

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MARK A. HIEBERT, D.V.M.,	:	
RESPONDENT.	:	000269⁴

Division of Legal Services and Compliance¹ Case No. 12 VET 039

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

Mark A. Hiebert, D.V.M.
454 S. Pleasant St.
Whitewater, WI 53190

Wisconsin Veterinary Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Veterinary Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Mark A. Hiebert, D.V.M. (dob November 7, 1966) is licensed in the State of Wisconsin to practice veterinary medicine, having license number 4705-50, first issued on June 27, 1997 and current through December 14, 2013. Dr. Hiebert's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 454 S. Pleasant Street, Whitewater, Wisconsin 53190.

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

2. For approximately four weeks in the fall of 2009, Respondent diverted the non-controlled substance Tramadol from the veterinary hospital's daily use drug stock for his personal use. Tramadol is used to treat post-operative and chronic pain.

3. From May of 2012 through October of 2012, Respondent diverted the schedule II controlled substance morphine sulfate from the veterinary hospital's daily use drug stock for his personal use.

4. Respondent removed morphine sulfate from the vial and replaced it with an unknown liquid.

5. Other veterinary hospital staff then unknowingly used the diluted morphine sulfate to treat animals' post-operative pain.

6. The morphine sulfate was later tested and found to have been diluted from a concentration of 15.4 mg/ml to a concentration of 2.5 mg/ml.

7. Respondent was terminated from employment and is not currently practicing veterinary medicine.

8. Respondent is not currently in a drug and alcohol treatment program.

9. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Veterinary Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 453.07, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Tramadol is a non-controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 450.11(1).

3. Pursuant to Wis. Stat. § 961.16(2)(a)10., morphine is a schedule II controlled substance for which, under the circumstances at issue, a prescription is required pursuant to Wis. Stat. § 961.38(2).

4. By the conduct described in the Findings of Fact, Mark A. Hiebert, D.V.M. violated Wis. Admin. Code § VE 7.06(7) by practicing or attempting to practice while unable to safely and reliably do so.

5. By the conduct described in the Findings of Fact, Mark A. Hiebert, D.V.M., violated Wis. Admin. Code § VE 7.06(8) by personally using and misusing drugs listed in the U.S. Controlled Substances Act.

6. By the conduct described in the Findings of Fact, Mark A. Hiebert, D.V.M. violated Wis. Admin. Code § VE 7.06(2) by engaging in fraud and gross negligence in the practice of veterinary medicine when he diluted pain medications that were intended to relieve patients' pain.

7. As a result of the above violations, Mark A. Hiebert, D.V.M. is subject to discipline pursuant to Wis. Stat. §§ 453.07(1)(b), (c), and (f).

ORDER

The attached Stipulation is accepted.

The license to practice veterinary medicine in the State of Wisconsin issued to Mark A. Hiebert, D.V.M. (license number 4705-50) is **SUSPENDED** and **LIMITED** as follows:

SUSPENSION

- A.1. The license of Respondent Mark A. Hiebert, D.V.M., (license number 4705-50), to practice veterinary medicine in the State of Wisconsin is **SUSPENDED** for an indefinite period.
- A.2. Respondent shall mail or physically deliver all indicia of Wisconsin licensure to practice veterinary medicine to the Department Monitor within fourteen (14) days of the effective date of this order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov/index.htm>.
- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least six hundred (600) hours of active practice of veterinary medicine for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Board may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed for the first three (3) months, but any time after three months the suspension shall be stayed upon Respondent providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.

- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code § SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within sixty (60) days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Education Required

- C.1. Within ninety (90) days of the date of this Order, Respondent shall successfully complete a minimum of six (6) hours of education on the topic of the proper prescribing of controlled substances offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.
- C.2. Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education to the Department Monitor at the address stated later in this Order. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department, and also may not be used in future attempts to upgrade a credential in Wisconsin.

Treatment Required

- C.3. Respondent shall enter into, and shall continue, drug and alcohol treatment with a Treater acceptable to the Board or its designee ("Treater"). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.4. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.5. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.6. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by D.4., below.
- C.7. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.8. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater and treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.9. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly to Treater and the Department Monitor.

Sobriety

- C.10. Respondent shall abstain from all personal use of alcohol.
- C.11. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.12. Respondent shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural substances such as poppy seeds) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.13. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty four (24) hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- C.14. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11.

Drug and Alcohol Screens

- C.15. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department ("Approved Program").
- C.16. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program.

Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:

- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.17. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year, for the first year of this Order. After the first year, Respondent may petition the Board on an annual basis for a modification of the frequency of tests. The board may adjust the frequency of testing on its own initiative at any time.
- C.18. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.19. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.20. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody or other valid defense.
- C.21. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.22. Respondent shall not work as a veterinarian in a setting in which Respondent has access to controlled substances. If the Treater subsequently recommends that Respondent can have access to controlled substances, then Respondent must petition the Board to remove this limitation. Whether to remove this limitation shall be wholly in the discretion of the Board or its designee.
- C.23. Respondent shall not prescribe any controlled substances. If the Treater subsequently recommends that Respondent can resume prescribing controlled substances, then Respondent must petition the Board to remove this limitation.

Whether to remove this limitation shall be wholly in the discretion of the Board or its designee.

- C.24. Respondent shall practice only under the direct supervision of a licensed veterinarian approved by the Board or its designee.
- C.25. Respondent shall practice only in a work setting pre-approved by the Board or its designee.
- C.26. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a veterinarian or provides any veterinary care, currently or in the future.
- C.27. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active veterinarian practice worked during that quarter. If a report indicates poor performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.28. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department

Monitor of any violations of any of the terms and conditions of this Order by Respondent.

- D.3. Every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Board

- D.4. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier than one (1) year from the date of the initial stay of the suspension. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- D.6. Respondent may petition the Board for termination of this Order anytime after five (5) years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five (5) years.

Costs of Compliance

- D.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Costs of Proceeding

- D.8. Respondent shall pay costs of \$600.00 to the Department of Safety and Professional Services, within ninety (90) days of this Order. Payment should be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to timely submit any payment of costs, the Respondent's license (# 4705-50) may, in the discretion of the Board or its

designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.9. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 453.07.

Effective Date of Order

- D.10. This Order is effective on the date of its signing.

Dated at Madison, Wisconsin this 23 day of October, 2013.

WISCONSIN VETERINARY EXAMINING BOARD

By: 
A Member of the Board