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31 March 2003

VIA FACSIMILE: (919) 743-2201

TO: George Hearn
FROM: Michael Crowell *mc*
RE: *Kevin Monce*

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FOR SETTLEMENT PURPOSES ONLY

This is in response to the draft consent order you sent to me as a proposed settlement of the complaints against Kevin Monce. Although I believe we are on track toward getting this matter resolved, there are several aspects of the draft order that need to be addressed. As you will see, the questions have more to do with the accuracy of the factual statements than with the basic terms of the settlement.

Paragraph 7 of the findings of fact, on page 2, speaks to the failure to have the Veterinary Medicine Referral Hospital inspected. The following would be a more accurate summary of what occurred:

7. Between August 1994 and 1998, Dr. Monce delivered veterinary service at 3319 Chapel Hill Blvd., Durham, N.C., under the name Veterinary Medicine Referral Hospital. Dr. Monce listed the name Veterinary Medicine Referral Hospital on his 1995 license renewal form. On the form, he wrote that the facility has been inspected in March 1994 "as an emergency clinic," but that it had never been inspected "as a referral hospital." Dr. Monce did not take other actions to have the facility inspected and to obtain approval from the Board that the facility met the minimum standards for the delivery of veterinary medical services.

Paragraph 9 on page 2 is concerned with approval of the Veterinary Medicine Referral Hospital name. Consistent with the changes suggested in paragraph 7, and more accurate, would be the following:

31 March 2003

Page Two

9. Although Dr. Monce listed the name Veterinary Medicine Referral Hospital on his license renewals for 1995, 1996 and 1997, and Board records showed that name in its records, Dr. Monce failed to obtain approval of the name as required by Board rule before his delivery of veterinary medical services under that name.

Paragraph 10 of the findings of fact, also on page 2, is about the relationship between Dr. Monce and VetSound. A more complete statement of the arrangement would be as follows:

10. Beginning in 1998, and continuing to the present, Dr. Monce has been as a veterinary consultant to VetSound, Inc., and to individual veterinarians, principally to interpret the results of ultrasounds performed by VetSound. The ultrasounds were performed on equipment transported to veterinarians' offices by a VetSound trailer. Starting in the summer of 1999, the trailer was converted to a mobile practice facility, and Dr. Monce delivered veterinary medical services through the use of that mobile practice facility trailer.

Paragraph 12 of the findings of fact, on page 3, concerns the January 1999 meeting with the board, and it is incorrect. Dr. Monce did not come to the meeting at the board's request. The meeting was about VetSound, and he came at the invitation of Renee Dailey. More importantly, we do not understand the basis for the statement that Dr. Monce misled the board. The paragraph seems to say that he misled the board as to the delivery of veterinary medical services through a mobile practice facility. Actually, in January 1999 the trailer still was used only to transport equipment, and it was not converted to a mobile facility until later that year. At the January 1999 meeting Dr. Monce was forthcoming about his consulting services, and much of the discussion with the board was about the planned use of the internet. From Tom Mickey's letter to Monce and Dailey dated April 15, 1999, it would not appear that anyone felt misled. Mickey thanked Monce and Dailey for attending the January meeting and for their "timely and informative discussion." As the letter indicates, the meeting had answered board members' question as to whether Monce or Dailey was producing the diagnostic reports which were to be delivered by internet.

The only circumstance of which we are aware that might lead the board to think it was misled about Monce's relationship with VetSound is his inclusion of the name "VetSound, Inc." in his license renewals in 1999 and 2000. Although the street address given was his own, we can see that inclusion of the VetSound name might have created the impression that he was an owner or employee of VetSound, and thus practicing through VetSound, although that was not the case. When Tom Mickey addressed his April 1999 letter to Monce at VetSound, though, he did not raise any question about the tie between Monce and VetSound. Consequently, we believe that paragraph 12 should be

31 March 2003

Page Three

deleted. Nevertheless, if the board feels that some kind of finding on that issue is necessary, we would suggest the following substitution:

12. In his 1999 and 2000 license renewals, Dr. Monce included the name "VetSound, Inc." as part of his address, although he was not an owner or employee of VetSound and served only as a consultant to VetSound. The remainder of the address given in the license renewals was Dr. Monce's home address.

Consistent with the revisions in the findings of fact, we suggest that paragraph 2 of the conclusions of law, on page 3, be rewritten as follows:

2. Although Dr. Monce identified Veterinary Medicine Referral Hospital as an uninspected facility "as a referral hospital" on his 1995 license renewal, he violated Board Rule 21 NCAC 66.0207(b)(15) by failing to take any additional actions to obtain inspection and approval of that facility at 3319 Chapel Hill Blvd., Durham, N.C., in order that the Board could confirm that the facility met the minimum facility and practice standards required of all locations where veterinary medicine is practiced in this State. This violation continued from August 1994 through 1998.

Likewise, paragraph 4 of the conclusions, on page 4 of your draft, would be rewritten to read:

4. Although Dr. Monce listed the name Veterinary Medicine Referral Hospital on his license renewals for 1995, 1996 and 1997, he violated Board Rule 21 NCAC 66.202 by using that name for the above facilities in Durham and Cary, respectively, between August 1994 and 1998 without first obtaining Board approval for the use of the name.

Paragraphs 6, 7 and 8 of the conclusions, also on page 4, all concern the relationship between Monce and VetSound. We would substitute the following single paragraph for all three of the paragraphs in the draft:

6. Dr. Monce violated Board Rule 21 NCAC 66.0202 by using the name VetSound, Inc., as part of his address in his license renewals for 1999 and 2000 without adequately distinguishing that he was not an owner or employee of VetSound, Inc., and only provided consulting services to VetSound. The use of the VetSound name in his address made it appear that he was delivering veterinary medical services through a business corporation in violation of G.S. §§ 90-187.11 and 90-187.12.

31 March 2003
Page Four

The last comment on the wording of the document is that we do not think it is necessary in paragraph 11 of the conclusions — which would be renumbered — to identify the specific factors leading to the amount of the civil penalty, nor do we consider it accurate to include the language suggesting that the violations were willful. To avoid those questions, but leave the conclusion intact, we suggest the following be substituted for current paragraph 11:

11. In deciding to assess a civil penalty in the amount of \$5,000.00, the Board has considered the factors delineated in G.S. § 90-187.8(b) and has determined that they warrant a fine in that amount.

As currently drafted, the proposed consent order does not say anything about the dismissal of the other complaint, the complaint 00006-1-1 filed by the Deas sisters. Please let me know how you expect to handle that.

Finally, I note that the draft order provides for payment of the \$5,000 penalty within 30 days. As we have mentioned before, Dr. Monce does not have those funds available at the moment and we may need to discuss a different schedule for payment.

Thank you for your work on the draft. I believe that the changes suggested in this memo provide a more accurate summary of what has occurred, and they do not change the basic structure of the order. Please let me know your reaction to the proposed revisions so I may discuss with Dr. Monce how to proceed.