

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

PHYLLIS C. BURCH, D.V.M.,
RESPONDENT.

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FINAL DECISION AND ORDER

0003513

Division of Legal Services and Compliance Case No. 14 VET 020

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

Phyllis C. Burch, D.V.M.
E15664 Vet Road
Hillsboro, Wisconsin 54634

Wisconsin Veterinary Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
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 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 Phyllis C. Burch, D.V.M., (dob June 27, 1940), is licensed in the state of Wisconsin as a veterinarian, having license number 805-50, first issued on July 1, 1964 and current through December 14, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is E15664 Vet Road, Hillsboro, Wisconsin 54634.

2. At all times relevant to this proceeding, Respondent owned and operated a veterinary clinic located in Hillsboro, Wisconsin.

3. On June 4, 2014, Department investigators conducted an announced inspection of Respondent's veterinary clinic.

4. The inspection, and subsequent interviews of clinic staff and Respondent, revealed the following:

- a. The customer lobby area of Respondent's veterinary clinic served multiple purposes to include patient examination, treatment, and patient recovery area.
- b. An exposed needle containing a partially dispensed veterinary drug was found unattended in the clinic's surgery room.
- c. Controlled substances were not properly secured nor was there a controlled substances log to track their receipt, use, and disposal.
- d. The clinic is available for business 24 hours a day, 7 days a week with the exception of Wednesdays.
- e. Respondent informed Department investigators that she works long days sometimes beginning at 7 a.m. and concluding the next morning at 2 a.m.
- f. Several containers of expired medications were comingled with containers of unexpired medications.
- g. The veterinary clinic was not maintained in a clean and sanitary condition. The most unsanitary area was the clinic's surgery room which had significant amounts of dried blood on the walls, floor, and surgery table. A piece of bloody twine was hanging from the surgery table, a partially used fluid bag was hanging and attached to a piece of tape with animal hair adhered to it.

5. Since the commencement of this proceeding, Respondent has been fully cooperative with Department staff.

6. On or about June 7, 2014, at the Department's request, Respondent voluntarily closed her clinic and has yet to reopen her clinic for business.

7. While the veterinary clinic has been closed, Respondent has taken the following actions:

- a. The entire clinic has been cleaned, sanitized, and organized.
- b. Respondent has removed all expired medications from the clinic.
- c. Respondent has developed a cleaning schedule for the clinic.

- d. Respondent has secured all controlled substances and has developed a controlled substances log that tracks the receipt, use, and disposal of controlled substances.
 - e. Respondent has invested thousands of dollars in upgrading her facilities and equipment to make the clinic easier to keep clean and sanitary (e.g., Respondent remodeled the clinic's surgery room to include washable walls and floors and replaced the surgery table made of wood with one made out of stainless steel).
 - f. Respondent has reevaluated her practice as a whole and has determined that a decrease in work hours is warranted.
 - g. Respondent has collaborated with local veterinarians to determine best veterinary practices and has identified colleagues who may be available for patient referral.
8. Respondent voluntarily underwent a fitness to practice evaluation performed by a health care professional approved by the Department.
9. The health care professional determined that Respondent is physically and mentally fit to practice veterinary medicine, but recommended reduced work hours.
10. On July 16, 2014, Department staff reinspected Respondent's veterinary clinic.
11. The inspection revealed that the deficiencies outlined in Finding of Fact, paragraph four, and the actions outlined in Finding of Fact paragraph seven, have been rectified and/or verified.
12. Respondent admits that she acquired too many patients and worked too many hours. As a result, she did not adequately maintain her clinic in accordance with the minimal standards set forth by the veterinary profession.
13. Respondent is passionate about the practice of veterinary medicine and often provides services at very low prices in the community. She immediately recognized the need to change the condition of her practice and is remorseful.
14. 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(2), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
2. By the conduct described in the Findings of Fact, Respondent Phyllis C. Burch, D.V.M., engaged in unprofessional conduct as defined in Wis. Admin. Code § VE 7.06(1) by

utilizing the lobby area of her veterinary clinic as a treatment and recovery area for patients thereby potentially exposing customers and other patients to unsanitary or infectious conditions.

3. By the conduct described in the Findings of Fact, Respondent Phyllis C. Burch, D.V.M., engaged in unprofessional conduct as defined in Wis. Admin. Code § VE 7.06(1) by leaving an exposed needle containing a partially dispensed veterinary drug unattended.

4. By the conduct described in the Findings of Fact, Respondent Phyllis C. Burch, D.V.M., engaged in unprofessional conduct as defined in Wis. Admin. Code § VE 7.06(4) by failing to properly secure or account for controlled substances located within her veterinary clinic in accordance with 21 C.F.R. §§ 1301.72-1301.76 (2014) and Wis. Admin. Code § Phar 8.02.

5. By the conduct described in the Findings of Fact, Respondent Phyllis C. Burch, D.V.M., engaged in unprofessional conduct as defined in Wis. Admin. Code § VE 7.06(1) by comingling containers of expired medications with containers of unexpired medications.

6. By the conduct described in the Findings of Fact, Respondent Phyllis C. Burch, D.V.M., engaged in unprofessional conduct as defined in Wis. Admin. Code § VE 7.06(17) by failing to keep the veterinary facility and all equipment in a clean and sanitary condition while practicing as a veterinarian.

7. As a result of the above violations, Respondent Phyllis C. Burch, D.V.M., is subject to discipline pursuant to Wis. Stat. §§ 453.07(1)(b) and (f).

ORDER

1. The attached Stipulation is accepted.

2. The professional veterinary license issued to Respondent Phyllis C. Burch, D.V.M., (license number 805-50), is SUSPENDED as follows:

SUSPENSION

A.1. Respondent's license to practice as a veterinarian in the state of Wisconsin is SUSPENDED for an indefinite period. The suspension is retroactive to June 7, 2014.

A.2. Respondent shall mail or physically deliver all indicia of Wisconsin Veterinary licensure 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, 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 is hereby stayed, effective September 7, 2014. The stay is authorized because Respondent self-imposed a period during which she ceased the practice of veterinary medicine, commencing on June 7, 2014. During the Department's, July 16, 2014, reinspection of Respondent's veterinary clinic Respondent demonstrated compliance with the standards of the profession and rules regulating the veterinary profession. The stay of suspension shall remain in effect as long as Respondent complies with the conditions and limitations set forth in this Order.
- 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, any violation concerning hygiene and sanitation, controlled substances and those articulated in Wis. Admin. Code § VE 7.06. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board or its designee 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 ch. 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

Quarterly Inspections

- C.1. The veterinary license issued to Phyllis C. Burch, D.V.M., (license number 805-50) is LIMITED to require third-party inspections of Respondent's veterinary practices as follows:
- a. No later than sixty (60) days from the date of this Order, and every three (3) months thereafter, for a period of twenty-four months, Respondent shall have a third-party inspection of all areas of any site at which Respondent offers to

practice veterinary medicine, including non-clinical areas, sterilization areas and laboratories. The purpose of the inspections is to assess Respondent's compliance with the standard of minimal competence in veterinary medicine.

- b. Respondent is responsible for obtaining preapproval of the third-party inspector from the Board or its designee.
- c. An acceptable inspector will, at a minimum, be a licensed veterinarian or other health care professional with demonstrated knowledge of requirements of the minimal competence for sanitation in a veterinary practice. The inspector shall not have any personal or professional relationship, past or present, with Respondent that could reasonably be expected to compromise the proposed inspector's ability to render fair and unbiased reports to the Department.

With the approval of the Board or its designee, the inspector may also serve as the professional mentor required in paragraph C.3.

- d. Respondent shall insure that, within fourteen (14) days of each inspection, the third-party inspector submits written reports of the inspector's findings to the Department Monitor.
- e. Respondent shall comply with any and all recommendations of the third-party inspector within a time-frame determined by the Board or its designee and to the satisfaction of the Board or its designee.
- f. Respondent is responsible for all costs associated with the third-party inspections.
- g. Except as provided in subparagraph C.4., this limitation shall be removed when the Board or its designee, in an exercise of discretion, determines that Respondent has undergone eight consecutive satisfactory inspections.

Remedial Education

C.2. Respondent's license to practice veterinary medicine in the state of Wisconsin is further LIMITED as follows:

- a. Within six (6) months of the date of this Order, Respondent shall successfully complete six (6) hours of education on the subject of legal aspects of controlled substances. The course(s) must be pre-approved by the Board's designee. Successful completion requires that Respondent take and pass any exam offered for the course(s). Courses taken without preapproval may NOT be used to satisfy the remedial education requirements of this Order.
- b. Within thirty (30) days of completion of the preapproved remedial education, Respondent shall submit proof of successful completion in the form of verification from the institution or organization that provided the education.

- c. None of the remedial 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.
- d. The Department shall remove this limitation from Respondent's license when Respondent has satisfied the Board's designee that Respondent has successfully completed the preapproved education.

Professional Mentor

C.3. Respondent's license to practice veterinary in the state of Wisconsin is further LIMITED as follows:

- a. Within ninety (90) days from the date of this Order, Respondent shall engage the services of a professional mentor who is licensed to practice veterinary medicine in the state of Wisconsin, and who has not been disciplined by the Board.
- b. Within thirty (30) days of the date of this Order, Respondent shall submit to the Department Monitor at the address below a written request for approval of a proposed mentor. The request for approval shall be accompanied by the mentor's current curriculum vitae and a letter from the mentor confirming that he or she has read the Final Decision and Order and agrees to undertake the duties of a professional mentor as set out in this paragraph.
- c. The professional mentor shall be actively engaged in the practice of veterinary medicine and shall not have any personal or professional relationship, past or present, with Respondent that could reasonably be expected to compromise the proposed mentor's ability to render fair and unbiased reports to the Department.

With the approval of the Board or its designee, the professional mentor may also perform the quarterly third-party inspections required in paragraph C.1.

- d. The Board's designee has the full and final authority to approve or reject a proposed mentor. This decision is based on an exercise of discretion and is not reviewable. The Board's designee may, for good cause, approve or direct a change in the professional mentor at any time.
- e. Every month, for a period of twenty-four (24) months, the mentor shall visit and inspect Respondent's veterinary practice, for the purposes of determining whether or not Respondent is maintaining the practice site consistent with the standards of the veterinary profession, including record keeping, limited practice hours and storage of controlled substances, if any.
- f. During the monthly visit, the mentor shall randomly select and review the charts of at least five (5) patients that have presented to Respondent in the preceding month. The chart review shall thoroughly assess whether Respondent's records are compliant with the rules and regulations of the profession and completed in a

timely manner. Records shall be assessed at the standard of minimum competence.

- g. During the monthly visit, the mentor shall review Respondent's calendar and other documentation necessary to confirm that Respondent is, without exception, practicing veterinary medicine no more than forty (40) hours per week.
- h. The professional mentor shall offer feedback and direction to Respondent for the purposes of assisting Respondent in continued compliance with the standards of the profession. Respondent shall follow the appropriate guidance of the mentoring veterinarian. Whether or not guidance of the mentoring veterinarian is appropriate and whether or not Respondent has complied with the guidance shall be in the sole discretion of the Board's designee. These discretionary determinations are not reviewable.
- i. The mentor shall submit written and thorough quarterly reports indicating the number of hours Respondent has practiced veterinary medicine during each week of the quarter; identifying the number of charts reviewed in the previous quarter; and identifying any concern with Respondent's practice. It is Respondent's responsibility to ensure the quarterly reports are submitted when due.
- j. The mentor shall immediately report any unprofessional conduct or suspected violation of this Order to the Department Monitor.
- k. After the timely submission of eight (8) consecutive quarterly mentor reports, and with a written recommendation from the mentor expressly supporting the request, Respondent may petition the Board or its designee for modification or termination of any part of this limitation. Whether to modify the terms of this Limitation is in the sole discretion of the Board or its designee and is not reviewable.
- l. Respondent is responsible for any and all costs associated with the services of the professional mentor.

Permanent Limitations

- C.4. Respondent shall permit any representative of the Board or the Division of Legal Services and Compliance to perform an inspection of all portions of any site at which Respondent practices veterinary medicine, at any time and without prior notice. This limitation is permanent.
- C.5. Respondent shall limit her hours of veterinary practice to forty (40) hours per week. This limitation is permanent.

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 7190, Madison, WI 53707-7190
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 third-party inspector or professional mentor 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 Third-Party Inspector or Professional Mentor by the Board

- D.4. If the Board or its designee determines that the third-party inspector or professional mentor has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent obtain inspections or mentorship under the direction of another inspector or professional mentor.

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 professional mentor 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 any time 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 any expenses associated with compliance with the terms of this Order.

Costs of Proceeding

- D.8. Respondent shall pay costs of \$2,400.00 to the Department of Safety and Professional Services in 24 equal monthly payments. The first payment shall be due 30 days from the date of this Order. Payment of all costs shall 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 (number 805-50) 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(1)(h).

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

WISCONSIN VETERINARY EXAMINING BOARD:

by: P. C. Johnson DVM
A Member of the Board

10/29/14
Date

STATE OF WISCONSIN
BEFORE THE VETERINARY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

PHYLLIS C. BURCH, D.V.M.,
RESPONDENT.

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STIPULATION

0003513

Division of Legal Services and Compliance Case No. 14 VET 020

Respondent Phyllis C. Burch 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. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, 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 Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's 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 Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by Attorney Richard A. Radcliffe.

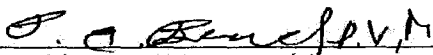
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Veterinary Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, 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 Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

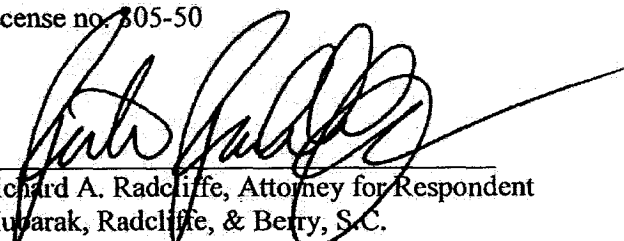
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

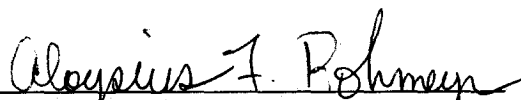
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Phyllis C. Burch, Respondent
E15664 Vet Road
Hillsboro, Wisconsin 54634
License no. 805-50

10-15-14
Date


Richard A. Radcliffe, Attorney for Respondent
Munarak, Radcliffe, & Berry, S.C.
917 Superior Avenue
P.O. Box 110
Tomah, Wisconsin 54660-0110

10/15/14
Date


Aloysius F. Rohmeyer, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

10/17/14
Date