

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

In the Matter of
DANA KING

OAHNo. 08-0103-VET
Agency Case No. 3150-08-002

DECISION

I. Introduction

Dana King applied for a "courtesy veterinary license" to participate as a veterinarian in the 2008 Iditarod. At its regular meeting of February 1, 2008, the Alaska Board of Veterinary Examiners ("the board") denied Dr. King's application. Dr. King requested a hearing on the matter. Administrative Law Judge Dale Whitney heard Dr. King's appeal at a hearing on April 2, 2008. Dr. King appeared by telephone. Assistant Attorney General Jenna Conley represented the Department of Commerce, Community and Economic Development, Division of Corporations, Business, and Professional Licensing ("the division"). The evidence shows that the board's decision to deny Dr. King's application for a courtesy veterinary license was consistent with Alaska law and should be affirmed.

II. Facts

Dr. King practices veterinary medicine in Ohio. After some communication with the Iditarod Trail Committee, Dr. King submitted an application for a courtesy veterinary license on December 28, 2007, using a form published by the division. The form contains a signature block by which signers certify a number of declarations. The signature block reads in part, "by my signature below, I attest that I have not: 1. had a veterinary license suspended or revoked in any jurisdiction..." After this sentence, Dr. King placed an asterisk, referring to a notation immediately above in which he wrote, "15-day suspension Feb 9-23, 1998 for record keeping."

Upon receiving Dr. King's application, a licensing examiner for the division created a file and referred the matter to an investigator, who contacted the Ohio Veterinary Medical Licensing Board. That board reported that Dr. King was currently licensed and in good standing in Ohio, but that he had in the past been subject to three disciplinary actions, two of which resulted in suspensions of his Ohio license. The first suspension, in August of 1997, involved improper documentation or recordkeeping regarding controlled substances. The second suspension, in February of 1998, was for failing to abide by a board order stemming from the previous action, and an additional issue regarding documentation of extra-label use of medication. The third action,

which did not result in suspension, was for violating the proper standard of care in treating a dog's fractured femur.

Dr. King testified that when he read the application form for a courtesy license in Alaska, he immediately called somebody in Alaska for advice on the matter, but he could not remember with certainty who he had talked to. It may have been someone from the Iditarod Trail Committee. It does not appear that Dr. King talked to anyone in the division. Dr. King testified that he was told to write the information about his suspension on the form, and the board would get all of his information from Ohio. The person Dr. King talked to offered an opinion that, since the suspension was from so long ago, there should be no problem obtaining a courtesy license.

Dr. King testified that he was aware of the second suspension at the time he completed his application, but he considered it related to the first action and saw no need to identify it separately. Dr. King explained that he expected the board to receive his entire file from Ohio, and he saw no need to go into details on the form, which contained no space for an explanation. Dr. King also testified that he was aware of the 2004 action, but he did not mention it because the form did not ask for information other than suspensions, there was no extra space on the form, and again, he expected the board to receive all information regarding his license from the Ohio board. Dr. King denies any effort to omit information or to mislead the board. In fact, his disclosure on the application form did bring all of the Ohio information to the board's attention.

Dr. King has been a veterinarian for over thirty years. He testified that over the course of his career he has seen millions of dogs and treated many large animals. He works in a \$2.6 million practice that sees over sixty animals per day. Dr. King testified that for the number of animals his practice sees per day, the number of complaints have been minimal. Dr. King admitted to errors that resulted in the two suspensions. While he stated that he was not making excuses, he explained that at that time the vet Dr. King had been working with had just left the practice. Dr. King was going through a divorce, resulting in him working extraordinary long hours under stress.

Dr. King testified the principal problem leading to his suspension was that his office had ordered 500 doses of Tylenol with codeine but had received five bottles, or 5000 doses, from the supplier. Dr. King and his staff had meant to return the surplus, but did not do so immediately because they had been so busy. This quantity drew the attention of authorities. Dr. King returned four unopened bottles and about three-fourths of the fifth bottle. Of the approximately 300 doses used, Dr. King had records for prescribing about 150 to 180, but he had not properly documented the remaining doses he had prescribed. Dr. King testified that there had also been a problem found

with one bottle of another drug, and that at this point he did not remember precisely what the situation had been, but that it was a matter of improper recordkeeping, not improper use, of a very small quantity. Dr. King offered this information not as an excuse, but by way of explanation of what had happened. Dr. King also testified about the details regarding an incident of improper recordkeeping for a steer he treated in 1997.

Since then Dr. King has hired a technician to oversee this part of the practice, and the practice has maintained a pharmacy license. Dr. King testified that an inspector from the Ohio board conducted a thorough examination of the practice in 2004 and approved all the recordkeeping procedures, stating that it was one of the best-run practices the inspector had ever seen. Dr. King admits to making some mistakes in the past, but he argues that all of the good things he has done over the past thirty years outweigh his errors, and they should "count for something."

III. Discussion

A courtesy license to practice veterinary medicine in Alaska is authorized by 12 A A C 68.041. A courtesy license is valid for thirty consecutive days, and a person may not hold more than two courtesy licenses in any year.¹ A courtesy license authorizes the licensee to practice veterinary medicine for a special event only.² A courtesy license does not authorize the licensee to conduct a general veterinary practice or to perform services outside the scope of practice required for that special event.³

In its discretion, the board will issue a courtesy license to applicants who, among other things, attest "that the applicant has not...had a veterinary license suspended or revoked in any jurisdiction...."⁴ There was a great deal of testimony and discussion at the hearing about Dr. King's general competence, the circumstances of the Ohio disciplinary actions, and matters that might influence the board's discretion to decide to whom it issues courtesy licenses. But the overlooked factor is that the board does not have discretion to issue a courtesy license until the applicant has met all of the eligibility criteria. One of these criteria is that the applicant attest that his license has never been revoked or suspended. There are no circumstances under which an applicant can attest that his license has never been suspended if it has been suspended. There are no provisions of law that allow the board to waive the requirement or consider applications on a case-by-case basis when the applicant cannot meet the eligibility criteria.

¹ 12 A A C 68.041(c).

² 12 A A C 68.041(a).

³ *Id.*

⁴ 12 A A C 68.041(b)(8)(A).

Dr. King's competence and fitness to practice need not be questioned. It is undisputed that Dr. King did, in the past, have his license to practice veterinary medicine suspended by another jurisdiction. Regardless of the circumstances under which that action occurred, the fact that Dr. King cannot attest that he has never had his license suspended or revoked makes him ineligible for a courtesy license in Alaska. The board could not legally issue Dr. King a courtesy license under any circumstances. It is therefore unnecessary to examine Dr. King's general competence and ability, or any other factual matters that might bear on the board's decision to exercise discretion. The board has no discretion in this case; Dr. King is not eligible for a courtesy license as a matter of law.

IV. Conclusion

Because Dr. King's license has been suspended in another jurisdiction, he is not eligible for a courtesy license to practice veterinary medicine in Alaska, and the board was correctly applying the law when it made the decision to deny Dr. King's application. The board's decision of February 1, 2008, to deny Dr. King's application for a courtesy license is AFFIRMED.

DATED this 8th day of May, 2008.

By: DALE WHITNEY
Administrative Law Judge

Adoption

On behalf of the Alaska Board of Veterinary Examiners, the undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 13th day of June, 2008.

By: Steve M. Torrence, DVM
Chair, AK Board of Veterinary Examiners

The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals:
Case Parties
6/18/08