

STATE OF WISCONSIN  
BEFORE THE VETERINARY EXAMINING BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 :  
 : FINAL DECISION AND ORDER  
 JAMES METZ, D.V.M., :  
 : LS 0312301 VET  
 RESPONDENT. :  
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[Division of Enforcement Case #'s 97 VET 006, 04 VET 001, 05 VET 020]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

James Metz, D.V.M.  
900 Green Valley RD  
Beaver Dam, WI 53916

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Veterinary Examining Board  
Department of Regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Notice of Hearing and Complaint were filed in this matter on December 30, 2003. Prior to the hearing on the formal complaint, the parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Wisconsin Veterinary Examining Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. James Metz, D.V.M., Respondent herein, whose date of birth is January 31, 1950, is duly licensed by the Wisconsin Veterinary Examining Board to practice veterinary medicine in the State of Wisconsin pursuant to license number 1834 which was granted on June 23, 1978.

2. Respondent's last address reported to the Department of Regulation and Licensing is 900 Green Valley Rd, Beaver Dam, WI 53916.

3. At all times relevant to this action, Respondent was working as a veterinarian in the State of Wisconsin.

4. As part of the investigation in this matter, the Board exercised its authority to obtain and review Respondent's client records.

5. In particular, the Board obtained client records for Hickory Hills Farms in Sussex, Wisconsin. ("Hickory Hills")

6. During 1998 and 1999, Respondent provided veterinary services to the animals maintained at the dairy operations of Hickory Hills in Sussex, Wisconsin.

7. Respondent's client records for Hickory Hills do not contain sufficient information to determine whether a veterinarian-client-patient relationship existed for the period between 1998 and 1999 when Respondent provided veterinary services to the animals maintained on the farms.

8. The formal complaint filed in the matter contains allegations involving four separate clients that Respondent did not establish and maintain a valid veterinarian-client-patient relationship prior to selling the clients prescription drugs for treatment of their animals. The Board has made no determination with regard to those allegations but finds the allegations to be resolved by the Order contained herein.

9. Respondent disputes all of the allegations set forth in the Complaint filed in this matter, and the allegations in the current investigative matters entitled 04 Vet 001 and 95 Vet 020, but in the interests of fully and finally resolving all pending matters, agrees to the resolution contained herein.

### CONCLUSIONS OF LAW

1. The Wisconsin Veterinary Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. sec. 453.07(2), and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. sec. 227.44(5).

2. The conduct set forth above does not comply with the requirements of Wis. Admin. Code sec. VE 7.03(3), which sets forth the minimum requirements for client records for food and fiber patients, and Respondent is therefore in violation of Wis. Admin. Code sec. VE 7.06 (15).

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the Stipulation of the parties is hereby accepted.

IT IS FURTHER ORDERED that Respondent, James Metz, D.V.M., is REPRIMANDED by the Board.

IT IS FURTHER ORDERED that for a period of three (3) years from the effective date of this Order, Respondent's license to practice veterinary medicine in the State of Wisconsin shall be limited on the following terms and conditions:

1. The Effective Date of this Order is March 19, 2009.
2. Respondent shall delegate veterinary medical acts, including performing surgery, only in accordance with the provisions of Wis. Adm. Code sec. VE 7.02.
3. A copy of all of Respondent's client records, including but not limited to all treatment records, all dispensing records, copies of prescriptions and all treatment protocols, shall be maintained at Respondent's clinic/s.
4. Respondent shall not prescribe, administer, dispense, or authorize the dispensing of any prescription drug without first establishing a valid veterinarian-client-patient relationship that meets all of the requirements of Wis. Stats sec. 453.068. If the drug is intended for prophylactic treatment or for reproductive purposes, Respondent shall prescribe, administer, dispense or authorize for dispensing only under the conditions set forth in paragraph 5 below. Compliance with this section shall also include all of the following:
  - a. Respondent, not the client, must determine the need for the prescription drug. Before prescribing, administering, dispensing or authorizing the dispensing of the drug for treatment of disease conditions, injury, pain or surgical procedures, Respondent shall perform and document in the client record either a recent examination of the patient(s) or medically appropriate and timely visit(s) to the premises on which the patient(s) is kept, together with the results of such visit(s).
  - b. Respondent shall enter sufficient information into the client records about the history of the conditions, symptoms, diagnoses and any diagnostic procedures and examination findings, if any, to show that prescribing, administering, dispensing, or authorizing the dispensing of the prescription drug is medically appropriate. Such records shall meet all requirements of Wis. Adm. Code sec VE 7.03.
  - c. Respondent must enter the prescription or note the administration, dispensing, or authorization to dispense in the client records or maintain a copy of the prescription in the client records.

- d. Respondent shall enter the plan for treatment of the animal's medical conditions, including all of the veterinarian's recommendations about the use of the prescription drugs, into the client records. Where the treatment plan is in accordance with standard treatment protocols, Respondent shall so note in the records, maintain a permanent computer or paper record of the treatment protocols in the clinic and shall furnish the client with a copy of the protocols to post or retain at the client's facility where the animals are being kept.
- e. Quantities of the prescription drugs prescribed, administered, dispensed or authorized for dispensing by Respondent shall be no greater than needed for treatment of the affected animal/s or herd for the diagnosed conditions as determined by the Respondent in the exercise of his professional judgment. Respondent may authorize any reasonable refills if consistent with minimum standards of reasonable veterinary practice for the particular medical conditions and particular prescription drugs and if consistent with state and federal law.
- f. Respondent shall be readily available for follow-up treatment of the patient if the patient has an adverse reaction to veterinary treatment.
- g. If advised by the client that the treatment plan has not been successful, Respondent shall consult with the client, provide additional recommendations, including additional treatment if warranted in his professional opinion and, if necessary pursuant to the minimal standards in the veterinary profession, examine the animal/s and perform appropriate diagnostics, if any are required, or make medically appropriate and timely visits to the premises where the animals are kept to determine the cause of the failure of the treatment.

5. Respondent may prescribe, administer, dispense or authorize for dispensing a prescription drug intended for prophylactic treatment or reproductive purposes pursuant to an established treatment protocol that meets the minimum standards of veterinary medicine so long as Respondent has recently examined the animals or made medically appropriate and timely visits to the site where the animal/s or herd is located prior to the prescribing, dispensing or authorizing for dispensing of the prescription drugs established for those purposes and only under the following additional conditions:

- a. The treatment protocols shall contain a recommendation that the client immediately contact the Respondent whenever there is any failure of treatment with a prescription drug specified in the protocols. Respondent shall document any such contact and Respondent's recommendations to the client in the client records.
- b. Respondent shall provide the client with sufficient instruction and direction regarding the protocol to assist the client in understanding the proper application of the treatment protocols. Such instruction and direction shall be documented in the client records.
- c. Respondent shall make medically appropriate and timely herd health visits to the farm on which the treatment protocols are used. At the time of the visit, Respondent shall review the client's prescription drug use under the treatment protocols and shall consult with the client about the protocols, the medical condition/s treated in accordance with the protocols, and the efficacy of the treatment/s. If advised by the client that the treatment plan has not been successful, Respondent shall consult with the client, provide additional recommendations, including additional treatment if warranted in his professional opinion and, if necessary pursuant to the minimal standards in the veterinary profession, examine the animal/s and perform appropriate diagnostics, if any are required, to determine the cause of the failure of the treatment. Respondent shall further determine whether the client is in material compliance with the provisions of the treatment protocols and, if not, shall take steps to provide the client with reasonable instruction and direction on compliance with the provisions of the treatment protocols.

d. Before prescribing, dispensing, or authorizing the dispensing of a prescription drug for use in accordance with a treatment protocol, Respondent shall consult with the client and obtain and document in the client record sufficient information regarding the animal(s) or herd(s) and the medical condition so as to evidence the need for the treatment protocol.

e. The treatment protocol shall be animal(s) and/or herd and site specific.

6. Each prescription written by Respondent shall comply with the provisions of Wis. Stat. sec. 453.068 and all other applicable state and federal laws regarding prescription drugs and controlled substances.

7. All prescription drugs administered, dispensed, or authorized for dispensing by Respondent, to a client shall be reflected in the client records and shall comply with the provisions of Wis. Stats. sec. 453.068, Wis. Admin. Code sec. 7.06 (9), (10), (11) and (12), including all labeling requirements, and all other applicable state and federal laws regarding the administration and dispensing of prescription drugs and controlled substances.

8. All client or patient records shall comply with the provisions of Wis. Admin. Code sec. VE 7.03, Wis. Stats sec. 453.068 and all other applicable state and federal laws regarding the provision of veterinary care and the use of prescription drugs and controlled substances.

9. Upon the documented request of other veterinarians who provide services to Respondent's clients, together with the documented authorization of such clients, Respondent shall provide such veterinarians with a summary of Respondent's findings and a list of all drugs prescribed, administered, dispensed, or authorized to be dispensed, with dosage strength, amount, and frequency including all refills which are authorized, if any.

10. Respondent shall ensure that all clinic personnel, including all licensed veterinarians, employed by Respondent, or any entity in which Respondent and/or Respondent's spouse holds an interest shall be advised of and comply with the applicable terms and conditions of this Order as contained in paragraphs 1 through 9 above.

11. No later than 60 days from the Effective Date of this Order, Respondent shall engage the services of a licensed veterinarian who shall be pre-approved by the Veterinary Examining Board to serve as a Monitor for this Order. The Monitor shall not have any affiliation with any business entity in which Respondent and/or Respondent's spouse holds any interest or receives any other form of compensation or benefit. Upon Board approval of the suggested Monitor, and for a period of three (3) years following the Effective Date of this Order, Respondent shall permit the Monitor to enter his clinics for the purpose of determining compliance with this Order. The Monitor shall make that determination based upon the following:

a. For the first twelve (12) months following the Effective Date of this Order, the Monitor shall conduct (2) reviews of Respondent's records at Respondent's clinic(s) consistent with the procedure set forth in para. 11 (b) – (g), below. The first review will take place no less than six (6) months after the Effective Date of the Order. In the event that the Monitor determines Respondent has complied with the Order in each of the first two (2) reviews, any and all subsequent reviews shall be conducted on an annual basis.

b. Pursuant to the schedule set forth at para. 11(a), the Monitor shall contact the Respondent to arrange a date and time for review of Respondent's clinic records at Respondent's clinic/s. Any request for review should be made no less than ten (10) business days prior to the requested date of review. At the time of the review, the Monitor shall select a random sampling of not more than 25 client records for all clinic(s) where the records are maintained and any review shall be limited to clients for whom Respondent has made visits on or after the Effective Date of this Order and shall also be limited to client records for food and fiber patients only. The Monitor shall compare Respondent's client records and treatment protocols with the prescriptions written or obtained and the drugs administered or dispensed to determine whether the medical records contain sufficient information to ascertain that the prescribed, administered or dispensed drug was medically appropriate.

c. The Monitor shall further review those records to determine compliance with all requirements of

paragraphs 3 through 9 above.

d. The Monitor shall review a randomly selected sample of Respondent's labeling practice to determine compliance with the provisions of paragraph six above.

e. The Monitor shall submit written reports following each scheduled compliance visit to the Veterinary Examining Board which shall include the date of the inspection, what records were reviewed and the monitor's specific findings. At the time of the initial review, if the Monitor has concluded that Respondent may be in violation of the order, the Monitor shall advise the Department Monitor and the Board liaison for monitoring who shall work in good faith with Respondent to bring him back into compliance with the Order. If, following such good faith compliance efforts, the Monitor, Department Monitor and Board Liaison for monitoring are satisfied the Respondent has been brought back into compliance, there is no further reporting to the Board required, other than reporting the facts of the review, set forth immediately above. If, however, following such good faith compliance efforts, the Monitor, Department Monitor and the Board liaison for monitoring are not satisfied the Respondent has been brought back into compliance, they shall report that conclusion to the Board. Any such report shall also provide the specifics of the alleged violation including the identity of the client, animal(s), drug, date of the incident and alleged violation. The Monitor shall also identify all related records. A copy of any and all Reports and attendant documents that the Monitor provides to the Veterinary Examining Board, together with any and all written and oral communications regarding Dr. Metz that is exchanged by and between the Board and the Monitor shall be provided to Dr. Metz. Any potential violations identified in subsequent reviews conducted pursuant to sub. b. above, shall be reported directly to the Board and Respondent with the accompanying documentation set forth herein.

g. Respondent shall be responsible for all costs incurred by the Monitor and shall ensure timely payment of any bills for services submitted to him by the Monitor within thirty (30) days, unless Respondent has a good faith dispute as to the amounts billed.

12. The Board will take no action, based on any conduct by Respondent and all clinic personnel, including all licensed veterinarians employed by Respondent, other than that set forth in this Order, based on any conduct by Respondent and all clinic personnel, including all licensed veterinarians employed by Respondent relating to their food and fiber veterinary practice, which may be in violation of the statutes and rules which govern the practice of veterinary medicine which may have occurred prior to the effective date of this Order.

13. The Board will take no further action, based on any of the allegations contained in investigative files 97 Vet 006, 04 Vet 001 and 05 Vet 020 other than that set forth in this Order.

14. The terms and fact of the settlement set forth in this Order will be treated in a manner consistent with all other disciplinary cases decided by the Boards attached to the Department and the Board shall make no affirmative efforts to comment on, publicize or otherwise bring attention to this decision, other than by release of information as required by law, including laws governing records and open meetings. Dr. Metz understands that consistent with Department policy, the Department will post the Final Decision and Order on the Department website and in a listing of decisions reached by all of the boards each month. Prior to dissemination of any listing of decisions the Department prepares, Dr. Metz may contact Michael Berndt, Department of Regulation and Licensing, to discuss the language the Department proposes to use.

15. Respondent shall, no later than February 19, 2009, pay costs of this proceeding in the amount of fifteen thousand (\$15,000.00) dollars. Payment shall be made to the Wisconsin Department of Regulation and Licensing, and mailed or delivered to:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935  
Fax (608) 266-2264  
Telephone (608) 267-3817

16. In the event that Respondent fails to pay costs as ordered, Respondent's license (#1834) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order regarding payment of costs.

17. Investigative files 04 Vet 001 and 05 Vet 020 are hereby closed.

Wisconsin Veterinary Examining Board

By: Robert Spencer DVM  
A Member of the Board

11/19/08  
Date