

**BEFORE THE MINNESOTA
BOARD OF VETERINARY MEDICINE**

In the Matter of
Todd Varnes, D.V.M.
License No. 09599

STIPULATION AND ORDER

STIPULATION

Todd Varnes, D.V.M. ("Licensee"), and the Minnesota Board of Veterinary Medicine Complaint Review Committee ("Complaint Review Committee") agree that the above-referenced matter may be resolved without trial of any issue or fact as follows:

I.

JURISDICTION

A. The Minnesota Board of Veterinary Medicine ("Board") is authorized pursuant to 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 Stipulation and Order.

II.

CONFERENCE/COMPLAINT REVIEW COMMITTEE

A. On August 12, 2003, Licensee appeared before the Complaint Review Committee, composed of Lorna Reichl, D.V.M., Board Vice President, Joanne Schulman, D.V.M., Board President, and John King, D.V.M., Executive Director of the Board, to discuss allegations made in a Notice of Conference dated July 2, 2003. Susan E. Damon, Assistant

Attorney General, represented the Complaint Review Committee in this matter. Licensee was represented by counsel at the conference but terminated his legal representation following the conference. Although advised of his right to be represented by legal counsel throughout the entire proceeding, Licensee 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 was licensed by the Board on January 12, 1999. He owns and practices veterinary medicine at Affordacare Veterinary Clinic in Blaine, Minnesota.

Veterinary Practice in Indiana

2. Licensee was employed as a veterinarian at an Indiana practice from about June 1995 through about November 14, 1996.

3. Licensee's personnel file from the Indiana veterinary practice contains negative information about Licensee's conduct, including statements that Licensee failed to follow clinic policy by refusing to attend to certain patients; that the Indiana practice received numerous complaints from staff and clients regarding Licensee's treatment of them; that Licensee handled an aggressive dog unnecessarily roughly; that Licensee, while in a fit of temper, threw all of the articles from a desk on the floor, cursed loudly enough that clients in the lobby heard him and called one of the staff members a vulgar name.

4. On November 14, 1996, Licensee was terminated from employment at the Indiana practice after he allegedly left a new veterinary technician alone in the clinic for six

hours. While Licensee denied that he had left the technician alone that long, he acknowledged that he was gone longer than the two hour break that was allowed.

5. On March 2, 2000, the Indiana State Board of Veterinary Medical Examiners (“Indiana Board”) issued Findings of Fact and Order against Licensee. The March 2, 2000 Order suspended Licensee’s Indiana license indefinitely. The Order, which was issued in a default proceeding, was based on allegations that Licensee:

- Failed appropriately to assess and repair traumatic injuries to B.B., a cat, during surgery, including failing to reestablish connective tissue and musculature continuity in areas where it had been torn from the rectum, anus, and penis; failed to assess, diagnose and treat severe internal injuries in the cat; and failed to perform x-rays in connection with his evaluation of the cat;
- Failed appropriately to treat a female canine during 1996; and
- Failed to be in attendance at the Indiana practice on November 14, 1996 for several hours during the shift while the new veterinary technician was working.

6. The Ultimate Findings of Fact in the March 2, 2000 Order state that Licensee’s described conduct constitutes violations of specified sections of the Indiana Code.

7. Licensee contends that he never received notice of the Indiana disciplinary proceedings until an investigator for the Minnesota Board of Veterinary Medicine informed him about the March 2, 2000 Indiana Order.

Veterinary Practice in Minnesota

8. The Board received complaints about Licensee’s conduct while in practice at Affordacare Veterinary Clinic in Blaine, Minnesota. The complaints included allegations that Licensee:

- Was unable to control his anger, became angry during his treatment of animals and had fits of rage during which he screamed, threw objects, cursed, slammed doors and left the clinic to drive around while animals were still under anesthesia;
- Engaged in threatening and abusive conduct toward clinic staff;

- Used profanity and made vulgar statements and statements of a sexual nature to female staff;
- Engaged in abusive conduct toward animals, including being unnecessarily rough when moving animals, throwing animals or squeezing their limbs, and screaming at animals;
- Performed declaw procedures on cats that were not fully anesthetized;
- Failed to use a pulse oximeter during all surgeries when prevailing standards of practice would require use of a pulse oximeter, including in the case of a dog that died after Licensee's veterinary technician failed to properly place an endotracheal tube and Licensee failed to check the endotracheal tube to ensure it was properly inserted;
- Failed to render appropriate care to a sixteen-year-old dog that had trouble breathing following dental extractions;
- Failed to properly conduct heartworm tests and instructed clinic personnel to falsify laboratory results;
- Directed unlicensed veterinary technicians to extract animals' teeth, which constitutes the unlicensed practice of veterinary medicine;
- Failed to maintain separate sterile packs for each set of surgical instruments and did not consistently wear a gown, mask or head covering during surgery; and
- Failed to comply with state and federal regulations regarding the maintenance of controlled substance records and inventories.

Evaluation

9. In connection with the Complaint Review Committee's investigation of the complaints against him, Licensee voluntarily underwent a multidisciplinary assessment at Rush Behavioral Health Center in Downers Grove, Illinois. The evaluators diagnosed Licensee as having a personality disorder not otherwise specified with narcissistic and schizoid features, and recommended that Licensee:

- Enroll in the Health Professional Services Program ("HPSP") and comply with all recommendations by HPSP;

- Undergo psychotherapy, by a psychotherapist approved by HPSP, to address issues including, but not necessarily limited to, increasing Licensee’s level of self-awareness, anger management, stress reduction, and the importance and value of maintaining appropriate boundaries;
- Complete both an anger management and boundaries course approved by HPSP; and
- Seek the services of an office management/human resource service in order to develop policies and procedures which would help facilitate the smooth running of Licensee’s practice.

IV.

LAWS

A. Licensee acknowledges that the facts and conduct described in section III above, if proven at a hearing, would constitute violations of Minn. Stat. §§ 156.081, subd. 2(3), (5), (6), (7), (11) and (12) and Minn. R. 9100.0700, subps. 1.A, B, C, and I, and 7.B(1) and 8, and provide a sufficient basis for the disciplinary action set forth in part V below.

V.

DISCIPLINARY ACTION

A. ***Conditional License.*** Until further order of the Board, Licensee’s license to practice veterinary medicine in the State of Minnesota is conditioned on his compliance with the following requirements:

Conditions Relating to Indiana License and Any Discipline in Other States

1. ***Indiana License.*** Licensee shall comply with any and all orders by the Indiana Board relating to his license in that state. Any further disciplinary action against Licensee by the Indiana Board or any disciplinary action by any other state based on conduct not specifically addressed in this Order shall constitute a violation of this Order.

Health Professionals Services Program

2. ***HPSP Enrollment and Compliance.*** Within 10 days of the date of this Order, Licensee shall contact the Health Professionals Services Program (“HPSP”) for the purpose of enrollment. If HPSP determines that Licensee is eligible for monitoring, Licensee shall sign a Participation Agreement within the time period directed by HPSP and shall comply with and fulfill all terms and conditions of his HPSP Participation Agreement and Monitoring Plan and any amendments or modifications thereto, as determined by HPSP. Noncompliance by Licensee with any term or condition of his HPSP Participation Agreement or Monitoring Plan shall constitute a violation of this Order. If HPSP determines that Licensee is not eligible for monitoring, the Complaint Review Committee shall fulfill the functions of HPSP, including establishing the conditions of treatment and therapy and monitoring Licensee’s compliance with the following paragraphs.

a. ***Psychotherapy.*** Licensee shall undergo psychotherapy by a therapist preapproved by HPSP. The duration of the psychotherapy shall be a minimum of six months or a period of time determined by HPSP and Licensee’s therapist, whichever is longer. The number and frequency of the visits shall be determined by HPSP in consultation with Licensee’s therapist. The psychotherapy shall address increasing Licensee’s level of self-awareness, anger management, stress reduction, and the importance and value of maintaining appropriate boundaries, as well as any other issues deemed appropriate by HPSP or Licensee’s therapist. Licensee shall cause the therapist to submit periodic reports to HPSP, the content and frequency of which shall be determined by HPSP.

b. ***Anger Management Course.*** Licensee shall successfully complete an anger management course preapproved by HPSP. The length of the course shall be

determined by HPSP. Licensee's successful completion of the course shall be determined by HPSP in consultation with the course instructor. Licensee shall cause the course instructor to submit periodic reports to HPSP, the content and frequency of which shall be determined by HPSP.

c. ***Boundaries Instruction.*** Licensee shall successfully complete one-on-one instruction in boundaries preapproved by HPSP. The length of the instruction shall be determined by HPSP. Licensee's successful completion of the instruction shall be determined by HPSP in consultation with the instructor. Licensee shall cause the course instructor to submit periodic reports to HPSP, the content and frequency of which shall be determined by HPSP.

d. ***Waivers/Authorizations for Release.*** At any time while this Order is in effect and at the request of HPSP, the Committee or its designee, Licensee shall complete and sign any waiver or authorization for the release of medical, mental health or other records in order to allow the Committee or its designee to discuss Licensee's case with, to release records and information to and to obtain written evaluations and reports and copies of all of Licensee's medical, mental health or other records from any treatment facility, organization, physician, therapist, treatment provider or other person from whom Licensee has sought or obtained treatment, support or assistance.

Practice Conditions

3. ***Group Practice.*** Licensee shall practice in a group setting only. The practice setting must be approved by HPSP within 30 days of the date of this Order.

4. ***Work-Site Monitor.*** Licensee must have a work-site monitor who is a veterinarian in good standing with the Board. The work-site monitor must be approved by HPSP within 30 days of the date of this Order. Licensee shall cause the work-site monitor to submit

periodic reports to HPSP about Licensee's conduct in the work setting and his compliance with this Order. The content and frequency of the reports shall be determined by HPSP. The work-site monitor must agree to report immediately to HPSP any conduct by Licensee that may endanger any patient, any episode of disruptive, threatening or abusive conduct by Licensee in the work setting, or any conduct by Licensee that may otherwise violate this Order.

5. ***Disruptive, Threatening or Abusive Conduct Prohibited.*** Licensee is prohibited from engaging in any disruptive, threatening or abusive conduct in the work setting, including, but not limited to, the following:

- Employing threatening or abusive language directed at clinic staff, other veterinarians or clients;
- Making degrading or demeaning comments regarding staff, other veterinarians or clients;
- Using profanity or other grossly offensive language;
- Utilizing threatening or intimidating physical contact;
- Engaging in any unwanted touching, sexual touching, sexually-oriented or degrading comments or jokes or obscene gestures;
- Engaging in throwing any objects;
- Engaging in any act or omission that causes or may cause unnecessary or unjustifiable pain, suffering, injury to, or the death of any animal; or
- Yelling or screaming at or engaging in any other verbal or physical conduct that may unnecessarily frighten any animal.

6. ***Care of Post-Surgical Complications.*** Licensee must render appropriate care that is consistent with minimum standards of acceptable and prevailing practice in the event that any animal suffers post-surgical complications or is otherwise in distress while under Licensee's care.

7. ***Heartworm Tests.*** Licensee must comply with minimum standards of acceptable and prevailing practice for performing and reporting heartworm tests, including accurately reporting the results of all tests.

8. ***Use of Pulse Oximeter.*** Licensee must use a pulse oximeter on animals undergoing surgery consistent with minimum standards of acceptable and prevailing practice.

9. ***Dental Extractions by Veterinary Technicians Prohibited.*** Licensee is prohibited from directing or authorizing any veterinary technician or other unlicensed employee from extracting animals' teeth or from engaging in any other acts or practices that are prohibited under Minn. Stat. § 156.12, subd. 2(h) and Minn. R. 9100.0800, subp. 7.B.

10. ***Sterile Surgery.*** Licensee must comply with minimum standards of acceptable and prevailing practice for sterile surgery, including sterilizing each set of surgical instruments in a separate pack and consistently wearing a gown, mask and head covering during surgery.

11. ***Controlled Substances.*** Licensee must comply with all state and federal controlled substances regulations, including regulations pertaining to record keeping and storage.

12. ***Office Management/Human Resource Service.*** Within 60 days of the date of this Order and for a time period of no less than one year, Licensee shall engage an office management/human resource service in order to develop policies and procedures which would help facilitate the smooth running of Licensee's practice.

Costs

13. ***Investigative Costs.*** Licensee shall pay the Board \$5,000 in investigative costs, \$2,500 of which is due within 30 days of issuance of this Order and the remainder of which is due one year from the date of this Order.

14. ***Responsibility for Costs.*** Licensee is responsible for all costs associated with his compliance with this Order.

VI.

CONSEQUENCES OF A VIOLATION

A. ***Hearing Before the Board/Temporary Suspension.*** If the Committee determines that Licensee has violated any term or condition of this Order, including any failure to comply with his HPSP Participation Agreement or Monitoring Plan, if any, the Committee may schedule a hearing before the Board and serve on Licensee a Notice of Hearing for Alleged Non-Compliance with Stipulation and Order (“Notice”), which sets forth the allegations against Licensee and provides Licensee notice of the date, time and place of the hearing before the Board. The procedures set forth in paragraph VI.B below shall apply to the hearing. The Committee may, in its discretion, prior to the hearing, temporarily suspend Licensee’s license based on its determination that Licensee has violated this Order. A temporary suspension shall become effective upon service on Licensee of a written notice of temporary suspension. If the Committee temporarily suspends Licensee’s license, the hearing shall be held no later than 30 days after the date the written notice of temporary suspension is mailed to Licensee, unless the Committee and Licensee agree to hold the hearing at a later time.

B. ***Hearing Procedures.*** The following procedures shall apply:

1. ***Response to Allegations in Notice.*** At least seven days before the hearing, Licensee shall submit a written response to the allegations set forth in the Notice. 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.B.3 below to determine

whether the allegations are true and, if so, whether to continue any suspension and/or to take additional disciplinary action against Licensee, which may include any of the forms of disciplinary action set forth in Minn. Stat. § 156.127.

3. ***Evidence at Hearing/Burden of Proof/Waiver of Hearing Before Administrative Law Judge.*** At the hearing before the Board, the Committee and Licensee may present affidavits made on personal knowledge; affidavits of experts; authenticated documents; certified court records; Board records, including reports; medical records, including, but not limited to, written evaluations, reports or treatment recommendations, and HPSP 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, records and reports and this Stipulation and Order. The Committee shall file with the Board all evidence it intends to present at the hearing and shall serve a copy on Licensee at least 14 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 Committee at least seven days before the hearing. The Committee must prove by a preponderance of the evidence that Licensee has violated this 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.

4. ***Costs.*** If the Committee proves by a preponderance of the evidence that Licensee has violated this Order, the Board may require Licensee to pay all costs of the proceedings. The costs of the proceedings shall include, but not be limited to, 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.

C. ***Statutory Procedures.*** Nothing herein shall limit the Committee's right to attempt to resolve an alleged violation of this Order through the procedures of Minn. Stat. § 214.103, subd. 6 or to initiate a contested case proceeding under Minn. Stat. ch. 14 based on an alleged violation of this Order.

VII.

PETITION FOR UNCONDITIONAL LICENSE

A. Licensee may petition the Board to issue an order granting him an unconditional license at any regularly scheduled Board meeting three years after the date of this Order or following Licensee's successful completion of his HPSP Participation Agreement and Monitoring Plan, if any, whichever is later. At the time of his petition, Licensee shall have the burden of proving that he has fully complied with this Order and that he is able to practice veterinary medicine safely and in compliance with all statutes and rules governing the profession in the State of Minnesota without being subject to the terms of this Order.

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 Stipulation and Order, which may otherwise be available to Licensee.

C. 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.

D. Licensee was advised of his right to be represented by counsel throughout this entire proceeding and knowingly and voluntarily waived that right.

E. 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 change, 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 in paragraph VIII.F.

F. 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.

G. This Stipulation and Order 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 specific facts and circumstances set forth in this document.

IX.

DATA PRACTICES NOTICES

A. This Stipulation and Order constitutes disciplinary action by the Board and is classified as public data pursuant to Minn. Stat. § 13.41, subd. 4.

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

Signature on file

TODD VARNES, D.V.M.

Licensee

Dated: March 16, 2004.

ORDER

Upon consideration of the Stipulation and all the files, records and proceedings herein, the terms of the Stipulation are approved and adopted, and hereby issued as an Order of this Board effective this thirty-first day of March, 2004.

MINNESOTA BOARD
OF VETERINARY MEDICINE

Signature on file

JOHN KING, D.V.M.

Executive Director