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02 VMB 1712

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October 15, 2002

FILED

OFFICE OF
ADMINISTRATIVE
HEARINGS

2002 OCT 16 P 3:34

Hon. Julian Mann, III
Chief Judge, Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714

Re: N.C. Veterinary Medical Board v. Kevin A. Monce, D.V.M.
Complaint Nos. 00006-1-1 and 00048-2-1

COPY

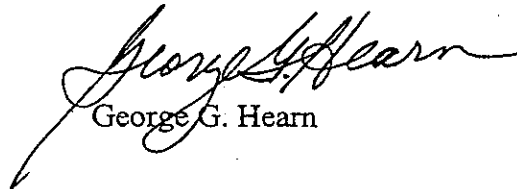
Dear Judge Mann:

Enclosed is a copy of a Notice of Hearing which is being mailed today by certified mail, return receipt requested, to Kevin A. Monce, D.V.M.

On behalf of the Veterinary Medical Board, we ask that you assign an administrative law Judge to hear this matter pursuant to G.S. § 150B-40(e) and other applicable statutes and rules.

Please let us know what other information your office needs. Thank you.

Very truly yours,


George G. Hearn

GGH:jh
Enclosure

cc: Board Members
Thomas M. Mickey, Executive Director
Kevin A. Monce, D.V.M.
Michael Crowell, Esq.

02 VMB 1712

BEFORE THE
NORTH CAROLINA VETERINARY MEDICAL BOARD
RALEIGH, NORTH CAROLINA

THE NORTH CAROLINA)
VETERINARY MEDICAL BOARD,)
)
Petitioner,)
)
Vs.)
)
KEVIN A. MONCE, D.V.M.)
)
License No. 3661,)
)
Respondent.)

OFFICE OF
ADMINISTRATIVE
HEARINGS

2002 OCT 16 P 3:34

FILED

NOTICE OF HEARING
Complaint No. 00006-1-1
and 00048-2-1

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

OR: Kevin A. Monce, D.V.M.
4037 Masonboro Loop Road
Wilmington, NC 28409

* * *

PLEASE TAKE NOTICE that the North Carolina Veterinary Medical Board, Petitioner, (hereafter "the Board"), complaining of Kevin A. Monce, D.V.M., Respondent (hereafter "Dr. Monce"), issues this Notice of Hearing for a contested case hearing to be conducted at a date and place hereafter designated by the Office of Administrative Hearings, Raleigh, N.C. on the matters and things alleged in this Notice of Hearing.

The hearing in this matter will be conducted pursuant to N.C. General Statute Chapter 150B (the Administrative Procedure Act); N.C. General Statute Chapter 90, Article 11 (G.S. § 90-179 et seq., the North Carolina Veterinary Practice Act); and 21 NCAC 66 .0101 et seq. (North Carolina Administrative Code, Veterinary Medical Board, Administrative Rules). Reference is made to the following specific statutes and rules:

- 1. G.S. § 90-185(2):

"In addition to the powers set forth in G.S. 90-185 above, the Board may:

* * *

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(2) Issue, renew, deny, suspend, or revoke licenses and limited veterinary licenses, and issue, deny, or revoke temporary permits to practice veterinary medicine in the State or otherwise discipline veterinarians consistent with the provisions of Chapter 150B of the General Statutes and of this Article and the rules adopted under this Article.”

2. G.S. § 90-187.8(a) and (b). [Discipline of licensees; suspension and revocation of license; civil monetary penalty; grounds for disciplinary action.]
3. G.S. § 90-187.8(c); and --187.8(c)(6); and -- 187.8(c)(19). [Grounds for disciplinary action; including incompetence, gross negligence, or other malpractice in the practice of veterinary medicine; and including acts or behavior constituting dishonesty or misrepresentation in the veterinarian-client-patient relationship].
4. Board Administrative Rule 21 NCAC 66.0605 [Notice of Hearing].
5. Board Administrative Rule 21 NCAC 66.0205(5) [Grounds for disciplinary action shall include . . . the following: violating the laws of North Carolina . . . related to the practice of veterinary medicine . . . or violating any veterinary licensing Board rule . . .]
6. Board Administrative Rule 21 NCAC 66.0601(l) and (m) [Assessment of costs incurred by Board against licensee; civil monetary penalty].
7. Board Administrative Rule 21 NCAC 66.0207(b)(15) [Inspection and approval of facility by Board necessary for the practice of veterinary medicine therein].
8. Board Administrative Rule 21 NCAC 66.0208 [Facilities providing limited veterinary services].
9. Board Administrative Rule 21 NCAC 66.0202 [Board approval required for name of entity through which veterinarian practices or delivers veterinary medical services].
10. Board Administrative Rules 21 NCAC 66.0205(1) and 66.0205(4) [Grounds for disciplinary action including untrue statements, or willfully misleading conduct and representations in any professional relationship, or in veterinarian-client-patient relationship].
11. Administrative Board Rules 21 NCAC 66.0207(b)(12) [Minimum standards for record-keeping]; and 66.0207(b)(11)(C) [Minimum standards for maintaining a record of all drugs administered or dispensed on an individual animal].
12. G.S. § 90-187.11 [Prohibition of business corporation practicing veterinary medicine].

This contested case hearing is initiated by the Board for the purpose of presenting evidence to determine whether the facts show sufficient cause to warrant discipline against the veterinary medical license issued by the Board to Dr. Monce, which discipline may include but not be limited to revocation, suspension or other disposition or imposition of a civil monetary penalty and the recovery of costs.

At the hearing, Dr. Monce will be given an opportunity to appear, be heard, introduce evidence and be represented by legal counsel pursuant to the provision of G.S. Chapter 150B, G.S. Chapter 90, Article 11 (the Veterinary Practice Act), the Administrative Rules of the Board and, if applicable, the Hearing Rules of the Office of Administrative Hearings.

Pursuant to G.S. § 150B-40(e) the Board has elected to apply to the Director of the Office of Administrative Hearings for the designation of an administrative law Judge to preside at the hearing of this contested case. The administrative law Judge assigned to hear this contested case shall sit in the place of the agency; shall have the authority of the presiding officer in a contested case under G.S. Chapter 150B, Article 3A; and shall make a proposal for decision which shall contain proposed findings of fact and proposed conclusions of law. The Board will make its final decision after the administrative law Judge's proposal for decision is served upon the parties and an opportunity is given to each party to file exceptions and proposed findings of fact and present oral and written arguments to the Board.

FACTUAL ALLEGATIONS
ON WHICH THE NOTICE OF HEARING IS ISSUED

COMPLAINT NO. 00006-1-1

1. Dr. Monce is a veterinarian licensed by this Board since June 13, 1994, holding license no. 3661.
2. Nancy Deas and Edna Deas are residents of Raleigh (hereafter collectively referred to as the "Deases") and at all times relevant hereto they owned a 14-year-old Manchester Terrier named "Alex."
3. Dr. Monce had treated Alex at various times for several years preceding 1999, and had treated him through early March, 1998. Dr. Monce treated Alex at several different facilities at which he was practicing. In these treatments over this period of time, Dr. Monce acted as a primary veterinarian for Alex, as well as primary veterinarian for Gus, another Manchester Terrier owned by the Deases.
4. After March, 1998, for a period of several months, Dr. Monce lived in another State and he referred the Deases to Dana Jones, D.V.M. (hereafter "Dr. Jones") at Durant Road Animal Hospital and Kennel in Raleigh (hereafter "Durant Road") for treatment for their dogs. Upon information and belief, Dr. Monce returned to North Carolina at least by early 1999. Dr. Monce had informed the Deases that he would continue to treat their dogs even though he would be out of State, working with Dr. Jones. Dr. Jones' records disclosed that Dr. Jones worked with Dr. Monce

regarding the dogs' care. After Dr. Monce returned to North Carolina, he treated Gus at the Durant Road facility in May and September, 1999.

5. On or about December 28, 1999, the Deases presented Alex for examination and treatment to Dr. Jones at Durant Road. The complaints concerning Alex at presentation included loss of appetite, apparent weakness and possible weight loss.

6. On December 29, Nancy Deas spoke with Dr. Jones about Alex's condition. Dr. Jones said that he would contact Dr. Monce the following week about Alex's problems. However, the Deases' concern for Alex led them to telephone to Dr. Monce that day about the dog.

7. On December 30, Nancy Deas spoke with Dr. Jones about Alex's decline, and he said he would contact Dr. Monce that day if he could.

8. On December 31, the Deases again presented Alex to Dr. Jones. Upon information and belief, Dr. Jones related to the Deases that Dr. Monce wished to do a liver biopsy on January 3, and that Dr. Monce wanted Dr. Jones to repeat the SuperChem test and CBC test, which had been done on December 28. At Dr. Monce's request, Dr. Jones performed a coagulation profile and administered a vitamin K injection to Alex. Dr. Jones examined Alex's back and eyes and administered fluids subcutaneously.

9. On January 1, 2000 Nancy Deas spoke with Dr. Jones about Alex and the Deases presented the dog to him for treatment on January 2.

10. Alex continued to worsen. On January 3 at approximately 8:00 a.m., Dr. Monce called Nancy Deas in response to the previous day's message. Nancy Deas discussed with him Alex's decline and condition and her request that Dr. Monce take charge of the case.

11. On January 3 at 11:00 a.m., Nancy Deas presented Alex to Dr. Jones and Dr. Monce at Durant Road for examination and treatment.

12. On January 3 Dr. Monce brought to the Durant Road parking lot a mobile trailer in which he performed certain treatment and procedures on Alex. Dr. Monce evaluated Alex's condition and performed certain diagnostic procedures. Upon information and belief, Dr. Monce's treatment of Alex in the trailer included administering drugs, later identified by Dr. Monce to be Ketaset, Valium and acepromazine, and further included obtaining tissue and fluid samples and performing tru-cut biopsies of the dog's liver and spleen and performing needle aspirate procedures. All of these procedures were conducted inside the mobile trailer while it was parked in the parking lot of the Durant Road facility.

13. Upon information and belief, the mobile trailer used by Dr. Monce January 3 was then owned and operated by a North Carolina business corporation, VetSound, Inc. Upon further information and belief, the President of VetSound, Inc. was Ms. Renee Dailey (formerly Renee Dailey Daniel) (hereafter "Ms. Dailey"). Ms. Dailey assisted Dr. Monce January 3 in the above-described treatment of Alex. She assisted Dr. Monce in conducting an ultrasound test on Alex's abdomen.

14. The mobile trailer in which Dr. Monce treated Alex on January 3 was a veterinary facility through which Dr. Monce delivered veterinary medical services. As a veterinarian licensed by the Board, Dr. Monce on January 3 knew or should have known that the mobile trailer should have been inspected and approved by the Board pursuant to Board Rule 21 NCAC 66.0207(b)(15) as a facility from which he could delivery veterinary services.

15. Dr. Monce's failure to obtain from the Board the required mandatory inspection and approval of the mobile trailer as a facility where veterinary medicine could be practiced violated Board Rule 21 NCAC 66.0207(b)(15) and Board Rule 21 NCAC 66.0205(4).

16. Upon information and belief, Dr. Monce did not disclose to his colleague, Dr. Jones, nor to his clients, the Deases, that the mobile trailer facility was not inspected nor approved by the Board for the delivery of veterinary medical services. His failure to disclose this fact was an act of misrepresentation in his professional relationship with Dr. Jones and in the veterinarian-client-patient relationship with the Deases. These acts of misrepresentation constituted violations of G.S. § 90-187.8(c)(19).

17. Dr. Monce was a primary veterinarian for Alex, during the dates and time alleged, specifically including late December, 1999, through early January, 2000.

18. Dr. Monce was familiar with the general condition of Alex by reason of his treatment of Alex in 1999 and previous years, and from information Dr. Monce obtained from Dr. Jones and from the Deases in late December, 1999 through January 4, 2000.

19. In his treatment of Alex on January 3, Dr. Monce violated the veterinary medical standard of care and violated G.S. § 90-187.8(c)(6) by the following acts, respectively, which constituted incompetent or other malpractice in the practice of veterinary medicine:

(a) Dr. Monce failed to provide needed precautionary veterinary medical support for Alex before, during and after he administered drugs to the dog on January 3 prior to obtaining the tru-cut needle biopsies, tissue samples and fluids.

(b) Dr. Monce failed to provide treatment therapies which were available when Alex did not readily recover from the drugs.

(c) Dr. Monce failed to assess Alex's level of consciousness and failed to provide appropriate supportive care, including administering oxygen, when the dog did not readily recover from the drugs.

20. Following Dr. Monce's treatment and diagnostic procedures in the mobile trailer, Alex was taken from the trailer into the Durant Road facility. There Dr. Monce and Dr. Jones together continued to treat Alex. Dr. Monce recommended administering dexamethasone, which was done. Radiographs were taken at Dr. Monce's recommendation. At or about 1:00 p.m. Dr. Monce left the Durant Road facility without speaking to Nancy Deas and without prior notice to her. At this time Alex had not yet recovered from the drugs Dr. Monce had administered.

21. Alex, prior to recovery, was discharged by Dr. Jones at approximately 4:30 p.m. January 3, but later that evening began rapid and labored breathing. The Deases returned him to the Hospital at approximately 10:00 p.m. where Dr. Jones evaluated and treated Alex. Following treatment, Alex was discharged and the Deases returned home with him. At the time of this discharge Alex remained unresponsive.

22. In the late hours of January 3 and the early hours of January 4, Nancy Deas spoke by telephone several times to Dr. Jones and twice to Dr. Monce about Alex. Nancy Deas related to Dr. Monce Dr. Jones' treatment earlier that evening (January 3). Dr. Monce had not mentioned that condition or the possibility of that diagnosis previously to the Deases. Dr. Monce had not observed Alex for almost 11 hours. Dr. Monce suggested a diagnosis that Alex had hepatic encephalopathy. Dr. Monce also instructed the Deases to give Alex an enema and, contrary to what Dr. Jones had advised, to refrain from turning Alex from side to side.

23. Dr. Monce's communication of a diagnosis of hepatic encephalopathy for Alex at the time and under the circumstances described above violated the veterinary medical standard of care and was an act of incompetence or other malpractice in the practice of veterinary medicine in violation of G.S. § 90-187.8(c)(6).

24. Dr. Monce advised Nancy Deas to take Alex to the Animal Emergency Care Clinic of Cary. The Deases presented Alex to this facility in the early morning of January 4 where he was examined by Dr. Ronald Feimster. Following examination, evaluation and treatment by Dr. Feimster, the Deases consented to the euthanasia of Alex at approximately 3:30 a.m. by reason of his failing condition and the renal failure as diagnosed by Dr. Feimster.

25. Dr. Monce violated Board Rule 21 NCAC 66.0207(b)(12) regarding minimum standards for recordkeeping in his treatment of Alex between December 29, 1999 and January 4, 2000 by not keeping complete medical records for Alex.

26. On January 3, 2000, Dr. Monce failed to comply with Board Rule 21 NCAC 66.0208 with respect to veterinary medical facilities providing limited veterinary services.

27. On or about January 3, 2000, Dr. Monce violated G.S. § 90-187.11 by delivering veterinary medical services under the name of VetSound, Inc., a business corporation.

COMPLAINT NO. 00048-2-1

28. The Board incorporates by reference the allegations of paragraphs 1 through 27 of the Factual Allegations of this Notice of Hearing.

29. Dr. Monce was first licensed as a veterinarian by the Board June 13, 1994.

30. Upon information and belief, after August 1994 and prior to early 1995, Dr. Monce delivered veterinary medical services at a facility known as Veterinary Medicine Referral Hospital, located at 3319 Chapel Hill Blvd., Durham, N.C. without first obtaining from the Board a practice

facility inspection and approval, in violation of Board Rule 21 NCAC 66.0207(b)(15). Upon information and belief, Dr. Monce delivered veterinary medical services in this uninspected and unapproved facility during all or parts of the years 1995, 1996, 1997 and 1998, respectively.

31. Dr. Monce treated Gus, a dog owned by the Deases, at the above-described facility in Durham, on at least four occasions between July, 1995 and January, 1996.

32. Upon information and belief, Dr. Monce used the name Veterinary Medicine Referral Hospital to deliver veterinary medical services in the nature of surgery upon Alex's ear in November, 1997. This surgery was performed by Dr. Monce at the Durant Road premises.

33. Upon information and belief, Dr. Monce used the name Veterinary Medicine Referral Hospital through which he delivered veterinary medical services at a facility located at 2111 High House Road, Cary, N.C. between approximately December, 1996 and March 1998. During this time period, he treated the Deases' dogs Alex and Gus at this facility.

34. Dr. Monce advertised in the February, 1998 edition of the BellSouth Yellow Pages for the Raleigh area which included an advertisement on page 1266 for Veterinary Medicine Referral Hospital at 2111 High House Road, Cary, N.C. Dr. Monce's name appears under this named facility.

35. Neither prior to nor during his delivery of veterinary medical services at the above-described premises in Cary, N.C., did Dr. Monce obtain an inspection and approval of this veterinary medical facility, thereby violating Board Rule 21 NCAC 66.0207(b)(15).

36. Dr. Monce further violated Board Rule 21 NCAC 66.0202 by utilizing the name Veterinary Medicine Referral Hospital for both the Durham and Cary locations without first obtaining Board approval for use of this name.

37. Dr. Monce treated the Deases' dog Gus on September 8, 1999 inside a mobile trailer owned by VetSound, Inc., a business corporation, while this trailer was on the premises of Dr. Jones' Durant Road facility in Raleigh. The veterinary medical services were in the nature of pre-surgery cardiac evaluation. Dr. Monce delivered veterinary medical services without this trailer having been inspected and approved for such service by the Board on or before this date, in violation of Board Rule 21 NCAC 66.0207(b)(15).

38. Dr. Monce submitted an application to renew his veterinary medical license to the Board January 11, 2000 and in this application he reported that the name of his office was VetSound, Inc., described as a mobile practice, located at 1105 Sturdivant Road, Cary, N.C.

39. Dr. Monce violated G.S. § 90-187.11 and G.S. § 90-187.12 by engaging in and offering to engage in veterinary medical practice through VetSound, Inc., a business corporation in 1999, 2000, and upon information and belief, in 2001.

40. By delivery of veterinary medical services through the mobile trailer owned by or under the name of VetSound, Inc. to the dogs, Gus on September 8, 1999, and to Alex on January 3, 2000, Dr. Monce violated Veterinary Practice Act, G.S. § 90-179, *et seq.* and Administrative Rules of the Board as follows:

(a) G.S. § 90-187.11, by practicing veterinary medicine through a business corporation, VetSound, Inc.

(b) Board Rule 21 NCAC 66.0207(b)(15), by failing to obtain inspection and approval by the Board of the mobile veterinary practice facility prior to Dr. Monce's practice of veterinary medicine within it.

(c) Board Rule 21 NCAC 66.0202, by failing to obtain prior approval from the Board for the name of the practice through which Dr. Monce delivered these veterinary services.

(d) Board Rule 21 NCAC 66.0205(1), by misleading the Board in meeting with it in January, 1999 of Dr. Monce's failing to disclose his then on-going practice in the mobile facility as hereinabove described.

(e) Board Rule 21 NCAC 66.0205(4), by Dr. Monce's misleading the Deases through the implied representation that the facilities in which he provided veterinary medical services to the Deases' Alex and Gus between 1995 and 2000 complied with the statute administered by the Board and the Rules of the Board.

(f) Board Rule 21 NCAC 66.0208, by Dr. Monce's not complying with the provisions of this Rule for facilities providing limited veterinary services.

41. Upon a finding of violations as alleged regarding both of the above complaints, respectively, the Board may assess against Dr. Monce a civil monetary penalty or penalties regarding the findings on each complaint pursuant to N.C. Gen. Stat. § 90-187.8 and Board Rule 21 NCAC 66.0601(m) of up to \$5,000.00 for each violation subject to findings by the Board pursuant to N.C. Gen. Stat. § 90-187.8(b).

For further information, please contact either the undersigned at 1307 Glenwood Avenue, Suite 156, Raleigh, N.C. 27605, telephone (919) 733-7689; or George G. Hearn, attorney for the Board at P. O. Box 1776, Raleigh, N.C. 27602, or (919) 743-2200.

This 15th day of October, 2002.



Thomas M. Mickey
Executive Director
North Carolina Veterinary Medical Board