

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON
REFERRAL FROM THE ALASKA BOARD OF VETERINARY EXAMINERS**

In the Matter of _____)
Frederick "Judge" Robert Conniff)
_____) OAH No. 05-0794-VET
_____) Board Case No. 3100-05-003

NOTICE TRANSMITTING FINAL DECISION

Attached is the Board of Veterinary Examiners' decision in this matter, which the board adopted at its May 19, 2006 meeting. Under AS 44.62.520, the board's decision becomes effective 30 days after the attached decision is mailed or otherwise delivered to you.

A party may request reconsideration of the decision by filing a petition under AS 44.62.540 within 15 days after delivery or mailing of the decision. Send the petition requesting reconsideration to the following address:

Office of Administrative Hearings
Attn. Board of Veterinary Examiners
PO Box 110231
Juneau, AK 99811-0231

At the same time, send a copy of the petition to the opposing party's legal counsel, or to the opposing party if not represented by counsel.

Judicial review of the board's decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the decision is mailed or otherwise distributed.

DATED this 20th day of June, 2006.

By: _____
Kim Rechin
Office of Administrative Hearings

The undersigned certifies that this date an exact copy of the foregoing was provided to the following individuals:

Robert Conniff
Steven Winkler
Richard Urion
Branda Donohue

Signature Lt. Governors Date
Office _____

6.20.06

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OAH No. 05-0794-VET
Board Case NO. 3100-05-003

DECISION & RECOMMENDED ORDER

I. Introduction

The Division of Corporations, Business and Professional Licensing filed an accusation to suspend, revoke, or impose other disciplinary sanctions against Frederick "Judge" Robert Conniff, DVM. Dr. Conniff requested a formal hearing. The Office of Administrative Hearings heard the case on December 12, 2005. Dr. Conniff appeared in person. Steven Winker represented the Division of Corporations, Business and Professional Licensing.

II. Facts

Dr. Conniff was licensed to practice veterinary medicine in Alaska on August 27, 2003, for a period that lasted through 2004. Because he was renewing his license for the first time in 2005, Dr. Conniff was required to certify completing fifteen contact hours of continuing education (CE) for each full year in the licensing period before 2005; as the only full year was 2004, Dr. Conniff was required to certify that he had completed fifteen contact hours for that year.

Before December of 2004 Dr. Conniff read the course materials and answered the test questions for an online continuing education course that would have satisfied the 15-credit requirement. For this particular course, test questions could be submitted for grading either by mail or online. Online tests are graded automatically, and credit is immediately granted when the exams have been successfully completed and tuition is paid. Dr. Conniff attempted to submit his test answers online, but a computer problem of some kind prevented successful submission of the test scores. Dr. Conniff decided to wait a few days and attempt to submit his test scores again later.

On December 2, 2004, Dr. Conniff signed a "Biennial Veterinarian License Renewal" form stating in part that "I hereby certify that I have obtained the following continuing education credits during the concluding licensing period January 1, 2003 – December 31, 2004, and that I have documentation of attendance of courses as described in 12 AAC 68.230, which I will furnish to the Board of Veterinary if requested to do so." At this time, although he had

completed studying the course materials, Dr. Conniff had not officially had obtained credit for the course. Because he intended to obtain the credit before the period ending December 31, 2004, Dr. Conniff considered his certification on the license renewal form to be truthful.

Having turned in his license renewal form, Dr. Conniff then forgot to submit his exams for grading. When he received a letter dated February 10, 2005, advising him that he had been randomly selected for a CE audit and requesting proof of his CE credit, Dr. Conniff realized that he had forgotten to submit his exams for grading in time to receive credit before the end of the year. At this time, Dr. Conniff went online and submitted his exams. His transcript shows that he was awarded eight CE credits on February 16, 2005, and another ten credits on February 22, 2005.

The division conceded at the hearing that, had Dr. Conniff successfully received credit for the course after he submitted his license renewal form but before December 31, 2004, he would have been in compliance with the CE requirement and his renewal form would have been truthful.

The evidence regarding prior similar cases was limited. After this case was initiated, Mr. Conniff brought it to the attention of the division that the Veterinary Board had resolved a number of similar cases in the past by approving CE credits obtained after the licensing period, without any disciplinary action.¹ In response, the director of the Division of Corporations, Business and Professional Licensing sent a letter to the board stating that it would no longer conduct audits of CE compliance by veterinarians.² The division made a presentation to the board at its May 20, 2005 meeting. The minutes from the meeting indicate that after the presentation, the board took the following action:

- On a motion duly made...and approved unanimously, it was RESOLVED, regarding general guidelines for disciplinary sanctions, the Board of Veterinary Examiners will enforce disciplinary sanctions outlined as follows:
- Requirement to complete deficit CE
 - Mandatory audit for two renewal cycles
 - Reprimand
 - Suspension of license until satisfactory documentation of deficient CE is received
 - Civil fine of \$3,5000 maximum amount comprised of two elements: \$2,500 fine for falsification on the application (all or part of this amount may be suspended based on the gravity of the offense) plus \$100 per deficit CE hour to a \$1,000 maximum for veterinarians.

¹ Exhibit 9, pp. 8-9; Exhibit Q.

² Exhibit P.

III. Discussion

The Board of Veterinary Examiners has the duty to set minimum qualifications for licensing.³ In the exercise of that duty, the board has established minimum requirements for continuing education of licensees.⁴ In the enforcement of its standards, the board has broad disciplinary powers. According to AS 08.01.075, the board may take the following actions:

Disciplinary powers of boards.

(a) A board may take the following disciplinary actions, singly or in combination:

- (1) permanently revoke a license;
- (2) suspend a license for a specified period;
- (3) censure or reprimand a licensee;
- (4) impose limitations or conditions on the professional practice of a licensee;
- (5) require a licensee to submit to peer review;
- (6) impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of the licensee;
- (7) impose probation requiring a licensee to report regularly to the board on matters related to the grounds for probation;
- (8) impose a civil fine not to exceed \$5,000.

(b) A board may withdraw probationary status if the deficiencies that required the sanction are remedied.

* * * * *

(f) A board shall seek consistency in the application of disciplinary sanctions. A board shall explain a significant departure from prior decisions involving similar facts in the order imposing the sanction.

Dr. Conniff has made up the deficit CE credit shortly after he was notified of the audit. Thus, imposition of a requirement that he make up the credit and suspension of his license until he does so are not appropriate penalties in this case. Dr. Conniff does not object to a mandatory audit of his CE completion for the next two renewal cycles. The remaining issues are whether Dr. Conniff should be reprimanded, whether a fine should be imposed, and if so how much the fine should be.

The division did not recommend any specific action. Dr. Conniff argues that the appropriate sanction would be action akin to "a slap on the wrist." He acknowledges that he did not comply with the CE requirement. But Dr. Conniff argues that forgetting to obtain the credit for the work he had done is in the nature of a technical violation. Because he immediately remedied the problem and acted in good faith at all times, Dr. Conniff asserts that a serious

³ AS 08.01.070.

⁴ 12 AAC 68.220-225.

penalty is inappropriate in this case. Dr. Conniff states that an official reprimand is something that he, as a professional, takes seriously, and it would be an adequate sanction with no fine.

I find Dr. Conniff's testimony to be credible on two important points. First, I find that Dr. Conniff did in fact complete the coursework he says he did, and that he had gained the educational value of the work before the end of 2004. The division argues that Dr. Conniff could not "complete" the course until he was granted credit for it. There is no dispute on this point, but I find that Dr. Conniff did demonstrate diligence in maintaining a satisfactory level of learning and competence. His omission was a technical one: forgetting to submit his tests for grading before the end of the year as required and as he promised he would.

Second, I find that Dr. Conniff did not intend to mislead the division or the board when he submitted his renewal form. The preprinted declaration on the form essentially stated that Dr. Conniff would have obtained the necessary credit by the end of December, 2004. Dr. Conniff signed the form on December 2, 2004. At that time he had only to log on to the CE provider's website and submit his exam answers in order to receive the credit. Dr. Conniff had no reason to believe he might not be able to receive the necessary credit within the 29 days after he signed the form. Even if he did not pass the test, there was adequate time for Dr. Conniff to go over any questions he might have missed and to resubmit corrected answers before the end of the year. The division's form permit veterinarians to merely certify that they will get all required credit before the end of the year, and the division conceded that if Dr. Conniff had remembered to submit his tests for grading in December, 2004, after signing the form, the certification would have been truthful and there would be no reason to question Dr. Conniff's license renewal.

I find the controlling statute in this case to be the requirements of AS 08.01.075(f) that the board seek consistency in the application of disciplinary sanctions and that it explain significant departures from prior decisions involving similar facts in the order imposing the sanction. While the board has adopted guidelines for disciplinary action, it did so after Dr. Conniff's case arose. Indeed, it was Dr. Conniff that brought the board's existing policy to the attention of the division, in turn prompting the discussion leading up to the change in policy. The board's resolution does not have the authority of a duly adopted regulation, but even if it did, applying the new policy to Dr. Conniff's case would result in a retrospective application of a new regulation, which is prohibited by AS 44.62.240.

Because Dr. Conniff falls within the group of veterinarians who did not timely complete CE credit before the new policy was announced, it would not be possible to explain a difference

in treatment between Dr. Conniff and the many other veterinarians who were not sanctioned at all. If it could be found that Dr. Conniff had intended to deceive the board, that he had presented some danger to the public, or that some other circumstance made his case particularly egregious, a different result than that reached in previous cases would be called for. Because Dr. Conniff's omission has been corrected, no further action is warranted at this time.

IV. Conclusion

Dr. Conniff's applications for renewal of his license should be audited for CE compliance for the next two renewal cycles. Dr. Conniff should consider himself on notice that subsequent incorrect claims to have completed CE credit would be likely to be considered aggravated cases with significant consequences. No fine or reprimand extending beyond the content of this decision is appropriate in this case.

V. Recommended Order

IT IS HEREBY ORDERED that Dr. Conniff's application to renew his license be audited for continuing education compliance for the next two renewal cycles. No further action shall be taken in this case.

DATED this 16th day of February, 2006.

By: _____
DALE WHITNEY
Administrative Law Judge

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Non-Adoption Options

State of Alaska
Office of Administrative Hearings

1. The undersigned, on behalf of Alaska Board of Veterinary Examiners and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about _____;

make additional findings about _____;

conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2006.

By: _____

Signature

Name

Title

2. The undersigned, on behalf of Alaska Board of Veterinary Examiners and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

1. A civil penalty of \$1500⁰⁰ with \$1500⁰⁰ suspended shall be imposed.

2. A reprimand as stated on the record shall be issued.

3. Mandatory audit for 2 renewal cycles.

DATED this 19th day of May, 2006 / MD

By: TL

Signature

Timothy L Bowser DVM

Name

Acting Chairman - Board of

Title

Vet. Examiners