

NORTH CAROLINA VETERINARY MEDICAL BOARD

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October 17, 2001

*Via Certified Mail,
Return Receipt Requested*

Kevin A. Monce, D.V.M.
P. O. Box 15396
Wilmington, NC 28408

*Letter of Reprimand
Board Rule .0601(h)*

Re: File No. 00006-1-1
Nancy G. Deas and Edna E. Deas
Raleigh, N.C.

Dear Dr. Monce:

I write on behalf of the North Carolina Veterinary Medical Board and its Committee on Investigations No. 1 to explain the decision of the Committee and the Board on the complaint by Nancy and Edna Deas (hereafter the "Deases") regarding your care and treatment of their dog Alex, a 14-year-old Manchester terrier. The complaint was filed against both you and Dr. Dana R. Jones of Raleigh. The decision with respect to Dr. Jones is set forth in a letter to him.

The Committee voted to issue you this letter of reprimand and to recommend to the Board that you be assessed a civil monetary penalty of \$3,000.00. The Board has agreed with the Committee's decision and recommendation. Please review the provisions of Board Rule .0601(h) and follow them if you choose to reject the reprimand and request a formal hearing. If you accept the reprimand, nothing further is required.

By copy of this letter, the Committee and the Board express their condolences to the Deases over the loss of Alex.

Board Investigative Procedure

The Veterinary Medical Board regulates veterinary medicine in the State pursuant to the Veterinary Practice Act. Written complaints to the Board are investigated by one of its three-member Committees on Investigation (in this case, Committee No. 1), which reviews the materials

relevant to the complaint to determine whether there is probable cause that the veterinarian complained of violated the statutes and/or administrative rules governing veterinary medicine. A Committee follows Board Rule .0601, copy enclosed, in conducting the investigation.

Several hundred pages of materials were reviewed by the Committee on this and the Board-initiated complaint, file no. 00048-1-1. The Committee also interviewed you, Dr. Jones and the Deases. A number of issues and questions were presented by the complaint, all of which have been considered by the Committee. The Committee has identified the relevant issues of this complaint, has made findings and decisions on the issues.

Summary of Chronology and Complaint Allegations

The chronology of complaint allegations is set forth in the letter of reprimand to Dr. Dana R. Jones, which letter is incorporated herein by reference. A copy of that letter is enclosed.

General Complaint Issues as Determined by Committee No. 1

Attached to the Deases' complaint was an extensive list of approximately 39 questions, many with subparts. Committee 1 has organized the questions into a series of issues. The following issues relate to the complaint against you:

1. Did you violate the Practice Act and Board Rules by delivering veterinary medical services to the Deases for Alex in a mobile facility not inspected or approved for such services by the Veterinary Medical Board?
2. Were you a primary veterinarian or only a consulting veterinarian in the treatment of Alex?
3. Did you comply with Board Rule .0207(b)(12) regarding minimum standards for recordkeeping in the treatment of Alex?
4. Did you provide competent veterinary medical diagnosis, care and treatment of Alex during the several days preceding January 4, 2000?
5. Did you violate the Practice Act by delivering veterinary medical services to Alex during this period of time through a business corporation known as "VetSound, Inc."?

Discussion

Committee 1 addresses the foregoing issues with the following findings and points. Some of the findings relate to more than one issue. The Committee has found probable cause that you violated N.C. Gen. Stat. § 90-187.8(c)(6). Your diagnosis, care and treatment of Alex, as described

below, was not competent and did not meet the minimum standard of veterinary medical care. In lieu of sending this matter to a formal hearing, the Committee has issued this letter of reprimand pursuant to Board Rule .0601(h).

North Carolina General Statute § 90-187.8(c)(6) provides as follows:

(c) Grounds for disciplinary action [by the Board] shall include but not be limited to the following:

* * * *

(6) Incompetence, gross negligence, or other malpractice in the practice of veterinary medicine.

* * * *

1. Practice in an Uninspected Facility. You violated the Veterinary Practice Act and Board administrative rules by delivering veterinary medical services in an uninspected facility. Board Rule .0207 establishes the minimum facility and practice standards for all locations where veterinary medicine is practiced. Subsection.0207(b)(15) of the Rule provides:

(15) All new veterinary facilities and all existing facilities changing ownership shall be inspected and approved by the Board prior to the practice of veterinary medicine within the facility.

You allowed Alex to be brought by Dr. Jones and Nancy Deas from Durant Road Animal Hospital & Kennel, PLLC (the "Hospital") into your trailer in the Hospital parking lot knowing that it was not inspected and approved for the delivery of veterinary medical services. While under your care in this facility you conducted invasive procedures on Alex, including a biopsy of his liver and the obtaining of other tissue and fluid samples. Your acts and omissions constituted a blatant disregard of the Veterinary Practice Act and Board Rule requirements. Your conduct violated the minimum sanitary and practice requirements of Board Rule .0207(b)(15). Further, your conduct in leading Dr. Jones, Nancy and Edna Deas to believe that the facility was appropriate for the delivery of veterinary medical services, when it was not, constituted an act of misrepresentation in the veterinarian-client-patient relationship in violation of G.S. § 90-187.8(c)(19). Your total conduct constituted incompetence and malpractice in the practice of veterinary medicine in violation of G.S. § 90-187.8(c)(6).

A related question on this issue is whether your treatment of Alex in this trailer caused or contributed to the deterioration of Alex's deteriorating health. The Committee does not find a causal connection.

2. Was your role that of a consultant or a primary veterinarian? The Committee believes you were a primary veterinarian for Alex, often sharing this status with Dr. Jones. Although you have referred to your capacity as only that of a consultant, the facts show otherwise. You did a great deal more than merely consult. You had a history of treating Alex for several years, apparently long before you identified yourself as a consultant. Dr. Jones as well as the Deases contacted you in December, 1999 to provide opinions, diagnosis and care for Alex. You assumed the responsibility as a primary care giver. The Deases called you at home on at least three occasions during this period of time. On the evening of January 3 and the early morning hours of January 4 Nancy Deas called you and you gave her instructions and advice regarding treatment. The Deases looked to you as a primary care giver. Therefore, as a primary veterinarian, you should have provided more supportive care for Alex at the Hospital during the afternoon of January 3, as well as in the late evening of January 3 and early morning of January 4. These omissions are further discussed below.

3. Recordkeeping. The Committee finds you violated Board Rule .0207(b)(13) with respect to minimum standards for recordkeeping, which also constitutes a violation of the competency practice standards of G.S. § 90-187.8(6). Your recordkeeping was extremely poor, and you did not maintain a complete medical record for Alex. While you wished to deliver services in a consultative-type capacity, as noted above you were actually a primary veterinarian for Alex. Moreover, a facility providing limited veterinary services, even an approved one, is required by Board Rule .0208(b) to comply with the minimum standards of Board Rule .0207. Recordkeeping is one of these standards.

4. Care and Treatment of Alex. Your total care and treatment of Alex fell below the minimum competency standards of G.S. § 90-187.8(c)(6), especially in light of your status as diplomate of the American College of Veterinary Internal Medicine. You were at least a primary veterinarian for Alex from late December, 1999 through the early morning of January 4, 2000. You had treated Alex and the Deases' other dog, Gus, for several years. You were familiar with Alex's general condition and you knew his age. This 14-year-old dog first needed precautionary support before, during and after your administration of anesthesia.

After Alex was transported from the trailer back to the Hospital following the biopsy procedure, you assisted Dr. Jones in further treatment and diagnosis. Shortly thereafter you left the facility before Alex had recovered. When Alex did not readily recover from the anesthesia, this was a second chance for you to respond with supportive care, with fluids or otherwise. But you were not available. Perhaps because you incorrectly viewed your role as a consultant, you left the Hospital prior to Alex's discharge.

Was your treatment of Alex during the day of January 3 appropriate and complete? The diagnostic procedures were appropriate, but you erred in failing to provide treatment therapies readily available, such as the administration of fluids, when Alex did not readily recover from the anesthesia.

Did the recommendations that you made at or about 12:30 a.m. January 4 meet the minimum veterinary standard of care? No. There appears to be little basis in the records for you to make a diagnosis then that Alex had hepatic encephalopathy, when nothing else was mentioned about that previously. You had not seen Alex for almost 12 hours. The Committee believes there are risks associated with making that type of diagnosis in this situation.

5. Practicing Through a Regular Business Corporation. Did you deliver veterinary medical services through the name of VetSound, the name of business corporation, VetSound, Inc.? It appears that VetSound, Inc. owned the trailer, perhaps as co-owner with Renee Dailey Daniel, in which you treated Alex on or about January 3, 2000. A veterinarian is not permitted to deliver veterinary medical services through a regular business corporation. On this occasion it appeared that you were conducting a veterinary medical practice through the name VetSound. This violation is another aspect of your disregard of the statute and rules concerning veterinary medicine in this State.

Civil Monetary Penalty

Pursuant to N.C. Gen. Stat. § 90-187.8(b) and Board Rule .0601(m), the Veterinary Medical Board has voted to impose and collect from you a civil monetary penalty in the amount of \$3,000.00 for your violations of the Veterinary Practice Act and Board Rules, as discussed, which form the basis for this letter of reprimand. The amount of this civil penalty has been determined upon a finding by the Board of the following factors, only one of which is necessary to sustain the imposition of the penalty:

1. N.C. General Statute § 90-187.8(b)(2) [duration and gravity of violation]. You treated Alex in an uninspected facility, a serious violation.
2. N.C. General Statute § 90-187.8(b)(3) [willful or intentional violation or one reflecting a continuing pattern]. Your treating Alex in an uninspected mobile facility was committed willfully and intentionally. It also appears to have reflected a continuing pattern. You disregarded the terms of the Practice Act and Board Rules.
3. N.C. General Statute § 90-187.8(b)(4) [a violation involving elements of fraud or deception to a client or to the Board]. Treating Alex in an uninspected mobile facility was an act of deception to the Nancy and Edna Deas in the veterinarian-client-patient relationship, to the Veterinary Medical Board and to Dr. Dana Jones, your colleague.

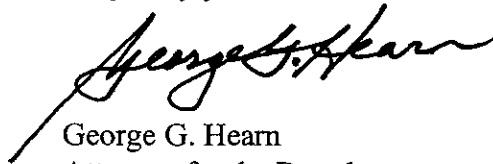
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4. N.C. General Statute § 90-187.8(b)(6) [profiting by violation]. The Board finds that you profited by charging for professional fees performed in the uninspected mobile facility.

This concludes the decisions of Committee No. 1 with respect that portion of this complaint against you. The decision of Committee 1 has been reported to and accepted by the Veterinary Medical Board. Please be advised that if you elect a hearing, which is your right, the hearing panel is not limited to the disciplinary sanctions contained in this letter if the hearing panel finds a violation. In other words, the hearing panel can find no violation and impose no sanction, find the same violations and impose identical sanctions, or find violations and impose more severe discipline, both in terms of license discipline, civil monetary penalty, and recovery of costs. Please review Board Rule .0601(h).

If you or your attorney have any questions about this, please contact me or Mr. Mickey.

Very truly yours,



George G. Hearn
Attorney for the Board

GGH:ccs
Enclosures

cc: Nancy G. Deas ✓
Edna G. Deas ✓
Dana R. Jones, D.V.M.
Board Members
Thomas M. Mickey, Executive Director

SECTION .0600 - ADMINISTRATIVE HEARINGS: PROCEDURES

.0601 COMMITTEE ON INVESTIGATIONS

- (a) Upon receipt of a charge alleging misconduct against a licensee or registrant of the Board, the Executive Secretary shall inform the accused party of the nature of the charges as filed with the Board.
- (b) The accused party shall respond to the charges by filing a written answer with the Board within 20 days of the receipt of the notification of charges.
- (c) The complaining party shall be provided with a copy of the accused party's answer and within 20 days from receipt thereof shall file a reply to the accused party's answer.
- (d) The charges as filed with the Board, the answer and reply may be referred to the Committee on Investigations (hereinafter referred to as "Committee"). The Committee shall consist of three members of the Board, one of whom shall serve as chairman.
- (e) The Committee shall investigate the complaint referred to it by the Board and as part of the investigation may:
- (1) Assign the complaint to the Board's investigator who shall submit a written report to the Committee.
 - (2) Invite the complaining party and the accused party before the Committee to receive their oral statements, but neither party shall be compelled to attend.
 - (3) Conduct any other type of investigation as is deemed appropriate by the Committee.
- (f) Upon the completion of the investigation, the Committee shall determine whether or not there is probable cause to believe that the accused party has violated any standard of misconduct which would justify a disciplinary hearing based upon the grounds as specified in Article 11 of Chapter 90 of the North Carolina General Statutes or this Chapter.
- (g) If probable cause is found, the Committee shall direct the legal counsel for the Board to file a Notice of Hearing.
- (h) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the Committee may issue a reprimand to the accused party. A statement of such reprimand shall be mailed to the accused party. Within 15 days after receipt of the reprimand, the accused party may refuse the reprimand and request that Notice of Hearing be issued pursuant to Chapter 150B of the North Carolina General Statutes or this Chapter. Such refusal and request shall be addressed to the Committee and filed with the Executive Secretary for the Board. The legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the letter of reprimand is accepted, a record of the reprimand shall be maintained in the office of the Board.
- (i) If no probable cause is found, the Committee shall dismiss the charges and prepare a statement of the reasons therefore which shall be mailed to the accused party and the complaining party.
- (j) If no probable cause is found, but it is determined by the Committee that the conduct of the accused party is not in accord with accepted professional practice or may be the subject of discipline if continued or repeated, the Committee may issue a letter of caution to the accused party stating that the conduct, while not the basis for a disciplinary hearing, is not professionally acceptable or may be the basis for a disciplinary hearing if repeated. A record of such letter of caution shall be maintained in the office of the Board.
- (k) A Board member who has served on the Committee is deemed disqualified to act as a presiding officer or member of the Board assigned to render a decision in any administrative disciplinary proceeding brought pursuant to a Notice of Hearing for which that member has sat in an investigative capacity as a member or chairman of the Committee.

*History Note: Statutory Authority G.S. 90-185(3); 90-185(6);
Eff. January 1, 1987;
Amended Eff. May 1, 1989.*