

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
James L. Busby, D.V.M.
License No. 10178

STIPULATION AND ORDER

STIPULATION

James L. Busby, 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 November 20, 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 October 4, 2001. Susan Thurmer, Esq., represented Licensee. Susan E. Damon, Assistant Attorney General, represented the Complaint Review Committee.

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 was initially licensed by the Board as a veterinarian on January 5, 1978.
2. Licensee currently owns a veterinary practice called Busby Veterinary Clinic, which is located in rural Bemidji, Minnesota.
3. The Board received a complaint about Licensee's care of Tuffy, an eight-year-old dog on whom Licensee performed an ovariohysterectomy. In connection with its investigation of the complaint, the Committee determined that Licensee's practice of veterinary medicine does not meet current minimum standards of acceptable and prevailing practice. Examples include the following:
 - a. Licensee does not routinely examine animals before performing surgery.
 - b. Licensee does not perform or offer to perform presurgical screenings on animals.
 - c. Licensee routinely relies on injections of Vitamin K to control intra-operative bleeding, without first determining the cause of the bleeding.
 - d. Licensee reuses disposable syringes.
 - e. Licensee sterilizes his instruments in cold sterilization solution, but only changes the solution approximately once per month.
 - f. Licensee does not have gas anesthesia or oxygen in his clinic.
 - g. Licensee saves contaminated pentobarbital left over from veterinary surgeries and uses it as a euthanasia agent.
 - h. Licensee's medical records do not contain the information required by Minnesota Rules 9100.0800, subpart 4.A.
 - i. Licensee was unable to produce his controlled drug log when it was requested by the Board's investigator. Licensee stated that he had been unable to locate the

log since an employee quit working for him about one month earlier. Licensee reviewed his records and re-created the controlled drug log before the conference with the Committee.

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. 9100.0700, subp. 1.A, and Minn. R. 9100.0800, subps. 1 and 4.A, and agrees to the remedy set forth below.

V.

REMEDY

A. Limited and Conditional Licensure. Licensee's license to practice veterinary medicine in the State of Minnesota is placed in limited and conditional status. Licensee shall comply with each of the following terms, conditions and requirements:

1. Practice Restriction. Until such time as Licensee has fully complied with the requirements set forth in paragraphs V.A.2, V.A.3 and V.A.4 herein, Licensee's veterinary practice shall be restricted to well-animal care. For purposes of this Order, well-animal care is defined as follows:

- a. For animals under three years of age:
 - (1) Routine health maintenance appointments;
 - (2) Spay, neuter and declaw surgeries;
 - (3) Any dental care;
 - (4) Removal of porcupine quills;
 - (5) Treatment of cherry eye; and
 - (6) Ear cleaning that requires anesthesia.
- b. For animals of any age:
 - (1) Vaccinations and pre-vaccination examinations;
 - (2) Suturing of simple lacerations under 6 cm;
 - (3) Treatment of uncomplicated otitis externa; and
 - (4) Euthanasia.

At all times while this Order is in effect, Licensee shall post in a conspicuous location in the lobby of his clinic a sign which states that his services are limited to those listed above.

2. Professional Reading/Affidavit of Compliance. No later than one year from the date of this Order, Licensee shall read the following sections of Birchard and Sherding, Saunders Manual of Small Animal Practice (1994): section 1, chs. 1-6; section 3, chs. 1-3 and 7-9; section 4, chs. 1-4; section 5, ch. 9; section 6, chs. 1-7, 12, 14, 16, 17, 20 and 21; section 7, chs. 2-13; section 8, chs. 1, 3, 7, 14 and 16; and section 9, all chapters. No later than 14 days after completion of this reading, Licensee shall submit an affidavit of compliance to the Board.

3. Companion Animal Disciplinary Examination. Licensee shall take and pass the Companion Animal Disciplinary Examination sponsored by the National Board of Veterinary Medical Examiners ("NBVME"). The minimum passing score of the Companion Animal Disciplinary Examination is the NBVME's recommended criterion-referenced passing point. Licensee shall be allowed one re-examination only if he fails to pass the Companion Animal Disciplinary Examination on the first attempt. Licensee is responsible for all costs associated with examination and for all costs of any necessary re-examination. If the Companion Animal Disciplinary Examination becomes unavailable, the Complaint Review Committee may substitute a similar examination that Licensee must take and pass to fulfill the requirements of this paragraph.

4. Senior Rotations. Licensee shall complete six two-week senior rotations in small animal medicine at the University of Minnesota College of Veterinary Medicine. The rotations must be pre-approved by the Complaint Review Committee and must include at least one rotation each in anesthesia and internal medicine. Licensee shall cause the instructor to submit to the Board proof of Licensee's completion of each rotation no later than 14 days after completion. Licensee is responsible for all costs associated with completion of the rotations.

5. Presurgical Examinations. Licensee shall perform presurgical examinations on all surgical patients. At a minimum, such examinations shall include auscultation of the animal's heart and lungs and examination of its mucous membranes. Licensee shall also obtain the animal's health history from the client.

6. Presurgical Screenings. Licensee shall offer presurgical screenings for all surgical patients. If Licensee performs any presurgical screenings in house, he shall purchase a chemistry analyzer sufficient to use for the screenings.

7. Surgical Consent Form. No later than 10 days from the date of this Order, Licensee shall prepare and submit a surgical consent form to the Complaint Review Committee

for approval. Following the Complaint Review Committee's notice to Licensee of its approval, Licensee shall use the surgical consent form in all surgical cases.

8. Oxygen and Ambubag Required. Within 30 days of the date of this Order, Licensee shall equip his clinic with oxygen, an ambubag, masks and endotracheal tubes to use for any respiratory or cardiovascular event.

9. Re-Use of Syringes Restricted. Licensee is prohibited from reusing syringes unless they have been autoclaved or steam sterilized.

10. Conditions for Use of Vitamin K. Licensee shall use Vitamin K only in instances in which he actually determines and documents in the medical record that its use is medically justified.

11. Conditions for Use of Cold Sterilization. Licensee shall change any cold sterilization solution a minimum of one time per week.

12. Conditions for Euthanasia. Licensee is prohibited from using contaminated pentobarbital as a euthanasia agent. Licensee shall perform euthanasias in accordance with current American Veterinary Medical Association guidelines.

13. Record Keeping Requirements.

a. Licensee shall comply with the record keeping requirements set forth in Minn. R. 9100.0800, subp. 4. Licensee's compliance with Minn. R. 9100.0800, subp. 4 shall specifically include the following:

(1) Licensee shall include physical examination findings in the record of every animal he examines. Licensee shall be permitted to use physical examination stickers in patient records to comply with this requirement.

(2) Licensee shall prepare a surgical report for each surgery he performs or shall maintain a book of his standard surgical procedures and shall note in the patient record that a routine surgery (e.g., OHE) was performed. Licensee shall prepare individual surgical reports in all cases in which complications occur.

14. Controlled Drug Log. Licensee shall continue to create and maintain a controlled drug log.

15. 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 any clinic in which Licensee practices, to examine and, as deemed necessary by the inspector, to remove from the premises for review and copying, Licensee's medical records for the purpose of determining his compliance with this 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 Order as the Board or its designee deems necessary. In lieu of entry and inspection, the Board member or Board designee may forward a written request to Licensee to provide the Board member or Board designee with copies of specified medical records by mail. Licensee shall respond to any such written request for records within the time period set forth in the request, provided that any written request shall allow Licensee a minimum of two business days after his actual receipt of the request to copy the records and to place them in the mail.

16. Continuing Education Audit Authority. At any time while this Order is in effect, the Board may audit Licensee's compliance with continuing education requirements under Minn. R. 9100.1000. Upon request by the Board, Licensee must furnish, within 30 days, proof to the Board of satisfactorily meeting the required number of continuing education hours established by the Board. The Board's authority under this paragraph is in addition to its audit and investigation authority set forth in Minn. R. 9100.1000, subp. 8.B.

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, Minn. Stat. ch. 156 or Minn. R. ch. 9100, 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, 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, Minn. Stat. ch. 156 or Minn. R. ch. 9100 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, to seek injunctive relief under Minn. Stat. § 214.11 or to issue a cease and desist order under Minn. Stat. § 156.15 based on an alleged violation of this Stipulation and Order, Minn. Stat. ch. 156 or Minn. R. ch. 9100.

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 Licensee's compliance with all requirements set forth in paragraphs V.A.2, V.A.3 and V.A.4 herein. 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 Order;
2. Has provided wholly truthful information in his reinstatement petition and has otherwise complied with all reinstatement requirements; and

3. Can be expected to practice veterinary medicine with reasonable skill and safety to patients without conditions or limitations 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 represented by counsel in this matter.

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.

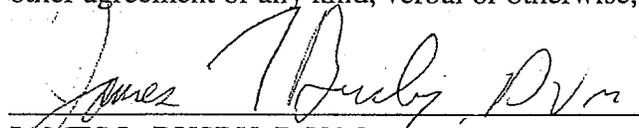
DATA PRACTICES NOTICE

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.



JAMES L. BUSBY, D.V.M.
Licensee

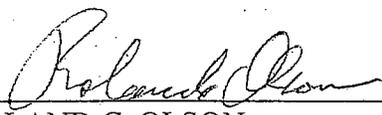
Dated: 2/18/02

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 1 day of March, 2002.

MINNESOTA BOARD

OF VETERINARY MEDICINE



ROLAND C. OLSON
Executive Director