

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
Paul Holmberg, D.V.M.
License No. C4860

STIPULATION AND ORDER

STIPULATION

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

I.

JURISDICTION

A. The Minnesota Board of Veterinary Medicine ("Board") is authorized under 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.

II.

CONFERENCE

A. On April 3, 2001, Licensee appeared before the Complaint Review Committee, composed of Frances Smith, D.V.M., Board President, Meg Glattly, D.V.M., Board Member, and Roland C. Olson, D.V.M., Executive Director of the Board, to discuss allegations set forth in a Notice of Conference dated March 7, 2001. Susan E. Damon, Assistant Attorney General, represented the Complaint Review Committee. Licensee was advised of his right to be represented by an attorney at the conference and knowingly and voluntarily waived that right.

III.
FACTS

A. 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:

1. Licensee has been licensed by the Board since July 13, 1960.
2. Licensee is the owner of Phalen Park Veterinary Clinic in St. Paul, Minnesota.
3. On November 28, 2000, M.M. brought Magoo, his 14-year-old male Dachshund, to Licensee's clinic for a second opinion relating to a possible inguinal hernia.
4. Licensee did not maintain any veterinary medical record of the November 28, 2000 appointment with Magoo. The only record is a receipt dated November 28, 2000 for an office charge with a notation "poss. inguinal hernia."
5. Surgery was scheduled for December 21, 2000. Licensee did not perform or offer to perform any pre-surgical laboratory screenings on Magoo. Licensee performed the surgery at about 4:00 p.m. He corrected bilateral inguinal hernias and an umbilical hernia on the dog. Magoo was not put on a warming blanket after the surgery.
6. In the evening of December 21, 2000, M.M. was informed that the surgery was a success and that he could pick up Magoo the next morning.
7. Licensee left the clinic at about 9:30 p.m. on December 21, 2000. Magoo was left unattended in a carrier at the clinic overnight.
8. When Licensee's assistant arrived at the clinic the morning of December 22, 2000, she found that Magoo was cold to the touch and difficult to wake. The assistant brought Magoo, who was cold and shaking, to see M.M. when he arrived at the clinic. The assistant suggested that M.M. come back to pick up Magoo later in the day.
9. After Licensee arrived at the clinic, his staff put Magoo on a carpet, covered him with blankets and put a space heater next to him. The dog had not urinated since the surgery. Licensee gave Magoo subcutaneous fluids, Torbutrol and diuretics. Licensee did not put Magoo on a warming blanket or give him any I.V. fluids.

10. When M.M. returned to the clinic the evening of December 22, 2001, Licensee convinced M.M. that Magoo should go home with Licensee overnight so that Licensee could administer medications to him.

11. Licensee took Magoo home and continued to administer subcutaneous fluids and medications. The dog did not produce urine, did not respond to the treatment and died the following morning.

12. Licensee's veterinary medical record for Magoo shows a number of deficiencies in addition to those referenced in paragraph III.A.4 above, including the following:

- a. The record does not contain any medical history.
- b. The record does not indicate the type or amount of anesthesia that was used for the surgery.
- c. The record does not indicate all treatment provided, including the names of all medications given or the amounts and frequencies of any medications.
- d. Although the record indicates that "emergency overnight care, fluids and oral meds" were provided, it does not explain what type of post-surgical complications occurred, does not contain any post-surgical examination findings and does not contain any treatment plan to address the post-surgical complications.
- e. The record does not contain any specific entries for December 22 and 23, 2000.
- f. The record does not indicate that the dog died.

13. On February 23, 2001, Frances Smith, D.V.M., Board President, and Roland C. Olson, D.V.M., Executive Director of the Board, conducted an inspection of Licensee's clinic in accordance with Minnesota Statutes section 156.121. Drs. Smith and Olson determined that Licensee's clinic did not meet minimum standards of acceptable practice for housing and sterile surgery in that all animals being held at Licensee's clinic were housed in plastic portable carriers in the surgery room. They also determined that Licensee did not have an x-ray machine in his clinic.

IV.

LAWS

A. Licensee acknowledges that the facts and conduct described in section III above would, if proven at a hearing, constitute violations of Minn. Stat. § 156.081, subd. 2(11) and

(12); Minn. R. 9100.0300, subp. 4; 9100.0700, subp. 1.A, and .C; and 9100.0800, subps. 1, 3.A and 4.A; and agrees to the remedy set forth in section V below.

V.

REMEDY

A. Conditional Licensure. Licensee's license to practice veterinary medicine in the State of Minnesota is placed in conditional status until such time as the Board may by further order grant Licensee an unconditional license. During the period of conditional licensure, Licensee shall comply with each of the following terms, conditions and requirements:

1. Limitation on Practice Until X-Ray Machine is Acquired. Until such time as Licensee acquires an x-ray machine for his clinic, becomes proficient in its use and meets the applicable registration requirements of the Minnesota Department of Health, Licensee shall not handle any orthopedic, trauma or respiratory cases and Licensee's surgical practice shall be limited to spay and neuter surgeries and routine dental care. If Licensee acquires an x-ray machine, he shall so notify the Board's executive director within 30 days of the acquisition.

2. Conditions Relating to Surgical Practice. In addition to the limitation set forth in paragraph V.A.1 above, Licensee's practice of surgery is conditioned as follows:

a. Training in Post-Surgical Care. Within one year of the date of this Stipulation and Order, Licensee shall, at his own expense, complete four hours of training in post-surgical care. The training must be pre-approved by the Complaint Review Committee. If the training is a Board approved continuing education course, the four hours required under this paragraph shall be in addition to the 40 hours of continuing education required of all licensed veterinarians within a two-year period. No later than 30 days after completion of the training, Licensee shall cause the provider of the training to submit verification of Licensee's attendance to the Board.

b. Pre-Surgical Screenings. Licensee shall offer to perform pre-surgical laboratory screenings on all surgical patients and shall recommend such screenings for all patients three years old and older and for all patients younger than three years with known medical conditions that increase the risks of anesthesia or surgery. In all surgical cases, Licensee shall adequately explain the risks associated with failure to perform pre-surgical screenings so that the client can make an informed decision. If a client declines Licensee's offer to perform pre-surgical laboratory screenings, Licensee shall so note on the surgical consent form before it

is signed by the client, or shall note in the veterinary medical record what information Licensee provided to the client about pre-surgical laboratory screenings and that the client declined the pre-surgical screenings after being provided with such information.

c. Post-Surgical Care. Effective immediately upon issuance of this Stipulation and Order, Licensee shall acquire a sufficient number of warming blankets so that they can be used on all post-surgical patients. If any surgical patient is not ready for release at the close of normal clinic hours on the same day as the surgery, the client shall be informed that the patient will be left unattended at Licensee's clinic all or part of the night and shall be given the option of taking the animal to an emergency veterinary facility for overnight care. If post-surgical complications occur in any patient, Licensee shall immediately notify the client and shall give the client the option of transferring the patient to a veterinary hospital that provides 24-hour care or to an emergency veterinary facility for overnight care.

3. Conditions Relating to Record Keeping.

a. Continuing Education in Record Keeping. Within one year of the date of this Stipulation and Order, Licensee shall, at his own expense, complete four hours of continuing education in record keeping. The course must be pre-approved by the Complaint Review Committee. The four hours of continuing education shall be in addition to the 40 hours of continuing education required of all licensed veterinarians within a two-year period. No later than 30 days after completion of the course, Licensee shall cause the course provider to submit verification of Licensee's attendance to the Board.

b. Minnesota Rule 9100.0800, subpart 4. Licensee shall comply with all record keeping requirements set forth in Minnesota Rule 9100.0800, subpart 4. Licensee's veterinary medical records shall specifically include:

(1) Dates on which any examination, treatment, surgery or hospitalization occurs;

(2) A brief history of the condition of the animal, including a brief history of the presenting problem;

(3) Examination findings;

(4) Treatment plan;

(5) The names, strengths, quantities and frequencies of any medications prescribed, dispensed or administered;

- (6) A description of all treatment recommended or provided;
- (7) A description of all discussions with the client related to care of the patient, including instances in which the client declines recommended treatment; and
- (8) Information about any patient death, including suspected or known causation.

4. Replacement of Portable Plastic Carriers. Licensee shall immediately remove from his surgery room all portable plastic carriers that are used to house patients. Within 30 days of the date of this Stipulation and Order, Licensee shall replace all portable plastic carriers with cages. The cages shall be placed in a room in Licensee's clinic other than the surgery room, and no patient shall be housed in the surgery room.

5. Clinic Inspection and Records Review Authority. Effective immediately and until such time as Licensee is granted an unconditional license in accordance with the procedures set forth in part VII below, Licensee shall permit a Board member or Board designee to enter and inspect Licensee's clinic and to examine and, as deemed necessary by the inspector, to remove from the premises for review and copying, Licensee's veterinary medical records for the purpose of determining Licensee's compliance with this Stipulation and Order. Entry and inspection under this part shall occur during normal business hours when Licensee or an agent of Licensee is on the premises, may occur with or without prior notice to Licensee and may occur as many times during the effective period of this Stipulation and Order as the Board or its designee deems necessary.

VI.

CONSEQUENCES OF A VIOLATION OF THIS STIPULATION AND ORDER

A. Summary Proceeding Before the Board. Subject to the limitations set forth in paragraph VI.C below, if the Complaint Review Committee determines that Licensee has violated any term or condition of this Stipulation and Order, the Complaint Review Committee may, in its discretion, seek additional discipline against Licensee by the following procedure:

1. Notice of Hearing/Response. The Complaint Review Committee shall schedule a hearing before the Board. At least 30 days before the hearing, the Complaint Review Committee shall mail Licensee a notice of the violation(s) alleged by the Complaint Review Committee. In addition, the notice shall designate the time and place of the hearing. At least 10

days before the hearing, Licensee shall submit a written response to the allegations. 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 VI.A.3 below to determine whether to take any additional disciplinary action against Licensee, which may include any of the forms of disciplinary action set forth in Minn. Stat. § 156.127, subd. 1.

3. Evidence at Hearing/Burden of Proof/Waiver of Hearing Before Administrative Law Judge. At the hearing before the Board, the Complaint Review Committee and Licensee may present affidavits made on personal knowledge, authenticated documents, and veterinary medical records 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 Complaint Review Committee shall file with the Board all evidence it intends to present at the hearing and shall serve a copy on Licensee at least 30 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 Complaint Review Committee at least 10 days before the hearing. The Complaint Review 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. Nothing herein shall be construed as a waiver of Licensee's right of appeal to the Minnesota Court of Appeals from a final order issued under the summary procedures set forth in paragraphs VI.A.1-3.

B. Statutory Procedures. Nothing herein shall limit the Complaint Review 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. Nothing herein shall limit the Complaint Review Committee's right to temporarily suspend Licensee's license under Minn. Stat. § 156.126, to initiate a contested case proceeding under Minn. Stat. ch. 14 or to seek injunctive relief under Minn. Stat. § 214.11 based on an alleged violation of this Stipulation and Order.

C. Requirement of Conference Before Initiating Summary Proceeding. The Complaint Review Committee is prohibited from initiating a summary proceeding under paragraph VI.A unless it first has mailed Licensee a notice of conference that contains all

allegations of violations of this Stipulation and Order that are alleged in the summary proceeding, and has provided Licensee an opportunity to respond in writing to the allegations and to appear at a conference with the Complaint Review Committee to discuss and to attempt to resolve the allegations. The Complaint Review Committee is not prohibited from initiating a summary proceeding if Licensee fails to respond in writing to the allegations or fails to appear at the conference after a notice of conference has been mailed to Licensee at Licensee's last known address on file with the Board.

VII.

PETITION FOR UNCONDITIONAL LICENSE

A. Petition for Unconditional Licensure. Licensee may petition the Board for an unconditional license at any regularly scheduled Board meeting following two years from the date of this Stipulation and Order. Any petition shall be in writing and shall include an affidavit from Licensee stating whether he has complied with all of the terms and conditions set forth in part V above and may include any other information that Licensee deems relevant to the Board's consideration of his petition.

B. Meeting with the Complaint Review Committee. At the time Licensee submits a petition for an unconditional license in accordance with paragraph VII.A above, the Complaint Review Committee may, in its discretion, schedule a meeting with Licensee to discuss his petition. Licensee shall provide any additional information or documentation that the Complaint Review Committee reasonably deems necessary to the Board's consideration of Licensee's petition.

C. Information Submitted to the Board by the Complaint Review Committee. The Complaint Review Committee may submit any information to the Board that it deems relevant to the Board's consideration of Licensee's petition.

D. Grant of Petition. The Board shall grant a petition submitted in accordance with the above paragraphs if it determines that the preponderance of all information received indicates that Licensee:

1. Has fully complied with this Stipulation and Order;
2. Has provided wholly truthful information in his petition and has otherwise complied with all requirements for reinstatement of an unconditional license; and

3. Can be expected to practice veterinary medicine with reasonable skill and safety to patients without conditions on his license.

E. Consequences of Denial of Petition. In the event the Board denies a petition for unconditional licensure submitted by Licensee, Licensee shall not again petition the Board for a period of six months from the date of the denial.

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

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 facts and circumstances set forth in this document.

IX.

DATA PRACTICES NOTICE

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.

X.

ADDITIONAL INFORMATION

A. 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 HOLMBERG, D.V.M.
Licensee

Dated: May 7, 2001.

ORDER

Upon consideration of the Stipulation and all the files, records and proceedings herein, the terms of the Stipulation are approved, adopted and hereby issued as an Order of this Board effective this 23 day of May, 2001.

MINNESOTA BOARD

OF VETERINARY MEDICINE


ROLAND C. OLSON
Executive Director