

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
Jenny M. Mayaka, D.V.M.
License No. 01799

STIPULATION AND ORDER

STIPULATION

Jenny M. Mayaka, 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:

I.

JURISDICTION

1. 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.

2. 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.

COMPLAINT REVIEW COMMITTEE

The Committee that negotiated this Stipulation with Licensee is composed of Barbara S. Fischley, D.V.M. and Sharon Todoroff. Benjamin R. Garbe, Assistant Attorney General, represents the Committee in this matter. Eric C. Tostrud, Lockridge Grindal Nauen P.L.L.P., represents Licensee.

III.
FACTS

The parties agree this Stipulation and Order is based upon the following facts:

1. On July 6, 1999, Licensee was licensed by the Board to practice veterinary medicine in Minnesota.
2. Licensee was employed at a teaching position at the Minnesota School of Business.
3. In September 2011, at a spay-neuter clinic at the Shakopee campus of the Minnesota School of Business, Licensee punctured the spleen or liver of a dog during a spay procedure. The dog was taken to an emergency clinic and received anti-clotting medication.
4. On November 2, 2011, at the Lakeville campus of the Minnesota School of Business, Licensee punctured the spleen of a dog during a spay procedure. It was reported that a colleague who assisted Licensee during the procedure smelled alcohol on Licensee's breath close in time to the procedure.
5. On November 10, 2011, Licensee entered inpatient treatment for alcohol dependency. During the intake process and during the course of treatment at the inpatient facility, Licensee reported the following information:
 - a. Licensee attended two prior outpatient treatment programs in 1990 and 1993.
 - b. Licensee attended four prior inpatient treatment programs in 1999, 2005, 2009, and 2010.
 - c. Licensee reported that, prior to admission on November 10, several students had recently approached the dean of the school regarding her behavior during classes.

Licensee admitted that her atypical behavior was the result of consuming alcohol while at work. Licensee advised that on several occasions she drank alcohol at work and would “sleep it off” under her desk. Licensee also reported that on occasion she would not be “able to recall periods of time during lectures she gave.”

6. On December 13, 2011, Licensee completed inpatient treatment and the program recommended that she enter a sober living facility and participate in outpatient aftercare. Licensee’s discharge diagnosis was Alcohol Dependence.

7. On December 13, 2011, Licensee entered into a participation agreement for monitoring of her chemical dependency with the Health Professionals Services Program (“HPSP”).

8. On January 18, 2012, Licensee was unsuccessfully discharged from outpatient aftercare due to lack of follow through with her relapse prevention plan.

9. On March 6, 2012, Licensee informed the HPSP that she had relapsed with alcohol use on March 3, 2012.

10. On May 10, 2012, Licensee appeared at a conference with the Committee. Licensee made the following misrepresentations to the Committee:

a. Licensee indicated that she had been sober since November 11, 2011 and had been compliant with all terms and conditions of the HPSP monitoring program.

b. Licensee stated that she had never consumed alcohol while at work nor had there ever been a report or allegation that she had consumed alcohol while at work.

c. Licensee stated that she had never attended inpatient or outpatient treatment prior to November 2011.

d. Licensee indicated that she had only received one DWI in 1991 when she was approximately 20 years old. However, the Committee subsequently discovered that Licensee was convicted of a second DWI in June 1997.

11. On May 25, 2012, Licensee was unsuccessfully discharged from outpatient treatment for a second time due to noncompliance, as Licensee had missed several group sessions and failed to commit to the 12-step recovery program.

12. On July 26, 2012, Licensee was discharged from the HPSP for noncompliance and failure to communicate with the HPSP staff.

IV.

LAWS

Licensee acknowledges the conduct described in section III. above justifies the disciplinary action described in section V. below, as it constitutes the following violations:

1. Inability to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or any other materials, or as a result of any mental or physical condition, in violation of Minn. Stat. § 156.081, subd. 2(3);

2. Engaging in deception or incompetence in the practice of veterinary medicine, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice, in violation of Minn. Stat. § 156.081, subd. 2(11);

3. Engaging in unprofessional conduct as defined in rules adopted by the Board or engaged in conduct which violates any statute or rule promulgated by the Board or any Board order, in violation of Minn. Stat. § 156.081, subd. 2(12); and

4. Making a false statement or misrepresentation to the board, in violation of Minn. Stat. § 156.081, subd. 2(17).

V.

REMEDY

The parties agree the Board may take the following disciplinary action and require compliance with the following terms:

Suspension

1. The Board **SUSPENDS** Licensee's license to practice veterinary medicine in the State of Minnesota. Licensee shall not engage in any act which constitutes the practice of veterinary medicine and shall not imply by words or conduct that she is authorized to practice.

2. Licensee shall surrender to the Board her license certificate. Licensee shall personally deliver or mail the certificate to the Minnesota Board of Veterinary Medicine, c/o John King, Executive Director, 2829 University Avenue S.E., Suite 540, Minneapolis, Minnesota 55414, within ten days of the date of this Order.

Reinstatement of License

3. Licensee may petition for reinstatement of her license following two years from the date this Stipulation is adopted. The burden of proof shall be upon Licensee to demonstrate by a preponderance of the evidence that she is capable of practicing veterinary medicine in a fit and competent manner, is successfully participating in a program of chemical dependency rehabilitation, and has been sober and free from alcohol and mood-altering chemicals during the 12 months immediately preceding her petition. At the time of Licensee's petition, Licensee shall meet with the Committee and comply with, at a minimum, the following:

a. Self-Report. Licensee shall submit to the Committee a report from Licensee herself. The report shall be submitted at the time Licensee petitions for reinstatement of her license. The report shall provide and address:

1) Licensee's sobriety, including the date Licensee last used mood-altering chemicals, including alcohol, and the circumstances surrounding any use while this Stipulation and Order is in effect;

2) Licensee's treatment and participation in a chemical dependency rehabilitation program, including weekly attendance at a chemical dependency support group such as Alcoholics Anonymous during the 12 months preceding the petition; evidence of participation shall include, but need not be limited to, attendance sheets on a form provided by the Board and that have been legibly signed or initialed and dated by a participant who attended the weekly meeting;

3) The type of employment in which Licensee has been involved, if any;

4) Licensee's physical and mental health status, treatment plan, medications, and compliance with treatment;

5) Licensee's work schedule, if any;

6) Licensee's future plans in veterinary medicine and the steps she has taken to prepare herself to return to practice; and

7) Any other information Licensee believes would assist the Board in its ultimate review of this matter.

b. Reports Verifying Sobriety. Licensee shall cause to be submitted to the Board reports from two adult persons, at least one of whom is not related to Licensee by blood or marriage, who can attest to Licensee's sobriety. These reports shall be submitted at the time Licensee petitions for reinstatement. Each report shall provide and address:

1) Licensee's regular participation in a chemical dependency support group such as AA or other structured chemical dependency rehabilitation program;

2) Licensee's sobriety, including the date she last used mood-altering chemicals, including alcohol; and

3) Any other information the reporter believes would assist the Board in its ultimate review of this matter.

c. Report From Employer. Licensee shall cause to be submitted to the Board a report from Licensee's non-veterinary employer, if applicable. The report shall be submitted at the time Licensee petitions for reinstatement. The report shall provide and address:

1) Licensee's sobriety;

2) Licensee's ability to perform assigned tasks;

3) Licensee's attendance and reliability;

4) Licensee's ability to handle stress;

5) Licensee's typical work schedule; and

6) Any other information the employer believes would assist the Board in its ultimate review of this matter.

d. Report From Mental Health Treatment Professional. Licensee shall cause to be submitted to the Board a report from any mental health treatment professional whom Licensee consults while this Stipulation and Order is in effect. The report shall be submitted to the Board at the time Licensee petitions for reinstatement. The report shall provide and address:

1) Verification that the mental health professional has reviewed this Stipulation and Order;

- 2) Identification of a plan of treatment, including any medications, devised for Licensee;
- 3) A statement of the involvement between Licensee and the mental health professional, including the number and frequency of meetings;
- 4) Licensee's progress with therapy and compliance with the treatment plan;
- 5) Licensee's awareness of her personal problems;
- 6) The mental health professional's conclusion as to the need for continuing therapy and Licensee's discontinuance of therapy; and
- 7) Any other information the mental health professional believes would assist the Board in its ultimate review of this matter.

e. Report From Health Care Professional. Licensee shall cause to be submitted to the Board a report from any health care professional whom Licensee consults for physical health, mental health, or chemical dependency treatment while this Stipulation and Order is in effect. The reports shall be submitted at the time Licensee petitions for reinstatement. The report shall provide and address:

- 1) Verification the health care professional has reviewed this Stipulation and Order;
- 2) Identification of diagnoses and any plans of treatment, including medications, devised for Licensee;
- 3) Licensee's progress with therapy and compliance with the treatment plan;
- 4) A statement regarding Licensee's mental health status;

- 5) A statement regarding Licensee's sobriety;
- 6) Recommendations for additional treatment, therapy, or monitoring;

and

- 7) Any other information the health care professional believes would assist the Board in its ultimate review of this matter.

f. Chemical Dependency Evaluation. Within 60 days prior to petitioning, Licensee shall undergo a chemical dependency evaluation performed by a chemical dependency treatment professional. Licensee shall submit, or cause to be submitted, the credentials of the chemical dependency evaluator for review and preapproval by Board staff for purposes of this evaluation. Licensee is responsible for the costs of the evaluation. The results of the evaluation shall be sent directly to the Board and must include a statement verifying the evaluator has reviewed this Stipulation and Order and any evaluation and/or treatment records deemed pertinent by the Committee or the evaluator prior to the evaluation.

g. Compliance With Evaluator's Recommendations. Licensee shall comply promptly with any recommendations for additional evaluation and treatment made by the chemical dependency evaluator.

h. Mental Health Evaluation. Within 60 days prior to petitioning, Licensee must undergo a mental health evaluation performed by a psychiatrist or a licensed psychologist. Licensee shall submit, or cause to be submitted, the credentials of the evaluator for review and pre-approval by Board staff for purposes of this evaluation. Licensee is responsible for the cost of the evaluation. The results shall be sent directly to the Board and shall provide and address:

1) Verification the evaluator has reviewed a copy of this Stipulation and Order and any evaluation and/or treatment records deemed pertinent by the Committee or the evaluator prior to the evaluation;

2) Diagnosis and any recommended treatment plan;

3) Licensee's ability to handle stress;

4) Recommendations for additional evaluation or treatment; and

5) Any other information the evaluator believes would assist the Board in its ultimate review of this matter.

i. Compliance With Evaluator's Recommendations. Licensee shall comply promptly with any recommendations for additional evaluation and treatment made by the mental health evaluator.

j. Random Alcohol and Drug Screens. At any time during the petition process, the Board may direct Licensee, without prior notice, to submit to laboratory hair, blood, and urine screenings to determine the presence or absence of alcohol or drugs. Licensee agrees to abstain from substances known to interfere with the toxicology screening process, including but not limited to certain foods, beverages, over-the-counter medications, and other products that contain poppy seeds, hemp seeds, and ethyl alcohol. Examples include but are not limited to nonalcoholic beer or wine; some desserts, salad dressings, soups and herbal remedies; and hand-sanitizing and mouthwash products. Licensee shall arrange with her employer, if any, for release from work for purposes of fulfilling the requirements of the laboratory screening. The Board may contact Licensee by telephone, letter, or through personal contact by an agent to direct her to submit to the tests within two hours after she is contacted by the Board. The hair, blood, and urine screens shall be: (1) observed in their drawing; (2) handled through legal chain-of-custody

methods; and (3) paid for by Licensee. The results of the screens shall be reported directly to the Board. The biological fluid testing shall take place at Hennepin County Medical Center, 701 Park Avenue South, Minneapolis, Minnesota 55415. If Licensee is farther than 30 miles from Hennepin County Medical Center and the blood and urine testing is to be completed through the mail, the drug screening tests used must be those obtained from Hennepin County Medical Center. All blood and urine tests processed through the mail must be directed to the attention of the toxicology supervisor at Hennepin County Medical Center.

k. Waivers. If requested by the Board at any time during the petition process, Licensee shall complete and sign health records waivers and chemical dependency treatment records waivers supplied by the Board to allow representatives of the Board to discuss Licensee's case with and to obtain written evaluations and reports and copies of all of Licensee's health, mental health, or chemical dependency records from her physician, mental health professional/therapist, chemical dependency counselor, or others from whom Licensee has sought or obtained treatment, support, or assistance.

l. Additional Information. Licensee shall provide any additional information relevant to her petition reasonably requested by the Committee.

4. Reinstatement Requirements. Licensee shall meet all requirements in effect at the time of her petition, including but not limited to completing the appropriate application, paying requisite fees, and completing any necessary continuing education requirements.

5. The Board may, at any regularly scheduled meeting following Licensee's petition for reinstatement pursuant to paragraph 3 above, take any of the following actions:

1. Remove the suspension and issue a license to Licensee;

2. Remove the suspension and issue a license to Licensee with limitations upon the scope of Licensee's practice and/or with conditions for Licensee's practice; or
3. Continue the suspension of Licensee's license upon her failure to meet the burden of proof.

VI.

CONSEQUENCES OF A VIOLATION

1. *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 Noncompliance 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 2 below shall apply to the hearing.
2. *Hearing Procedures.* The following procedures shall apply:
 - a. *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.
 - b. *Hearing Before Board.* The Board shall hold a hearing before its own members in accordance with the procedures set forth 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 Minnesota Statutes section 156.127.
 - c. *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 she 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 contested case proceeding and hearing before an administrative law judge and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

d. *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.

3. *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 Minnesota Statutes section 214.103, subdivision 6, through a temporary suspension proceeding pursuant to Minn. Stat. § 156.126, or to initiate a contested case proceeding under Minnesota Statutes chapter 14 based on an alleged violation of this Stipulation and Order.

VII.

ADDITIONAL INFORMATION

1. 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.

2. 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.

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

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

5. 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 changes, 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 below.

6. 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.

7. This Stipulation and Order does 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.

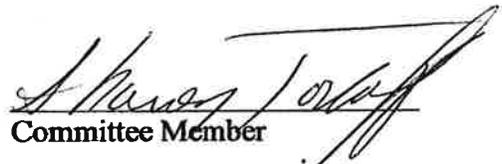
VIII.

DATA PRACTICES NOTICES

1. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minnesota Statutes section 13.41, subdivision 5. Data regarding this action will be provided to data banks as required by Federal law or consistent with Board policy. While this Stipulation and Order is in effect, information obtained by the Board pursuant to this Order is considered active investigative data on a licensed health professional, and as such, is classified as confidential data pursuant to Minnesota Statutes section 13.41, subdivision 4.

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


JENNY M. MAYAKA, D.V.M.
Licensee
Dated: 10/4, 2012


Committee Member
Dated: 8 November, 2012

ORDER

Upon consideration of the Stipulation, the Board **SUSPENDS** Licensee's license and adopts all of the terms described above on this 8 day of November, 2012.

MINNESOTA BOARD
OF VETERINARY MEDICINE



JOHN KING, D.V.M.
Executive Director

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