

086

# JOHNSON, HEARN, VINEGAR, GEE & MERCER, PLLC

ATTORNEYS AT LAW  
TWO HANNOVER SQUARE, SUITE 2200  
RALEIGH, NORTH CAROLINA 27601

TELEPHONE (919) 743-2200  
FACSIMILE (919) 743-2201  
jhvg@jhvglaw.com

MAILING ADDRESS:  
POST OFFICE BOX 1776  
RALEIGH, NORTH CAROLINA 27602

## Facsimile

**To:** Michael A. Crowell, Esq.  
**Fax No.:** 829-1583  
**From:** George G. Hearn  
**Date:** April 4, 2003  
**Re:** Kevin A. Monce, D.V.M.

**No. of Pages** 10 (including cover)

**Original(s) will follow by:**  
 Regular Mail  
 Certified Mail  
 Overnight Delivery  
 Hand Delivery  
 Will Not Follow

### Legal Services

- Administrative Law, Including Occupational Licensing
- Automobile Dealer Law
- Civil Litigation
- Corporations & Limited Liability Companies
- Contracts & Commercial Transactions
- Employment Law
- Franchise Law
- Government Relations, Including Representation Before the Legislature and Regulatory Agencies
- Mergers and Acquisitions
- State and Local Taxation
- Wills, Trusts & Estate Administration
- Wealth Transfer Strategies

**THIS TELECOPY IS ATTORNEY-CLIENT PRIVILEGED AND CONTAINS CONFIDENTIAL INFORMATION INTENDED ONLY FOR PERSON(S) NAMED ABOVE. ANY OTHER DISTRIBUTION, COPYING OR DISCLOSURE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TRANSMISSION TO US BY MAIL WITHOUT MAKING A COPY.**

**Comments:**

087

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. )

CONSENT ORDER  
Complaint No. 00006-1-1  
and 00048-2-1

THIS CONSENT ORDER is before the North Carolina Veterinary Medical Board ("Board") for consideration and entry upon recommendation of the Board's Committee on Investigation No. 1, and with the consent of Kevin A. Monce, D.V.M. ("Dr. Monce"), a licensee of this Board. After consideration of the matters and things on which the Order is based, the Board makes the following Findings of Fact and Conclusions of Law, and enters the following Order, with the consent of Dr. Monce:

Findings of Fact

1. Dr. Monce holds license No. 3661 originally issued by this Board June 13, 1984.
2. The Board has jurisdiction of Dr. Monce as its licensee and of the subject matter on which this Order is based.
3. Dr. Monce has been represented by Michael Crowell, attorney, of Raleigh, N.C. in this matter.

088

4. As of the date of the entry of this Order, Dr. Monce maintains a mobile practice facility with an address of P.O. Box 15396, Wilmington, N.C. 28408, and a residence address of 20 Shadow Court, Moncure, N.C. 27559.
5. Dr. Monce consents to the entry ~~into~~<sup>into</sup> of this Order with the Board to resolve the allegations and issues in the Notice of Hearing issued by the Board dated October 15, 2002 in this matter concerning complaint no. 00006-1-1 and complaint no. 00048-2-1. This Consent Order is entered into pursuant to G.S. §105B-41(c) as the settlement of a contested case
6. There are factual bases for the entry of this Order.
7. Between August, 1994 through 1998, Dr. Monce delivered veterinary medical services at 3319 Chapel Hill Blvd., Durham, N.C., under the name Veterinary Medicine Referral Hospital without first obtaining a facility inspection and approval from the Board that the facility met the minimum standards for the delivery of veterinary medical services. While Dr. Monce wrote on his 1994 license renewal form that the premises had been inspected "as an emergency clinic," he acknowledged that it had not been inspected "as a referral hospital." Obtaining inspection and approval from the Board remained Dr. Monce's responsibility and he did not take other actions to have the facility inspected and to obtain the approval from the Board that the facility met the minimum standards for the delivery of veterinary medical services.
8. Dr. Monce also delivered veterinary medical services at 2111 High House Road, Cary, under the name Veterinary Medicine Referral Hospital between December 1996 and March, 1998 without first obtaining a facility inspection and approval from the Board that the facility met the minimum standards for the delivery of medical veterinary services.

089

9. Dr. Monce failed to obtain approval as required by Board Rule for the name Veterinary Medicine Referral Hospital prior to his delivery of veterinary medical services under that name during the years and at the above-named facilities in Durham and Cary, respectively. While Dr. Monce listed the name Veterinary Medicine Referral Hospital on his Board veterinary license renewal applications for 1995, 1996 and 1997, respectively, his obtaining required approval from the Board remained his responsibility. Dr. Monce failed to obtain approval of the name as required by Board Rule prior to his delivery of veterinary medical services under that name.

10. Between 1999 and until February, 2001, Dr. Monce offered to deliver and delivered veterinary medical services through an uninspected mobile practice facility trailer. In February, 2001, he obtained Board inspection and approval for the use of this mobile practice facility trailer and obtained Board approval for the name of his practice, which is "Kevin Monce, DVM, DACVIM, Mobile Office."

~~11. The services offered through the said mobile practice facility trailer were limited and less than those offered in a full-service veterinary facility.~~

11. From at least 1999 through 2001, Dr. Monce offered to deliver and delivered veterinary medical services through his affiliation with VetSound, Inc., a business corporation. During this time one aspect of his practice was to consult with individual veterinarians in the interpretations of ultrasound images. ~~Dr. Monce has since said to the Board that he considered his affiliation with VetSound, Inc. to be that of a consultant to this business corporation which performed ultrasound imaging procedures. Dr. Monce's professional and business affiliation with~~

VetSound, Inc. was such that, whether intended or not, he delivered or permitted the delivery of veterinary medical services through it.

~~13. The Board at its request in January, 1999 met with Ms. Renee Dailey, owner of VetSound, Inc. Dr. Monce accompanied Ms. Dailey to this meeting at her request. He made an extensive presentation to the Board. The Board questioned Ms. Dailey and Dr. Monce, primarily to attempt to understand the relationship between Dr. Monce's delivery of veterinary medical services as a consultant only to veterinarians, and the sonography services offered by VetSound, Inc. At this meeting, Dr. Monce explained to the Board the nature of his veterinary medical practice and described himself as a consultant to veterinarians in diagnosing included his offering to diagnose radiographs, sonograms and similar images, including images transmitted to him over the Internet. Dr. Monce's explanation of his services was incomplete in describing all aspects of his professional affiliation with VetSound, Inc.~~

Based on the foregoing Findings of Fact, the Board makes the following:

Conclusions of Law

1. The Board has jurisdiction of Dr. Monce and of the subject matter on which this Order is based.
2. Dr. Monce violated Board Rule 21 NCAC 66.0207(b)(15) by failing to obtain an inspection and approval from the Board of the facility he maintained at 3319 Chapel Hill Blvd., Durham, N.C., under the name Veterinary Medicine Referral Hospital 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. While on his 1995 veterinary license renewal form to the Board, Dr. Monce listed

091

Veterinary Medicine Referral Hospital as an uninspected "referral hospital," he did not fulfill his responsibility to take additional actions to obtain inspection and approval for that facility from the Board in order to meet Board requirements.

3. Dr. Monce violated Board Rule 21 NCAC 66.0207(b)(15) by failing to obtain an inspection and approval from the Board of the facility he maintained at 2111 High House Road, Cary, N.C., under the name Veterinary Medicine Referral Hospital 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.

4. Dr. Monce violated Board Rule 21 NCAC 66.202 by utilizing the name Veterinary Medicine Referral Hospital for the above facilities in Durham and Cary, respectively, between August, 1994 and through 1998 without first obtaining Board approval for the use of this name. While Dr. Monce listed the name Veterinary Medicine Referral Hospital on his Board veterinary license renewal forms for 1995, 1996 and 1997, respectively, it was still his responsibility under said Rule to obtain Board approval for the use of the this name.

5. Dr. Monce violated Board Rule 21 NCAC 66.0207(b)(15) by failing to obtain an inspection and approval from the Board of his mobile practice facility to confirm that this mobile facility met the minimum practice and facility standards required of all locations where veterinary medicine is practiced in this State. This violation continued from 1999 through February 1, 2001.

6. Dr. Monce's professional relationship with VetSound, Inc., a business corporation, resulted in his express or implied delivery of veterinary medical services through the name VetSound, Inc. without obtaining Board approval for the use of that name. By doing so, he violated

Board Rule 21 NCAC 66.0202. While Dr. Monce listed the name VetSound, Inc. on his Board veterinary license renewal forms for the years 1999 and 2000, respectively, he did not provide the Board any limitations on his affiliation with this corporation. The Board has concluded that his listing of the name of VetSound, Inc. led to the reasonable conclusion that he was delivering or permitting the delivery of veterinary services through that name.

7. Dr. Monce's affiliation with VetSound, Inc. as described in the above findings and conclusions, resulted in violations of G.S. § 90-187.11 and G.S. § 90-187.12, statutes which prohibit a veterinarian from engaging in and offering to engage in the delivery of veterinary medical services through a business corporation. These violations occurred during the years 1999, 2000 and 2001.

~~8. Dr. Monce did not fully disclose all aspects of his professional business affiliation with VetSound, Inc. at the Board meeting in January, 1999, in light of the fact that a principal inquiry at the meeting was the nature of the services of VetSound, Inc. and the nature of his veterinary practice. The Board concludes that Dr. Monce's omissions in not providing complete information to the Board resulted in an unintended, but nevertheless negligent misrepresentation in violation of Board Rule 21 NCAC 66.0205(1).~~

~~Dr. Monce violated Board Rule 21 NCAC 66.0208 by failing to make the required disclosures to clients and failing to post information to clients regarding the limitation of services of his mobile practice facility.~~

9. Pursuant to N.C. Gen. Stat. § 90-187.8 and Board Rule 21 NCAC 66.0601(m), the Board may assess a civil monetary penalty against Dr. Monce for statutory and Board Rule violations cited above, subject to findings by the Board of one or more factors in G.S. § 90-187.8(b).

10. In deciding to assess a civil monetary penalty against Dr. Monce in the amount of \$5,000.00, the Board has considered the factors delineated in G.S. § 90-187.8(b) and has found that the violations were serious [(b)(2)] and continuing [(b)(3)] penalty is supported by the duration [(b)(2)] and the continuing pattern [(b)(3)] of the violations.

Consent and Waiver of Kevin A. Monce, D.V.M.

Dr. Kevin A. Monce, an adult under no disability, by affixing his signature to this Order, stipulates and agrees that: he has read its contents; he has had the opportunity to consult with his attorney, Michael Crowell of Raleigh, N.C., about its contents and effect prior to signing; he does not contest it, and he waives his right to contest the Findings of Fact, Conclusions of Law and the Order in any subsequent proceeding before the Board or in a court of competent jurisdiction; he consents to the Board's attorney, the Executive Director, and the members of Committee on Investigations No. 1 discussing the Order with the remaining members of the Board; he consents to the Board's entry of this Order, to be signed by the Board President, or other Board member or the Executive Director; he understands the Order's effect upon his license as a veterinarian; and he expressly waives his right to judicial review of this Consent Order under the provisions of N.C. Gen. Stat. Chapter 150B, the Veterinary Practice Act, Board Rules, or other applicable law.

Based on the foregoing Findings of Fact and Conclusions of Law, and upon the express consent and waiver of Dr. Kevin A. Monce, the Board enters the following:

Order

1. Upon the entry of this Order, the license to practice veterinary medicine issued by the Board to Dr. Kevin A. Monce, license no. 3661, is suspended for a period of thirty (30) days, but this suspension shall be stayed and Dr. Monce shall be placed on a period of probation for a period of



094

one (1) year, under the terms and conditions of this Order, provided that during the period of stayed suspension:

(a) Dr. Monce shall comply with the terms of this Order;

(b) Dr. Monce shall not violate the statutes and administrative rules governing veterinary medicine in this State;

(c) Dr. Monce shall not deliver veterinary medical services under the name of or through a business corporation;

2. If during the term of this Order the Board receives credible information or complaint of alleged violation by Dr. Monce of this Order, the allegations of violation shall be investigated by one of the Board's Committees on Investigations, pursuant to the Veterinary Practice Act and Board Rules. The finding of the investigation will be reported to the Board for further action, if necessary.

3. Dr. Monce is assessed a \$5,000.00 civil monetary penalty for the violations and findings of the Veterinary Practice Act and Board Rules set forth in the Conclusions of Law. This civil monetary penalty will be paid as follows: \$2,500.00 will be paid into the Board office within 30 days of the entry of this Order and the balance of \$2,500.00, if not sooner paid shall be paid in 10 consecutive equal monthly payments of \$250.00 beginning June 1, 2003, provided that the entire civil monetary penalty shall be paid within one year of the entry of this Order.

4. The Board may conduct one or more unannounced inspections of Dr. Monce's practice to monitor compliance with this Order.

5. The Board retains continuing jurisdiction of this matter and may review it from time to time in its discretion.

095

This \_\_\_\_\_ day of \_\_\_\_\_, 2003.

N.C. VETERINARY MEDICAL BOARD

By: \_\_\_\_\_  
Thomas M. Mickey, Executive Director

CONSENTED TO:

\_\_\_\_\_  
Kevin A. Monce, D.V.M.

Date: \_\_\_\_\_

F:\Docs\GGH\Nvmb-89611\Monce 0004\Consent Order 4-4-03 redline1.wpd