

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF A PETITION FOR AN	:	
ADMINISTRATIVE INJUNCTION	:	
INVOLVING	:	
	:	ADMINISTRATIVE INJUNCTION
KEVIN J. CULLEN AND	:	
CULLEN CALF PRODUCTS, LLC,	:	0003445
RESPONDENTS.	:	

Division of Legal Services and Compliance Case No. 13 UNL 160

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

Kevin J. Cullen and
Cullen Calf Products, LLC
24485 Cottage Inn Rd.
Belmont, WI 53510

Wisconsin Department of Safety and Professional Services
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Wisconsin Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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 Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Kevin J. Cullen (dob June 18, 1959), has owned and operated Cullen Calf Products, L.L.C., since September 2013 (CCP). CCP's business address is 24485 Cottage Inn Road, Belmont, Wisconsin 53510. Respondent Kevin J. Cullen is not and has never been licensed as a veterinarian in the state of Wisconsin.

2. CCP operates and maintains the website <http://www.calfdoctor.com>, through which he sells nutritional supplements for cattle.

3. CCP's website includes four (4) posts dated June 11, 2013, and attributed to the late Russ Schnepfer, D.V.M. Dr. Schnepfer previously owned and operated the calfdirector.com website. Schnepfer's articles advise readers about vaccinations and other aspects of animal care, while the site itself offers products to address the animal health issues.

4. Respondents have voluntarily revised the website to clarify that he is not a veterinarian and that neither he nor CCP provides veterinary services.

5. There is no evidence that Respondent Cullen intentionally misrepresented himself as authorized to practice veterinary medicine. Respondent has agreed to resolve this matter by stipulation.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction in this matter pursuant to Wis. Stat. § 440.21 and Wis. Admin. Code ch. SPS 3, and is authorized to enter into the attached Stipulation and Order pursuant to Wis. Stat. § 227.44(5).

2. Wisconsin Stat. § 453.02(6) defines the practice of veterinary medicine to mean: "...to examine into the fact or cause of animal health, disease or physical condition, or to treat, operate, prescribe or advise for the same, or to undertake, offer, advertise, announce, or hold out in any manner to do any of said acts, for compensation, or direct or indirect, or in the expectation thereof."

3. Pursuant to Wis. Stat. § 453.05(1), no person may offer to practice, advertise to practice or practice veterinary medicine, or use, in connection with his or her name, any title or description which may convey the impression that he or she is a veterinarian, without a license or temporary permit from the examining board.

4. The statements on Respondent CCP's website attributed to Russ Schnepfer, D.V.M., as displayed prior to the website's voluntary revision, would more likely than not lead a reasonable person to incorrectly believe that a licensed veterinarian was affiliated with Cullen Calf Products, L.L.C., at least as of June 11, 2013.

5. The statements on Respondent CCP's website attributed to Russ Schnepfer, D.V.M., as displayed prior to the website's voluntary revision, would more likely than not lead a reasonable person to incorrectly conclude that a veterinarian was providing the website's advice about animal health and care, at least as of June 11, 2013.

6. The website owned and controlled by Respondent CCP, in referring to the "Calf Doctor" prior to the website's voluntary revision, would more likely than not lead a reasonable

person to incorrectly believe that Respondent Cullen, as the individual controlling the content of the website, is a veterinarian.

7. The conduct described above constitutes the use of a title or description that inaccurately conveys the impression that Respondent Cullen is a veterinarian, contrary to Wis. Stat. § 453.05(1).

8. The conduct described above constitutes the act of advertising in a manner that inaccurately conveys the impression that Respondent Cullen is a veterinarian, contrary to Wis. Stat. § 453.05(1).

9. Respondents' voluntary revisions to the www.calfdoctor.com website, as described above, adequately address the Department's concerns giving rise to this action; namely, that the site's content and organization (a) convey inaccurate impressions and/or (b) create a likelihood that reasonable persons visiting the site would form incorrect beliefs as to whether the Respondent Cullen is a veterinarian or the site offers veterinary services.

ORDER

1. The attached stipulation is accepted.

2. Unless and until Respondent Cullen is properly licensed as a veterinarian by the Wisconsin Veterinary Examining Board, he is enjoined and prohibited from holding himself out as authorized to practice veterinary medicine in the state of Wisconsin. Violation of this special order may result in a forfeiture of up to \$10,000 for each day of violation. See Wis. Stat. § 440.21(4)(a).

3. Except as provided in paragraph 4 of this Order, Respondents are further enjoined from using the terms "Calf Doctor" or "calfdoctor" to refer to Kevin Cullen, or in conjunction with Cullen Calf Products, L.L.C., or in conjunction with any other business with which Respondent is affiliated. Use of the terms "Calf Doctor" or "calfdoctor" is prohibited unless and until a licensed veterinarian is affiliated with the business and assumes responsibility for the content of the website at <http://www.calfdoctor.com>.

4. Respondents may continue to use the domain name <http://www.calfdoctor.com> contingent upon prominent display of the following disclaimer on the front page of the web-site:

Cullen Calf Products, L.L.C., is not affiliated with any individual who is licensed to practice veterinary medicine in the state of Wisconsin. Information contained in this website is not intended to diagnose, prescribe or advise for treatment of any animal health condition or disease. Readers should contact licensed veterinarians if they require diagnoses, prescriptions, or advice for treatment of any animal health condition or disease.

5. Respondents are further enjoined from representing that any veterinarian has posted materials on the website at <http://www.calfdoctor.com>, unless the named veterinarian has personally posted the materials. Respondents may continue to display articles written by the late Russ Schnepfer, D.V.M., provided that the site makes clear that Dr. Schnepfer does not offer veterinary services through either CCP or the www.calfdoctor.com website.

6. If the Department determines that there is probable cause to believe that either Respondent has violated any terms of this Special Order, the Department will notify Respondent of the alleged violation(s) and may refer the violations covered by this decision and order to any appropriate prosecutorial unit for review for possible criminal charges.

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

Issued at Madison, Wisconsin, this 29th day of September, 2014.

By:



Michael J. Berndt, Chief Legal Counsel
On behalf of the Department

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF A PETITION FOR AN
ADMINISTRATIVE INJUNCTION
INVOLVING

KEVIN J. CULLEN AND
CULLEN CALF PRODUCTS, LLC,
RESPONDENTS.

STIPULATION

0003445

Division of Legal Services and Compliance Case No. 13 UNL 160

Respondents Kevin J. Cullen and Cullen Calf Products, LLC, and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:


1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondents consent to the resolution of this investigation by Stipulation.
2. Respondents understand that by signing this Stipulation, Respondents voluntarily and knowingly waive the following rights:
 - the right to a hearing on the allegations against Respondents, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
 - the right to confront and cross-examine the witnesses against Respondents;
 - the right to call witnesses on Respondents' behalf and to compel their attendance by subpoena;
 - the right to testify on Respondents' own behalf;
 - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
 - the right to petition for rehearing; and
 - all other applicable rights afforded to Respondents under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
3. Respondents are aware of their right to seek legal representation and have been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondents are represented by attorney Andrew W. Erlandson.
4. Respondents agree to the adoption of the attached Administrative Injunction by the Department. The parties to the Stipulation consent to the entry of the attached Administrative Injunction without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the Department's order, if adopted in the form as attached.

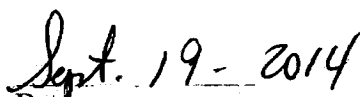
5. If the terms of this Stipulation are not acceptable to the Department, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Department, the parties agree not to contend that the Department has been prejudiced or biased in any manner by the consideration of this attempted resolution.

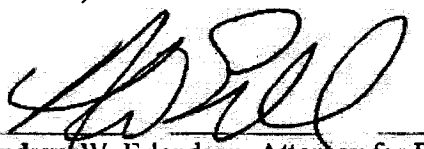
6. The parties to this Stipulation agree that the attorney for the Division of Legal Services and Compliance may appear before the Department for the purposes of speaking in support of this agreement and answering questions that the Department may have in connection with deliberations on this Stipulation.

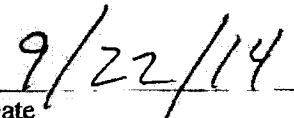
7. Respondents are informed that should the Department adopt this Stipulation; the Department's Administrative Injunction is a public record and will be published in accordance with standard Department procedure.


8. The Division of Legal Services and Compliance joins Respondents in recommending the Department adopt this Stipulation and issue the attached Administrative Injunction.

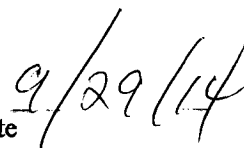

Kevin J. Cullen, Individually and
on behalf of Cullen Calf Products, LLC
24485 Cottage Inn Rd.
Belmont, WI 53510


Date


Andrew W. Erlandson, Attorney for Respondents
State Bar Number 1029815
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Date


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Date