

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
Ernest Glenn Drager, D.V.M.
License No. 07283

STIPULATION AND ORDER

STIPULATION

Ernest Glenn Drager, 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 Minn. Stat. Ch. 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.

BACKGROUND

3. On August 13, 2015, Licensee appeared before the Committee composed of Board members Barbara Fischley, D.V.M., and Mary Olson, D.V.M., to discuss allegations contained in a Notice of Conference dated July 14, 2015 (the “Conference”). Julia Wilson, D.V.M., Executive Director of the Board, was also present. Andrew M. Pettit, Assistant

Attorney General, appeared on behalf of the Committee. Licensee was advised by the Board's representatives that he may choose to be represented by legal counsel in this matter. Licensee knowingly waived legal representation at the Conference. Licensee subsequently retained Loren Gross, Esq., Bloomington, Minnesota.

4. Licensee was licensed to practice veterinary medicine in the State of Minnesota on June 14, 1983.

5. Licensee owns and operates a small animal veterinary practice in Bloomington, Minnesota.

6. Following investigation of a complaint in 2006, Licensee entered into an Agreement for Corrective Action with the Board in which Licensee agreed to comply with the medical record keeping requirements of Minn. Rule 9100.0800, subps. 4(A), (B), and (C).

III.

FACTS

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

a. For 31 years, Licensee has routinely used a neck tourniquet to draw blood from the jugular vein of his patients.

b. Between October 24, 2001, and May 7, 2015, Licensee provided medical care for Sammy, a 14-year-old male Pug owned by S.R. and J.S.

c. On April 5, 2010, Licensee inadvertently prescribed an excessive dose of ketoconazole for Sammy, who subsequently developed vomiting due to overdosing.

d. On May 7, 2015, Licensee used a tourniquet around Sammy's neck to attempt to draw blood from the jugular vein after failing to obtain blood from either front limb. A tourniquet around the neck does not meet the standard of care for venipuncture. While Sammy was anesthetized, Licensee again applied a tourniquet to his neck to draw his blood for a full blood chemistry profile.

e. Licensee's medical record for Sammy failed to include required parameters, including, but not limited to: medical history at the time of examination, vital signs, all abnormalities identified on physical examination, interpretation of laboratory reports, tentative diagnosis, and amount and frequency of treatments administered.

IV.

LAWS

8. Licensee acknowledges that the facts and conduct described in section III above constitute violations of Minn. Stat. § 156.081, subds. 2(11) and (12), Minn. R. 9100.0700, subps. 1(A), (B), (C), and Minn. R. 9100.0800, subps. 1, 2(B), and 4, and are sufficient grounds for the remedy set forth below.

V.

DISCIPLINARY ACTION

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

9. The Board hereby **SUSPENDS** Licensee's license to practice veterinary medicine. The suspension is **STAYED** so long as Licensee complies with the following **CONDITIONS** and **LIMITATIONS**:

a. Licensee will never utilize a neck tourniquet for venipuncture on animals.

Licensee will document in every medical record how, which vessel, and by whom the blood was drawn.

b. Licensee will only perform surgery with a veterinary technician who is a graduate of an accredited veterinary technician program and who is onsite and dedicated to monitoring the patient throughout the surgery and until the patient has recovered from the anesthesia.

c. Licensee will have and utilize an anesthetic monitoring machine in his practice at both locations. The anesthetic monitoring machine must be able to monitor heart rate and pulse oximetry. Licensee will also have and utilize a blood pressure machine.

d. Within 30 days from the date of this Order, Licensee must submit to the Committee documentation of all continuing education meeting attendance and hours of self-study completed in satisfaction of his most recent renewal period.

e. Licensee must submit to the Committee evidence of completion of all continuing education as described below. This continuing education includes the topics of veterinary medical records, dermatology, and anesthesia and pain management. Other than the medical records continuing education, the continuing education must be interactive and preapproved by the Committee. In order to obtain preapproval, Licensee must submit written documentation, such as a course description, brochure, or measurable learning objectives and qualifications of the instructor. These hours of continuing education may not be applied to the requirements for license renewal.

1) Within 60 days from the date of this Order, Licensee must submit to the Committee evidence of completion of all modules of "Online Veterinary Medical Records

Course” offered by James F. Wilson, D.V.M., J.D., of Iowa State University. This course is preapproved by the Committee.

2) Within 120 days from the date of this Order, Licensee must complete:

i) Six hours on the topics of anesthesia and pain management, including anesthetic monitoring.

ii) Four hours on the topic of canine dermatology, including immune mediated skin disease, atopy and otitis.

f. At intervals of 3, 6, and 12 months after completion of the medical records course, Licensee will allow the Executive Director, or another licensed veterinarian designated by the Committee, to review a random selection of ten medical records chosen by the reviewer, of which five shall be surgical cases and five shall be any other records. Records must meet the approval of the Committee.

g. While this Stipulation and Order is in effect, the Committee, the Executive Director, or any other authorized representative of the Board, may inspect any facility in which the Licensee practices veterinary medicine, at any time during which the facility is open for business, to ensure compliance with the requirements of this Stipulation and Order, Minnesota Statutes chapter 156, and the regulations of the Board. The inspection may include, but is not limited to, observation of surgical procedures and routine patient care, and records review.

10. Upon completing the requirements set forth in paragraph 9 and no earlier than 12 months from the date of this Order, Licensee may petition for an unconditional license. Licensee’s petition may be granted, if at all, as the evidence dictates and based upon the need to protect the public. The burden of proof will be upon Licensee to demonstrate by a

preponderance of the evidence that he is capable of conducting himself in a fit and competent manner in the practice of veterinary medicine.

11. At the time of Licensee's petition, Licensee may be required to meet with the Board's Complaint Review Committee to discuss his petition and provide any information relevant to Respondent's petition reasonably requested by the Board's Committee. The Committee will make a recommendation to the full Board which will make a decision as discussed below.

12. Upon hearing Licensee's petition, the Board may deny Licensee's petition for reinstatement, reinstate Licensee's license with conditions and/or limitations imposed on his license, or reinstate Licensee's license as unencumbered.

13. In the event Licensee resides or practices outside the State of Minnesota, Licensee must promptly notify the Board in writing of the location of his residence and all work sites. Periods of residency or practice outside of Minnesota will not be credited toward any period of Licensee's suspended, limited, or conditioned license in Minnesota unless Licensee demonstrates that practice in another state conforms completely with Licensee's Minnesota license to practice veterinary medicine.

VI.

CONSEQUENCES FOR NONCOMPLIANCE OR ADDITIONAL VIOLATIONS

14. It is Licensee's responsibility to ensure all payments, reports, evaluations, and documentation required to be filed with the Board pursuant to this Stipulation and Order are timely filed by those preparing the report, evaluation, or documentation. Failure to file payments, reports, evaluations, and documentation on or before their due date is a violation of this Stipulation and Order.

A. Noncompliance With Requirements for Stayed Suspension

15. If the Committee has probable cause to believe Licensee has failed to comply with or has violated any of the requirements for staying the suspension as outlined in paragraph 9 above, the Committee may remove the stayed suspension pursuant to the procedures outlined in paragraph 16 below, with the following additions and exceptions:

a. The removal of the stayed suspension shall take effect upon service of an Order of Removal of Stayed Suspension (“Order of Removal”). Licensee agrees that the Committee is authorized to issue an Order of Removal, which shall remain in effect and shall have the full force and effect of an order of the Board until the Board makes a final determination pursuant to the procedures outlined in paragraph 16 below. The Order of Removal shall confirm the Committee has probable cause to believe Licensee has failed to comply with or has violated one or more of the requirements for staying the suspension of Licensee’s license. Licensee further agrees an Order of Removal issued pursuant to this paragraph shall be deemed a public document under the Minnesota Government Data Practices Act. Licensee waives any right to a conference or hearing before removal of the stayed suspension.

b. The Committee shall schedule the hearing pursuant to paragraph 16.a. below to be held within 60 days of the notice of the Order of Removal.

B. Noncompliance With Stipulation and Order

16. If Licensee fails to comply with or violates this Stipulation and Order the Committee may, in its discretion, seek additional discipline either by initiating a contested case proceeding pursuant to Minnesota Statutes chapter 14 or by bringing the matter directly to the Board pursuant to the following procedure:

a. The Committee shall schedule a hearing before the Board. At least 20 days before the hearing, the Committee shall mail Licensee a notice of the violation(s) alleged by the Committee. In addition, the notice shall designate the time and place of the hearing. Within ten days after the notice is mailed, 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.

b. The Committee, in its discretion, may schedule a conference with Licensee prior to the hearing before the Board to discuss the allegations and to attempt to resolve the allegations through agreement.

c. Prior to the hearing before the Board, the Committee and Licensee may submit affidavits and written argument in support of their positions. At the hearing, the Committee and Licensee may present oral argument. Argument shall not refer to matters outside the record. The evidentiary record shall be limited to the affidavits submitted prior to the hearing and this Stipulation and Order. Unless stated otherwise in this Stipulation and Order, the Committee shall have the burden of proving by a preponderance of the evidence that a violation has occurred. If Licensee has failed to submit a timely response to the allegations, Licensee may not contest the allegations, but may present argument concerning the appropriateness of additional discipline. Licensee waives a hearing before an administrative law judge, discovery, cross-examination of adverse witnesses, and other procedures governing hearings pursuant to Minnesota Statutes chapter 14.

d. Licensee's correction of a violation prior to the conference, hearing, or meeting of the Board may be taken into account by the Board but shall not limit the Board's authority to impose discipline for the violation. A decision by the Committee not to seek

discipline when it first learns of a violation will not waive the Committee's right to later seek discipline for that violation, either alone or in combination with other violations, at any time while Licensee's license is suspended or the suspension is stayed.

e. Following the hearing, the Board will deliberate confidentially. If the allegations are not proved, the Board will dismiss the allegations. If a violation is proved, the Board may impose additional discipline, including additional requirements for the stayed suspension, removal of the stayed suspension, an additional period of suspension, or revocation of Licensee's license.

f. Nothing herein shall limit the Committee's or the Board's right to temporarily suspend Licensee's license pursuant to Minnesota Statutes section 156.126 based on a violation of this Stipulation and Order or based on conduct of Licensee not specifically referred to herein. Similarly, 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, or to initiate a contested case proceeding under Minnesota Statutes chapter 14 based on an alleged violation of this Stipulation and Order.

g. *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.

VII.

ADDITIONAL INFORMATION

17. 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.

18. 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.

19. 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.

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

21. 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.

22. 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.

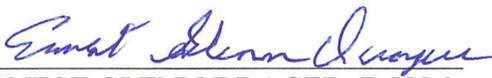
23. This Stipulation and Order does not limit the Board's authority to proceed against Licensee by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or omission of Licensee which constitutes grounds for disciplinary action and which is not directly related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

VIII.

DATA PRACTICES NOTICES

24. 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.

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


ERNEST GLENN DRAGER, D.V.M.
Licensee

Dated: 6/16/16


BARBARA FISCHLEY, D.V.M.
Committee Member

Dated: 7/20/16

ORDER

Upon consideration of the Stipulation and all the files, records and proceedings herein, the terms of the Stipulation are approved and adopted, and the recommended remedy set forth in the Stipulation is hereby issued as an Order of this Board effective this 20th day of July, 2016.

MINNESOTA BOARD
OF VETERINARY MEDICINE



JULIA H. WILSON, D.V.M.
Executive Director