

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
David H. Mills, D.V.M.
License No. 09274

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND FINAL DECISION AND ORDER**

The above-entitled matter came on for hearing by the Minnesota Board of Veterinary Medicine ("Board") on January 30, 2002 in Conference Room A, 4th Floor, 2829 University Avenue S.E., Minneapolis Minnesota 55414.

Susan E. Damon, Assistant Attorney General, represented the Board's Complaint Review Committee ("Committee"). David H. Mills, D.V.M. ("Respondent"), did not appear.

Board members present who considered this matter were: Lynn Green, Board Vice President and Public Member, Kenneth Greiner, D.V.M., Ronald Kuecker, D.V.M., Board Secretary-Treasurer, Frederick Mehr, D.V.M. and Susan Osman, Public Member. Committee members Frances O. Smith, D.V.M., Board President, and Meg J. Glattly, D.V.M., did not participate in deliberations or vote in the matter.

On September 5, 2001, the Committee initiated a contested case proceeding against Respondent at the State Office of Administrative Hearings. On October 23, 2001, the Committee moved for a default recommendation based on Respondent's failure to appear at the prehearing conference. On November 1, 2001, Steve M. Mihalchick, Administrative Law Judge, issued Findings of Fact, Conclusions and Recommendation based on Respondent's default.

Based upon all of the files, records, and proceedings herein, the Board makes the following:

FINDINGS OF FACT

1. Respondent has been licensed by the Board since July 10, 1974. His license was last renewed in inactive status on February 25, 2000.
2. Respondent is a resident of Wisconsin and held a license to practice veterinary medicine in that state.
3. On April 28, 1999, the State of Wisconsin, Veterinary Examining Board ("Wisconsin Board") issued a final decision and order in a contested case proceeding whereby

Respondent's Wisconsin license to practice veterinary medicine was indefinitely suspended for a period of not less than 20 days, or until he complied with a requirement that he successfully complete a course in conducting ovariohysterectomies on animals pre-approved by the Wisconsin Board, whichever was later.

4. Respondent filed a petition for review of the April 28, 1999 Final Decision and Order in the Circuit Court for Manitowoc County. The court did not stay the suspension of Respondent's license while his petition for review was pending. On November 22, 2000, the court issued a memorandum decision in which it vacated certain conclusions that were based on a deposition and an exhibit that the court determined should not have been admitted at the hearing. The court remanded the matter to the Wisconsin Board for further consideration of the sanctions and penalties, and directed the Wisconsin Board to exclude from deliberations information derived solely from the deposition and exhibit.

5. On January 30, 2001, the Wisconsin Board issued an order on remand affirming its April 28, 1999 Order. A true and correct copy of the January 30, 2001 Order on Remand is attached hereto as Exhibit A.

6. On February 1, 2001, the Wisconsin Board issued a final decision and order in which it found that Respondent had continued to practice veterinary medicine in Wisconsin for compensation after April 28, 1999, when his license was suspended. Based on this conduct, the Wisconsin Board concluded that Respondent had violated Wis. Stat. §§ 453.05(1) and 453.07(1)(b), (g) and (h) and ordered the revocation of Respondent's Wisconsin license. A true and correct copy of the February 1, 2001 Final Decision and Order is attached hereto as Exhibit B.

7. Respondent did not appeal either the January 30, 2001 Order on Remand or the February 1, 2001 Final Decision and Order.

8. On September 5, 2001 a Notice of and Order for Prehearing Conference and Hearing ("Notice") in this matter was mailed to Respondent by U.S. mail and certified mail. Both of the copies of the Notice were mailed to Respondent's last known address, 6506 North Avenue, Cleveland, WI 53015. The Committee received a return receipt from the certified mailing, bearing the signature of Dr. David Mills. The Notice scheduled the prehearing conference for October 23, 2001.

9. The Notice that was mailed to Respondent contained the following statement:

If Respondent fails to appear without the prior consent of the administrative law judge at the prehearing conference in this matter, Respondent shall be deemed in default and the allegations or issues set forth herein may be taken as true or deemed proved without further evidence, and the Board may revoke and/or take other action against Respondent's license to practice veterinary medicine in the State of Minnesota, including imposition of an administrative penalty, as authorized by Minn. Stat. §§ 156.081 and 156.127.

10. Respondent did not appear at the October 23, 2001 prehearing conference. No one appeared on behalf of Respondent. Respondent did not contact the Administrative Law Judge regarding this matter.

Based upon the foregoing Findings of Fact, the Board makes the following:

CONCLUSIONS OF LAW

1. The Board has subject matter jurisdiction herein pursuant to Minn. Stat. §§ 14.50, 156.081, 156.127, 214.10 and 214.103.
2. Respondent was given timely and proper notice of the prehearing conference in this matter.
3. The Board has complied with all relevant substantive and procedural requirements of statute and rule.
4. Under Minn. R. 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.
5. Under Minn. R. 1400.6000 when a party defaults, the allegations and the issues set out in the Notice of and Order for Prehearing Conference and Hearing may be taken as true and deemed proved. The Board therefore takes those allegations and issues as true and deemed proved.
6. Based upon the facts set out in the Notice of and Order for Prehearing Conference and Hearing and in the Findings of Fact herein, Respondent has been the subject of revocation and suspension of a veterinary license in another jurisdiction, in violation of Minn. Stat. § 156.081, subd. 2(5), and is subject to disciplinary action by the Board under Minn. Stat. § 156.127.

Based upon the foregoing Conclusions of Law, the Board issues the following:

ORDER

1. Respondent's license to practice veterinary medicine in the State of Minnesota, license number 09274, is hereby REVOKED, effective immediately.

2. Respondent shall surrender to the Board all Minnesota certificates of licensure by this Board within ten days of the date of this Order. The certificates shall be mailed to the Board of Veterinary Medicine, c/o Roland C. Olson, D.V.M., Executive Director, 2829 University Avenue S.E. #540, Minneapolis, MN 55414-3250.

Dated: February 1, 2002

MINNESOTA BOARD

OF VETERINARY MEDICINE

By: Lynn M. Green
LYNN GREEN
Vice President

STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

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IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

ADMINISTRATIVE
HEARINGS

DAVID MILLS, D.V.M.

LS9708281VET

Respondent

ORDER ON REMAND

On April 28, 1999, the Veterinary Examining Board filed its Final Decision and Order in the above-captioned matter. The board adopted the Proposed Decision of the Administrative Law Judge in the matter, and thereby made the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. David Mills, D.V.M., the respondent herein, was born on February 17, 1948, and is licensed to practice veterinary medicine in the state of Wisconsin pursuant to license number 1399. Dr. Mills practices at 6506 North Avenue, Cleveland, Wisconsin 53015.
2. On or about January 25, 1991, Dr. Mills attempted to perform an ovariohysterectomy on Sable, a one year old black Labrador retriever, owned by Scott and Pam Hurtienne. An ovariohysterectomy involves the excision of both ovaries and the uterus.
3. Following the surgery, Dr. Mills informed the dog's owners that the surgery had been uneventful, and completed successfully, with the exception that he had found a cyst on one of the ovaries, which he removed. He assured the owner's that the cyst was not cancerous and everything was fine.
4. The Hurtienne's were of the understanding that Dr. Mills had performed a complete ovariohysterectomy. In fact, Dr. Mills removed only the two uterine horns and the left ovary. Dr. Mills did not remove the right ovary.
5. Dr. Mills does not have his records regarding the history, physical examination findings and treatment details regarding Sable. However, Dr. Mills' kennel card of the spay reads "1/25/91 Spayed. - (Cyst on 1 ovary). No complications," and a chronological billing sheet states "1/25/91 Spay Surgery \$65.00".
6. Approximately six months later, Sable began bleeding in a manner typical of estrus.
7. Sable continued to show signs of estrus at six month intervals. The owners returned Sable to Dr. Mills in June or July, 1993 for investigation and correction of the apparently incomplete spay.

EXHIBIT

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8. During the 1993 operation, although Dr. Mills made a second incision in the midline of Sable's abdomen, he did not remove the remaining ovary.
9. Dr. Mills did not make any record of the second spay attempt, and refused to speak with the owners about the operation. When Mr. and Mrs. Hurtienne went to pick up Sable after the 1993 operation, Dr. Mills was not present. They were given the dog by a 10-13 year old girl at the clinic. Nevertheless, the owners had no reason to believe that Dr. Mills had not completed the ovariohysterectomy.
10. Sable showed signs of estrus again in November or December, 1993. Soon thereafter the Hurtiennes sold Sable to Mr. and Mrs. Chiples.
11. In the fall of 1994 and the spring of 1995, Sable again showed signs of estrus.
12. On April 19, 1995, Dr. Patricia Connors-Scherer, D.V.M., performed exploratory surgery on Sable. She discovered two healed midline incisions, and the complete right ovary with approximately 1" of uterine body attached.
13. On December 12, 1995, Dr. Mills told Celina Kobs, an investigator for the Division of Enforcement, that he remembered the Sable spay because it was a messy hysterectomy case. Dr. Mills told Investigator Kobs that the dog was "full of tumors."
14. Dr. Mills' records of his treatment of Sable provided to the Division of Enforcement, and represented by Dr. Mills to be complete, do not contain any indication of any pathology study or report of tumors removed from Sable by Dr. Mills. During the December 12, 1995, interview with the DOE investigator, Dr. Mills denied having any further treatment records for Sable beyond a chronological billing summary for the Hurtiennes and a single index card containing 10 lines of handwritten notes, which include the notations set forth above in paragraph 5.
15. On or about December 29, 1995, Dr. Mills wrote to the Division of Enforcement about his treatment of Sable. In the handwritten letter, Dr. Mills claimed that he recalled the spay of Sable because of "abnormalities I found when I performed the procedure. Large cystic (tumor?) ovaries were present with numerous adhesions of the uterine horns and ovaries." Dr. Mills went on to state that he informed the Hurtiennes that "I may not have removed all the ovarian tissue due to the size + adhesions that were present and of the possible problems in the future."

CONCLUSIONS OF LAW

1. The Veterinary Examining Board has jurisdiction in this proceeding pursuant to Ch. 453, Stats.
2. Dr. Mills' failure to perform a complete ovariohysterectomy on Sable constitutes conduct which evidences a lack of knowledge or ability to apply professional principles or skills, and is unprofessional conduct pursuant to sec. VE 7.06 (1), Wis. Adm. Code.
3. Dr. Mills' false statements to the animal's owners and the Division of Enforcement regarding his treatment of Sable constitutes deception in the practice of veterinary medicine, and is unprofessional conduct pursuant to sec. VE 7.06 (2), Wis. Adm. Code.
4. Dr. Mills' failure to maintain accurate history, physical examination findings, and treatment details regarding Sable constitutes a violation of sec. VE 7.03 (1), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of the respondent, David Mills, D.V.M., to practice veterinary medicine is indefinitely suspended for a period of not less than 20 days, or until he complies with the remedial education requirement herein, whichever is later.

FURTHERMORE, IT IS ORDERED that the suspension shall not be lifted until Dr. Mills has provided the board with sufficient evidence that he has participated in and successfully completed a course in conducting ovariohysterectomies on animals, provided through the University of Wisconsin School of Veterinary Medicine, an established clinic, or another facility approved by the board. The course shall consist of clinical and, if necessary, classroom or home study. A description of the course content and parameters shall be submitted to the Veterinary Examining Board, or its designee, for approval prior to commencement of the program. Dr. Mills shall permit the person(s) conducting the program to provide a written evaluation of his participation in and successful completion of the course. All costs of the program shall be the responsibility of Dr. Mills.

FURTHERMORE, IT IS ORDERED that the assessable costs of this proceeding be imposed upon Dr. Mills, pursuant to sec. 440.22, Wis. Stats.

On May 27, 1999, respondent filed his petition for review of the board's Final Decision and Order in the Circuit Court for Manitowoc County, the Honorable Fred H. Hazlewood presiding. The court issued its Memorandum Decision in the matter on November 22, 2000. The court's findings included the following:

The [Veterinary Examining] Board's findings and order adopting the findings of the administrative law judge are affirmed with respect to the conclusions that the petitioner failed ". . . to perform a complete ovariohysterectomy . . ." on a dog, and made false statements to the Division of Enforcement. These factual conclusions are supported by substantial evidence in the record. The legal conclusion that this constitutes unprofessional conduct under sections VE 7.06(1) & (2) Wis. Adm. Code is obvious and also affirmed.

However, the Board's conclusion that the petitioner failed to maintain adequate records in violation of the requirement at VE 7.03(1) Wis. Adm. Code, and that he made false statements to the dog's first owner, Ms. Hurtienne, must be vacated. These findings are based on the deposition and written statement of Ms. Hurtienne that were admitted into evidence over the objection of the petitioner. This court concludes that the proponent of the deposition failed to establish reasonable notice was given of the taking of the deposition. Without such a showing, the deposition should not have been admitted at the hearing. (Memorandum Decision pp. 1-2)

The court ordered as follows:

Because the Board's decision may have been affected by the information presented in the Hurtienne deposition and her written statement, this case is remanded to the Board for further consideration of the sanctions and penalties. The Board is directed to exclude from their deliberations any information derived solely from the Hurtienne deposition or Exhibit 3, her written statement. (Memorandum Decision, p. 15)

The board considered the court's order remanding the matter at its meeting of January 24, 2001. Based upon the court's Order, Findings of Fact and Conclusions of Law set forth in the ALJ's Proposed Decision which were based upon evidence found in the Hurtienne deposition and Exhibit 3 were excised, and the board considered only the following Findings of Fact and Conclusions of Law, as excerpted from the ALJ's Proposed Decision.

FINDINGS OF FACT

1. David Mills, D.V.M., the respondent herein, was born on February 17, 1948, and is licensed to practice veterinary medicine in the state of Wisconsin pursuant to license number 1399. Dr. Mills practices at 6506 North Avenue, Cleveland, Wisconsin 53015.
2. On or about January 25, 1991, Dr. Mills attempted to perform an ovariohysterectomy on Sable, a one year old black Labrador retriever, owned by Scott and Pam Hurtienne. An ovariohysterectomy involves the excision of both ovaries and the uterus.
4. In fact, Dr. Mills removed only the two uterine horns and the left ovary. Dr. Mills did not remove the right ovary.
5. Dr. Mills does not have his records regarding the history, physical examination findings and treatment details regarding Sable. However, Dr. Mills' kennel card of the spay reads "1/25/91 Spayed. - (Cyst on 1 ovary). No complications," and a chronological billing sheet states "1/25/91 Spay Surgery \$65.00".
11. In the fall of 1994 and the spring of 1995, Sable again showed signs of estrus.
12. On April 19, 1995, Dr. Patricia Connors-Scherer, D.V.M., performed exploratory surgery on Sable. She discovered two healed midline incisions, and the complete right ovary with approximately 1" of uterine body attached.
13. On December 12, 1995, Dr. Mills told Celina Kobs, an investigator for the Division of Enforcement, that he remembered the Sable spay because it was a messy hysterectomy case. Dr. Mills told Investigator Kobs that the dog was "full of tumors."
14. Dr. Mills' records of his treatment of Sable provided to the Division of Enforcement, and represented by Dr. Mills to be complete, do not contain any indication of any pathology study or report of tumors removed from Sable by Dr. Mills. During the December 12, 1995, interview with the DOE investigator, Dr. Mills denied having any further treatment records for Sable beyond a chronological billing summary for the Hurtiennes and a single index card containing 10 lines of handwritten notes, which include the notations set forth above in paragraph 5.
15. On or about December 29, 1995, Dr. Mills wrote to the Division of Enforcement about his treatment of Sable. In the handwritten letter, Dr. Mills claimed that he recalled the spay of Sable because of "abnormalities I found when I performed the procedure. Large cystic (tumor?) ovaries were present with numerous adhesions of the uterine horns and ovaries." Dr. Mills went on to state that he informed the Hurtiennes that "I may not have removed all the ovarian tissue due to the size + adhesions that were present and of the possible problems in the future."

CONCLUSIONS OF LAW

1. The Veterinary Examining Board has jurisdiction in this proceeding pursuant to Ch. 453, Stats.
2. Dr. Mills' failure to perform a complete ovariohysterectomy on Sable constitutes conduct which evidences a lack of knowledge or ability to apply professional principles or skills, and is unprofessional conduct pursuant to sec. VE 7.06 (1), Wis. Adm. Code.
3. Dr. Mills' false statements to the Division of Enforcement regarding his treatment of Sable constitutes deception in the practice of veterinary medicine, and is unprofessional conduct pursuant to sec. VE 7.06 (2), Wis. Adm. Code.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968).

The board concludes that the modified Findings of Fact and Conclusions of Law set forth above fully justify the discipline imposed by the board's April 28, 1999 Order. The rehabilitative objective militates for the remedial training set forth in the original Order, and is consistent with previous board actions in other cases involving similar negligent practice. That finding alone would not justify a period of suspension of the license, but there is more.

In both the licensure and disciplinary processes, the board and its licensees must perforce interact in a climate of mutual trust. The applicant for a license relies on the board to be fair and impartial in exercising its considerable discretion in making licensure decisions. The board relies on applicants to be truthful and forthcoming in the application process, for the licensing boards in this state simply do not have the resources to determine whether all representations made on an application are true. Falsification of an application, if discovered, is very often considered more serious than the underlying event that was the subject of the falsification.

So too, the board relies on its licensees to cooperate fully in the investigation of allegations of negligent practice or other misconduct, for misrepresentations made to the board interfere with and delay the board's ability to carry out its only reason for existing: the protection of the health, safety or welfare of the public. Accordingly, falsifications made to the board may well be considered more serious than the underlying conduct being investigated, and that is the case here. The board concludes that it is important that other licensees be reminded of the seriousness with which the board views such conduct, and deems a minimum suspension of 20 days to be appropriate in terms of accomplishing the deterrence objective.

NOW, THEREFORE, IT IS ORDERED that the Order set forth in the Proposed Decision in this matter dated March 5, 1999, as adopted by the board in its Final Decision and Order dated April 28, 1999, is hereby affirmed.

Dated this 30th day of January, 2001.

STATE OF WISCONSIN
VETERINARY EXAMINING BOARD

by Diane Scott
Diane Scott, D.V.M.
Chair

STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

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ADMINISTRATIVE
HEARINGS

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS
AGAINST

FINAL DECISION
AND ORDER

DAVID H. MILLS, D.V.M.

Case No. LS 0005161 VET

RESPONDENT

TO: David H. Mills, DVM
6506 North Avenue
Cleveland, WI 53015

James E. Polewski
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on July 28, 2000, before Administrative Law Judge William A. Black. The Division of Enforcement appeared by Attorney James E. Polewski. The respondent filed an answer to the complaint but did not appear at the hearing. The Administrative Law Judge (ALJ) filed his Proposed Decision in the matter on December 15, 2000. Dr. Mills filed his objections to the Proposed Decision on December 21, 2000, and Mr. Polewski filed his Division of Enforcement Response to Respondent's Objections to the Proposed Decision on January 8, 2001. The board considered the matter on January 24, 2001.

Based on the entire record of this case the Veterinary Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. David H. Mills, D.V.M., ("respondent"), DOB, February 17, 1948 was licensed to practice veterinary medicine this state of Wisconsin pursuant to license number 1399.
2. By order dated April 28, 1999, the Veterinary Examining Board suspended the veterinary license issued to respondent. The term of the license suspension was 20 days, or until respondent completed remedial education approved by the Veterinary Examining Board, whichever was later.

EXHIBIT

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3. As of April 26, 2000, the respondent had not complied with the condition for re-instatement of his license to practice veterinary medicine in Wisconsin, and the license remains suspended.
4. Despite the suspension of his license to practice veterinary medicine in Wisconsin, the respondent engaged in the practice of veterinary medicine for compensation in Wisconsin from April 28, 1999 and continuing, including:

(Exhibit 2 – Investigation Report, United States Department of Agriculture Animal and Plant Health Inspection Service)

- a. May, 1999: 4,5,7,8,9,10,12,13,14,17,18,19,26
- b. June, 1999: 1,4,7,9,11,14,15,16,18,21,24,28
- c. July, 1999: 2,6,8,9,10,13,14,19,23,25,26,30,31
- d. August, 1999: 2,4,5,6,17,18,19,23,24,25,26,30
- e. September, 1999: 3,7,9,13,20,21,22,27,29
- f. October, 1999: 1,2,4,5,6,8,12,14,15,18,25,26,28
- g. November, 1999: 1,4,5,6,10,11,15,16,17,18,19,20,23,25,29
- h. December, 1999: 3,9,10,14,22,27
- i. January, 2000: 7,15,20,21,26

5. On May 27, 1999, respondent filed his petition for review of the board's April 28, 1999, Final Decision and Order (Case #LS9708281VET) in the Circuit Court for Manitowoc County, the Honorable Fred H. Hazlewood presiding. The court issued its Memorandum Decision in the matter on November 22, 2000. The court found that the board erred in having admitted into evidence a deposition and a written statement of the complaining witness, and in making findings based upon that erroneously admitted evidence. The court therefore ordered that, because the Board's decision may have been affected by the information presented in the deposition and written statement, the case be remanded to the board for further consideration of the sanctions and penalties. The Board was directed to exclude from its deliberations any information derived solely from deposition and written statement of the complaining witness.

6. The board reconsidered the matter on remand on ~~April~~ ^{January} 24, 2001. After deliberation, the board affirmed its earlier Order that respondent's license be suspended for 20 days, or until respondent completed remedial education approved by the Veterinary Examining Board, whichever was later.

CONCLUSIONS OF LAW

1. The Veterinary Examining Board has jurisdiction in this matter pursuant to Wis. Stats. ch. 453.
2. By failing to appear at the hearing, the respondent is in default under Wis. Admin. Code sec. RL 2.14, and the Veterinary Examining Board may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.
3. By continuing to practice veterinary medicine while his license to do so was suspended by order of the board, and billing clients for his services as if he were authorized to provide those services, the respondent has violated Wis. Stat. sections, 453.05(1) and 453.07(1)(b), (g) and (h).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of David H. Mills, respondent, license number 1399, is REVOKED. Costs are awarded to Complainant.

EXPLANATION OF VARIANCE

The board has accepted the ALJ's Findings of Fact, Conclusions of Law and Order in their entirety. The board has, however, added two Findings of Fact at paragraphs 5 and 6, to reflect the status of Case #LS9708281VET at the time the board considered this matter.

Dated this 13 day of Feb, 2001.

STATE OF WISCONSIN
VETERINARY EXAMINING BOARD

by Diane Scott
Diane Scott, D.V.M.
Chair