BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE

In the Matter of
Fred Willis Pomeroy, D.V.M.
License No. 01674

STIPULATION AND ORDER

STIPULATION

Fred Willis Pomeroy, 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.

COMPLAINT REVIEW COMMITTEE

3. On April 4, 2016, Licensee met with the Complaint Review Committee. The Committee was composed of Board members Michelle Vaughn, D.V.M., and Barbara Fischley, D.V.M. Julia Wilson, D.V.M., Executive Director of the Board, was also present. Andrew Pettit, Assistant Attorney General, appeared on behalf of the Committee.
4. On September 26, 2016, Licensee again met with the Complaint Review Committee. The Committee was composed of Board members Michelle Vaughn, D.V.M., and Barbara Fischley, D.V.M. Julia Wilson, D.V.M., Executive Director of the Board, was also present. Jennifer Middleton, Assistant Attorney General, appeared on behalf of the Committee. John R. Kempe, Family First Law Office, represented Licensee.

5. On July 13, 2017, the parties participated in mediation through the Office of Administrative Hearings with Judge Thomas T. Wexler serving as mediator. The Committee was represented by Jody Grote, public member. Julia Wilson, D.V.M., Executive Director of the Board was also present. Tiffany Sedillos, Assistant Attorney General, appeared on behalf of the Committee. Gregory Hudalla, represented Licensee, who was also present.

III.

FACTS

6. 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. On May 7, 1997, the Board adopted an Agreement for Corrective Action with Licensee pertaining to minimum standards of record keeping and use of alternative therapies. Licensee complied with the agreed upon corrective actions.

   b. On December 6, 1999, the Board adopted an Agreement for Corrective Action with Licensee pertaining to minimum standards for anesthetic technique and monitoring. In compliance, Licensee purchased an electronic anesthesia monitoring device and attended four hours of continuing education in the subject of small animal general anesthesia.

   c. On December 31, 2002, the Board adopted an Agreement for Corrective Action with Licensee pertaining to minimum standards of record keeping and controlled
substances records. Licensee completed a record-keeping course preapproved by the Committee. Licensee agreed to record all examination findings, even if negative as well as client communication and discharge instructions. Licensee complied with the agreed upon corrective actions.

d. At all times relevant to these allegations, Licensee was a veterinarian at Pomeroy Animal Hospital in St. Paul, MN.

_Emir_

e. Licensee provided medical care for Emir, a male Presa Canario dog owned by O.H., from March 19, 2009, through November 16, 2015.

f. Licensee evaluated and treated Emir for multiple health issues including chronic dermatitis attributed to atopy, diarrhea, and arthritis. Definitive etiologic diagnoses were not made. Treatments included long term corticosteroids, many courses of antibiotics, and intermittent anti-inflammatory and analgesic drugs.

g. Licensee failed to recommend food trials or elimination diets to address Emir’s atopy, and to establish a minimum level of corticosteroid that would be effective to reduce adrenal suppression.

h. Licensee performed only limited examinations on multiple office visits, failing to evaluate all body systems, including those affected by ongoing disease. Few if any physical examination findings were recorded in the medical record.

i. Licensee repeatedly refilled prescriptions for Emir without reevaluating him, and changed prescribed antibiotics on the sole basis of Emir’s owner’s assessment of response.

j. On November 24, 2015 Emir developed signs of septic shock and a cardiac arrhythmia. Emir died despite treatment at an emergency hospital. Necropsy findings
were characteristic of canine iatrogenic hyperadrenocorticism, including adrenal gland atrophy, enlarged liver with microscopic changes of hepatocellular vacuolar degeneration, and marked calcinosis of the skin and other soft tissues. No endogenous source of corticosteroid production was identified. The veterinary pathologist suggested that iatrogenic hyperadrenocorticism from long term corticosteroid administration seemed most likely.

k. Licensee’s medical records for Emir lacked details of physical examinations, differential diagnoses, diagnoses, assessment of prognosis, anesthesia and surgery records, amount of medication dispensed, and client communication.

Tigger

l. On February 18, 2016, Licensee evaluated Tigger, a 15-year-old Domestic Short Hair cat for weight loss. Although it was abnormal, Licensee did not record Tigger’s heart rate. Methimazole was dispensed to treat hyperthyroidism in an extra label manner and was not properly documented.

George

m. On April 26, 2016, Licensee evaluated George, a 9-year-old male Boxer, owned by S.C. Licensee diagnosed George with metastatic cancer based on a mass on his right lower lip and a mass on his right rear leg. In George’s medical record, Licensee failed to indicate if he palpated George’s peripheral lymph nodes.

IV.

LAWS

7. 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), and Minn. R. 9100.0800, subps. 1 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:

8. The Board hereby places the following CONDITIONS on Licensee’s license:

a. 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 the most recent renewal period, March 1, 2014 through February 29, 2016.

b. Within 9 months of this Order, Licensee must take and pass the Companion Animal Species Specific Examination provided by the National Board of Veterinary Medical Examiners.

c. 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, endocrinology, anesthesia, gastroenterology and pharmacology. 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 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 “Veterinary Medical Records” online course offered by James F. Wilson, D.V.M., J.D at Iowa State University. This course is preapproved by the Committee.
2) Within 9 months of the date of this Order, Licensee must complete:
   i) Six hours on the topic of canine dermatology, including two
      hours on the diagnosis and treatment of atopy;
   ii) Two hours on the topic of canine diarrhea, including differential
diagnoses and treatment;
   iii) Two hours on the topic of canine hyperadrenocorticism,
(Cushing’s disease), including diagnosis and treatment;
   iv) Two hours on the topic of small animal anesthesia, including
monitoring during anesthesia and pain management;
   v) One hour on the judicious use of small animal antimicrobial
medications;
   vi) One hour on the topic of feline renal disease;
   vii) One hour on the topic of feline hyperthyroidism; and
   viii) Two hours on the topic of cytology as a diagnostic tool,
including the use of cytology for the diagnosis of neoplasia.

3) Within 90 days of completion of the medical records course,
Licensee will submit the appointment schedule from Licensee’s clinic for a week of the
Committee’s choice. The Committee will select three patients for which copies of the complete
medical records must be submitted for the Committee’s review and approval within fourteen
days of case identification. Copies of three medical records from subsequent quarters of the year
will be similarly requested, provided, and reviewed for a minimum of 18 months and until
satisfactory records are presented for three consecutive quarters preceding Licensee’s petition for
an unconditional license.
9. Upon completing the requirements set forth in paragraphs 6, 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. Licensee's petition for reinstatement will not be unreasonably denied. 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.

10. At the time of Licensee's petition, Licensee may be required to meet with the Board's Complaint Review Committee to discuss his petition. The Committee will make a recommendation to the full Board which will make a decision as discussed below.

VI

CONSEQUENCES FOR NONCOMPLIANCE

11. It is Licensee's responsibility to ensure all documentation required to be filed with the Board pursuant to this Stipulation and Order is timely. Failure to file documentation on or before their due date is a violation of this Stipulation and Order.

12. If the Committee determines that the Licensee has failed 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, a stayed suspension, 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 214.077 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

13. 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.

14. 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.
15. 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.

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

17. 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.

18. 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.

19. 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

20. 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.

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

Fred Willis Pomeroy, D.V.M.  
FRED WILLIS POMEROY, D.V.M.  
Licensee  
Dated: 7-13-17

Michelle Vaughn, D.V.M.  
MICHIELLE VAUGHN, D.V.M.  
Committee Member  
Dated: 9-20-17

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 September, 2017.

MINNESOTA BOARD OF VETERINARY MEDICINE

Julia H. Wilson, D.V.M.  
Executive Director