

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
Thomas E. Koepke, D.V.M.
License No. 5174

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

On May 10, 2002, the Complaint Review Committee (Committee) of the Minnesota Board of Veterinary Medicine (Board) initiated the above-entitled contested case proceeding against Thomas E. Koepke, D.V.M. (Respondent) at the State Office of Administrative Hearings. On June 20, 2002, the Committee moved for a default recommendation based on Respondent's failure to appear at the prehearing conference. On July 18, 2002, Barbara F. Goldstein, Administrative Law Judge (ALJ), issued Findings of Fact, Conclusions and Recommendation (Report) based on Respondent's default.

The matter came on for hearing by the Board on September 25, 2002 in Conference Room A, 4th Floor, 2829 University Avenue S.E., Minneapolis Minnesota 55414.

Susan E. Damon, Assistant Attorney General, presented oral argument on behalf of the Committee. Respondent did not appear.

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

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

FINDINGS OF FACT

1. Respondent has been licensed by the Board since 1974.
2. Respondent has been the subject of three Board stipulations and orders, which were issued on February 4, 1994 (1994 Order), September 3, 1997 (1997 Order) and April 29, 1999. The stipulations and orders are currently and were, at all times material hereto, in effect.
3. On or about July 27, 2000, Client #1 contacted Respondent and informed him that Dog #1 had been diagnosed with liver cancer. Client #1 requested that Respondent prescribe controlled substances for Dog #1.
4. Respondent did not examine Dog #1 or perform any tests to confirm the liver cancer diagnosis, did not contact or obtain records from the veterinarian who had diagnosed the dog and, although Respondent had not previously treated canine liver cancer with controlled substances, did not review any textbooks or professional literature to determine whether such treatment was medically appropriate.
5. Between about July 27, 2000 and February 2, 2001, Respondent wrote at least 13 prescriptions and gave pharmacies approximately 24 verbal authorizations to dispense controlled substances for Dog #1. The controlled substances included Demerol, Acetaminophen-Codeine #3, Lomotil Liquid, Duragesic, Vicodin and Darvon. Respondent also wrote a prescription for Zofran for Dog #1.
6. Instead of providing specific directions for use, Respondent wrote “use as necessary” or similar language on at least eight of the controlled substances prescriptions.
7. At the time he wrote the prescriptions for Duragesic patches, Respondent was not aware of how to use them and did not give Client #1 adequate directions for use. Further, Respondent used inappropriate dosages of Duragesic patches for Dog #1.

8. Respondent never examined Dog #1 during the entire time Respondent prescribed and authorized the controlled substances and other drug referenced above.

9. On or about April 2, 2001, the Board's executive director issued a subpoena for Respondent's records for Dog #1. Respondent provided no records for Dog #1 in response to the subpoena and informed the Board's executive director that he had no records for Dog #1. At a July 9, 2001 conference with the Complaint Review Committee, Respondent stated that he euthanized Dog #1 on February 4, 2001, and that he threw away his records for Dog #1 after euthanizing the dog.

10. In about February 2001, Client #1 informed Respondent that he had used some of the controlled substances prescribed for Dog #1 on his other dog, Dog #2, who suffered from severe gum disease and, as a result, had difficulty chewing. Client #1 told Respondent that Dog #2 seemed better using the controlled substances.

11. On at least five occasions between about February 8, 2001 and March 27, 2001, Respondent wrote prescriptions or verbally authorized a pharmacy to dispense controlled substances prescriptions for Dog #2. The controlled substances included Darvocet-N, Darvon Compound and Tussionex Suspension.

12. Respondent provided no directions for use on the prescription for Darvocet-N and wrote "use as necessary" on other prescriptions.

13. Treatment of gum disease in a dog with controlled substances is not medically appropriate.

14. On or about April 2, 2001, the Board's executive director issued a subpoena for Respondent's veterinary medical records for Dog #2. The records that Respondent provided in response to the subpoena contain no information about the dog's condition, do not indicate that

Respondent ever examined the dog and contain no information justifying the controlled substances prescriptions. Rather, the records merely consist of Client #1's name, address, telephone number, Dog #2's name, breed, age, color and gender, one entry for February 8, 2001 that states "Rx Pharmacy: Darvocet-N" and copies of three prescriptions.

15. Respondent indicated at the July 9, 2001 conference with the Complaint Review Committee that he had veterinary medical records for Dog #2 in addition to the ones he provided on April 2, 2001 and indicated that they had been in another location when the subpoena was served. Accordingly, on November 29, 2001, the Board's executive director issued another subpoena. The subpoena, which was served on Respondent's attorney, required Respondent to produce any and all veterinary medical records for Dog #2 by December 7, 2001. Despite Respondent's statements at the conference, he did not produce any additional records or otherwise respond to the November 29, 2001 subpoena.

16. Minnesota Statutes section 156.081, subdivision 2(11) and (12), Minnesota Rule 9100.0700, subparts 1.A through C and Minn. R. 9100.0800, subpart 1 authorize the Board to take disciplinary action against a licensed veterinarian who has failed to meet minimum standards of acceptable and prevailing veterinary practice; has engaged in conduct likely to harm the public or has demonstrated a willful or careless disregard for the health, welfare or safety of patients; or has engaged in veterinary practice that is professionally incompetent in that it may create unnecessary danger to a patient's life, health, or safety.

17. In connection with his treatment of Dog #1, Respondent violated Minn. Stat. § 156.081, subd. 2(11) and (12), Minn. R. 9100.0700, subps. 1.A through C and Minn. R. 9100.0800, subp. 1 for reasons that include, but are not limited to, the following:

a. Respondent commenced treatment of Dog #1 with controlled substances without examining Dog #1 or otherwise confirming the dog's liver cancer diagnosis.

b. Treatment of pain from liver cancer with the controlled substances that Respondent prescribed for Dog #1 was not medically appropriate for reasons that include, but are not limited to, the following:

- (1) Respondent prescribed Duragesic in inappropriate strengths;
- (2) Demerol is not used orally in dogs;
- (3) Darvon is not used in dogs and doses for use in dogs are not documented;
- (4) Vicodin is a combination of a cough suppressant and acetaminophen, and, thus, is not appropriate solely for the treatment of pain.

c. Respondent never examined Dog #1 or monitored its condition during the entire time he issued prescriptions for the dog.

d. Even if the controlled substances that Respondent prescribed for Dog #1 had been a medically appropriate treatment, Respondent's directions on several of the prescriptions to "use as necessary," were insufficient given the risks of and potential for abuse of narcotic analgesics.

18. In connection with his treatment of Dog #2, Respondent violated Minn. Stat. § 156.081, subd. 2(11) and (12), Minn. R. 9100.0700, subs. 1.A through C and Minn. R. 9100.0800, subp. 1, for reasons that include, but are not limited to, the following:

a. Treatment of gum disease with controlled substances is not medically appropriate.

b. Even if treatment of gum disease with controlled substances were medically appropriate, the prescription of Darvocet-N exposed Dog #2 to a serious risk of harm because it contains acetaminophen, which is potentially toxic to a dog of Dog #2's size in the dose Respondent prescribed, and because Respondent failed to provide directions for use adequate to prevent an overdose.

c. Tussionex Suspension is a cough suppressant, and no information in Respondent's records or provided by Respondent indicates that Dog #2 suffered from coughing.

19. Minnesota Statutes section 156.081, subd. 2(12) authorizes the Board to take disciplinary action against a licensed veterinarian for violating a statute, including a provision of Minnesota Statutes chapter 156.

20. Minnesota Statutes section 156.18, subdivision 1(c) requires a veterinarian to enter any verbal authorization to dispense a prescription drug into the patient record.

21. Respondent violated Minn. Stat. § 156.18, subd. 1(c) in connection with the verbal authorizations that he gave to pharmacies to dispense controlled substances for Dog #1, as Respondent maintained no records for the dog.

22. Respondent violated Minn. Stat. § 156.18 subd. 1(c) in connection with verbal authorizations that he gave to a pharmacy to dispense Tussionex Suspension for Dog #2, as Respondent did not enter the authorizations into Dog #2's veterinary medical record.

23. Minnesota Statutes section 156.18, subdivision 1(d) provides that a prescription or other veterinary authorization for a prescription drug must include:

- [. . .]
- (4) the name, strength, and quantity of the drug;
- (5) the date of issue;
- (6) directions for use;
- [. . .]

24. Respondent violated requirements of Minn. Stat. § 156.18, subd. 1(d)(4), (5) and (6) in connection with his written prescriptions for Dog #1 and Dog #2. Specifically:

a. A prescription for Dog #1 for Demerol 100 mg. (25 tablets) did not contain the date of issue.

b. A February 8, 2001 prescription for Dog #2 for Darvocet-N did not contain the strength of the drug or directions for use.

c. A March 18, 2001 prescription for Dog #2 for Darvon Compound did not contain the strength of the drug.

d. A prescription for Dog #2 for Darvon 65 (bottle of 500 tablets) did not contain the date of issue.

25. Minnesota Statutes section 156.081, subdivision 2(12) authorizes the Board to take disciplinary action against a licensed veterinarian for violating a rule promulgated by the Board or any Board order.

26. Paragraph V.6.g of the 1997 Order requires Respondent to maintain records on all patients in accordance with the record keeping requirements set forth in Minn. R. 9100.0800, subp. 4.

27. Minnesota Rule 9100.0800, subp. 4.A sets forth the minimum information that veterinary records must contain.

28. Minnesota Rule 9100.0800, subp. 4.C requires a veterinarian to maintain records for a minimum of three years after the last visit.

29. Respondent violated the 1997 Order and Minn. R. 9100.0800, subp. 4.C in connection with his treatment of Dog #1 between July 2000 and February 2001 because he failed to maintain any records of such treatment.

30. Respondent violated the 1997 Order and Minn. R. 9100.0800, subp. 4.A in connection with his treatment of Dog #2 in February and March 2001 because Respondent's veterinary medical records for Dog #2 do not contain the following required information:

- a. dates of examination(s);
- b. brief history of the condition Respondent treated with controlled substances;
- c. examination findings;
- d. laboratory and radiographic reports;
- e. tentative diagnosis;
- f. treatment plan; and

g. records of all medication and treatment, including amounts and frequency. Specifically, Respondent's records do not include any information about his verbal authorizations to a pharmacy to dispense Tussionex Suspension for Dog #2.

31. Minnesota Statutes section 156.081, subd. 2(12) authorizes the Board to take disciplinary action against a licensed veterinarian for violating a rule promulgated by the Board.

32. Minnesota Rule 9100.0800, subpart 2.B requires a veterinarian to assure that a prescription drug prescribed for use is properly administered, or for providing instructions to clients on the administration.

33. Respondent violated Minn. R. 9100.0800, subp. 2.B in connection with his prescriptions of controlled substances for Dog #1 for reasons that include, but are not limited to, the following:

a. Respondent's directions for use of some of the controlled substances, as described above, were inadequate to assure proper administration of the drugs.

b. As of the time Respondent prescribed Duragesic patches for Dog #1, Respondent was unaware of how to use them and, accordingly, did not instruct Client #1 as to their appropriate use.

c. Respondent could not assure proper administration of the controlled substances because Respondent never examined Dog #1 or otherwise monitored its condition.

34. Respondent violated Minn. R. 9100.0800, subp. 2.B in connection with his prescriptions of controlled substances for Dog #2 for reasons that include, but are not limited to, the following:

a. Respondent failed to include any directions for use on his prescription for Darvocet-N, as described above, and his directions for use of the other controlled substances, as described above, were inadequate to assure proper administration of the drugs.

35. Minnesota Statutes section 156.081, subd. 2(12) authorizes the Board to take disciplinary action against a licensed veterinarian for violating a statute, including a provision of Minnesota Statutes chapter 156.

36. Minnesota Statutes section 156.123 requires a veterinarian who is the subject of an investigation by or on behalf of the Board to “cooperate fully with the investigation.” Cooperation includes “providing copies of client and other records in the veterinarian’s possession as requested by the [B]oard.”

37. Respondent violated Minn. Stat. § 156.123 by failing to provide records or otherwise respond to the November 29, 2001 subpoena.

38. Minnesota Statutes section 156.081, subd. 1(12) authorizes the Board to take disciplinary action against a licensed veterinarian for violation of any Board order.

39. Paragraph E.2.c of the 1994 Order provides:

Respondent shall cause a written report to be submitted to the Board from his Dakota County probation officer every six (6) months. Each such report shall indicate the extent to which Respondent is complying with the terms of his criminal probation.

40. The Board has not received a report from Respondent’s probation officer since April 2, 1997, when it received a letter from Respondent’s probation officer dated March 19, 1997. Accordingly, Respondent has violated Paragraph E.2.c of the 1994 Order.

41. On May 10, 2002, a Notice of and Order for Prehearing Conference and Hearing in this matter was mailed to the attorney for Respondent, Virginia Ekola, Esq., at Barrister’s Trust Building, 247 Third Avenue South, Minneapolis, MN 55415. The Notice and Order for Prehearing Conference and Hearing scheduled the prehearing conference for June 20, 2002.

42. On May 31, 2002, Virginia Ekola filed a Notice of Withdrawal of Counsel with the Office of Administrative Hearings. This notice of withdrawal was also served by mail on Susan Damon, Assistant Attorney General, and on Respondent.

43. Susan Damon, Assistant Attorney General, served a second Notice of and Order for Prehearing Conference and Hearing on Respondent by mail on May 28, 2002. The hearing date, place and time remained the same, June 20, 2002, at the Office of Administrative Hearings to commence at 9:30 a.m.

44. Both Notices of and Orders for Prehearing Conference and Hearing that were 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.

45. Respondent did not appear at the June 20, 2002 prehearing conference. Respondent did not contact the Board or the Administrative Law Judge to request a continuance. No Notice of Appearance was filed by Respondent in this matter.

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

CONCLUSIONS OF LAW

1. The Board has subject matter jurisdiction herein pursuant to Minn. Stat. §§ 156.081, 156.127, 214.10, 214.103 and 14.50.

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. Rule 1400.6000, Respondent is in default as a result of his failure to appear at the scheduled prehearing conference.

5. Under Minn. Rule 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 above, Respondent has violated the following statutes, rules and orders and is subject to disciplinary action by the Board:

a. Respondent has departed from or failed to conform to the minimum standards of acceptable and prevailing veterinary practice, in violation of Minn. Stat. § 156.081, subd. 2(11) and (12), Minn. R. 9100.0700, subp. 1.A and Minn. R. 9100.0800, subp. 1;

b. Respondent has engaged in unprofessional conduct, in violation of Minn. Stat. § 156.081, subd. 2(12) and Minn. R. 9100.0700;

c. Respondent has engaged in conduct likely to harm the public or has demonstrated a willful or careless disregard for the health, welfare, or safety of a patient, in violation of Minn. Stat. § 156.081, subd. 2(12) and Minn. R. 9100.0700, subp. 1.B;

d. Respondent has engaged in veterinary practice that is professionally incompetent in that it may create unnecessary danger to a patient's life, health, or safety, in violation of Minn. Stat. § 156.081, subd. 2(12) and Minn. R. 9100.0700, subp. 1.C;

e. Respondent has failed to comply with the requirements for a veterinary prescription or other veterinary authorization for a prescription drug, in violation of Minn. Stat. §§ 156.081, subd. 2(12) and 156.18, subd. 1(c) and (d);

f. Respondent has failed to prepare and maintain veterinary medical records, in violation of Minn. Stat. § 156.081, subd. 2(12), Minn. R. 9100.0800, subp. 4 and the 1997 Order;

g. Respondent has failed to meet the minimum standards of practice for providing veterinary pharmaceutical services, in violation of Minn. Stat. § 156.081, subd. 2(12) and Minn. R. 9100.0800, subp. 2.B;

h. Respondent has violated the 1994 and 1997 Orders of the Board in violation of Minn. Stat. § 156.081, subd. 2(12); and

i. Respondent has failed to cooperate with an investigation of the Board in violation of Minn. Stat. §§ 156.081, subd. 2(12) and 156.123.

7. Any of the foregoing Findings of Fact more properly considered a Conclusion of Law, and any of the Conclusions of Law more properly considered a Finding of Fact, are hereby adopted as such.

8. An order by the Board prescribing disciplinary action against the Respondent is in the public interest.

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

ORDER

1. Respondent's license to practice veterinary medicine in the State of Minnesota, license number 5174, 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 or delivered to the Board of Veterinary Medicine, c/o John King, D.V.M., Executive Director, 2829 University Avenue S.E. #540, Minneapolis, MN 55414-3250.

Dated: September 25, 2002

MINNESOTA BOARD
OF VETERINARY MEDICINE

By: _____

Lynn M. Green
LYNN GREEN, President

MEMORANDUM

Under Minn. Stat. §§ 156.081, subd. 2(11) and (12) and 156.127 and Minn. R. 9100.0700, subp. 1.B and C, the Board is authorized to revoke the license of a veterinarian for incompetence, departure from the minimum standards of acceptable and prevailing practice, engaging in conduct likely to harm the public or demonstrating a willful or careless disregard for the health, welfare or safety of a patient. It is not necessary that actual injury be proven for the Board to take such action. Minn. Stat. § 156.081, subd. 2(11); Minn. R. 9100.0700, subp. B.

In connection with his prescription of controlled substances for Dog #1 and Dog #2, Respondent engaged in conduct that seriously departed from minimum standards of acceptable and prevailing veterinary practice. Respondent's provision of any treatment to Dog #1 without first examining the dog was clearly incompetent. Moreover, Respondent's provision of inappropriate strengths of Duragesic and of controlled substances not used in dogs posed a serious risk of harm to this patient. Respondent's provision of controlled substances to treat Dog #2's gum disease also represents an extreme deviation from competent veterinary care. Respondent's prescription of Darvocet-N, without directions for use adequate to prevent an overdose, created a serious risk that Dog #2 would be exposed to a toxic dose of acetaminophen. Finally, the fact that Respondent issued numerous prescriptions and verbal authorizations for controlled substances, which were not medically appropriate for treatment of the dogs' conditions and which are susceptible to abuse by humans, posed a serious risk of harm to the public.

The Board is charged with protecting the public. Respondent is the subject of three previous disciplinary actions by the Board. The actions taken in 1997 and 1999 were, in part,

based on incompetence. In light of this disciplinary history and based on Respondent's violations of Minn. Stat. §§ 156.081, subd. 2(11) and (12) and Minn. R. 9100.0700, subp. 1.B and C in this matter, the Board has concluded that revocation of Respondent's license is warranted and necessary to protect the public.

AG: #714501-v1