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3 March 2003

VIA FACSIMILE 743-2201

Mr. George G. Hearn

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Re: Dr. Kevin Monce

Dear George:

This is in response to your recent letter proposing a resolution of the pending case involving Dr. Kevin Monce. As stated in my telephone message, Dr. Monce cannot accept the terms you proposed, but we have some modifications to suggest and believe that we are making real progress.

One of Dr. Monce's principal reservations about any settlement has been the imposition of a license suspension, even if the suspension is stayed. As any professional would be, he has been very concerned about the effect on his reputation. He also has been concerned about the effect the suspension might have if he should ever choose to move to another state. With the assistance of Tom Mickey we have been able to get a better picture of the effect of the suspension in other states. Consequently, Dr. Monce now is ready to consider a stayed suspension as part of the resolution of this matter. I hope you appreciate that it has been very difficult for Dr. Monce to reach this point. It is hard to see how the administrative mistakes justify a license suspension, but he is willing to consider that result if necessary to bring this matter to a conclusion and avoid the cost and wear and tear of a hearing.

Your proposal is that the charges in complaint 00006-1-1 concerning the quality of care in the treatment of the Deas' dogs would be dismissed, and that the findings and disciplinary action would be based on complaint 00048-2-1. The wording of the settlement document is important. As you and the board are well aware, the Deas sisters have made a crusade out of their complaints. In addition to the endless communications to you, the board, and the Office of Administrative Hearings, they call newspaper reporters and have a web site devoted to railing against Dr. Monce. The settlement document needs to be

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written carefully to avoid giving them any further material to use. Settlement of this matter is not worthwhile to Dr. Monce if it simply prompts a further round of harassment from the Deas.

We believe the wording issue can be handled by sticking to simple factual statements of the matters in complaint 00048-2-1 and eliminating references to the Deas' animals. In describing the services provided by Dr. Monce in the Veterinary Medicine Referral Hospital in Durham, for example, it should be sufficient to say that he provided veterinary services in that facility from 1995 to 1998 without referring specifically to treatment of the Deas' dog. Similarly, we do not think it appropriate for the final document to say, as does your pleading in the Office of Administrative Hearings, that Dr. Monce was "misleading" the Deas or the board. While Dr. Monce may be willing to acknowledge administrative violations to conclude this matter, he cannot accept the proposition that he acted fraudulently. Again, sticking to a simple, straightforward recitation of facts should satisfy any concerns about the wording of the agreement.

We also would like for you to consider two modifications of the proposed settlement. The first would be to reduce the probationary period from two years to six months. Our reasoning is simple, and we think such a change would benefit the board as well as Dr. Monce. First, the violations to which Dr. Monce would be admitting would all be administrative in nature and have already been corrected. Thus, a probationary period is not necessary to see that he complies with the board statutes and rules. More importantly, though, we anticipate that the longer the probationary period the longer the Deas will continue complaining to the board. Based on their performance to date, we can expect the Deas to be writing to the board constantly, rehashing the same story and attempting to persuade the board to take further action. The two-year probationary period will only serve to stoke that fire. We would think that the board, like Dr. Monce, would be anxious to truly bring this matter to a close. The probationary period, however, will leave an opening for the Deas to keep it alive. We think that it is in the interest of both the board and Dr. Monce to have no probationary period, but if that is not possible six months would seem more than sufficient.

Finally, we would like you to consider reducing the amount of the civil monetary penalty from \$5,000 to \$2,500. Based on the violations to which he would finally admit, a lesser fine seems appropriate. Moreover, this has been a lengthy and expensive process for Dr. Monce, going on for over three years now, and he simply does not have the money available to pay a \$5,000 fine soon. The Deas' campaign has hurt him in his business and will continue to do so. A reduction in the amount of the fine would make it possible for him to pay sooner and bring the matter to a close. If the fine is not reduced, we will need to discuss a payment schedule.

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I have discussed these matters with Dr. Monce, but he has not had an opportunity to review this letter before it is sent to you.

Please respond as soon as you are able. And, in considering what I have said, please keep in mind that Dr. Monce has moved a great deal to get to this point. If the board is willing to accept our modifications on matters that do not go to the essence of what the board is trying to accomplish, we may be able to bring this matter to a conclusion quickly.

Sincerely,

THARRINGTON SMITH, L.L.P.

Michael Crowell

Michael Crowell

MC/em

cc: Dr. Kevin Monce