

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
Gary H. Newman, D.V.M.
License No. 03171

SETTLEMENT MEMORANDUM

A mediation session was conducted on Monday, February 25, 2002, involving Gary H. Newman, D.V.M. ("Licensee"), and the Minnesota Board of Veterinary Medicine Complaint Review Committee ("Complaint Review Committee"), who are parties to an administrative contested case proceeding currently pending in the Minnesota Office of Administrative Hearings. Bruce H. Johnson, Assistant Chief Administrative Law Judge, served as mediator. As a result of that mediation session, the parties agree that the above-referenced administrative contested case proceeding may be resolved without further proceedings.

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 Settlement Memorandum.

II.

CONFERENCE

- A. On July 12, 2001, Licensee appeared before the Complaint Review Committee, composed of Lynn Green, Board Vice President, Ronald Kuecker, D.V.M., Board Secretary/Treasurer, and Roland C. Olson, D.V.M., Executive Director of the Board, to discuss allegations set forth in a Notice of Conference dated June 14, 2001. Susan E. Damon, Assistant Attorney General, represented the Complaint Review Committee. Licensee was advised of his right to be represented by counsel at the conference and knowingly and voluntarily waived that right.

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 has been licensed by the Board since 1971.
2. Licensee practiced veterinary medicine full time until 1985, when he returned to college for training in dairy nutrition and management.
3. For the past ten 10 years, Licensee has worked as an independent dairy consultant, primarily in the area of nutrition.
4. In connection with his dairy consulting business, Licensee occasionally practices veterinary medicine, including making treatment recommendations and prescribing drugs. Licensee does not make or maintain any veterinary medical records relating to his practice of veterinary medicine. At the conference with the Complaint Review Committee, Licensee admitted that he does not examine animals before issuing prescriptions.
5. On October 26, 1998, Licensee signed two blank prescription forms and provided them to a route truck driver of a company that sold veterinary prescription drugs. Licensee gave the route truck driver the names of some of his dairy clients and told the route truck driver that he could use the prescription forms to enable the clients to purchase any prescription drugs they needed from the company. The route truck driver, instead, placed the names of Dairy Producers #1 and #2 on the forms and wrote in the forms that they were authorized to purchase "any" prescription drug in "any" quantity. Neither Dairy Producer #1 nor Dairy Producer #2 is Licensee's client.
6. On June 2, 1999, Licensee signed a prescription for Dairy Producer #3. Under the categories "drug name," "strength" and "quantity" on the prescription form, Licensee wrote: "Please allow [Dairy Producer #3] to purchase prescription drugs as needed."
7. On April 6, 2000, Licensee signed a second prescription for Dairy Producer #3. The prescription lists the drugs Excenel, Lutalyse, Gentocin, Predef, Aquacillin and Micotil. No strengths or quantities of the drugs are listed on the prescription. Under the category "ending date" on the prescription form, Licensee wrote: "As needed - till death us do part."

8. On April 27, 2000, Licensee signed a third prescription for Dairy Producer #3. The prescription lists the following drugs, along with strengths and quantities: Excenel, Lutalyse, Gentocin, Predef, Dexamethasone and Aquacillin. The prescription also lists 10 Micotil, but does not list the strength of that drug.
9. Licensee has no veterinary medical records for Dairy Producer #3.
10. On November 1, 1998, Licensee wrote a prescription for Dairy Producer #4. The prescription is for Lutalyse, Dexamethasone, Predef 2X, Quartermaster and Oxytocin. No quantities of any of these drugs are listed. Strengths of the drugs, except for Dexamethasone, are also not listed. Licensee made notations that state "anything" next to the "drug name" and "quantity" categories on the prescription form.
11. Licensee has provided his name and veterinary license number to a catalogue company to enable Dairy Producer #4 to purchase any prescription drugs he needs through that company. Licensee told the Complaint Review Committee that he has not written any specific prescriptions for Dairy Producer #4 to purchase drugs through the catalogue company because all the company requires is his name and license number.
12. Licensee has no veterinary medical records for Dairy Producer #4.
13. On February 24, 2000, Licensee signed a prescription form for Dairy Producer #5. The prescription form lists the following prescription drugs: Cal Dex CMPK, Lutalyse and Fertagyl/GNRH. Strengths of the prescription drugs are not listed.
14. Licensee has no veterinary medical records for Dairy Producer #5.
15. On December 20, 2000, Licensee provided verbal authorization to a pharmacy to dispense four 100 ml. of Dexamethasone and four 30 ml. of Lutalyse to Dairy Producer #6.
16. Licensee has no veterinary medical records for Dairy Producer #6.
17. At the conference with the Complaint Review Committee, Licensee admitted that he is not familiar with the Board's practice act and rules or with the federal Animal Medicinal Drug Use Clarification Act (AMDUCA).

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. Stat. § 156.16, subd. 12; Minn. Stat. § 156.18, subd. 1(c) & (d); Minn. R. 9100.0700, subp. 1.A., 1.B & 1.C; Minn. R. 9100.0800, subps. 1, 2 and 4, and agrees to the disciplinary action set forth below.

V.

REMEDY

A. Conditional License. Licensee's license to practice veterinary medicine in the State of Minnesota is placed in conditional status for an indefinite period of time, provided that Licensee shall be eligible to petition the Board for an order restoring an unconditional license in accordance with the requirements set forth in part VII herein. During the period of conditional licensure, Licensee shall comply with the following terms and conditions:

1. Off-Label Prescriptions. Licensee shall not prescribe, authorize or dispense any prescription or non-prescription drugs for off-label use.

2. On-Label Prescriptions. Except as set forth in paragraph V.A.7 herein, Licensee shall not prescribe, authorize or dispense any prescription drugs for on-label use until Licensee has complied with the following:

a. Minnesota Jurisprudence Examination. Within 60 days of the date of this Order, Licensee shall take and pass the Minnesota Jurisprudence Examination with a minimum passing score of 90. Licensee is responsible for all costs associated with the examination and for all costs of any necessary re-examination(s).

b. Record-Keeping and Prescription Writing Instruction. Licensee shall complete a minimum of 20 hours of instruction in record keeping and prescription writing. The instruction, which may either be one-on-one instruction or course work at an accredited college of veterinary medicine, shall be pre-approved by the Complaint Review Committee and must include an examination, prepared by the instructor, at the conclusion of the instruction. If Licensee fails the examination, Licensee shall repeat the instruction until such time as he passes the examination. Licensee shall cause the instructor to submit to the Board proof of Licensee's completion of the instruction and successful completion of the examination no later than 30 days after completion. Licensee is responsible for all costs associated with completion of the instruction.

3. Prescribing Limitations and Conditions. Following Licensee's completion of all requirements set forth in paragraph V.A.2 herein, Licensee may resume prescribing, dispensing and authorizing the dispensing of prescription drugs for on-label use, provided that Licensee complies with the following limitations and conditions:

a. Licensee is prohibited from prescribing, dispensing or authorizing the

dispensing of any prescription drug in connection with Licensee's work as a dairy or nutritional consultant, and Licensee's authority to prescribe, dispense or authorize the dispensing of prescription drugs shall be limited to his practice of veterinary medicine for compensation, including, but not limited to, his practice as a relief veterinarian.

b. Each prescription or other veterinary authorization for a prescription drug that Licensee issues shall contain all information required by Minn. Stat. §156.18, subd. 1(d), including, but not limited to, the name, strength and quantity of the drug.

c. Licensee shall enter each prescription or other veterinary authorization for a prescription drug into the client record, including instances in which Licensee provides verbal authorization to an unlicensed agent of a clinic where Licensee practices to dispense a prescription drug to a client. If Licensee issues a written prescription, Licensee may maintain a copy of the prescription form as part of the client record in lieu of actually entering the prescription into the record.

d. If Licensee dispenses a prescription drug to a client, Licensee shall so note in the client record.

e. Licensee shall comply with record-keeping requirements set forth in Minn. R. 9100.0800, subp. 4.

f. For each prescription, other veterinary authorization for or dispensing of a prescription drug, Licensee's compliance with Minn. R. 9100.0800, subp. 4 shall specifically include compliance with the following requirements:

(1) Licensee shall enter sufficient information into the client record about the history of the, condition, symptoms, diagnosis and any diagnostic procedures and examination findings to show that prescribing, authorizing or dispensing the prescription drug is medically appropriate.

(2) Licensee shall enter the treatment plan, including all of his recommendations about use of the prescription drug, into the client record.

4. Termination of Prescriptions.

a. Within 10 days of the date of this Order, Licensee shall terminate the authorization referenced in paragraph III.A.11 herein for the catalogue company to dispense prescription drugs to Dairy Producer #4, and shall terminate all other open-ended prescriptions or authorizations to dispense prescription drugs. Licensee shall notify the dispensers of termination of the prescriptions or authorizations by letters sent by certified mail, return receipts requested.

b. Within 10 days of the date of this Order, Licensee shall provide the Board

with copies of all termination letters sent to dispensers. Within 10 days of Licensee's receipt of any signed certified mail return receipt, Licensee shall provide the Board with a copy.

5. Notice to Board of Practice Locations. Within 10 days of the date of the Order issued pursuant to this Settlement Memorandum, Licensee shall notify the Board of the name, address and telephone number of any veterinary practice for which Licensee provides services as a veterinarian. If Licensee begins to provide services for any additional veterinary practice, Licensee shall notify the Board of the name, address and telephone number of the practice within 10 days.

6. 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 veterinary practice for which Licensee provides services as a veterinarian to examine and, as deemed necessary by the inspector, to remove from the premises for review and copying, Licensee's prescription drug and medical records for the purpose of determining Licensee's compliance with the Order issued pursuant to this Settlement Memorandum. 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 the 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 prescription drug and 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.

7. Nothing in this Settlement Memorandum shall preclude Licensee from dispensing prescription drugs in connection with his work as a relief veterinarian prior to his completion of the requirements of paragraphs V.A.2 herein, provided that Licensee documents the need for the prescription drugs in the medical record and provides the owner of the clinic where he provides the relief work with a copy of this Settlement Memorandum.

8. Nothing in this Settlement Memorandum shall preclude Licensee from formulating balanced feed rations; analyzing farm management practices; providing economic advice to producers or from recommending the on-label use of over-the-counter drugs.

9. Continuing Education. Within one year of the date of the Order issued pursuant to this Settlement Memorandum, Licensee shall supply the Board proof of his completion of continuing education

requirements for the period March 1, 1999 through February 28, 2001. The record keeping and prescription writing instruction referenced in paragraph V.A.2 herein may apply toward the continuing education requirements for either the period March 1, 1999 through February 28, 2001 or the period March 1, 2001 through February 28, 2001, but not both.

10. The Board shall be authorized to issue an order containing all terms and conditions set forth in this Settlement Memorandum.

VI.

CONSEQUENCES OF A VIOLATION OF ORDER ISSUED PURSUANT TO THIS SETTLEMENT MEMORANDUM

A. Summary Proceeding Before the Board. If the Complaint Review Committee determines that Licensee has violated any term or condition of the Order issued pursuant to this Settlement Memorandum, 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 veterinary prescription drug 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 Settlement Memorandum and the Board's Order issued pursuant to this Settlement Memorandum. 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 the 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 the Order through the procedures of Minn. Stat. § 214.103, subd. 6, or 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. ch. 156 based on an alleged violation of the Order.

VII.

PETITION FOR UNCONDITIONAL LICENSE

A. Petition for Unconditional License. Licensee may petition the Board for an unconditional license at the first regularly-scheduled Board meeting three years from the date of the Order issued pursuant to this Settlement Memorandum or following Licensee's completion of the requirements set forth in paragraph V.A.2 herein, whichever is later. 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. Licensee must submit his petition to the Complaint Review Committee at least 30 days before the Board meeting at which it will be considered.

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 the 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 the Order issued pursuant to this Settlement Memorandum;
2. Has provided wholly truthful information in his petition;
3. Has met all other requirements for licensees set forth in Minnesota Statutes chapter 156 and Minnesota Rules chapter 9100; and
4. Can be expected to practice with reasonable skill and safety to patients without conditions on his license.

E. Consequences of Denial of Petition. In the event the Board denies Licensee's petition for an unconditional license, 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 Settlement Memorandum, which may otherwise be available to Licensee.

C. This Settlement Memorandum, 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 has been advised of his right to be represented by counsel in this matter and has knowingly and voluntarily waived that right.

E. Licensee has read, understands, and agrees to this Settlement Memorandum and has voluntarily signed the Settlement Memorandum. Licensee is aware that the Board must approve this Settlement Memorandum and issue an order pursuant to its terms before it goes into effect. The Board may either approve the Settlement Memorandum as proposed, approve it subject to specified change, or reject it. If the changes are acceptable to Licensee, the Settlement Memorandum will take effect and the Order will be issued pursuant to it as modified. If the changes are unacceptable to Licensee or if the Board rejects the Settlement Memorandum, it will be of no effect

except as specified in paragraph VIII.F.

F. Licensee agrees that if the Board rejects this Settlement Memorandum 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 Settlement Memorandum or of any records relating to it.

G. This Settlement Memorandum 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.

H. If the Board accepts this settlement agreement, it is a binding agreement between the parties. The parties understand the binding effect of this agreement. The parties further understand that the mediator has no duty to protect the parties' interests or to inform them of their legal rights. The parties are signing this agreement of their own free will.

IX.

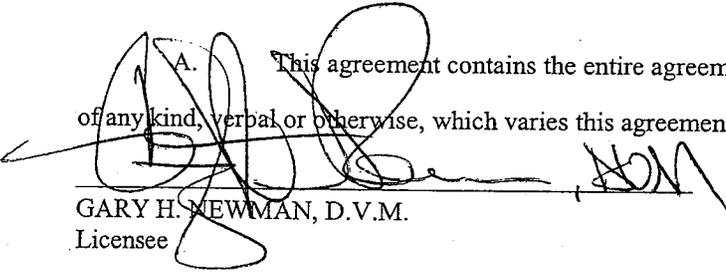
DATA PRACTICES NOTICE

A. This Settlement Memorandum, if approved by the Board, and the Order issued by the Board pursuant to this Settlement Memorandum will constitute be classified as public data pursuant to Minn. Stat. § 13.41, subd. 4.

X.

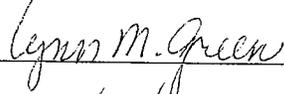
ADDITIONAL INFORMATION

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


GARY H. NEWMAN, D.V.M.
Licensee

Dated: 2/25/02

MINNESOTA BOARD OF VETERINARY MEDICINE
COMPLAINT REVIEW COMMITTEE

By: 

Dated: 02/23/02

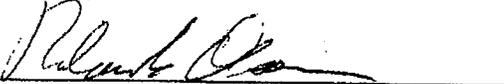
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In the Matter of
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License No. 03171

ORDER

Upon consideration of the February 25, 2002 Settlement Memorandum, which is attached hereto, and all of the files, records and proceedings herein, the terms of the February 25, 2002 Settlement Memorandum are approved and adopted and hereby issued as an order of this Board effective this 5 day of March, 2002.

MINNESOTA BOARD OF
VETERINARY MEDICINE



ROLAND C. OLSON
Executive Director