Committee proves by a preponderance of the evidence that Licensee has violated this Stipulation and Order, the Board may require Licensee to pay costs of the proceedings. The costs of the proceedings may include the cost paid by the Board to the Office of the Attorney General for investigative and legal services, the cost of reproducing records and documents, Board staff time, travel costs and expenses, and Board members' per diem reimbursements, travel costs, and expenses.

C. *Statutory Procedures.* Nothing herein shall limit the Committee's right to attempt to resolve an alleged violation of this Stipulation and Order through the procedures of Minn. Stat. § 214.103, subd. 6, or to initiate a contested case proceeding under Minn. Stat. ch. 14 based on an alleged violation of this Stipulation and Order.

## VIII.

### ADDITIONAL INFORMATION

A. Licensee knowingly and voluntarily waives a contested case hearing and all other procedures before the Board to which Licensee may be entitled under the Minnesota and United States constitutions, statutes, or rules.

B. Licensee knowingly and voluntarily waives any and all claims against the Board, the Minnesota Attorney General, the State of Minnesota, and their agents, employees and representatives related to the investigation of the conduct herein, or the negotiation or execution of this Stipulation and Order, which may otherwise be available to Licensee.

C. This Stipulation and Order, the files, records and proceedings associated with this matter shall constitute the entire record and may be reviewed by the Board in its consideration of this matter.

D. Licensee shall be responsible for all costs incurred as a result of compliance with this Stipulation and Order.

E. Licensee has read, understands, and agrees to this Stipulation and Order and has voluntarily signed the Stipulation and Order. Licensee is aware that this Stipulation and Order must be approved by the Board before it goes into effect. The Board may either approve the Stipulation and Order as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Licensee, the Stipulation and Order will take effect and the Order as modified will be issued. If the changes are unacceptable to Licensee or if the Board rejects the Stipulation and Order, it will be of no effect except as specified in paragraph VIII.F.

F. Licensee agrees that if the Board rejects this Stipulation and Order or a lesser remedy than indicated in this settlement, and this case comes again before the Board, Licensee will assert no claim that the Board was prejudiced by its review and discussion of this Stipulation and Order or of any records relating to it.

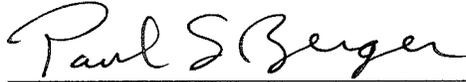
G. This Stipulation and Order shall not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or omission of Licensee which constitutes grounds for disciplinary action and which is not directly related to the specific facts and circumstances set forth in this document.

## **IX.**

### **DATA PRACTICES NOTICES**

A. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minn. Stat. § 13.41, subd. 4.

B. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies this Stipulation.



PAUL S. BERGER, D.V.M.  
Licensee

Dated: May 7, 2009

**ORDER**

Upon consideration of the Stipulation and all the files, records and proceedings herein, the terms of the Stipulation are approved and adopted, and the recommended remedy set forth in the Stipulation is hereby issued as an Order of this Board effective this 15 day of September, 2009.

MINNESOTA BOARD  
OF VETERINARY MEDICINE

  
JOHN KING, D.V.M.  
Executive Director

AG: #2331653-v1