

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
Gary H. Newman, DVM,	:	LS0305071VET
RESPONDENT.	:	

The State of Wisconsin, Veterinary Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Veterinary Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 6th day of December, 2004.

Larry Mahr
Board Member
Veterinary Examining Board

STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	AND ORDER
GARY H. NEWMAN, DVM,	:	LS0305071VET
RESPONDENT	:	

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Gary H. Newman, DVM
507 Knollwood Drive
Willman, MN 56201

Division of Enforcement
Department of Regulation and Licensing

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Veterinary Examining Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

On May 7, 2003, the Department of Regulation and Licensing, Division of Enforcement filed a complaint seeking discipline against Gary H. Newman, DVM. A Notice of Hearing and a copy of the complaint were served on Dr. Newman. Dr. Newman provided an informal response by letter dated May 24, 2003. Dr. Newman has not been represented by counsel but has participated in prehearing conferences personally.

A pre-hearing conference was held on May 20, 2004. Dr. Newman and Attorney Pamela Stach participated. The matter was scheduled for hearing on October 19, 2004. By letter dated October 5, 2004 addressed to Pamela Stach, Dr. Newman stated that he would not be present at the hearing on October 19, 2004.

A hearing in the above-captioned matter was held on October 19, 2004 before Administrative Law Judge Dennis C. Schuh. The Division of Enforcement appeared by Attorney Pamela Stach. Gary H. Newman, DVM, did not appear.

On the basis of the entire record herein, the administrative law judge recommends that the Veterinary Examining Board adopt as its final decision in this proceeding, the following Findings of Fact, Conclusion of Law, and Order.

FINDINGS OF FACT

1. Gary H. Newman, DVM, (DOB 05/13/1947) is duly licensed to practice veterinary medicine in the state of Wisconsin (license # 1314). This license was first granted on 01/01/1973.
2. Respondent's most recent address on file with the Wisconsin Department of Regulation and Licensing is 507 Knollwood Drive, Willmar, Minnesota 56201.
3. At all times relevant to this action, Respondent was working as doctor of veterinary medicine and was licensed to practice veterinary medicine in the State of Minnesota.
4. On March 5, 2002, the Minnesota Board of Veterinary Medicine entered an order placing Respondent's license in conditional status and restricted Respondent's license to practice veterinary medicine in the State of Minnesota.
5. A copy of the Minnesota Order is attached hereto and incorporated herein as Exhibit A.
6. The Respondent by letter received October 7, 2004 reported that he could not complete the requirements placed upon him by the Minnesota Board of Veterinary Medicine for reinstatement of full licensure.

CONCLUSIONS OF LAW

1. The Wisconsin Veterinary Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §453.07(2) and Administrative Code § VE 7.07.
2. By failing to file an Answer as required by Wis. Admin. Code § RL 2.09, and by failing to appear at the hearing, respondent is in default under Wis. Admin. Code § RL 2.14, and the Veterinary Examining Board may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.

[smg1]

3. The conduct described in paragraph 4, above, constitutes a violation of Wisconsin Administrative Code § VE 7.06(6).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of Gary H. Newman, DVM, to practice veterinary medicine in the State of Wisconsin is hereby revoked.

IT IS FURTHER ORDERED that:

2. The respondent is ordered to pay the costs of the department pursuant to Wis. Stats. § 440.22 (2). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

3. This Order is effective on the date of its signing.

OPINION

Applicable Law

Wis. Admin. Code § VE 7.06(6), provides:

Unprofessional conduct by a veterinarian is prohibited. Unprofessional conduct includes:

...

(6) Having a veterinary license or federal veterinary accreditation limited, suspended or revoked, or having been subject to any other discipline or restriction.

The Notice of Hearing and Complaint in this matter were served upon the respondent on May 5, 2003. The respondent acting pro se responded with a nine page letter. The letter is a rambling response that disputes the factual basis for the Minnesota procedure but does not dispute that his license was limited by the Minnesota action.

The respondent, by letter dated October 5, 2004, indicated that he would not be attending the hearing on October 19, 2004 as he had "nothing to present."

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint that disputed the allegation of license restriction in Minnesota, nor did he appear at the scheduled hearing.

The complainant introduced evidence showing that the Respondent was licensed to practice veterinary medicine in Wisconsin on January 1, 1973. (Exhibit #1) The complainant introduced as Exhibit #2 a certified copy of the order of the Minnesota Board of Veterinary Medicine dated February 25, 2002. Said document sets forth the factual basis for the

Board's action and imposes limitations on the Respondent's license.

The complainant has established a prima facie case that the Respondent Gary H. Newman, DVM has violated Wisconsin's code of conduct by having his license to practice in another state limited.

The complainant's motion for default is granted and the relief requested is granted.

Revocation of the respondent's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*. 41 Wis. 2d 481, 485 (1969). The state's purpose in licensing professionals is to protect its citizens.

The state's purpose in licensing professionals is to protect its citizens. *Strigenz*, 103 Wis.2d at 286, 307 N.W.2d at 667. License revocation is the ultimate means of protecting the public short of fining or imprisonment. *Strigenz v. Department of Regulation and Licensing*, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981)

The respondent had his Minnesota veterinary license limited due to allegations that he provided signed blank prescription forms to the route truck driver of a company that sold veterinary medicine. The Minnesota action required the respondent to take additional continuing education in record keeping and prescription writing. As of October 19, 2004, respondent failed to fulfill those requirements. The underlying limitation coupled with the failure to remediate the problem raise public protection concerns.

Protection of the public requires that a record be kept of the prescription drugs which are administered to animals. In the present circumstance it appears that respondent's actions allowed antibiotics to be administered to food producing animals without appropriate recordkeeping.

The introduction of medication in unknown quantities creates a danger to the consuming public.

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondent or that he even has an interest in being rehabilitated. The conduct alleged demonstrates an indifference to the health, safety and welfare of patients and the public.

Considering that the respondent has failed to pursue the rehabilitation opportunity presented to him in the Minnesota action, it is a reasonable assumption that he would not pursue rehabilitation options here as Minnesota's conditions were presented along with a less punitive conclusion. Further, to not revoke respondent's license would also wrongly signal others to engage in similar conduct without consequence, thus not constituting proper deterrence. Revocation will therefore act to safeguard the public and deter such conduct by other practitioners.

In the event that Respondent complies with the reinstatement requirements of the Minnesota Board of Veterinary Medicine, he may reapply to Wisconsin including documentation of the completion of the educational requirements.

Costs

Section 440.22 (2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Veterinary Examining Board, and

that the board's discretion extends to the decision whether to assess the full costs or only a portion of the costs.

The ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, the Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".[\[ccc2\]](#)

Dated this 21st day of October, 2004

Respectfully Submitted

Dennis C. Schuh
Administrative Law Judge

[\[smg1\]](#) This should be deleted/ changed to a blank
[\[ccc2\]](#) I assume this paragraph will not be present when the case is resolved via a Stipulation and the Respondent has waived all appeal rights.