

1997

Leo N. Taylor v. Department of Commerce, State of Utah, Division of Occupational and Professional Licensing : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE COURT OF APPEALS, STATE OF UTAH

DOCKET NO. 970030 CA

LEO N. TAYLOR,

:

Petitioner,

:

v.

:

Priority No. 14

DEPARTMENT OF COMMERCE, STATE
OF UTAH, and DIVISION OF
OCCUPATIONAL AND PROFESSIONAL
LICENSING,

:

Case No. 970030 CA

:

Judge Steven J. EKLIN

:

Respondent.

APPENDIX TO OPENING BRIEF OF PETITIONER

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FILED

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COURT OF APPEALS

IN THE COURT OF APPEALS, STATE OF UTAH

LEO N. TAYLOR,	:	
Petitioner,	:	
v.	:	
DEPARTMENT OF COMMERCE, STATE	:	Case No. 970030 CA
OF UTAH, and DIVISION OF	:	
OCCUPATIONAL AND PROFESSIONAL	:	
LICENSING,	:	
Respondent.	:	

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Standing.

Intervention in administrative proceeding based on stipulation that Subsection (2)(a) was satisfied did not confer standing to pursue claims on appeal that were outside the scope of the stipulation. *Sierra Club v. Department of Env'tl. Quality*, 219 Utah Adv. Rep. 21 (Ct. App. 1993).

Allegations by members of environmental organization that their use and enjoyment of Western Utah would have been adversely affected failed to show or allege any specific injury causally related to the alleged illegal activity. *Sierra Club v. Department of Env'tl. Quality*, 219 Utah Adv. Rep. 21 (Ct. App. 1993).

63-46b-10. Procedures for formal adjudicative proceedings — Orders.

In formal adjudicative proceedings:

(1) Within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, or within the time required by any applicable statute or rule of the agency, the presiding officer shall sign and issue an order that includes:

- (a) a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative proceedings or on facts officially noted;
- (b) a statement of the presiding officer's conclusions of law;
- (c) a statement of the reasons for the presiding officer's decision;
- (d) a statement of any relief ordered by the agency;
- (e) a notice of the right to apply for reconsideration;
- (f) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and
- (g) the time limits applicable to any reconsideration or review.

(2) The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(3) No finding of fact that was contested may be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

(4) This section does not preclude the presiding officer from issuing interim orders to:

- (a) notify the parties of further hearings;
- (b) notify the parties of provisional rulings on a portion of the issues presented; or
- (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

History: C. 1953, 63-46b-10, enacted by L. 1987, ch. 161, § 266; 1988, ch. 72, § 20.

NOTES TO DECISIONS

ANALYSIS

Contents of order.
Right to appeal.
Cited.

Contents of order.

This section requires considerable detail in agency orders issued in connection with formal adjudicative procedures, so an ambiguous let-

ter, merely indicating that the request for reconsideration was unpersuasive, was not a "written order" under § 63-46b-13(3). *Lopez v. Career Serv. Review Bd.*, 834 P.2d 568 (Utah Ct. App. 1992).

Right to appeal.

When a right to reconsideration exists, Subsection (1)(e) of this section requires notice to petitioner of that right; *Real Estate Commis-*

- (3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.
 (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

History: C. 1953, 63-46b-15, enacted by L. 1987, ch. 161, § 271; 1988, ch. 72, § 25; 1990, ch. 132, § 1.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, added the exception at the end of Subsection (1)(a).

NOTES TO DECISIONS

ANALYSIS

Final agency action.
Function of district court.
Right to judicial proceeding.
Cited.

Final agency action.

Industrial Commission's determination of wrongful discharge was not final, and so not reviewable under this section, because the commission and the parties had not resolved the issue of reimbursement for lost wages and benefits as required by § 34-28-19(2). *Parkdale Care Ctr. v. Frandsen*, 837 P.2d 989 (Utah Ct. App. 1992).

Function of district court.

Section 63-46b-16(1) provides that all final agency decisions through formal adjudicative proceedings will be reviewed by the Utah Supreme Court or Court of Appeals. Therefore, the district court will no longer function as intermediate appellate court except to review informal adjudicative proceedings de novo pursuant to Subsection (1)(a) of this section. In re Topik, 761 P.2d 32 (Utah Ct. App. 1988), cert. denied, 773 P.2d 45 (Utah 1989).

The only appellate jurisdiction statutorily delegated to the district court is to review informal agency adjudicative proceedings. *State v. Humphrey*, 794 P.2d 496 (Utah Ct. App. 1990).

Right to judicial proceeding.
 District court erred in declining a de novo review of a dentist's claim to licensure by reciprocity, where there had been no proceeding on his application that was sufficiently judicial in nature, and he had not yet had the licensing agency's action reviewed in a "trial-type hearing." *Kirk v. Division of Occupational & Professional Licensing*, 815 P.2d 242 (Utah Ct. App. 1991).

Cited in Southern Utah Wilderness Alliance v. Board of State Lands & Forestry, 830 P.2d 233 (Utah 1992); *Bonneville Int'l Corp. v. Utah State Tax Comm'n.* 219 Utah Adv. Rep. 52 (Ct. App. 1993).

63-46b-16. Judicial review — Formal adjudicative proceedings.

(1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative proceedings.

(2) (a) To seek judicial review of final agency action resulting from formal adjudicative proceedings, the petitioner shall file a petition for review of agency action with the appropriate appellate court in the form required by the appellate rules of the appropriate appellate court.

(b) The appellate rules of the appropriate appellate court shall govern all additional filings and proceedings in the appellate court.

(3) The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except that:

(a) all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

(b) the appellate court may tax the cost of preparing transcripts and copies for the record:

- (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or
 - (ii) according to any other provision of law.
- (4) The appellate court shall grant relief only if, on the basis of the agency's record, it determines that a person seeking judicial review has been substantially prejudiced by any of the following:
- (a) the agency action, or the statute or rule on which the agency action is based, is unconstitutional on its face or as applied;
 - (b) the agency has acted beyond the jurisdiction conferred by any statute;
 - (c) the agency has not decided all of the issues requiring resolution;
 - (d) the agency has erroneously interpreted or applied the law;
 - (e) the agency has engaged in an unlawful procedure or decision-making process, or has failed to follow prescribed procedure;
 - (f) the persons taking the agency action were illegally constituted as a decision-making body or were subject to disqualification;
 - (g) the agency action is based upon a determination of fact, made or implied by the agency, that is not supported by substantial evidence when viewed in light of the whole record before the court;
 - (h) the agency action is:
 - (i) an abuse of the discretion delegated to the agency by statute;
 - (ii) contrary to a rule of the agency;
 - (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or
 - (iv) otherwise arbitrary or capricious.

History: C. 1953, 63-46b-16, enacted by L. 1987, ch. 161, § 272; 1988, ch. 72, § 26.

Cross-References. — Review of proceed-

ings before State Tax Commission, jurisdiction and standard. §§ 59-1-601, 59-1-610.

NOTES TO DECISIONS

ANALYSIS

Agency action.
 Applicability of section.
 Arbitrary action.
 Conflicting evidence.
 Factual findings.
 Final order.
 Function of district court.
 Jurisdictional hearing by board.
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 Review.
 Standard of review.
 — Interpretation of statutory term.
 — Questions of law.
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Agency action.
 Whether the Industrial Commission acted contrary to its own rule is governed by Subsection (4)(h)(ii) of this section. *Ashcroft v. Indus-*

trial Comm'n, 855 P.2d 267 (Utah Ct. App. 1993).

Applicability of section.

Subsection (4) deals with judicial relief, not judicial review. It does not affect the degree of deference an appellate court grants to an agency's decision. Rather, it ensures that relief should not be granted when, although the agency committed error, the error was harmless. *Morton Int'l, Inc. v. Utah State Tax Comm'n*, 814 P.2d 581 (Utah 1991).

Arbitrary action.

Industrial commission's denial of occupational disease disability benefits based upon a solitary finding regarding the ultimate issue of causation failed to disclose the steps by which the ultimate factual conclusions, or conclusions of mixed fact and law, were reached, and therefore rendered the action arbitrary. *Adams v. Board of Review*, 821 P.2d 1 (Utah Ct. App. 1991).

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF
LEO N. TAYLOR
TO PRACTICE AS A VETERINARIAN
IN THE STATE OF UTAH

:
: **FINDINGS OF FACT**
: **CONCLUSIONS OF LAW**
: **AND RECOMMENDED ORDER**
: CASE NO. OPL-95-19
:

Appearances:

R. Paul Allred for the Division of Occupational and
Professional Licensing

Everett E. Dahl for Respondent

BY THE BOARD:

A hearing was conducted on March 18-20, 1996 in the above-entitled proceeding before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the Veterinary Board. Board members present were Edmund L. Sperry, Roger E. Rees, Denzel E. Taylor and Katherine R. Brown. The remaining Board member, Gilbert Orme, was absent and did not participate in this proceeding. J. Craig Jackson, Director of the Division of Occupational and Professional Licensing, was present.

Thereafter, evidence was offered and received. The Board, being fully advised in the premises, now enters its Findings of Fact, Conclusions of Law and submits the following Recommended Order for review and action by the Division:

FINDINGS OF FACT

1. Respondent is, and at all time relevant to this proceeding has been, licensed to practice as a veterinarian in this state. Respondent became so licensed in 1956. Respondent maintains a large and small animal veterinary practice at Brookside Animal Hospital, located in West Jordan, Utah.

2. Brookside Animal Hospital was built in 1970. Respondent has maintained a high volume practice at that facility since 1991. Dr. Boyd Stock also provided veterinary services at that facility from October 5, 1992 until May 5, 1995.

3. On July 8, 1993, Respondent provided initial veterinary services to a cocker spaniel, Oscar, owned by Vicki Crocker. Oscar had sustained a broken leg when hit by an automobile. Oscar was in severe shock and pain when Mrs. Crocker brought him to Brookside Animal Hospital.

4. Respondent performed surgery on July 10, 1993 to repair the humeral fracture of Oscar's leg by uniting that fracture with a galvanized rod which Respondent had prepared from supplies maintained at the hospital. Based on the more credible evidence presented, Respondent did not use a stainless steel intramedullary pin for the just-described surgical procedure.

5. The galvanized rod which Respondent used was too small in diameter to adequately stabilize the fracture. Moreover, the rod was not inserted in the medullary canal as to properly unite the various bone fragments which were present. Respondent did not take a post-operative x-ray to confirm that the galvanized

rod was properly positioned as to effectively repair the fracture.

6. Respondent wrapped chromic gut around the fracture as to stabilize the bone during the subsequent healing process. Chromic gut is only properly used for soft tissue repair, inasmuch as that material will deteriorate before any bone has been stabilized in a calloused state. Accordingly, Respondent improperly used chromic gut for the above-described surgical procedure.

7. Oscar remained in Respondent's care until July 17, 1993. When Respondent released Oscar to Mrs. Crocker, he did not provide accurate post-operative instructions to her that Oscar's mobility should be limited during the initial healing period. Rather, one of Respondent's employees verbally instructed Mrs. Crocker that Oscar should be encouraged to use his fractured leg.

8. When Oscar subsequently refused to walk and was very lethargic, Mrs. Crocker took Oscar to another veterinarian, Dr. James R. Kallman, on July 19, 1993. Dr. Kallman briefly examined Oscar and obtained a medical history from Mrs. Crocker. Dr. Kallman then took x-rays, which revealed the fracture was not united, the galvanized rod was not in the medullary canal and the pieces of bone were not reduced.

9. There is no substantial evidence Dr. Kallman performed any surgical procedure on Oscar or otherwise altered the position of the galvanized rod as presented when Mrs. Crocker brought the dog to him. Dr. Kallman then referred Oscar to Dr. Dale Smith,

an orthopedic surgeon.

10. Dr. Smith treated Oscar on July 20, 1993. Specifically, Dr. Smith reviewed the x-rays previously taken by Dr. Kallman. He then removed the galvanized rod in Oscar's leg and inserted a bone plate to repair the humeral fracture. There is no substantial evidence that anyone other than Respondent inserted the galvanized rod in Oscar's leg.

11. Based on the substantial and credible evidence presented, Respondent had used galvanized material, which is subject to rusting and deterioration, to serve as an intramedullary pin in Oscar's leg. However, Respondent should have used a stainless steel pin manufactured for surgical use. Further, Respondent should have wrapped stainless steel wire around the fracture to sufficiently stabilize the bone during the subsequent healing process.

12. Respondent did not maintain any sufficient medical records of the treatment which he rendered to Oscar. The pre-operative x-ray which Respondent took of the fracture was not sufficient to allow him to adequately diagnose and treat that condition. Specifically, two x-rays should have been taken to thus reveal both joints of the humerus, above and below the fracture.

13. Respondent did not record Oscar's medical history or any physical examination of the animal. Further, Respondent did not record any surgery report or progress notes as to document Oscar's condition while in his care. Respondent's diagnosis of

Oscar - a fractured humerus - is reflected on billing records maintained by the hospital.

14. Michael and Rebecca De Guzman took their chow/lab mix, Nadia, to Respondent for treatment on December 23, 1993. Nadia was afflicted with mastitis and remained in Respondent's care until December 27, 1993. There is a lack of credible evidence to find Respondent physically abused Nadia while that dog was in his care.

15. When the mastitis ulcerated and ruptured, Respondent removed skin around that wound without adequately shaving the area. The wound was approximately five inches by two inches. There is lack of sufficient evidence to find Respondent did not administer an anesthetic before he treated Nadia. Respondent acted properly when he left the wound open to drain without applying a bandage and dressing.

16. Respondent gave the De Guzman's medication (Granulex) to treat the wound. However, the De Guzmans took Nadia to Dr. Jolie R. Brown on December 28, 1993 for subsequent treatment and surgery. Specifically, Dr. Brown further shaved the area. She also debrided additional dead tissue.

17. Respondent did not record Nadia's medical history or any physical examination of that animal. Further, Respondent did not record any surgery report or progress notes as to document Nadia's condition while under his care. Respondent's diagnosis of Nadia - mastitis - is reflected on billing records maintained by the hospital.

18. Cindy Bue took her English bulldog, Hillary, to Respondent to be artificially inseminated. With due regard for the certification of breeding which Respondent executed as to Hillary and notwithstanding Respondent's testimony to the contrary, substantial and credible evidence exists and the Board thus finds that Respondent artificially inseminated Hillary on April 21 and 23, 1994.

19. On June 17, 1994, Hillary exhibited labor symptoms. Ms. Bue contacted Respondent, who instructed her to bring the dog to the hospital the following day. Ms. Bue took Hillary to Respondent's clinic on the morning of June 18, 1994. Hillary had passed two dead pups prior to arriving at the hospital. Based on the more credible evidence presented, and with due regard for the billing records maintained by Respondent, the Board finds that Respondent examined Hillary.

20. Respondent thus palpated Hillary to diagnose her condition. Given the physiology of English bulldogs, Respondent could not possibly palpate Hillary to accurately determine if she had delivered the entire litter. Moreover, Respondent did not take an x-ray to accurately and adequately assess Hillary's condition. Respondent informed Ms. Bue that the litter was premature and any remaining pups would be born dead. Respondent determined that no surgical intervention would be necessary, as he believed Hillary would successfully pass the pups without such assistance.

21. Based on the more credible evidence presented, Hillary

remained in Respondent's care until June 19, 1994. Respondent informed Ms. Bue on that date that Hillary had passed the last pup, which was also premature and dead. Respondent made that representation without having taken an x-ray to adequately diagnose Hillary's condition and accurately determine whether she had delivered the entire litter. There is no credible and substantial evidence that Respondent performed any procedure, whereby he allegedly inserted a catheter into Hillary's uterus to flush out the dog.

22. Respondent released Hillary to Ms. Bue on June 19, 1994. The dog passed another dead pup later that evening and started to bleed heavily. Ms. Bue took Hillary to Dr. Mayling Chinn shortly before midnight on June 19, 1994. Hillary subsequently dropped another dead pup. Based on the credible evidence presented, that animal was fully formed to term.

23. Dr. Chinn took x-rays which revealed one additional pup yet to be born. Hillary was in shock and almost died due to prolonged labor. Dr. Chinn thus performed an emergency C-section on the morning of June 20, 1994. Based on the more credible evidenced presented, the last dead pup was fully formed to term.

24. Given the dual artificial insemination procedures which Respondent performed and Hillary's condition when presented to Respondent for treatment on June 18, 1994, Respondent improperly released Hillary on June 19, 1994 without taking an x-ray to adequately diagnose Hillary's condition. Respondent's failure to have taken that x-ray subsequently jeopardized Hillary's health,

due to the ensuing lengthy and difficult labor.

25. Any adequate x-ray would have revealed the presence of additional pups and Respondent could have then provided adequate treatment for Hillary. Given the more credible evidence and the reasonable inferences drawn therefrom, no substantial evidence exists to find that Ms. Bue declined to have Respondent perform a C-section, particularly on any consideration of the cost of that procedure.

26. Respondent also did not document Hillary's medical history or his physical examination of that animal. Further, Respondent did not document his diagnosis of Hillary and her progress while in his care.

27. Cheryl Devlin's male chow chow, Shakesbear, sustained injuries when he fell off a porch on May 24, 1994. Ms. Devlin's brother, Dean Schofield, took Shakesbear to Respondent for treatment. Respondent took an x-ray and kept Shakesbear for observation.

28. Based on the x-ray, Respondent informed Mr. Schofield that Shakesbear's spine was injured and his disks were out of alignment. Respondent did not take two x-rays to accurately diagnose Shakesbear's condition. Further, the x-ray which Respondent took reveals no evidence of any misaligned disks. Based on his faulty diagnosis, Respondent concluded Shakesbear would not walk again. Respondent thus suggested Shakesbear be euthanized and he so informed Mr. Schofield on May 25, 1994.

29. Mr. Schofield took Shakesbear from Respondent's care on

May 26, 1994 to obtain a second opinion from another veterinarian. Based on the more credible evidence presented, Shakesbear was substantially immobilized and unable to control his bladder function while in Respondent's care. When Mr. Schofield retrieved Shakesbear, the dog was wet and strongly smelled of urine.

30. Respondent did not document Shakesbear's medical history or his physical examination of that animal. Further, Respondent did not document his diagnosis of Shakesbear and the dog's progress while in his care.

31. Dr. Gary L. Peterson treated Shakesbear on May 26, 1994. Specifically, Dr. Peterson reviewed the x-ray previously taken by Respondent. However, Dr. Peterson also took a myelogram because the prior x-ray was not sufficient to establish a diagnosis. Dr. Peterson determined Shakesbear had pain sensation in his legs and that the dog could recover from his existing condition.

32. Dr. Peterson's examination also revealed Shakesbear was afflicted with a severe and extensive urine scald. Based on the more credible evidence presented and the proper inferences drawn therefrom, that condition developed when Shakesbear was in Respondent's care, the dog was unattended and thus sat in his own urine for two days. Respondent did not provide adequate nursing observation and care as to maintain Shakesbear in a sanitary environment. The urine scald was resolved approximately 1 - 2 months later. Shakesbear also recovered his ability to walk.

33. Stephanie Picklesimer took her Chinese shar pei, Char, to Respondent on October 11, 1994. Respondent was to spay the dog. Respondent contacted Ms. Picklesimer on October 12, 1994, informed her the dog did not tolerate the anesthesia which he had administered to perform the procedure and the dog had died.

34. Respondent then performed a necropsy on the dog and he thus informed Ms. Picklesimer that the dog had died due to an irregular shaped heart and pneumonia. Ms. Picklesimer took Char's body to Dr. Scott Vande Griend on October 12, 1994. Dr. Vande Griend performed a second necropsy on that date. The second necropsy revealed no irregular shaped heart or any evidence of pneumonia. No abnormalities were detected as to Char's heart or lungs. Based on the more credible evidence presented, Respondent misdiagnosed the cause of Char's death.

CONCLUSIONS OF LAW

§58-1-401(2) provides the Division may revoke, suspend, restrict, place on probation, issue a public or private reprimand to, or otherwise act upon the license of any licensee who:

(a)...has engaged in unprofessional conduct, as defined by statute or rule under this title.

§58-1-501(2) generally defines unprofessional conduct to include:

(b) violating . . . any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

(g) practicing . . . an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence.

§58-28-2(6) further defines unprofessional conduct to include:

(a) applying unsanitary methods or procedures in the treatment of any animal, contrary to rules adopted by the board and approved by the division.

R156-28-8 provides:

(3) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to include the proper routine disposal of waste materials and proper sterilization and/or sanitation of all equipment used in diagnosis and/or treatment.

Respondent has repeatedly violated various generally accepted professional standards applicable to the practice of veterinary medicine. Generally, he failed to document that a medical history was taken of each animal and that a physical examination was performed on each animal. Respondent also failed to record the surgical procedures used on any animal and the progress and condition of each animal while in his care. Moreover, Respondent failed to document his diagnosis of Hillary and Shakesbear.

Respondent also violated generally accepted professional standards when he failed to take adequate x-rays in numerous instances, which then seriously compromised the quality of subsequent veterinary care he provided to Hillary, Oscar and Shakesbear. Respondent's decision to only palpate Hillary as the sole means to diagnose her condition was entirely unjustified. His corollary failure to take a necessary x-ray thus precluded any accurate diagnosis of Hillary's condition. Accordingly, Respondent failed to take appropriate action as to stabilize

Hillary's condition and assist her in labor to deliver any mature pups. Such conduct reflects an extreme and egregious departure from generally accepted professional standards.

Respondent's failure to take necessary and adequate x-rays precluded any accurate diagnosis of Oscar's condition. Accordingly, Respondent failed to perform a complete and effective surgical procedure. He also failed to take a post-operative x-ray to confirm the proper location of the rod which he surgically implanted to stabilize the fracture.

Respondent's failure to take an adequate x-ray precluded any accurate diagnosis of Shakesbear's condition. Accordingly, Respondent failed to both substantiate his prognosis for Shakesbear and properly identify available treatment which could promote recovery under the circumstances. Such conduct reflects an extreme and egregious departure from generally accepted professional standards.

Significantly, Respondent's treatment of Oscar also reflects a woefully deficient surgical procedure. He used an improper device, both in size and composition, to perform that surgery. Respondent then failed to both properly position the rod and use the appropriate wire to stabilize the fracture. Such conduct again reflects an extreme and egregious departure from generally accepted professional standards.

Further, Respondent's post-operative treatment of Oscar was seriously lacking in important respects. He failed to confirm whether the rod was properly positioned. Moreover, there is no

substantial evidence that Respondent provided - either directly or through any employee - accurate post-operative instructions to Mrs. Crocker regarding the need to limit Oscar's use of the fractured leg during the initial healing period.

Respondent violated generally accepted professional standards when he provided inadequate pre-operative care in his treatment of Nadia. He failed to properly shave the area affected with mastitis. Respondent also failed to provide adequate nursing care and observation for Shakesbear. The resulting injury from an extensive urine scald reflects Respondent's failure to maintain a sanitary environment as to avoid a source of a potential infection for Shakesbear while in his care. Respondent's failure thus prompted necessary subsequent remedial action as to that animal.

Finally, Respondent violated generally accepted professional standards when he failed to perform any adequate pre-operative examination of Char as to identify any purported pneumonic condition prior to anesthetizing that animal. Beyond Respondent's self-serving testimony as to the results of the necropsy which he subsequently performed, there is no substantial evidence that pneumonia and/or any irregularly shaped heart caused Char's death. Based on the more substantial and credible evidence, Respondent misdiagnosed and then misrepresented the cause of Char's death.

No statutory definition exists of "gross incompetence" or "gross negligence", as those terms are used in Section 58-1-

501(2). Moreover, Utah courts have not interpreted those terms in the context of a professional licensure proceeding. The Utah Supreme Court generally addressed the distinction between negligence and gross negligence in Strange v. Ostlund, 594 P.2d. 877 (1979), a case of alleged willful misconduct regarding an automobile accident. The Court thus stated:

The line of culpability between that conduct which is simply negligent and that conduct which is clearly intentional is a matter of degree. And at some point along that line, accumulated aggravation of negligence amounts to willful misconduct. Terms such as . . . gross negligence . . . fall on that line of culpability somewhere between simple negligence and clearly intentional conduct and involve elements of both. A finding of gross negligence does not preclude finding elements of intent. Id. at 881.

However, courts in other states have addressed the issues of competency and negligence in a professional setting relative to licensure proceedings. Generally, incompetence refers to something less than the "minimally acceptable level of learning and skill" in the practice of a given profession. Board of Dental Examiners v. Brown, 448 A.2d 881, 884 (Me. 1982). Gross incompetence is an extreme deficiency in the basic knowledge and skills necessary to practice at the minimum degree of necessary technical expertise or ability. See Tomlinson v. State of Washington, Dental Disciplinary Board, 51 Wash.App. 472, 754 P.2d 109, 114 (1988); Faulkner v. North Carolina State Hearing Aid Dealers and Fitters Board, 38 N.C.App. 222, 247 S.E.2d 668, 669-70 (1978).

Negligence usually refers to "the failure to use the degree of care required under the particular circumstances involved".

See Duncan v. Missouri Board for Architects, Professional Engineers and Land Surveyors, Mo. App., 744 S.W.2d 524 532 (1988). Courts have defined gross negligence as:

. . . substantially and appreciably higher in magnitude than ordinary negligence. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others.

Hellman v. Board of Registration in Medicine, 404 Mass. 800, 537 N.E.2d 150, 152 (1989).

Some courts have concluded that gross negligence differs from ordinary negligence only in degree and not in kind, that it signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences, and that it is merely an extreme departure from the ordinary standard of care. See Wright v. State Board of Engineering Examiners, 250 N.W.2d 412 (Iowa 1977); Vivian v. Examining Board of Architects, etc., 61 Wis.2d 627 213 N.W.2d 359 (1974).

Other courts have concluded gross negligence differs from ordinary negligence in kind and not degree. Those courts "view gross negligence as a conduct of such magnitude or reoccurrence as to infer, or indicate, or cause a presumption that the actor

is indifferent to his obligations, to the probable consequences of his act or acts, and to the right of others". See Duncan v. Missouri Board for Architects Professional Engineers and Land Surveyors, supra, at 533, and authorities cited therein.

An act "which demonstrates a conscious indifference to a professional duty would appear to be a reckless act or more seriously a willful and wanton abrogation of professional responsibility". Duncan v. Missouri Board for Architects, Professional Engineers and Land Surveyors, supra. Further, "discipline for more than mere inadvertence . . . requires a finding that the conduct is so egregious as to warrant an inference of a mental state unacceptable" in a licensed professional. See Duncan v. Missouri Board for Architects, Professional Engineers and Land Surveyors, supra.

Respondent has practiced veterinary medicine in both a grossly incompetent and grossly negligent manner. Specifically, Respondent engaged in grossly incompetent practices as to his treatment of Oscar, Hillary and Shakesbear in numerous respects. Respondent was grossly incompetent when he improperly used a galvanized rod and failed to utilize a stainless steel pin in the surgical procedure for Oscar. Respondent was also grossly incompetent when he improperly used chromic gut and failed to use stainless steel as to stabilize the fracture.

Respondent was grossly incompetent in his treatment of Hillary when he elected to only palpate the dog as the sole means to diagnose her condition. Respondent was grossly incompetent in

his treatment of Shakesbear when he diagnosed that dog's condition without resort to any adequate x-rays, he made an unsubstantiated prognosis and then recommended the dog be euthanized.

Respondent engaged in grossly negligent conduct with respect to the treatment he provided every animal. Specifically, Respondent failed to obtain a sufficient pre-operative x-ray as to diagnose and treat Oscar. He also used a device too small and of improper composition to stabilize the fracture in Oscar's leg. Respondent also failed to position the galvanized rod in the medullary canal as to properly unite bone fragments. Further, Respondent took no post-operative x-ray to confirm the proper position of that rod.

Respondent's conduct was grossly negligent when he took no x-ray to accurately and adequately diagnose Hillary's condition and when he improperly released that dog without adequate diagnosis and treatment. Respondent engaged in grossly negligent conduct as to Shakesbear when he failed to take an adequate x-ray to accurately diagnose the condition of that dog. Moreover, Respondent failed to provide adequate nursing observation and care as to maintain Shakesbear in a sanitary environment. Respondent further engaged in grossly negligent conduct when he misdiagnosed the cause of Char's death.

Respondent also engaged in a repeated pattern of negligence as to each of the animals in questions. Specifically, he failed to record a medical history or his physical examination of Oscar,

Nadia, Hillary and Shakesbear. Respondent failed to record an adequate surgery report as to Oscar and Nadia. He failed to record progress notes as to Oscar, Nadia, Hillary and Shakesbear. Finally, Respondent failed to record a diagnosis as to Hillary and Shakesbear.

Respondent has engaged in numerous instances of unprofessional conduct. Moreover, his practices of veterinary medicine reflect repeated occasions of gross incompetence, gross negligence and a pattern of negligence. Thus, a proper factual and legal basis exists to enter a disciplinary sanction as to Respondent's license.

Respondent has repeatedly engaged in unprofessional conduct in the fundamental aspects of the practice of veterinary medicine. He has failed to render adequate diagnoses and he has not provided adequate pre-operative care. Respondent utterly failed to perform and complete an effective surgical procedure in one instance. He also failed to render adequate post-operative care on two occasions. Respondent does not generally maintain adequate medical records. Simply put, Respondent's misconduct permeates many critical phases of his veterinary practice.

There are numerous aggravating factors which should be considered regarding the disciplinary sanction to be imposed in this proceeding. Respondent has engaged in multiple instances of unprofessional conduct, which reflect either an inability to provide minimally acceptable veterinary care or a callous indifference to the condition and needs of those animals

presented for such care. Respondent's unprofessional conduct exposed Hillary, Oscar and Shakesbear to potential or actual serious injury. Moreover, Respondent has uniformly refused to acknowledge the wrongful nature of his misconduct to either this Board or any of the owners of the animals in question.

Respondent has inexcusably failed to maintain ongoing compliance with those professional standards which generally govern all veterinarians in this state. Given Respondent's substantial experience as a practicing veterinarian, he should be fully able and capable of performing his professional duties in a competent and safe manner. Nevertheless, Respondent has failed to do so. Further, there is no evidence Respondent undertook any good faith efforts to make restitution or rectify the consequences of his misconduct.

The Board duly notes Respondent's license has not been previously subject to disciplinary sanction. Given Respondent's lengthy professional career and the high volume of his caseload, it is to be expected that certain animal owners would be entirely satisfied with the services which Respondent has provided. Concededly, Respondent's fee schedule may be quite attractive to some animal owners who could not afford or decide to avoid veterinary care at significantly greater cost elsewhere.

Nevertheless, Respondent's ability and willingness to provide veterinary care at a measurably lower cost does not relieve him of the continuing obligation to provide competent and adequate services to those animal owners who seek his veterinary

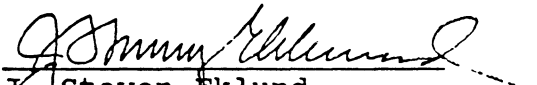
services. The Board reluctantly, but necessarily concludes the Recommended Order set forth below is warranted to properly address the nature and severity of Respondent's repeated gross incompetence, gross negligence and his failure to conduct a veterinary practice consistent with those generally accepted standards governing that profession.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED that Respondent's license to practice as a veterinarian in this state shall be revoked.

It is further ordered the revocation not become effective until June 1, 1996 to thus allow Respondent a reasonable time to transfer the ongoing care of any animals to other veterinarians.

On behalf of the Veterinary Board, I hereby certify the foregoing Findings of Fact, Conclusions of Law and Recommended Order was submitted to J. Craig Jackson, Director of the Division of Occupational and Professional Licensing, on the 12th day of April, 1996 for his review and action.


J. Steven Eklund
Administrative Law Judge

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
LEO N. TAYLOR
TO PRACTICE AS A VETERINARIAN
IN THE STATE OF UTAH

:
:
:
:
:
:

O R D E R
Case No. DOPL-95-19

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational and Professional Licensing of the State of Utah. Respondent's license is thus revoked, effective June 1, 1996.

IT IS FURTHER ORDERED that the revoked license, both wall and wallet sizes, as well as the embossed certificate, thus be surrendered to the Division of Occupational and Professional Licensing.

Dated this 15 day of April, 1996.




J. Craig Jackson
Director

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63-46b-12 of the Utah Code, and Section R151-46b-13 of the Utah Administrative Code.

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OCT 23 1996

IN THE SUPREME COURT OF THE STATE OF UTAH

STIRBA & HATHAWAY

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In re Richard Worthen,
Justice Court Judge.

No. 950536

William Gibbs,
Complainant.

In re Gaylen Buckley,
Justice Court Judge.

No. 950537

Robert Newton,
Complainant.

F I L E D

October 22, 1996

Disciplinary Proceedings from the Judicial Conduct Commission

Attorneys: Stanley R. Smith, Lisabeth Joner, American Fork,
for Judge Worthen
Benson L. Hathaway, Salt Lake City, for Judge
Buckley
Steven H. Stewart, Salt Lake City, for the Commission

ZIMMERMAN, Chief Justice:

These matters came before us on the motions of Justice Court Judges Richard Worthen and Gaylen Buckley. Both requested a hearing at which they could present additional evidence and argument prior to our issuance of any order implementing, modifying, or rejecting the orders of the Judicial Conduct Commission ("Commission"), entered under section 78-7-28 of the Utah Code, sanctioning each judge for willful misconduct in office and for conduct prejudicial to the administration of justice. The judges also requested that we close our hearings to the public. We granted their request for hearings but declined to close the hearings.¹ Having heard oral argument, we now

¹ Our order in each case read:

No good cause having been shown as to

(Footnote continued on the next page.)

remand these cases to the Commission for further proceedings.

A prefatory note is in order. These are the first cases to come before us where the Commission has entered an order imposing sanctions against Utah judges and the judges have challenged the Commission's action. As a result, these are the first cases where we have been called upon to construe the relevant constitutional and statutory provisions and to scrutinize the Commission's conduct of its business. Our conclusion that errors have been committed and that these cases should be remanded should not be construed as an indication that the Commission has in some manner fundamentally failed in the performance of its duties or that the conduct of these judges does not merit the Commission's attention. Rather, due to the relative newness of the Commission and the paucity of guidance provided it by the constitution, statutes, and case law, it is not surprising that we find the proceedings before us wanting in some respects. Today, we undertake to supply some of the guidance the Commission needs if it is to fulfill the essential tasks that it has been assigned.

We begin with a brief review of the Commission's history and function. From 1896 to 1971, there were only two methods for disciplining judges whose conduct violated ethical norms. "Removal from office" was authorized under article VIII, section 11 (repealed 1984). Removal could be accomplished only by a concurrent vote of both houses of the legislature, with two-thirds of the members of each house concurring in the removal. Utah Const. art. VIII, § 11. The article provides that removal should be "for cause" but does not specify any particular causes. In contrast, article VI, section 19 provided (as it does today) for impeachment of judicial officers for high crimes, misdemeanors, or malfeasance in office. Impeachment could be initiated only by a vote of two-thirds of the members of the house of representatives, and trial was had to the senate, with

¹ (Footnote continued.)

why these proceedings should not be open to the public, THE COURT ORDERS THAT:

1) The hearing on implementation of the Judicial Conduct Commission's order in Re: [The Honorable Richard Worthen] [The Honorable Gaylen Buckley], Justice Court Judge shall be open;

2) All documents filed with the court by parties and proposed intervenors are hereby made public, pursuant to section 78-7-30(5)(i).

laws. In addition, as we explain below, the substance of the Commission's charges and findings is not entirely clear. As a result, we cannot tell precisely what ethical breaches occurred and whether they amount to "willful misconduct" or "prejudicial conduct." Second, the context in which the alleged unjudicial conduct occurred is not dealt with in the Commission's findings, which makes it virtually impossible for us to evaluate whether the alleged misconduct was willful or whether it prejudiced public esteem for the judiciary. Third, the Commission's findings fail to resolve several disputed issues of fact, thus preventing us from determining whether the findings are simply incomplete or whether there was insufficient proof of the Commission's charges. Finally, the Commission failed to explain how the facts as found by the masters logically support the Commission's ultimate conclusions.

We recognize that these are among the Commission's first formal discipline cases and that it has not had the benefit of any interpretation of the governing constitutional and statutory standards it is to apply. As a result, the Commission did not know that it must establish "unjudicial conduct" by reference to the ethical canons contained in the Code of Judicial Conduct and to any underlying statutes and court rules with which the failure to comply constituted an ethical violation. We also recognize that without the benefit of today's decision, the masters asked to find facts for the Commission had no clear legal standard against which to evaluate the facts. Our opinion today should prevent these problems from arising in the future. But whatever the reason, we find it impossible to perform our constitutional and statutory review function on the two records before us. Because of these deficiencies, and because of due process problems we address later in this opinion, we remand these cases to the Commission for further proceedings. To facilitate those proceedings, we set forth the general standard that Commission findings and conclusions must meet, and then we identify some of the specific problems with the Commission's findings and conclusions before us.

A general observation about the standard by which the Commission's findings, conclusions, and reasoning will be judged: We expect the Commission's findings to resolve questions of fact and provide an explanation of its assessment of the facts so as to provide a reasoned basis for its decision. There must be an explanation of the linkage between the raw facts and the Commission's ultimate conclusions, including an explanation of why the Commission drew the inferences from the facts that it did. Finally, the Commission must logically link its factual findings and legal conclusions to the recommended sanction order to explain why it chose one sanction over another. These

requirements are not out of the ordinary. They are consistent with what we have required of other state agencies. As we explained when describing the obligation of the Public Service Commission to demonstrate the basis for its orders:

The Commission cannot discharge its statutory responsibilities without making findings of fact on all necessary ultimate issues under the governing statutory standards. It is also essential that the Commission make subsidiary findings in sufficient detail that the critical subordinate factual issues are highlighted and resolved in such a fashion as to demonstrate that there is a logical and legal basis for the ultimate conclusions. The importance of complete, accurate, and consistent findings of fact is essential to a proper determination by an administrative agency. To that end, findings should be sufficiently detailed to disclose the steps by which the ultimate factual conclusions, or conclusions of mixed law and fact, are reached. Without such findings, this Court cannot perform its duty of reviewing the Commission's order in accordance with established legal principles and of protecting the parties and the public from arbitrary and capricious administrative action.

Milne Truck Lines, Inc. v. Public Service Comm'n, 720 P.2d 1373, 1378 (Utah 1986).

The value of this requirement is well illustrated in the instant cases. For example, we cannot determine from the materials before us whether the alleged misconduct in these cases constituted unjudicial conduct as we have defined that term or otherwise departed from widespread justice court practice. As a result, we cannot assess whether, under the test for prejudicial conduct, such conduct would appear to an objective observer to have prejudiced public esteem for the judicial office. These same concerns pertain to the Commission's conclusion of willful misconduct because the Commission has failed to specify the relevant unjudicial conduct or to establish that bad faith was involved.

A few specific examples will highlight the problematic nature of the Commission's findings in these cases. In Judge

Buckley's case, there is insufficient information about the larger context against which his actions are to be judged. We cannot tell whether his practice of allowing his clerk to sign misdemeanor informations was followed by other justice court judges, because of a lack of clarity in the statutes or because of some other justifiable reason, which may have a bearing on whether his conduct was or was not willful or prejudicial. Whether the practice was widespread may also bear on the level of sanctions to be imposed. Moreover, at Judge Buckley's hearing, the Commission's examiner/prosecutor questioned Judge Buckley about the procedure for handling a traffic citation when the violator refuses to sign the citation, with the implication that a different court procedure is called for in such cases.¹¹

¹¹ The following questions by the Commission's examiner/prosecutor and answers from Judge Buckley illustrates the tone of the hearing:

Q. When you took the bench you were provided with a handbook, something called a manual, were you not?

A. I was.

Q. And that sets out all of the procedures in--(Inaudible) contact with?

A. That is incorrect.

Q. Does it set out any procedures about issuance of informations?

A. I'm sure it does.

Q. Does it -- information concerning traffic citations, unsigned traffic citations?

A. I don't recall.

Q. Have you looked in that book recently?

A. Yes, I have.

Q. Does it tell you anything about what a traffic ticket means?

A. Yes.

Q. Does it tell you about when it's not a signed traffic ticket, what you must do?

A. At the time when I had this issue I really didn't understand that process; I do now. That's why I made the notation in my notes that in any succeeding case that --

Q. For seven years you've had this -- you've never looked at it[.] (Inaudible) If you've had a question you've never --

A. That is incorrect.

Needless to say, the record includes no manual as an exhibit to support the examiner's claim, nor have we been able to find any
(Footnote continued on the next page.)

However, the Commission does not identify what the supposedly proper procedure would be, and we have not been able to find any statute or rule that would call for a different procedure in such cases.

Similarly, to the extent that allegations regarding Judge Buckley's misconduct are premised on violations of technical statutes and court rules, the Commission's notice of charges fails to identify all such statutes and rules, and the Commission's findings do not mention any of them. As a result, we cannot determine which of the numerous factual findings relate to what violations,¹² and this problem makes it virtually impossible for us to parse the facts and theories which support each of the charges.

Moving beyond the lack of clarity as to the specific ethical violations at issue, we note again that mere errors of law, such as defects in the procedures followed and the imposition of excessive contempt sanctions, should ordinarily be dealt with through the appeals process. It is true that if a judge persistently commits the same error so as to demonstrate the bad faith necessary to support a charge of willful misconduct or the type of disregard and indifference necessary to support a charge of prejudicial conduct, then invocation of the disciplinary machinery is appropriate. See, e.g., In re Crowell, 379 So. 2d 107, 110 (Fla. 1980); Goldman v. Nevada Comm'n on Judicial Discipline, 830 P.2d at 132-36; Shaman, *supra*, § 2.03, at 37-38. But here, the Commission's findings do not explain why Judge Buckley's errors, including his conceded excessive contempt sanction against Newton, rise to the level of ethical misconduct,

¹¹ (Footnote continued.)
legal authority calling for a different procedure by justice court judges when a violator fails to sign a citation.

¹² We note, for example, that the Commission's notice of charges stated that Judge Buckley improperly prepared four documents in the Newton case in violation of rules 3-303 and 4-403(2) and (3) of the Utah Code of Judicial Administration. These rules relate to court clerks' duties and use of a judge's signature stamp. Two of the four documents listed by the Commission, however, were personally signed by Judge Buckley. Because the Commission's subsequent findings fail to relate the facts to the governing statutes and rules, we cannot determine whether the Commission concluded that these two documents were improperly prepared, nor can we determine to what extent the Commission relied on facts surrounding these documents in imposing sanctions.

as opposed to mere errors of law. Moreover, even if Judge Buckley committed an error of law that is sanctionable, detailed information on whether, how, and why the judge corrected the mistake is at least necessary to decide upon a proper sanction. Without factual findings that support each charge and an explanation of the Commission's ultimate conclusion, we cannot appropriately decide whether sanctions are warranted at all and, if so, what the proper sanction should be.

Similarly, in Judge Worthen's case, we cannot analyze his conduct without some explanation of the larger context in which the incidents arose and without findings that relate specific facts to specific violations of ethical canons, statutes, and court rules. Turning first to the Commission's charge that the judge operated his own private probation program, we note that the practice of justice courts operating their own informal diversion programs was apparently widespread. Memoranda from the court administrator's office to the Judicial Council in May of 1991 and to the circuit and justice court judges in July of 1991 indicate that the informal diversion practices were not in compliance with the diversion statute. According to these documents, justice court judges typically held pleas in abeyance and failed to report traffic convictions. If this was done because of lack of clarity in the statute or because of some other justifiable reasons, then this information is relevant to the issues of willfulness and prejudice and to the issue of the appropriate sanction. The Commission could be claiming that Judge Worthen's conduct was unethical because (i) he participated in the admittedly unauthorized but widespread practice of granting informal diversions (and therefore is being treated somewhat as a scapegoat); (ii) he went beyond even the informal practice by applying it to DUI cases; (iii) he failed to cease the practice after receiving the July 31, 1991, memorandum from the deputy state court administrator; or (iv) some combination of the prior three arguments or some other rationale. None of the contextual facts necessary to support any of these arguments is in the materials before us, nor is the Commission's reasoning apparent. A similar discussion of context is required for the Commission's charges related to Judge Worthen's handling of the case against his clerk's daughter in 1983 and granddaughter in 1992.

The deficiencies noted above make it impossible for us to determine whether either judge committed unjudicial conduct by violating one or more ethical canons. Without establishing that unjudicial conduct occurred, the Commission cannot establish that either prejudicial or willful misconduct occurred. Moreover, even if the findings were sufficient to demonstrate that both judges committed unjudicial conduct while acting in their

judicial capacities, thus satisfying the first and third elements of "willful misconduct in office," the record in each case is currently insufficient to establish the second element of bad faith. For example, although we note that Judge Buckley admitted he was aware of his clerk's habit of using the judge's signature stamp, the masters' findings do not suggest that the practice resulted from an improper purpose. Nor is there any suggestion in the record that the information against Newton--whatever its legal defects--was generated for an improper purpose. Finally, although Judge Buckley concededly exceeded his powers to sanction an individual for contempt, there is again no suggestion in the record that the excessive sanction was imposed for an improper purpose.

In Judge Worthen's case, the special masters noted in a letter accompanying their findings of fact that the record failed to establish, "at least with clarity," the scope of Judge Worthen's administrative duties and whether he was guilty of "simple inattentiveness or intentional withholding" in failing to report convictions to the Division. Before this court, the Commission argues that the masters' findings support an inference that Judge Worthen was intentionally conducting his own private probation program in violation of section 53-3-218 of the Utah Code, which requires courts to forward driver's licenses subject to suspension and to report traffic convictions within ten days of a conviction.¹³ The Commission claims Judge Worthen's acts were committed for a purpose other than the faithful discharge of his duties and involved "gross disconcert, bad faith, and knowing misuse of his office." On the other hand, Judge Worthen maintains that the failure to report the convictions was the result of a clerical failure to submit the reports. As noted above, the masters who heard the evidence failed to reach any conclusion. We therefore cannot discern the logical and legal basis for the Commission's ultimate conclusion, particularly given the absence of any consideration of the fact that many justice court judges engaged in similar practices.

Judge Worthen's conduct in the cases of his clerk's daughter and granddaughter is a closer call. The masters noted that while these incidents are "plainly matters of concern . . . they may be matters more of a lack of sensitivity than

¹³ We note that the Commission's undated notice of charges, which was served on Judge Worthen on January 13, 1994, referred to violations of sections 41-2-126 and 41-2-127 of the Utah Code. Effective July 1, 1993, however, these sections were amended and renumbered as sections 53-3-218 and 53-3-220, respectively. See Act of Feb. 12, 1993, ch. 234, §§ 97, 99, 1993 Utah Laws 1052-53.

culpability." The Commission noted that it had considered the masters' letter but did not modify its order finding Judge Worthen guilty of willful misconduct in office. However, the order did not explain the basis for the Commission's ultimate conclusion. This is problematic because the stipulated facts indicate that the sentence Judge Worthen imposed in 1983 on his clerk's daughter, Libby Drew, was entered pursuant to a plea agreement she reached with the city prosecutor. In the materials submitted to this court, the Commission argues that Judge Worthen should still have disqualified himself, pursuant to canon 3E(1) of the Code of Judicial Conduct, and that the failure to report Drew's conviction clearly provides a basis for questioning Judge Worthen's impartiality. However, even if Judge Worthen should have disqualified himself solely on the basis of his relationship with Drew's mother, we cannot necessarily agree on the basis of the findings before us that his failure to report Drew's conviction also provides a basis for questioning his impartiality, without some explanation of how this particular instance relates to the widespread justice court practice of operating informal diversion programs.

In the materials submitted to this court, neither party specifically refers to the 1992 incident involving Judge Worthen's clerk's granddaughter, Tosha Harris, in which Judge Worthen held her guilty plea to speeding in abeyance for six months, backdated her citation by eight months, and failed to report the conviction to the Division. Again, these facts could support an inference that Judge Worthen intentionally failed to act in an impartial manner and intentionally failed to comply with the reporting requirements of the Utah Code, possibly for the improper purpose of dealing leniently with persons known to the judge. However, without an explanation of the Commission's logical and legal bases for its ultimate conclusion and a delineation of the steps by which it reached that conclusion, we find the issue impossible to review. Simply put, we cannot determine an appropriate sanction for the Drew and Harris incidents because we cannot determine whether the judge should be sanctioned for the failure to disqualify himself, the failure to report the convictions, or both.

The problems we have identified with the Commission's findings and conclusions clearly mandate that we remand both cases to the Commission. We emphasize that our discussion is meant to illustrate the problematic nature of the Commission's findings and conclusions and is not meant to provide an exhaustive list of deficiencies. The Commission may well need to address other issues upon remand that we have not raised in this opinion. To provide a more complete understanding of the nature of the remand that we hope will resolve these deficiencies, we

must also address the serious due process concerns the proceedings below raise. We acknowledge that these issues have not been briefed, but we think an overview of the due process requirements applicable to the Commission will avoid problems in the future. First, we observe that due process must be provided by the Commission. The relationship of the Commission to this court is not unlike the relationship of any trial court or administrative agency to this court. One of the basic purposes served by our review function of Commission actions is to protect the due process rights to which every citizen of this state is entitled. These rights attach, as our constitution states, whenever a citizen is threatened with deprivation of "life, liberty or property," Utah Const. art. I, § 7, even when the deprivation occurs as a result of administrative action. Due process rights attach to Commission proceedings because it is empowered to find violations and recommend entry of an order that imposes the ultimate sanction of removing a judge from the bench, as well as lesser sanctions which nonetheless may subject a judge to temporary loss of employment and public stigma. Utah Const. art. VIII, § 13; Utah Code Ann. § 78-7-30. Therefore, the Commission is subject to the constitutional requirements of due process just like the other commissions, boards, and administrative entities of this state.

We next address the scope of the rights guaranteed in proceedings before the Commission. Utah's due process clause provides, "No person shall be deprived of life, liberty or property, without due process of law." Utah Const. art. I, § 7. In Untermeyer v. State Tax Commission, we held that Utah's constitutional guarantee of due process is substantially the same as the due process guarantees contained in the Fifth and Fourteenth amendments to the United States Constitution. 129 P.2d 881, 885 (Utah 1942). We have delineated these requirements in a variety of contexts, for "[d]ue process is flexible and calls for the procedural protections that the given situation demands." Labrum v. Utah State Bd. of Pardons, 870 P.2d 902, 911 (Utah 1993) (quoting In re Whitesel, 763 P.2d 199, 203 (Wash. 1988)). At a minimum, "[t]imely and adequate notice and an opportunity to be heard in a meaningful way are at the very heart of procedural fairness."¹⁴ Nelson v. Jacobsen, 669 P.2d 1207, 1211 (Utah 1983); accord Plumb v. State, 809 P.2d 734, 743 (Utah

¹⁴ We emphasize that these are minimum requirements. Other requirements may attach, for instance, at the investigation stage if the possibility exists that a criminal action might be filed or a criminal conviction secured and an answer of a person being interrogated by the Commission might incriminate that person. See In re Criminal Investigation, 7th Dist. Ct. No. CS-1, 754 P.2d 633, 645 (Utah 1988).

1990); see also Provo River Water Users' Ass'n v. Morgan, 857 P.2d 927, 934 (Utah 1993). We have also held that "every person who brings a claim in a court or at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal." Bunnell v. Industrial Comm'n, 740 P.2d 1331, 1333 (Utah 1987) (emphasis added).

For instance, when an inmate appears at a hearing in front of the board of pardons for the first time, we have determined that he or she is entitled to know what information that board will be considering with enough advance notice to enable the inmate to prepare a response and rebut inaccurate information. Labrum, 870 P.2d at 909. When citizens protest their tax assessments before the Utah State Tax Commission, we will not sustain commission rulings when they lack necessary predicate factual findings. Jensen v. State Tax Comm'n, 835 P.2d 965, 971 (Utah 1992). Likewise, Utah's appellate courts have never hesitated to consider claims alleging due process violations when professionals risk losing their professional license or means of employment through the action of a public disciplinary body. See, e.g., In re Schwenke, 849 P.2d 573, 576 (Utah 1993) (attorney's license); Anderson v. Public Serv. Comm'n, 839 P.2d 822, 825 (Utah 1992) (license to carry passengers for hire); Tolman v. Salt Lake County Attorney, 818 P.2d 23, 28 (Utah Ct. App. 1991) (public employment); Kirk v. Division of Occupational & Professional Licensing, 815 P.2d 242, 244 (Utah Ct. App. 1991) (dentist's license); D.B. v. Division of Occupational & Professional Licensing, 779 P.2d 1145, 1149 (Utah Ct. App. 1989) (social worker's license). Judges are entitled to the same basic due process protections afforded to these other professionals because these protections are, indeed, fundamental rights which inure to the benefit of every citizen of this state.

Having said that notice is required, the question becomes the type of notice required for Commission proceedings. The Commission has established written rules governing notice. See Utah Admin. Office of the Courts, Compilation of Laws 53-58 (1995) [hereinafter Commission Rule(s)]. Commission Rule 5 requires that the Commission notify a judge that a preliminary investigation has commenced, the nature of the charge, the identity of the person who made a verified complaint, if any, or that the investigation began on the Commission's own motion, and allow the judge to present such matters as he or she may choose. Id. at 54. The language of Commission Rule 5 providing that the Commission "may make . . . a preliminary investigation on its own motion" exceeds the Commission's grant of authority by article VIII, section 13 of the Utah Constitution, which merely permits the Commission to "investigate and conduct confidential hearings regarding complaints against any justice or judge." (Emphasis

added.) We therefore strike out all references to the Commission's acting upon its own motion. Nevertheless, if upon receiving a verified complaint the Commission concludes that it should commence formal proceedings, Commission Rule 6 requires the Commission to provide written notice of that fact to the judge. Subsection (b) of rule 6 states:

The notice shall specify in ordinary and concise language the charges against the judge, the alleged facts upon which such charges are based, and shall advise the judge of the right to file a written answer to the charges within 15 days after service of the notice upon the judge.

Id.

Other than the scope of authority problem in Commission Rule 5, we find nothing lacking in the text of these rules. However, their implementation is critical. In this case, we think that these rules, properly and constitutionally construed, were not complied with. "[W]here notice is ambiguous or inadequate to inform a party of the nature of the proceedings against him . . . a party is deprived of due process." Nelson, 669 P.2d at 1212. Thus, to satisfy due process, a hearing "must be prefaced by timely notice which adequately informs the parties of the specific issues they must prepare to meet." Id. at 1213 (emphasis added) (quoting State v. Gibbs, 500 P.2d 209, 215 (Idaho 1972)). Moreover, "[d]ue process' is not a technical concept that can be reduced to a formula with a fixed content unrelated to time, place, and circumstances. Rather, 'the demands of due process rest on the concept of basic fairness of procedure and demand a procedure appropriate to the case and just to the parties involved.'" Id. (quoting Rupp v. Grantsville City, 610 P.2d 338, 341 (Utah 1980)). The most troubling aspect of the deficiencies we have identified in the cases before us is the lack of specificity in the formal notice and at the hearings regarding the governing legal and ethical standards and the rules or laws the judges allegedly violated. We are firmly convinced that if we are unable to discern the specific nature of the Commission's charges after it has rendered its order, the judges in these cases received insufficient notice of the charges against them before their hearings.

To meet minimum due process requirements, the Commission's notice of formal proceedings must set forth the applicable provisions of the Code of Judicial Conduct alleged to have been violated. Further, in cases such as these where the ethical violation allegedly results from underlying violations of

statutes and court rules, the Commission must identify these statutes and rules within the notice. This information is critical because it identifies the substance of the Commission's complaint against a judge. In addition, the notice must be framed in terms of the elements necessary to prove the charges made in the context of the facts alleged.

Wholly apart from these due process questions, we note a failure by the Commission to comply with its own rules in respects central to our ability to fulfill our constitutional and statutory duty to review its proceedings. Article VIII, section 13 of the Utah Constitution and section 78-7-30(4) of the Utah Code both require this court to review the Commission's proceedings as to both law and fact. That is impossible unless we have a transcript. Commission Rule 20 provides, "If the Commission orders censure, reprimand, suspension, removal, or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein" Commission Rule 20, at 57 (emphasis added). Despite this rule, we received only five cassette tapes and no transcript of the hearing in Judge Worthen's case. We received a transcript of Judge Buckley's hearing attached to his motion to this court requesting consideration of additional evidence and oral argument, which we suspect he may have prepared at his own expense. In the future, the Commission must follow its own rules and supply "a transcript of the evidence and of all proceedings therein" to this court as part of the record of its proceedings when it orders a sanction.

Finally, we observe that other materials should be part of the record submitted to this court after the Commission enters an order imposing sanctions. Both of the current records include (i) the Commission's formal notice of charges; (ii) exhibits introduced at each hearing, (iii) the Commission's conclusions and findings, and (iv) a certificate indicating delivery of each record to this court. One record also includes an answer to the Commission's notice of charges, and the other includes a certificate of service of the notice and a series of stipulated facts. Missing from both records is the initial complaint which led to the Commission's preliminary investigation and any correspondence or other documents which passed between the Commission and each judge, including letters which may have explained the charges, affidavits of witnesses, and the like. To some extent, we are hypothesizing that such materials exist and that the Commission relied on them in framing its orders. If so, these materials should be included in the record submitted to this court. We also note that one record failed to include a certificate of service of the notice. This should also be part of the record. Although we do not require that the Commission include records of its preliminary investigation in the record

submitted to this court, the Commission should keep some record of the investigation in the event that a challenge is made to its investigatory procedures. Cf. In re Criminal Investigation, 754 P.2d at 653-55.

We remand these cases to the Commission for further proceedings consistent with this opinion. We recognize that this may require the Commission to start over in order to remedy the deficiencies we noted in the complaint and notice, in the evidence, and in the findings and conclusions. However, that is an unavoidable consequence when all concerned are writing on a clean slate as regards the heretofore uninterpreted constitutional and statutory provisions concerning the Judicial Conduct Commission.

We now turn to the issue of sanctions. In light of our decision to remand these cases, it is premature to address the appropriateness of any sanctions. However, we note that the Commission promulgated guidelines for sanctions on February 7, 1996. We also observe that it did not have the opportunity to apply these guidelines in these cases, because its orders of sanctions were issued before it promulgated the guidelines. Our decision to remand will afford both the Commission and the judges the opportunity to address these guidelines in detail.

We commend the Commission for promulgating these guidelines. Our research indicates that most courts justify a particular sanction in a specific case on an ad hoc basis, that is, by comparing the conduct in the case at issue to the conduct and sanctions imposed in other cases. This ad hoc or developmental approach makes some sense given the wide variation of conduct reported in the cases. However, it tends to produce punishments that lack uniformity and consistency. As Hart observed, "[T]he ideal of justice [is] treating morally like cases alike and morally different ones differently." H.L.A. Hart, Punishment and Responsibility 80 (1968). Consideration of the Commission's guidelines over time will help assure that such fairness is realized in Utah sooner rather than later.

The last issue we address regards the confidentiality of the Commission's investigations and hearings as well as the hearings before this court. The Utah Constitution provides that the Commission "shall investigate and conduct confidential hearings regarding complaints against any justice or judge." Utah Const. art. VIII, § 13 (emphasis added). Section 78-7-30 of the Utah Code provides:

The following documents are privileged
in any civil action:

(a) the transmission, production, or disclosure of any complaints, papers, or testimony in the course of proceedings before:

(i) the Judicial Conduct Commission;

(ii) the masters appointed under Subsection (2); or

(iii) the Supreme Court;

(b) any complaints, papers, or testimony may not be disclosed by the commission, masters, or any court until the Supreme Court has entered its final order in accordance with this section, except:

(i) upon order of the Supreme Court;

(ii) upon the request of the judge or justice who is the subject of the complaint; or

(iii) the dismissal of a complaint or allegation against a judge or justice shall be disclosed without consent of the judge or justice to the person who filed the complaint or allegation.

Utah Code Ann. § 78-7-30(6). A plain reading of these provisions indicates that (i) the Commission's hearings must remain confidential and cannot be opened except upon order of this court; (ii) complaints, papers, and testimony related to the matter are to remain confidential until this court has entered an order implementing, modifying, or rejecting the Commission's order, unless we order their release or the offending judge requests their release; and (iii) hearings before this court may be opened to the public if we enter an order to that effect. We note that the Commission's investigations are not made expressly subject to confidentiality, presumably for the sound reason that investigators need to speak to witnesses and gather information.

According to a leading treatise, provisions governing the confidentiality of judicial conduct commissions can be grouped into three categories, with Utah falling in the second:

- 1) [T]wenty-two states permit public disclosure once a commission, after an investigation and finding of probable cause, files formal charges against a judge;
- 2) nineteen states permit public disclosure when, after a formal hearing has been held, a commission make[s] a recommendation of discipline to the state supreme court; and
- 3) nine states and the District of Columbia permit public disclosure only where a supreme court orders a sanction.

Shaman, supra, § 13.15, at 463.

Confidentiality is thought to (i) promote the disciplinary process by protecting complainants and witnesses from retribution, harassment, or the possibility of subornation of perjury; (ii) protect innocent judges wrongfully accused; (iii) maintain confidence in the judicial system by avoiding premature disclosure of alleged misconduct; (iv) encourage retirement in place of formal hearings; and (v) protect commission members from outside pressures. Id. at 464. The first proposition is probably not relevant to our statutory scheme because in Utah, the justice or judge under investigation "shall be provided with all information necessary to prepare an adequate response or defense, which may include the identity of the complainant." Utah Code Ann. § 78-7-30(1)(b). The second and third propositions aim to protect the judge's privacy interest and to protect against unwarranted damage to his or her reputation. This makes sense given that 75% of judicial complaints nationwide are determined to be either unfounded, frivolous, or lacking proper jurisdiction, and Utah's rate may well prove to be higher over time. We agree that the judge under investigation and the entire judiciary would needlessly suffer if all complaints were disclosed. See Shaman, supra, § 13.15, at 465, 467. However, our constitutional and statutory scheme avoids these problems by requiring confidentiality until the Commission finds misconduct and enters an order accordingly. Indeed, this measure of confidentiality also satisfies the fourth and fifth propositions, thus permitting speedy and effective resolution of certain cases without the need for formal hearings.

Once the Commission enters an order and the matter has been brought here, however, we see little reason to maintain confidentiality. Confidentiality at this point would not serve any of the stated goals sufficiently to overcome our traditional bias for open court proceedings. See, e.g., State v. Crowley, 766 P.2d 1069, 1070 (Utah 1988) ("A similar emphasis on the inherent value of public proceedings is found in this Court's

treatment of the right of the public and the press to have access to court proceedings civil and criminal."); see also State v. Archuleta, 857 P.2d 234, 238-39 (Utah 1993) (holding that presumptive right of access to documents filed in connection with criminal preliminary hearing exists). Our order opening the record and the proceedings in these two matters suggests as much, stating as it does that no good cause was shown warranting closure. See supra note 1. We emphasize again today that it would take an unusual set of circumstances to justify closure of proceedings before this court.

In sum, we remand these cases to the Commission for further proceedings consistent with this opinion.

Justice Howe, Justice Durham, and Justice Russon concur in Chief Justice Zimmerman's opinion.

Associate Chief Justice Stewart does not participate herein.

DEPARTMENT OF BUSINESS REGULATION
Heber M. Wells Building
160 East 300 South
P. O. Box 45802 - Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING

STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	:	
ROGER ANTHONY KODEL	:	ORDER OF DISMISSAL
TO PRACTICE AS A VETERINARIAN	:	
AND TO PRESCRIBE AND ADMINISTER	:	
CONTROLLED SUBSTANCES	:	CASE NO. OPL-86-85
IN THE STATE OF UTAH	:	

IT IS HEREBY ORDERED that the matter of Case #OPL-86-85 is dismissed
with prejudice.

Dated this 21st day of October, 1986.



DAVID E. ROBINSON, DIRECTOR

S E A L

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THE ATTORNEY GENERAL
STATE OF UTAH
DAVID L. WILKINSON
ATTORNEY GENERAL

OCT 20 1986

DIVISION OF OCCUPATIONAL
& PROFESSIONAL LICENSING

PAUL M. TINKER
CHIEF DEPUTY ATTORNEY GENERAL

DALLIN W. JENSEN
Solicitor General

WILLIAM T. EVANS, CHIEF
Human Resources Division

DONALD S. COLEMAN, CHIEF
Physical Resources Division

EARL F. DORIUS, CHIEF
Governmental Affairs Division

October 16, 1986

PAUL M. WARNER
ASSOCIATE DEPUTY ATTORNEY GENERAL

STEPHEN G. SCHWENDIMAN, CHIEF
Tax & Business Regulation Division

STEPHEN J. SORENSON, CHIEF
Litigation Division

MICHAEL D. SMITH, CHIEF
Civil Enforcement Division

Mr. David G. Robinson, Director
Division of Occupational and
Professional Licensing
Department of Business Regulation
Heber M. Wells Building
Fourth Floor
160 East 300 South
Salt Lake City, UT 84145

Re: Roger Anthony Kodel, Case No. OPL 86-85

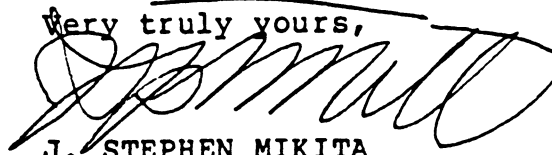
Dear Mr. Robinson:

Please be informed that I have discussed the above-entitled case with Dr. Norman Erikson of the Veterinary Board. Dr. Erikson believes that no formal action is necessary in the case since it appears that Dr. Kodel was prescribing for his son merely as a matter of convenience and without an intent to abuse.

I have also informed Dr. Kodel by letter and verbally that as a veterinarian he is prohibited from prescribing controlled substances to persons and that he must cease and desist from any further prescribing for his son. Therefore, I recommend that the petition be dismissed with prejudice to accommodate the interests of justice.

Thank you for your review of this matter.

Very truly yours,



J. STEPHEN MIKITA
Assistant Attorney General

:dlw

September 12, 1986

J. Stephen Mikita
Assistant Attorney General
Office of the Attorney General
State of Utah
236 State Capitol Building
Salt Lake City, Utah 84414

STATE OF UTAH
DEPARTMENT OF
BUSINESS REGULATION

NORMAN H. BANGERTER, GOVERNOR
WILLIAM E. DUNN, EXECUTIVE DIRECTOR

Re: Roger Anthony Kodel, Case OPL 86-85

Dear Mr. Mikita:

Your letter of September 2, 1986 in the matter regarding Roger Anthony Kodel has been referred to me. The first paragraph of your letter states that you recommend that the petition be dismissed with prejudice in the interests of justice. That statement is followed in the second paragraph with an indication that you shall inform the respondent with respect to certain matter.

I trust that you have not as yet informed Mr. Kodel, noting that you were recommending a course of action and I presume that course was to be conditioned upon concurrence of the Division.

I have taken the opportunity to review the entire file and discuss the matter with Steve Davis. While I recognize this case does not represent an aggravated situation, it is quite clear that Dr. Kodel is acting in violation of the law. He has also displayed an attitude toward the investigators which I would describe as disdain for the law.

It is my suggestion that rather than dismiss the petition as you have suggested, we proceed with a hearing before the board. By so doing we will afford this particular practitioner of peer review and judgment in this matter by those who in this instance are best qualified to evaluate his conduct. While the decision of the board may result in a decision that no action need be taken toward the practitioner with respect to his license, the necessity of him appearing before a hearing and going through the process may assist in impressing upon him the importance of his compliance with laws and appropriate rules and regulations relating his profession.

I will appreciate very much the opportunity to discuss this matter with you before a final decision is made with respect to its disposition.

Sincerely,



David E. Robinson
Director

ROB/ihk

*10/14/86
Mikita
and letter*

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THE ATTORNEY GENERAL
STATE OF UTAH

DAVID L. WILKINSON
ATTORNEY GENERAL

PAUL M. TINKER
DEPUTY ATTORNEY GENERAL

DALLIN W. JENSEN
Solicitor General

WILLIAM T. EVANS, CHIEF
Human Resources Division

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STEPHEN G. SCHWENDIMAN, CHIEF
Tax & Business Regulation Division

EARL F. DORIUS, CHIEF
Governmental Affairs Division

PAUL M. WARNER, CHIEF
Legation Division

MICHAEL D. SMITH, CHIEF
Civil Enforcement Division

September 2, 1986

Mr. Steve Davis
Lead Investigator
Division of Occupational and
Professional Licensing
Heber M. Wells Building
160 East 300 South
P.O. Box 45802
Salt Lake City, Utah 84145-0801
BUILDING MAIL

RE: Roger Anthony Kodel, Case No. OPL 86-85


Dear Mr. Davis:

Please be advised that following my review of the
above-entitled case I recommend that the petition be dismissed
with prejudice in the interests of justice.

I shall inform the respondent that as a veterinarian he
is prohibited from prescribing controlled substances to persons
and that he must cease and desist from continuing this practice
for his son.

Thank you for your consideration of this matter.

Very truly yours,


J. STEPHEN MIKITA
Assistant Attorney General

JSM/lc

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DEPARTMENT OF BUSINESS REGULATION
Heber M. Wells Building
160 East 300 South
P. O. Box 45802 - Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF	:	
ROGER ANTHONY KODEL	:	NOTICE OF ACTION
TO PRACTICE AS A VETERINARIAN	:	
AND PRESCRIBE AND ADMINISTER	:	CASE NO. OPL-86-85
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	

THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING TO
THE ABOVE-NAMED RESPONDENT:

The Division of Occupational & Professional Licensing ("the Division") as of this date has filed a case against you.

The case is based upon the Verified Petition of Chris Godnick, Investigator, State of Utah. A copy of the Verified Petition is attached hereto and by reference made a part hereof.

You may answer the Verified Petition, but are not required to do so. Any answer you may file, however, would be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition.

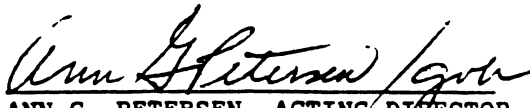
You are entitled by law to a formal hearing before an appropriate hearing officer or board, as designated by the Director of the Division. At the hearing, you may appear and be heard; you may present evidence and show cause why your license to practice as a veterinarian in the State of Utah should not be revoked.

Alternatively, you may attempt to negotiate a settlement of the case without proceeding to a formal hearing. Should you so desire, please contact J. Stephen Mikita, Assistant Attorney General, immediately. He can be reached at (801) 533-5319 or 130 State Capitol, SLC, Utah 84114. If the case has not been resolved by Stipulation, as described above, on or before September 8th, 1986 [30 days from the date of the Verified Petition], the Division will assume you wish to proceed with a formal hearing and notice will be sent to you by certified mail.

You are entitled to be represented by legal counsel at all times while this action is pending. Your legal counsel should file with the Division an Entry of Appearance within three weeks from the date of this Notice.

Please conduct yourself accordingly.

Dated this 6th day of August, 1986.


ANN G. PETERSEN, ACTING DIRECTOR

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DEPARTMENT OF BUSINESS REGULATION
Heber M. Wells Building
160 East 300 South, P. O. Box 45802
Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	:	
ROGER ANTHONY KODEL	:	
TO PRACTICE AS A VETERINARIAN	:	P E T I T I O N
AND PRESCRIBE AND ADMINISTER	:	
CONTROLLED SUBSTANCES	:	CASE NO. OPL-86-85
IN THE STATE OF UTAH	:	

PRELIMINARY STATEMENT

These causes of action were investigated by the Utah Division of Occupational & Professional Licensing (the Division) upon complaints that ROGER ANTHONY KODEL, a licensee of the Division, has engaged in acts and practices which constitute violations of the Utah Controlled Substance Act, the Medical Practice Act and the Division of Occupational and Professional Licensing Act, Utah Code Ann., Sections 58-12, 58-37 and 58-1.

PARTIES

1. The Division is a Division of the Department of Business Regulation of the State of Utah, established by virtue of Section 13-1-2 of the Utah Code.

2. ROGER ANTHONY KODEL is a licensee of the Division.

STATEMENT OF FACTS

3. a. On or about July, 1985 through May, 1986, KODEL, treated and prescribed a controlled substance, methylphenidate, to his son Rhett for hyperactivity. During this period, KODEL was not licensed to practice medicine or to administer and prescribe controlled substances to human beings.

COUNT I

4. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 3 above as if fully set out herein.

5. Utah Code Ann., § 58-1-15 (1985 Supp.) provides that the Division may revoke the license of any licensee who is or has been guilty of unprofessional conduct as defined by statute or rule.

6. Utah Code Ann., § 58-1-2(6) (1985 Supp.) defines "unprofessional conduct" as:

Acts, knowledge and practices, which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, welfare, or safety and includes the violation of any statute regulating an occupation or profession under title 58.

7. By engaging in the acts and practices contained in paragraph number 3 above, KODEL has violated the provisions of Utah Code Ann. § 58-1-2(6) (1985 Supp.), constituting grounds for the revocation of his licenses under the provisions of Utah Code Ann. § 58-1-15 (1985 Supp.)

COUNT II

8. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 7 above as if fully set out herein.

9. Utah Code Ann. § 58-37-6(7)(a)(i) (1985 Supp.) provides that no person may write or authorize a prescription for a controlled substances unless he is:

(i) a practitioner authorized to prescribe drugs and medicine under the laws of this state.

10. By engaging in the acts and practices contained in paragraph number 3, KODEL is in violation of the provisions of Utah Code Ann. § 58-37-6(7)(a)(i) (1985 Supp.), constituting grounds for the revocation of his licenses under the provisions of Utah Code Ann. § 58-1-15(1985 Supp.)

COUNT III

11. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 10 above as if fully set out herein.

12. Utah Code Ann. § 58-12-30 (1981 Supp.) provides that it is unlawful to engage in the practice of medicine in this state without first obtaining a license.


13. Utah Code Ann. § 58-12-28(4)(a) (1985 Supp.) defines the "practice of medicine" to mean; to diagnose, treat, correct, advise, or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, or to attempt to do so by any means or instrumentality.

14. By engaging in the acts and practices contained in paragraph number 3, KODEL has violated the provisions of Utah Code Ann. § 58-12-30 (1981 Supp.), constituting grounds for the revocation of his licenses under the provisions of Utah Code Ann. § 58-1-15 (1985 Supp.)

WHEREFORE, the Division requests the following relief:

1. That ROGER ANTHONY KODEL be adjudged and decreed to have engaged in the acts alleged herein.
2. That by engaging in the above acts, KODEL be adjudged and decreed to have violated the provisions of the Medical Practice Act and the Controlled Substance Act, and the Division of Occupational & Professional Licensing Act.
3. That an Order be issued revoking the licenses of ROGER ANTHONY KODEL to practice as a Veterinarian and to Administer and Prescribe Controlled Substances.

DATED this 14th day of August, 1986.



Division of Occupational &
Professional Licensing
Department of Business Regulation

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
DEON W. KELSEY
TO PRACTICE AS A VETERINARIAN
IN THE STATE OF UTAH

CASE NO. OPL-88-40
O R D E R

The attached Findings of Fact, Conclusions of Law and Recommended Order are hereby adopted by the Director of the Division of Occupational & Professional Licensing of the State of Utah.

Dated this 9th day of January, 1989.



S E A L



DAVID E. ROBINSON, DIRECTOR

Administrative review of this Order may be obtained by filing a request for review within thirty (30) days after the issuance of this Order. Any request for review shall comply with the requirements set forth in Section 63-46b-12(1) and the departmental rules which govern agency review.

Judicial review of this Order may be obtained by filing a petition for review within thirty (30) days after the issuance of this Order. Any petition for judicial review shall comply with the requirements set forth in Section 63-46b-16.

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KEN CHAMBERLAIN [0608]
OLSEN, McIFF & CHAMBERLAIN
ATTORNEYS FOR RESPONDENT
225 NORTH 100 EAST, P.O. BOX 100
RICHFIELD, UTAH 84701

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

* * * * *

IN THE MATTER OF THE LICENSE OF) ANSWER OF DEON W. KELSEY
DEON W. KELSEY : TO PETITION
TO PRACTICE AS A VETERINARIAN)
IN THE STATE OF UTAH : Case No. OPL-88-40

* * * * *

GENERAL STATEMENT

The Respondent Deon W. Kelsey ("Respondent") generally admits the allegations of fact in the Petition except as is expressly set forth herein and respectfully takes exception to the conclusion that there has been a violation of §51-1-15(2), Utah Code Annotated 1953, or that any offense of which he has been found guilty is a crime involving moral turpitude as it relates to the duties or functions of a Doctor of Veterinary Medicine; and Respondent respectfully alleges that in the interest of justice no sanction should be applied.

PARTIES

1. The Respondent admits paragraph 1 of the Petition.
2. The Respondent admits paragraph 2 of the Petition.
3. The Respondent admits paragraph 3 of the Petition.

COUNT I

4. The Respondent admits paragraph 4 of the Petition.
5. The Respondent respectfully takes exception to

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LAW OFFICES
OLSEN, McIFF & CHAMBERLAIN
225 NORTH 100 EAST, P. O. BOX 100
RICHFIELD, UTAH 84701

paragraph 5 of the Petition on the ground that the offenses alleged in paragraph 3 are neither crimes involving moral turpitude nor offenses having relation to the functions or duties relating to the profession of a Doctor of Veterinary Medicine.

6. For the reasons stated in the answer to paragraph 5 the Respondent respectfully excepts to the allegation contained in paragraph 6.

FIRST, SEPARATE AND AFFIRMATIVE RESPONSE

As a first, separate, and affirmative response to the Petition, the Respondent alleges as follows:

1. The Respondent acknowledges that he was found guilty by a jury of the offenses alleged in paragraph 3. The Respondent does not deny nor does he discount or diminish responsibility for the findings which were entered in the Sixth Judicial District Court; however, the offenses charged and of which Respondent was found guilty did not and do not involve moral turpitude and do not relate to the functions and duties of the profession of a Doctor of Veterinary Medicine, as will be set out with greater particularity hereinafter.

2. The offenses were found to have been committed against Sevier Valley Animal Clinic, a corporation ("Clinic"); and Respondent, although he admits wrongfully, had intentions of adjusting or resolving, by the actions of which he was found guilty, certain differences between himself and the Clinic of which he was a one-half owner. Although admitting that the offenses of which he was found guilty were wrongful, Respondent

SECOND, SEPARATE AND AFFIRMATIVE DEFENSE

5. The Respondent represents that he has never at any time committed any impropriety, any offense, any act of malpractice, error or omission toward or affecting, nor defrauded, deceived, injured, either purposely, negligently or accidentally any person whom the Professional Licensing Act was designed and intended to protect.

6. The Respondent has never committed any act of malfeasance, malpractice, misfeasance, carelessness, errors or omissions or any related or similar indiscretion toward or against any member of the public.

7. The Respondent respectfully represents that he has an unchallenged reputation for honesty, integrity, fair-dealing, professional excellence and competence and effective dealing with all members of the public.

8. The Respondent represents that all members of the public for whom he has performed professional work, have been and are satisfied with the charges and fees made, with his attention to problems of a veterinary medicine nature committed to him, and that in no way has he ever breached the trust, confidence and fiduciary duty to the public or any client owed to them by the Respondent as a professional Doctor of Veterinary Medicine.

9. The Respondent has been required to spend sixty days in confinement, has been subjected to a fine of \$7,500.00 together with a 25% victim reparation fee; has lost all of his equity and interest in the Clinic and is severely in debt; that

SUBSCRIBED AND SWORN to before me, a notary public,
this 27th day of July, 1988.

Sworn E. Baxter
Notary Public

Residing At: Richfield, Utah

My Commission Expires: 7-10-91

LAW OFFICES
OLSEN, MCIFF & CHAMBERLAIN
225 NORTH 100 EAST, P. O. BOX 100
RICHFIELD, UTAH 84701

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF	:	CASE NO. OPL-88-40
DEON W. KELSEY	:	FINDINGS OF FACT,
TO PRACTICE AS A VETERINARIAN	:	CONCLUSIONS OF LAW
IN THE STATE OF UTAH	:	AND RECOMMENDED ORDER
	:	

Appearances:

Richard J. Culbertson for the Division of Occupational & Professional
Licensing

Ken Chamberlain for Respondent

BY THE BOARD:

Pursuant to notice duly served by certified mail, the above-entitled matter came on regularly for hearing on December 19, 1988, before J. Steven Eklund, Administrative Law Judge for the Department of Business Regulation, and the Veterinary Board. Thereafter, evidence was offered and received.

The Board, being fully advised in the premises, now enters the following Findings of Fact, Conclusions of Law and Recommended Order:

FINDINGS OF FACT

1. Respondent is, and at all times relevant to these proceedings has been, licensed to practice as a veterinarian by the Division of Occupational & Professional Licensing of the State of Utah. Respondent has been so licensed since 1981.

2. In September 1981, Respondent commenced his practice as a veterinarian in Richfield, Utah. At that time, Respondent was employed by Duane Utley. Approximately one (1) year later, Respondent and Dr. Utley established a partnership known as the Sevier Valley Animal Clinic and operated that business until July 1987.

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3. On at least nine (9) occasions between April 24, 1985 and April 29, 1987, Respondent committed theft relative to certain checks payable to the Sevier Valley Animal Clinic, said funds being in excess of \$16,750.

Respondent's conduct was prompted by a dispute between himself and Dr. Utley as to the manner in which funds payable to the Clinic were being distributed between himself and Dr. Utley. That dispute arose due to Respondent's and Dr. Utley's prior practices, whereby they had bartered their services with various customers of the Clinic.

4. Criminal proceedings were subsequently initiated and, on May 17, 1988, Respondent was found guilty of nine (9) counts of theft, which consisted of seven (7) Second Degree felonies, one (1) Third Degree felony and one (1) Class A misdemeanor. On July 6, 1988, Respondent was sentenced to a jail term of sixty (60) days in the Sevier County Jail, fined \$7,500 and required to make payment of a 25% victim reparation fee. Respondent was also sentenced to serve an eighteen (18) month probationary term.

5. Respondent was released from jail on September 12, 1988. Since his release, Respondent has resumed his practice as a veterinarian in Richfield, Utah. Pursuant to a prior agreement, Respondent assigned his equity interest in the Sevier Valley Animal Clinic to Dr. Utley. By doing so, Respondent owes no remaining restitution to Dr. Utley.

CONCLUSIONS OF LAW

Respondent asserts that his convictions do not reflect crimes involving moral turpitude or offenses which have any relation to his functions or duties as a licensed veterinarian. Thus, Respondent contends there is no basis to enter any sanction respecting his license to so practice.

Section 58-1-15, Utah Code Ann. (1953), as amended, provides that the Division may suspend or revoke the license of any licensee who:

(2) has been convicted of a crime involving moral turpitude as it relates to the functions and duties of the occupation or profession for which the license was issued.

Concededly, there is no evidence that Respondent engaged in any unprofessional conduct relative to services rendered to any customer as a licensed veterinarian. To the contrary, the record reflects that Respondent competently discharged all duties he has performed relative to animal care and his conduct has not been deficient in that regard.

Nevertheless, business practices are often an inherent and integral aspect of a licensee's profession and, as such, are properly considered as being included within the functions and duties of that profession. Business aspects of a profession necessarily involve proper billing for services rendered and the appropriate disposition of any funds received for services so rendered. Respondent engaged in unethical business practices and exercised inappropriate judgment as it relates to the bartering of his services and, more significantly, the unauthorized disposition of funds due and owing to the Clinic. The convictions referenced herein clearly constitute crimes involving moral turpitude by reason of the nature of the conduct which prompted said convictions.

Thus, a sufficient basis exists to enter a sanction as to Respondent's licensure to practice as a veterinarian. It is duly recognized that Respondent has already been subject to criminal sanction and financial hardship and the Recommended Order set forth herein is not intended to further punish Respondent. However, it is necessary that Respondent's practice as a veterinarian be subject to periodic monitoring by the Board to reduce the possibility that similar misconduct is repeated in the future.

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RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED that Respondent's license to practice as a veterinarian in the State of Utah be suspended for three (3) months.

It is further ordered that there be a stay of enforcement as to the just-stated suspension and that Respondent's license be placed on probation concurrent with the remaining term of his criminal probation, it being anticipated that said probationary term will continue until approximately March, 1990. Respondent's probation herein shall also be subject to the following terms and conditions:

1. Respondent's criminal probation officer shall provide written notice to the Board of any noncompliance by Respondent with the terms and conditions of that probation. Respondent's probation officer shall also provide written notice to the Board when that term of probation has been satisfied.
2. Respondent shall meet with the Board within sixty (60) days after his criminal probation has been terminated. Regardless of the business form of his practice during the probationary term set forth herein, Respondent shall provide documentation to the Board of an audit conducted by a certified public accountant as to Respondent's billing practices during the just-stated time. Following Board review of that audit, a determination will be made whether Respondent's license to practice should be reinstated to full privilege or if a period of further probation is warranted.

Should Respondent fail to comply with the above-stated terms and conditions or otherwise violate any statute or rule which governs his practice as a veterinarian in the State of Utah, the stay of enforcement herein shall be vacated and the suspension of Respondent's license shall become effective. Further proceedings shall also be conducted to determine whether a sanction of greater severity than that set forth herein is warranted.

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
160 East 300 South
P. O. Box 45802 - Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF :
DEON W. KELSEY : NOTICE OF AGENCY ACTION
TO PRACTICE AS A VETERINARIAN : AND HEARING
IN THE STATE OF UTAH : CASE NO. OPL-88-40

THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING TO
THE ABOVE-NAMED RESPONDENT:

The Division of Occupational & Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of C. Ray Openshaw, III, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. Within twenty (20) days of the date of this notice, you are required to file a written response with this Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition. If you fail to file a response, you may be held in default and an order may enter consistent with the terms of the Verified Petition.

You are entitled by law to a hearing as to whether your license to practice as a veterinarian in the State of Utah should be subject to a disciplinary sanction. Notice is hereby given that said hearing will be conducted on the following date and appointed hour in Conference Room 457, of the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

SEPTEMBER 15, 1988

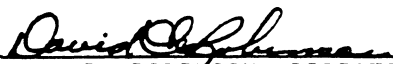
9:00 a.m.

At the hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence. The presiding officer at the hearing will be J. Steven Eklund, Administrative Law Judge, Department of Business Regulation. If you have any questions as to the procedures relative to the hearing, he can be contacted at P.O. Box 45802, Salt Lake City, UT 84145. His telephone number is (801) 530-6648. Should you fail to appear for such a scheduled hearing, you may be held in default and an order may enter consistent with the terms of the Verified Petition.

If you have any questions as to the evidence to be offered by the Division during the hearing, please contact Richard Culbertson, Assistant Attorney General, immediately. He can be reached at (801) 538-1019 or 236 State Capitol, Salt Lake City, Utah 84114. You may represent yourself or you are entitled to be represented by legal counsel at all times while this action is pending. Your legal counsel should file with the Division an Entry of Appearance no later than the filing of a response to the Verified Petition.

Please conduct yourself accordingly.

Dated this 20th day of July, 1988.


DAVID E. ROBINSON, DIRECTOR

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DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South - P. O. Box 45802
Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF	:	
DEON W. KELSEY	:	P E T I T I O N
TO PRACTICE AS A VETERINARIAN	:	
IN THE STATE OF UTAH	:	CASE NO. OPL-88-40
	:	

PRELIMINARY STATEMENT

These causes of action were investigated by the Utah Division of Occupational & Professional Licensing (the Division) upon complaints that DEON W. KELSEY, a licensee of the Division, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann., §58-1-1, et seq.

PARTIES

1. The Division is a Division of the Department of Business Regulation of the State of Utah, established by virtue of Section 13-1-2, Utah Code Ann. (1953), as amended.

2. DEON W. KELSEY is a licensee of the Division.

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STATEMENT OF FACTS

3. a. On or about May 17, 1988 in the Sixth Judicial District, Sevier County, KELSEY was found guilty of nine (9) counts of theft, to wit: seven (7) Second Degree felonies; one (1) Third Degree felony; and one (1) Class A misdemeanor. The thefts constituted over \$16,750 stolen from the Sevier Valley Animal Clinic, a corporation in which KELSEY practiced and was an officer.

COUNT I

4. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 3 above as if fully set out herein.

5. Section 58-1-15, Utah Code Ann. (1953), as amended, provides that the Division may refuse to issue or renew, and may suspend or revoke the license of any licensee who:

(2) has been convicted of a crime involving moral turpitude as it relates to the functions and duties of the occupation or profession for which the license was issued.

6. By engaging in the acts and practices contained in paragraph number 3 above, DEON W. KELSEY has violated the provisions of Section 58-1-15(2), Utah Code Ann. (1953), as amended, constituting grounds for imposing an appropriate sanction against his license.

WHEREFORE, the Division requests the following relief:


1. That DEON W. KELSEY be adjudged and decreed to have engaged in the acts alleged herein.

2. That by engaging in the above acts, DEON W. KELSEY be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act.

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3. That an Order be issued imposing an appropriate sanction against the license of DEON W. KELSEY to practice as a veterinarian.

DATED this 20th day of JULY, 1988.


Division of Occupational &
Professional Licensing
Department of Business Regulation

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
NORMAN ERIC HAFEN
TO PRACTICE AS A VETERINARIAN
IN THE STATE OF UTAH

:
:
: ORDER REINSTATING LICENSE
:
: Case No. OPL-90-97
:

BY THE DIVISION:

Respondent has satisfied the terms and conditions set forth in the Division's Order, dated July 8, 1991, and the Amended Order, dated October 23, 1991, in the above-referenced case.

IT IS HEREBY ORDERED that the restrictions on the license of NORMAN ERIC HAFEN to practice as a veterinarian be terminated and that said license be reinstated with full privileges.

Dated this 13th day of January, 1992.

K* David E. Robinson
David E. Robinson, Director

S E A L

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF
NORMAN ERIC HAFEN
TO PRACTICE AS A VETERINARIAN
IN THE STATE OF UTAH

:
:
:
:
:
:

AMENDED ORDER

Case No. OPL-90-97

BY THE DIVISION:

The Order, dated July 8, 1991, in the above-referenced case is hereby amended as follows:

IT IS HEREBY ORDERED that Respondent is granted temporary approval to practice as a veterinarian at his existing facility. A final inspection will be conducted at Respondent's facility during November 1991. After that inspection, the Division will determine if the above approval can be made permanent.

Dated this 23rd day of October, 1991.




David E. Robinson
Director

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**BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF	:	FINDINGS OF FACT
NORMAN ERIC HAFEN	:	CONCLUSIONS OF LAW
TO PRACTICE AS A VETERINARIAN	:	AND RECOMMENDED ORDER
IN THE STATE OF UTAH	:	CASE NO. OPL-90-97
	:	

Appearances:

Melissa M. Hubbell for the Division of Occupational &
Professional Licensing

Ralph J. Hafen for Respondent

BY THE BOARD:

Pursuant to notice duly served by certified mail, a hearing was conducted in the above-entitled matter on May 2, 1991 before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the Veterinary Board. Board members present for the hearing were Norman T. Erekson, Richard J. White, Christine Wilde Eagar, D. Glen Esplin and Harold Judd Davis. David E. Robinson, the Director of the Division of Occupational and Professional Licensing, was also present. Thereafter, evidence was received and the matter was submitted at the conclusion of the hearing.

The Board, being fully advised in the premises, now enters the following:

FINDINGS OF FACT

1. Respondent is, and at all times relevant to this

proceeding has been, licensed to practice as a veterinarian in this state. Specifically, Respondent became licensed in Utah on August 29, 1955. He also obtained a California license and subsequently maintained a veterinary practice in that state for 13 years. When Respondent relocated to Utah approximately 20 years ago, he did not initially intend to practice as a veterinarian. However, Respondent subsequently conducted a veterinary practice in Utah on an intermittent basis.

2. Sparing detail, Respondent's Utah veterinary license was scheduled to be renewed by December 31, 1990. Due to some confusion, Respondent submitted a renewal form and fee to the Division for only his Utah controlled substance license. That license was renewed, but Respondent's veterinary license expired. Prior to the hearing in this proceeding, Respondent's Utah veterinary license had not yet been renewed.

3. Respondent is presently semi-retired. His existing practice includes providing on-site veterinary services for large animals at various locations. Respondent also maintains a small animal veterinary practice in facilities adjoining his home. On July 11, 1990, a Division investigator inspected those facilities. The inspection revealed that Respondent used a single concrete room, with a surgery table, as both an examination and surgery room for his veterinary practice at that location. Natural and artificial lighting provided a measure of 115 foot candle power over the surgery table. Artificial lighting alone provided 45 foot candle power in that regard.

4. The July 11, 1990 inspection also revealed that Respondent uses wire, grocery-type shopping carts to house the small animals he treats and maintains at the facility on a short term basis. Given the credible evidence presented, Respondent does not treat contagious animals at his facility. Rather, he refers such cases for treatment by others.

5. Prompted by the July 11, 1990 inspection, Respondent subsequently remodeled his facility to provide a separate examination room. Specifically, Respondent added a 12 foot x 15 foot cement slab, surrounded by a 9 foot fence, adjacent to the existing room. That fenced enclosure has a roof, but three sides of the enclosure are exposed to the elements and there is no artificial lighting in that area. Based on the more credible evidence presented, Respondent improved the artificial lighting available in the surgery room and there is a lack of sufficient evidence to now conclude that such lighting is not adequate.

6. On February 14, 1991, a second inspection was conducted. That inspection revealed a pickup truck stock rack with a plywood cover on the premises. Based on the credible evidence presented, Respondent uses that enclosure to house larger animals. Said enclosure, as well as the various containers Respondent uses to house smaller animals, are all located outside and do not assure the comfort or sanitation of any animal which might occupy them.

7. During an April 23, 1991 inspection of Respondent's facilities, the Division investigator observed the surgery room table Respondent would use to perform veterinary services. There

is no evidence that Respondent had used the table for such purposes. However, the table's surface is marble, a semi-porous material, which is extremely difficult to maintain in a sanitary condition.

CONCLUSIONS OF LAW

Section 58-1-15(1), Utah Code Ann. (1953), as amended, provides that the Division may suspend or revoke the license of any licensee who has been guilty of unprofessional conduct, as defined by statute or rule. Section 58-1-2(6) generally defines unprofessional conduct as:

. . . acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title.

R153-28-3 sets forth the minimum standards which govern an acceptable veterinary practice. The preamble to that rule provides:

The intent of the Committee for these minimum standards is that licensed veterinarians should maintain facilities, equipment (including practice vehicles) and conduct which reflect credit on the profession, provide comfort for patients and create confidence in the animal owners, providing for adequate sanitation and disease control and minimal standards of acceptable veterinary practice.

R153-28-3(A)(1)(a) requires that minimum indoor lighting be available to provide reasonable visibility. As a guide in that regard, R153-28-3(A)(1)(a)(4) specifically provides that 150

candles be present at table elevation in a surgery room. R153-28-3(A)(2) further provides that a veterinary facility shall contain the following:

(b) Examination room should be separate from the other areas of the facility and of sufficient size to accommodate the doctor, assistant, patient and client; and

(c) A sanitary surgery room or area which is separate and distinct from all other rooms; a single purpose room or area for surgery only.

R153-28-3(A)(3) also provides that veterinary facilities where animals are retained for treatment and/or hospitalization shall provide for the following:

(a) Separate compartments, one for each animal maintained in such a sanitary manner as to assure comfort, and be of such a design and construction so as to facilitate sanitation procedures;

(b) Facilities and efforts allowing for the effective separation of contagious and noncontagious cases.

(c) Exercise areas which provide and allow effective separation of animals and their waste products.

There is no sufficient and credible evidence that Respondent treats contagious animals at his facility or houses any animals at the facility for any measurable time as to require exercise areas for those animals. Thus, no basis exists to conclude that Respondent has violated R153-28-3(A)(3)(b) or (c). Upon a review of the evidence presented, Respondent previously had inadequate lighting in his surgery room. Thus, Respondent violated R153-28-3(A)(1)(a)(4). However, Respondent undertook subsequent remedial

efforts to cure that defect and there is a lack of sufficient evidence to now conclude that said lighting is still inadequate.

Respondent has engaged in unprofessional conduct in other respects with regard to the nature of the facility he utilizes to provide veterinary services. Respondent initially failed to maintain a separate and distinct examination room in his veterinary practice, violative of R153-28-3(A)(2)(b). Although Respondent later added a fenced enclosure to purportedly establish a separate examination room, that room is wholly inadequate for that purpose. Specifically, an examination room must be adequately enclosed to afford protection from the elements and also properly lit to permit professionally acceptable examinations of any animals in that regard. Respondent's existing examination room lacks adequate sanitation and disease control and represents no appropriate effort whatsoever to comply with the requirements, and satisfy the intent, of the above-quoted rules.

Despite Respondent's efforts, it is also not likely that a marble surgical table can be maintained in a sanitary condition. The various wire enclosures which Respondent uses to house small animals are not located indoors and, thus, are also not capable of being maintained in a sanitary manner. The foregoing matters reflect Respondent's failure to comply with the provisions of R153-28-3(A)(2)(c) and R153-28-3(A)(3)(a).

Nothing herein should be construed to restrict Respondent from offering on-site veterinary services with respect to large

animals at various locations. However, Respondent's existing facility to provide veterinary services with respect to small animals must be extensively remodeled to satisfy those requirements which govern that aspect of his practice. Until such modifications have been made and an inspection reveals compliance with the just-referenced requirements, the recommended order set forth below is necessary to adequately protect the public health, safety and welfare and ensure that the quality of services which Respondent offers is consistent with those standards which govern his profession.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED that Respondent shall not engage in the practice of veterinary medicine at his existing facility until that facility is in full compliance with those statutes and rules which govern his practice. Further, Respondent may not maintain a small animal veterinary practice at any specific location unless he has provided written notice to the Division as to the nature of that proposed facility and the Board has reviewed and approved that practice location.

It is further ordered that, within thirty (30) days from the date this Recommended Order may be adopted by the Director of the Division of Occupational and Professional Licensing, Respondent shall provide written notice to the Board whether he expects to undertake efforts to improve his facility as to fully comply with the statutes and rules which govern his profession. Should Respondent elect to so remodel his existing facility, he may not

subsequently resume any practice of veterinary medicine at that facility until it is has been inspected by the Division and a written report has issued to the Board for its review and approval as to the adequacy of that facility.

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P. O. Box 45802
Salt Lake City, Utah 84145

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF	:	
NORMAN ERIC HAFEN	:	AMENDED PETITION
TO PRACTICE AS A VETERINARIAN	:	
IN THE STATE OF UTAH	:	CASE NO. OPL-90-97

PRELIMINARY STATEMENT

These causes of action were investigated by the Utah Division of Occupational & Professional Licensing (the Division) upon complaints that NORMAN ERIC HAFEN, (Respondent), a licensee of the Division, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, and the Veterinary Practice Act, Utah Code Ann., §58-1-1, and §58-28-1, et seq.

PARTIES

1. The Division is a Division of the Department of Commerce of the State of Utah, established by virtue of Section 13-1-2, Utah Code Ann. (1953), as amended.

2. Respondent is a licensee of the Division.

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STATEMENT OF FACTS

3. a. On or about July 11, 1990, B. A. "Tony" Robinson, a Division investigator, conducted an inspection of Respondent's facilities at 411 West Hwy 91, Ivins, Utah.

b. The inspection determined that the facility consisted of one room which was used as both the examination room and the surgery room. This room was a 10' x 7" wide by 16' x 6" deep concrete room with a surgery table.

c. There were two lights in the room. A measure of lighting determined at approximately 2 feet inside the door with the door open was 95 foot candle power, another reading over the surgery table determined a light measure of 115 foot candle power with the door open, and 45 foot candle power with the door closed.

d. The inspection also determined that the facilities did not provide for the compartment storage of animals despite the fact that Respondent admitted to sending spayed and neutered animals the day after surgery.

e. Separate facilities for animals with contagious diseases and exercise facilities for the animals were also found to be lacking at the facility.

f. On or about February 14, 1991, another investigation of Respondent's facilities was made after Respondent represented to the Division that he had remodeled it. The inspection determined that Respondent added a 12' x 15' cement slab enclosed by a 9' fence directly adjacent to the operating room. Respondent claimed this fenced slab to be his new examination room, though there was no

roof or lighting in the facility.

g. The lighting over the surgery table was found to have been increased to 95 foot candles, still well short of the standard of 150 foot candles.

h. A pickup truck stock rack with a plywood cover was identified by the Respondent as his facilities for larger contagious animals. Several other box containers were identified by the Respondent as facilities for housing small and medium sized contagious animals. These facilities were all located outdoors and did not have utilities or facilities to assure the comfort or sanitation of the animals which might occupy them.

COUNT 1

4. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 3 above as if fully set out herein.

5. Section 58-28-3(2), Utah Code Ann. (1953), as amended, provides that the board may initiate rules for adoption by the Division necessary to protect the public relating to the practice of veterinary medicine, surgery, and dentistry.

6. Section 58-1-15(1), Utah Code Ann. (1953), as amended, provides that the Division may refuse to issue or renew, and may suspend or revoke the license of any licensee who:

(1) is or has been guilty of unprofessional conduct, as defined by statute or rule;

7. Section 58-1-2, Utah Code Ann. (1953), as amended, provides:

(6) Unprofessional conduct means acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title.

8. R153-28-3(A)(1)(a)(4) of the Rules of the Utah Veterinary Licensing Committee provides:

"Minimum indoor lighting to provide reasonable visibility. Surgery table elevation: 150 candles."

9. Because the lighting over Respondent's surgery table was not adequate as described as above, Respondent has violated the provisions of R 153-28-3(A)(1)(a)(4) of the Rules of the Utah Veterinary Licensing Committee which constitutes unprofessional conduct under the provisions of section 58-1-2(6) and grounds for suspension or revocation of his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT II

10. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 9 above as if fully set out herein.

11. Rule R153-28-3(A)(2)(b) and (c) of the Rules of the Utah Veterinary Licensing Committee provides:

b. Examination room should be separate from the other areas of the facility and of sufficient size to accommodate the doctor, assistant, patient and client; and

c. A sanitary surgery room or area which is separate and distinct from all other rooms; a single purpose room or area for surgery only.

12. Because on inspection as noted in paragraph #3, Respondent failed to maintain separate examination and surgery rooms, Respondent has violated the provisions of Rule R153-28-3(A)(2)(b) and (c) of the Rules of the Utah Veterinary Licensing Committee which constitutes unprofessional conduct under the provisions of section 58-1-2(6) and grounds for suspension or revocation of his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT III

13. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 12 above as if fully set out herein.

14. Rule R153-28-3(A)(3)(a), (b) and (c) of the Rules of the Utah Veterinary Licensing Committee provides:

a. Separate compartments. One for each animal maintained in such a sanitary manner as to assure comfort, and be of such a design and construction so as to facilitate sanitation procedures;

b. Facilities and efforts allowing for the effective separation of contagious and noncontagious cases.

c. Exercise areas which provide and allow effective separation of animals and their waste products.


15. Because on inspection as noted in paragraph #3, Respondent was found to not be maintaining facilities for separate

compartments for keeping animals or separating contagious animals and for providing an area for exercising of animals, Respondent has violated the provisions of Rule R153-28-3(A)(3)(a), (b) and (c) of the Rules of the Utah Veterinary Licensing Committee which constitutes unprofessional conduct under the provisions of section 58-1-2(6) and grounds for suspension or revocation of his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

WHEREFORE, The Division requests the following relief:

1. That NORMAN ERIC HAFEN be adjudged and decreed to have engaged in the acts alleged herein.
2. That by engaging in the above acts, NORMAN ERIC HAFEN be adjudged and decreed to have violated the Veterinary Practices Act.
3. That an Order be issued suspending, revoking or other appropriate action against the license of NORMAN ERIC HAFEN until such time as he comes into compliance with the rules of the Utah Veterinary Licensing Committee.

DATED this 21 day of March, 1991.



Division of Occupational &
Professional Licensing
Department of Commerce

STATEMENT OF FACTS

3. a. On or about July 11, 1990, B. A. "Tony" Robinson, a Division investigator, conducted an inspection of Respondent's facilities at 411 West Hwy 91, Ivins, Utah.

b. The inspection determined that the facility consisted of one room which was used as both the examination room and the surgery room. This room was a 10' x 7" wide by 16' x 6" deep concrete room with a surgery table.

c. There were two lights in the room. A measure of lighting determined at approximately 2 feet inside the door with the door open was 95 foot candle power, another reading over the surgery table determined a light measure of 115 foot candle power with the door open, and 45 foot candle power with the door closed.

d. The inspection also determined that the facilities did not provide for the compartment storage of animals despite the fact that Respondent admitted to sending spayed and neutered animals the day after surgery.

e. The inspection also determined that the facilities did not provide separate facilities for animals with contagious diseases and exercise facilities for the animals.

COUNT 1

4. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 3 above as if fully set out herein.

5. Section 58-28-3(2), Utah Code Ann. (1953), as amended,

provides that the board may initiate rules for adoption by the Division necessary to protect the public relating to the practice of veterinary medicine, surgery, and dentistry.

6. Section 58-1-15(1), Utah Code Ann. (1953), as amended, provides that the Division may refuse to issue or renew, and may suspend or revoke the license of any licensee who:

(1) is or has been guilty of unprofessional conduct, as defined by statute or rule;

7. Section 58-1-2, Utah Code Ann. (1953), as amended, provides:

(6) Unprofessional conduct means acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title.

8. R153-28-3(A)(1)(a)(4) of the Rules of the Utah Veterinary Licensing Committee provides:

"Minimum indoor lighting to provide reasonable visibility. Surgery table elevation: 150 candles."

9. Because the lighting over Respondent's surgery table was not adequate as described as above, Respondent has violated the provisions of R 153-28-3(A)(1)(a)(4) of the Rules of the Utah Veterinary Licensing Committee which consistutes unprofessional

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conduct under the provisions of section 58-1-2(6) and grounds for suspension or revocation of his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT II

10. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 9 above as if fully set out herein.

11. Rule R153-28-3(A)(2)(b) and (c) of the Rules of the Utah Veterinary Licensing Committee provides:

b. Examination room should be separate from the other areas of the facility and of sufficient size to accommodate the doctor, assistant, patient and client; and

c. A sanitary surgery room or area which is separate and distinct from all other rooms; a single purpose room or area for surgery only.

12. Because on inspection as noted in paragraph #3, Respondent failed to maintain separate examination and surgery rooms, Respondent has violated the provisions of Rule R153-28-3(A)(2)(b) and (c) of the Rules of the Utah Veterinary Licensing Committee which constitutes unprofessional conduct under the provisions of section 58-1-2(6) and grounds for suspension or revocation of his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT III

13. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 12 above as if fully set out herein.

14. Rule R153-28-3(A)(3)(a), (b) and (c) of the Rules of the Utah Veterinary Licensing Committee provides:

a. Separate compartments. One for each animal maintained in such a sanitary manner as to assure comfort, and be of such a design and construction so as to facilitate sanitation procedures;

b. Facilities and efforts allowing for the effective separation of contagious and noncontagious cases.

c. Exercise areas which provide and allow effective separation of animals and their waste products.

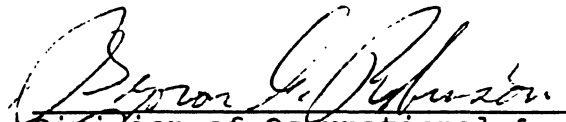
15. Because on inspection as noted in paragraph #3, Respondent was found to not be maintaining facilities for separate compartments for keeping animals or separating contagious animals and for providing an area for exercising of animals, Respondent has violated the provisions of Rule R153-28-3(A)(3)(a), (b) and (c) of the Rules of the Utah Veterinary Licensing Committee which constitutes unprofessional conduct under the provisions of section 58-1-2(6) and grounds for suspension or revocation of his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

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WHEREFORE, The Division requests the following relief:

1. That NORMAN ERIC HAFEN be adjudges and decreed to have engaged in the acts alleged herein.
2. That by engaging in the above acts, NORMAN ERIC HAFEN be adjudged and decreed to have violated the Veterinary Practices Act.
3. That an Order be issued suspending, revoking or other appropriate action against the license of NORMAN ERIC HAFEN until such time as he comes into compliance with the rules of the Utah Veterinary Licensing Committee.

DATED this 2nd day of November, 1990.



Division of Occupational &
Professional Licensing
Department of Commerce

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF
RODDY C. SHARP
TO PRACTICE AS A VETERINARIAN
AND TO PRESCRIBE AND ADMINISTER
CONTROLLED SUBSTANCES
IN THE STATE OF UTAH

:
:
: ORDER REINSTATING LICENSE
:
:
: Case No. OPL-90-10
:
:

BY THE DIVISION:

Respondent has satisfied the terms and conditions of probation set forth in the Division's Order, dated November 27, 1990, in the above-referenced case.

IT IS HEREBY ORDERED that the probation on the license of RODDY C. SHARP to prescribe and administer controlled substances be terminated and that said license be reinstated with full privileges.

Dated this 1st day of May, 1992.



David E. Robinson
David E. Robinson, Director

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF
RODDY C. SHARP

TO PRACTICE AS A VETERINARIAN

AND TO PRESCRIBE AND ADMINISTER CONTROLLED:
SUBSTANCES IN THE STATE OF UTAH

AMENDED ORDER

Case No. OPL-90-10

The Order, dated November 27, 1990, in the above-referenced case is hereby amended as follows:

IT IS HEREBY ORDERED that the suspension on Respondent's license to prescribe and administer Schedule II controlled substances be terminated and that said license be placed on probation consistent with the terms and conditions set forth in the November 27, 1990 Order, upon receipt of all applicable renewal fees.

Dated this 30th day of September, 1991.



David E. Robinson
David E. Robinson, Director

9-30-91

Renewal fee was paid on

12-12-90

cm

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	:
RODDY C. SHARP	:
TO PRACTICE AS A VETERINARIAN	: FINDINGS OF FACT,
AND TO PRESCRIBE AND ADMINISTER	: CONCLUSIONS OF LAW
CONTROLLED SUBSTANCES	: AND RECOMMENDED ORDER
IN THE STATE OF UTAH	:
	: CASE NO. OPL-90-10
	:

Appearances:

Melissa M. Hubbell for the Division of Occupational &
Professional Licensing
Kim R. Wilson for Respondent

BY THE BOARD:

Pursuant to notice duly served by certified mail, a hearing was conducted in the above-entitled matter on November 5, 1990, before J. Steven Eklund, Administrative Law Judge for the Department of Commerce, and the Veterinary Board. Four members of the Board, Norman T. Erikson, M. Christine Wilde Eagar, D. Glen Esplin, and Harold Judd Davis were present for the hearing. The remaining Board member, Richard J. White, was absent and did not participate in this proceeding. Thereafter, evidence was offered and received.

The Board, being fully advised in the premises, now enters the following Findings of Fact, Conclusions of Law and Recommended Order:

FINDINGS OF FACT

1. Respondent is, and at all times relevant to these proceedings has been, licensed to practice as a veterinarian and to

prescribe and administer controlled substances in the State of Utah. Respondent has been so licensed for approximately fifteen (15) years.

2. Since October 1987, Dr. Luther E. Giddings has prescribed Ritalin (i.e., Methylphenidate) to treat Respondent's sons, Branden and Cameron Sharp, for Attention Deficiency Disorder (ADD). On September 14, 1988, Respondent purchased one thousand (1,000) tablets of Methylphenidate, a Schedule II controlled substance, from a wholesale distributor. Respondent did not purchase that controlled substance for use in his veterinary practice. Rather, Respondent purchased Methylphenidate to obtain that controlled substance at a lower cost than had been incurred when prescriptions for Ritalin issued by Dr. Giddings were filled through a pharmacy.

3. By prescriptions, dated October 13, 1988, Dr. Giddings prescribed one hundred and twenty (120) tablets of Ritalin to Brandon Sharp and seventy five (75) such tablets to Cameron Sharp. By prescriptions, dated November 17, 1988, Dr. Giddings prescribed thirty (30) and seventy five (75) Ritalin tablets, respectively, to Brandon and Cameron Sharp. By separate prescriptions, dated December 28, 1988, January 28, 1989, February 15, 1989, March 30, 1989 and April 29, 1989, Dr. Giddings prescribed seventy five (75) Ritalin tablets for each of Respondent's sons. As Dr. Giddings issued the above-described prescriptions, Respondent packaged, labelled and then dispensed Methylphenidate, through his wife, to his sons from the stock of that controlled substance which he had purchased.

4. The fourteen (14) Ritalin prescriptions Dr. Giddings issued

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between October 13, 1988 and April 29, 1989 were never filled by a pharmacist. Based on the more substantial and credible evidence, Respondent recorded the amounts of Methylphenidate he dispensed to his sons as that controlled substance was so dispensed. Records presented during the instant hearing reflect that Respondent dispensed ninety (90) tablets of Methylphenidate for each of his sons on October 18, 1988, sixty (60) tablets of that controlled substance for each son on November 21, 1988 and seventy five (75) tablets for each son on December 30, 1988, January 31, 1989, February 17, 1989, and March 30, 1989. On April 30, 1989, Respondent dispensed forty nine (49) tablets of Methylphenidate for each son and thus exhausted his supply of that controlled substance.

5. Sometime prior to April 30, 1989, Respondent became aware that he should not have dispensed any controlled substances for his family members. Since April 30, 1989, Respondent has not engaged in that conduct and any necessary medication for his sons has only been obtained directly from a pharmacy through prescriptions issued by Dr. Giddings.

CONCLUSIONS OF LAW

Section 58-1-15(1), Utah Code Ann. (1953), as amended, provides that the Division may suspend or revoke a license if the licensee has been guilty of unprofessional conduct, as defined by statute or rule. Section 58-1-2, Utah Code Ann. (1953), as amended, defines unprofessional conduct as:

(6) acts, knowledge, and practices which fail to conform with the accepted standards of

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the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title.

With regard to the practice of veterinary medicine, Section 58-28-2(6) defines unprofessional conduct to include:

(m) violating the Utah Controlled Substances Act.

Section 58-37-6(5) of that Act provides:

(b)(i) Every . . . veterinarian . . . who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered . . . or professionally used by him otherwise than by a prescription.

Section 58-37-6(4)(a) further provides that a controlled substance license may be suspended or revoked if the licensee has:

(vi) violated any department rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances.

R153-37-8(A) provides that the Division may revoke or suspend a controlled substance license if the licensee:

(2) has violated any federal or state law relating to controlled substances.

(3) prescribed or administered a controlled substance for a condition he is not licensed to treat.

R153-37-9(A) further requires as follows:

Records of purchase, distribution, dispensing and prescribing, and administration of controlled substances shall be kept according to state and federal law

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Respondent maintained written records as to the Methylphenidate which he provided to his sons. Thus, there is no basis to conclude that he violated either Section 58-37-6(5)(b)(i) or R153-37-9(A). Further, Respondent did not prescribe or administer a controlled substance, as those terms are defined in the Utah Controlled Substances Act. Thus, Respondent did not violate R153-37-8(A)(3).

However, Section 58-37-2(9) defines "dispense" as:

. . . the delivery of a controlled substance by a pharmacist to an ultimate user pursuant to the lawful order of a practitioner, and includes distributing to, leaving with, giving away, or disposing of that substance as well as the packaging, labeling or compounding necessary to prepare the substance for delivery. (Emphasis added.)

Further, Section 58-37-2(10) defines "dispenser" as "a pharmacist who dispenses a controlled substance". Respondent is not a pharmacist and Section 58-37-6(2)(b) only allows a licensee to dispense or administer controlled substances "to the extent authorized by . . . [his] . . . license and in conformity with this chapter".

Significantly, Section 58-28-2(5) provides that the practice of veterinary medicine means to:

(b) administer or prescribe any drug . . . for the cure, relief, or correction of any animal disease, deformity, defect, wound, or injury, or otherwise practice any veterinary medicine, dentistry or surgery on any animal.

Respondent dispensed controlled substances to his sons, yet he was not authorized to do so by either his licensure as a veterinarian or his license to prescribe and administer controlled substances. Respondent was thus engaged in unprofessional conduct and a proper basis exists to

enter a disciplinary sanction as to his license to prescribe and administer controlled substances.

Given Respondent's credible testimony, and the unique circumstances presented in this case, it does not appear Respondent will engage in similar misconduct in the future. Thus, no sanction should enter with respect to his license to practice veterinary medicine. Nevertheless, Respondent is cautioned to prescribe and administer controlled substances only for appropriate veterinary purposes.

RECOMMENDED ORDER

WHEREFORE, IT IS ORDERED that no disciplinary sanction be entered as to Respondent's license to practice as a veterinarian in the State of Utah.

It is further ordered that Respondent's license to prescribe and administer Schedule II controlled substances be suspended for three (3) months, effective thirty (30) days from the date this Recommended Order may be adopted by the Division of Occupational and Professional Licensing. Respondent's controlled substance license shall thereafter be placed on probation for one (1) year, subject to the following terms and conditions:

Respondent shall meet with the Board every six (6) months during the probationary term, at which time the Board will review Respondent's controlled substance practices to insure that such conduct is consistent with the statutes and rules which govern that licensure.

Should Respondent fail to comply with the terms and conditions set forth herein, or otherwise violate any statute or rule which

governs his license to practice as a veterinarian and to prescribe and administer controlled substances, further proceedings shall be conducted and a determination made whether a sanction of greater severity than that set forth herein is warranted.

KIM R. WILSON (A3512)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Roddy C. Sharp
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE, STATE OF UTAH

IN THE MATTER OF THE LICENSES
OF RODDY C. SHARP TO PRACTICE
AS A VETERINARIAN AND TO
ADMINISTER AND PRESCRIBE
CONTROLLED SUBSTANCES IN THE
STATE OF UTAH

Case No. OPL-90-10

RESPONSE TO PETITION

Roddy C. Sharp responds to the Petition of the Division and
admits, denies and alleges as follows:

FIRST DEFENSE

The Petition fails to state a claim upon which relief can be
granted.

SECOND DEFENSE

Roddy C. Sharp responds to the specific allegations of the
petition and admits, denies and alleges as follows:

1. Admits the allegations of paragraphs 1 and 2.
2. Admits that on or about September 14, 1988, Respondent
purchased such tablets and that such tablets were for treatment
of his sons, but denies all other allegations of paragraph 3(a).
3. Denies the allegations of paragraph 3(b).

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4. Respondent restates his responses to paragraphs 1 through 3 in answer to the allegations of paragraph 4.

5. Admits the allegations of paragraphs 5 and 6.

6. Denies the allegations of paragraph 7.

7. Respondent restates his responses to paragraphs 1 through 7 in answer to the allegations of paragraph 8.

8. Admits the allegations of paragraphs 9, 10 and 11.

9. Denies the allegations of paragraph 12.

10. Respondent restates his responses to paragraphs 1 through 12 in answer to the allegations of paragraph 13.

11. Admits the allegations of paragraph 14 and 15.

12. Denies the allegations of paragraph 7 (sic) which follows paragraph 15.

13. Denies each and every other allegation of the petition not specifically admitted herein.

THIRD DEFENSE

The procedures established by state law and regulations promulgated thereunder for the adjudication of this licence matter violate the guarantees of separation of powers and Respondent's rights to be judged by an independent authority

under the Constitution of Utah and the United States
Constitution.

DATED this 31 day of October, 1990.

SNOW, CHRISTENSEN & MARTINEAU

By


Kim R. Wilson

Attorneys for Roddy C. Sharp

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P. O. Box 45802 - Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF :
RODDY C. SHARP : NOTICE OF AGENCY ACTION
TO PRACTICE AS A VETERINARIAN :
AND TO PRESCRIBE AND ADMINISTER : CASE NO. OPL-90-10
CONTROLLED SUBSTANCES :
IN THE STATE OF UTAH :

THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING TO
THE ABOVE-NAMED RESPONDENT:

The Division of Occupational & Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Gail Oliver, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. Within thirty (30) days of the date of this notice, you are required to file a written response with this Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition.

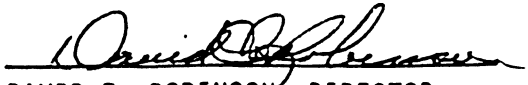
You are entitled by law to a hearing, at which time you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence as to whether your licenses to practice as a veterinarian and to prescribe and administer controlled substances in the State of Utah should be subject to a disciplinary sanction. The presiding officer at the hearing will be J. Steven Eklund, Administrative Law Judge, Department of Commerce. If you have any questions as to the procedures relative to the hearing, he can be contacted at P.O. Box 45802, Salt Lake City, UT 84145. His telephone number is (801) 530-6648.

Alternatively, you may attempt to negotiate a settlement of the case without proceeding to a hearing. Should you so desire, please contact Melissa Hubbell, Assistant Attorney General, immediately. She can be reached at (801) 538-1019 or 236 State Capitol, Salt Lake City, Utah 84114. If the case has not been resolved by Stipulation, as described above, on or before April 27, 1990 [30 days from the date of this Notice of Agency Action], the Division will schedule a hearing and notice of the date, time and location for the hearing will be sent to you by certified mail. Should you fail to timely file a response, as set forth above, or fail to appear for any scheduled hearing, you may be held in default and an order may enter consistent with the terms of the Verified Petition.

You may represent yourself or you are entitled to be represented by legal counsel at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance no later than the filing of a response to the Verified Petition.

Please conduct yourself accordingly.

Dated and mailed this 27th day of March, 1990.


DAVID E. ROBINSON, DIRECTOR

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DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P. O. Box 45802
Salt Lake City, Utah 84145

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	:	
RODDY C. SHARP	:	
TO PRACTICE AS A VETERINARIAN	:	P E T I T I O N
AND TO PRESCRIBE AND ADMINISTER	:	
CONTROLLED SUBSTANCES	:	CASE NO. OPL-90-10
IN THE STATE OF UTAH	:	

PRELIMINARY STATEMENT

These causes of action were investigated by the Utah Division of Occupational & Professional Licensing (the Division) upon a complaint that RODDY C. SHARP, a licensee of the Division, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, the Veterinary Practice Act, the Controlled Substances Act, Utah Code Ann., §58-1-1, §58-28-1, §58-37-1, et seq. and the Controlled Substance Rules.

PARTIES

1. The Division is a Division of the Department of Commerce of the State of Utah, established by virtue of Section 13-1-2, Utah Code Ann. (1953), as amended.

2. RODDY C. SHARP is a licensee of the Division.

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STATEMENT OF FACTS

3. a. On or about September 14, 1988, SHARP, a veterinarian, without a prescription from a physician purchased on the wholesale market a Schedule II controlled substance, 1,000 tablets of Methylphenidate, supposedly for office used in his veterinary practice. Actually the tablets were for his sons, Branden and Cameron Sharp, for the treatment of Attention Deficient Disorder (ADD).

b. On or about August 7, 1989, SHARP was unable to produce any dispensing or treatment records accounting for how the Methylphenidate was used.

COUNT I

4. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 3 above as if fully set out herein.

5. Section 58-28-6, Utah Code Ann. (1953), as amended, defines unprofessional conduct to mean:

(m) violating the Utah Controlled Substance Act.

6. Section 58-37-6(5), Utah Code Ann. (1953), as amended, provides that:

(b)(i) Every physician, dentist, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed or professionally used by him otherwise than by a prescription.

7. Because Sharp failed to keep records of the dispositions of the Methylphenidate he purchased as described in paragraph number 3 above, RODDY C. SHARP has violated the provisions of Sections 58-28-6(m) and 58-37-6(5)(b)(i), Utah Code Ann. (1953), as amended, constituting grounds for

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imposing an appropriate sanction against his licenses under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT II

8. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 7 above as if fully set out herein.

9. Section 58-37-6(4)(a), Utah Code Ann. (1953), as amended, provides that a license pursuant to Subsection (2) to manufacture, produce, distribute, dispense, administer, or conduct research with a controlled substance may be denied, suspended, or revoked by the department upon finding that the applicant has:

(vi) violated any department rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances.

10. R153-37-8 A. of the Controlled Substance Rules provides that the Division may revoke, suspend or deny a controlled substance license if the licensee or applicant:

(2) has violated any federal or state law relating to controlled substances.

(3) prescribed or administered a controlled substance for a condition he is not licensed to treat.

11. R153-37-9 of the Controlled Substance Rules provides as follows:

A. Records of purchase, distribution, dispensing and prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, the amount purchased and the amount administered and prescribed to each patient.

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12. Because Sharp obtained and dispensed controlled substances for a condition he was not licensed to treat and because he failed to maintain records relating to controlled substances as described in paragraph number 3 above, RODDY C. SHARP has violated the provisions of Section 58-37-6(4)(a)(vi), Utah Code Ann. (1953), as amended, R153-37-8A (2) and (3), and R153-37-9 A., of the Utah Controlled Substance Rules, constituting grounds for imposing an appropriate sanction against his licenses under the provisions of 58-37-6(4), Utah Code Ann. (1953), as amended.

COUNT III

13. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 12 above as if fully set out herein.

14. Section 58-1-15(1), Utah Code Ann. (1953), as amended, provides that the Division may refuse to issue or renew, and may suspend or revoke the license of any licensee who is or has been guilty of unprofessional conduct, as defined by statute or rule.

15. Section 58-1-2, Utah Code Ann. (1953), as amended, defines unprofessional conduct to mean:

(6) acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title.

7. By obtaining Methylphenidate a Schedule II controlled substance, and dispensing it to his sons as described in paragraph number 3 above, RODDY C. SHARP has violated the provisions of Section 58-1-2(6), Utah Code Ann. (1953), as amended, constituting grounds for imposing an appropriate sanction against his licenses under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

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WHEREFORE, the Division requests the following relief:

1. That RODDY C. SHARP be adjudged and decreed to have engaged in the acts alleged herein.

2. That by engaging in the above acts, RODDY C. SHARP be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act, the Veterinary Practice Act, the Controlled Substance Act and the Controlled Substance Rules.

3. That an Order be issued imposing an appropriate sanction against the licenses of RODDY C. SHARP to practice as a veterinarian and to administer and prescribe controlled substances in the State of Utah.

DATED this 19th day of March, 198⁹9.



Division of Occupational &
Professional Licensing
Department of Commerce

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF
JAMES PETER REILLY
TO PRACTICE AS A VETERINARIAN
AND TO PRESCRIBE AND ADMINISTER
CONTROLLED SUBSTANCES
IN THE STATE OF UTAH

:
:
:ORDER REINSTATING LICENSE
:
: Case No. OPL-90-36
:
:
:

BY THE DIVISION:

Respondent has satisfied the terms and conditions as set forth in the Division's Order, dated February 7, 1991, in the above-referenced case.

IT IS HEREBY ORDERED that the probation on the license of JAMES PETER REILLY to practice as a veterinarian be terminated and that said license be reinstated with full privileges.

Dated this 29th day of June, 1993.




David E. Robinson, Director

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R. PAUL VAN DAM (#3312)
Attorney General of Utah
MELISSA M. HUBBELL (#5090)
Assistant Attorney General
Tax and Business Regulation Division
Beneficial Life Tower, 11th Floor
36 South State Street
Salt Lake City, Utah 84114
Telephone: (801) 538-1019

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL
LICENSING OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES)	
OF JAMES PETER REILLY TO)	STIPULATION AND ORDER
PRACTICE AS A VETERINARIAN)	
AND TO PRESCRIBE AND ADMINISTER)	Case No. OPL 90-36
CONTROLLED SUBSTANCES IN THE)	
STATE OF UTAH		

JAMES PETER REILLY ("Respondent") by and through counsel, Fay E. Reber, and the Division of Occupational and Professional Licensing ("the Division"), by and through counsel, Melissa M. Hubbell, Assistant Attorney General, hereby stipulate and agree as follows:

1. Respondent is and has been a licensee of the Division at all times relevant to this case.
2. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.
3. Respondent acknowledges that he enters into this Stipulation voluntarily, and that no promise or threat whatsoever has been made by the Division, or any member, officer, agent or representative of the Division to induce him to enter into this Stipulation.

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4. Respondent acknowledges that he has been represented by counsel, Fay E. Reber, during these proceedings and that he enters into this Stipulation with the advice of counsel. Respondent acknowledges that he has a personal knowledge and understanding of the terms of this Stipulation.

5. Respondent waives the right to confront adverse witnesses and the right to a hearing before the Division.

6. Pursuant to complaint, the Division initiated an investigation into alleged violations of Utah Code Ann. §§ 58-1-2(6), 58-28-6(m), 58-37-8(a)(vi), 58-17-2(35), 58-1-7(1), 58-37-8(a), 58-37-6(a), and Rules R153-37-9, R153-37-10 G.(1-8), and R153-37-101 (1) and (2) of the Controlled Substance Rules.

7. The Division has completed its investigation and alleges that Respondent is in violation of the provisions cited in paragraph 6 above, based upon the allegations of fact contained in the Petition filed in the present case, which Petition is incorporated by reference to this Stipulation and Order.

8. The parties hereto have agreed to stipulate to the following facts:

a. On or about September 12, 1988, Reilly purchased 200 tablets of Methylphenidate, a schedule II controlled stimulant, from Harmons Apothecary in St. George, Utah.

b. On or about January 26, 1989, Reilly was asked by a Division investigator to show records to account for the 200 tablets of Methylphenidate mentioned above. Reilly said he did not keep separate records as to the disposition of the drugs, but claimed he dispensed it to horse trainers so they could use the drug to assist in training horses. Reilly said he would try to reconstruct the records and provide them to the Division.

c. When the records were not produced, Gail Oliver, a Division investigator again interviewed Reilly. He told Oliver that he had dispensed the Methylphenidate 15 or 20 tablets at a time to assist in training and to stimulate horses to run faster.

d. According to Tom Umrath, product manager at CIBA Pharmaceutical, a major manufacturer of Methylphenidate, there are no studies which show any efficacy in the treatment of horses with Methylphenidate.

9. Respondent neither admits nor denies the afორereferenced allegations of fact and that such allegations constitute violations of Utah Code Ann. 58-1-2(6), 58-28-6(m), 58-37-8(a)(vi), 58-17-2(35), 58-1-7(1), 58-37-8(a), 58-37-6(a), and Rules R153-37-9, R153-37-10 G.(1-8), and R153-37-101 (1) and (2) of the Controlled Substance Rules.

10. Respondent agrees to the imposition of the following sanctions:

A. Respondent's Schedule II Controlled Substance License shall be suspended for a period of no less than 2 years. Respondent shall surrender all copies of said license to the Division. After a period of no less than two (2) years, respondent may reapply for his Schedule II Controlled Substance License.

B. Respondent's license to practice Veterinary Medicine shall be placed on probation for a period of one year beginning with his first meeting with the Veterinarian Board. Respondent shall meet with the Board at commencement of probation, 6 months into probation and at the termination of probation.

C. Respondent shall take 30 hours of Continuing Education, the content of which is to be approved by the Veterinarian Licensing Board in advance.

11. If Respondent violates any of the terms of the

*True State Authority.
replied to 10/90
10/90 27-26*

*St. James County Authority
November 91*

*Western states
for 6 years
- Feb 92*

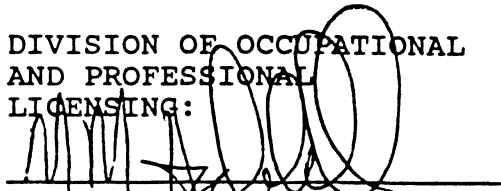
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Stipulation in any respect or any of the Utah statutes or rules governing controlled substances or the practice of medicine, then the Division, after giving Respondent notice and opportunity to be heard, may refile the petition and a hearing shall be held in order to determine why his controlled substance license and his license to practice medicine should not be revoked.

12. Respondent acknowledges that this Stipulation and Order, upon approval by the Director of the Division, shall be the final compromise and settlement of this matter. Respondent further acknowledges that the Director of the Division may not accept the terms of this Stipulation and Order and if the Stipulation is not accepted by the Director, it is null and void and without any force or effect whatsoever.

13. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements which modify, interpret, construe or affect this agreement.

DIVISION OF OCCUPATIONAL
AND PROFESSIONAL
LICENSING:


MELISSA N. HUBBELL
Assistant Attorney General

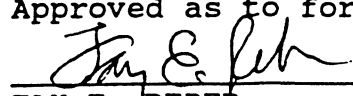
Date: 1/31/91

RESPONDENT


JAMES PETER REILLY

Date: 1/22/91

Approved as to form by:


FAY E. REBER

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF
JAMES PETER REILLY
TO PRACTICE AS A VETERINARIAN
AND TO PRESCRIBE AND ADMINISTER
CONTROLLED SUBSTANCES
IN THE STATE OF UTAH

:
: Case No. OPL-90-36
:
: NOTICE OF HEARING
:
:
:
:

Notice is hereby given that on the following date and appointed hour in Conference Room 457, of the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah, the Division of Occupational & Professional Licensing of the State of Utah will conduct a hearing to determine whether or not action should be taken against the licenses of JAMES PETER REILLY to practice as a veterinarian and to prescribe and administer controlled substances in the State of Utah and to determine the specific action to be taken, if any.


FEBRUARY 4, 1991

1:00 p.m.

The hearing will promptly commence as scheduled. Any preliminary review of the case between the parties should be completed prior to that time.

Dated this 3rd day of January, 1991.




DAVID E. ROBINSON, DIRECTOR

000108

THOMPSON, HUGHES & REBER
Fay E. Reber/#2703
Attorney for Respondent
148 East Tabernacle
St. George, Utah 84770
Telephone(801)673-4892

BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL
LICENSING OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES)
OF JAMES PETER REILLY TO) ANSWER TO PETITION
PRACTICE AS A VETERINARIAN)
AND TO PRESCRIBE AND) Civil No. OPL-90-36
ADMINISTER CONTROLLED)
SUBSTANCES IN THE STATE OF)
UTAH)

JAMES PETER REILLY, by and through his legal
counsel, Fay E. Reber, hereby answers the Petition filed in
the above-entitled matter as follows:

1. Reilly admits the statements contained in
paragraph 1 of the Petition.
2. Reilly admits the statements contained in
paragraph 2 of the Petition.
3. Reilly admits the statements contained in
paragraph 3.a., but denies the statements contained in
paragraphs 3.b., 3.c. and 3.d. of the Petition. Reilly
affirmatively states that there are, in fact, studies showing
the efficacy in the treatment of horses with Methylphenidate
and that such use of Methylphenidate is a legitimate use of
said substance.

COUNT 1

4. Reilly incorporates by reference herein his answers to the statements set forth in paragraphs 1 through 3 of the Petition as if fully set forth.

5. Reilly admits the statements of paragraph 5 of the Petition.

6. Reilly admits the statements contained in paragraph 6 of the Petition.

7. Reilly denies the statements contained in paragraph 7 of the Petition.

COUNT 2

8. Reilly incorporates herein by reference the answers to the statements contained in paragraphs 1 through 7 herein as if fully set forth.

9. Reilly admits the statements contained in paragraph 9 of the Petition.

10. Reilly admits the statements contained in paragraph 10 of the Petition.

11. Reilly denies statements contained in paragraph 11 of the Petition.

COUNT 3

12. Reilly incorporates herein by reference the answers to the statements contained in paragraphs 1 through 10 of the Petition as if fully set forth.

13. Reilly admits the statements contained in paragraph 13 of the Petition.

14. Reilly admits the statements contained in paragraph 14 of the Petition.

15. Reilly denies the statements contained in paragraph 15 of the Petition.

COUNT 4

16. Reilly incorporates herein by reference the answers to the statements set forth in paragraphs 1 through 14 as if fully set forth herein.

17. Reilly admits the statements contained in paragraph 17 of the Petition.

18. Reilly denies the statements contained in paragraph 18 of the Petition.

COUNT 5

19. Reilly incorporates herein by reference the answers to the statements contained in paragraphs 1 through 17 as if fully set forth herein.

20. Reilly admits the allegations contained in paragraph 20 of the Petition.

22. Reilly admits the statements contained in paragraph 22 of the Petition.

23. Reilly admits the statements of paragraph 23 of the Petition.

24. Reilly admits the statements contained in paragraph 24 of the Petition.

25. Reilly denies the allegations contained in paragraph 25 of the Petition.


AFFIRMATIVE STATEMENT OF JAMES PETER REILLY

The essence of the statements contained in the Petition is that the treatment of horses with Methylphenidate is not considered a legitimate use of said substance. On the contrary, there are many studies by well-recognized experts recognizing the salutary effect of Methylphenidate on the performance of horses. Reilly further represents that the use

of Methylphenidate in the treatment of horses is, in fact, a legitimate use of said substance and is not an uncommon practice in the State of Utah or other states.

WHEREFORE Reilly requests that the Petition be dismissed without action.

DATED this 5th day of August, 1990.



FAY E. REBER
Attorney for JAMES PETER REILLY

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and accurate copy of the foregoing ANSWER TO PETITION, postage prepaid, to the Division of Occupational and Professional Licensing, Heber M. Wells Building, 160 East 300 South, P. O. Box 45802, Salt Lake City, Utah 84145, this 9th day of August, 1990.



DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P. O. Box 45802 - Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF :
JAMES PETER REILLY : NOTICE OF AGENCY ACTION
TO PRACTICE AS A VETERINARIAN :
AND TO PRESCRIBE AND ADMINISTER : CASE NO. OPL-90-36
CONTROLLED SUBSTANCES :
IN THE STATE OF UTAH :

THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING TO
THE ABOVE-NAMED RESPONDENT:

The Division of Occupational & Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Gail Oliver, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. Within thirty (30) days of the date of this notice, you are required to file a written response with this Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition.

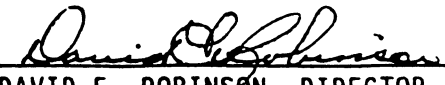
You are entitled by law to a hearing, at which time you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence as to whether your licenses to practice as a veterinarian and to prescribe and administer controlled substances in the State of Utah should be subject to a disciplinary sanction. The presiding officer at the hearing will be J. Steven Eklund, Administrative Law Judge, Department of Commerce. If you have any questions as to the procedures relative to the hearing, he can be contacted at P.O. Box 45802, Salt Lake City, UT 84145. His telephone number is (801) 530-6648.

Alternatively, you may attempt to negotiate a settlement of the case without proceeding to a hearing. Should you so desire, please contact Earl Maeser, Department of Commerce, immediately. He can be reached at (801) 530-6421 or 160 East 300 South, Salt Lake City, Utah 84111. If the case has not been resolved by Stipulation, as described above, on or before June 29, 1990 [30 days from the date of this Notice of Agency Action], the Division will schedule a hearing and notice of the date, time and location for the hearing will be sent to you by certified mail. Should you fail to timely file a response, as set forth above, or fail to appear for any scheduled hearing, you may be held in default and an order may enter consistent with the terms of the Verified Petition.

You may represent yourself or you are entitled to be represented by legal counsel at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance no later than the filing of a response to the Verified Petition.

Please conduct yourself accordingly.

Dated and mailed this 29th day of May, 1990.


DAVID E. ROBINSON, DIRECTOR

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DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P. O. Box 45802
Salt Lake City, Utah 84145

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	:	
JAMES PETER REILLY	:	
TO PRACTICE AS A VETERINARIAN	:	P E T I T I O N
AND TO PRESCRIBE AND ADMINISTER	:	
CONTROLLED SUBSTANCES	:	CASE NO. OPL-90-36
IN THE STATE OF UTAH	:	

PRELIMINARY STATEMENT

These causes of action were investigated by the Utah Division of Occupational & Professional Licensing (the Division) upon complaints that JAMES PETER REILLY, a licensee of the Division, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, the Veterinary Practice Act, the Controlled Substances Act, Utah Code Ann., §58-1-1, §58-28-1, §58-37-1, et seq. and the Controlled Substance Rules.

PARTIES

1. The Division is a Division of the Department of Commerce of the State of Utah, established by virtue of Section 13-1-2, Utah Code Ann. (1953), as amended.

2. JAMES PETER REILLY is a licensee of the Division.

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STATEMENT OF FACTS

3. a. On or about September 12, 1988, Reilly purchased 200 doses of Methylphenidate, a schedule II controlled stimulant, from Harmons Apothecary in Saint George, Utah.

b. On or about January 26, 1989 Reilly was asked by a Division investigator to show records to account for the 200 doses of Methylphenidate mentioned above. Reilly said he did not keep records as to the disposition of the drugs, but claimed he administered Methylphenidate to horses for the purpose of training them to race, or dispensed it to horse trainers so they could use the drug to assist in training the horses. Reilly said he would try to reconstruct the records and provide them to the Division.

c. When the records were not produced, Gail Oliver, a Division investigator again interviewed Reilly. He told Oliver that he had dispensed the Methylphenidate 15 doses at a time to be administered to horses at their trainers discretion, five doses at a time to assist in training and to stimulate horses to run faster.

d. According to Tom Umrath, product manager at CIBA Pharmaceutical, a major manufacturer of Methylphenidate, there are no studies which show any efficacy in the treatment of horses with Methylphenidate.

COUNT I

4. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 3 above as if fully set out herein.

5. Section 58-1-15(1), Utah Code Ann. (1953), as amended, provides that the Division may refuse to issue or renew, and may suspend or revoke the

license of any licensee who is or has been guilty of unprofessional conduct, as defined by statute or rule.

6. Section 58-1-2, Utah Code Ann. (1953), as amended, defines unprofessional conduct to mean:

(6) acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title.

7. Because he administered and dispensed a Schedule II Controlled Substance for purposes other than legitimate medical use without keeping records as required by statute and rule as described in paragraph 3 above. Reilly has violated the provisions of Section 58-1-2(6), Utah Code Ann. (1953), as amended, constituting grounds for imposing an appropriate sanction against his licenses under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT II

8. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 7 above as if fully set out herein.

9. Section 58-28-6, Utah Code Ann. (1953), as amended, defines unprofessional conduct to mean:

(m) violating the Utah Controlled Substance Act.

10. Section 58-37-8,(a)(vi), states

(a) it is unlawful for any person:

(i) who is subject to this chapter to distribute or dispense a controlled substance in violation of this chapter

11. Because he administered or dispensed Schedule II Controlled Substances for non medical conditions as described in paragraph number 3 above, REILLY has violated the provisions of Section 58-28-6(m) and 58-37-8(a)(vi), Utah Code Ann. (1953), as amended, constituting grounds for imposing an appropriate sanction against his license under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT III

12. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 10 above as if fully set out herein.

13. Section 58-17-7(1), Utah Code Ann. (1953), as amended, provides it is unlawful for any person to engage in the practice of pharmacy without first being licensed..

14. Section 58-17-2(35), Utah Code Ann. (1953), as amended, defines the practice of pharmacy to include:

(a) compounding, packaging, labeling, dispensing, and the coincident distribution of prescription drugs and devices.

15. Because he dispensed drugs to various unidentified horse trainers as described in paragraph number 3 above, REILLY has violated the provisions of Section 58-17-7(1), Utah Code Ann. (1953), as amended, constituting unprofessional conduct under the provisions of Section 58-1-2(6), constituting grounds for imposing an appropriate sanction against his licenses under the provisions of Section 58-1-15(1), Utah Code Ann. (1953), as amended.

COUNT IV

16. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 14 above as if fully set out herein.

17. Section 58-37-8(a), Utah Code Ann. (1953), as amended, provides that it is unlawful for any person:

(iv) to refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this chapter;

18. Because Reilly failed to make and keep records of his administration and dispensing of Methylphenidate as described in paragraph number 3 above, REILLY has violated the provisions of Section 58-37-8(3)(a)(iv), Utah Code Ann. (1953), as amended, constituting unprofessional conduct under the provisions of 58-1-2(6) and grounds for imposing an appropriate sanction against his licenses under the provisions of Section 58-1-15(1), Utah Code Ann. (1953) as amended.

COUNT V

19. The Division realleges and incorporates by reference the allegations set forth in paragraphs 1 through 17 above as if fully set out herein.

20. Section 58-37-6(a), Utah Code Ann. (1953), as amended, provides that a license pursuant to Subsection (2) to manufacture, produce, distribute, dispense, administer, or conduct research with a controlled substance may be denied, suspended, or revoked by the department upon finding that the applicant has:

(vi) violated any department rule that reflects adversely on the licensee's reliability and integrity with respect to controlled substances.

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22. R153-37-9 of the Controlled Substance Rules provides as follows:

A. Records of purchase, distribution, dispensing and prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, the amount purchased and the amount administered and prescribed to each patient.

23. Rule R153-37-10 G.(1-8) of the controlled substance rules provides as follows:

- G. A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:
- (1) the treatment of narcolepsy as confirmed by neurological evaluation;
 - (2) the treatment of abnormal behavioral syndrome (attention deficit disorder, hyperkinetic syndrome), and/or related disorders;
 - (3) the treatment of drug-induced brain dysfunction;
 - (4) the differential diagnostic psychiatric evaluation of depression;
 - (5) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;
 - (6) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;
 - (7) the clinical investigation of the effects of such drugs, in which case the practitioner shall submit to the Division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within sixty days following the conclusion of the investigation, submit to the Division a written report detailing the findings and conclusions of the investigation, submit to the Division a written report detailing the findings and conclusions of the investigation; or
 - (8) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

24. Rule R153-37-10I(1) and (2) of the Controlled Substance Rules provides as follows:

- I. A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in paragraph G of this rule, provided that all of the following conditions are met:
 - (1) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;
 - (2) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

25. Because he dispensed Methylphenidate for purposes not provided for by the Controlled Substance Rules and for patients he had not examined, and because he failed to keep records documenting the need for the drug on the animals they were used on as described in paragraph number 3 above; REILLY has violated the provisions of Section 58-37-6(4)(a)(vi), Utah Code Ann., (1953), as amended, R153-37-8A (2) and R153-37-9 A. and R153-37-10(G)(1-8), and I(1)(2), of the Utah Controlled Substance Rules, constituting grounds for imposing an appropriate sanction against his licenses under the provisions of 58-37-6(vi), Utah Code Ann. (1953), as amended.

WHEREFORE, the Division requests the following relief:


1. That JAMES PETER REILLY be adjudged and decreed to have engaged in the acts alleged herein.

2. That by engaging in the above acts, JAMES PETER REILLY be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act, the Pharmacy Practice Act, the Veterinary Practice Act, the Controlled Substance Act and the Controlled Substance Rules.

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3. That an Order be issued imposing an appropriate sanction against the licenses of JAMES PETER REILLY to practice as a veterinarian and to administer and prescribe controlled substances in the State of Utah.

DATED this 29th day of May, 1990.


Division of Occupational &
Professional Licensing
Department of Commerce

000121

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSE OF
REED A. JONES
TO PRACTICE AS A VETERINARIAN
IN THE STATE OF UTAH**

**NOTICE OF PRHEARING
CONFERENCE AND
SCHEDULING ORDER
Case No. OPL-95-20**

BY THE ADMINISTRATIVE LAW JUDGE:

Pursuant to a November 6, 1995 Supplemental Scheduling Order, the Court conducted a November 21, 1995 telephonic conference with R. Paul Allred, counsel for the Division of Occupational and Professional Licensing, and J. Garry McAllister, counsel for Respondent.

Respective counsel informed the Court that no resolution of this proceeding is likely as to allegations concerning random drug testing, as set forth in Paragraph 3(i) of the November 7, 1995 Amended Petition. Respective counsel further informed the Court that the parties have agreed Respondent may pursue informal discovery regarding the random drug testing process administered through the Division. Specifically, Mr. McAllister will provide a written request to Mr. Allred regarding the nature and scope of Respondent's anticipated discovery as to that matter.

Mr. McAllister informed the Court and Mr. Allred that Respondent will submit to an evaluation to be conducted by a Dr. Ray Middleton and the results of that evaluation will be subsequently provided to the Division. It is anticipated Dr. Middleton's report will identify his evaluation of Respondent's

present condition and will also include any recommendation for further drug counseling.

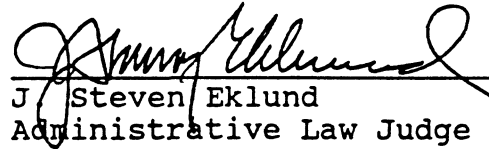
Based on the agreement of the parties, the Court entered an Order, the terms of which are restated as follows:

ORDER

Respondent shall provide the Division with a written request regarding the nature and scope of informal discovery being sought relative to the drug testing program administered through the Division. The just-described request shall be submitted to the Division by November 28, 1995.

Respective counsel shall contact the Court by December 15, 1995 to review the current status of this proceeding. The Court will contact respective counsel if no telephonic conference has been conducted by the just-stated date.

Dated this 6th day of December, 1995


J. Steven Eklund
Administrative Law Judge

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South - P.O. Box 45805
Salt Lake City, Utah 84145
Telephone: (801) 530-6628

RECEIVED
NOV 1991
DEPARTMENT OF
COMMERCE

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSE OF :
REED A. JONES TO PRACTICE : AMENDED PETITION
AS A VETERINARIAN :
IN THE STATE OF UTAH : Case No. OPL-95-20

PRELIMINARY STATEMENT

These claims were investigated by the DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING ("Division") upon complaint that Respondent REED A. JONES ("Respondent") has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, UTAH CODE ANN. §§ 58-1-1, et seq. (1994).

PARTIES

1. The Division is a Division of the Department of Commerce of the State of Utah and is established by virtue of UTAH CODE ANN. § 13-1-2 (1994) and § 58-1-103 (1994).

2. At all times material to the allegations in this action, Respondent was licensed by the Division to practice as a

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veterinarian under the Veterinary Practice Act.

STATEMENT OF ALLEGATIONS

3. a. On or about July 8, 1993, in Case No. OPL-93-59, the Division issued a Stipulation and Order sanctioning Respondent's license (hereafter referred to as "July 8 Order"). A copy of the July 8 Order is attached hereto as Exhibit "A" and is incorporated herein by this reference. The Stipulation and Order provided for the revocation of Respondent's license, with such revocation stayed in favor of a three-year period of probation, with terms and conditions. Paragraph 8(2)(b) and(c) of the July 8 Order required Respondent to:

- (b) submit to random drug testing upon the request of the Division or any company with whom the Division has contracted to conduct drug testing.

The Division shall determine when and where Respondent is to submit himself for testing.

- (c) complete a drug treatment program approved by Division and the Veterinary Board (the "Board").

complete any aftercare program recommended by the drug treatment program, or which the Division and the Board may require after his treatment prognosis and progress has been reviewed.

cause his treating therapist to discuss Respondent's diagnosis, treatment, and prognosis with the Division and the Board, and

to submit quarterly evaluations to the Board which addresses Respondent's prognosis and use of controlled substances.

b. On or about July 30, 1993, Respondent met with the Board at a probationary interview, at which time Respondent represented that he had completed an in-patient drug program but was not presently attending aftercare. The Board advised Respondent that he must attend aftercare in order to be in compliance with the July 8 Order.

c. On or about October 22, 1993, Respondent met with the Board at a probationary interview, at which time Respondent represented that he had begun attending aftercare at Olympus View Hospital and started random drug testing. Respondent furnished to the Board a report of his treatment program, which only contained information up through June 1993. The Board deemed Respondent was not in compliance with the July 8 Order.

d. On or about January 10, 1994, Respondent met with the Board at a probationary interview, at which time Respondent represented that he was attending aftercare once a week. Respondent also provided the Board with current aftercare reports. The Board deemed respondent in compliance with the July 8 Order.

e. On or about September 20, 1994, Respondent met with the Board at a probationary interview, at which time Respondent

represented that he had attended aftercare for one year. The Board requested Dr. Jones to cause "appropriate persons" at his Olympus View Hospital aftercare program to submit to the Board a report which reflects the following: (1) aftercare attendance records; (2) end of session evaluation; and (3) recommendations concerning future care.

f. On or about September 21, 1994, the Division advised Respondent in writing that the aftercare report requested by the Board must be submitted within 30 days of the date of the Division's letter and that his failure to do so would put him out of compliance with the July 8 Order.

g. On or about December 6, 1994, Respondent contacted the Division. At such time, the Division advised Respondent he was out of compliance with the July 8 Order because the Division had not yet received the aftercare report requested by the Board.

h. To date, Respondent has failed to provide the Division with the requested aftercare report.

i. The Division's records show that the Respondent failed to appear for five random drug screens beginning in February 1995 through August 1995.

COUNT I
(UNPROFESSIONAL CONDUCT)

4. Paragraphs 1 through 3 are hereby incorporated by reference.

5. The division may revoke, suspend or restrict the license of any licensee who:

(a) has engaged in unprofessional conduct, as defined by statute or rule under this title.

UTAH CODE ANN. § 58-1-401(2) (1994).

6. "Unprofessional conduct" is defined to include:

(a) violating ... any statute, rule, or order regulating an occupation or profession under this title.

UTAH CODE ANN. § 58-1-501(2) (1994).

7. Because Respondent violated a Division Order when he failed to cause a report to be submitted from his therapist to the Division, as described in paragraph 3 above, Respondent has engaged in "unprofessional conduct" as defined under the provisions of UTAH CODE ANN. § 58-1-501(2)(a), thus providing a basis to invoke sanctions against his license pursuant to UTAH CODE ANN. § 58-1-401(2)(a).

8. Because Respondent violated a Division Order when he

failed to appear at scheduled random drug screens, as described in paragraph 3 above, Respondent has engaged in "unprofessional conduct" as defined under the provisions of UTAH CODE ANN. § 58-1-501(2)(a), thus providing a basis to invoke sanctions against his license pursuant to UTAH CODE ANN. § 58-1-401(2)(a).

COUNT II
(REVOCATION OF PROBATION)

9. Paragraphs 1 through 3 are hereby incorporated by reference.

10. The Division's Order following Respondent's prior adjudication held that:

In the event Respondent violates or fails to fulfill any of the terms or conditions contained in this Stipulation, the Division, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation and impose any sanction stayed thereby, and may otherwise proceed against Respondent under applicable law. If a complaint or petition to revoke probation is filed against Respondent during probation, the period of probation and all relevant probationary terms and conditions shall be extended until the matter is final.

July 8 Order, ¶ 8(2)(g).

11. Because Respondent failed to cause a report to be submitted by his therapist to the Board, as described in paragraph 3 above and as required by the Division's July 8 Order, a basis exists upon which to revoke Respondent's probation.

12. Because Respondent failed to appear at scheduled random drug screens, as described in paragraph 3 above and as required by the Division's July 8 Order, a basis exists upon which to revoke Respondent's probation.

WHEREFORE, the Division requests the following relief:

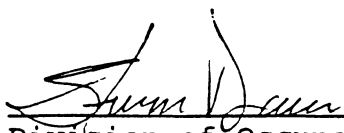
1. that Respondent be adjudged and decreed to have engaged in the acts alleged herein;

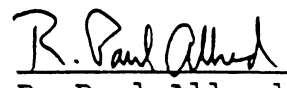
2. that by engaging in the above acts, Respondent be adjudged and decreed to have violated the above-enumerated provisions of the Division of Occupational and Professional Licensing Act and Order of the Division;

3. that an Order be issued imposing revocation of Respondent's license to practice as a veterinarian in the State of Utah.

DATED this 7 day of November, 1995.

Approved for Filing:


Division of Occupational &
Professional Licensing
Department of Commerce


R. Paul Allred
Assistant Attorney General

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South
P.O. Box 45805
Salt Lake City UT 84145-0805
Telephone: (801) 530-6628

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF	:	
REED A. JONES	:	
TO PRACTICE AS A VETERINARIAN	:	NOTICE OF AGENCY ACTION
IN THE STATE OF UTAH	:	
	:	Case No. OPL-95-20

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO
THE ABOVE-NAMED RESPONDENT:

The Division of Occupational and Professional Licensing ("the Division") hereby files this Notice of Agency Action. Said action is based upon the Verified Petition of Steve Davis, Investigator, State of Utah, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. Within thirty (30) days of the date of this notice, you are required to file a written response with this Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Verified Petition.

You may represent yourself or be represented by legal counsel at all times while this action is pending. Your legal counsel shall file with the Division an Entry of Appearance no later than the filing of a response to the Verified Petition.

You are entitled by law to a hearing conducted before the Veterinarian Board as to whether your license to practice as a veterinarian in the State of Utah should be subject to a disciplinary sanction. You will be notified by separate notice of the date, time, and place of any hearing.

During the hearing, you will have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence to the Board. After the hearing, the Board will act as a presiding officer to submit findings of fact, conclusions of law and a recommended order to the Director of the Division of Occupational and Professional Licensing for his subsequent review and action.

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The presiding officer for purposes of conducting the hearing will be J. Steven Eklund, Administrative Law Judge, Department of Commerce. He will rule on any evidentiary issues and matters of law or procedure. If you have any questions as to the procedure relative to the hearing, Judge Eklund can be contacted at P.O. Box 45802, Salt Lake City, UT 84145-0802. His telephone number is (801) 530-6648.

Counsel for the Division in this case is Mark Hirata, Assistant Attorney General at (801) 575-1600 or 330 South 300 East, Salt Lake City, UT 84111. Mr. Hirata shall contact you or your counsel and the presiding officer conducting the hearing no later than ten days following the filing of your Response to schedule a prehearing conference.

You may attempt to negotiate a settlement of the case without proceeding to a hearing. Should you so desire, please contact Mr. Hirata. Any agreement to resolve this proceeding in lieu of a hearing shall be in writing and executed by the parties no later than two (2) days prior to any subsequent hearing before the Board. All preliminary review of this case between the parties shall be completed prior to the date of said hearing.

Should you fail to timely file a response, as set forth above, or fail to appear for any scheduled prehearing conference(s) or hearing(s) in this case, you may be held in default without further notice to you. If you are held in default, the maximum administrative sanction consistent with the terms of the Verified Petition will be imposed against you. The maximum administrative sanction in this case is revocation of licensure.

Please conduct yourself accordingly.

Dated and mailed this 27th day of February, 1995.

W. Ray Walker
W. Ray Walker
Enforcement Counsel

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DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South - P.O. Box 45805
Salt Lake City, Utah 84145-0805
Telephone : (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES	:	
OF REED A. JONES TO PRACTICE	:	STIPULATION AND ORDER
AS A VETERINARIAN AND TO	:	
ADMINISTER AND PRESCRIBE	:	CASE NO. OPL93 -59
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	

REED A. JONES ("RESPONDENT") and the Division of Occupational and Professional Licensing of the Department of Commerce ("DOPL") stipulate and agree as follows:

1. Respondent admits the jurisdiction of DOPL over him and over the subject matter of this action.

2. Respondent acknowledges that he enters into this Stipulation voluntarily, and other than what is contained in this agreement, no promise or threat whatsoever has been made by the Attorney General, DOPL, or any member, officer, agent or representative of DOPL or the Attorney General's office to induce him to enter into this Agreement.

3. Respondent acknowledges that he has been informed of his right to be represented by counsel, and has chosen not to be represented by counsel.

4. Respondent understands that he is entitled to a hearing

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before the Veterinary Board ("the Board") at which time he may present to the Board evidence on his behalf, present his own witnesses and confront adverse witnesses. Respondent hereby acknowledges that by executing this document, he waives: (1) the right to a hearing before the Board, (2) the right to present evidence on his behalf, (3) the right to present his own witnesses, and (4) the right to confront adverse witnesses, together with such other rights as to which he may be entitled in connection with said hearing.

5. Respondent understands that, upon the signing of this Stipulation and Order by all parties thereto, DOPL will file a Petition in this matter, which is incorporated herein by reference, together with this Stipulation and Order. Respondent waives the right to issuance of a Notice of Agency Action.

6. Respondent acknowledges that this Stipulation and Order, if adopted by the Director of DOPL, will be classified as a public document and may be released to the public upon request. In addition, DOPL is authorized to inform other state and federal agencies of the action taken herein and of the content of this Stipulation and Order.

7. Respondent admits as follows:

(1) Respondent is licensed by the Division as a veterinarian and was licensed to prescribe and administer controlled substances. Respondent voluntarily surrendered his license to administer and prescribe controlled substances to DOPL on June 23, 1993.

(2) On May 26, 1993, an audit of Respondent's controlled substance inventory was conducted by Division investigator, David Bancroft. During the course of the audit, Bancroft observed contaminants in Respondent's multi-dose Demerol containers (Demerol is a schedule II controlled substance). Bancroft was not able to conduct a meaningful audit of the drugs due to Respondent's failure to maintain adequate records of his purchases of controlled substances.

(3) On June 15, 1993, Respondent was confronted by Bancroft regarding the contaminants found in the Demerol stock. Respondent admitted to Bancroft that most of the Demerol he had purchased for his practice during the past several months he had administered to himself to medicate for neck pain. Respondent also admitted to Bancroft he had maintained fictitious records to account for the Demerol he used, including documenting in patient records the use of the drug when none was in fact administered. Respondent also admitted to filling depleted containers of Demerol with other liquids conceal the missing Demoral.

During Bancroft's conversation with Respondent, Respondent's clinic was open for business, patients were in the clinic to receive treatment, and Respondent was observed by Bancroft to be in an intoxicated state.

(4) On June 18, 1993, Respondent was admitted into an in-patient drug rehabilitation program in Salt Lake City.

8. Respondent agrees an Order shall be entered in this matter imposing the following sanctions and restrictions on his licenses:

(1) Respondent's license to administer and prescribe controlled substances was surrendered on June 23, 1993. Respondent may reapply for a restricted license to administer and prescribe only those controlled substances authorized by the DOPL and the Board.

(2) Respondent's license to practice as a veterinarian shall be revoked. That revocation, however, shall be stayed in favor of a three year term of probation subject to the following terms and conditions:

a. Respondent shall continuously and without exception, abstain from consuming alcoholic beverages or any unauthorized use or possession of any drugs or controlled substances as defined in the Utah Controlled Substances Act, or any drugs requiring a prescription, unless such drug is lawfully prescribed for him for a bona fide illness or condition by a licensed practitioner and taken according to that practitioner's instructions.

b. Respondent shall submit to random drug testing upon the request of the Division or any company with whom the Division has contracted to conduct drug testing. The Division shall determine when and where Respondent is to submit himself for testing. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division. The Respondent shall also provide the Division with two recent wallet sized photographs. If the drug testing provided for herein indicates the presence of any prescription drug, including controlled substances, for which Respondent does not have a valid, current

prescription from a licensed practitioner under which the drug is being taken, Respondent's license to practice as a veterinarian and his controlled substance licenses shall be immediately surrendered to and suspended by DOPL until such time as a hearing can be conducted to determine what, if any, sanctions are appropriate.

c. Respondent shall complete a drug treatment program approved by DOPL and the Board. Respondent shall also participate in any after care program recommended by the drug treatment program, or which DOPL and the Board may require after his treatment prognosis and progress has been reviewed. Any treatment program or therapist from whom Respondent has or will receive treatment must be directed and authorized by Respondent to discuss his diagnosis, treatment, and prognosis with DOPL and the Board. Respondent shall cause to be submitted from the therapist quarterly evaluations to the Board which address Respondent's prognosis and use of controlled substances.

d. Should Respondent not be engaged in the practice of veterinary medicine for a consecutive period of more than 90 days, that period shall not apply to the reduction of probation, though the terms of probation shall remain applicable.

e. Respondent shall meet with the Board within 30 days of the signing of the accompanying Order and on a quarterly basis for the duration of the probationary period thereafter. At the first meeting, Respondent may present any proposal regarding his drug treatment program discussed in paragraph 8(2)(c) above.

f. In the event Respondent should leave the State, Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside this State will not apply to the reduction of the probationary period and the licensing authorities of the jurisdiction to which Respondent moves must be promptly notified of Respondent's probationary status in this State.

g. In the event Respondent violates or fails to fulfill any of the terms or conditions contained in this Stipulation, the Division, in addition to taking action as provided for herein, after giving Respondent notice and the opportunity to be heard, revoke probation and impose any sanction stayed thereby, and may otherwise proceed against Respondent under applicable law. If a complaint or petition to revoke probation is filed against Respondent during probation, the period of

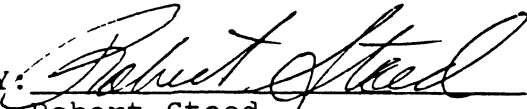
probation and all relevant probationary terms and conditions shall be extended until the matter is final.

9. Respondent acknowledges this Stipulation and Order, upon approval by the Director of DOPL, shall be the final compromise and settlement of this matter. Respondent further acknowledges the Director of DOPL is not required to accept the terms of this Stipulation and Order and if the Stipulation is not accepted by the Director, it is null and void and without any force or effect whatsoever.

10. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements which modify, interpret, construe or affect this Stipulation.

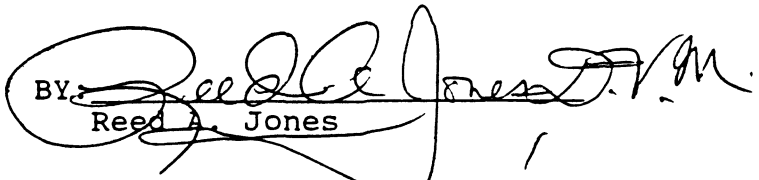
DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

DATE: 6-30-93

BY: 
Robert Steed,
Assistant Attorney General

RESPONDENT

DATE: 6-29-93

BY: 
Reed A. Jones

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South - P.O. Box 45805
Salt Lake City, Utah 84145-0805
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE)	STIPULATION AND ORDER
SURRENDER OF THE LICENSE OF)	
REED A. JONES)	OPL 93 - 59

REED A. JONES ("Licensee") and the DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING ("Division") of the Utah Department of Commerce, stipulate and agree as follows:

1. On or about June 17, 1993, Licensee presented his controlled substance license, license number #90-117679-9915, to the Division, informing the Division that he wished to surrender it to the Division.

2. Licensee acknowledges that on June 17, 1993, he was informed by the Division that the Division is not required to accept the surrender of his license, but that upon signature of this document by the parties on the signature blocks provided immediately following the numbered paragraphs herein, his request would be evaluated by the Director of the Division.

3. Licensee acknowledges that the Director of the Division is not required to accept the terms of this Stipulation and that if the Stipulation is not approved by the Director through the issuance of an Order, the Stipulation is null and void and without any force or effect whatsoever.

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4. Licensee admits the jurisdiction of the Division over him and over the subject matter of his request.

5. Licensee affirms that he is offering to surrender his license voluntarily of his own free will and choice without any undue inducement, coercion, or threat from any source, and that the only promises or understandings he has obtained from the Division regarding the surrender of his license are those contained in this Stipulation.

6. Licensee acknowledges that he has been informed of his right to be represented by counsel, and that he has chosen not to be so represented.

7. Licensee affirms that he is offering to surrender his license because he is being investigated by the Division for diverting drugs from the stock of his practice for his personal use, and admits to inappropriately taking drugs. Licensee would rather surrender his controlled substance license rather than have that license subjected to the investigation and disciplinary process.

8. Licensee understands that if his request is granted he will forfeit all rights associated with a controlled substance license in Utah unless and until he reapplies for licensure and his application is approved by the Division.

9. Licensee understands that if he reapplies for licensure, he must meet the requirements for a new license unless those requirements are waived by the Division in whole or in part upon a review of the application.

10. Licensee understands that he will not receive any refund of license or renewal fees previously paid to the Division.

11. Licensee acknowledges that no representations regarding

a future waiver of licensure requirements have been extended to him.

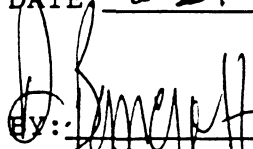
12. Licensee recognizes this stipulation does not constitute a finding of unprofessional or unlawful conduct by the Division, nor does it constitute disciplinary action by the Division. Licensee also agrees this document will only be used in future proceedings relative to any reapplication he may make for licensure and will not be used in any other proceedings.

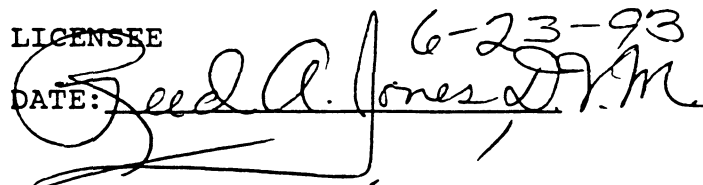
13. Licensee acknowledges that he was informed that his request may be withdrawn at any time prior to an Order being entered herein by the Director or his designee.

14. Licensee acknowledges that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document and may be released to the public upon request. In addition, the Division is authorized to inform other state and federal agencies of the action taken herein and of the content of this Stipulation and Order.

15. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements which modify, interpret, construe or effect this Stipulation.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

DATE: 6-29-93

BY: _____
(Representative)
(Title)

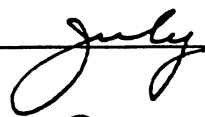

LICENSEE
DATE: 6-23-93

BY: 6-29-93
(Licensee/Representative)
(Title)

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ORDER

THE STIPULATION ABOVE, which is approved by the Division of Occupational & Professional Licensing, constitutes my Findings of Fact and Conclusions of Law in this matter. The terms and conditions of the Stipulation are hereby incorporated herein and adopted as the Order of the Division of Occupational & Professional Licensing. Specifically, Licensee's request to surrender his license is approved and Licensee's right to prescribe and administer controlled substances in Utah is extinguished unless and until he reapplies for licensure and his application is approved by the Division. If Licensee reapplies for licensure, he must satisfy the requirements for anew license unless those requirements are waived by the Division in whole or in part upon a review of the application. The legal effect of this Order is as set forth in the Stipulation.

DATED this 7th day of July, 1993.

DAVID E. ROBINSON, Director
Division of Occupational and
Professional Licensing

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DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South - P. O. Box 45802
Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES	:	
OF REED A. JONES TO PRACTICE	:	P E T I T I O N
AS A VETERINARIAN AND TO	:	
ADMINISTER AND PRESCRIBE	:	CASE NO. OPL93 - 59
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	

PRELIMINARY STATEMENT

These claims were investigated by the UTAH DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING ("Division") upon complaints that REED A. JONES ("Respondent"), has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, the Veterinary Practice Act, and the Controlled Substance Act, Utah Code Annotated (1953), as amended (U.C.A.), §§58-1-1, 58-28-1, and 58-35-1, et seq.

PARTIES

1. The Division is a Division of the Department of Commerce of the State of Utah and is established by virtue of §13-1-2, U.C.A.

2. Respondent is a licensee of the Division.

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Statement of Allegations

3.(a) During all time pertinent to the allegations contained herein, Respondent was licensed by the Division as a veterinarian and was licensed to prescribe and administer controlled substances.

(b) On or about May 26, 1993, an audit of Respondent's controlled substance inventory was conducted by Division investigator, David Bancroft. During the course of the audit, Bancroft observed contaminants in Respondent's multi-dose Demerol containers (Demerol is a schedule II controlled substance). Bancroft was not able to conduct a meaningful audit of the drugs because Respondent had failed to maintain records of his controlled substances purchases.

(c) On or about June 15, 1993, Respondent was confronted by Bancroft regarding the contaminants found in the Demerol stock. Respondent was observed by Bancroft to have the appearance of drug intoxication. Respondent admitted to Bancroft he had administered most of the Demerol he had purchased for his practice during the past several months to himself to medicate for neck pain. Respondent also admitted to Bancroft that he had maintained fictitious records to account for the Demerol use, including documenting in patient records the use of the drug when none was in fact used. Respondent also admitted to filling depleted containers of Demerol with other liquids to conceal the missing Demoral.

(d) Respondent was observed in an intoxicated state at the clinic while it was open for business and patients were at the

clinic for treatment.

(e) On or about June 18, 1993, Respondent was admitted into an in-patient drug rehabilitation program in Salt Lake City.

COUNT I

4. Paragraphs 1 through 3 above are incorporated by reference as if fully set forth herein.

5. §58-1-15 U.C.A. provides in pertinent part that the Division may refuse to issue or renew, and may suspend or revoke the license of any licensee who:

(1) is or has been guilty of unprofessional conduct, as defined by statute or rule.

6. §58-28-2(7), U.C.A., defines unprofessional conduct to include:

(b) using intoxicants or drugs to such an extent as to render the user unfit to practice veterinary medicine, surgery, or dentistry;

(m) violating the Utah Controlled Substances Act.

7. Because Respondent used controlled substances to an extent to render him unfit to practice veterinary medicine, surgery, or dentistry, Respondent has violated §58-28-2(7)(b), U.C.A., constituting unprofessional conduct and grounds for sanctioning his license as provided under §58-1-15(1), U.C.A.

COUNT II

8. Paragraphs 1 through 9 are incorporated by reference as if fully set forth herein.

9. §58-37-8(2)(a), U.C.A. provides that it is unlawful:

(i) for any person knowingly and intentionally to possess or use a

controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of his professional practice.

11. Because Respondent used controlled substances which were not obtained by a valid prescription, as described above, Respondent has violated the provisions of §58-37-8(2)(a)(i), U.C.A., constituting unprofessional conduct under the provisions of §58-28-2(7)(m), U.C.A., and grounds for imposing a sanction against his license under the provisions of §58-1-15(1), U.C.A.

COUNT III

12. Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

13. §58-37-6(5)(b), U.C.A., provides in relevant part:

(i) Every physician, dentist, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.

10. §58-37-8(4)(a), U.C.A. provides in pertinent part that it is unlawful:

(iv) to furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or to willfully make any false statement in any prescription, order, report, or record required by this chapter.

15. Because Respondent falsely maintained records of the disposition of his controlled substance inventory, and failed to

maintain required controlled substance records, as described above, Respondent has violated the provisions of §§58-37-6(5)(b)(i) and 58-37-8(4)(a)(iv), U.C.A., constituting unprofessional conduct as provided under §58-28-2(7)(m), U.C.A., and grounds for imposing a sanction against his license as provided under §58-1-15(1), U.C.A.

WHEREFORE, the Division requests the following relief:

1. That Respondent be adjudged and decreed to have engaged in the acts alleged herein;
2. That by engaging in the above acts, Respondent be adjudged and decreed to have violated the Division of Occupational and Professional Licensing Act, the Veterinary Practice Act, and the Controlled Substance Act; and
3. That an Order be issued imposing an appropriate sanction against Respondent's license under the provisions of §§58-1-15(2), U.C.A.

DATED this, 7 day of JULY, 1993.



Division of Occupational &
Professional Licensing
Department of Commerce

R. PAUL ALLRED (No. 4785)
Assistant Attorney General
JAN C. GRAHAM (No. 1231)
Attorney General
Consumer Rights Division
160 East 300 South
P.O. Box 140872
Salt Lake City, UT 84114
Telephone: (801) 366-0200

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	:	
GREGORY RAY JOHNSTON TO PRACTICE	:	STIPULATION AND ORDER
AS A VETERINARIAN AND TO	:	
ADMINISTER AND PRESCRIBE	:	Case No. OPL-95-112
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	

The Division of Occupational and Professional Licensing (the "Division"), and Respondent Gregory Ray Johnston ("Respondent"), by and through the respective counsel of record, hereby stipulate and agree as follows:

1. Respondent is and has been a licensee of the Division at all times relevant to this action.
2. Respondent admits to the jurisdiction of the Division over him and the subject matter of this action.
3. Respondent acknowledges that he enters into this Stipulation and Order voluntarily, and that no promise or threat

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whatsoever has been made by the Division, or any member, officer, agent or representative of the Division, to induce him to enter into this Stipulation and Order.

4. Respondent acknowledges that he is represented by his counsel, Robert L. Neeley.

5. On or about May 24, 1995, the Division filed a Petition against Respondent based upon allegations of unprofessional conduct in violation of Utah Code Ann. §§ 58-1-401(2)(a) and 58-1-501(2). A copy of the Petition is attached hereto as Exhibit "A" and is incorporated herein by this reference. More specifically, the Petition alleges:

- a. Respondent failed to meet professional standards applicable to practicing veterinary medicine in Utah;
- b. Respondent caused a person to solicit patronage for his clinic.

6. Respondent understands he is entitled to a hearing before the Veterinary Licensing Board (the "Board"). Respondent acknowledges that by executing this Stipulation and Order, he waives his right to: (1) a hearing before the Board on this matter; (2) present witnesses and evidence on his behalf; and (3) confront adverse witnesses, together with such other rights as to which he may be entitled in connection with said hearing.

7. Respondent, without admitting the truthfulness of all the allegations, agrees that cause exists for sanctions against his license. In lieu of a formal hearing before the Board, Respondent agrees to the following terms and conditions:

a. Respondent's license to practice veterinary medicine in the State of Utah shall be revoked, with such revocation stayed in favor of a period of probation beginning on the date of this Stipulation and Order and continuing for five years ("period of probation"). During the period of probation, Respondent shall:

- (1) Refrain from performing ovariectomies on small animals. Respondent shall only preform complete ovariohysterectomies when spaying small animals.
- (2) Respondent shall be required to participate in a professional educational program or course work of not less than 32 hours per year throughout the period of probation. The professional educational program shall consist primarily of surgical "wet" labs for small animals. Respondent shall submit his proposed course work, to the Board for approval, each year within two weeks of the anniversary date of the Division's approval of this Stipulation and Order.
- (3) Respondent, during the first three years of his probation, shall take the Clinical Competency Test ("CCT") offered by the Professional Examination Service of New York. Failure to pass the examination with a minimum passing score, as determined by the National Board Examination of the National Board Examination Committee of the American Veterinary Medical Association, shall be deemed a violation of this Stipulation and

Order. Before the end of the first three years of probation, the Respondent may make a written request of the Board for additional time to pass the CCT. The Board shall have the discretion to accept, reject or modify Respondent's request.

- (4) Respondent, at his own expense, shall cause a qualified veterinarian, approved by the Board, to review one out of every fifteen of Respondent's patient charts, meet with him to discuss any issues arising out of such review, and thereafter cause the reviewer to submit a written evaluation to the Division. The review shall be performed on a quarterly basis throughout the period of probation. The type of cases reviewed shall be at the Board's discretion. The Board shall provide instructions to the reviewing veterinarian about the procedure for review as it deems appropriate. (The Board shall have the right to modify this condition as it deems necessary.)
- (5) Respondent shall meet with the Board on a quarterly basis, beginning with the next-scheduled Board meeting following the date of this Stipulation and Order, or as determined by the Board.
- b. Upon request, Respondent shall submit or cause to be submitted to the Division any other information requested by the Board or the Division;
- c. In the event Respondent leaves Utah to reside or practice in another State, Respondent shall notify the Board, in writing, of his intention to do so, including the expected dates of departure and return. Such notice shall be provided no later than fourteen (14) days prior to Respondent's departure. Any such periods of residency outside Utah shall not be applied to the reduction of the terms and conditions of this Stipulation and Order,

unless Respondent sufficiently establishes, to the Board's satisfaction, continued compliance with the terms and conditions of this Stipulation and Order. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent of this Stipulation and Order within seven (7) days of Respondent's arrival;

- d. If Respondent successfully completes the terms and conditions of this Stipulation and Order, the Division shall immediately thereafter lift any restrictions on his licenses. If, on the other hand, Respondent hereafter violates any of the terms and conditions of this Stipulation and Order in any respect, or fails to maintain professional standards applicable to practicing veterinary medicine in Utah, the case will be referred immediately to the Division for investigation and, where appropriate, a hearing shall be conducted before the Board to determine whether further sanctions should issue against Respondent's licenses.

8. Respondent acknowledges this Stipulation and Order, if adopted by the Director of Division, will be classified as a public document and may be released to the public upon request. In addition, Division is authorized to inform other state and federal agencies of the action taken herein and of the contents of this Stipulation and Order.

9. Respondent acknowledges that the Director of the Division is not required to accept the terms of this Stipulation and Order and if rejected by the Director, it is null and void and without any force or effect whatsoever. The Division acknowledges that it

will waive its right to file any criminal charges against Respondent based upon or arising from the allegations contained in the Petition.

10. Respondent acknowledges he has read and understands the terms of this Stipulation and Order.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements which modify, interpret, construe or affect this Stipulation and Order.

Counsel for the Division of Occupational and Professional Licensing



R. Paul Allred
Assistant Attorney General

4-25-96

Date

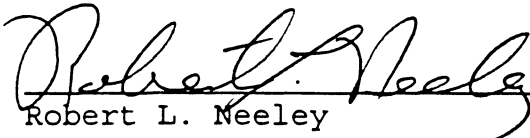


Gregory Ray Johnston
Respondent

4/23/1996

Date

Approved as to form:



Robert L. Neeley
Attorney for Respondent

April 23, 1996

Date

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DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Heber M. Wells Building
160 East 300 South - P.O. Box 45805
Salt Lake City, Utah 84145
Telephone: (801) 530-6628

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF THE LICENSES OF	:	
GREGORY RAY JOHNSTON TO PRACTICE	:	AMENDED PETITION
AS A VETERINARIAN AND TO	:	
ADMINISTER AND PRESCRIBE	:	Case No. OPL-95-112
CONTROLLED SUBSTANCES	:	
IN THE STATE OF UTAH	:	

PRELIMINARY STATEMENT

These claims were investigated by the DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING (the "Division") upon complaint that Respondent GREGORY RAY JOHNSTON ("Respondent") has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, UTAH CODE ANN. §§ 58-1-101, et seq. (1953), as amended, and the Veterinary Practice Act §§ 58-28-1, et seq. (1953), as amended.

PARTIES

1. The Division is a division of the Department of Commerce of the State of Utah and is established by virtue of UTAH CODE ANN.

§ 13-1-2 (Supp. 1993) and § 58-1-103 (1993).

2. At all times material to this action, Respondent was licensed by the Division to practice as a veterinarian.

STATEMENT OF ALLEGATIONS

SAKI

3. a. During December 1990, Linda Harden had her cat, Saki, spayed by Respondent. A subsequent operation performed on Saki on or about March 9, 1992, uncovered an infected uterus without the ovaries.

KITTEN

b. On or about September 3, 1991, Linda Watts took her kitten to Respondent, after it began to bloat and could not defecate. When she went to pick her kitten up, Watts was informed by a member of Respondent's staff that her kitten's temperature had been taken, that her kitten had had a bowel movement, and that her kitten was "healthy." Watts was also provided with dewormer medication and directed to feed her kitten scrambled eggs.

- (1) The kitten's condition did not change and was still unable to defecate. Upon telephoning Respondent's office, Watts was told by a member of Respondent's staff that her kitten would not defecate because the scrambled eggs were fully digestible.
- (2) The kitten's condition worsened, as Watts found her lying down appearing half dead. The kitten was seen by another veterinarian at the North Ogden Animal Hospital. The veterinarian, desiring to take the kitten's temperature, could not insert a

rectal thermometer. Upon further evaluation, the veterinarian determined the kitten had an outer rectum opening with nothing connected to it. The kitten therefore needed to be and was euthanized.

STINKER

c. On or about 1991 or 1992, Linda Naumann had her cat, Stinker, spayed and de-clawed by Respondent. Another veterinarian subsequently examined Stinker, found a testicle, and removed it.

BABY

d. During January 1992, Rochelle Rockne took her sick kitten (fatigue and vomiting), Baby, to Respondent for treatment, and to be neutered if the kitten's condition improved. While Baby was still sick, Respondent neutered him and, during this process, severely burned the kitten. Rockne took her kitten to another veterinarian, who determined Baby's burn was not treatable and that he had only been partially neutered. Baby was thereafter euthanized.

SHY

e. On or about December 10, 1992, Louise Cromwell had her cat, Shy, neutered by Respondent. Another veterinarian subsequently examined Shy, found a testicle, and removed it.

ABBY

f. On or about January 15, 1992, Tami Friese had her

cat, Abby, spayed by Respondent. Abby later gave birth to four kittens.

BUZZY

g. On or about April 17, 1992, Debra Ramer had her cat, Buzzy, neutered by Respondent. Another veterinarian subsequently examined Buzzy, found a testicle, and removed it.

FLOPPY

h. On or about July 14, 1992, Jeffery Martinez had his dog, Floppy, spayed by Respondent. Floppy later went into heat. Martinez returned Floppy to Respondent. Respondent said the problem was likely an infection and that sometimes, in spay procedures, an ovary may be missed and bleeding could result. Floppy went into heat again. Prior to performing a spay operation on Floppy, another veterinarian examined her and found: (1) very little scar tissue; (2) right side horn and ovary in place; (3) left side horn undeveloped with a short stump, which led to a cystic ovary; and (4) normal ligaments.

SANDY

i. On or about August 18, 1992, Shannon Sims had her cat, Sandy, spayed by Respondent. Sandy later gave birth to three kittens.

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SONYA

j. On or about January 18, 1993, Kevin and Becky Ireland had their cat, Sonya, spayed and de-clawed by Respondent. In the ensuing month following her operation, Sonya went into heat.

- (1) Respondent's office, when contacted by Becky, said Sonya would go into phantom heat for awhile but that she would not have any kittens.
- (2) The problem persisted, and Sonya began urinating around the house. Respondent's office, again contacted by Becky, stated to discipline the cat.
- (3) Sonya began dripping from her vaginal area. Respondent's office was notified. The receptionist said the condition was life-threatening and that Sonya needed to be seen right away.
- (4) Sonya was taken to Erz Animal Hospital by Becky and placed on Amoxicillin. Sonya responded favorably.
- (5) The dripping condition returned, and Sonya was thereafter taken to another veterinarian by Becky, where she was treated for a uterine infection, and an operation followed. Prior to performing a spay operation on Sonya, the veterinarian examined her and found the right ovary, horns, and the entire uterus in place.

SNUGGLES

k. On or about October 13, 1993, Lynda Davis had her cat, Snuggles, spayed by Respondent. Snuggles later gave birth to four kittens.

BEAR

1. On or about December 13, 1993, Paulette Roberts took her three month old chow puppy, Bear, to Respondent for treatment of a broken leg. The pin that was holding the break in place started to come out. When Roberts phoned Respondent's office, she was told to just push the pin back in place. She did so but the pin later worked its way out. Since this occurred after regular business hours, Roberts was unable to reach Respondent by phone. Bear was then taken to another veterinarian, who determined Respondent had inappropriately prescribed Phenobarbital, a seizure medication, for pain and had used the wrong type and size of pin to hold the break. Respondent also provided Bear with Temaril-P, a medication used primarily for respiratory conditions. Bear showed no signs of such a condition. Bear was euthanized when it was determined that, as a result of the infection, the leg would have to be amputated.

TWIX

m. On or about February 10, 1994, Emmalee Tracy had her cat, Twix, spayed by Respondent. Twix later gave birth to a kitten.

LACY

n. Suzanne Hahto, shortly after adopting her cat, Lacy,

received a phone call soliciting business for Respondent. Hahto was offered a free examination. She accepted the offer and an appointment was scheduled for on or about March 17, 1994. During this examination, Respondent gave Lacy a leukemia vaccination and inaccurately represented to Hahto that if her cat had been exposed to the causing virus this vaccination would keep the cat from developing leukemia. On or about March 21, 1994, Lacy was spayed and de-clawed by Respondent. Lacy later went into heat. On or about September 8, 1994, Lacy was respayed by another veterinarian, who found a large portion of the uterus still in place.

BORIS

o. On or about March 24, 1994, Lisa Abshere, after adopting a cat, Boris, from the Ogden City Animal Shelter, received a phone call from a woman (identifying herself as a representative of Respondent's office) soliciting veterinary care business for Respondent, including vaccinations, neuters, spays, medications, and physicals.

VARDA

p. On or about September 6, 1994, Terry Lynn D'Agostino took her cat, Varda, to Respondent for treatment after it was injured in a mishap. Respondent did not evaluate and treat Varda promptly. Two days later, Varda died during preparation for

surgery. At death, Varda had a hole in her thorax, maggots in her lungs, with gangrene having set in.

PUDDLES

q. On or about October 12, 1994, Marilyn Stickler had her kitten, Puddles, spayed and all four paws de-clawed by Respondent. On or about November 13, 1994, Puddles appeared to be dying and was euthanized by another veterinarian. A subsequent autopsy performed by the veterinarian revealed Respondent had done an incomplete spay, as Puddles' uterus and both horns were still intact.

DUFFER

r. On or about December 6, 1994, Rob Orsburn took his cat, Duffer, to Respondent for treatment. Duffer was fourteen years old, declining in health, losing considerable weight, and was vomiting. Respondent told Orsburn that Duffer could have his life prolonged from one to three years if he would only allow him to do some work on his teeth. Respondent claimed if the work was not done, Duffer would only live six months.

- (1) Duffer was thereafter taken to Respondent to have the proposed work done on his teeth. While at Respondent's clinic, Duffer was also vaccinated for rabies, panleukopenia, rhinotracheitis, calicivirus, chlamydia and leukemia. The next morning following this procedure, Duffer was found dead.

APPLICABLE LAW
(CONDUCT PRIOR TO JULY 1, 1993)

4. The Division may refuse to issue or renew, and may suspend, revoke, or place on probation the license of any licensee who:

is or has been guilty of unprofessional conduct, as defined by statute or rule;

UTAH CODE ANN. § 58-1-15(1) (1990).

5. "Unprofessional conduct" is defined to include any:

acts, knowledge, and practices which fail to conform with the accepted standards of the specific licensed occupation or profession and which could jeopardize the public health, safety, or welfare and includes the violation of any statute regulating an occupation or profession under this title.

UTAH CODE ANN. § 58-1-2(6) (1990).

APPLICABLE LAW
(CONDUCT AFTER JULY 1, 1993)

6. The Division may revoke, suspend or restrict the license of any licensee who:

has engaged in unprofessional conduct, as defined by statute or rule under this title;

UTAH CODE ANN. § 58-1-401(2)(a) (Cum. Supp. 1993).

7. "Unprofessional conduct" is defined to include:

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence.

UTAH CODE ANN. § 58-1-501(2) (Cum. Supp. 1993).

8. "Unprofessional conduct" is further defined to include:

soliciting patronage by directly or indirectly employing solicitors.

UTAH CODE ANN. § 58-28-2(6)(b) (Cum. Supp. 1993).

COUNT I
(CONDUCT PRIOR TO JULY 1, 1993)

9. Paragraphs 1 through 3 are incorporated herein by reference.

10. Because Respondent: (1) failed to meet professional standards applicable to practicing veterinary medicine in Utah; and (2) in doing so, jeopardized the public health, safety, or welfare, as described in paragraphs 3.a. through 3.l. above, Respondent has engaged in "unprofessional conduct" as defined under UTAH CODE ANN. § 58-1-2(6), thus providing a basis upon which to invoke appropriate sanctions against his license under UTAH CODE ANN. § 58-1-15(1).

COUNT II
(CONDUCT AFTER JULY 1, 1993)

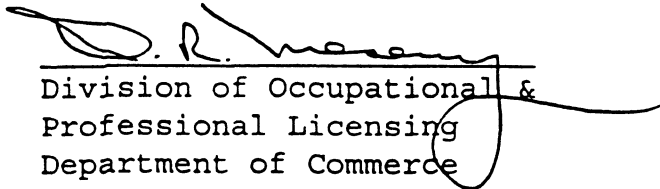
11. Paragraphs 1 through 3 are incorporated herein by reference.

12. Because Respondent: (1) failed to meet professional standards applicable to practicing veterinary medicine in Utah; (2) engaged in a pattern of incompetency and/or negligence in his practice of veterinary medicine; (3) caused a person to solicit patronage for his clinic, as described in paragraphs 3.m. through 3.t. above, Respondent has engaged in "unprofessional conduct" as defined under UTAH CODE ANN. §§ 58-1-501(2)(b) and (g), and § 58-1-2(6), thus providing a basis upon which to invoke appropriate sanctions against his license under UTAH CODE ANN. § 58-1-401(2)(a).


WHEREFORE, the Division requests the following relief:

1. that Respondent be adjudged and decreed to have engaged in the acts alleged herein;
2. that by engaging in the above acts, Respondent be adjudged and decreed to have violated the provisions of the Division of Occupational and Professional Licensing Act; and
3. that appropriate sanctions be invoked against Respondent's license to practice as a veterinarian in the State of Utah.

DATED this 19 day of January, 1996.


Division of Occupational &
Professional Licensing
Department of Commerce

Approved as to Form:


R. PAUL ALLRED
Assistant Attorney General

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSES OF	:	
GREGORY RAY JOHNSTON	:	NOTICE OF PREHEARING
TO PRACTICE AS A VETERINARIAN AND TO	:	CONFERENCE AND MODIFIED
PRESCRIBE AND ADMINISTER CONTROLLED	:	SCHEDULING ORDER
SUBSTANCES IN THE STATE OF UTAH	:	
	:	Case No. OPL-95-112

BY THE ADMINISTRATIVE LAW JUDGE:

Pursuant to a March 7, 1996 Scheduling Order, the Court conducted telephone conferences on April 4 and 5, 1996 in the above-entitled proceeding with R. Paul Allred, counsel for the Division of Occupational and Professional Licensing, and Robert L. Neeley, counsel for Respondent.

The Court initially informed respective counsel that Respondent had contacted the Court on April 3, 1996 and identified certain concerns regarding possible involvement by Dr. Denzel E. Taylor in the stipulation process being pursued by the parties in this proceeding. The Court informed respective counsel that the Court was not aware whether Dr. Taylor had been so involved in that stipulation process. However, the Court further informed respective counsel that the Court had assured Respondent that Dr. Taylor would not subsequently join the Board and participate in any hearing which might be conducted in this proceeding.

Respective counsel then informed the Court that further review is ongoing as to any possible stipulation as the means to

potentially resolve this proceeding in lieu of a hearing before the Board. Mr. Allred informed the Court and opposing counsel that the Division has recently received other complaints which may bear on Respondent's licensure to practice as a veterinarian. Based on the review of those complaints with his client, Mr. Allred informed the Court and opposing counsel that the Division's outstanding offer to possibly resolve this proceeding by stipulation is still viable.

However, Mr. Allred further informed opposing counsel and the Court that, should Respondent decline to accept the stipulation that has been proposed, the Division will request leave to file an amended petition in this proceeding to include allegations regarding the recent complaints as to Respondent's veterinary practice.

Based on the foregoing, the Court entered an Order, the terms of which are restated as follows:

ORDER

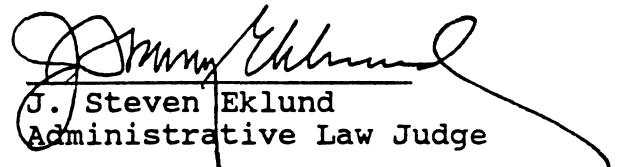
The parties are granted further leave to pursue any possible resolution of this proceeding by stipulation in lieu of a hearing before the Board. The Court will conduct a further telephonic conference with respective counsel at 8:30 a.m. on April 22, 1996. During that conference, the Court will address the current status of any potential stipulation in this proceeding and schedule the submission - if any - of a written stipulation for review and action by the Division.

If it appears no stipulation will be realized, the Court will thereafter address a schedule for the Division's filing of

any motion to amend the petition in this proceeding and subsequent submissions by the parties relative thereto. The Court will also address a schedule for any further discovery as may be warranted.

Concurrent with the issuance of this Order, the Court has provided the parties with a copy of an order recently entered in an unrelated proceeding (In re Taylor, Case No. OPL-95-19).

Dated this 16th day of April, 1996.


J. Steven Eklund
Administrative Law Judge

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BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

Comes now Gregory Ray Johnston, by and through his attorney, Robert L. Neeley, and Answers the Petition filed in the above-entitled matter as follows, to-wit:

1. Admits paragraphs 1 and 2 of said Petition.
2. In answering paragraph 3(a) of said Petition, Saki was spayed using the Flynn Technique. In this form of ovariohysterectomy, portions of each uterine horn are returned to the abdominal cavity without the ovaries where they undergo marked atrophy following surgery. Respondent denies each and every other allegation contained in paragraph 3(a).
3. In response to 3(b), Tango was spayed using the Flynn Technique. In this form of ovariohysterectomy, portions of each uterine horn are returned to the abdominal cavity without

ANSWER
RESPONDENT GREG JOHNSTON

the ovaries where they undergo marked atrophy following surgery. Respondent denies each and every other allegation contained in paragraph 3(b) .

4. In response to 3(c), Respondent examined Kitten and diagnosed Kitten with multiple birth defects with poor prognosis for survival. No treatment was given to Kitten. Linda Watts was informed that there was nothing Respondent could do for her cat.

5. In response to 3(d), Respondent denies each and every allegation as set forth in said paragraph. One does not remove a testicle from a female cat.

6. In response to 3(e), 3(g), 3(i), 3(j), 3 (k), 3(m), and 3(o) respondent denies each and every allegation as set forth in said paragraphs of the Petition.

7. In response to 3(f), Respondent removed both testicles from Shy and if any tissue was found by a subsequent surgical procedure, it was not an intact testicle.

8. In response to 3(h), Respondent neutered and vaccinated Buzzy, and removed both testicles. Any tissue found by a subsequent surgical procedure, was not an intact testicle.

9. In response to 3(l), Patty Maw did not follow the recommended course of treatment by Respondent nor followed the recommendations of Respondent to operate and remove the ear structure. Respondent denies each and every other allegation contained in said paragraph.

10. In response to 3(n), Respondent surgically

ANSWER
RESPONDENT GREG JOHNSTON

repaired a broken femur on the three month old chow puppy, Bear, on December 13, 1993. Bear was discharged only after he could walk and was responding as expected from surgery, treatment, and drug therapy. No infection was present upon discharge. On December 20, 1993, Mr. Roberts called indicating the I.M. pin was moving. The Roberts were instructed to bring Bear back as soon as possible. Mr. Roberts reported on December 20, 1993, at 11:00 a.m. that Bear was o.k. and walking. On December 20, 1993, at 12:02 p.m., Mr. Roberts called and said that Bear's leg was full of infection and it could not be repaired. As to drug therapy, Penn-Strep was used before and after surgery and Bear was discharged on Amoxicillin. Phenobarbital was dispensed only as a sedative and pain killer. Temaril-P was dispensed as a non-steroidal anti-inflammatory agent. Respondent denies each and every other allegation contained in said paragraph.

11. In response to 3(p), Suzanne Hahto came to Respondent for a free health exam for her cat Lacy. Respondent's name was on the spay certificate provided to Suzanne Hahto by the Animal Shelter as well as on a certificate for a free health exam. On March 21, 1994, Respondent spayed and declawed Lacy. Respondent denies each and every other allegation contained in 3(p) of the Petition.

12. In response to 3(q), Ogden City Animal Shelter provides Respondent with the name, address and telephone numbers of all people who adopt animals through the shelter. Parties who

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RESPONDENT GREG JOHNSTON

adopt animals are required by law to purchase a spay/neuter certificate. The Animal Shelter provides a list naming several veterinarians who provide a discount for adopted pets. A certificate for a free health exam is also provided naming several veterinarians. Lisa Abshire was contacted to inform her of Respondent's new address. Respondent denies each and every other allegation contained in said paragraph.

13. In response to 3(r), Varda was brought in to Respondent's hospital on September 6, 1994, in poor, near death state, and full of fly larvae. The cat's history indicates it came home after being gone for three days. The cat had a foul smelling discharge from the mouth and chest wounds. The chest wounds were full of maggots. After two days of extensive treatment, the cat had improved to the point that Respondent attempted to surgically clean and close the chest wounds. Varda died shortly after Respondent attempted to surgically clean and close the cat's chest wounds. Respondent attempted to notify the owners by phone, was unable to do so, and notified the owners by letter. Respondent denies each and every other allegation contained in said paragraph.

14. In response to 3(s), respondent spayed and declawed Marilyn Sticker's cat, Puddles, on October 12, 1994. Ms. Stickler was made aware of the cat's condition of multiple birth defects prior to any surgery. Ms. Stickler refused vaccination so Respondent vaccinated the cat at no charge because

ANSWER
RESPONDENT GREG JOHNSTON

of concern with the after effects of surgical stress on the long term health of Puddles. Puddles was sent home in good condition. On October 28, 1994, Puddles was returned ill. Respondent hospitalized Puddles and found she had liver damage from an unknown cause. Puddles responded favorably from antibiotic and vitamin treatment. Puddles started eating and drinking and was discharged on antibiotics. Ms. Stickler was advised of the poor long term prognosis of her cat. Respondent denies each and every other allegation contained in said paragraph.

15. In response to 3(t), Respondent examined Duffer, an older cat, on December 6, 1994 for Rob Orsburn. Respondent recommended pulling abscessed teeth and cleaning the remaining teeth. Respondent explained the risk of anesthesia and the risk the cat was under because of poor health at that time. The cat's temperature was 103.5 F. Duffer was diagnosed with chronic kidney failure and had not eaten in two weeks. Mr. Orsburn took Duffer and left without any medication. Mr. Orsburn returned 43 days later on January 19, 1995 for treatment of Duffer. A surgical consent release form was signed and work was performed and Duffer was sent home later that same day with information on his condition. The cat was walking when discharged from Respondent's hospital. Respondent denies each and every other allegation contained in said paragraph.

16. Respondent admits paragraphs 4, 5, 6, 7, and 8 of the Petition.

ANSWER
RESPONDENT GREG JOHNSTON

17. In response to paragraph 9, Respondent realleges its answers previously given to paragraphs 1 through 3 as incorporated herein by reference.

18. Respondent denies paragraphs 10 and 12 of the Petition.

19. In response to paragraph 11, respondent realleges answers given to paragraphs 1 through 3 as incorporated herein by reference.

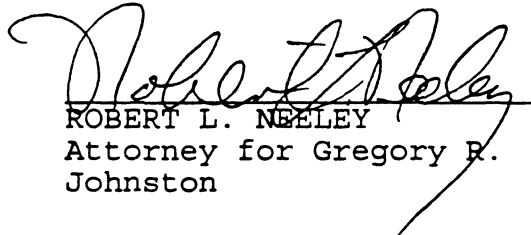
SECOND DEFENSE

The Petition fails to state a claim or cause of action against Respondent upon which the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah may grant relief.

THIRD DEFENSE

Respondent denies each and every allegation in the Petition not specifically admitted.

DATED this 30th day of June, 1995.


ROBERT L. NEELEY
Attorney for Gregory R.
Johnston

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the Answer to Mark Y. Hirata, Assistant Attorney General, 330 S. 300 E., Salt Lake City, Utah 84111, this 20th day of June, 1995, postage prepaid.


SECRETARY

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In The Matter Of:

*Matter of License of
Leo W. Taylor*

*Hearing Volume Number 1
March 18, 1996*

*Rocky Mountain Reporting Service, Inc.
Certified Shorthand Reporters
10 Exchange Place
322 Newhouse Building
Salt Lake City, UT
(801) 531-0256 FAX: (801) 531-0263*

*Original File ltaylr1.r1, 216 Pages
Min-U-Script® File ID: 10620-i0620*

Word Index included with this Min-U-Script®

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[1] BEFORE THE DIVISION OF
[2] OCCUPATIONAL AND PROFESSIONAL LICENSING
[3] OF THE DEPARTMENT OF COMMERCE
[4] OF THE STATE OF UTAH
[5]
[6] IN THE MATTER OF THE LICENSE OF)
LEO W. TAYLOR) CASE NO. OPL-95-19
[7] TO PRACTICE AS A VETERINARIAN) TRANSCRIPT OF
IN THE STATE OF UTAH) PROCEEDINGS
[8]) VOLUME I
[9]
[10] BE IT REMEMBERED THAT on the 18th day of March,
[11] 1996, the hearing in the above-entitled action now
[12] pending before the above-named division was taken
[13] before Deborah F. LaVine, a Certified Shorthand
[14] Reporter and Notary Public in and for the State of
[15] Utah commencing at the hour of 9:15 a.m. of said day,
[16] at 160 East 300 South, Heber M. Wells Building, Salt
[17] Lake City, Utah.
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[1] APPEARANCES
[2] ADMINISTRATIVE JUDGE: J. STEVEN EKLUND
Department of Occupational &
[3] Professional Licensing
160 East 300 South
[4] Heber M. Wells Building
Salt Lake City, Utah 84145-0805
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Assistant Attorney General
[7] Office of Attorney General
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[8] Salt Lake City, Utah 84114
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FOR THE RESPONDENT: EVERETT E. DAHL
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[11] Midvale, Utah 84047
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PROCEEDINGS

[1] MARCH 18, 1996
[2] THE COURT: On the record. This is the
[3] time and place set for hearing in the matter of the
[4] license of Leo N. Taylor to practice as a veterinarian
[5] in the state of Utah, case number OPL-95-19. This
[6] hearing before the veterinary board comes on before
[7] the Division of Occupational and Professional
[8] Licensing. The division in this proceeding is
[9] represented by R. Paul Allred, assistant attorney
[10] general, State of Utah. The respondent, Leo N.
[11] Taylor, is present and represented through counsel,
[12] Everett E. Dahl. Four members of the veterinary board
[13] are present for this hearing, Edmund L. Sperry, Roger
[14] E. Rees, Denzel E. Taylor and Katherine R. Brown. The
[15] division director, Craig Jackson, is also present.
[16] The fifth board member, Gilbert Orme, is not present
[17] and will not be attending this proceeding having
[18] recused himself from any participation as a board
[19] member here.
[20] Before taking opening statements from Mr.
[21] Allred and Mr. Dahl, there are just two or three brief
[22] procedural matters which should be addressed. First
[23] of all, it's my understanding that counsel would
[24] request a brief voir dire of Dr. Brown based on

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[1] something Dr. Brown disclosed to the Court this
[2] morning which the Court has in turn disclosed to
[3] counsel. We'll do that initially.
[4] Before we get to that though, it's also my
[5] understanding, Mr. Allred, that the division has no
[6] objection to any other board member serving on this
[7] panel; is that right?
[8] MR. ALLRED: That's correct, your
[9] Honor.
[10] THE COURT: Mr. Dahl, is that also
[11] correct?
[12] MR. DAHL: That's true.
[13] THE COURT: Very good. Dr. Brown, what
[14] I'd like to do is direct just a couple very brief
[15] questions to you and then allow Mr. Allred and Mr.
[16] Dahl to also do that. The purpose of this examination
[17] is to ensure that you can adequately, fairly and
[18] impartially serve as a board member in this case.
[19] Did you have occasion to become aware of a
[20] complaint regarding Dr. Taylor in your capacity as a
[21] member of an ethics committee of the veterinary
[22] association of this state?
[23] MS. BROWN: Yes, I did.
[24] THE COURT: Could you indicate the
[25] circumstances, how you became aware of that?

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[1] MS. BROWN: It was in a letter from Ms.
[2] Picklesmeier, and I was chair of the ethics board that
[3] year. And I referred the case on to the Occupational
[4] and Professional Licensing because it seemed to deal
[5] more with something that needed investigation. And I
[6] didn't think that we were competent to handle it.
[7] THE COURT: As chair of that ethics
[8] body, would you routinely get complaints?
[9] MS. BROWN: Yes.
[10] THE COURT: And you received a written
[11] complaint; is that right?
[12] MS. BROWN: That's correct.
[13] THE COURT: And on receiving it, you
[14] submitted it or referred it to the division?
[15] MS. BROWN: Yes, I did.
[16] THE COURT: Did you read the complaint
[17] when you received it?
[18] MS. BROWN: Yes.
[19] THE COURT: Did you discuss the
[20] complaint with anyone?
[21] MS. BROWN: With the committee.
[22] THE COURT: The ethics committee?
[23] MS. BROWN: The ethics committee.
[24] THE COURT: Have you discussed that
[25] complaint with any member of the division?

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[1] MS. BROWN: No.
[2] THE COURT: Do you know who you
[3] referred the complaint to?
[4] MS. BROWN: I'm not absolutely
[5] certain. It might have been Dennis Messerby, or there
[6] was a young woman who I also referred some other cases
[7] to, and I can't remember which one it was.
[8] THE COURT: Did you discuss the
[9] complaint in its substance with anyone other than the
[10] ethics committee?
[11] MS. BROWN: No, I don't believe so.
[12] THE COURT: Mr. Allred?
[13] MR. ALLRED: Your Honor, I don't have
[14] any questions.
[15] THE COURT: Mr. Dahl?
[16] MR. DAHL: Did you discuss it at all
[17] with Vicki Larsen, the investigator?
[18] THE COURT: Laurie Larsen?
[19] MR. DAHL: Laurie Larsen.
[20] MS. BROWN: Oh, that's who it was.
[21] Laurie Larsen was other name. I don't believe I
[22] discussed the case with her.
[23] THE COURT: When did this occur, Dr.
[24] Brown? Do you remember?
[25] MS. BROWN: Well, I was chair for

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[1] 1994. Yes, for the year of 1994, so it had to be
[2] within that year. I have no memory of the date.
[3] **THE COURT:** Mr. Dahl, go ahead. I'm
[4] sorry.
[5] **MS. BROWN:** I don't remember. In
[6] answer to your question, Mr. Dahl, I don't remember
[7] specifically if I discussed it with her, the details
[8] of the case.
[9] **MR. DAHL:** I think the purpose of the
[10] voir dire is, and I'm going to rely on you as a
[11] professional, do you feel that the information you
[12] received outside of this hearing and your discussions
[13] with the board and so on would affect your
[14] impartiality concerning Dr. Taylor at this hearing?
[15] **MS. BROWN:** No, I don't think so.
[16] **THE COURT:** Mr. Allred, any objections
[17] to Dr. Brown serving as a board member?
[18] **MR. ALLRED:** No, your Honor.
[19] **THE COURT:** Mr. Dahl?
[20] **MR. DAHL:** I think I've put it in her
[21] lap as a professional. And if she feels that she can
[22] impartially hear this case with the knowledge that
[23] she's gained outside of this hearing, I'm going to
[24] accept her statement.
[25] **THE COURT:** Let me just instruct Dr.

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[1] Brown and ask one question. Doctor, during the course
[2] of the proceeding over the next few days, there will
[3] be testimony offered on behalf of both parties. And I
[4] anticipate some testimony will be offered as to the
[5] complaint that you've initially referred to. Do you
[6] believe that you can base any decision as a board
[7] member in this case solely on the evidence offered
[8] during the hearing today?
[9] **MS. BROWN:** Yes, I do.
[10] **THE COURT:** And that you can set aside
[11] your prior knowledge as to the finding of that
[12] complaint and whatever it claims and only base a
[13] consideration of that complaint on the evidence that
[14] you hear today?
[15] **MS. BROWN:** Yes.
[16] **THE COURT:** I see no basis to recuse
[17] Dr. Brown from any participation as a board member in
[18] this case, and she may so participate.
[19] **MR. DAHL:** May I ask one other
[20] question?
[21] **THE COURT:** Go ahead.
[22] **MR. DAHL:** Have you had any contact
[23] with Dr. Gail Salmon?
[24] **MS. BROWN:** She used to work for me.
[25] This was for about eight years.

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[1] **MR. DAHL:** Now she used to work for Dr.
[2] Taylor; were you aware of that?
[3] **MS. BROWN:** Yes, I was.
[4] **MR. DAHL:** Relations between her and
[5] Dr. Taylor were not the best at the end when he fired
[6] her. Has she carried that ill feeling over in her
[7] conversations with you?
[8] **MS. BROWN:** I'm trying to remember. I
[9] don't really remember talking about it very much or,
[10] if it was, it was a long time ago.
[11] **THE COURT:** Any concern, Mr. Dahl.
[12] **MR. DAHL:** No, I'm relying everything
[13] on her. And she's a professional, and so I will not
[14] move that she step aside.
[15] **THE COURT:** Very good. Dr. Brown is so
[16] qualified to join the board in this proceeding. Mr.
[17] Allred, an opening statement on behalf of the
[18] division.
[19] **MR. ALLRED:** Your Honor, I believe you
[20] were going to make an instruction to the board first.
[21] **THE COURT:** I am. Thank you. The
[22] record should reflect that prior to the commencement
[23] of this hearing, probably two weeks ago, as a matter
[24] of course, this board received a copy of the Notice of
[25] Agency Action and Petition filed by the division

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[1] whereby this proceeding was initiated. The board also
[2] received a copy of the brief response, I believe it
[3] was one page, filed by Mr. Dahl on behalf of Dr.
[4] Taylor.
[5] I need to instruct the board as to one
[6] matter concerning the response that you've had the
[7] chance to review. That response makes reference to an
[8] affirmative defense and specifically indicates on
[9] paragraph three of that response dated April 12th,
[10] 1995, that Dr. Taylor alleges that a claim made on
[11] Nadia is res judicata and further references that the
[12] owner sued respondent in West Jordan city court and
[13] after trial the judge dismissed the complaint.
[14] I need to instruct the board that there has
[15] been a motion filed on behalf of the division to
[16] exclude testimony as to the outcome of that small
[17] claims court action. There has been argument offered
[18] by both parties as to whether that evidence should be
[19] properly before the board in terms of whatever
[20] relevance it has and also whether it bars the division
[21] from moving forward on this claim. I have ruled on
[22] that motion and have determined that the small claims
[23] court action, the fact that an action was initiated in
[24] small claims court is relevant and may be properly
[25] considered by the board. However, the outcome of that

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[1] proceeding is not such as to factually and legally bar
[2] the division from proceeding with this claim in this
[3] licensure matter and that it does not prevent the
[4] division from offering evidence in that regard. The
[5] board is thus instructed that you may consider
[6] evidence of that claim in this case. And the fact
[7] that there was a prior small claims court action will
[8] be properly admissible before the board. And I
[9] anticipate some testimony and perhaps some argument
[10] along that line from Mr. Dahl.

[11] But the board is to disregard the outcome of
[12] that proceeding as well as the outcome of reference to
[13] any other litigation which may arise during the course
[14] of this proceeding. And you are so limited in how you
[15] may consider that. Mr. Allred.

[16] **MR. ALLRED:** Thank you, your Honor.
[17] Good morning to Director Jackson, Judge Eklund and the
[18] Board. We're going to be taking a number of days here
[19] to hear a matter involving the license of Dr. Leo
[20] Taylor, a veterinarian licensed to practice here in
[21] the state of Utah. The Division of Occupational and
[22] Professional Licensing has a responsibility to protect
[23] the public with respect to the licensees that it
[24] regulates. The division has brought this action
[25] against Dr. Taylor based upon what it discovered

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[1] during an investigation of Dr. Taylor's conduct.
[2] The division has brought this action because
[3] it's conclude that Dr. Taylor's conduct comes under
[4] the definition of unprofessional conduct under the
[5] rules and statutes that govern each profession. In
[6] this case, the division is relying on Utah Code
[7] Annotated section 58-1-5012 which defines
[8] unprofessional conduct as violating or aiding or
[9] abetting any person to violate any generally accepted
[10] professional or ethical standard applicable to an
[11] occupation or profession regulated under this title.
[12] The key here is violating any generally accepted
[13] standard applicable to an occupation or profession,
[14] and then subparagraph G, practicing or attempting to
[15] practice an occupation or profession regulated under
[16] this title through gross incompetence, gross
[17] negligence or pattern of incompetency or negligence.
[18] The keys here are practicing or attempting to practice
[19] an occupation through gross negligence or pattern of
[20] incompetency or negligence.

[21] The division, as you've noted in reading the
[22] petition, has alleged that Dr. Taylor has failed to
[23] conform to professional standards for veterinarians in
[24] this state in the areas of record keeping and sanitary
[25] conditions as well as engaging in a pattern of

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[1] incompetency or negligence. You will hear the
[2] testimony of the owners of five animals who were
[3] treated and cared for by Dr. Taylor. You're going to
[4] hear the testimonies of Rebecca and Michael DeGuzman
[5] who owned a Chow/Lab mix named Nadia. Nadia was taken
[6] to Dr. Taylor in December of 1993 because she had
[7] mastitis. You'll hear their testimony, and then
[8] you'll hear the testimony of the veterinarian who
[9] treated Nadia after Dr. Taylor did.

[10] You'll hear the testimony of Cheryl Devlin
[11] who owns a Chow Chow named Shakesbear, and I had to
[12] really work on saying that name correctly. So if I
[13] get it wrong today or tomorrow or however long this
[14] hearing takes, I beg your indulgence because I'm used
[15] to saying Shakespeare. And that's not how you say it,
[16] but I've had to fight to say Shakesbear. But
[17] Shakesbear was injured when he fell off a 12-foot
[18] porch and became paralyzed and was taken to Dr. Taylor
[19] for treatment. You'll hear the testimony of the
[20] veterinarian that saw Shakesbear after Dr. Taylor
[21] treated him.

[22] You'll hear the testimony of Stephanie
[23] Picklesmeier who owned a Shar Pei name Char. And Char
[24] was taken to Dr. Taylor for a spay and died because
[25] she didn't tolerate the anesthetic. You'll hear the

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[1] testimony of the veterinarian who performed a second
[2] autopsy on Char to determine the cause of death.

[3] You'll hear the testimony of Cindy Bue who
[4] owns an English bulldog named Hillary. Hillary was
[5] taken to Dr. Taylor for breeding purposes, and he
[6] treated Hillary when she was in labor. You'll also
[7] hear the testimony of the veterinarian who saw Hillary
[8] after Dr. Taylor cared for her. If finally you'll
[9] hear the testimony of Vicki Crocker, and this one I
[10] had to work on as well, Vicki Crocker who owned a
[11] Cocker Spaniel named Oscar. That's like saying the
[12] seashell rhyme. If you say it real quick, you get
[13] your tongue kind of tied up. So I'll try to stay
[14] straight on that one, too.

[15] Each incident in the petition occurred from
[16] July 1993 to October 1994, and that's a 16-month
[17] period. The allegations provide an insight into the
[18] type of work performed by Dr. Taylor during that
[19] time. Now you're not going to hear a lot of testimony
[20] during this hearing about the things that Dr. Taylor
[21] did right. The division isn't maintaining that he
[22] didn't do things properly. But what we'll focus on is
[23] those things that Dr. Taylor didn't do properly, in
[24] other words, those things that he did that fell below
[25] the appropriate standard of care for practice for

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[1] veterinarians in this community.

[2] The division will put on evidence, as I've
[3] stated, that will show that Dr. Taylor fell below that
[4] standard of care or practice, however you want to
[5] refer to it. You'll hear that testimony from the
[6] veterinarians who treated the animals after Dr. Taylor
[7] did. They'll offer testimony regarding the adequacy
[8] of the records maintained by Dr. Taylor. They'll
[9] offer testimony regarding the sanitary conditions that
[10] they perceived when they observed the animals brought
[11] to them. And they'll offer testimony about the care
[12] that Dr. Taylor provided and whether it fell below the
[13] standard.

[14] You'll hear their testimony as to what the
[15] standard is, how they believe that the animal should
[16] have been treated. And you'll hear that they believe
[17] that Dr. Taylor breached the standard. And that's a
[18] term we use in the law to indicate that someone has
[19] fallen below the standard. So they'll testify that
[20] Dr. Taylor has breached that standard. You'll hear
[21] from the owners the damages that they sustained.
[22] That's important to remember because we're really
[23] talking about malpractice here, the fact that Dr.
[24] Taylor has engaged in malpractice. And any time that
[25] happens, we have someone who feels like they've been

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[1] Dr. Taylor's side. And you have to make that
[2] determination in order to decide, after we're through
[3] with this hearing and you're given the opportunity to
[4] deliberate, whether Dr. Taylor has engaged in
[5] unprofessional conduct.

[6] If he's engaged in unprofessional conduct,
[7] then by statute the division has the authority to take
[8] sanctions against his license. And we'll ask you or
[9] we'll come back to that at the end of the hearing as
[10] we give you our closing statements, and I'll share
[11] with you the recommendation of the division. But I
[12] want you to have the opportunity to hear the evidence
[13] in the case and to start to form your opinions as the
[14] hearing goes on and then hear all of that evidence
[15] before I share with you the division's recommendation
[16] for what should happen with Dr. Taylor's license.

[17] We'll try to move this case along. I have
[18] approximately 16 witnesses, and that's why it's been
[19] scheduled for a four-day hearing. But we'll try to
[20] bring out only the relevant facts. We'll try to move
[21] the case along. I hope that we'll be able to stay on
[22] point, that we won't wander, and that you'll have an
[23] opportunity to hear the evidence that you need to hear
[24] in order to decide about those things, the allegations
[25] that are raised in the petition. And with that, I

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[1] damaged through that malpractice. Otherwise, we
[2] wouldn't have situations where people report the
[3] conduct either to the veterinarians association or to
[4] the division itself. So you'll hear testimony about
[5] that today.

[6] I just want to tell you that the division
[7] has to be able to prove that Dr. Taylor did these
[8] things by a legal term of art we call a preponderance
[9] of the evidence. There are three standards of proof
[10] commonly referred to in the law. Preponderance of the
[11] evidence can be stated another way, by a greater
[12] weight of the evidence. So if you have the scales of
[13] justice and you listen to the evidence on Dr. Taylor's
[14] side and you listen to the evidence on the division's
[15] side, you have to make a determination of which
[16] carried the greater weight of the evidence. The other
[17] standards you don't need to worry about. They're
[18] clear and convincing evidence and beyond a reasonable
[19] doubt, which is the kind of standard that the State
[20] has to prove in a criminal case.

[21] But as you listen throughout the hearing,
[22] what you need to decide is where that evidence is
[23] balancing, if you feel like there's greater
[24] credibility from the witnesses you hear on the State
[25] side, on the division side or greater credibility on

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[1] turn it over to my opponent for his opening statement.

[2] **THE COURT:** Mr. Dahl.

[3] **MR. DAHL:** Your Honor, members of the
[4] panel, I have selected to make a statement before
[5] respondent puts on the evidence because you're going
[6] to be listening to a lot of contradictory evidence
[7] from both sides during the course of this hearing. I
[8] thought I would start off by saying that there was an
[9] article in the DVM news magazine concerning complaints
[10] that veterinarians receive from owners of animals. Or
[11] I guess they're the owners that do the complaining.
[12] The patients don't talk very well, I suppose. But
[13] article starts off this veterinarian was talking to an
[14] old lawyer friend of his that kind of reminds me of
[15] me. I've represented Dr. Taylor for nearly 40 years,
[16] so I am his senior, so I guess I fit the pattern
[17] also. After listening to him discussing unhappy
[18] difficult clients in his veterinary practice, the
[19] lawyer friend said, Chris, if you don't have many
[20] miserable clients, you're not doing much business.

[21] Today it seems like we're in a litigation
[22] category. Everybody is filing suits to reach the deep
[23] pocket. And also in this particular business, I want
[24] you to observe the veterinarians who are going to
[25] testify against Dr. Taylor. You'll notice that

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[1] there's only three or four clinics that are involved
[2] in this situation. The evidence will point out that
[3] Dr. Taylor has wide experience in both large and small
[4] animals. His volume of business will be brought out
[5] to show that each year, Dr. Taylor handles more than
[6] 1700 different clients or dog owners. We'll point out
[7] his work ethics, how many hours he works. We'll also
[8] state what his continuing veterinary education is.
[9] And the testimony will be that he has exceeded the
[10] minimum number of hours each year required of the vet
[11] on continued education. You'll hear his dedication to
[12] practice of veterinary medicine.

[13] He is the owner and this Brookside Hospital
[14] is the second animal hospital during Dr. Taylor's
[15] career that he has established. You'll also notice
[16] that his patients or owners of animals primarily come
[17] by reference by other satisfied customers as opposed
[18] to some of the great advertising of some of the
[19] clinics that you'll hear. From what I understand, Dr.
[20] Taylor does not charge nearly as much fees as some of
[21] the other veterinarians do. We'll show you the number
[22] of employees that he has and his facilities. We'll
[23] show that he does have cold storage facilities,
[24] x-rays, sterilization, anesthesia equipment, modern
[25] equipment, pharmacy, computers, and how sanitation is

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[1] taking place in his hospital.

[2] You will also hear testimony concerning this
[3] one dog called Shakesbear. That's the bulldog case, I
[4] think. You will hear evidence both from Dr. Taylor
[5] and one of the employees at the hospital that this
[6] animal was treated by another veterinarian who is
[7] employed at Brookside and the animal was not treated
[8] by Dr. Taylor. I will bring out evidence of two
[9] lawsuits filed. The Court has ruled on my motion or
[10] my defense, but I will bring out these particular
[11] cases to show motivation on the part of owners of the
[12] animals as to the actions that they have taken.

[13] This is the first time I have been in front
[14] of an administrative board like this. And this is why
[15] I feel comfortable with you veterinarians because you
[16] have knowledge of the field and the facts that we're
[17] going to be talking about in this particular hearing.
[18] But I also get a little chilled that the investigation
[19] that goes on prior to these hearings through the
[20] division is conducted by a certified police officer
[21] who is not trained in veterinary medicine but is
[22] trained as a investigator in criminal matters. It
[23] kind of makes you feel a little squeamish when you're
[24] investigated like Dr. Taylor has been investigated.

And the knowledge that people have makes one wonder

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[1] can he receive a fair and impartial hearing. And
[2] going over credentials of you members, I'm satisfied
[3] today that we can have an impartial hearing and a
[4] proper finding.

[5] I think it's also interesting to look at the
[6] time frame involved. We're looking at five complaints
[7] over a period of, what was it Mr. Allred said, many
[8] months. I think we have to compare that with the
[9] many, many patients or animals that have been treated
[10] by Dr. Taylor in his career. And there probably is
[11] going to be some conflict of opinions. For instance,
[12] one of the complaints is the neutering of a dog, and
[13] the dog died during the process. I would think in
[14] your experience, you would look back and determine how
[15] many dogs in your practice have you spayed that
[16] expired? I also want you to listen to the opinion of
[17] the other doctor. He cannot testify as to why that
[18] animal died.

[19] So I will also go ahead and present an
[20] interesting witness, a Bill Brenton, who is the
[21] director of Companion Golden Retriever Rescue
[22] nationwide. It's a nonprofit corporation. He's the
[23] executive director, writes in children's books about
[24] animals, trains animals. He himself has a broken back
[25] and disabled and has one of these retriever animals to

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[1] protect him at all times. Over the years he will
[2] testify that he has had excellent care rendered by Dr.
[3] Taylor to over 2700 dogs during a span of several
[4] years. That includes spaying, neutering, repair of
[5] broken bones. These dogs are strays. People have
[6] kicked them out. They have been hit by automobiles,
[7] sometimes two or three times. He picks up the dogs,
[8] takes them to Dr. Taylor to go ahead and perform
[9] veterinary services on those animals, trains them, and
[10] then gives them to people throughout the world and the
[11] United States. And he also has received the national
[12] award of the Good Samaritan Award and other items,
[13] awards and so on that I'll bring up during his
[14] testimony. All I ask for you to do is to use your
[15] experience as veterinarians in listening to the
[16] various testimonies and make a fair evaluation of Dr.
[17] Taylor's practice. After 35 years or so, the taking
[18] away of his livelihood is an extremely serious matter
[19] and should not be taken lightly. Thank you very
[20] much.

[21] THE COURT: Thank you, Mr. Dahl. Your
[22] first witness, Mr. Allred.

[23] MR. ALLRED: Your Honor, I would call
[24] Rebecca DeGuzman to the stand.

[25] THE COURT: Off the record just one

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[1] minute.
[2] (WHEREUPON, a discussion was held
[3] off the record.)
[4] **THE COURT:** Back on the record. Before
[5] you're seated, could I ask you to raise your right
[6] hand, please. Do you solemnly swear the testimony
[7] you're about to offer in this proceeding is the truth,
[8] the whole truth and nothing but the truth?
[9] **THE WITNESS:** I do.
[10] **THE COURT:** Please be seated. And as
[11] Mr. Allred, Mr. Dahl and perhaps any members of the
[12] board, Ms. DeGuzman, have any questions for you, I'll
[13] ask you to speak in the microphone there. And if I or
[14] anyone is having difficulty hearing you, we'll ask you
[15] to speak up a little bit. Mr. Allred.
[16] **REBECCA DeGUZMAN**
[17] the witness hereinbefore named, being first duly sworn
[18] to testify the truth, the whole truth and nothing but
[19] the truth, testified on her oath as follows:
[20] **DIRECT EXAMINATION**
[21] **BY MR. ALLRED:**
[22] **Q:** Ms. De Guzman, please state and spell your
[23] name for the record to help our transcriber out.
[24] **A:** Rebecca DeGuzman, R-e-b-e-c-c-a,
[25] D-e-G-u-z-m-a-n.

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[1] **Q:** Mrs. DeGuzman, did you own a dog named Nadia
[2] during December of 1993?
[3] **A:** Yes.
[4] **Q:** What type of breed was Nadia?
[5] **A:** A Chow/Lab mix.
[6] **Q:** And who was Nadia's regular veterinarian
[7] prior to that time, December of 1993?
[8] **A:** She's seen two vets.
[9] **Q:** And who were those veterinarians?
[10] **A:** Dr. Leo Taylor and Dr. Shupe.
[11] **Q:** Before December of 1993, did you ever take
[12] Nadia to Dr. Taylor?
[13] **A:** Yes.
[14] **Q:** What did you know about Brookside Animal
[15] Hospital prior to December of 1993?
[16] **A:** I don't understand the question.
[17] **Q:** Had you ever taken any other animal other
[18] than Nadia to Brookside Animal Hospital before
[19] December of 1993?
[20] **A:** No.
[21] **Q:** So you'd only taken Nadia?
[22] **A:** Yes.
[23] **Q:** Had you taken Nadia enough times to know a
[24] little something about Dr. Taylor and Brookside?
[25] **A:** I took her two times before.

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[1] **Q:** Why did you take Nadia to Brookside during
[2] December of 1993?
[3] **A:** Because I had an outstanding bill with All
[4] Pet Complex for another dog.
[5] **Q:** And what was Nadia's condition when you took
[6] her to Brookside in December of '93?
[7] **A:** She had mastitis I believe it was called.
[8] **Q:** How long did you leave Nadia at Brookside?
[9] **A:** I believe it was four days, three or four
[10] days, somewhere around there.
[11] **Q:** How did you determine when it was time to
[12] take Nadia home?
[13] **A:** Dr. Taylor told me I could come pick her up.
[14] **Q:** I've placed on the table in front of you a
[15] notebook which contains exhibits. If you could please
[16] pick that up and open the notebook up to tab number
[17] 1.
[18] **A:** (Witness complies.)
[19] **Q:** Ms. DeGuzman, can you tell me if you
[20] recognize what's been marked as Exhibit Number 1?
[21] **A:** That's the bill from Brookside for Nadia.
[22] **Q:** And did you receive that bill from Dr.
[23] Taylor?
[24] **A:** Yes, I picked it up.
[25] **MR. ALLRED:** Your Honor, Exhibit Number

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[1] 1 is one of those exhibits that Mr. Dahl has
[2] stipulated could come into evidence. So I'd like -
[3] **THE COURT:** Mr. Dahl, any objection?
[4] **MR. DAHL:** No objection.
[5] **THE COURT:** Division Exhibit Number 1
[6] is so received, and you may provide copies to the
[7] board, Mr. Allred.
[8] **MR. ALLRED:** Thank you, your Honor.
[9] (WHEREUPON, Division Exhibit 1
[10] was received in evidence.)
[11] **THE COURT:** Mr. Allred, you've just
[12] handed me - are these the originals for the file?
[13] **MR. ALLRED:** Right.
[14] **THE COURT:** Thank you. I can keep them
[15] if you want me to do that.
[16] **MR. ALLRED:** Your Honor, I apologize.
[17] We've had a little miscommunication. We were hoping
[18] that we could use the binders and avoid the problem of
[19] shuffling papers. So I've got to have my assistant
[20] separate out enough Exhibit 1s to give one to the
[21] reporter and one to you and the board.
[22] **THE COURT:** That's fine.
[23] **MR. ALLRED:** And we'll try to organize
[24] it so that we don't have to do that. Go through this
[25] process each time.

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[1] Q: (By Mr. Allred) Ms. DeGuzman, you've
[2] testified that this is a bill that you received from
[3] Dr. Taylor. Could you take a moment and look at the
[4] bill and tell me if you see a charge on that bill for
[5] anesthetic?

[6] A: No, there's not.

[7] Q: Did you speak to anyone at Brookside Animal
[8] Hospital about the fact that the bill did not contain
[9] a charge for anesthetic?

[10] A: Yes, I spoke with the receptionist.

[11] Q: Did you speak with anyone else other than
[12] the receptionist?

[13] A: Dr. Taylor.

[14] Q: What did you discuss with Dr. Taylor about
[15] the bill?

[16] A: Why there wasn't an anesthetic on it,
[17] anesthesia.

[18] Q: What did Dr. Taylor tell you?

[19] MR. DAHL: I'm going to - he's going
[20] to be here to testify, isn't he?

[21] THE COURT: He, who?

[22] MR. DAHL: The doctor.

[23] THE COURT: Dr. Taylor?

[24] MR. DAHL: Oh, was she going to testify
[25] to what Dr. Taylor, oh, all right. I misunderstood.

[1] A: Because I was shocked by the hole in her. I
[2] didn't believe she was going to be all right.

[3] Q: When you took Nadia to All Pet Complex, did
[4] you explain to the people there Nadia's condition?

[5] A: Yes, I did.

[6] Q: And what did you tell the people at All Pet
[7] Complex?

[8] A: That I had taken her to Brookside and he had
[9] kept her there and then he released her and left her
[10] open like that.

[11] Q: Would you please turn to tab number 2 and
[12] tell me if you can identify that document.

[13] A: Yes. It's the bill from All Pet Complex.

[14] Q: Did you receive this bill from All Pet
[15] Complex?

[16] A: Yes, I did.

[17] MR. ALLRED: Your Honor, I would move
[18] to admit Exhibit Number 2 into evidence.

[19] MR. DAHL: No objection.

[20] THE COURT: No objection? Division
[21] Exhibit Number 2 is so received, and copies are being
[22] provided to the board.

[23] (WHEREUPON, Division Exhibit 2
[24] was received in evidence.)

[25] Q: (By Mr. Allred) Mrs. DeGuzman, would you

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[1] I thought he was -

[2] THE COURT: Referring to another
[3] doctor, no, that's fine. Go ahead, Mr. Allred.

[4] MR. ALLRED: Let me repeat the
[5] question.

[6] Q: (By Mr. Allred) What did you discuss with
[7] Dr. Taylor regarding the bill?

[8] A: That there was no anesthesia.

[9] Q: And what did Dr. Taylor tell you?

[10] A: That the tissue was dead and didn't require
[11] anesthesia to be cut off.

[12] Q: You've testified that you took Nadia home
[13] after four days. What did you observe when you took
[14] Nadia home?

[15] A: That one of her breasts was cut off and left
[16] an open gaping hole.

[17] Q: And how large a hole? Would you -

[18] A: About four or five inches.

[19] Q: Were there any bandages on the hole?

[20] A: No.

[21] Q: Where did you take Nadia after you noticed
[22] her condition?

[23] A: In the morning, I took her to All Pet
[24] Complex.

[25] Q: And what did you tell the people at All Pet Complex?

[1] take a moment and just briefly describe the type of
[2] charges on this bill from All Pet Complex.

[3] A: Each one?

[4] Q: Just a brief summary.

[5] A: Well, she was hospitalized for four days at
[6] All Pet Complex. They waited, I believe, a week or a
[7] couple of days before they did surgery to repair the
[8] left open wound. And they sutured it and put a
[9] penrose drain in it to drain off the infection.

[10] Q: Do you see a charge on Exhibit Number 2 for
[11] anesthetic?

[12] A: Yes.

[13] Q: How long did it take for Nadia's wound to
[14] heal after you took her to All Pet Complex?

[15] A: I believe it was a few weeks when she was
[16] recovered.

[17] Q: And what is Nadia's condition today?

[18] A: She has been put to sleep.

[19] Q: Was she put to sleep shortly after this
[20] incident?

[21] A: No.

[22] Q: So it had nothing to do with this incident?

[23] A: No.

[24] MR. ALLRED: Your Honor, I'm finished
[25] with Ms. DeGuzman.

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[1] **THE COURT:** Mr. Dahl, any questions?
 [2] **MR. DAHL:** Yes.
 [3] **CROSS-EXAMINATION**
 [4] **BY MR. DAHL:**
 [5] **Q:** Ms. DeGuzman, in picking up the dog from
 [6] Brookside, you've testified you had conversation with
 [7] Dr. Taylor?
 [8] **A:** Yes.
 [9] **Q:** And what was Dr. Taylor's recommendation?
 [10] **A:** He said to spray this Granulex spray he left
 [11] me, he gave me with her on the wound and it should
 [12] heal.
 [13] **Q:** Did he suggest that the dog be kept at the
 [14] hospital for a few more days until it drained?
 [15] **A:** No, he did not.
 [16] **Q:** And did you use the medication that he
 [17] furnished you?
 [18] **A:** Yes, I used it that day.
 [19] **Q:** And I guess we're going to have to ask
 [20] this. Did Dr. Taylor suggest that the animal be left
 [21] at the hospital so that the infection could properly
 [22] drain?
 [23] **A:** He did not.
 [24] **MR. ALLRED:** Your Honor, I believe the
 [25] question has already been asked and answered.

[1] **THE COURT:** I think the first question
 [2] was how long he suggested the animal be left there.
 [3] Now I think the purpose of this question is to
 [4] determine whether he indicated why, and I'll allow
 [5] it. Go ahead, Mr. Dahl, if you could rephrase the
 [6] question, please.
 [7] **Q:** (By Mr. Dahl) Let me just ask this. Did Dr.
 [8] Taylor explain to you that this infection that had
 [9] been treated by him was in the process of draining and
 [10] the dog should remain at the hospital so the drainage
 [11] could be managed properly?
 [12] **A:** No, he did not.
 [13] **Q:** You then sued Dr. Taylor?
 [14] **A:** Yes.
 [15] **Q:** That was in the city court of West Jordan?
 [16] **A:** Yes.
 [17] **Q:** And the outcome?
 [18] **MR. ALLRED:** Your Honor, I object.
 [19] **THE COURT:** I've ruled on the
 [20] admissibility of this evidence, and the witness is
 [21] instructed not to answer the question. And the
 [22] objection to the question is sustained.
 [23] **Q:** (By Mr. Dahl) I guess one other question.
 [24] You went to Brookside because you owed the other vet a
 [25] previous bill; is that correct?

[1] **A:** Yes.
 [2] **Q:** Now let me ask you this. Have you paid
 [3] Brookside any part of your bill?
 [4] **A:** No, I have not.
 [5] **MR. DAHL:** That's all I have.
 [6] **THE COURT:** Redirect, Mr. Allred?
 [7] **MR. ALLRED:** Yes, your Honor, just a
 [8] couple of questions
 [9] **REDIRECT EXAMINATION**
 [10] **BY MR. ALLRED:**
 [11] **Q:** Mrs. DeGuzman, you've indicated that you
 [12] have not paid the bill. Why have you not paid the
 [13] bill to Brookside?
 [14] **A:** Because I have never been billed since the
 [15] small claims, and he's never asked for payment on it.
 [16] **MR. ALLRED:** Thank you, your Honor.
 [17] **THE COURT:** Recross, Mr. Dahl?
 [18] **MR. DAHL:** No, your Honor.
 [19] **THE COURT:** Any questions by the board
 [20] of this witness, starting with Dr. Taylor?
 [21] **MR. TAYLOR:** I don't think so.
 [22] **THE COURT:** Dr. Rees?
 [23] **EXAMINATION**
 [24] **BY MR. REES:**
 [25] **Q:** Yeah, the question I have is, Dr. Taylor,

[1] was he involved in the primary treatment of this
 [2] animal? None of his assistants were involved to your
 [3] knowledge?
 [4] **A:** He was involved, Dr. Taylor was.
 [5] **THE COURT:** Dr. Brown?
 [6] **MS. BROWN:** I don't have any
 [7] questions.
 [8] **THE COURT:** Mr. Sperry?
 [9] **EXAMINATION**
 [10] **BY MR. SPERRY:**
 [11] **Q:** When you got Nadia back from Dr. Taylor, was
 [12] there any discharge, odor?
 [13] **A:** Yes, there was both discharge and odor.
 [14] **MR. SPERRY:** Thank you.
 [15] **THE COURT:** Any other questions by the
 [16] board of this witness? Mr. Allred, any further
 [17] redirect?
 [18] **MR. ALLRED:** No, your Honor.
 [19] **THE COURT:** Mr. Dahl?
 [20] **MR. DAHL:** Nothing.
 [21] **THE COURT:** Ms. DeGuzman, your
 [22] testimony is concluded at this time. Let me ask of
 [23] both counsel. As we move through each witness, I'm
 [24] going to ask both of you if the witness is subject to
 [25] recall. And if they are not, then they will simply be

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[1] free to either continue to observe the hearing or
[2] leave as the case may be.
[3] Mr.Allred, do you expect further testimony
[4] from Ms. DeGuzman?
[5] MR. ALLRED: No, your Honor.
[6] THE COURT: Mr. Dahl?
[7] MR. DAHL: No, your Honor.
[8] THE COURT: Ms. DeGuzman, you can stay
[9] in the courtroom as you can choose. Mr.Allred, your
[10] next witness.
[11] MR. ALLRED: Your Honor, I call Michael
[12] DeGuzman to the stand.
[13] THE COURT: Mr. DeGuzman.
[14] MICHAEL DeGUZMAN
[15] the witness hereinbefore named, being first duly sworn
[16] to testify the truth, the whole truth and nothing but
[17] the truth, testified on his oath as follows:
[18] DIRECT EXAMINATION
[19] BY MR. ALLRED:
[20] Q: Mr. DeGuzman, would you please state your
[21] full name and spell it for the record?
[22] A: Michael DeGuzman, M-i-c-h-a-e-l,
[23] D-e-G-u-z-m-a-n.
[24] Q: Mr. DeGuzman, are you married to Rebecca
[25] DeGuzman?

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[1] A: Yes, sir.
[2] Q: So you were the owner of a dog named Nadia
[3] during December of 1993?
[4] A: Yes, sir, I was.
[5] Q: Were you with Rebecca DeGuzman when Nadia
[6] was picked up from Brookside Animal Hospital?
[7] A: Yes, sir.
[8] Q: Were you with your wife when you took
[9] Nadia -
[10] A: Yes, I was.
[11] Q: - to Brookside? What did you observe as
[12] you were leaving Nadia at Brookside Animal Hospital
[13] the day you left here there?
[14] A: As we dropped Nadia off, she was put on a
[15] table. We were walking - we were told we could leave
[16] that he would take over. We were walking out. And as
[17] I turned, I heard Nadia yelp. And I turned around,
[18] and Dr. Taylor had more or less thrown Nadia off the
[19] table and then kicked her. He said it was directing
[20] her into the room, but I've never seen an animal
[21] directed that way. So I don't feel there was any
[22] reason to kick her.
[23] Q: So Dr. Taylor actually used his foot and
[24] struck Nadia?
[25] A: Yes, Yes, he did.

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[1] Q: Did you say anything to Dr. Taylor at that
[2] time?
[3] A: No, I didn't.
[4] Q: What happened after you saw Nadia kicked?
[5] A: We went out to the car, and I told my wife
[6] about it. And she was pretty upset, and then we went
[7] home.
[8] Q: So your wife had not witnessed -
[9] A: No.
[10] Q: - what Dr. Taylor had done?
[11] MR. ALLRED: Thank you.
[12] THE COURT: Any cross, Mr. Dahl?
[13] MR. DAHL: Yes.
[14] CROSS-EXAMINATION
[15] BY MR. DAHL:
[16] Q: Mr. DeGuzman, were you there when she picked
[17] up the dog from Brookside?
[18] A: Yes, sir, I was.
[19] Q: What did Dr. Taylor tell you and your wife?
[20] A: About the care of the animal?
[21] Q: Yes.
[22] A: Just to spread the Granulex on it as my wife
[23] had told you.
[24] Q: What else?
[25] A: That was about it.

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[1] Q: Did he suggest that the animal stay at the
[2] hospital until the drainage was complete?
[3] A: No, he did not.
[4] MR. DAHL: I think that's all.
[5] THE COURT: Any redirect?
[6] MR. ALLRED: Just a couple of
[7] questions, your Honor.
[8] REDIRECT EXAMINATION
[9] BY MR. ALLRED:
[10] Q: Were you with your wife when she discovered
[11] the nature of Nadia's wound?
[12] A: I was in the other room, and she started
[13] hollering and crying at the same time. And I come in,
[14] yes, I was in the house with her.
[15] Q: Did it upset you to see the condition that
[16] Nadia was in?
[17] A: Yes, it did very much.
[18] Q: Were you part of the decision to take Nadia
[19] to a different veterinary clinic?
[20] A: Yes.
[21] MR. ALLRED: Thank you.
[22] THE COURT: Any recross, Mr. Dahl?
[23] MR. DAHL: No, your Honor.
[24] THE COURT: Any questions by the board
[25] of this witness? Dr. Taylor?

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[1] MR. TAYLOR: (Shakes head.)
[2] THE COURT: Dr. Rees?
[3] MR. REES: No.
[4] THE COURT: Dr. Brown?
[5] MS. BROWN: No.
[6] THE COURT: Mr. Sperry?
[7] MR. SPERRY: No.
[8] THE COURT: Mr. DeGuzman, I believe
[9] you're free to leave. Is this witness subject to
[10] recall, Mr. Allred?
[11] MR. ALLRED: No, your Honor.
[12] THE COURT: Mr. Dahl?
[13] MR. DAHL: No.
[14] THE COURT: I'll leave it to both you
[15] and your wife. If you'd like to observe the hearing
[16] from this point forward, you certainly can. Or you're
[17] free to leave.
[18] THE WITNESS: Thank you, your Honor.
[19] THE COURT: Thank you. Mr. Allred,
[20] your next witness.
[21] MR. ALLRED: Your Honor, I call Dr.
[22] Jolie Brown to the stand.
[23] JOLIE R. BROWN
[24] the witness hereinbefore named, being first duly sworn
[25] to testify the truth, the whole truth and nothing but

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[1] the truth, testified on her oath as follows:
[2] DIRECT EXAMINATION
[3] BY MR. ALLRED:
[4] Q: I want to apologize to Dr. Brown. I said
[5] her first name wrong. It's Jolie. And following up
[6] with that comment, Dr. Brown, would you please state
[7] your full name and spell it for the record.
[8] A: It's the first name is J-o-l-i-e, middle
[9] initial R, last name Brown, B-r-o-w-n.
[10] Q: Dr. Brown, what is your profession?
[11] A: Doctor of veterinary medicine.
[12] Q: Are you licensed to practice veterinary
[13] medicine in this state?
[14] A: Yes.
[15] Q: When were you licensed to practice in Utah?
[16] A: In June of 1993.
[17] Q: Are you licensed to practice veterinary
[18] medicine in any other state?
[19] A: At that time Kansas.
[20] Q: Would you please give us just a brief
[21] educational background starting with college and
[22] veterinary college?
[23] A: Starting with veterinary college?
[24] Q: Starting with college and then -
[25] A: I attended University of Nebraska at Omaha.

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[1] I entered that college in the summer semester of
[2] 1985. I graduated in May of 1989 summa cum laude, and
[3] I entered into the College of Veterinary Medicine at
[4] Kansas State, Manhattan, Kansas, in the summer of
[5] 1989, graduated with honors in May of 1993.
[6] Q: Do you currently belong to any professional
[7] groups?
[8] A: I do.
[9] Q: What groups are those?
[10] A: American Association of Veterinary Medicine,
[11] AAHA, American Animal Hospital Association, American
[12] Association of Feline Practitioners.
[13] Q: Thank you. Are you currently engaged in the
[14] private practice of veterinary medicine?
[15] A: Yes.
[16] Q: For how long have you been in private
[17] practice?
[18] A: Almost three years now.
[19] Q: Do you have any areas of special interest in
[20] your practice?
[21] A: My special interests include medicine and
[22] soft tissue surgery of primarily dogs and cats, about
[23] 98 percent dogs and cats. I have special interest in
[24] behavior as well of small animals.
[25] Q: I want to turn your attention now to Nadia

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[1] who was owned by the DeGuzmans. Have you ever
[2] examined or treated Nadia?
[3] A: I had examined her. I wasn't the primary
[4] doctor on her case.
[5] Q: Do you recall when you treated her?
[6] A: Well, I can't recall when she came in. I
[7] was not her primary clinician.
[8] Q: I apologize.
[9] A: It was December 28th, 1993.
[10] Q: Does good veterinary practice require a
[11] veterinarian to obtain a history from the owner of an
[12] animal particularly when that animal has been treated
[13] by another veterinarian?
[14] A: Of course.
[15] Q: And do you know if anyone at All Pet Complex
[16] obtained a history from the DeGuzmans?
[17] A: Yes.
[18] Q: Are you familiar with that history?
[19] A: Yes.
[20] Q: Could you briefly explain to the board the
[21] history that was obtained by DeGuzmans when Nadia was
[22] brought in in December of '93?
[23] A: Okay. Nadia had previously been treated at
[24] Brookside Animal Hospital under care of Dr. Taylor.
[25] The DeGuzmans' primary concern was the gaping hole

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[1] that was left. And I felt anyway that they were very
[2] confused as far as after care and expectations on
[3] healing. They also seemed to be concerned that the
[4] animal was painful. I do not know if the pet was on
[5] any type of antibiotic at that time. Dr. Shupe may be
[6] able to further address medications.

[7] Q: What did you observe when you examined Nadia
[8] that day?

[9] A: There was about a four- or five-inch hole
[10] around the area where the right fifth mammary gland
[11] had been excised. The wound did not appear to have
[12] been shaved. There were long hairs all around the
[13] wound. So it was my interpretation that the wound had
[14] not been properly shaved and cleaned prior to the
[15] surgical procedure having been performed.

[16] Q: When Nadia was brought in, had any
[17] technicians worked on her prior to your examining her?

[18] A: Yes. When the dog came in and when I became
[19] aware of what was going on, she had already been over
[20] 50 percent, probably 80 percent shaved. The
[21] technicians were starting to clean her. I was aware
[22] at that time that the DeGuzmans were very distraught
[23] about the condition of their dog. At that time, I
[24] requested that the technicians stop cleaning the area
[25] up and that some pictures be taken.

[1] concerned, and I felt that it was wise to get some
[2] pictures of the wound prior to us actually doing any
[3] kind of medical treatment of it.

[4] Q: Did you have any other concerns when you
[5] examined Nadia other than the failure to properly
[6] prepare the site?

[7] A: As far as the condition of the wound or -

[8] Q: As far as the history that was obtained from
[9] the DeGuzmans and Nadia's condition.

[10] A: I'm sorry. I'm not sure exactly how to
[11] answer that.

[12] Q: Was the wound bandaged or covered in any
[13] way?

[14] A: It was not. There was some debris in the
[15] wound as well.

[16] Q: Would it be appropriate to bandage this type
[17] of wound before discharging an animal?

[18] A: If possible. This particular area may be a
[19] challenge to actually cover with a full bandage. I
[20] think there could be a local bandage applied. It is
[21] important that the wound is able to drain properly.

[22] Q: When treating mastitis like Nadia had, would
[23] it be appropriate to administer an anesthetic when
[24] debriding a wound?

[25] A: I believe, yes, that it would be.

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[1] Q: Would you please turn to tab number 3 of the
[2] exhibit book that you find on the table there and tell
[3] me if you can identify that document.

[4] A: Okay.

[5] Q: Tab number 3 which -

[6] A: Oh, okay.

[7] Q: - has an Exhibit Number 3 sticker at the
[8] bottom.

[9] A: Right. These would have been pictures taken
[10] after the wound was already partially shaven. I think
[11] you can tell the areas where our technicians had
[12] shaved the fur back.

[13] MR. ALLRED: Your Honor, I move to
[14] admit Exhibit Number 3 into evidence.

[15] THE COURT: Mr. Dahl?

[16] MR. DAHL: I have no objection.

[17] THE COURT: Division Exhibit 3 is
[18] received and copies are provided to the board.

[19] (WHEREUPON, Division Exhibit 3
[20] was received in evidence.)

[21] Q: (By Mr. Allred) Dr. Brown, why did you think
[22] it was important to have these photographs taken?

[23] A: When I first saw the condition of the wound,
[24] in my opinion, it hadn't been shaved properly prior to
[25] a surgical procedure. I knew the DeGuzmans were very

[1] Q: If I could have you turn to tab number 4...

[2] MR. ALLRED: Your Honor, this is one of
[3] those exhibits that Mr. Dahl has stipulated can come
[4] into evidence. This is the medical history report
[5] from Dr. Taylor that was obtained by subpoena during
[6] the investigation.

[7] THE COURT: Any objection, Mr. Dahl?

[8] MR. DAHL: No objection.

[9] THE COURT: Division Exhibit 4 is
[10] received and copies are provided to the board.

[11] (WHEREUPON, Division Exhibit 4
[12] was received in evidence.)

[13] Q: (By Mr. Allred) Dr. Brown, I direct your
[14] attention to -

[15] THE COURT: Mr. Allred, do you have one
[16] more of those?

[17] MR. ALLRED: I'm sure I do, your
[18] Honor.

[19] THE COURT: I'm sorry to interrupt.

[20] Q: (By Mr. Allred) Dr. Brown, I direct your
[21] attention to Exhibit Number 4. Have you seen this
[22] document prior to today?

[23] A: No.

[24] Q: Just take a moment and quickly review what
[25] you see here.

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[1] A: Do you want me to read verbally?
[2] Q: No. Why don't you just read it to yourself
[3] and tell me when you've had a chance to study it.
[4] A: Okay.
[5] Q: In your review of this document, do you see
[6] any reference to anesthetic?
[7] A: No, sir.
[8] Q: If I told you that this was Dr. Taylor's
[9] medical history or record for Nadia, would you find it
[10] helpful if this would have been presented to you at
[11] the time Nadia was brought in?
[12] A: Yes, as far as what had previously been
[13] done. Again, there would have been a question in my
[14] mind as far as what all took place because there isn't
[15] a description of surgical procedure or anesthesia
[16] used, et cetera.
[17] Q: In your opinion, is it important to keep a
[18] record of what was done?
[19] A: Yes.
[20] Q: Could you take a moment and tell us why it
[21] would be important in your opinion to administer
[22] anesthetic to treat a condition like Nadia had?
[23] A: Most dogs undergoing this type of a
[24] procedure as far as how much pain was actually felt by
[25] the pet, I'm not sure. I'm sure there would have been

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[1] some. Any necrotic dead tissue isn't going to be -
[2] the debridement is probably not going to be felt by
[3] the pet, although many times emotionally these pets
[4] are distraught, sometimes hard to control when you're
[5] trying to remove, especially that large of an area
[6] that was excised off of Nadia. So just not only for
[7] the comfort of the pet but the emotional well-being, I
[8] feel that anesthesia would have been appropriate.
[9] Q: Based upon your understanding of the care
[10] that Nadia received and what you saw when you examined
[11] Nadia, in your opinion, was the care that Dr. Taylor
[12] provided for Nadia below the standard of care for
[13] veterinarians in this community?
[14] A: I can answer that partially as far as I
[15] don't feel that the wound was prepared prior to the
[16] debridement properly because it did not appear to have
[17] been shaved. As far as the surgery procedure, I
[18] cannot really answer that. I was not there. I think,
[19] perhaps, client education and after care should have
[20] been addressed in more detail. Again, I was not there
[21] at the time when the surgery took place, so there's a
[22] lot of information that I can't answer. It was just
[23] handled differently than I would have handled the
[24] case.
[25] Q: What kind of problems can occur when a site

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[1] isn't properly prepared before surgery?
[2] A: The additional hair, the debris, the
[3] contaminants, okay, even if you're treating an area
[4] that's infected, not properly clearing that away just
[5] adds more contamination to the site that doesn't need
[6] to be there.
[7] Q: Would that give you a concern as to the
[8] question of sanitation?
[9] A: It would.
[10] Q: In your opinion, would you consider the fact
[11] that this site wasn't properly prepared to be
[12] unsanitary?
[13] A: Yes.
[14] MR. ALLRED: Your Honor, that's all the
[15] questions I have now.
[16] THE COURT: Cross-examination, Mr.
[17] Dahl?
[18] CROSS-EXAMINATION
[19] BY MR. DAHL:
[20] Q: Dr. Brown, as I understand correctly, you
[21] graduated in May of 1993?
[22] A: Yes, sir.
[23] Q: And the case you're talking about was
[24] brought to the hospital where you worked on December
[25] 28th of '93?

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[1] A: Yes, sir.
[2] Q: Have you ever handled a case of gangrenous
[3] mastitis?
[4] A: Yes, sir.
[5] Q: What is that?
[6] A: As far as which case, the case that I had
[7] handled was in a dairy cow at the Kansas State College
[8] of Veterinary Medicine.
[9] Q: Was this a gangrenous mastitis case?
[10] A: I cannot answer that. I did not see the
[11] case prior to when Dr. Taylor addressed it. When I
[12] saw the case, the area had already been debrided and
[13] some granulation tissue -
[14] Q: Isn't it true that with this type of case,
[15] the flesh kind of sloughs off?
[16] A: Dead, necrotic tissue generally does.
[17] Q: Dead tissue. So if you were removing dead
[18] tissue, would anesthesia be prescribed in all cases
[19] there?
[20] A: Not in all cases, no.
[21] Q: Did you ask the DeGuzmans what advice they
[22] had received from Dr. Taylor when they removed the
[23] animal from that hospital?
[24] A: I did not. I was not the primary doctor on
[25] the case. I more witnessed the case after it was

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[1] already in our treatment area. I did not check them
[2] in, nor did I do follow-up care after Dr. Shupe had
[3] treated the case. I was more witnessed and helped
[4] guide the technicians as far as their initial
[5] preparation of the wound.
[6] Q: Do you still work at the same hospital?
[7] A: I do.
[8] Q: What hospital is it, do you say?
[9] A: At that time, we were called All Pet
[10] Complex. Our name has changed. We are now VCA All
[11] Pet Animal Hospital.
[12] Q: Will you say that last again.
[13] A: VCA All Pet Animal Hospital. We were
[14] purchased by Veterinary Clinics of America last July.
[15] Q: Are you the one that keeps the records at
[16] the hospital?
[17] A: We do keep records at the hospital. I did
[18] not make entries into this particular case's record.
[19] That was under the care of Dr. Shupe.
[20] MR. DAHL: I have no further questions.
[21] THE COURT: Redirect?
[22] MR. ALLRED: Yes, your Honor, just one
[23] question.
[24] REDIRECT EXAMINATION
[25] BY MR. ALLRED:

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[1] Q: Dr. Brown, in debriding a wound such as
[2] Nadia would have had, is it important to get back to
[3] live healthy tissue?
[4] A: Yes, sir.
[5] Q: And in making those incisions, would the
[6] animal feel?
[7] A: Yes. Once you get back to live healthy
[8] tissue, you're going to have a blood supply, you're
[9] going to have nerve innervation as well. At that
[10] point, the pet most likely would feel some degree of
[11] pain.
[12] MR. ALLRED: Thank you, your Honor.
[13] THE COURT: Recross?
[14] MR. DAHL: None.
[15] THE COURT: Any questions by the board
[16] of this witness starting with Dr. Taylor.
[17] MR. TAYLOR: Just one question.
[18] EXAMINATION
[19] BY MR. TAYLOR:
[20] Q: Had this wound been debrided by your people
[21] prior except for just shaving it?
[22] A: We checked -
[23] Q: Prior to these photos?
[24] A: Yes. They had already started to shave and
[25] debride the wound when I -

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[1] Q: Had they trimmed the edges at all?
[2] A: Yes, they had. They completely shaved it,
[3] shaved it back.
[4] Q: I'm talking about the edge of the wound.
[5] Had that been trimmed up, too, the dead tissue cleaned
[6] off?
[7] A: Probably not have not been trimmed. That
[8] would have been under the care of Dr. Shupe.
[9] Q: And what was the dog's attitude at this
[10] time? Was it feeling good? Was it a sick dog or how?
[11] A: The patient had an elevated temperature of
[12] 104.2 according to the record and a little stressed,
[13] but she was not by any means aggressive towards us.
[14] And I know Dr. Shupe did administer some short-term
[15] anesthesia to the pet.
[16] MR. TAYLOR: Okay.
[17] THE COURT: Dr. Rees?
[18] EXAMINATION
[19] BY MR. REES:
[20] Q: That short-term anesthesia had been
[21] administered by the time the photographs in Exhibit 3
[22] were taken; is that correct?
[23] A: I believe so. Again, Dr. Shupe was in
[24] charge of administering the medications. I cannot
[25] remember if it was given prior to the technicians

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[1] starting to shave or prior to the treatment by Dr.
[2] Shupe.
[3] Q: Had the dog been licking this wound? Could
[4] you tell?
[5] A: I could not answer that. Most likely, yes,
[6] but I could not answer that.
[7] Q: In your opinion, would this granulation
[8] tissue that appears to be exhibited here on this
[9] photograph, was it your opinion that that was healthy
[10] granulation tissue at the time you examined the pet?
[11] A: According to the picture, it appears
[12] healthy. The best that I can remember, there was some
[13] healthy granulation tissue present when I saw the pet.
[14] MR. REES: Thank you.
[15] THE COURT: Dr. Brown?
[16] EXAMINATION
[17] BY MS. BROWN:
[18] Q: Did it look like the wound was still
[19] infected?
[20] A: There was - well, there was hair and debris
[21] there. I cannot remember the amount if there was
[22] pyretic - or purulent material present. I cannot
[23] remember that.
[24] Q: But the patient did have a fever?
[25] A: 104.2, yes.

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[1] Q: Do you recall the temperature the next day
[2] after your treatment, if that changed at all?

[3] A: I do not.

[4] MS. BROWN: Okay.

[5] THE COURT: Mr. Sperry?

[6] EXAMINATION

[7] BY MR. SPERRY:

[8] Q: There's a significant difference in your
[9] bill and Dr. Taylor's bill. If a client came to your
[10] clinic on a very limited budget with a sick animal,
[11] are the standards - what would you have cut out if
[12] somebody said, I have very, very limited dollars to
[13] work with but a sick animal?

[14] A: As far as the charges that Dr. Shupe has
[15] listed?

[16] Q: Yes, you have a -

[17] A: You know, I think it is important to educate
[18] the client as far as what definitely needs to be done
[19] and areas where you can, you know, cut costs, let them
[20] make that determination as far as if they want to take
[21] a lower standard and then also work with the clients
[22] as far as billing arrangements.

[23] As far as cutting out anything that Dr.
[24] Shupe, see, I think everything Dr. Shupe did for this
[25] particular case was appropriate. I don't think he

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[1] part of its mammary tissue and we have an additional
[2] mastectomy charge on there. Was there an additional
[3] done to this animal?

[4] A: That charge that was on there probably was
[5] for the additional debridement that Dr. Shupe had done
[6] over the mammary area.

[7] MR. TAYLOR: One question on this
[8] bandage application.

[9] EXAMINATION

[10] BY MR. TAYLOR:

[11] Q: I've never been able to keep a bandage on an
[12] area that. I just wonder what \$72 would cover there,
[13] and isn't it better for that to drain rather than keep
[14] that on there.

[15] A: Well, it wasn't an actual - the best that I
[16] can remember. Again, I was not the primary doctor
[17] that was on the case, but Dr. Shupe had done a
[18] wet-to-dry bandage application and stented that on so
[19] he could do very frequent changing. And then that
[20] wet-to-dry helps debride any additional necrotic
[21] tissue away from the mastectomy site. And this pet
[22] did require frequent changes of that bandaging. It
[23] was such though that it did allow, the material used
[24] did absorb drainage material and, again, just helped
[25] debride it in the process of it being changed as

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[1] overcharged or added any treatments in that were not
[2] appropriate for this dog.

[3] Q: I'm not suggesting that there was
[4] overcharging. What I'm suggesting is that is Dr.
[5] Taylor's standard of care sufficient to meet the
[6] immediate problem if there was a budget problem? I
[7] understand that Dr. Shupe's standard of care is the
[8] standard. But is Dr. Taylor's standard, given a
[9] circumstance of a money crunch, would that have been a
[10] reasonable approach in your opinion?

[11] A: It would not have been an approach I would
[12] have done. I would have at least sedated, given a
[13] heavy sedation, some kind of anesthesia to the pet and
[14] shaved and debrided the wound. I would not have cut
[15] those corners.

[16] MR. SPERRY: Thank you.

[17] THE COURT: Other questions by the
[18] board of this witness?

[19] MR. REES: I have one.

[20] THE COURT: Yes, Dr. Rees.

[21] EXAMINATION

[22] BY MR. REES:

[23] Q: I notice on the charges here, there's a
[24] charge for a mastectomy. What does that mean? I'm
[25] assuming that the animal came to you already nursing

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[1] well. That's my understanding as far as the treatment
[2] that Dr. Shupe chose, and it did seem to work very
[3] well.

[4] THE COURT: Any other questions by the
[5] board of this witness?

[6] MS. BROWN: One question.

[7] THE COURT: Dr. Brown.

[8] MS. BROWN: Why is Dr. Shupe not
[9] testifying about her?

[10] THE COURT: He will be, I believe, is
[11] he not?

[12] MR. ALLRED: He's our next witness.
[13] your Honor.

[14] THE COURT: Anything further for this
[15] witness, Mr. Allred.

[16] MR. ALLRED: No, your Honor.

[17] THE COURT: Mr. Dahl?

[18] MR. DAHL: I have one question.

[19] RE-CROSS-EXAMINATION

[20] BY MR. DAHL:

[21] Q. As I understand the testimony of the
[22] DeGuzmans, they had the dog in their home for a couple
[23] of days before they took it to your hospital; is that
[24] correct?

[25] A: I believe so. And Dr. Shupe was the primary

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[1] clinician. He would have been the one there that took
[2] the full history. I was not in the room when he took
[3] the full history, so all I can do is speculate as far
[4] as part of that.

[5] **MR. DAHL:** No further questions.

[6] **THE COURT:** Mr. Allred.

[7] **MR. ALLRED:** Your Honor, we would call
[8] Dr. Shupe to the stand.

[9] **THE COURT:** A question, is Dr. Brown
[10] subject to recall?

[11] **MR. ALLRED:** No, your Honor.

[12] **THE COURT:** Mr. Dahl? Dr. Brown,
[13] you're free to leave. Thank you. Mr. Allred?

[14] **DAVID SHUPE**

[15] the witness hereinbefore named, being first duly sworn
[16] to testify the truth, the whole truth and nothing but
[17] the truth, testified on his oath as follows:

[18] **DIRECT EXAMINATION**

[19] **BY MR. ALLRED:**

[20] **Q:** Dr. Shupe, would you please state and spell
[21] your name for the record.

[22] **A:** My name is David Shupe, David, D-a-v-i-d,
[23] Shupe, S-h-u-p-e.

[24] **Q:** What is your profession, Dr. Shupe?

[25] **A:** I'm a doctor of veterinary medicine.

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[1] practice of veterinary medicine?

[2] **A:** Yes, I am.

[3] **Q:** For how long have you been in private
[4] practice?

[5] **A:** For three years, nearly three. It'll be
[6] three this May.

[7] **Q:** Do you have any areas of special interest in
[8] your practice?

[9] **A:** In my practice, areas of special interest
[10] would include medicine and/or oncology.

[11] **Q:** Did you examine a Chow/Lab mix dog named
[12] Nadia owned by the DeGuzmans in December of 1993?

[13] **A:** Yes, I did.

[14] **Q:** When did you first see Nadia?

[15] **A:** I believe, according to the record, that
[16] would have been December 28th, 1993.

[17] **Q:** And I assume that the DeGuzmans brought
[18] Nadia into the clinic?

[19] **A:** Yes, they did.

[20] **Q:** Does good veterinary practice require a
[21] veterinarian to obtain a history from the owners of an
[22] animal that has been previously treated by another
[23] veterinarian?

[24] **A:** Certainly.

[25] **Q:** Did you obtain a history from the DeGuzmans?

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[1] **Q:** Are you licensed to practice veterinary
[2] medicine in the state of Utah?

[3] **A:** Yes, I am.

[4] **Q:** When were you licensed?

[5] **A:** I was licensed in 1993.

[6] **Q:** Are you licensed to practice veterinary
[7] medicine in any other state?

[8] **A:** No.

[9] **Q:** Would you please just give us a brief
[10] background of your education starting with college and
[11] concluding with veterinary college.

[12] **A:** Education, Weber State University, an
[13] associate's degree, graduated in '86. I went to Utah
[14] State University from '86 to '89, Colorado State
[15] University from '89 to '93 where I graduated in May of
[16] that year.

[17] **Q:** Do you currently belong to any professional
[18] groups?

[19] **A:** Yes, I do.

[20] **Q:** What are those professional groups?

[21] **A:** AVMA, American Veterinary Medical
[22] Association, AAHA, the same one that Dr. Brown belongs
[23] to, SLVMA, Salt Lake Veterinary Medical Association,
[24] and UVMA, Utah Veterinary Medical Association.

[25] **Q:** Are you currently engaged in any other

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[1] **A:** Yes, I did.

[2] **Q:** Did the DeGuzmans indicate to you how long
[3] it had been since Nadia had been in Dr. Taylor's care?

[4] **A:** Well, on that point, I'm not exactly clear.

[5] According to Dr. Taylor's records, we can certainly
[6] compare and see when he was dismissed as to when he
[7] came to the veterinary hospital at All Pet Complex in
[8] Sandy.

[9] **Q:** Would you turn to tab number 4 which has
[10] been previously admitted as the Division's Exhibit
[11] Number 4 and tell me what date appears on the top of
[12] the information below the header?

[13] **A:** I'm seeing December 27th, 1993.

[14] **Q:** And, again, when did you see Nadia for the
[15] first time?

[16] **A:** December 28th, 1993.

[17] **Q:** Would you please take a moment and describe
[18] to the board and to the Court what history you
[19] obtained from the DeGuzmans?

[20] **A:** The history included that the clients were
[21] disgruntled and were going on and on but that Nadia
[22] had been admitted to Dr. Taylor's, that she had had
[23] some mastitis and that Dr. Taylor had in fact done a
[24] mastectomy of the fifth mammary gland on the right
[25] side. They also mention that he had not used

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[1] anesthetics to do that procedure. And as far as
[2] medication to go home, they did mention that they had
[3] been given a spray. I don't believe that I had
[4] questioned them on antibiotic therapy. But, again, if
[5] you look on Dr. Taylor's summary, you don't see it
[6] there.

[7] (WHEREUPON, a discussion was held
[8] off the record.)

[9] **THE COURT:** Pull the microphone, slide
[10] it closer to you. It might help. Thank you.

[11] **A:** Okay. I don't know if antibiotics were
[12] distributed by Dr. Taylor's clinic or not if that's
[13] part of the history. And it's been so long I don't
[14] remember what I asked.

[15] **Q:** (By Mr. Allred) Now, Dr. Shupe, would you
[16] please turn to tab number 5 and tell me if you can
[17] identify this document which has been marked as
[18] State's Exhibit Number 5.

[19] **A:** Yes, I can identify that. That's part of
[20] the medical report or the medical history that we had
[21] included on Nadia.

[22] **Q:** Did you make entry into this history?

[23] **A:** Yes, I did.

[24] **MR. ALLRED:** Your Honor, I would move
[25] to admit State's Exhibit Number 5 into evidence.

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[1] was not shaved. There was hair all the way up to the
[2] margins. And the fact that the dog was sent home with
[3] the hole open as well as it is. That is discussed
[4] here previously again. Bandaging that area can be a
[5] challenge. The way that I had accomplished that, if
[6] it's appropriate to answer that at this time, was to
[7] place belt loops or sutures within the margin of the
[8] lesion, place a bandage over the top of that, and then
[9] I laced with umbilical tape the bandage to the surface
[10] of the skin.

[11] **Q:** Do you have a professional opinion as to
[12] whether Nadia should have been hospitalized with this
[13] wound?

[14] **A:** I feel she should have been hospitalized,
[15] yes.

[16] **Q:** Could you take a moment and describe what
[17] you think the appropriate type of preparation for the
[18] site would be for a condition like Nadia had?

[19] **A:** I hadn't seen her prior to the surgery that
[20] Dr. Taylor had performed. But in my estimation as a
[21] professional, I would have shaved with wide margins
[22] just to prevent secondary infection from occurring. I
[23] also would have debrided more completely from what I
[24] had seen, the wound. What changes had taken place
[25] since she'd left Dr. Taylor's clinic again, I'm not

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[1] **THE COURT:** Any objection?

[2] **MR. DAHL:** No objections.

[3] **THE COURT:** As identified, so received
[4] and copies may be provided to the board.

[5] (WHEREUPON, Division's Exhibit 5
[6] was received in evidence.)

[7] **Q:** (By Mr. Allred) Dr. Shupe, could you please
[8] tell the board what you observed when the DeGuzmans
[9] brought Nadia into your clinic.

[10] **A:** When the DeGuzmans had brought Nadia into
[11] the clinic, we had gone into an exam room and placed
[12] Nadia on a table, and I was examining the dog and
[13] taking a history all at the same time. In looking
[14] underneath the dog, there was a large gaping wound, I
[15] would estimate about seven centimeters in width and
[16] about, oh, 13 to 14 centimeters in length. The wound
[17] was obviously infected and dripping onto the table
[18] top, onto the surface. Lots of debris contained within
[19] the wound, dead and dying or necrotic tissue was
[20] noted. I believe that Nadia - pain is a subjective
[21] thing, but I think that she was painful throughout.

[22] **Q:** Was there anything about what you observed
[23] that caused you concern?

[24] **A:** From what I observed and has already been
[25] discussed in this hearing was the fact that the wound

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[1] sure but I would have debrided more completely.

[2] **Q:** Would you have administered an anesthetic?

[3] **A:** Certainly.

[4] **Q:** And do you have a professional opinion as to
[5] the care that Nadia received based upon your
[6] observation of the wound?

[7] **A:** Based on my observation of the wound, the
[8] care that Nadia had received was minimal. Certainly
[9] if she had a necrotizing mastitis and that gland was
[10] dead, dead tissue will eventually slough or be
[11] reabsorbed by the body. And so in what Dr. Taylor had
[12] done in my opinion was correct partially; that is, to
[13] remove the offending tissue so that we could speed
[14] recovery time. Whether or not that was done
[15] completely enough is subjective from veterinarian to
[16] veterinarian.

[17] **Q:** Did you find that there was enough healthy
[18] tissue surrounding the wound to say it had been
[19] properly debrided?

[20] **A:** There was enough necrotic tissue left in the
[21] wound that I would say just the opposite, that it was
[22] not completely debrided.

[23] **Q:** So in your opinion, the care that Dr. Taylor
[24] provided to Nadia, did that fall below the standard of
[25] care for treating this type of wound?

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[1] A: In my opinion, yes.
[2] MR. ALLRED: Thank you. That's all I
[3] have right now, your Honor.
[4] THE COURT: Cross-examination, Mr.
[5] Dahl?
[6] MR. DAHL: Yes.
[7] CROSS-EXAMINATION
[8] BY MR. DAHL:
[9] Q: Dr. Shupe, if I get the dates right, you and
[10] Dr. Brown are graduates about the same time?
[11] A: That's correct.
[12] Q: Would you have diagnosed this as gangrous
[13] mastitis?
[14] A: I didn't see the mammary gland prior to Dr.
[15] Taylor's surgical procedure, so it would be difficult
[16] for me to assess. The gland was actually missing. If
[17] you read in the notes, we did perform a mastectomy.
[18] That did include the fourth mammary gland on that
[19] side, the one just ahead or cranial to the fifth
[20] mammary gland that Dr. Taylor had excised. The reason
[21] we felt it necessary to do so was that in my
[22] professional opinion, the fourth mammary gland was
[23] also affected.
[24] Q: I have in front of me a copy of the contact
[25] report made by Ms. Larsen.

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[1] A: Do I have a copy of that in here?
[2] THE COURT: I don't think so, but I
[3] think Mr. Dahl may be asking you a question from his.
[4] MR. DAHL: Yes.
[5] Q: (By Mr. Dahl) She reports that your opinion
[6] was that if dead tissue was being cut, the dog
[7] wouldn't feel it; is that correct?
[8] A: That's correct. If the tissue is actually
[9] dead, then innervation is going to be gone and he
[10] won't necessarily feel that.
[11] Q: Then why do you use anesthesia?
[12] A: My feeling on the use of anesthetics is that
[13] in order to do a complete job of debridement one
[14] should obtain a good tissue margin, that is, to go all
[15] the way back to healthy tissue, to good healthy
[16] bleeding tissue, in that that will help to stimulate
[17] good formation of healthy granulation tissue. Remove
[18] the dead so that the live, so we can generate live
[19] tissue.
[20] Q: Now did you ever tell Rebecca DeGuzman her
[21] dog almost died and that it would never have healed on
[22] its own?
[23] A: My recollection on that matter is not
[24] correct - or I'm sorry. No, I don't remember her
[25] telling her that. Let me explain. In the clinic,

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[1] Nadia was exposed not only to doctors but to technical
[2] staff and to receptionist staff. And my statement was
[3] that I didn't feel that this wound had been treated
[4] properly. And from my statement, others had
[5] extrapolated or interpreted and talked amongst
[6] themselves, receptionists and/or technicians. And
[7] those technicians had, again, related information
[8] whether or not that was based on medical opinion, not
[9] true, but they may have related some of those
[10] statements that you mentioned to Rebecca DeGuzman.
[11] But my statement that the dog would have died, I don't
[12] remember saying that, no.
[13] Q: You realized that there was not a good
[14] doctor-client relationship between Dr. Taylor and the
[15] DeGuzmans?
[16] A: That was fairly obvious, yes, that the
[17] DeGuzmans were fairly upset.
[18] Q: And did you also make a statement to the
[19] investigator that perhaps Dr. Taylor was planning on
[20] doing some type of staged surgery?
[21] A: Yes, I did. In my opinion, to handled the
[22] patient the way that he handled the case was to do a
[23] staged procedure, that is, obtain good clinical
[24] debridement of the lesion, secondarily, let
[25] granulation tissue form, and then, thirdly, to close

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[1] the skin over the top of the lesion that was there.
[2] And if you'll note in State's Exhibit 5, that was
[3] actually the case where we had seen the animal on
[4] December 28th and the surgery wasn't performed until
[5] January 1st.
[6] MR. DAHL: No further questions.
[7] THE COURT: Redirect, Mr. Allred?
[8] MR. ALLRED: Yes, your Honor.
[9] REDIRECT EXAMINATION
[10] BY MR. ALLRED:
[11] Q: Dr. Shupe, did you meet any resistance from
[12] the DeGuzmans when you informed them that Nadia should
[13] spend time in your clinic and should receive a staged
[14] surgery?
[15] A: Not to my recollection, no.
[16] Q: They didn't complain or they didn't argue
[17] that they didn't want you to keep Nadia?
[18] A: No, they can't. Obviously finances would
[19] play a role in however much a client will allow a
[20] veterinarian to do. In this case, where we had
[21] offered kind of a payment arrangement, they were
[22] willing to allow us to hospitalize and treat Nadia as
[23] outlined.
[24] Q: Would the fact that this might have been a
[25] gangrenous mastitis have changed the way you would

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[1] have treated Nadia?
[2] A: I would have started her certainly on
[3] antibiotics. To debride the wound, that is, to excise
[4] dead tissue, I would have done the same thing as Dr.
[5] Taylor did. However, I would have used anesthetics
[6] just so I could get all the way back to healthy
[7] tissue.
[8] Q: Would the fact that it might have been
[9] gangrenous have changed your opinion that she should
[10] stay in the hospital?
[11] A: Yes, it would have. I would have
[12] recommended keeping her, yes.
[13] MR. ALLRED: Thank you, your Honor.
[14] THE COURT: Recross, Mr. Dahl?
[15] MR. DAHL: Nothing.
[16] THE COURT: Any questions by the board
[17] of this witness? Mr. Taylor, Dr. Taylor?
[18] MR. TAYLOR: No.
[19] THE COURT: Dr. Rees.
[20] MR. REES: No.
[21] THE COURT: Dr. Brown?
[22] MS. BROWN: I don't think so.
[23] THE COURT: Mr. Sperry?
[24] MR. SPERRY: No.
[25] THE COURT: Is this witness subject to

[1] D-e-v-l-i-n.
[2] Q: Ms. Devlin, do you own a Chow Chow named
[3] Shakesbear?
[4] A: I do.
[5] Q: And who was Shakesbear's regular
[6] veterinarian prior to May of 1994?
[7] A: It was Dr. Taylor.
[8] Q: Could you please tell the board and the
[9] Court where you were on May 24 of 1993?
[10] A: I was in Orange County, California, on a
[11] week's vacation.
[12] Q: And who did you leave Shakesbear with?
[13] A: I left him with my brother and my parents.
[14] Q: And what is your brother's name?
[15] A: My brother's name is Dean Schofield.
[16] Q: I'm assuming that you're aware of what
[17] happened on the morning of May 24, 1994, to
[18] Shakesbear?
[19] A: Yes, I received a phone call, I believe, on
[20] the 25th because my brother could not get ahold of me
[21] because I was on vacation, informing me that my dog
[22] had been injured and that he had taken him to Dr.
[23] Taylor and Dr. Taylor's recommendation was to put
[24] Shakesbear to sleep because he felt that he would
[25] never recover from this injury.

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[1] recall, Mr. Allred?
[2] MR. ALLRED: No, your Honor.
[3] THE COURT: Mr. Dahl?
[4] MR. DAHL: No.
[5] THE COURT: Dr. Shupe, you're free to
[6] leave. Thank you. Mr. Allred perhaps a brief recess
[7] might be in order.
[8] MR. ALLRED: I concur, your Honor.
[9] THE COURT: We'll be in recess until
[10] five after 11:00 for ten minutes. Off the record.
[11] (WHEREUPON, a recess was taken.)
[12] THE COURT: Back on the record after a
[13] recess of approximately ten minutes. Mr. Allred, your
[14] next witness.
[15] MR. ALLRED: Your Honor, the division
[16] would call Cheryl Devlin to the stand.
[17] CHERYL S. DEVLIN
[18] the witness hereinbefore named, being first duly sworn
[19] to testify the truth, the whole truth and nothing but
[20] the truth, testified on her oath as follows:
[21] DIRECT EXAMINATION
[22] BY MR. ALLRED:
[23] Q: Would you state and spell your name for the
[24] record.
[25] A: Cheryl S. Devlin, C-h-e-r-y-l, initial S,

[1] Q: Did your brother explain to you what the
[2] cause of the accident was?
[3] A: Yes, he did. He fell off a 12-foot porch at
[4] my parent's house. We're not quite sure how he fell,
[5] but he injured his back.
[6] Q: What was the reaction you've had when your
[7] brother told you about the accident?
[8] A: I was hysterical. My husband was
[9] hysterical. It ruined my vacation. All I wanted to
[10] do was come home, and there were no flights available
[11] for me to fly home. So I was kind of stuck there.
[12] The next day, we went out and tried to enjoy
[13] ourselves, but all I could think about was my dog
[14] being put to sleep. I had given my brother permission
[15] to have the dog put down because I felt that Dr.
[16] Taylor was a competent veterinarian and I trusted his
[17] word.
[18] Q: Did you ever speak to Dr. Taylor about
[19] Shakesbear after the accident?
[20] A: No, I did not.
[21] Q: Would you please turn to tab number 6 in the
[22] witness book which is on the table there to your right
[23] - or your left and tell knec if you can identify
[24] that document.
[25] A: This is the bill that we received from Dr.

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[1] Taylor's office approximately a week after Shakesbear
[2] was hurt.
[3] Q: And you received a bill from Dr. Taylor?
[4] A: Yes, we did.
[5] Q: When did you return to Salt Lake City, if
[6] the accident was on May 24th?
[7] A: It was the Monday after the accident, so
[8] almost a full week. I don't remember the exact date.
[9] It was Memorial day that we flew home.
[10] Q: What was the first thing you did with
[11] respect to Shakesbear when you returned to Salt Lake
[12] City?
[13] A: We drove straight to my parent's house.
[14] Shakesbear was at my parent's house being taken care
[15] of by my father and my brother. And I just wanted to
[16] see my dog. And it was very horrifying to see him in
[17] the condition he was in. But I just helped him along
[18] the best I could. I walked him. I made a sling for
[19] his hind quarter so that we could show him that he
[20] could walk. And within about a two- or three-week
[21] period, I believe, he was up and walking on his own.
[22] Q: Who did your brother take Shakesbear to
[23] after he removed him from Brookside Hospital?
[24] A: To Dr. Gary Peterson.
[25] Q: Did you have an occasion to speak with Dr.

[1] (WHEREUPON, Division's Exhibits 7, 8 and 9
[2] were received in evidence.)
[3] Q: (By Mr. Allred) Mrs. Devlin, can you tell us
[4] how long it took for Shakesbear to regain his ability
[5] to walk?
[6] A: Probably about, I believe it was two to
[7] three weeks, possibly a month. On a daily basis - I
[8] was working full time at the time. And in the
[9] morning, I would get up and go to my parents' house
[10] because that is where we had to keep the dog because
[11] there was no one home to take care of him while I was
[12] at work, my husband and I were at work. We would
[13] catheterize him to drain his urine, and I would take
[14] him for a short walk in the morning. And then after
[15] work, I would go back, catheterize him again and take
[16] him for at least a two block walk around the block
[17] holding his hind quarter up with a, I don't know,
[18] sling that I made for him. And then we'd also let him
[19] sit in the backyard. And because he was dragging his
[20] hind legs, he would just sit there. And there was a
[21] rabbit in my parents' neighbor's yard that he liked to
[22] chase. And the day he stood up, it was just he was
[23] chasing the rabbit. He just stood up and started
[24] walking again.
[25] Q: When you spoke with Dr. Peterson, did he

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[1] Peterson about Shakesbear's condition?
[2] A: I did on the Tuesday after I returned home
[3] from California. I called him. He invited me to come
[4] to his office. He showed me the x-rays from the
[5] myelogram that he had done on Shakesbear. He showed
[6] me exactly where the injury was on the spinal cord and
[7] told me there's a 50/50 chance that he'll walk again.
[8] Q: Would you turn to Exhibit 7 and tell me if
[9] you can identify this exhibit.
[10] A: This is the first initial bill from Dr.
[11] Peterson's office.
[12] Q: Could you turn to tab number 8 and tell me
[13] if you can identify that exhibit, Number 8.
[14] A: This is another bill from Dr. Peterson's
[15] office.
[16] Q: And then finally turn to Exhibit Number 9
[17] and tell me if you can identify that exhibit.
[18] A: This is another bill from Dr. Peterson's
[19] office for the care of Shakesbear.
[20] MR. ALLRED: Your Honor, I would move
[21] to admit Exhibits 7, 8, and 9 into evidence.
[22] MR. DAHL: No objections.
[23] THE COURT: Exhibits 7, 8 and 9 as
[24] identified are received and copies may be provided to
[25] the board.

[1] discuss anything other than spinal injury with you?
[2] A: Shakesbear was severely burned on his
[3] testicles and his rear end. He had to be shaved. It
[4] was a burn caused by urine due to the fact that he was
[5] left in his own urine for some period of time. That
[6] took approximately two months to totally clear that
[7] up, and that was with treatment twice a day.
[8] Q: How is Shakesbear doing today?
[9] A: He's great. He walks. He runs. I have a
[10] female Chow Chow also. He plays fetch. He's a great
[11] dog. He's in great condition.
[12] MR. ALLRED: Your Honor, that's all the
[13] questions I have right now.
[14] THE COURT: Cross-examination, Mr.
[15] Dahl?
[16] CROSS-EXAMINATION
[17] BY MR. DAHL:
[18] Q: Who made the decision, after you'd consented
[19] that the dog be put to sleep, who changed - who made
[20] the decision to keep the dog?
[21] A: My brother contacted a friend that he worked
[22] with and was told that he had a dog that had a similar
[23] situation and he referred him to Dr. Peterson. My
[24] brother took it upon himself to get a second opinion
[25] on the dog. Once he had made that decision, then I

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[1] was contacted in California that they were taking him
[2] in for a second opinion.

[3] **MR. DAHL:** I have no further questions.

[4] **THE COURT:** Any redirect, Mr. Allred?

[5] **MR. ALLRED:** Just a housekeeping
[6] point. I neglected to move to have Exhibit Number 6
[7] admitted. It's one that Mr. Dahl had previously
[8] stipulated could be admitted. It's Dr. Taylor's bill.

[9] **THE COURT:** Any objection, Mr. Dahl?

[10] **MR. DAHL:** No objection.

[11] **THE COURT:** Division Exhibit 6 is
[12] received and copies may be provided to the board.
[13] (WHEREUPON, Division's Exhibit 6
[14] was received in evidence.)

[15] **THE COURT:** Does the board have any
[16] question of this witness, starting with Dr. Taylor?

[17] **EXAMINATION**

[18] **BY MR. TAYLOR:**

[19] **Q:** Was there a period of time from the time Dr.
[20] Taylor released the dog until they took it to Dr.
[21] Peterson?

[22] **A:** No, sir, there was not.

[23] **Q:** They took it directly over?

[24] **A:** Directly to Dr. Peterson's office.

[25] **MR. TAYLOR:** That's all.

[1] **MR. ALLRED:** Your Honor, the division

[2] would call Dean Schofield to the stand.

[3] **ALVIN DEAN SCHOFIELD**

[4] the witness hereinbefore named, being first duly sworn
[5] to testify the truth, the whole truth and nothing but
[6] the truth, testified on his oath as follows:

[7] **DIRECT EXAMINATION**

[8] **BY MR. ALLRED:**

[9] **Q:** Mr. Schofield, could you please state and
[10] spell your name for the record.

[11] **A:** Alvin Dean Schofield, A-l-i-v-n, Dean,
[12] D-e-a-n, Schofield, S-c-h-o-f-i-e-l-d.

[13] **Q:** Mr. Schofield, are you the brother of Cheryl
[14] Devlin?

[15] **A:** Yes, sir.

[16] **Q:** And were you taking care of Shakesbear on
[17] May 24, 1994?

[18] **A:** Yeah, I was taking care of him while they
[19] were on vacation, at my parents' house because at the
[20] time I was living there with them.

[21] **Q:** Could you just take a moment and describe to
[22] the board and to the Court what happened on the
[23] morning of May 24th, 1994.

[24] **A:** Well, I was in asleep, and my father had
[25] woken me up. He said that Bear was out in the front

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[1] **THE COURT:** Dr. Rees?

[2] **EXAMINATION**

[3] **BY MR. REES:**

[4] **Q:** Did your brother talk to Dr. Taylor at the
[5] time of his removal of the dog from his clinic
[6] regarding his condition?

[7] **A:** Yes, he did.

[8] **Q:** What did Dr. Taylor say about the dog at
[9] that time?

[10] **A:** To be honest with you, I'm not sure. I was
[11] not present. I believe my brother is going to testify
[12] today.

[13] **THE COURT:** He is.

[14] **MR. REES:** I have no other questions.

[15] **THE COURT:** Dr. Brown?

[16] **MS. BROWN:** No questions.

[17] **THE COURT:** Mr. Sperry?

[18] **MR. SPERRY:** No.

[19] **THE COURT:** Is this witness subject to
[20] recall, Mr. Allred?

[21] **MR. ALLRED:** No, your Honor.

[22] **THE COURT:** Mr. Dahl?

[23] **MR. DAHL:** No, your Honor.

[24] **THE COURT:** Thank you. Your next
[25] witness.

[1] yard just sitting there and that he looked like he had
[2] been injured. By the time, I'd gotten out of bed and
[3] gotten upstairs, they had brought him into the front
[4] of the house. And I had noticed that he was dragging
[5] his hind quarters. And at that time, you know, I was
[6] pretty much I did know that Cheryl took him to the
[7] clinic out there. And that's when I contacted the
[8] clinic.

[9] **Q:** So you knew that Cheryl had taken Shakesbear
[10] to Brookside in the past?

[11] **A:** Right.

[12] **Q:** And you contacted Brookside -

[13] **A:** Right.

[14] **Q:** - that morning? Was Shakesbear able to
[15] stand on his hind quarters?

[16] **A:** He was not able to. He was dragging - we
[17] have a wood floor, and he was pretty much pulling
[18] himself around.

[19] **Q:** Prior to taking Shakesbear to Brookside, did
[20] you know anything about Brookside Animal Clinic?

[21] **A:** No, sir.

[22] **Q:** Could you briefly tell the board what you
[23] noticed as you entered into Brookside Animal Clinic
[24] that morning with Shakesbear?

[25] **A:** Well, I brought him in and, I mean, pretty

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[1] much it looked, I mean, I'd never owned an animal. I
[2] do now. And so, I mean, it pretty much looked like a
[3] clinic to me. And I brought him in, and I noticed
[4] that, you know, there was a lot of other animals. I
[5] guess, waiting there. I talked to the lady at the
[6] front desk, and she told me to sit and wait while I
[7] waited for, I guess, the dog to -
[8] Q: Did you speak with Dr. Taylor that morning?
[9] A: I did. I did, yeah. I had brought the
[10] dog in. And he come out and briefly told me that they
[11] would pretty much have to - he took a look and said
[12] that he would have to take some x-rays in order to
[13] give me a prognosis on what was up. And I explained
[14] to him, you know, what had happened, you know, that
[15] the dog, I don't know how, whether it saw a cat or
[16] whatever, it jumped off the front porch and that my
[17] sister, the actual owner, was in California.
[18] Q: Were you present when Dr. Taylor examined
[19] Shakesbear?
[20] A: I was.
[21] Q: Did you notice that Dr. Taylor attempted to
[22] determine whether Shakesbear had any feeling in his
[23] hind quarters?
[24] A: All I noticed was him feeling the dog up and
[25] down his back. Well, this had been after I'd left the

[1] dog recover from an injury like this and that there
[2] was a few of his discs, I guess, misplaced from the
[3] x-rays.
[4] Q: Did Dr. Taylor show you the x-ray that he
[5] had taken of Shakesbear?
[6] A: No, he did not.
[7] Q: So he just described to you what he saw in
[8] the x-ray?
[9] A: Right. And after talking with Tom, you
[10] know, and I had gotten ahold of my sister, she said
[11] basically, Well, don't let Bear suffer if he has to
[12] put him down. And I didn't want to bring up her hopes
[13] too much. I mean, I mentioned that, you know, I might
[14] get a second opinion. And so I went back out after,
[15] you know, talking to the clinic and wanted to pick up
[16] the dog. I spoke to Leo about it, and he said that he
[17] was - well, he'd gone over that. And I wanted to get
[18] a second opinion. So that's when he had me pull
[19] around the side of the clinic, and that's when I was
[20] kind of a little bit - pretty upset. That's -
[21] Q: Why don't you take a moment and describe to
[22] the board what you saw as Shakesbear was brought
[23] outside of the clinic to your car.
[24] A: Well, I drove my truck around there to the
[25] back where I guess they had this garage that they keep

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[1] dog there. And then I called back that day, and they
[2] still had not taken a look at, you know, gotten the
[3] x-rays and all that. And I was still trying to
[4] contact my sister at the time and couldn't get ahold
[5] of her. At that point, I had to go to work that
[6] night. And so I went to work, and that's when I
[7] started talking with a friend of mine, Tom Collins,
[8] who takes his dog to Gary Peterson.
[9] Q: So did you describe to Mr. Collins what had
[10] occurred with Shakesbear?
[11] A: I did. And he has a - oh, what do you call
[12] them, a weiner dog? I guess it had fallen and injured
[13] its back. And so he explained to me that, you know,
[14] he'd taken him to Gary Peterson and that the dog, you
[15] know, they were exercising its legs and the dog was
[16] running around, obviously because I'd seen the dog.
[17] The next day, I went out there because I needed to
[18] find out what was going on.
[19] Q: So at the time you talked with Mr. Collins,
[20] had you spoken to Dr. Taylor about his recommendation
[21] for Shakesbear?
[22] A: He recommended - I can't really remember
[23] whether it was that day or after I talked to Tom, but
[24] he had recommended that the dog be put down. He said
[25] that in his 30 years of practice, he'd never seen a

[1] them in. It was all cement. And when he'd brought
[2] Shakesbear out, I mean, he just wreaked of urine so
[3] bad it was ungodly. And the thing that amazed me the
[4] most is when he did bring him out, he held Shakesbear
[5] by the tail to hold up his hind quarters. And it
[6] looked like, you know, he was wet so they had like
[7] squirted him off just before they had brought him
[8] out. I wrapped him up in a blanket and put him in the
[9] truck. And that's when I drove him directly over to
[10] Town and Country.
[11] Q: Would you please turn to tab number 10 and
[12] tell me if you can identify this exhibit.
[13] A: Yeah, this is the letter that I wrote. My
[14] sister and I were kind of appalled at the care of
[15] Shakesbear, and she contacted -
[16] MR. DAHL: Excuse me a moment, your
[17] Honor. Are you going to try to introduce that
[18] letter?
[19] MR. ALLRED: Yes, your Honor, I'm going
[20] to. It's my intention to move to have it admitted.
[21] THE COURT: For what purpose, Mr.
[22] Allred? I want to hear your purpose before I
[23] entertain any objection.
[24] MR. ALLRED: Your Honor, this is a
[25] letter, and I wanted to finish a couple of questions

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[1] with Mr. Schofield.

[2] **THE COURT:** Well, you haven't offered
[3] it yet, so let's address it when you do. But I don't
[4] want the witness testifying from the exhibit until
[5] we've addressed its admissibility.

[6] **Q:** (By Mr. Allred) Mr. Schofield, can you tell
[7] us why you wrote the letter?

[8] **A:** Because I was appalled at the care
[9] Shakesbear, the way he was handled especially since he
[10] did have a back injury, the way he was -

[11] **Q:** Did you write it at anyone's direction?

[12] **A:** Well, my sister wanted to pursue this. And
[13] obviously, to take, you know, a vet or anything, to
[14] get any action, I really didn't think anything would
[15] come of it. My sister did want me to document it and
[16] to write up something as to what had happened. She
[17] was really perturbed and wanted to make a complaint.
[18] And so I sat down one night at work, because I deal
[19] with computers. I just wrote up a letter as to, you
[20] know, the care of Shakesbear. Another thing is I
[21] wrote it also out of just, you know, I don't think
[22] animals should be treated like this whether they're
[23] going to be put down or not, you know.

[24] **MR. ALLRED:** Your Honor, my purpose in
[25] moving to admit this into evidence is this is Mr.

[1] 1994. Is that when you prepared it?

[2] **THE WITNESS:** I believe so that that's
[3] the correct date.

[4] **THE COURT:** The body of the letter
[5] suggests that that was approximately four months after
[6] this event?

[7] **THE WITNESS:** Correct.

[8] **THE COURT:** In May of that year. The
[9] letter strikes me in large part as somewhat cumulative
[10] of the witness's testimony. But there certainly is a
[11] possibility to cross-examine the witness if necessary
[12] based on receipt of this letter in evidence.
[13] Furthermore, it appears to be present recollection
[14] recorded at the time or shortly within a reasonable
[15] period after the time of this event. I see no basis
[16] to exclude it. I'll allow it and receive it as
[17] Division's Exhibit 10, and copies may be provided to
[18] the board.

[19] **MR. ALLRED:** Thank you, your Honor.
[20] (WHEREUPON, Division's Exhibit 10
[21] was received in evidence.)

[22] **Q:** (By Mr. Allred)?

[23] **MR. ALLRED:** Your Honor, with that, I
[24] have no further questions of Mr. Schofield at this
[25] time.

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[1] Schofield's feelings and thoughts after the incident
[2] occurred. I believe Mr. Dahl will object on the
[3] grounds that this is hearsay. This is the witness's
[4] own words he memorialized in the form of a letter, and
[5] it occurred contemporaneously with the incident,
[6] contemporaneously enough that the board can get a
[7] flavor of his feelings and what took place. And that
[8] would be the basis for admitting it into evidence.

[9] **THE COURT:** Mr. Dahl?

[10] **MR. DAHL:** Well, we have the witness
[11] sitting right there. He can testify to everything
[12] that he's got in the letter putting letters like this
[13] is inflammatory. And I can't cross-examine everything
[14] that's in the letter, but I can cross-examine him on
[15] the witness stand.

[16] **THE COURT:** I think I'm going to need
[17] to see the rule. Can I have a copy of it, please.

[18] **MR. ALLRED:** Yeah, sure.

[19] **THE COURT:** Off the record.

[20] (WHEREUPON, a discussion was held
[21] off the record.)

[22] **THE COURT:** Back on the record. The
[23] Court has had the opportunity to review what's been
[24] offered as Division's Exhibit 10. Just one question,
[25] Mr. Schofield. The letter is dated September 28th,

[1] **THE COURT:** Cross-examination, Mr.
[2] Dahl?

[3] **CROSS-EXAMINATION**
[4] **BY MR. DAHL:**

[5] **Q:** Mr. Schofield, what hospital does Dr.
[6] Peterson work for?

[7] **A:** Town and Country.

[8] **Q:** Town and Country.

[9] **A:** As far as I know, yeah.

[10] **Q:** Who advised you to file a complaint with the
[11] division?

[12] **A:** Advised me? Well, my sister and I were both
[13] appalled at the care. She is the one that initiated
[14] the complaint. And since I was the one that had a lot
[15] to do with it, I wrote up the letter for her.

[16] **Q:** Who told you where to send the letter of
[17] complaint?

[18] **A:** My sister, I guess. The letter was - I had
[19] been contacted by Laurie Larsen, I believe, was her
[20] name. And that's when I'd sent the letter to her
[21] because that's who my sister had been in contact with
[22] for the complaint.

[23] **Q:** So it was the division that asked her to
[24] file a complaint; that's your testimony?

[25] **A:** No, sir, she wanted to file the complaint.

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[1] She just wanted me to go over what had happened. And
[2] after my sister had filed the complaint, Laurie Larsen
[3] wanted me to submit what had happened. And also my
[4] sister had wanted me to document pretty much what had
[5] happened.

[6] Q: I guess a couple days elapsed between the
[7] time you took Bear to Brookside until a decision was
[8] made whether to put the dog down or to get a second
[9] opinion: is that correct?

[10] A: Could you repeat that now?

[11] Q: When the dog was taken to Brookside, did you
[12] authorize Dr. Taylor to do anything to this dog?

[13] A: I told him that I would have to talk to my
[14] sister before, you know, accepting any care on the dog
[15] as far as, you know, putting the dog to sleep as he
[16] had suggested. I can't put my sister's dog down
[17] without talking to her, you know. I brought it in to
[18] have the x-rays done and to see what was needed to be
[19] done.

[20] Q: The x-rays were performed, and you received
[21] advice from the doctor?

[22] A: Right.

[23] Q: Then did Dr. Taylor object to you taking the
[24] animal to another vet for a second opinion?

[25] A: His expression was kind of a surprise that I

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[1] would go take it to a different vet, yes.

[2] Q: But he never objected to it?

[3] A: No, sir.

[4] Q: Now is it unusual for a dog who's paralyzed
[5] in the legs, he may urinate on himself?

[6] A: I would assume that, yeah, he would urinate
[7] on himself. But I would assume also that he would
[8] take care of him to where he's not sitting in it. I
[9] mean, the dog was left in his care for a couple days
[10] while I tried to get ahold of my sister in order to,
[11] you know, get her permission to either put the dog
[12] down, have it, you know, whatever was needed to take
[13] care of the dog.

[14] MR. DAHL: No further questions.

[15] THE COURT: Any redirect?

[16] MR. ALLRED: No, your Honor.

[17] THE COURT: Any questions by the board
[18] of this witness? Dr. Taylor?

[19] MR. TAYLOR: No.

[20] THE COURT: Dr. Rees?

[21] EXAMINATION

[22] BY MR. REES:

[23] Q: Did you see the dog in its housing area?

[24] You never observed the dog hospitalized in the cage
[25] yourself?

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[1] A: No, sir, I didn't.

[2] Q: You reported in the letter that the dog was
[3] brought to you on the first visit out in a blanket and
[4] a discussion was had?

[5] A: Right.

[6] Q: And the next time you saw the dog, it was
[7] out -

[8] A: Out the back.

[9] Q: When you took it -

[10] A: Right.

[11] Q: - to Dr. Peterson's hospital? But you
[12] never observed the dog in the housing area where it
[13] was kept?

[14] A: No, sir.

[15] THE COURT: Dr. Brown?

[16] MS. BROWN: No questions.

[17] THE COURT: Mr. Sperry?

[18] EXAMINATION

[19] BY MR. SPERRY:

[20] Q: When you had the dog at Dr. Peterson's
[21] clinic, was it catheterized the whole time it was
[22] there? Do you know?

[23] A: As far as I know, I'd taken the dog in there
[24] and gotten his - left it there until he gave me a
[25] prognosis on it. And from that time on, I think he

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[1] had said that it would have to be catheterized and it
[2] was. When I next saw the dog, he'd been shaved where
[3] all the burns were and he was washed up because he
[4] wreaked of urine so bad. I mean, I had to throw the
[5] blanket out. The thing was just ungodly because of
[6] the urine smell on it. But he was, I would say, twice
[7] to ten times better care of him. I mean, he was
[8] clean.

[9] MR. SPERRY: Thank you.

[10] THE COURT: Any other questions by the
[11] board of this witness?

[12] MR. REES: I have one.

[13] THE COURT: Go ahead, Dr. Rees.

[14] EXAMINATION

[15] BY MR. REES:

[16] Q: The x-rays that were taken of the dog, were
[17] you shown the x-rays?

[18] A: I wasn't shown the x-rays.

[19] Q: That question was answered before earlier.
[20] Was there one x-ray, or did he indicate that there
[21] were several?

[22] A: He did not indicate any number of x-rays.
[23] Only that he'd taken x-rays - are we discussing Dr.
[24] Taylor?

[25] Q: Yes.

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[1] A: That he had taken x-rays and that some discs
[2] were out of place is what I was told. When I went to
[3] Dr. Peterson's and he had taken some x-rays, he told
[4] me that there was no discs out of place and that it
[5] was just inflamed around the hind quarters where the,
[6] you know, the injury had occurred.
[7] THE COURT: Mr. Allred, anything
[8] further for this witness?
[9] MR. ALLRED: No, your Honor.
[10] THE COURT: Mr. Dahl?
[11] MR. DAHL: No, your Honor.
[12] THE COURT: Mr. Allred, is this witness
[13] subject to recall?
[14] MR. ALLRED: No, your Honor.
[15] THE COURT: Mr. Dahl?
[16] MR. DAHL: (Shakes head.)
[17] THE COURT: Thank you, Mr. Schofield.
[18] Mr. Allred, your next witness.
[19] MR. ALLRED: Dr. Gary Peterson.
[20] GARY L. PETERSON
[21] the witness hereinbefore named, being first duly sworn
[22] to testify the truth, the whole truth and nothing but
[23] the truth, testified on his oath as follows:
[24] DIRECT EXAMINATION
[25] BY MR. ALLRED:

[1] Medical Association, the American Animal Hospital
[2] Association, the Utah Veterinary Medical Association
[3] and Salt Lake Veterinary Medical Association.
[4] Q: Are you currently engaged in the private
[5] practice of veterinary medicine?
[6] A: Yes.
[7] Q: For how long have you been engaged in
[8] private practice?
[9] A: 25 years in June.
[10] Q: Do you have an area or areas of special
[11] interest in your practice?
[12] A: I have a specialty interest in neurology.
[13] Q: Have you ever examined or treated a Chow
[14] Chow by the name of Shakesbear owned by Cheryl Devlin?
[15] A: Yes, I have.
[16] Q: Do you remember when you treated it?
[17] A: I saw it on May 26th, 1994, first.
[18] Q: And could you tell us who brought Shakesbear
[19] into your clinic?
[20] A: Cheryl Devlin's brother, Mr. Schofield.
[21] Q: Does good veterinary practice require a
[22] veterinarian to obtain a history from the owner of an
[23] animal that has been previously treated by another
[24] veterinarian?
[25] A: Yes.

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[1] Q: Dr. Peterson, would you state and spell your
[2] name for the record?
[3] A: Sure, it's Gary L. Peterson, G-a-r-y, letter
[4] L., P-e-t-e-r-s-o-n.
[5] Q: Dr. Peterson, what is your profession?
[6] A: I'm a veterinarian.
[7] Q: Are you licensed to practice veterinary
[8] medicine in the state of Utah?
[9] A: I am.
[10] Q: And when were you licensed to practice
[11] veterinary medicine in Utah?
[12] A: June of 1971.
[13] Q: Are you licensed to practice veterinary
[14] medicine in any other state?
[15] A: No.
[16] Q: If you could just briefly give us your
[17] educational background beginning with college and
[18] ending with veterinary college.
[19] A: I have two years of preveterinary college at
[20] Colorado State University followed by four years of
[21] professional school, graduated in June '71 with a DVM
[22] degree and also a bachelor of science degree.
[23] Q: Do you currently belong to any professional
[24] groups?
[25] A: Yes, I belong to the American Veterinary

[1] Q: And did you get a history from Dean
[2] Schofield?
[3] A: Yes.
[4] Q: Would you please turn to tab number 11 of
[5] the book that's to your left and tell me if you can
[6] identify what's been marked as Division's Exhibit
[7] Number 11?
[8] A: Yes, this is a record from my medical
[9] hospital.
[10] Q: And does this record contain the history
[11] that Mr. Devlin provided to you?
[12] A: Yes.
[13] MR. ALLRED: Your Honor, I would move
[14] to admit Division's Exhibit Number 11 into evidence.
[15] THE COURT: Any objection?
[16] MR. DAHL: No objection.
[17] THE COURT: Division's 11 is received,
[18] and copies may be provided to the board.
[19] (WHEREUPON, Division's Exhibit 11
[20] was received in evidence.)
[21] Q: (By Mr. Allred) Dr. Peterson, would you take
[22] a moment and tell the board what medical history you
[23] were provided when Mr. Schofield brought Shakesbear
[24] into your clinic on May 24, 1994?
[25] A: Yes. When he came in, the history had been

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[1] that a couple days prior, I believe on the 24th, that
[2] Monday, that the dog had jumped or fallen off a porch
[3] and had been holding up it's right rear paw and then
[4] about three or four hours later was totally down in
[5] both rear legs. He had taken him to Brookside for
[6] evaluation there, and some x-rays had been taken and
[7] said there was compression of the spine and the
[8] recommendation was that the dog be put to sleep.

[9] Q: Could you tell the board what you observed
[10] when you examined Shakesbear on May 26th, 1994?

[11] A: Yes. The dog was brought in paralyzed in
[12] the rear legs, unable to move his rear legs. Its rear
[13] end was soggy with urine, and the dog smelled of
[14] urine. The towel he was in was actually damp with
[15] what appeared to be urine. It sure did smell that
[16] way.

[17] Now the dog was paralyzed in the rear legs
[18] but still had the pain sensation as we went through a
[19] neurological exam. All the cranial nerves were fine.
[20] The front legs were fine. There was just a paralysis
[21] in the back legs. I could detect deep pain sensation
[22] in the rear legs. Patellar reflexes were hyper, and
[23] the sciatic reflexes which are located at the back of
[24] the spinal cord appeared to be pressed.

[25] There was a severe urine scald over the

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[1] scrotum and thighs on both thighs of the dog. The
[2] hair was just all matted and sectioned in that soggy
[3] urine moisture.

[4] Q: What would be the type of appropriate
[5] nursing care for an animal that was in Shakesbear's
[6] condition?

[7] A: The dog certainly should have been
[8] catheterized to relieve that urine to drain the
[9] bladder at least intermittently to prevent the urine
[10] scalding, raised on a rack or adapter that would allow
[11] the urine to drip away from the dog and not remain in
[12] contact with the dog's skin. If the hair became
[13] saturated, the hair would need to be shaved off so it
[14] just doesn't go into that urine moisture.

[15] Q: Does a dog of the breed of Shakesbear
[16] present a problem with laying in its own urine?

[17] A: Sure does. They have a very, very dense
[18] coat. And so it just acts like a sponge and just
[19] holds that urine against the skin.

[20] Q: Do you have an opinion as to the type of
[21] nursing care that was provided for Shakesbear?

[22] A: In my opinion, it did not appear that this
[23] dog had received any care as far as treating this
[24] urine burn at all.

Q: In your opinion, did the care it received

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[1] fall below the standard of care?

[2] A: In my opinion, yes.

[3] Q: Would you please turn to tab number 12.

[4] A: (Witness complies.)

[5] MR. ALLRED: And, your Honor, this is
[6] one that Mr. Dahl has stipulated can be admitted into
[7] evidence. And so I would move at this time to admit
[8] it. This is Dr. Leo Taylor's medical history report
[9] on Shakesbear.

[10] THE COURT: Any objection, Mr. Dahl?

[11] MR. DAHL: No objection.

[12] THE COURT: Division's Exhibit 12 will
[13] be received and copies provided to the board.

[14] MR. ALLRED: Thank you, your Honor.

[15] (WHEREUPON, Division's Exhibit 12
[16] was received in evidence.)

[17] Q: (By Mr. Allred) Dr. Peterson, have you ever
[18] seen the Division's Exhibit Number 12 prior to today?

[19] A: Yes, I have.

[20] Q: Do you have an opinion as to the adequacy of
[21] the information contained in this report?

[22] A: This is basically just an invoice, does not
[23] describe any of the medical care, results of the
[24] radiographs. It's basically just a bill.

[25] Q: Do you think it's important that as the

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[1] subsequent veterinarian you have before you a record
[2] that helps you understand the treatment provided
[3] previously?

[4] A: It certainly would be very helpful, yes.

[5] Q: If I told you that this was the equivalent
[6] of State's Exhibit Number 11, your medical history,
[7] would you find that Exhibit Number 12 is inadequate?

[8] A: In my opinion, yes.

[9] MR. ALLRED: Your Honor, the next
[10] exhibit I have is a radiograph taken by Dr. Leo Taylor
[11] of Shakesbear. We have a light box here, and I'm not
[12] sure where we can plug it in. I'm not familiar with
[13] the courtroom, should have taken some time -

[14] THE COURT: I suspect there is a -
[15] let's go off the record for this. Off the record.

[16] (WHEREUPON, a discussion was held
[17] off the record.)

[18] THE COURT: We'll be in brief recess.

[19] (WHEREUPON, a recess was taken.)

[20] THE COURT: Back on the record after
[21] arrangements have been made to allow the board to
[22] review the x-ray that's about to be made reference to
[23] in testimony. Mr. Allred, go ahead.

[24] MR. ALLRED: Your Honor, as a matter of
[25] procedure, I don't believe Dr. Peterson can lay the

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[1] proper foundation for this coming into evidence. And
[2] it is my intention that it be admitted into evidence.
[3] It is an x-ray taken at Brookside Animal Hospital that
[4] bears the label of Brookside Animal Hospital and the
[5] name of the patient and the date. It was obtained by
[6] the division under an investigative subpoena. And if
[7] it would be possible, your Honor, I would move to
[8] admit it into evidence now, of course with Mr. Dahl's
[9] objection.

[10] **MR. DAHL:** I have no objection.

[11] **THE COURT:** As identified, the x-ray is
[12] so received as Division's Exhibit 13.

[13] (WHEREUPON, Division's Exhibit 13
[14] was received in evidence.)

[15] **MR. ALLRED:** Thank you, your Honor.

[16] **Q:** (By Mr. Allred) I've always wanted to do
[17] that, a frustrated doctor. Dr. Peterson, what you see
[18] before you has been admitted into evidence as State's
[19] Exhibit Number 13. And can you identify what you see
[20] in this x-ray?

[21] **A:** This is a radiograph of what appears to be a
[22] dog, spinal x-ray primarily showing from about the
[23] ninth or tenth - eighth or ninth rib down to the
[24] level of the pelvis in generally what would be
[25] considered a dorsal/ventral or ventral/dorsal view.

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[1] **Q:** Do you have an opinion as to whether any of
[2] the discs along that spinal column are misaligned or
[3] out of position?

[4] **A:** Based on this radiograph, I can't define any
[5] of them that are necessarily misaligned, no. There is
[6] some rotation of the spine. It tips (indicating), so
[7] it isn't an ideal view. Usually we see two views at
[8] the very least to make any determination of any sort.
[9] But based on what I'm seeing here, I cannot see
[10] obvious misalignment.

[11] **Q:** You indicated that usually you see two
[12] views. Would it be appropriate for further
[13] radiographs to be taken to make a diagnosis?

[14] **A:** In my opinion, yes.

[15] **MR. ALLRED:** Your Honor, that's all the
[16] questions I have with regard to this exhibit.

[17] **THE COURT:** It has been so received.
[18] The board can return.

[19] **MR. ALLRED:** And in fact, your Honor,
[20] that's all the questions I have of Dr. Peterson.

[21] **THE COURT:** Any cross-examination, Mr.
[22] Dahl?

[23] **MR. DAHL:** Yes, your Honor.

[24] **CROSS-EXAMINATION**
[25] **BY MR. DAHL:**

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[1] **Q:** Dr. Peterson, I take it that you have a
[2] specialty in veterinary medicine; is that correct?

[3] **A:** I am a veterinarian, yeah.

[4] **Q:** Well, the report I'm reading from here
[5] indicates that - it says Dr. Peterson's specialty is
[6] neurology.

[7] **A:** I have a specialty interest in neurology.

[8] I'm not a specialist in neurology.

[9] **Q:** Do all veterinarians have the same
[10] qualifications in that direction that you do?

[11] **A:** No, I don't believe so.

[12] **Q:** Now would it be proper caging procedure to
[13] keep a paralyzed dog like this in a cage where any
[14] urine or anything like that can drain off?

[15] **A:** Yes.

[16] **Q:** Is it unordinary that a dog that's paralyzed
[17] may urinate and come in contact with its own urine
[18] when you have a condition of a dog like Bear?

[19] **A:** It certainly can occur, yes.

[20] **Q:** Now in your examination of Bear, were you
[21] able to determine what portion of the body hit the
[22] ground when it fell this 12 feet?

[23] **A:** No, I was not.

[24] **Q:** Was there bruises on the rear end?

[25] **A:** Not that I'm aware of. The thighs and the

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[1] scrotal area had tremendous inflammation and scalding
[2] from the urine. But beyond that, I could detect no
[3] obvious bruises or injuries.

[4] **Q:** What part of the body did this animal fall
[5] on or land on when it fell?

[6] **A:** I can't tell you that other than the fact
[7] that its back was injured, whether it fell and landed
[8] on its back or whether it just twisted as it fell, I
[9] can't tell you.

[10] **Q:** From all outward appearances, it appeared
[11] that the legs were paralyzed, did it not?

[12] **A:** Yes, the legs were paralyzed, but it did
[13] have pain sensation in the legs, so not totally
[14] paralyzed. All sensation was not lost. The dog was
[15] unable to move its legs but did have reflexes.

[16] **Q:** When this patient was received by you, did
[17] Mr. Schofield explain to you that Dr. Taylor was
[18] washing the dog down and was willing to go ahead and
[19] bathe the dog before he took it?

[20] **A:** I believe he said something about the dog
[21] had been hosed down, but he did not say anything
[22] further than that to my recollection.

[23] **Q:** Now if a dog is placed on a blanket and
[24] passes water or urinates, does the blanket soak up the
[25] urine?

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[1] A: It'll certainly soak up some of it.
[2] Q: And you say that this particular breed of
[3] animal has a heavy fur coat; is that correct?
[4] A: That's correct.
[5] Q: And that will also absorb and keep urine; is
[6] that correct?
[7] A: That's correct.
[8] Q: Do dogs at times lick off and clean
[9] themselves and this type of stuff?
[10] A: Yes.
[11] Q: According to the medical history report of
[12] Bear, a charge was made of \$45 for three days. Does
[13] that indicate that medication and other care was
[14] rendered to the dog greater than just shelter?
[15] A: I don't know that I can answer that
[16] question.
[17] Q: What is the normal charge per day for taking
[18] up a kennel in a hospital?
[19] A: Just for occupying the kennel, probably in
[20] the neighborhood of 15 to \$20 a day just for the
[21] kennel occupation, not regarding treatment, medical
[22] supervision, medication.
[23] Q: That's your charges?
[24] A: That would be my charges, yes.
[25] Q: Now you stated your opinion is the dog

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[1] should have been catheterized while it was in the care
[2] of Dr. Taylor. Is that always necessary when the
[3] animal is passing its own urine?
[4] A: In this case the dog was not passing its own
[5] urine. It was just overflowing. The bladder was
[6] tremendously distended, and it was just an overflowing
[7] of urine. So the bladder, just whatever he was
[8] producing was leaking out. The dog did not regain
[9] urinary control for probably a month or six weeks
[10] anyway afterwards.
[11] Q: Also in this report I'm looking at, it's
[12] reported you said diagnosing a ruptured disc rather
[13] than a hemorrhage based on x-ray is not unusual for
[14] the veterinarian not trained specifically in
[15] neurology?
[16] A: It certainly could be a ruptured disc and a
[17] hemorrhage could appear to have the same kind of
[18] signs, yes.
[19] Q: Especially a veterinarian not specially
[20] trained like yourself?
[21] A: That's correct.
[22] MR. DAHL: I think that's all I have.
[23] THE COURT: Redirect, Mr. Allred?
[24] MR. ALLRED: Yes, your Honor.
[25] REDIRECT EXAMINATION

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[1] BY MR. ALLRED:
[2] Q: Dr. Peterson, if Shakesbear had been kept in
[3] a cage with a drain, in your opinion, would that have
[4] been sufficient enough to prevent the accumulation of
[5] urine?
[6] A: Probably not with considering the density of
[7] this dog's hair coat and the fact that it just
[8] couldn't move away from that urine at all.
[9] Q: Based upon your observation of the inflamed
[10] tissue, was there sufficient damage at the time that
[11] you saw Shakesbear that a bath wouldn't have cured the
[12] problem?
[13] A: In my opinion, a bath would not have just
[14] solved the problem. We needed to clip the hair
[15] dramatically because he was just - it was awful.
[16] Q: Is it possible for a Chow breed to
[17] sufficiently clean itself if it's left to lie in its
[18] own urine?
[19] A: I don't believe so. The coat is so dense
[20] that it couldn't clean that urine away from itself
[21] adequately.
[22] Q: In fact, would the dog have felt the effects
[23] of the urine burn on it?
[24] A: In my opinion, yes, because it had pain
[25] sensation in its legs, yes.

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[1] MR. ALLRED: Thank you, your Honor.
[2] That's all I have.
[3] THE COURT: Recross, Mr. Dahl?
[4] MR. DAHL: No.
[5] THE COURT: Any questions by the board?
[6] Dr. Taylor?
[7] MR. TAYLOR: No.
[8] THE COURT: Dr. Rees?
[9] MR. REES: Has the dog suffered any -
[10] I might have directed this to the previous witness.
[11] EXAMINATION
[12] BY MR. REES:
[13] Q: But is the dog normal now with regard to its
[14] skin, scrotum and the thighs? Has the hair all grown
[15] back?
[16] A: To the best of my knowledge, yes. I haven't
[17] seen it for a year, but it took considerable time for
[18] the ulcers and that to heal on the scrotum, at least a
[19] month. But to my knowledge now, it is back to
[20] normal.
[21] MR. REES: Okay.
[22] THE COURT: Dr. Brown?
[23] EXAMINATION
[24] BY MS. BROWN:
[25] Q: Dr. Peterson, what kind of medical care -

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[1] did you use any medications in the treatment of this
[2] dog?
[3] A: Yeah, we did. We anesthetized the dog and
[4] for diagnostics took plain x-rays and did a myelogram
[5] to determine exactly what was happening in the spine.
[6] And we found a swelling of the cord between the third
[7] and fourth lumbar vertebrae and indistinct dye below
[8] that point indicating something was happening,
[9] swelling of the cord or something below that point.
[10] We did get blood back on a spinal tap as we did that
[11] procedure, indicating there was probably hemorrhage
[12] running around the spinal cord. At that time, we also
[13] shaved the dog's whole rear quarters and its scrotum,
[14] cleaned it and debrided it and got all the sloughing
[15] tissue that was there and scald off, bathed it, and
[16] applied antibiotic anti-inflammatory ointment to the
[17] skin of the area. And we catheterized the dog at that
[18] time, drained the bladder and continued throughout the
[19] time it was in the hospital to catheterize it
[20] intermittently and treat it with antibiotics and
[21] anti-inflammatory drugs.
[22] Q: Was it your opinion that if
[23] anti-inflammatory medication had been started earlier
[24] that this dog might have recovered sooner?
[25] A: I don't know that I can give you a good

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[1] opinion on that. The earlier we start treatment, the
[2] better our chances of having recovery are. But
[3] whether or not two days' difference would have made a
[4] tremendous difference in the outcome, I can't tell
[5] you.
[6] Q: Have you ever done any referrals of
[7] neurological cases for Dr. Taylor, I mean, direct
[8] referrals by him?
[9] A: By him? Not to my recollection.
[10] MS. BROWN: Thank you.
[11] THE COURT: Mr. Sperry?
[12] EXAMINATION
[13] BY MR. SPERRY:
[14] Q: As a standard of practice if a dog was
[15] brought in with a spinal injury and not able to move
[16] its legs, would you as a routine measure administer
[17] Prednisone or some other anti-inflammatory while a
[18] determination was made as to whether there was going
[19] to be -
[20] A: While an examination was made?
[21] Q: The dog was held for a couple of days while
[22] a determination was made whether they were actually
[23] going to do any in-depth treatment. As a standard of
[24] practice, would you have administered Prednisone?
[25] A: Yes, I would have administered

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[1] anti-inflammatories of some sort and antibiotics.
[2] MR. SPERRY: Okay.
[3] THE COURT: Any other questions by the
[4] board of this witness? Mr. Allred?
[5] MR. ALLRED: None for me, your Honor.
[6] THE COURT: Mr. Dahl?
[7] MR. DAHL: No.
[8] THE COURT: Is this witness subject to
[9] recall, Mr. Allred?
[10] MR. ALLRED: No, your Honor.
[11] THE COURT: Mr. Dahl?
[12] MR. DAHL: No.
[13] THE COURT: Doctor, you're free to
[14] leave. Thank you. Mr. Allred, would it be an
[15] opportune time to take a recess?
[16] MR. ALLRED: Yes, your Honor, we're
[17] just ready to move into our third allegation.
[18] THE COURT: Okay. I have discussed
[19] with respect to counsel the parameters of any noon day
[20] recess. Does counsel have a preference in terms of
[21] whether it's 60 to 90 minutes today?
[22] MR. ALLRED: Your Honor, I think it
[23] would be more appropriate to ask Mr. Dahl what would
[24] be appropriate for him.
[25] THE COURT: Mr. Dahl, any preference?

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[1] MR. DAHL: I think an hour. Is there a
[2] cafeteria or any facilities?
[3] THE COURT: We can go off the record
[4] for this, I think. We'll be in recess until 1:15.
[5] (WHEREUPON, a recess was taken.)
[6] THE COURT: Back on the record after a
[7] recess of approximately one hour. Mr. Allred, your
[8] next witness.
[9] MR. ALLRED: Your Honor, the division
[10] would call Stephanie Picklesmeier to the stand.
[11] STEPHANIE PICKLESIMER
[12] the witness hereinbefore named, being first duly sworn
[13] to testify the truth, the whole truth and nothing but
[14] the truth, testified on her oath as follows:
[15] DIRECT EXAMINATION
[16] BY MR. ALLRED:
[17] Q: Ms. Picklesmeier, and I hope I'm saying your
[18] name right, I'm not.
[19] A: Picklesimer.
[20] Q: Picklesimer. Would you please state and
[21] spell your name for the Court.
[22] A: Stephanie Picklesimer, S-t-e-p-h-a-n-i-e,
[23] P-i-c-k-l-e-s-i-m-e-r.
[24] Q: And I'll try to say it correctly. Forgive
[25] me if I don't. Mrs. Picklesimer -

000204

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A: Picklesimer.

Q: Did you own a female Chinese Shar Pei by the name of Char -

A: Yes.

Q: - during October of 1994?

A: Yes.

Q: And did you take Char to Dr. Taylor during that month?

A: Yes.

Q: What did you take Char to Dr. Taylor for?

A: To get spayed.

Q: Could you tell the Court and the board what happened after you left Char at Dr. Taylor's?

A: I called him or he called me the next morning. And I had slept in that morning, so I just woke up. And he told me she was dead that she didn't take the anesthetic well and she was dead.

Q: And did you any further discussion with him?

A: He just said these things happen. He was very unsympathetic. He said these things happen. I can do an autopsy and find out why she didn't take that anesthetic well. And so I told him to go ahead and do one.

Q: Would you please turn to Exhibit Number 14 in this binder and tell me if you can identify it.

off the record.)

THE COURT: On the record, the Court has reviewed the proposed exhibit, Division's Exhibit 14. In reviewing it, Mr. Allred, and then in considering the allegations the division set forth in their petition, there are a number of items set forth in this proposed exhibit that go beyond those allegations. Much of it reflects matters as to state of mind, events the division has not alleged as a basis to take action on Dr. Taylor's license. What is it being offered for, and how do you intend to use it through this witness.

MR. ALLRED: Your Honor, I just intended to introduce it for Ms. Picklesimer's feeling regarding her animal at the time that Dr. Taylor treated it and what he offered to do. In addition, your Honor, at the time that the division filed its exhibit list, it did not intend to call her husband, Jeff, as a witness. I think his testimony would be important. And in fact he's come today without a subpoena.

THE COURT: Do you intend to call him?

MR. ALLRED: If it's not objected to by Mr. Dahl.

MR. DAHL: He can go ahead.

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A: It's a letter I wrote.

Q: Do you know the date that you wrote the letter?

A: It wasn't too long. It was probably the end of October '94.

MR. ALLRED: Your Honor, it's the division's intention to admit into evidence Exhibit Number 14 as past recollection recalled at the time that she wrote the letter. I know we've had objection in the past to this type of exhibit.

THE COURT: Mr. Dahl?

MR. DAHL: I was going to raise the same exhibit I did before. It's a very lengthy letter. She also expresses her opinions in the letter itself. She's present here. It's a very simple case. She can testify as to what she did and conversation with Dr. Taylor. And this letter here is part of the complaint to the division, and reading it is full of all sorts of unsubstantiated contentions and opinions.

THE COURT: May I see a copy of that, Mr. Allred?

MR. ALLRED: Yes, your Honor.

THE COURT: Off the record.

(WHEREUPON, a discussion was held

THE COURT: Frankly, I view this exhibit in a different light than the earlier one, Mr. Allred, because of the reasons I've just stated. I have no problem if the witness wants to use the document to refresh her recollection as to events to the extent she needs to do so. But because of various aspects of the contents of that exhibit when held against the division's allegations, I don't believe it's appropriate to receive it as an exhibit. Of course, Mr. Dahl would have the opportunity to cross-examine this witness, and I'm sure he'll take that opportunity at the time. Go ahead.

MR. ALLRED: Your Honor, then if I understand the Court's ruling, the document won't be admitted?

THE COURT: That's right. But the witness can certainly use it to refresh her recollection as you proceed through direct examination.

Q: (By Mr. Allred) Stephanie, did you hear again from Dr. Taylor after he offered to do an autopsy?

A: Yeah, he called me back later.

Q: And what did he tell you?

A: That she had pneumonia in both lungs, that

000205

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[1] she had an irregularly shaped heart, and there was
[2] fluid around her heart.
[3] **Q:** Would you please turn to tab number 15 which
[4] has been marked as State's Exhibit Number 15 and tell
[5] me if you can identify this document.
[6] **A:** Yes.
[7] **Q:** Did you receive a copy of this document
[8] through the mail or the original?
[9] **A:** Yeah, I went and picked it up.
[10] **MR. ALLRED:** Your Honor, I would move
[11] to admit Exhibit Number 15 into evidence.
[12] **THE COURT:** Any objection?
[13] **MR. DAHL:** No objection.
[14] **THE COURT:** As identified, so
[15] received. Copies may be provided to the board.
[16] (WHEREUPON, Division's Exhibit 15
[17] was received in evidence.)
[18] **Q:** (By Mr. Allred) Stephanie, this is a short
[19] letter that you received from Dr. Taylor. Would you
[20] take a moment and just read it into the record.
[21] **A:** You want me to read it out loud?
[22] **Q:** Yes.
[23] **A:** To whom it may concern: The three-year-old
[24] fawn Shar Pei, Char, belonging to Stephanie
[25] Picklesimer of 5405 South Northwest Avenue was found

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[1] during an autopsy to have a pneumonia in both lungs
[2] and also an irregularly-shaped heart. Excessive
[3] amounts of fluid were around the heart. Leo N.
[4] Taylor.
[5] **Q:** Does this letter that you received from Dr.
[6] Taylor, Exhibit Number 15, support what he told you
[7] over the telephone?
[8] **A:** Yeah.
[9] **Q:** What did you do after you were told by Dr.
[10] Taylor that Char had died of pneumonia and an
[11] irregularly-shaped heart?
[12] **A:** I was in shock. She was fine when I took
[13] her in there.
[14] **Q:** And did you contact anyone after?
[15] **A:** I waited until my husband got home and
[16] discussed it with him. And he called Dr. Taylor and
[17] said he was coming down to get her carcass and that he
[18] was going to take it and have another autopsy done.
[19] **Q:** And did you have anyone in mind at the time
[20] that you discussed this with your husband for a second
[21] autopsy?
[22] **A:** All City Pet Complex.
[23] **MR. ALLRED:** Your Honor, that's all the
[24] questions I have at this moment.
[25] **THE COURT:** Let me return this proposed

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[1] exhibit to you, Mr. Allred, since it will not be
[2] received in evidence.
[3] **MR. ALLRED:** Thank you, your Honor.
[4] And I moved, I believe I moved to admit Number 15.
[5] But if I didn't -
[6] **THE COURT:** You did, and it's been
[7] received.
[8] **MR. ALLRED:** Then I will make it
[9] available to the reporter and the board.
[10] **THE COURT:** Thank you.
[11] **MR. DAHL:** Mr. Dahl, any questions on
[12] cross-examination of this witness?
[13] **CROSS-EXAMINATION**
[14] **BY MR. DAHL:**
[15] **Q:** Has Dr. Taylor been your veterinarian in the
[16] past?
[17] **A:** No, I've never taken my dogs to him.
[18] **MR. DAHL:** I have no questions.
[19] **THE COURT:** Any redirect at this time?
[20] **MR. ALLRED:** No, your Honor.
[21] **THE COURT:** Any questions by the board
[22] of this witness starting with Dr. Taylor?
[23] **MR. TAYLOR:** No.
[24] **THE COURT:** Dr. Rees?
[25] **MR. REES:** No.

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[1] **THE COURT:** Dr. Brown?
[2] **MS. BROWN:** I don't think so.
[3] **THE COURT:** Excuse me, Mr. Sperry?
[4] **MR. SPERRY:** No.
[5] **THE COURT:** Is this witness subject to
[6] recall, Mr. Allred?
[7] **MR. ALLRED:** No, your Honor.
[8] **THE COURT:** Mr. Dahl?
[9] **MR. DAHL:** No, your Honor.
[10] **THE COURT:** You're free to leave if
[11] you'd like to.
[12] **THE WITNESS:** Thank you.
[13] **THE COURT:** Mr. Allred, your next
[14] witness.
[15] **MR. ALLRED:** Your Honor, the division
[16] would call Stephanie's husband, Jeff Picklesimer, to
[17] the stand.
[18] **JEFFREY ALLEN PICKLESIMER**
[19] the witness hereinbefore named, being first duly sworn
[20] to testify the truth, the whole truth and nothing but
[21] the truth, testified on his oath as follows:
[22] **DIRECT EXAMINATION**
[23] **BY MR. ALLRED:**
[24] **Q:** Would you please state and spell your name
[25] for the record.

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[1] A: It's Jeffrey Allen Picklesimer.
[2] J-e-f-f-r-e-y, A-l-l-e-n, P-i-c-k-l-e-s-i-m-e-r.
[3] Q: Mr. Picklesimer, you are married to
[4] Stephanie Picklesimer?
[5] A: Yes.
[6] Q: And you were the owner of a Shar Pei by the
[7] name of Char?
[8] A: Yes.
[9] Q: Could you tell the board what happened after
[10] you came home from work on October 12th and talked
[11] with your wife.
[12] A: When I came home, she told me that the vet
[13] called and said Char was dead. And I'm thinking, Oh
[14] really? How convenient, you know, typically. And so
[15] I called them and told them I was going to come and
[16] get her to have her checked by someone else. And when
[17] I go to get her, he opens up the door and hands her to
[18] me in a 40-pound dog food sack. Her body was in
[19] here. Here, he says, These things happen, oh, well.
[20] That's basically all he said.
[21] Q: Was Char an important part of our family?
[22] A: Yeah.
[23] Q: Can you briefly tell the board why Char had
[24]
[25] A: Well, we had her, my wife always wanted a

[1] Taylor had stated was the cause of death for Char?
[2] A: Yeah.
[3] Q: Did you stay at All Pet Complex while Dr.
[4] Vande Griend performed the autopsy?
[5] A: No, I couldn't. I went back home. He said
[6] he'd call within 45 minutes or so. He was like on his
[7] way to go home. So I think he ended up staying and
[8] doing the autopsy and then calling us back and letting
[9] us know what he found out.
[10] Q: And was his cause of death different than
[11] that of Dr. Taylor's?
[12] A: Yeah, he said there was no pneumonia in
[13] either lung and her heart was normal. So obviously he
[14] lied about that.
[15] MR. ALLRED: Thank you, your Honor.
[16] Your Honor, that's all the questions I have.
[17] THE COURT: Any cross-examination, Mr.
[18] Dahl?
[19] MR. DAHL: No questions.
[20] THE COURT: Any questions by the board
[21] of this witness, Dr. Taylor?
[22] MR. TAYLOR: No.
[23] THE COURT: Dr. Rees?
[24] MS. BROWN: No.
[25] THE COURT: Dr. Brown?

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[1] Shar Pei when we got married. I got it for us for our
[2] anniversary or for our wedding.
[3] Q: So it's safe to say that both you and
[4] Stephanie felt strongly about Char?
[5] A: And six months later after we got married,
[6] we had a baby. And our little girl grew up with the
[7] dog, you know, went through years. And it's like our
[8] little girl still says, Where's Char at, you know.
[9] Q: Where did you take Char's body when you
[10] picked it up from Brookside?
[11] A: Took it to All City Pet Complex.
[12] Q: And did you speak with anyone at All City
[13] Pet Complex when you took Char in?
[14] A: Yeah, I talked to the doctor, yeah, Van
[15] Green, I don't know how to pronounce his last name.
[16] Van Green or something like that is who I talked to.
[17] Q: You don't need to worry. I've had a couple
[18] of problems this morning and this afternoon
[19] pronouncing names. I want to apologize to everyone.
[20] Did you talk with Dr. Vande Griend about Char?
[21] A: Yeah, yeah, he said bring her down. And
[22] then he asked if I wanted him to do an autopsy. I
[23] said, Sure. You know, wanted to see if that's what
[24] was really the problem, you know.
[25] Q: So did you tell Dr. Vande Griend what Dr.

[1] MS. BROWN: No.
[2] THE COURT: Is this witness subject to
[3] recall?
[4] MR. ALLRED: No, your Honor.
[5] THE COURT: Mr. Dahl?
[6] MR. DAHL: No, your Honor.
[7] THE COURT: You're free to leave.
[8] Thank you, sir.
[9] MR. ALLRED: Your Honor, the division
[10] would call Dr. Scott Vande Griend to the stand.
[11] THE COURT: Doctor.
[12] SCOTT VANDE GRIEND
[13] the witness hereinbefore named, being first duly sworn
[14] to testify the truth, the whole truth and nothing but
[15] the truth, testified on his oath as follows:
[16] DIRECT EXAMINATION
[17] BY MR. ALLRED:
[18] Q: Let me hand you what has been used as a
[19] witness exhibit book, Dr. Vande Griend. I'll be
[20] having you to turn to that in a moment. Would you
[21] please state and spell your name for the record.
[22] A: Scott Vande Griend. And it's S-c-o-t-t,
[23] V-a-n-d-e, space, G-r-i-e-n-d.
[24] Q: Dr. Vande Griend, what is your profession?
[25] A: I'm a veterinarian.

000207

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Q: Are you licensed to practice veterinary
medicine in the state of Utah?

A: Yes.

Q: When were you licensed to practice
veterinary medicine in Utah?

A: 1987, I believe. I don't recall the exact
date.

Q: Are you licensed to practice veterinary
medicine in any other state?

A: No, I was licensed in Idaho, but I've since
left that to lapse.

Q: Could you just give us a brief educational
background starting with your college background and
then your veterinary college?

A: Yeah, I went to college three years at Dordt
College in Sioux Center, Iowa, in biology and
preveterinary studies. I applied early to vet school
and was accepted at that point, went to Iowa State
University four years and received my DVM in May of
1985.

Q: And when did you start private practice
after you graduated?

A: May of 1985.

Q: And where did you practice before coming to
Utah?

place?

A: The best of my recollection, he just
mentioned that she had died during surgery and that
she'd had pneumonia or something. He was so upset and
crying. I just told him I would try to find out if I
could find any problems.

Q: Was anyone else present when you did the
necropsy on Char?

A: Yes, Dr. Brett Neville was also present and
was able to observe my necropsy.

Q: So he was able to observe the organs as you
performed the necropsy?

A: Yes.

Q: Would you explain to the board what you
found during your necropsy of Char.

A: I found the pericardial sac had been opened,
so I could not find evidence of fluid around the
heart. On a thorough necropsy of the entire abdominal
cavity and thoracic cavity, there were no
abnormalities. The lungs were normal, pink, healthy.
The heart was normal size and shape. The heart had
not been opened, so I opened up the heart and checked
the valves. And it was all fine, no valvular
myocardial anything, infarcts, no signs of any
problems whatsoever, entirely normal necropsy. I was

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A: In Caldwell, Idaho, Twin Falls, Idaho.

Q: Were you in private practice during October
of 1994?

A: Yes.

Q: Where are you currently employed today?

A: I'm employed by Hills Pet Nutrition,
Incorporated.

Q: So you're not currently involved in the
private practice of veterinary medicine?

A: No, I received a job offer and accepted the
job offer with the company.

Q: Where were you employed during October of
1994?

A: For All Pet Complex or All City Pet Complex.

Q: Did you perform an autopsy on a Shar Pei by
the name of Char owned by the Picklesimers in October
of 1994?

A: Actually, the correct terminology is
necropsy. Autopsy refers to doing a human postmortem
examination. And when you do it on an animal, it's
called necropsy.

Q: I appreciate that correction. Who brought
Char in for the necropsy?

A: Mr. Picklesimer.

Q: Did he give you a history of what had taken

halfway hoping to find something wrong to help
alleviate Mr. Picklesimer's pain, but I couldn't.

Q: Would you please turn to the tab number 16
and tell me if you can identify this document.

A: It's the one behind. This is the postmortem
examination form that I filled out.

Q: So you actually filled out this document?

A: Yes, this is my handwriting.

MR. ALLRED: Your Honor, I would move
to admit Exhibit Number 16 into evidence.

THE COURT: Any objection?

MR. DAHL: No objection.

THE COURT: As identified, it is so
received. Copies may be provided to the board.

(WHEREUPON, Division Exhibit 16
was received in evidence.)

Q: (By Mr. Allred) Dr. Vande Griend, are you
familiar with the conclusions of Dr. Taylor's autopsy?

A: Yes, I received a copy of that just the
other day. I hadn't seen it until then. At the time,
I just had Mr. Picklesimer's anecdotal report of
pneumonia.

Q: Do you agree with Dr. Taylor's conclusion
that Char died of pneumonia and an irregularly shaped
heart?

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[1] A: No, I do not.
[2] Q: In your professional opinion, is there any
[3] excuse for the conclusion that Dr. Taylor reached when
[4] he performed a necropsy on Char?
[5] A: No, I do not. In particular, if there was
[6] suspicion of pneumonia, some histopathology or
[7] microscopic studies should have been submitted, which
[8] were not. I disagree.
[9] Q: In your opinion, did Dr. Taylor's
[10] conclusions in his necropsy fall below the standard of
[11] care in the profession for performing a necropsy?
[12] A: Yes.
[13] MR. ALLRED: That's all the questions I
[14] have right now, your Honor.
[15] THE COURT: Cross-examination, Mr.
[16] Dahl?
[17] MR. DAHL: I believe, yes.
[18] MR. ALLRED: I forgot to submit, again,
[19] Exhibit 16 to the board.
[20] THE COURT: Mr. Dahl, go ahead
[21] CROSS-EXAMINATION
[22] BY MR. DAHL:
[23] Q: Doctor, I have read your report on the
[24] postmortem examination. You show no conclusions as to
[25] what the cause of death was?

[1] A: I wouldn't agree with that. There are
[2] medical standards and medical practices that are very
[3] clear. In choice of therapeutic regimens and so
[4] forth, that's where there may be some discrepancies.
[5] But when you look at a very clear case of is there
[6] pneumonia or not pneumonia, which is a very simple
[7] necropsy procedure to find out, it's much easier to
[8] make that choice at that point.
[9] Q: How far after the examination that Dr.
[10] Taylor performed and when you've performed it?
[11] A: It would have been within a few minutes
[12] after Jeff Picklesimer dropped her body off. So it
[13] would be the interval between when he picked her up
[14] and brought her over, which I'm not aware of.
[15] Q: Well, he'd done the autopsy or postmortem
[16] much before the time when Mr. Picklesimer picked up
[17] the dog?
[18] A: Uh-huh.
[19] Q: As a matter of fact, probably a period of 24
[20] to 36 hours elapsed in between.
[21] MR. ALLRED: Your Honor, I object. I
[22] think Mr. Dahl is referring to facts that are not into
[23] evidence. I don't think there's been any testimony
[24] regarding how long a time had elapsed between the time
[25] Dr. Taylor performed the autopsy and Dr. Vande Griend.

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[1] A: No, I could not conclude from the necropsy.
[2] At times it is physically or medically impossible to
[3] show from necropsy what the cause of death was. In
[4] certain situations, you cannot.
[5] Q: Let me ask this. Neutering animals is an
[6] almost everyday occurrence in veterinary medicine, is
[7] it not?
[8] A: Yes, very common surgery, uh-huh.
[9] Q: And let me ask you this. Have you ever
[10] performed a surgery of this type and lost an animal?
[11] A: Yes, I have.
[12] Q: So in the normal course of events, sometimes
[13] animals die from this procedure?
[14] A: That is correct. But in the normal course
[15] of events in necropsy, if there is a physical finding
[16] in necropsy, it's not normal to report something
[17] that's not there.
[18] Q: So what you do is you have a difference of
[19] opinion with Dr. Taylor?
[20] A: Exactly.
[21] Q: Has that ever happened in the profession?
[22] A: Yes.
[23] Q: Lot of times doctors disagree, don't they?
[24] A: Pardon?
[25] Q: A lot of times doctors disagree?

[1] THE COURT: Let me just clarify if I
[2] can with counsels' help. Exhibit 15, which has been
[3] received, is the autopsy report prepared by Dr.
[4] Taylor. That report bears the date of October 13th,
[5] 1994. The body of the report doesn't expressly
[6] identify the date of the autopsy. It may be a
[7] different date. It may be the same date. I don't
[8] think we have it before us as yet. And I'm assuming
[9] some testimony could come forward either if this
[10] witness knows or perhaps Dr. Taylor himself.
[11] MR. DAHL: Yes, Dr. Taylor can testify
[12] to it.
[13] THE COURT: I don't know if this
[14] witness can answer that question.
[15] MR. DAHL: Maybe I asked a
[16] hypothetical.
[17] Q: (By Mr. Dahl) If a period of 48 hours
[18] elapses between two postmortems, can that have an
[19] effect on what you find?
[20] A: Yes, it should have the effect of making -
[21] for example, if there were a situation where there is
[22] pneumonia in the lung, it would be easier to spot
[23] because the fluid would be accumulated throughout the
[24] period of death. Even after that extended amount of
[25] time, there was no fluid in the lungs. Normally after

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[1] an animal dies, fluid will gradually accumulate in the
[2] lungs. So if it's been two or three days, you should
[3] see some fluid there. I found none except for some
[4] slight edema at one end of the lung.

[5] Q: Yeah, what's an edema?

[6] A: Edema is the collection of fluid in the
[7] tissues.

[8] Q: You found some?

[9] A: There was just a tiny rim on the very outer
[10] edge of one of the lungs. This is a normal thing that
[11] happens after an animal dies. After a person dies,
[12] fluid will gradually accumulate in the lungs. And the
[13] longer it is between the necropsy and death, the more
[14] you'll see. And to find a tiny amount at that point
[15] was pretty significant.

[16] Q: But anyway you did find moisture in the
[17] lungs?

[18] A: Normal amounts.

[19] Q: Now we got on the reproductive system here.
[20] You got an abnormal reading on that. Can you explain
[21] that?

[22] A: Found a couple of cystic structures on the
[23] uterine wall, which are very normal. I shouldn't say
[24] normal. Very common. Especially in intact
[25] middle-aged female dogs.

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[1] Q: If it's normal, why didn't you mark normal?

[2] A: They're not normal. I want to clarify.
[3] They're abnormal but very common. They're usually of
[4] no consequence. But it was the only thing I could
[5] find of any kind of aberration from a normal dog's
[6] organs.

[7] Q: You've got gall bladder and bile ducts -
[8] having a little hard time reading your writing.

[9] A: Gall bladder and bile ducts are distended.

[10] Q: Yes, what's that mean?

[11] A: It means that they're kind of full and that
[12] the ducts or the tubes which contain the bile were
[13] kind of full. That can be because of anorexia, the
[14] dog hasn't eaten before surgery. Anything like that
[15] can cause that. Anesthetics can have effect on duct
[16] flow also.

[17] Q: And you've got a comment on spleen?

[18] A: Yes, the spleen was very enlarged, engorged
[19] especially in the dorsal portion.

[20] Q: You mark it normal?

[21] A: Yes, because during anesthesia that's a
[22] normal finding. When you induce an animal with
[23] anesthetic agents, the spleen will quite often distend
[24] and it's normal. That's one of the functions of the
[25] spleen is to control blood pressure and sort blood.

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[1] So that was a finding that's normal for anesthesia.
[2] but you want to report it because it's not the way
[3] that all spleens look.

[4] MR. DAHL: No further questions.

[5] THE COURT: Any redirect?

[6] MR. ALLRED: Yes, your Honor, just one
[7] question.

[8] **REDIRECT EXAMINATION**

[9] **BY MR. ALLRED:**

[10] Q: Dr. Vande Griend, Exhibit Number 16, does
[11] that bear a date anywhere on it?

[12] A: Yeah, October 12th, '94.

[13] Q: In fact, doesn't it bear that date on each
[14] of the pages?

[15] A: Yeah. And that was the day I did the
[16] necropsy, on the afternoon of the 12th.

[17] Q: How soon after Mr. Picklesimer arrived with
[18] the body did you perform the necropsy?

[19] A: I started immediately after he left.
[20] Because my shift had just ended, I was going to go
[21] home but decided to stay and do the necropsy at that
[22] point rather than let it sit until the next day.

[23] MR. ALLRED: Thank you.

[24] THE COURT: Any recross, Mr. Dahl?

[25] MR. DAHL: Yes.

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[1] **RECROSS-EXAMINATION**

[2] **BY MR. DAHL:**

[3] Q: Did you advise the owner of the dog to file
[4] a complaint?

[5] A: No, I did not. He was extremely upset, and
[6] I just simply reported what I found to him. And I
[7] told him not to get too upset until I could give him
[8] an answer.

[9] MR. DAHL: Thank you. That's all I
[10] have.

[11] THE COURT: Any questions by the board
[12] of this witness, Dr. Taylor?

[13] **EXAMINATION**

[14] **BY MR. TAYLOR:**

[15] Q: Did you send tissues in for histoanalysis?

[16] A: No, I did not. I asked the owners if they
[17] wished us to do that at further expense. They
[18] declined.

[19] THE COURT: Dr. Rees?

[20] MR. REES: No.

[21] THE COURT: Dr. Brown?

[22] **EXAMINATION**

[23] **BY MS. BROWN:**

[24] Q: This dog had not been spayed?

[25] A: No. The organs were still there.

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[1] Q: Could you describe the state of the body
[2] when it came to you?
[3] A: It had been opened up from the chest with a
[4] ventral incision, midline ventral incision from the
[5] point of the thorax all the way down to the abdomen,
[6] and the organs had been examined. And the pericardial
[7] sac had been opened. So if there was any fluid on the
[8] heart, I couldn't determine that because it had leaked
[9] out.
[10] Q: Were there any incisions into the lung?
[11] A: I can't recall. I don't believe there were,
[12] but I can't say for certain because I can't exactly
[13] recall.
[14] Q: And no organs had been removed?
[15] A: No organs had been removed.
[16] THE COURT: Mr. Sperry?
[17] MR. SPERRY: Yes.
[18] EXAMINATION
[19] BY MR. SPERRY:
[20] Q: Prior to inducing anesthesia as a standard
[21] of practice, would you do a physical on a dog? And if
[22] you did a physical, would pneumonia show up as part of
[23] your physical findings?
[24] A: It could. If you had an elevated
[25] temperature or irregular heart sounds or irregular

[1] leave. Thank you, Mr. Allred, your next witness.
[2] MR. ALLRED: Your Honor, the division
[3] failed to include in its witness an exhibit list. Dr.
[4] Neville who accompanied or was present with Dr. Vande
[5] Griend when the autopsy was performed. Dependent on
[6] any objection by Mr. Dahl, it would be the division's
[7] intention to call him to the stand.
[8] THE COURT: What's the purpose of his
[9] testimony?
[10] MR. ALLRED: Your Honor, only to
[11] provide a second opinion as to the cause of death,
[12] whether the cause of death identified by Dr. Taylor is
[13] the same conclusion that Dr. Neville came to.
[14] THE COURT: Mr. Dahl, any objections?
[15] MR. DAHL: Seems to be cumulative to
[16] me.
[17] THE COURT: It is, but I sense it's
[18] relatively brief testimony anticipated.
[19] MR. ALLRED: It is, your Honor.
[20] THE COURT: I'll allow it. Doctor.
[21] BRETT NEVILLE
[22] the witness hereinbefore named, being first duly sworn
[23] to testify the truth, the whole truth and nothing but
[24] the truth, testified on his oath as follows:
[25] DIRECT EXAMINATION

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[1] lung sounds, it could show up. However, pneumonia
[2] could possibly be hidden. But normally you'd see some
[3] symptoms of pneumonia. The dog would be ill,
[4] coughing, elevated temperature. In most cases that
[5] would be fairly straightforward to detect.
[6] Q: What about an enlarged heart or fluid around
[7] the pericardium?
[8] A: Only really a radiograph and ultrasound
[9] would show that. When listening to the heart with
[10] stethoscope, certain heart problems, valvular defects,
[11] you could hear some sounds or some irregularities, but
[12] that would be a little more difficult to tell without
[13] an x-ray.
[14] Q: Thank you.
[15] THE COURT: Any redirect, Mr. Allred?
[16] MR. ALLRED: No, your Honor.
[17] THE COURT: Mr. Dahl, further recross?
[18] MR. DAHL: No.
[19] THE COURT: Any other questions by the
[20] board of this witness? Is this witness subject to
[21] recall, Mr. Allred?
[22] MR. ALLRED: No, your Honor.
[23] THE COURT: Mr. Dahl?
[24] MR. DAHL: No, your Honor.
[25] THE COURT: Doctor, you're free to

[1] BY MR. ALLRED:
[2] Q: Doctor, let me give you the exhibit book.
[3] And I hope I've pronounced your name correctly. I've
[4] bombed out on three names already today. May have
[5] been more. I've kind of lost count. Would you please
[6] state and spell your name for the record.
[7] A: It'll be Brett Neville, B-r-e-t-t,
[8] N-e-v-i-l-l-e.
[9] Q: Dr. Neville, what is your profession?
[10] A: I'm a veterinarian.
[11] Q: Are you licensed to practice veterinary
[12] medicine in the state of Utah?
[13] A: I am.
[14] Q: And when were you licensed?
[15] A: In July of '87.
[16] Q: Are you licensed to practice veterinary
[17] medicine in any other state?
[18] A: No.
[19] Q: And could you just give us your educational
[20] background starting with college to veterinary
[21] college.
[22] A: I graduated from Weber State University,
[23] four years, and went to University of Tennessee
[24] College of Veterinary Medicine and graduated June of
[25] 1987.

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[1] Q: And are you currently in the private
[2] practice of veterinary medicine?
[3] A: I am.
[4] Q: And have you been so employed since 1987?
[5] A: I have been.
[6] Q: Where are you currently employed?
[7] A: In a clinic called VCA All Pet Animal
[8] Hospital.
[9] Q: Is that the place you were employed in
[10] October of 1994?
[11] A: Same place, different ownership.
[12] Q: Were you present when Dr. Vande Griend
[13] performed a necropsy on a three-year-old female Shar
[14] Pei named Char?
[15] A: I was.
[16] Q: And did you have the opportunity to view the
[17] organs?
[18] A: I viewed the heart and the lungs were the
[19] two main ones I helped evaluate.
[20] Q: And would you please turn to Exhibit Number
[21] 16. And after you take a moment to look at that,
[22] would you agree with Dr. Vande Griend's conclusions as
[23] he stated in his report?
[24] A: Yes, I would. In fact, I remember he cut a
[25] piece of the lung out. And the lung field should have

[1] A: None that I can see.
[2] MR. ALLRED: Thank you. Done.
[3] THE COURT: Cross-examination. Mr.
[4] Dahl?
[5] MR. DAHL: No questions.
[6] THE COURT: Any questions by the board
[7] of this witness? Dr. Taylor?
[8] MR. TAYLOR: No.
[9] THE COURT: Dr. Rees?
[10] MR. REES: No, your Honor.
[11] THE COURT: Dr. Brown?
[12] MS. BROWN: Yes.

**EXAMINATION
BY MS. BROWN:**

[15] Q: Do you recall if prior to you and Dr. Vande
[16] Griend looking at Char's body if there was any
[17] incisions into any body organs other than the
[18] pericardium?
[19] A: I saw no other incisions in any body organs.
[20] Q: Not even the lungs?
[21] A: Not in the lungs, just in the body wall.
[22] MS. BROWN: Thank you.
[23] THE COURT: Mr. Sperry?
[24] MR. SPERRY: No.
[25] THE COURT: Is this witness subject to

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[1] had a lot of air in it, and he put a piece in the
[2] water to see if it would float, which it did.
[3] Q: Would you please turn to tab number 15,
[4] which is Exhibit Number 15, and tell me if you agree
[5] with Dr. Taylor's conclusion as to the cause of death
[6] for Char?
[7] A: I do not. I saw no indication of a
[8] pneumonia. The heart appeared to me to be of normal
[9] size and normal consistency and normal shape and had
[10] no indication of fluid around the heart because,
[11] again, it was kind of - the pericardial sac was cut
[12] open.
[13] Q: Do you have a professional opinion as to
[14] whether it's acceptable to make a misdiagnosis on this
[15] type of necropsy?
[16] A: Anesthetic deaths or risk are always a
[17] concern whenever an animal is under anesthetic, and
[18] that's something that happens to every veterinarian I
[19] know. There is no indication of what Dr. Taylor said
[20] on the necropsy, so we still don't have an answer what
[21] caused it. But I guess I don't understand why Dr.
[22] Taylor said pneumonia and irregularly shaped heart
[23] when there wasn't.
[24] Q: So is there an excuse for the conclusion he
[25] reached?

[1] recall, Mr. Allred?
[2] MR. ALLRED: No, your Honor.
[3] THE COURT: Mr. Dahl?
[4] MR. DAHL: No, your Honor.
[5] THE COURT: Doctor, you're free to
[6] leave. Thank you. Mr. Allred, your next witness.
[7] MR. ALLRED: Your Honor, the division
[8] would call Cindy Bue.

CINDY BUE

[10] the witness hereinbefore named, being first duly sworn
[11] to testify the truth, the whole truth and nothing but
[12] the truth, testified on her oath as follows:

**DIRECT EXAMINATION
BY MR. ALLRED:**

[15] Q: Mrs. Bue, would you please state and spell
[16] your name for the record.
[17] A: Cindy Bue, C-i-n-d-y, B-u-e.
[18] Q: And are you the owner of an English bulldog
[19] by the name of Hillary?
[20] A: Yes.
[21] Q: Could you please tell the board why you
[22] purchased Hillary?
[23] A: The reason my husband and I purchased her
[24] was our neighbor had one and she was breeding it. And
[25] we saw that they were a good quality dog that we

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[1] wanted to have as a pet and also we could breed her
[2] for profit of money.
[3] **Q:** When you say your neighbor had one, was that
[4] a male or female?
[5] **A:** It was a male.
[6] **Q:** So was it your intention to breed Hillary
[7] with your neighbor's male English bulldog?
[8] **A:** Yes.
[9] **Q:** Who did you take Hillary to to have her
[10] artificially inseminated when you decided to breed
[11] her?
[12] **A:** Dr. Taylor.
[13] **Q:** And on what dates did you take Hillary to
[14] Dr. Taylor for artificial insemination?
[15] **A:** We took her - it was around April, the
[16] middle of April is when she came into heat. And I
[17] called Dr. Taylor previous before that, well, I talked
[18] to another vet about the insemination and was checking
[19] out the prices and see who was qualified in doing
[20] inseminations because before purchasing the dog, after
[21] reading about English bulldogs, we knew in advance
[22] that they needed to be artificially inseminated. They
[23] could not breed on their own, that they are a man-made
[24] dogs and that they have problems delivering on their
[25] own because of the big head and wide shoulders to

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[1] **Q:** Ms. Bue, do you recognize Exhibit Number 17?
[2] **A:** Yes.
[3] **Q:** And can you tell the Court and the board
[4] what this exhibit is?
[5] **A:** It's a letter that I wrote about exactly my
[6] experience at his office and what we went through with
[7] my dog.
[8] **MR. ALLRED:** Your Honor, it's my
[9] intention to move to admit Exhibit Number 17 into
[10] evidence, and I know that Mr. Dahl will have an
[11] objection to that.
[12] **MR. DAHL:** I do.
[13] **THE COURT:** I need to entertain the
[14] objection before I rule. I'll also need to review the
[15] exhibit before I rule. What's the objection, Mr.
[16] Dahl?
[17] **MR. DAHL:** The witness is here, able to
[18] testify. I have no objection to her looking at her
[19] previous letter. But like all the other letters, they
[20] get all sorts of other information included in it
[21] which is opinions only.
[22] **THE COURT:** Let me review the proposed
[23] exhibit and the allegations in the petition off the
[24] record.
[25] (WHEREUPON, a discussion was held

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[1] where they need caesarian section. So I called around
[2] the valley who see who was qualified and interested in
[3] doing this. And Dr. Taylor's office was probably the
[4] most reasonable in rates and assured me that he was
[5] qualified.
[6] **MR. ALLRED:** Your Honor, I would like
[7] to approach the witness and give her the exhibit book.
[8] **THE COURT:** That's fine.
[9] **MR. ALLRED:** For the purpose of
[10] refreshing her recollection.
[11] **Q:** (By Mr. Allred) I'll ask you to turn to tab
[12] number 17 which has been marked as Exhibit Number 17.
[13] And without stating what's in that, could you just
[14] briefly review it with the purpose of refreshing your
[15] recollection and see if you can answer my question of
[16] when you might have taken Hillary to Dr. Taylor for
[17] artificial insemination.
[18] **A:** Yeah, in the middle of the April, April
[19] 15th, I took him to Dr. Taylor.
[20] **Q:** Did you take Hillary in just one time?
[21] **A:** Twice to ensure a good catch.
[22] **Q:** When were the two dates that you took her?
[23] **A:** It would have been the 15th and then two
[24] days later. And that would be like the ninth of her
[25] cycle, the ninth day of her cycle.

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[1] off the record.)
[2] **THE COURT:** Back on the record. The
[3] Court has reviewed proposed Exhibit 17 and the
[4] allegations in the petition relevant thereto. I just
[5] have one question of the witness.
[6] When did you prepare this three-page
[7] statement, Ms. Bue?
[8] **THE WITNESS:** It was before I contacted
[9] this office, so it was around July 1st.
[10] **THE COURT:** Of what year?
[11] **THE WITNESS:** '94.
[12] **THE COURT:** Approximately three to four
[13] months after these events occurred back in April of
[14] 1994?
[15] **MR. ALLRED:** Well, your Honor, the
[16] events really occurred, the most recent events
[17] occurred in the middle of June.
[18] **THE COURT:** Excuse me. You contacted
[19] Dr. Taylor in mid April, but most of what's in this
[20] report involves something that occurred within a month
[21] of it, prior to your preparing it; is that right?
[22] **THE WITNESS:** Yeah, right away I did
[23] the letter, a couple weeks.
[24] **THE COURT:** I acknowledge that the
[25] detail of this proposed exhibit is significantly

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[1] greater than the allegations in the petition.
[2] However, I believe for the board to understand the
[3] sequence of events, to understand the condition of the
[4] animal, to understand what may have occurred at least
[5] from this witness's testimony, it would be helpful for
[6] the board to receive this exhibit. And of course the
[7] witness is subject to any cross-examination based on
[8] her testimony or the contents of this exhibit in any
[9] respect.

[10] I'll overrule the objection, and Division's
[11] Exhibit 17 is received. A copy of it may be provided
[12] to the board.

[13] (WHEREUPON, Division's Exhibit 17
[14] was received in evidence.)

[15] Q: (By Mr. Allred) Mrs. Bue, if I could direct
[16] your attention to paragraph 2 of Exhibit Number 17,
[17] would it be more accurate to say that you took Hillary
[18] in on April 21 and 23rd for artificial insemination?

[19] A: Yeah.

[20] Q: And what year was that?

[21] A: '94.

[22] Q: When did you schedule Hillary for a
[23] C-section with Dr. Taylor?

[24] A: At first we had to see if the insemination
[25] had taken. And at about five weeks after the

[1] Q: What was the date?

[2] A: June 20th, excuse me.

[3] Q: Do you remember what day of the week that
[4] was?

[5] A: It would have been Monday. It was a Monday.

[6] Q: What day did Hillary actually go into labor?

[7] A: Friday night, June 17th.

[8] Q: How could you tell that Hillary was in
[9] labor?

[10] A: She was panting extra heavily.

[11] Q: Was there any indication that she was
[12] pushing?

[13] A: Not at that time, no.

[14] Q: What did you do when you noticed that she
[15] was panting heavily?

[16] A: Well, her being a bulldog, she pants heavily
[17] at some times anyway. So we watched her for about an
[18] hour, and it just kept progressively getting worse.
[19] And we knew she was in labor for sure. We called the
[20] office.

[21] Q: And when you say the office, do you mean
[22] Brookside Animal Clinic?

[23] A: Yes.

[24] Q: And what did you discuss with the office
[25] when you called them?

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[1] insemination, I had noticed we had a pregnancy with
[2] the swollen nipples and the enlarged abdomen. And so
[3] I contacted the veterinarian clinic with the good news
[4] that we were going to have a litter and to set up to
[5] undergo the C-section. And he told me to keep an eye
[6] to her and return around her 60th or 62nd day for the
[7] operation.

[8] Q: Did you see Dr. Taylor when Hillary was
[9] artificially inseminated on the 21st and 23rd of
[10] April?

[11] A: Yes, I did.

[12] Q: And did you set up a date for a C-section
[13] for Hillary?

[14] A: I wanted to, but he just told me to go home
[15] and to see if the insemination had caught and then to
[16] call his office to set up the appointment for the
[17] operation. I didn't know how far in advance he needed
[18] to make that appointment.

[19] Q: Did you in fact make the telephone call to
[20] his office during the month of June to set up the
[21] C-section?

[22] A: Uh-huh.

[23] Q: When did you arrange to have the C-section
[24] done?

[25] A: On her 61st day.

[1] A: I told them that she was breathing extra
[2] heavily and that I thought she was in labor. And he
[3] told me not to worry that she was early. She was only
[4] in her 59th day and that it probably wasn't labor,
[5] just take her for a walk and calm her down and that if
[6] she was still having a hard time in the morning to
[7] bring her in, he would take the puppies Saturday
[8] morning.

[9] Q: It sounds like you were speaking to a male
[10] person on the other end. Who was that you were
[11] talking to?

[12] A: It was Dr. Taylor.

[13] Q: So you spoke with Dr. Taylor about Hillary's
[14] condition?

[15] A: Uh-huh.

[16] Q: Can you tell the board what happened after
[17] you got off the phone with Dr. Taylor?

[18] A: She never did calm down. She just kept
[19] getting worse. Between my husband and I, we were
[20] petting her, walking her. I tried to call his office
[21] again. It was about, I think, around 3:00 in the
[22] morning, and there was no answer. And then I finally
[23] got ahold of someone at 7:00 in the morning. My
[24] husband woke me up. She was having pushing pains.

[25] Q: So your husband noticed that Hillary was

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[1] actually pushing?
[2] A: Uh-huh.
[3] Q: And what happened after you made the call to
[4] Brookside Animal Hospital?
[5] A: I got ahold of a lady that told me that Dr.
[6] Taylor was out on a large animal emergency. And I
[7] told her that my dog was having pushing pains, they're
[8] coming now. And she told me to calm down, that dogs
[9] have puppies every day and just let her have them and
[10] stay out of it and let her do her job. And then I was
[11] hysterically explaining to her that they were bulldogs
[12] and she needed help.
[13] Q: So what happened after you got off the
[14] telephone with the person from Brookside Animal
[15] Hospital?
[16] A: She told me - she gave me a number of
[17] another doctor, and I called it. I called him, and
[18] that phone number had been disconnected. So I
[19] immediately called her back hysterically that she was
[20] still pushing and she was leaking. And she told me,
[21] Well, bring her in. I'll have two girls there
[22] waiting. I'll have some girls there waiting for you
[23] to help you. So my neighbor and I immediately rushed
[24] her down to the hospital. There was nobody there at
[25] the hospital.

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[1] Q: So how long did you wait at the hospital?
[2] A: Probably about 15, 20 minutes.
[3] Q: Did anything happen on the way to Brookside
[4] Animal Clinic with Hillary?
[5] A: Yeah, she had another puppy in the car.
[6] Q: Had she had a puppy before you put her in
[7] the car?
[8] A: Yes, she had a puppy at the house when my
[9] husband and I picked her up and put her in the car.
[10] One came out backwards. As we were picking her up,
[11] one had just came out backwards. And it was dead,
[12] wasn't moving. And then she had one in the car, and
[13] it was in a sack, and it was moving at first and then
[14] it just died. So I'm assuming it just drowned. Me
[15] not knowing what to do. I didn't tear the bag, I
[16] guess. And then when I got to the hospital, nobody
[17] was there.
[18] Q: How long did you wait before someone showed
[19] up at Brookside Animal Clinic?
[20] A: Probably 15, 20 minutes.
[21] Q: And then who showed up?
[22] A: A brunette lady I assumed worked there. She
[23] had the keys.
[24] Q: Did you see Dr. Taylor that morning?
[25] A: Not until around 8:30.

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[1] Q: Did he examine Hillary?
[2] A: Uh-huh.
[3] Q: Did he examine Hillary in your presence?
[4] A: Uh-huh, yes.
[5] Q: What did you observe when he examined
[6] Hillary?
[7] A: That he came in. She put her in a cage on
[8] the floor, just a regular metal bar cage on the
[9] floor. And he came in and he felt her stomach. And
[10] we had one dead puppy with us that she had had in the
[11] car. And he put that on an examining table, and he
[12] felt her stomach. And then he examined the puppy and
[13] said it was premature and that it wouldn't have lived
[14] anyway.
[15] Q: Did you tell Dr. Taylor that the puppy was
[16] alive when it was born?
[17] A: Yes.
[18] Q: Did Dr. Taylor do anything after he felt
[19] Hillary's stomach?
[20] A: He just told me that she was going to have
[21] her puppies and that they would all probably be dead
[22] anyway and just to let her have them -
[23] Q: So what did Dr. Taylor discuss with you?
[24] A: - in that cage.
[25] Q: Did he discuss anything about the treatment

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[1] of Hillary or the care that he would provide for
[2] Hillary while she was there?
[3] A: He said there was one puppy left inside of
[4] her, maybe two and that since they were so premature
[5] she was delivering them fine, pushing them out. And
[6] the best thing to do was just let her finish. And I
[7] noticed my dog just getting weaker and tired (sic).
[8] And I asked him, What about the C-section? At that
[9] time, he explained that all the puppies were going to
[10] be premature anyway and that they'd all be born dead.
[11] And I just noticed that she was getting more tired,
[12] and she was still pushing and having pains. And me
[13] being a mother, I know how that labor is. And I
[14] wanted her to have the C-section to get the dead
[15] puppies out of her.
[16] Q: So did you ask Dr. Taylor to perform a
[17] C-section?
[18] A: Yes, I did.
[19] Q: Was anyone else present when you asked him
[20] to do that?
[21] A: My neighbor.
[22] Q: Did she hear you ask for the C-section?
[23] A: Yes.
[24] Q: What was Dr. Taylor's response?
[25] A: He told me that I would be risking my dog's

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[1] life to give her the C-section and why waste the
[2] money, she was passing the puppies just fine and that
[3] I'd do greater damage to my dog by giving her a
[4] C-section.

[5] Q: Did you leave Hillary with Dr. Taylor that
[6] morning?

[7] A: Yes. He told me, Go on home. He was going
[8] to do some flushing on her and clean her out. And
[9] then he called me when he was done.

[10] Q: Did he explain to you what he meant by
[11] flushing?

[12] A: I asked him if it was similar to a D&C, and
[13] he said, yes, yes, somewhat, and that he would call me
[14] when he was done, that she had maybe one or two
[15] puppies left inside of her at the most.

[16] Q: How long were you with Hillary at Dr.
[17] Taylor's clinic?

[18] A: Until about 10:30, 11:00.

[19] Q: And what did you do after you left?

[20] A: I went home and cried that I'd lost all the
[21] puppies and -

[22] Q: When did you hear from Dr. Taylor?

[23] A: I kept calling the office. Between me and
[24] my neighbor and my sister, we had all called. They
[25] were getting irritating with us calling. He told us

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[1] A: I didn't find - I found the office closed
[2] except I seen that his truck was there. On the side
[3] of his clinic, there is a garage door that his truck
[4] was parked in front of. I knew somebody was there at
[5] the office. So I persisted on ringing the back door
[6] bell and banging on the windows.

[7] Q: Did anyone answer your -

[8] A: Not for 20 minutes.

[9] Q: And then what happened?

[10] A: And then he came out irritated that I was
[11] there. I asked him, Well, what about my dog? You
[12] never called me. And he says, Well, you never gave me
[13] a chance. And I said, Well, how is she doing? He
[14] goes, I don't know. I haven't got to her yet. I
[15] haven't had time. I said, Well, can I see her? And
[16] he said, his exact words were, yes, you can see her.
[17] You can take her out of here. If you don't trust what
[18] I'm doing, you can take her home right now.

[19] Q: What was your reply?

[20] A: I was shocked that he was telling me to take
[21] my sick animal out of the hospital.

[22] Q: And what happened?

[23] A: I was depending on him to help me.

[24] Q: What happened after Dr. Taylor offered to
[25] let you take Hillary home?

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[1] she had another puppy and that it was dead and it was
[2] premature.

[3] Q: Did you actually speak to Dr. Taylor during
[4] one of those phone calls?

[5] A: I don't think I did. It was the nurse or
[6] his wife.

[7] Q: What did that person tell you?

[8] A: That she was doing fine, that she passed
[9] another puppy and it was dead and she was doing fine.
[10] And Dr. Taylor had hadn't gotten to the flushing
[11] process yet, and he wasn't done with her. But she was
[12] doing fine in her cage.

[13] Q: So you left Hillary with Dr. Taylor
[14] overnight?

[15] A: Yes.

[16] Q: You brought her in on a Saturday morning,
[17] and you left her there Saturday night?

[18] A: After I went down to the office. He told me
[19] he'd call me before 6:00 to let me know if I could
[20] pick her up Saturday night to bring her home or what
[21] he was going to do. He never did call me, so I went
[22] down there because of nobody answering the phone. I
[23] went down there.

[24] Q: What did you find when you went down to
[25] Brookside that evening?

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[1] A: He said, yes. I said, I trust you, Dr.
[2] Taylor, but can I see her, to see how she was doing.
[3] And he said - he threw his hands up in the air. And
[4] standing at the garage door that he had opened, I
[5] could see into the back room which was dusty and
[6] dirty. It looked like a wood shop. And he took me
[7] around to the front where the clinic doors were. And
[8] I went in. We went to a back room where Hillary was
[9] in the same cage, the same newspaper, in the back
[10] room, exactly in the same spot.

[11] He let her out. The room was extremely
[12] hot. It was June, so I imagine that room was probably
[13] 95 to 100 degrees. She was panting heavily. She
[14] looked very weak and tired. She could hardly walk.
[15] She was wobbling. He went to the sink and got her a
[16] bowl of water which she immediately threw up. There
[17] was green bile throw up on the floor. He threw some
[18] paper towels on the floor and covered it. And then he
[19] insisted that I leave so he could do his job.

[20] Q: What did he tell you about what he was going
[21] to do for Hillary?

[22] A: That he hadn't gotten to the flushing
[23] process and that she, her abdomen, was still swollen
[24] and that she probably still had a puppy left inside of
[25] her, maybe one at the most this time because she'd

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[1] already passed one.
[2] Q: And what did you do after Dr. Taylor told
[3] you that he needed to flush Hillary?
[4] A: I went on home, and we let her spend the
[5] night. He said he would call me in the morning to
[6] come get her.
[7] Q: And did Dr. Taylor call you the next
[8] morning?
[9] A: Yes, he did.
[10] Q: If you could please turn to tab number 18
[11] and tell me if you can identify that exhibit marked
[12] Exhibit Number 18.
[13] A: Yes.
[14] Q: What is Exhibit Number 18?
[15] A: That's my bill from Brookside and Dr.
[16] Taylor.
[17] MR. ALLRED: Your Honor, again, Mr.
[18] Dahl has previously agreed that this exhibit could
[19] come into evidence so the division would move that
[20] Exhibit 18 come into evidence.
[21] MR. DAHL: No objection.
[22] THE COURT: As identified, it is
[23] received, and copies may be provided to the board.
[24] (WHEREUPON, Division's Exhibit 18
[25] was received in evidence.)

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[1] Q: (By Mr. Allred) Ms. Bue, do you see a charge
[2] on this bill for an x-ray or radiograph?
[3] A: No.
[4] Q: What happened after you took Hillary home?
[5] A: I went and got her, and he gave me some
[6] penicillin pills and some vitamins and pet tabs which
[7] she's been on since the day she was born anyway on a
[8] daily basis. And he told me to just keep an eye on
[9] her and to call if there was anything wrong and to
[10] give her penicillin. And I took her home. She
[11] immediately jumped in the car. When we got home, she
[12] immediately jumped out, went in the house excitedly
[13] and went right to the backyard and laid there.
[14] Q: What happened after Hillary went out to the
[15] backyard?
[16] A: She laid there. She wouldn't come in the
[17] house. She just laid in the shade. She found her
[18] little spot and just laid there, which she'd never
[19] done before. She's a house dog. She don't go out and
[20] lay in the backyard. And so I was assuming she was
[21] mad at me, didn't want to talk to me. And I left her
[22] alone, just went out there and tried to give her some
[23] water and food, just keeping an eye on her, and let
[24] her stay out there. And then she started her pushing
[25] pains again. She started panting and pushing.

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[1] Q: What had Dr. Taylor told you about the size
[2] of her litter and her condition when you picked her
[3] up?
[4] A: That there was no puppies left inside of
[5] her, she was fine, and to take her on home and call if
[6] there was an emergency.
[7] Q: Did he tell you how he knew that there were
[8] no further puppies?
[9] A: No, he didn't.
[10] Q: So were you surprised when Hillary started
[11] pushing again?
[12] A: Yes.
[13] Q: What did you do after you determined that
[14] she was again in labor?
[15] A: I called his office and someone answered the
[16] phone, a lady. And I told her that she was pushing
[17] again and that I think she still has puppies in her.
[18] And she briefed with Dr. Taylor and then she got back
[19] on the phone and said she just finished cleaning
[20] herself out. She's just cleaning herself out, and
[21] she's fine. Just keep an eye on her. And that was
[22] it.
[23] Q: What happened after you got off the phone
[24] with Brookside Animal Hospital?
[25] A: We kept an eye on her. She was panting

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[1] heavily. She was going to have another puppy, and she
[2] did. She dropped another puppy in my backyard.
[3] Q: What time was that approximately when she
[4] dropped that puppy?
[5] A: It was around 2:00 p.m., 3:00 p.m. It was
[6] later afternoon.
[7] Q: And, again, what day was this on that you
[8] had taking Hillary home, what day of the week?
[9] A: This was Sunday, the 19th.
[10] Q: So what did you do after you discovered that
[11] Hillary had delivered another puppy?
[12] A: I couldn't believe it. I looked at the
[13] puppy. The puppy was obviously dead. And my husband
[14] took care of it, put it in the garbage. And then she
[15] started acting just fine again. She started getting
[16] up. She came up to the place where we were all
[17] sitting on our deck. And she ate. She drank. And
[18] she was letting everybody pet her, and she was acting
[19] fine. And I told my husband, Well, she just had one
[20] more puppy in her, and she'll be fine.
[21] Q: So what did you do? Did you make a
[22] telephone call to Brookside after that puppy was born?
[23] A: Yes.
[24] Q: And no one answered?
[25] A: No one answered.

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[1] Q: Can you tell the board what happened as the
[2] day progressed?
[3] A: Then it started getting dark and it was
[4] later, and she started going back into looking wore
[5] out again and tired. And she started breathing and
[6] panting heavily. But this time she was bleeding very
[7] badly. She was bleeding horribly.
[8] Q: What time did you notice that she was
[9] starting to bleed?
[10] A: 10:30.
[11] Q: So that was 10:30 -
[12] A: 10:30, 11:00.
[13] Q: - Sunday evening?
[14] A: Sunday evening.
[15] Q: What did you do when you noticed that she
[16] was bleeding?
[17] A: I think I tried to get ahold of Dr. Taylor
[18] again. I'm not sure.
[19] Q: Were you successful?
[20] A: I can't remember.
[21] Q: Were you successful in reaching anyone at
[22] Brookside?
[23] A: No, I wasn't. I was not.
[24] Q: What did you do after you determined that
[25] you couldn't get ahold of anyone at Brookside Animal

[1] A: Yes.
[2] Q: And what did Dr. Chinn do for Hillary when
[3] you brought her in to Central Valley?
[4] A: She was just pretty horrified at the
[5] condition Hillary was in. And they didn't take very
[6] long, probably three minutes of checking the inside of
[7] her lip was pure white. Her eyes were just white.
[8] You could tell that she was very, very pale. And so
[9] it was probably a three-minute examination to where
[10] she said that your dog is in shock and she needs to be
[11] taken care of now or she will die.
[12] Q: What did Dr. Chinn refer to when she said
[13] your dog needs to be taken care of?
[14] A: To be hooked up to some IVs, to stop the
[15] hemorrhaging, the bleeding. She was bleeding very
[16] badly out her rear end.
[17] Q: Did you talk to Dr. Chinn about whether
[18] Hillary had delivered her full litter?
[19] A: Yeah, I told her what had happened with the
[20] litter. And so she knew that the dog had delivered
[21] puppies and that was the cause of her problems. And
[22] so I was at that point still curious if she had
[23] anymore puppies left inside of her, and she told me
[24] she would find out.
[25] Q: And how did she tell you she was going to

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[1] Hospital?
[2] A: I immediately started thinking of where I
[3] could take her, probably to another vet. And looking
[4] in the phone book, I seen Central Valley Hospital was
[5] open 24 hours, so I immediately called there.
[6] Q: Had you ever taken Hillary to Central Valley
[7] in the past?
[8] A: The hospital, no. They have surrounding
[9] clinics that the doctors are affiliated with one
[10] hospital.
[11] Q: So had you taken Hillary to one of those
[12] surrounding clinics?
[13] A: Yes.
[14] Q: So after you determined that Central Valley
[15] was opened 24 hours, what did you do with Hillary?
[16] A: I took her there immediately, and she was
[17] seen by Dr. Chinn.
[18] Q: Had Dr. Chinn ever examined Hillary in the
[19] past?
[20] A: Yes.
[21] Q: Were you surprised that Dr. Chinn was the
[22] veterinarian that was on call?
[23] A: Yeah, I was happy to see a familiar face.
[24] Q: Did Dr. Chinn examine Hillary in your
[25] presence?

[1] find out if there were any?
[2] A: She would do a simple x-ray.
[3] Q: Would you please turn to tab number 19 and
[4] tell me if you can identify those documents.
[5] A: Yeah, it's part of the bill from Central
[6] Valley Hospital.
[7] Q: Did you receive this bill from Central
[8] Valley Hospital?
[9] A: Uh-huh. Yes, I did.
[10] MR. ALLRED: Your Honor, the division
[11] would move to admit Exhibit Number 19 into evidence.
[12] MR. DAHL: No objection.
[13] THE COURT: As identified, so
[14] received. Copies may be provided to the board.
[15] MR. ALLRED: Thank you, your Honor.
[16] (WHEREUPON, Division Exhibit 19
[17] was received in evidence.)
[18] Q: (By Mr. Allred) Mrs. Bue, if you could just
[19] take a moment and look at that bill, do you see a
[20] charge there for an x-ray or radiograph?
[21] A: On number 19, no.
[22] Q: There are several pages that go with number
[23] 19. Just look to the second to last page.
[24] A: I can't see it. Maybe you can point it out.
[25] Q: If you could look to the second to last

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[1] page, there is a description of the services
[2] rendered. At the bottom of that, there is a reference
[3] to a -
[4] A: X-ray and interpret. Uh-huh, yes.
[5] Q: That supports your testimony that Dr. Chinn
[6] did an x-ray on Hillary to determine whether there
[7] were any further puppies?
[8] A: Yes, she did.
[9] Q: Can you tell the board what happened after
[10] Dr. Chinn examined Hillary?
[11] A: As soon as she examined her, she took her
[12] away from us. We were told to go home, and she would
[13] call us throughout the night.
[14] Q: So did you in fact leave -
[15] A: Yes, we did.
[16] Q: - Central Valley? And did you receive any
[17] phone calls from Dr. Chinn?
[18] A: Yes, I did.
[19] Q: Could you tell the -
[20] A: About 2:00 a.m. in the morning, she called
[21] us and told us that Hillary had passed another puppy
[22] at the office and that they were trying to revive it.
[23] They spent 45 minutes on trying to revive that one
[24] puppy to see if they could save its life. And they
[25] couldn't, but the x-ray showed there was still another

[1] Dr. Chinn?
[2] A: Uh-huh, yes, I did.
[3] Q: And do you know if Dr. Chinn performed a
[4] C-section?
[5] A: Yes, she did.
[6] Q: And in fact, isn't there a charge on the
[7] bill for -
[8] A: Yes.
[9] Q: - a C-section is on the last page of
[10] Exhibit Number 19 near the -
[11] A: Caesarian, C-section, see.
[12] Q: So Dr. Chinn did perform a caesarian?
[13] A: Yeah, she did.
[14] Q: Do you know what the status of the puppy was
[15] that was delivered by Dr. Chinn?
[16] A: Both puppies she delivered in her care were
[17] dead.
[18] Q: So did any of the puppies survive?
[19] A: No, none of them did.
[20] Q: So you lost the entire litter?
[21] A: Yes, seven.
[22] Q: What were your intentions with respect to
[23] the litter when you had Hillary bred?
[24] A: Excuse me. Say that again.
[25] Q: What did you intend to do with the puppies

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[1] puppy left inside of her and that it would need to
[2] come out.
[3] Q: So Dr. Chinn made a recommendation to you
[4] about taking care of that last puppy?
[5] A: Yes.
[6] Q: What did Dr. Chinn recommend?
[7] A: If she didn't pass it soon that she would
[8] need the C-section. She definitely needs a C-section.
[9] Q: Were you hesitant to have a C-section
[10] performed on Hillary at that time?
[11] A: Yeah, I was.
[12] Q: Why were you hesitant to have a C-section
[13] when you had previously arranged for a C-section with
[14] Dr. Taylor on Monday, June 20th?
[15] A: The main part of it was that Dr. Taylor had
[16] - I was still relying on what he had told me that it
[17] was a great risk to my dog's health. And my dog was
[18] about dead. She couldn't walk, move, nothing. And I
[19] was very concerned that she wouldn't make it through
[20] the surgery. Bulldogs anyway, the smashed-in noses,
[21] they have a hard time with anesthesia.
[22] Q: So you were concerned about further risking
[23] Hillary's life by doing the C-section?
[24] A: Yes, that was my main reason.
[25] Q: Did you eventually agree to a C-section by

[1] after they were born?
[2] A: Oh, of course sell them.
[3] Q: Did you have an idea of how much English
[4] bulldog puppies were selling for at the time Hillary
[5] was inseminated?
[6] A: Yes.
[7] Q: How much?
[8] MR. DAHL: I think I'm going to object
[9] to this point, your Honor. I think we're now getting
[10] into an area that is not relevant to this
[11] administrative hearing. We're not here to go ahead
[12] and start determining damages and things of this
[13] nature.
[14] THE COURT: Mr. Allred?
[15] MR. ALLRED: Your Honor, my intent in
[16] trying to elicit that testimony is not to bring out
[17] motive but to address the question of whether Ms. Bue
[18] had some economic investment in her dog and whether
[19] she was willing to spend some money to make sure that
[20] that investment was protected.
[21] THE COURT: For that -
[22] MR. DAHL: I'll stipulate to that.
[23] THE COURT: I suspect there is no
[24] dispute about that, Mr. Allred.
[25] MR. ALLRED: Your Honor, I think if we

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[1] could have Mrs. Bue answer the question on this -
[2] **THE COURT:** I don't think we need
[3] specific dollar amounts, but go ahead and ask her if
[4] what you've just represented to me would be the case
[5] because we are not here to establish some amount of
[6] monetary damage. And furthermore, I do not believe
[7] that the presence or absence of monetary damage
[8] necessarily establishes or fails to establish
[9] unprofessional conduct here, so go ahead.
[10] **MR. ALLRED:** Your Honor, I believe that
[11] part of Dr. Taylor's defense will be that Ms. Bue was
[12] concerned about money and didn't want to pay to have a
[13] C-section.
[14] **THE COURT:** For that limited purpose,
[15] I'll allow you to go ahead with this witness.
[16] **Q:** (By Mr. Allred) Ms. Bue, do you have an idea
[17] of how much English bulldog puppies were selling for?
[18] **A:** Yes, they were in the \$1,000 range for a
[19] puppy.
[20] **Q:** So you were willing to expend some money to
[21] make sure that your litter was -
[22] **A:** Oh, of course, we were in the full intention
[23] that a C-section, insemination, our investment was
[24] going to run another 7, \$800 to get the puppies.
[25] **Q:** So you did not decide not to have a

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[1] C-section on Hillary based on economics?
[2] **A:** No, no. It was for her health, and I did
[3] ask about the price for the fact that's my nature. I
[4] just don't let people do services for me without
[5] asking the price. And I was shocked at Dr. Taylor's
[6] bill for what he had done. I mean, it was nothing.
[7] **Q:** When you say it was nothing, do you mean you
[8] expected?
[9] **A:** I was expecting a couple hundred dollars in
[10] care, you know, what she needed, but he handed me a
[11] \$50 bill, which I was shocked.
[12] **Q:** Mrs. Bue, could you tell us what Hillary's
[13] condition is today?
[14] **A:** Today she's healthy, fine, pet quality,
[15] beautiful. We can't breed her. We wouldn't risk her
[16] life in trying to breed her again.
[17] **MR. ALLRED:** Your Honor, that's all the
[18] questions I have.
[19] **THE COURT:** Mr. Dahl, I anticipate a
[20] somewhat lengthy cross-examination of this witness.
[21] Could a brief recess be in order?
[22] **MR. DAHL:** That's fine with me.
[23] **THE COURT:** I'm taking it for the
[24] benefit of the court reporter perhaps more than anyone
[25] else.

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[1] **MR. DAHL:** I think our mind can only
[2] absorb as much as our rear end anyway.
[3] **THE COURT:** Couldn't put it any
[4] better. We'll be in recess for ten minutes until
[5] 2:50. Off the record.
[6] (WHEREUPON, a recess was taken.)
[7] **THE COURT:** Back on the record after a
[8] ten-minute recess. Cross-examination of this witness,
[9] Mr. Dahl.
[10] **MR. DAHL:** Thank you.
[11] **CROSS-EXAMINATION**
[12] **BY MR. DAHL:**
[13] **Q:** Ms. Bue, did you have occasion to talk to
[14] Dr. Chinn, is it, before you had the dogs fertilized?
[15] **A:** Yes.
[16] **Q:** And did she tell you how much it was going
[17] to cost?
[18] **A:** Yeah, it was either her or Dr. Sheahy. I
[19] think it was her. I think it was more Dr. Sheahy. I
[20] don't know. I probably discussed it with both of
[21] them.
[22] **Q:** That's when you went searching for other
[23] places; is that right?
[24] **A:** Yeah, I wanted to go around the valley, get
[25] prices.

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[1] **Q:** You thought they were a little high?
[2] **A:** I was curious to see if I couldn't get it
[3] cheaper.
[4] **Q:** But had you been at Dr. Chinn's hospital
[5] before?
[6] **A:** The clinic, yes.
[7] **Q:** So really searching out these other places
[8] was an economic factor consideration; is that right?
[9] **A:** Yeah.
[10] **Q:** Had you ever taken any animals before to the
[11] Brookside hospital?
[12] **A:** Yes.
[13] **Q:** When?
[14] **A:** When I was a young girl, probably I think I
[15] was 13. Between the age of 9 and 13, I had two
[16] animals taken there.
[17] **Q:** Do you know all the doctors that work at
[18] Brookside?
[19] **A:** No, I just know Dr. Taylor from when I was a
[20] small girl.
[21] **Q:** Outside of your seeing Dr. Taylor when you
[22] were a small girl, are you sure you were not having
[23] your dog being treated by another veterinarian at
[24] Brookside hospital?
[25] **A:** No, it was Dr. Taylor. He hasn't changed

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[1] that much, the same man, tall. And his name was Dr.
[2] Taylor. We all knew that was his hospital there.
[3] Q: Sure, it was his hospital.
[4] A: Uh-huh.
[5] Q: That doesn't necessarily infer that he's the
[6] only doctor in the hospital.
[7] A: No, but we knew who he was. We lived in a
[8] trailer court within a half mile.
[9] Q: Well, was there anybody wearing any name
[10] tags or anything at the hospital?
[11] A: I don't remember if he had his name on his
[12] coat or not.
[13] Q: Now which part of the hospital did all this
[14] take part in, the back part or the front part?
[15] A: The front part, in two separate rooms.
[16] After you pass the desk, there was an examination room
[17] where the insemination and examination of the dead
[18] puppy took place. And then there was a back room with
[19] cages, cats and dogs mixed. That was the only two
[20] rooms I was in.
[21] Q: Right. And your dog was kept back there?
[22] A: Uh-huh, yes.
[23] Q: Now did Dr. Chinn caution about a caesarian
[24] operation for fear that this may affect future
[25] pregnancies?

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[1] A: No, she couldn't tell what the damage was
[2] until she got inside.
[3] Q: Did she warn you that that's a possibility?
[4] A: She was leaning toward a hysterectomy.
[5] Q: A hysterectomy?
[6] A: Yes, to get her spayed.
[7] Q: Is this before or after she had performed
[8] the caesarian?
[9] A: Before and after. And after.
[10] Q: And that is why you have not had her rebred
[11] since this event?
[12] A: No. We had her bred again. She was bred
[13] again.
[14] Q: Oh, and what was the success of this
[15] breeding?
[16] A: It was the puppies' success was good. We
[17] had six except - and it was all done under Dr.
[18] Chinn's care. And then Hillary was in bad shape again
[19] because of the scarring that Dr. Taylor leaving the
[20] dead puppies in her for so long had caused. And there
[21] was excessive scarring which caused her to start
[22] bleeding heavily again and back in the hospital again,
[23] the same condition.
[24] Q: Did all these puppies survive?
[25] A: Yes.

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[1] Q: What was the term between the insemination
[2] and the actual birth of the puppies? Was that a
[3] normal gestation period?
[4] A: Yeah, I think she was a couple days early.
[5] I'm not sure. I can't really remember. The 63 days
[6] is a normal gestation period. And I think she went
[7] again on her 61st, 60th or 61st day, same as last
[8] time.
[9] Q: I think last time it was under 60?
[10] A: 59, the day she went into labor.
[11] Q: She was bred on April 21st and 23rd?
[12] A: Uh-huh.
[13] Q: And she started delivering on June the 17th?
[14] A: Yes.
[15] Q: How many days is that?
[16] A: I'm pretty sure it was 59. She was on her
[17] 59th day from the first insemination.
[18] MR. DAHL: I think that's all the
[19] questions I have.
[20] THE COURT: Redirect, Mr. Allred?
[21] MR. ALLRED: Your Honor, I just have a
[22] couple of questions.
[23] REDIRECT EXAMINATION
[24] BY MR. ALLRED:
[25] Q: Mrs. Bue, are you certain that the

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[1] veterinarian that examined Hillary on Saturday
[2] morning, June 19th, is Dr. Taylor, the gentleman
[3] that's seated directly in front of you?
[4] A: Yes.
[5] MR. ALLRED: Thank you.
[6] MR. DAHL: No further questions.
[7] THE COURT: Any questions by the board,
[8] Dr. Taylor?
[9] MR. TAYLOR: No.
[10] THE COURT: Dr. Rees?
[11] MR. REES: No.
[12] THE COURT: Dr. Brown?
[13] MS. BROWN: No questions.
[14] THE COURT: Mr. Sperry?
[15] MR. SPERRY: No.
[16] THE COURT: Is this witness subject to
[17] recall, Mr. Allred?
[18] MR. ALLRED: No, your Honor.
[19] THE COURT: Mr. Dahl, is this witness
[20] subject to any recall?
[21] MR. DAHL: I'd hate to keep her here.
[22] She would not be subject to recall until perhaps
[23] Wednesday afternoon if we get on the defense's case.
[24] THE COURT: I'm certain we will get
[25] started with your case by then, probably earlier than

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[1] that.
[2] **MR. DAHL:** I think so. And I don't
[3] want to put her to an inconvenience, but the identity
[4] of the doctor is very important because I will have
[5] other testimony concerning the doctor who actually did
[6] the work on this dog.
[7] **THE COURT:** Well, what I'm going to do
[8] then even though Ms. Bue is testifying on behalf of
[9] the division here, I will ask you to inform me as soon
[10] as you know that she may be having to be recalled.
[11] **MR. DAHL:** Yes, we will pay her witness
[12] fee.
[13] **THE COURT:** And you think it might be
[14] Wednesday afternoon?
[15] **MR. DAHL:** I think more than likely if
[16] we're still here, it'll be either Wednesday afternoon
[17] if we keep progressing like we're doing now or it
[18] would be Thursday morning.
[19] **THE COURT:** Ms. Bue, could you be
[20] available on either Wednesday afternoon or Thursday
[21] morning if that became necessary?
[22] **THE WITNESS:** Yes, Wednesday
[23] definitely.
[24] **THE COURT:** I'm going to ask Mr. Dahl
[25] to contact you and let you know if he needs you here

[1] the truth, testified on her oath as follows:
[2] **DIRECT EXAMINATION**
[3] **BY MR. ALLRED:**
[4] **Q:** Dr. Chinn, could you state and spell your
[5] name for the record?
[6] **A:** Sure. Dr. Mayling M. Chinn, M-a-y-l-i-n-g.
[7] C-h-i-n-n.
[8] **Q:** Dr. Chinn, are you licensed to practice
[9] veterinary medicine in the state of Utah?
[10] **A:** Yes.
[11] **Q:** And when were you licensed to practice
[12] veterinary medicine in Utah?
[13] **A:** '89, 1989.
[14] **Q:** Are you licensed to practice veterinary
[15] medicine in any other state?
[16] **A:** Yes, Nevada, Oregon, Hawaii and Colorado.
[17] **Q:** And approximately when were you licensed in
[18] those states?
[19] **A:** 1989.
[20] **Q:** So it's fair to say you were busy taking
[21] exams during 1989?
[22] **A:** Yes.
[23] **Q:** If you could, just give us a brief
[24] background of your college experience, that is, where
[25] you attended college and where you attended veterinary

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[1] as a witness.
[2] **THE WITNESS:** All right. I would be
[3] happy to.
[4] **MR. DAHL:** Can you give me your
[5] telephone number?
[6] **THE WITNESS:** Uh-huh.
[7] **THE COURT:** You can just give it to him
[8] before you leave today. That'll be fine. If you're
[9] planning on leaving now.
[10] **MR. DAHL:** Or if you could, I can take
[11] it right now.
[12] **THE COURT:** We don't need it as a
[13] matter of testimony. We can go off the record, and
[14] you can make those arrangements, Mr. Dahl. And so for
[15] now, Ms. Bue, you're excused. You may be subject to
[16] recall at that time.
[17] **THE WITNESS:** Yes.
[18] **THE COURT:** Mr. Allred, your next
[19] witness.
[20] **MR. ALLRED:** The division would call
[21] Dr. Mayling Chinn to the stand.
[22] **THE COURT:** Doctor.
[23] **MAYLING M. CHINN**
[24] the witness hereinbefore named, being first duly sworn
[25] to testify the truth, the whole truth and nothing but

[1] college?
[2] **A:** Took my undergraduate work mainly in
[3] Colorado State University and summer sessions at the
[4] University of Nevada, Reno. And I received my
[5] bachelor of science degree in bioagricultural science
[6] with a concentration in microbiology. And then I
[7] entered veterinary school in 1985 at Colorado State
[8] University and graduated in 1989.
[9] **Q:** Do you currently belong to any professional
[10] groups?
[11] **A:** I currently belong to the UVMA, Utah
[12] Veterinary Medical Association, the Nevada Veterinary
[13] Medical Association, American Animal Hospital
[14] Association, American Veterinary Medical Association
[15] and Salt Lake Valley Veterinary Medical Association.
[16] **Q:** Are you currently engaged in the private
[17] practice of veterinary medicine?
[18] **A:** Yes, I am.
[19] **Q:** And were engaged in the private practice in
[20] June of 1994?
[21] **A:** Yes.
[22] **Q:** And how long have you been in private
[23] practice?
[24] **A:** I'll be going on my seventh year.
[25] **Q:** And where have you been employed during that

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[1] time?

[2] **A:** The whole time? I've worked in the Reno
[3] area and mainly at Central Valley Veterinary Hospital
[4] here in Salt Lake City.

[5] **Q:** Do you have an area or areas of special
[6] interest in your practice?

[7] **A:** I work on exotics as well. And I'm also a
[8] microbiologist, so I work with infectious disease.

[9] **Q:** Would you consider an English bulldog an
[10] exotic?

[11] **A:** No, not as the AVMA has it.

[12] **Q:** Are you familiar with the common problems
[13] that are encountered by pregnant English bulldogs?

[14] **A:** Yes.

[15] **Q:** Would you take a minute and describe to the
[16] board your understanding of the kind of problems that
[17] that breed has in gestation and delivery?

[18] **A:** Generally, the English bulldog belongs to a
[19] class of dogs that we term brachiocephalics, meaning
[20] they all tend to have pushed-in noses, big heads,
[21] broad shoulders. And all of those breeds tend to have
[22] trouble because of their body anatomy with the wide
[23] shoulders and the big heads and the narrow pelvises or
[24] the narrow hips to sometimes deliver puppies
[25] naturally. And with certain breeding animals,

[1] owners need to be aware of timing of when labor sets,
[2] you know, the stages of labor like active labor such
[3] as with the dog pushing and active pushing for an hour
[4] and there's no puppies coming or even dead puppies
[5] coming.

[6] **Q:** Would it be fair to say that there are
[7] standards or procedures for monitoring an English
[8] bulldog?

[9] **A:** The procedure would be again timing of the
[10] contractions, you know, gestation length. You know,
[11] the female bulldogs and breeds of this kind also
[12] sometimes will lose uterine inertia or it's called
[13] inertia where the uterus just can't push anymore.

[14] **Q:** Is it appropriate to - don't worry about
[15] that. Someone needs to move to turn on the light.

[16] **THE COURT:** Fine job, Mr. Allred.

[17] **MR. ALLRED:** I'm only sorry that's part
[18] of the record.

[19] **Q:** (By Mr. Allred) In your opinion, is it
[20] appropriate to palpate an English bulldog to determine
[21] the number and size of a litter?

[22] **A:** Palpation is always something you do on an
[23] exam. However, on many dogs, especially larger breed
[24] dogs or the anatomy of a bulldog can be difficult to
[25] palpate and determine number of puppies or if there

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[1] particularly - pretty much any dogs, sometimes it's
[2] difficult to have them bred. And so artificial
[3] insemination is not uncommon to use in them. But
[4] especially during the delivery is when we encounter
[5] problems.

[6] **Q:** And what type problem is typical, or is
[7] there a typical problem?

[8] **A:** Yeah. The term they would use is called
[9] dystocia where the female is trying to give birth,
[10] pass the puppy through the birth canal because of the
[11] puppy's size, the head or shoulder gets stuck and so
[12] then they need help. Usually we counsel our clients
[13] about requiring higher probability than another breed
[14] of dog to require a caesarian section.

[15] **Q:** In fact, what is the percentage of
[16] C-sections that you see performed on English bulldogs
[17] that are pregnant?

[18] **A:** I don't know about a certain percentage, but
[19] I would say a high incidence would be, you know,
[20] greater than 50 percent.

[21] **Q:** Are there things that you need to watch for
[22] when an English bulldog goes into labor?

[23] **A:** I think it's the same for any dog that goes
[24] into labor. Again particularly because the bulldogs
[25] are more predisposed to the dystocia problem, the

[1] are even puppies. It can be very difficult to do
[2] that.

[3] **Q:** So would it be appropriate to do a
[4] radiograph to -

[5] **A:** Yeah. Yeah, radiography is the only way to
[6] determine first like pregnancy and then trying to
[7] determine the number of puppies. But even a
[8] radiograph may not tell you the exact number of
[9] puppies if there's a large litter, all the puppies on
[10] top of each other.

[11] **Q:** Did you examine Hillary in the late hours of
[12] June 19th and in the early hours of June 20th?

[13] **A:** Yes, I did.

[14] **Q:** And does good veterinary practice require a
[15] veterinarian to obtain a history from the owner of an
[16] animal that has been previously treated?

[17] **A:** Yes.

[18] **Q:** And did you obtain a history from Cindy Bue?

[19] **A:** Yes, I did, yeah.

[20] **MR. ALLRED:** Let me hand you what we've
[21] been using as an exhibit book and ask you to turn to
[22] tab 21. And for the record, I did not move to admit
[23] what's been marked as Exhibit Number 20, and that was
[24] intentional. And we'll just proceed with the
[25] admission of Exhibit Number 21.

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[1] THE COURT: Fine.

[2] Q: (By Mr. Allred) Dr. Chinn, can you identify
[3] this document for me?

[4] A: Yeah, this is the Central Emergency Animal
[5] Clinic admission form and history form for that night.

[6] Q: Did you enter some of the information
[7] contained on this form?

[8] A: Yeah. As it starts with history, the
[9] denotation of Hx and then a colon, from then on is my
[10] handwriting.

[11] MR. ALLRED: Your Honor, I would move
[12] to have State's Exhibit Number 21 admitted into
[13] evidence.

[14] THE COURT: Any objection?

[15] MR. DAHL: No objection.

[16] THE COURT: As identified, so
[17] received. And copies may be provided to the board.

[18] (WHEREUPON, Division's Exhibit 21
[19] was received in evidence.)

[20] Q: (By Mr. Allred) Dr. Chinn, would you take a
[21] moment and explain to the board and to the Court the
[22] history that you obtained from Mrs. Bue when she
[23] brought Hillary in in the late hours of June 19th.

[24] A: Where it says notes and the temperature of
[25] 100.1, labor started Friday, passed five dead

[1] Q: Thank you, Dr. Chinn. What did you observe

[2] when you examined Hillary after Mrs. Bue brought her
[3] to the hospital?

[4] A: Hillary was in quite a bit of distress. She
[5] was panting. She couldn't get up. She was obviously
[6] fairly weak. I couldn't raise a capillary refill time
[7] on her, membranes were pretty pale. She was in a lot
[8] of distress. Heart rate was fairly high at 200, and
[9] the femoral pulses were fairly weak. She had an
[10] obvious vaginal discharge. I mean, it was just bright
[11] red blood coming out, frank blood from the vulva. I
[12] couldn't raise any peripheral veins. That was so I
[13] could assess blood pressure. I tried to palpate the
[14] abdomen but, as I note, it was difficult to palpate.
[15] It was very doughy, and I suspected that she had some
[16] puppies still inside of her, as I noted there. And I
[17] told Mr. And Mrs. Bue that I thought Hillary was in
[18] quite a bit of trouble and in shock and that we need
[19] to help her.

[20] Q: What did you do in addition to your
[21] examination for Hillary? Did you -

[22] A: I went to assess the nature of her shock. I
[23] was also concerned that because she was bleeding so
[24] much from the vulva, I was afraid that she might have
[25] had a placental rupture. So the initial treatment was

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[1] puppies. Owner says she's having vaginal bleeding and
[2] panting. That was taken by the admitting nurse, which
[3] is very, it's common to have that done.

[4] On the history, basically from gleanings from
[5] what Mrs. Bue had said, and again these are notes
[6] taken from her conversation, she told me that Hillary
[7] had started going into labor about 9:00 o'clock on
[8] Friday. She had some puppies on Saturday night. And
[9] she told me that she had taken the dog to Brookside.
[10] And she described a procedure that the dog had been
[11] douched or flushed by Dr. Taylor and that on both
[12] Saturday night and Sunday morning. On Sunday morning,
[13] she said the dog was - she had gotten the dog from
[14] Dr. Taylor on Sunday morning at 10:30. She was weak
[15] and staggering. On Sunday at 4:00 o'clock, she said
[16] the dog had passed another dead puppy, and she started
[17] doing better. And so she thought, Well, maybe he had
[18] missed one and it had come out and so now the dog is
[19] going to do better. And the dog was eating for her
[20] that evening. But around 7:00, she said the dog
[21] started panting. She said the dog started having
[22] bleeding from the vulva, had another abdominal
[23] contraction and was not doing well. That's why she
[24] brought her in and that the breeding date was between
[25] 58 and 59 days, I believe, on the Friday.

[1] started for the shock and stabilizing Hillary first,
[2] getting her blood pressure up. We ran a packed cell
[3] volume, total protein, also ran a white blood cell
[4] count and performed an abdominal radiograph.

[5] Q: What were the results of the abdominal
[6] radiograph?

[7] A: Radiograph showed that there were pups in
[8] there, a puppy.

[9] Q: So you were able to determine that she had
[10] not finished delivering her litter?

[11] A: Right.

[12] Q: And that she was in fact in labor?

[13] A: I think at this point, yeah. At this point,
[14] I think she was in uterine inertia. She just didn't
[15] have enough strength to push anymore.

[16] Q: Is it possible for you to give an opinion as
[17] to how long that phase had existed, her inability to
[18] push?

[19] A: Difficult to say. In some dogs, it can
[20] occur, you know, early in labor. Or it could, I mean,
[21] at this point, after, you know, from starting on
[22] Friday and then here it is Sunday night at 11:00, I
[23] figured, you know, probably a while.

[24] Q: Would you please turn to tab number 18,
[25] which has been previously admitted into evidence as

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[1] Exhibit Number 18, and tell me if you've ever seen
[2] this document before?
[3] A: No, I haven't.
[4] Q: This is a bill from Brookside Animal
[5] Hospital.
[6] A: Oh, I'm sorry, sir. I think I did see it
[7] several days - I think when Mrs. Bue showed it to me
[8] several days later. I'm not quite certain though. I
[9] may have seen it.
[10] Q: Do you see a charge on there for an x-ray?
[11] A: No, I don't.
[12] Q: Would you turn to tab number 22?
[13] A: (Witness complies.)
[14] MR. ALLRED: Your Honor, this is again
[15] one of these exhibits that Mr. Dahl has previously
[16] stipulated could come into evidence.
[17] THE COURT: Any objection?
[18] MR. DAHL: No objection.
[19] THE COURT: As identified, Division
[20] Exhibit 22 is received and copies may be provided to
[21] the board.
[22] (WHEREUPON, Division's Exhibit 22
[23] was received in evidence.)
[24] MR. ALLRED: Thank you, your Honor.
[25] Q: (By Mr. Allred) Dr. Chinn, if you could just

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[1] take a moment and look at Exhibit Number 22. This has
[2] been obtained by the division through an
[3] administrative subpoena or an investigative subpoena,
[4] and it's the medical history for Dr. Taylor's
[5] treatment of Hillary. After you've taken a look at
[6] this for a minute, can you tell me if you find this
[7] history to be helpful in determining what care was
[8] given to Hillary previous to this being created?
[9] A: Helpful to me as far as treating Hillary?
[10] Q: Yes.
[11] A: I believe Cindy Bue told me about that, but
[12] it doesn't give any specifics on the whelping
[13] assistance or has no - from what I see here, it
[14] doesn't have any details, I would say.
[15] Q: If you compared that to your own medical
[16] history, do they contain similar detail?
[17] A: No.
[18] Q: Do you consider taking and recording a
[19] history of your treatment of the animal to be
[20] important?
[21] A: Yes, definitely.
[22] Q: Why would that be important for you to keep
[23] an accurate history of the treatment and diagnosis of
[24] the animal?
[25] A: A thorough history is most important in any

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[1] veterinarian or doctor's case. Since my patients
[2] can't talk to me, so I rely on the owner's history.
[3] And it gives you a point of reference on what has been
[4] happening with the animal over the period of illness
[5] that the owner has observed at home and before the
[6] animal came in, and it gives you a point of reference
[7] of where to go.
[8] Q: Would the kind of record that you keep be
[9] more helpful to you in the future if you were to treat
[10] Hillary again?
[11] A: Yeah, definitely.
[12] Q: And would the record that you see in Exhibit
[13] Number 22 provide that same kind of assistance in
[14] treating Hillary?
[15] A: No. I think the whole idea of a record is
[16] so that when, you know, per chance if another doctor
[17] had to take over the case, they could glean what I had
[18] done or what any other doctor had done previously and
[19] continue on that care for the patient.
[20] Q: Dr. Chinn, is there a normal period of labor
[21] or parturition for an English bulldog?
[22] A: Most dogs follow the same type of what
[23] you're asking me to say as far as labor. And there
[24] are two stages of labor mainly in the dog and just
[25] like, you know, women, human women. The first stage

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[1] lasts about six to 12 hours in most females. And
[2] that's where the cervix dilates. And then that's when
[3] the uterine contractions are not present.
[4] And then stage two is where, that's where we
[5] visually see the abdominal contractions. And usually
[6] within the first four hours of the start of that, the
[7] first puppy is born and subsequent puppies come in
[8] every 15 minutes either in groups or singularly or up
[9] to two hours apart.
[10] But I think the thing that if you see active
[11] contractions, the dog is obviously, the abdomen is
[12] actively contracting for an hour and there's no puppy
[13] coming out, then we advise owners to call us or to
[14] seek help.
[15] Q: Would it be a cause for concern if there was
[16] more than a 15- to 20-minute delay between the births
[17] of puppies after the first one is born?
[18] A: Not necessarily. Some of them can come up
[19] to two hours later, but it's more likely that it's
[20] less than the two-hour time period. It's more likely
[21] that they will come in every 15 minutes or 20 minutes
[22] or 30 minutes.
[23] Q: Turning your attention back to Hillary, how
[24] many of the puppies that Hillary delivered were you
[25] able to examine?

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[1] A: I was only able to examine the two that were
[2] still in her when she came to my hospital.
[3] Q: And how were those puppies delivered?
[4] A: One she had passed. I had to manually
[5] deliver that one. And then the other one was through
[6] a caesarian.
[7] Q: And were you able to determine the cause of
[8] death for the puppies that you examined?
[9] A: At the time, the puppies, the placentas were
[10] already separated from the puppies. So if the
[11] placenta had separated while they were in utero, they
[12] would have died from that because the placenta would
[13] have provided their only source of oxygen, nutrition,
[14] so forth.
[15] Q: Do you have an opinion as to whether the
[16] dogs were premature or fully formed?
[17] A: In my opinion, they appeared to be fully
[18] formed. They were starting to - one was really dry,
[19] the one that was really in her, meaning that the water
[20] bag had broken. And it had fully formed features.
[21] The other one was a little bit more moist and had a
[22] fetid odor like it was starting to decay, deteriorate,
[23] actually both of them were, but...
[24] Q: Do you have an opinion as to whether the
[25] puppies that would have been born from Friday through

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[1] Saturday would have been fully formed?
[2] A: More than likely, they would have been from
[3] the two that I saw.
[4] Q: So, in other words, there probably wouldn't
[5] have been a very great difference between the
[6] condition of the puppies first born and the two that
[7] you saw?
[8] A: No.
[9] Q: So do you have a professional opinion as to
[10] the cause of death?
[11] A: Death was probably due to some sort of
[12] either uterine inertia and/or dystocia followed by
[13] subsequent placental separation.
[14] Q: Do you have an opinion about the standard of
[15] care that Dr. Taylor provided for Hillary?
[16] A: As far as the medical history or just
[17] overall?
[18] Q: Well, based upon your review of the medical
[19] history and what Mrs. Bue told you, do you have an
[20] opinion as to the standard of care that Dr. Taylor
[21] provided for Hillary?
[22] A: I think initially in my opinion and also
[23] what is substantiated in our current veterinary texts
[24] that a thorough physical examination as well as
[25] performing at least an abdominal radiograph would have

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[1] been helpful to assess the nature for Hillary.
[2] Q: Based upon what you know that is that there
[3] was no radiograph performed by Dr. Taylor, did the
[4] standard of care that he provided for Hillary fall
[5] below the accepted standard?
[6] A: From the information that I have, I feel
[7] that it did.
[8] MR. ALLRED: Thank you. Your Honor,
[9] that's all the questions I have now.
[10] THE COURT: Cross-examination, Mr.
[11] Dahl?
[12] MR. DAHL: Thank you, your Honor.
[13] CROSS-EXAMINATION
[14] BY MR. DAHL:
[15] Q: Dr. Chinn, did you have occasion to see the
[16] other five puppies that were born two, three days
[17] before you first saw the dog?
[18] A: No, I did not.
[19] Q: Would you consider a puppy with no hair on
[20] it a fully developed puppy?
[21] A: I guess, could you repeat the question?
[22] Q: Would you consider a puppy that was born
[23] two, three days earlier before you saw the mother and
[24] there was no hair on the body, would that be
[25] considered mature, fully developed by you?

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[1] A: No. Usually hair does form by then. No, it
[2] would not be developed.
[3] Q: Now according to the records, this
[4] insemination took place between April 21st and 23rd
[5] and Hillary started delivering on the 17th of June.
[6] In your opinion, is that a mature puppy ready to be
[7] delivered?
[8] A: Yeah, puppies can survive on that day of
[9] gestation.
[10] Q: Higher risk, however, isn't it?
[11] A: A little bit.
[12] Q: Especially if they have no hair on them?
[13] A: Well, on that, with dogs and cats when they
[14] have litters, there are chances for an individual
[15] puppy to have died while in utero during the pregnancy
[16] and then not develop and then that puppy or kitten or
[17] piglet not affect the other puppies in the uterus
[18] because they each have their own sack.
[19] Q: Is it true that having two inseminations a
[20] couple days apart is proper procedure?
[21] A: Yes.
[22] Q: And is it also true that the development of
[23] the puppies - you'll have to excuse my lack of
[24] scientific knowledge. What I'm getting to is that
[25] sometimes when you have these two inseminations close

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[1] together, one insemination may have taken and the
[2] second one -

[3] A: Sure.

[4] Q: - may have taken, so you have different
[5] periods of the beginning of the gestation; is that
[6] true?

[7] A: Yes, that's true. However, you know, it
[8] depends on also while the sperm and the eggs are in
[9] the area in there and they get fertilized, they have a
[10] period of time where they travel down and become
[11] implanted in the uterus. So sometimes, you know, if
[12] they all implant on the same day, then the growth of
[13] those embryos are very close to each other.

[14] Q: Let's see. Are you in charge of record
[15] keeping at the hospital that the work at?

[16] A: As far as all the -

[17] Q: Hospital records.

[18] A: All the hospital records, no, I would say
[19] that would be my receptionist. We all take part in
[20] keeping records.

[21] Q: The records that have been introduced into
[22] evidence that were prepared by you, did they ever find
[23] their way into a computer?

[24] A: No. Well, billing. We do billing, yes.

[25] Q: Billing, but the billing will not have all

[1] Q: And was she concerned about costs?

[2] A: Yes, she was.

[3] Q: And you recommended that a caesarian be
[4] performed - or not a caesarian but a hysterectomy?

[5] A: I recommended a caesarian, and pretty much,
[6] yeah, usually we offer a hysterectomy, actually an
[7] ovariectomy whenever we do a C-section. And in
[8] Hillary's case, I wasn't sure how her uterus was going
[9] to appear. And so I warned her that we might have to
[10] do a hysterectomy, an ovariectomy.

[11] Q: If that had been done, that would have been
[12] period for Hillary's production -

[13] A: Right.

[14] Q: - capabilities, pretty much? What do you
[15] mean exotics?

[16] A: Yeah.

[17] Q: That's a French word, isn't it?

[18] A: Exotic is a term that the American
[19] Veterinary Medical Association uses to encompass those
[20] animals, they also call them pocket pets is one where
[21] it includes birds, reptiles, hamsters, gerbils,
[22] rabbits, pot bellied pigs, generally species that are
[23] not traditional dog and cat or horses or cattle.

[24] Q: Have you done any veterinary practice in
[25] large animals like horses and cows?

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[1] this great detail you had on your narrative?

[2] A: Correct, we keep both written in the
[3] doctor's handwriting, and also the computer will list
[4] all the charges for each individual thing that we've
[5] done.

[6] Q: And that's what you had from Brookside was
[7] the billing; is that correct? How long do you keep
[8] your records?

[9] A: We keep ours a minimum for active clientele,
[10] a minimum of three years.

[11] Q: If they're not active clientele, how long?

[12] A: Actually, if they're not active, we keep
[13] them for three years. If they're active clients, we
[14] keep them for the duration of the client.

[15] Q: That gets pretty burdensome, does it not?

[16] A: No.

[17] Q: Space wise?

[18] A: No.

[19] Q: Tell me, was the billing that Brookside made
[20] to Ms. Bue reasonable?

[21] A: Every hospital sets their own charges.

[22] Q: Now according to Ms. Bue's testimony, she
[23] was very hesitant to have you perform the C-section;
[24] is that correct?

[25] A: Yes.

[1] A: Yes, I have.

[2] Q: Is the practice very similar, is it, except
[3] size?

[4] A: Well, every species has their own.

[5] Q: When Ms. Bue first saw you before the
[6] insemination took place on these dogs, my notes here
[7] say that you quoted her a price of \$1,000 for the
[8] procedure to do the insemination and the delivery; is
[9] that correct?

[10] A: I believe I gave her a range that the 1,000
[11] was at the upper limit.

[12] MR. DAHL: That's all.

[13] THE COURT: Redirect, Mr. Allred?

[14] MR. ALLRED: Yes, your Honor, just a
[15] couple of questions.

[16] REDIRECT EXAMINATION

[17] BY MR. ALLRED:

[18] Q: Dr. Chinn, Mr. Dahl asked you a question
[19] about hair on the puppies. When is the hair formed in
[20] the gestational process?

[21] A: Usually, I can't remember the exact day of
[22] gestation, but you usually start seeing it within
[23] two-thirds of the way in.

[24] Q: So it wouldn't be the last thing?

[25] A: No, absolutely not.

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[1] Q: Would you use the presence of hair as a
[2] determination to decide if a puppy is fully formed?
[3] A: Yeah, that is one of the determinations.
[4] But, again, sometimes we have puppies or kittens that
[5] die early and they become mummified. And the normal
[6] pregnancy can still continue with the other puppies
[7] but that one just not being viable.
[8] Q: Is it appropriate to reach a conclusion as
[9] to the status of all the puppies if only one has been
[10] born?
[11] A: If the other puppies had hair and other
[12] features, just only one, no, you could only see it per
[13] individual puppy.
[14] Q: So a judgment should be made about whether
[15] they're fully formed or premature based on each -
[16] A: Each puppy.
[17] Q: - puppy? When you performed a C-section on
[18] Hillary, did you obtain Mrs. Bue's approval before you
[19] operated?
[20] A: Yeah, yes, and it's written up on my records
[21] as such.
[22] Q: So Mrs. Bue did approve the C-section?
[23] A: (Witness nods head.) Yes.
[24] MR. ALLRED: Your Honor, that's all the
[25] questions I have.

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[1] a sense of when and if that might be, if you would let
[2] her know. Mr. Dahl is going to let Ms. Bue know. And
[3] while they're both here in the courtroom, let me just
[4] offer this caution to both of you. It's possible that
[5] either or each of you will be coming back to offer
[6] more testimony at a later stage of this hearing.
[7] To ensure that that testimony is not
[8] influenced, if you will, don't discuss the case with
[9] any other witnesses if you happen to come in contact
[10] with them. Certainly, Dr. Chinn, if you're going to
[11] be called by Mr. Allred, you can discuss it with him.
[12] And, Mr. Dahl, the same is true of you with Ms. Bue.
[13] And I'll leave it to counsel to coordinate whatever
[14] may take place in terms of either of these witnesses
[15] coming back to testify. But for now, Dr. Chinn,
[16] you're excused. Thank you.
[17] THE WITNESS: Thank you.
[18] THE COURT: Mr. Allred, your next
[19] witness.
[20] MR. ALLRED: Your Honor, our next
[21] witness is Vicki Crocker. And given the hour, it will
[22] probably take close to 4:30 to get her testimony on.
[23] Direct will probably take up until about 4:10. And
[24] then of course Mr. Dahl has cross-examination for
[25] her. If it would please the Court, I would propose

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[1] THE COURT: Recross, Mr. Dahl?
[2] MR. DAHL: No, your Honor.
[3] THE COURT: Any questions by the board
[4] of this witness? Dr. Taylor?
[5] MR. TAYLOR: No.
[6] THE COURT: Dr. Rees?
[7] MR. REES: No, sir.
[8] THE COURT: Dr. Brown?
[9] MS. BROWN: No.
[10] THE COURT: Dr. Sperry - Mr. Sperry?
[11] I'm going to make a doctor out of you before I'm
[12] through here.
[13] MR. DAHL: Isn't he a doctor?
[14] MR. SPERRY: (Shakes head.)
[15] THE COURT: Mr. Sperry is the public
[16] member of the board.
[17] MR. DAHL: Excuse me.
[18] THE COURT: Mr. Allred, is this witness
[19] subject to recall?
[20] MR. ALLRED: Your Honor, I hadn't
[21] anticipated recalling the witness. And I don't know
[22] if it might be helpful to have her recalled after Dr.
[23] Taylor gives his testimony.
[24] THE COURT: Okay. If you will
[25] coordinate that with Dr. Chinn, if you need her, have

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[1] that we recess for today and take her tomorrow morning
[2] as our first witness and then continue on with the
[3] testimony of Dr. Dale Smith and then Robert Brinkman
[4] who would be the only three witnesses called with the
[5] last allegation in the petition. I think after we're
[6] done with that, I can wrap up the case quite quickly.
[7] THE COURT: Let me just ask a question
[8] or two. Do you still intend any testimony at all from
[9] Dr. Richard White?
[10] MR. ALLRED: No, your Honor.
[11] THE COURT: Any testimony from Laurie
[12] Larsen?
[13] MR. ALLRED: Your Honor, there may be
[14] testimony from Ms. Larsen, but I won't determine that
[15] until probably after our last witness is called.
[16] THE COURT: And finally you listed Dr.
[17] Taylor as a possible witness. I assume that you will
[18] deal with that aspect during cross-examination as an
[19] adverse witness, or will you be calling him before you
[20] rest your case?
[21] MR. ALLRED: Your Honor, I haven't
[22] quite decided.
[23] THE COURT: Well, frankly, Mr. Dahl,
[24] even though we've moved with a fair amount of
[25] expediency today, I see some point in keeping the

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[1] testimony within a given set of circumstances
[2] together. If it's acceptable with you, we'll recess
[3] at this time and commence again tomorrow morning at
[4] 9:00 o'clock with testimony initially from Vicki
[5] Crocker, if that's all right.

[6] **MR. DAHL:** That's fine with me.

[7] **THE COURT:** Very good. We'll be in
[8] recess until 9:00 o'clock tomorrow morning.

[9] **MR. DAHL:** Thank you, your Honor.

[10] **THE COURT:** Oh, one other thing while
[11] we're on the record. Because this is a multiple day
[12] hearing, I'm going to request the board to not discuss
[13] this case while we are in recess between sessions
[14] amongst yourself or anyone else. We still have more
[15] testimony to take, and I think it would not be
[16] appropriate to have any of those discussions occur
[17] until both parties have had the opportunity to give
[18] you all of the testimony they'd like you to consider.

[19] We'll be in recess until 9:00 o'clock in the
[20] morning.

[21] **MR. ALLRED:** Thank you, your Honor.

[22] (WHEREUPON, the proceedings were recessed
[23] at the approximate hour of 3:45 p.m.)

[24]

[25]

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[1] CERTIFICATE

[2] STATE OF UTAH

[3] COUNTY OF SALT LAKE)

[4] I, DEBORAH F. LAVINE, a Certified Shorthand
[5] Reporter and Notary Public in and for the County of
[6] Salt Lake, State of Utah, do hereby certify:

[7] That the foregoing proceedings before the
[8] Division of Occupational and Professional Licensing
[9] were taken before me at the time and place set forth
[10] herein and was taken down by me in shorthand and
[11] thereafter transcribed into typewriting under my
[12] direction and supervision.

[13] That the foregoing 215 pages contain a true
[14] and correct transcription of my said shorthand notes
[15] so taken.

[16] Witness my hand and official seal at Salt
[17] Lake City, Utah, this 5th day of May, 1996.

[18]

[19]

[20]

[21] DEBORAH F. LAVINE, RPR, CSR, NP

[22]

[23]

[24] My Commission Expires:

[25] March 4, 1999

000229

In The Matter Of:

*Matter of License of:
Leo N. Taylor*

*Hearing Volume Number 2
March 19, 1996*

*Rocky Mountain Reporting Service, Inc.
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000231

[1] BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL
[2] LICENSING OF THE DEPARTMENT OF COMMERCE
[3] OF THE STATE OF UTAH

[4]
[5]
[6] IN THE MATTER OF the) BOARD HEARING
[7] License of LEO N. TAYLOR) VOLUME II
to Practice as a Veterinarian)
[8] in the State of Utah.) Case No. OPL-95-19
[9]) Admin. Law Judge
J. Steven Eklund

[10]
[11]
[12]
[13]
[14] BE IT REMEMBERED THAT on the 19th day of
[15] March, 1996, the above-entitled continued action
[16] before the above-named tribunal was taken before Kathy
[17] H. Morgan, a Certified Court Reporter and Notary
[18] Public in and for the States of Utah and Nevada,
[19] commencing at the hour of 9:00 a.m. of said day,
[20] Heber M. Wells Building, 160 East 300 South, Fourth
[21] Floor, City of Salt Lake, State of Utah.

[22]
[23]
[24]
[25]

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Members of the
[12] Veterinary Board
Present: EDMUND L. SPERRY
[13] ROGER E. REES
DENZEL E. TAYLOR
[14] KATHERINE R. BROWN
[15]

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[1] MARCH 19, 1996 - 9:00 A.M. - SALT LAKE CITY, UTAH
[2]
[3] PROCEEDINGS
[4]
[5] THE COURT: This is the time and place set
[6] for resumption of the hearing in the matter of the
[7] license of Leo M. Taylor to practice as a veterinarian
[8] in the State of Utah. The Division is again
[9] represented by R. Paul Allred, Assistant Attorney
[10] General, State of Utah. The Respondent is present and
[11] represented by counsel, Everett E. Dahl. And the four
[12] members of the Veterinary Board initially present for
[13] the commencement of this hearing on March 18th are
[14] also present, as is the Division Director, Craig
[15] Jackson.
[16] Mr. Allred, your next witness.
[17] MR. ALLRED: Your Honor, the Division
[18] would call Vicki Crocker to the stand.
[19] THE COURT: Would you raise your right
[20] hand, please.
[21] (The witness was sworn.)
[22] THE COURT: Mr. Allred?
[23] DIRECT EXAMINATION
[24] BY MR. ALLRED:
[25] Q: Ms. Crocker, would you please state and

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[1] spell your name for the record.
[2] **A:** Vicki L. Crocker, V-i-c-k-i L.
[3] C-r-o-c-k-e-r.
[4] **Q:** Ms. Crocker, were you the owner of a
[5] cocker spaniel named Oscar during July of 1993?
[6] **A:** Yes.
[7] **Q:** Would you please turn to tab number 23 in
[8] the witnesses exhibit book and tell me if you can
[9] identify this document.
[10] **A:** Yes. This is the letter that I wrote to
[11] Dr. Gary Peterson, the Ethics Chairman, regarding a
[12] complaint I had against Leo Taylor.
[13] **Q:** When did you write the letter?
[14] **A:** August 10th, 1993.
[15] **Q:** And you've indicated you wrote the letter
[16] as a complaint to the Ethics Committee?
[17] **A:** Yes.
[18] **MR. ALLRED:** Your Honor, I would move to
[19] admit Division's Exhibit Number 23 into evidence.
[20] **THE COURT:** I anticipate a possible
[21] objection, Mr. Dahl.
[22] **MR. DAHL:** Yes, your Honor. It's the same
[23] thing. The copy of that letter I was furnished was
[24] not as clear as this, but almost black, and the
[25] witness is here to testify. If she wants to refer to

[1] **MR. ALLRED:** Yes.
[2] **THE COURT:** Mr. Allred, I believe it would
[3] certainly be appropriate for this witness to review
[4] the document for purposes of refreshing her testimony
[5] and recollection of the events that occurred that are
[6] set forth in the document. I don't believe it has the
[7] same degree of passionate and rather pointed
[8] perjorative comments toward Dr. Taylor that the other
[9] exhibit did, which was excluded.
[10] However, I also don't think it's got the
[11] type of detail that will necessarily be beneficial to
[12] the Board. The witness is here to testify with regard
[13] to these matters and certainly will not be
[14] disadvantaged in so doing, particularly if she has
[15] reference to this exhibit, or at least to this
[16] document to refresh her testimony as may be
[17] necessary.
[18] Since the witness is here present to
[19] testify, I think you can certainly draw out from her
[20] on direct examination all of the elements of this
[21] letter that are pertinent to the allegations. Under
[22] those circumstances I don't see reason to admit it.
[23] With respect to the hearsay objection.
[24] however, let me indicate, for the purpose of the
[25] Board's understanding, that hearsay testimony is

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[1] it to refresh her memory, fine, but I think these
[2] passionate letters are not proper evidence before the
[3] Board.
[4] **THE COURT:** Let me review the proposed
[5] exhibit and the allegations of the petition briefly to
[6] rule on the objection. Just one minute. Off the
[7] record.
[8] (Brief pause)
[9] **THE COURT:** Back on the record. The Court
[10] has reviewed Division's proposed Exhibit 23 and the
[11] allegations in the petition with respect to this
[12] animal. Mr. Dahl, you had a secondary objection for
[13] the record?
[14] **MR. DAHL:** Yes. Besides what I mentioned
[15] before, you will notice that the letter also contains
[16] what I would consider hearsay about what the doctor
[17] said, and that doctor also will testify here. I'm
[18] going to object to it due to the hearsay rule.
[19] **THE COURT:** Are you referring to contents
[20] of the letter as they pertain to Dr. Kallman or Dr.
[21] Smith?
[22] **MR. ALLRED:** Your Honor, Dr. Kallman will
[23] not be testifying today. He's not available. He's
[24] left the State of Utah.
[25] **THE COURT:** But Dr. Smith will be?

[1] admissible in these proceedings unless it goes to a
[2] contested matter of disputed fact, in which case it
[3] must be corroborated by non-hearsay testimony unless
[4] the hearsay testimony being offered would be otherwise
[5] admissible. Dr. Kallman will not be testifying today.
[6] To the extent that this witness will be testifying or
[7] might testify as to anything Dr. Kallman may have told
[8] her, I'll note your objection, Mr. Dahl, for the
[9] record. It will be a standing objection in that
[10] regard.
[11] **MR. DAHL:** Thank you.
[12] **THE COURT:** But I will allow it subject to
[13] the Board's proper consideration of it during its
[14] deliberations. Mr. Allred, let me return this
[15] proposed exhibit. It will not be received, Division's
[16] 23.
[17] **BY MR. ALLRED:**
[18] **Q:** Ms. Crocker, would you tell the Board what
[19] happened to Oscar on July 8th of 1993?
[20] **A:** My son - we were living at my parents'
[21] house while we were having our house built, and she
[22] lives on 13th West, which is a rather busy street. My
[23] son took Oscar out front and was playing with him, and
[24] Oscar has this kind of aversion to chase trucks,
[25] whether it's the UPS truck or milkman or whatever.

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[1] And he saw a dump truck with two pup trailers on it,
[2] and decided he had to chase it. So he ran out into
[3] the street, and as he ran out into the street my son
[4] hollered his name, "Oscar." And as he hollered, Oscar
[5] turned to look at him and ran into the side of one of
[6] the wheels of the dump truck.

[7] Q: So who was with your son when Oscar was
[8] hit by the dump truck?

[9] A: My dad was out front mowing the lawn.

[10] Q: And what happened after Oscar ran into the
[11] wheels of the dump truck?

[12] A: The dump truck stopped and my dad and my
[13] son Brad ran out to see how he was. He was laying on
[14] the street. They were very concerned. They could
[15] tell he was hurt because when they tried to move him,
[16] he wouldn't get up or anything. And so they hurried
[17] and put him in the back of my dad's truck and drove
[18] him down to Brookside Animal Clinic, because it was
[19] only, like, six or eight blocks away.

[20] Q: When did you find out about the accident?

[21] A: I was on my way home from work when the
[22] accident happened. And I walked into the house and my
[23] mom was there and she said, "Vicki, I've got something
[24] horrible to tell you." And she said, "Sit down." And
[25] I sat down and she said, "Oscar's been hit by a

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[1] any infections or whatever, and to call tomorrow,
[2] which was the 9th.

[3] Q: So did you call on July 9th and talk with
[4] someone at Brookside?

[5] A: Yes, I did. I did not talk to Dr. Taylor.
[6] I talked to some - you know, his receptionist or
[7] nurse or whatever, and she had said that Dr. Taylor
[8] was going or had done the x-rays. Oscar had a broken
[9] right front leg and a broken jaw on the left side;
[10] that he would be doing surgery but they wanted to keep
[11] him on antibiotics long enough for those to take
[12] effect, and he would do surgery on the 10th.

[13] Q: What did you do? Did you contact
[14] Brookside after that phone call on July 9th?

[15] A: No.

[16] Q: What happened next? When did you find out
[17] that the surgery had been performed?

[18] A: Well, on July 10th they told me to call in
[19] the morning to see if the surgery had been done. I
[20] called roughly at I think it was about 10:30, and the
[21] nurse had told me that no, Oscar has not had his
[22] surgery yet. He was prepped for surgery, he was ready
[23] to go, but Dr. Taylor had just not gotten to him yet.
[24] Call in, like, I think it was a couple of hours.

[25] So in a couple of hours I called again.

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[1] truck." I was very upset. She said, "I haven't told
[2] Sidney," which is my daughter, who was only, like,
[3] nine at the time. And she says, "I don't know how to
[4] tell her," because Oscar is a, you know, he's a member
[5] of our family. We were devastated that he was even
[6] hit by a truck.

[7] So I proceeded to tell my daughter what
[8] had happened. Everybody was crying, we were all
[9] worried, and, you know, I didn't know what else to do
[10] other than just leave him at Brookside under his care.

[11] Q: So did you go to Brookside Animal Hospital
[12] after you found out that Oscar was taken there?

[13] A: No, I called. My dad said that Dr. Taylor
[14] had said, "We have to get him out of shock. He's
[15] going into shock. That is my first priority." He
[16] said that he would like us to call in - I don't
[17] remember if it was an hour or a couple of hours, or I
[18] don't remember the exact time frame, but to call
[19] later.

[20] I did call later. He had said that he had
[21] gotten Oscar out of shock. He hadn't done any x-rays
[22] yet or anything to tell me what was wrong with him.
[23] He said that he wanted to put him on antibiotics to
[24] make sure, you know, because if he had to do surgery
[25] or something, that he would, you know, he wouldn't get

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[1] "How is Oscar?"

[2] "Oh, Oscar is fine, but we haven't done
[3] the surgery yet. It's been really crazy around here.
[4] We haven't been able to get to him. We've had some
[5] medical emergencies."

[6] I said, "Well, okay. I can understand
[7] that. I would want, you know, if my dog came in under
[8] a medical emergency, I'd want you to take care of that
[9] first, and I understand."

[10] She says, "Call in another couple of
[11] hours." So I called again. Still no surgery done.
[12] Same rhetoric, you know. "We've been really busy,"
[13] whatever. "Call at about 5:30."

[14] When I called at 5:30, I got a very rude
[15] "Just a minute." She put me on hold and Dr. Taylor
[16] came to the phone. One of the first things Dr. Taylor
[17] said to me is, "I can't believe you're calling," and
[18] I'm not quoting, something to the effect that I can't
[19] believe you're calling so much. These things take
[20] time. You can't just rush into them. We're worried
[21] about the nerve in his leg, because there was a major
[22] nerve going in that leg. "And I'll call you when I'm
[23] finished."

[24] I was very upset. I was crying. My dog
[25] was hurt, my kids were bawling, my husband was upset.

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[1] I mean, this dog is a member of our family. I said,
[2] "Well, wait a minute. First of all, Oscar is a
[3] member of our family. I'm very worried about him. My
[4] kids are upset. I can't handle my kids, let alone my
[5] dog." And I said, "All I want is to know how my dog
[6] is."

[7] And he said, "Well, I'll call you when I'm
[8] finished."

[9] Q: When did you hear from Dr. Taylor?

[10] A: Before I called Dr. Taylor back, or before
[11] he called me back, I called my veterinarian, which is
[12] Willow Creek Pet Center, and talked with Dr. Kallman
[13] there. I mean, I was ready to move Oscar, but I
[14] didn't know the ramifications of moving him, what it
[15] would do, if I'd hurt him, if I'd make things worse,
[16] whatever. I mean, I was ready to move him.

[17] Q: What did Dr. Kallman recommend?

[18] A: Dr. Kallman said to me, "We can certainly
[19] take him. We will take him if you want." He said
[20] that they either could go get him for me, which there
[21] would be a fee to do, which didn't bother me, or I
[22] could go get him and take him to them.

[23] And I said, "Well, I'm so upset I can't
[24] think clearly. This is a decision I need to talk to
[25] my husband about."

[1] A: Yes, I did. When I got there, well, in
[2] the past if I'd had a dog at a clinic, they've always
[3] said, "Come back here." Rather than moving the dog,
[4] if something's wrong they say, "Come back here." They
[5] said, "You'll have to wait here. We'll go get him."

[6] So they put me in an exam room and brought
[7] Oscar out in a blanket. He smelled of urine. Oh, he
[8] stunk so bad. I can't tell you how bad he stunk. He
[9] was extremely groggy, and I had thought he'd be coming
[10] out of it by then, out of the anesthesia. I was
[11] crying. He had a huge incision down his leg, probably
[12] four, five inches long. I couldn't see anything with
[13] the jaw, other than he had just shaved the one side of
[14] his jaw. He was - I mean, he obviously knew me. He
[15] was trying to get up. I wouldn't let him get up, and,
[16] you know, I just held him and cried.

[17] Q: What day was this that you visited Oscar?

[18] A: The 11th.

[19] Q: And did you continue to follow Oscar's
[20] progress by contacting Brookside?

[21] A: Yes, I did. At least once a day I would
[22] call to see how he was. On the 12th my kids were both
[23] upset. They wanted to see their dog. They wanted to
[24] make sure he was okay. So on the 12th we again went
[25] in to Brookside and asked to see Oscar. I didn't call

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[1] But he said, you know, "Make a decision
[2] and call me back."

[3] When I talked to my husband, he, you know,
[4] we were both worried about moving Oscar, what it would
[5] do to him, what it would do to the kids, because they
[6] would obviously want to go and they would see him
[7] hurt. So we decided that if the surgery wasn't done
[8] that day, that we would go get him and take him to
[9] Willow Creek. At about 6:30 is when I heard from Dr.
[10] Taylor.

[11] Q: What did Dr. Taylor tell you?

[12] A: Dr. Taylor told me the surgery was
[13] performed. He did not think that the nerve was
[14] involved, but he wasn't sure. He said only time will
[15] tell. He said that he had put a - and I don't
[16] remember his exact words, because it was medical
[17] terminology. He had put a surgical pin in down the
[18] canal of the bone, I guess, and wrapped it with wire
[19] and then wired his jaw bone, and that I could call
[20] tomorrow to see how he was doing.

[21] Q: Did you make the call the next day?

[22] A: Yes, I did. Then he said Oscar was fine,
[23] still groggy from anesthesia, he said. And I said, "I
[24] want to come see him."

[25] Q: Did you go see Oscar?

[1] to tell them I was coming. I just went in.

[2] They brought Oscar out in pretty much the
[3] same condition he was in before, except that he wasn't
[4] so groggy from the anesthesia. He tried to get up.
[5] My kids were bawling. I mean, I've never been through
[6] anything so hard in my life, to deal with those kids.

[7] Q: What happened after July 12th?

[8] A: Dr. Taylor, every day I called and said,
[9] "Can he come home? Can he come home?"

[10] "No, he's got to stay a few more days."

[11] And then on Friday the 16th he said - his staff said,
[12] "You can come get him tomorrow." Well, tomorrow was
[13] the 17th and that was the day we were moving into our
[14] new house, so it was utter chaos with everything we
[15] were doing. I almost forgot him, based on, you know,
[16] I lost track of time. So when I called his office, I
[17] guess his office closes early on Saturday. I don't
[18] know what happened. And I think I went in roughly
[19] around 2:30 to get him.

[20] The instructions to me from his staff was
[21] don't baby him. Make him walk on the leg. Make him
[22] use it, which contradicts everything I've ever been
[23] told about an injury. I mean, as far as a broken leg
[24] or arm, it's don't use it. But I thought okay, he's
[25] the doctor, they're the doctors, they know what

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[1] they're doing. So I took him home. My kids were
 [2] ecstatic to see him.
 [3] Q: When you say you took him home, where did
 [4] you take him to?
 [5] A: To my new house.
 [6] Q: What did you do with Oscar after you took
 [7] him home?
 [8] A: Took him home and he wouldn't walk at all.
 [9] It being a new house, we didn't have any grass, so it
 [10] was very difficult for him to go out and go to the
 [11] bathroom. I finally got a collar that I could hold
 [12] him up more or less to go out and go to the bathroom.
 [13] When he was in the house he was always laying on a
 [14] blanket or pillow. He likes pillows. He wouldn't
 [15] even go to his water or his dog food. We had to give
 [16] it to him, take it to him so he would eat or drink.
 [17] His incision was oozing this - I mean, I
 [18] could tell, it looked like it was infected to me, but
 [19] they said, you know, when I left they said the
 [20] draining was normal, so I didn't question it. I mean,
 [21] he was very lethargic, laying around, not moving, not
 [22] playing. Oscar likes balls. You'd try and give him a
 [23] ball to play with. He wouldn't play with the ball.
 [24] It was very sad.
 [25] Q: Was someone with Oscar each time he went

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[1] A: Yes, he did.
 [2] Q: What did he do when he examined Oscar?
 [3] A: When he saw the lump, he said to me
 [4] something to the effect that - I told him what Taylor
 [5] had told me he had done. I said he told me that he
 [6] put the surgical pin down the bone and wrapped it with
 [7] wire, and he said okay, that's normal standard
 [8] procedure. He said, however, sometimes with a
 [9] surgical pin, if it's coming out of the bone, it
 [10] sometimes can rub on soft tissue, so it could very
 [11] well be that that's what the pin was doing, and he
 [12] wasn't very concerned. He said we can take an x-ray
 [13] or we can call Dr. Taylor to get his post-op x-rays.
 [14] And I said, "I don't want to deal with Taylor anymore.
 [15] Do the x-rays."
 [16] And he said, "Well, it will cost \$75."
 [17] And I said, "I don't care. Do the
 [18] x-rays."
 [19] Q: So did Dr. Kallman do an x-ray on Oscar?
 [20] A: Yes, he did.
 [21] Q: Would you please turn to tab number 24 and
 [22] tell me if you can identify this document.
 [23] A: Yes. This is the charge from Willow Creek
 [24] for the x-ray.
 [25] Q: Did you receive this bill from Willow

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[1] outside?
 [2] A: Always. Always.
 [3] Q: Did he leave the home other than to go
 [4] outside?
 [5] A: No.
 [6] Q: How long did you monitor Oscar's
 [7] condition?
 [8] A: It was a couple of days, and then I
 [9] noticed there was a lump on his collar bone, and it
 [10] was probably, oh, an inch to inch-and-a-half in
 [11] diameter. I was very concerned about it, mainly
 [12] because I thought well, maybe Dr. Taylor missed
 [13] something, you know, because a lot of the time, I
 [14] knew, with swelling and whatever, sometimes they can't
 [15] see things on x-rays. I was very, very worried, but I
 [16] was unwilling to take him back to Taylor for care,
 [17] very unwilling. I mean, based on how I was treated,
 [18] being yelled at, you know, not being called telling me
 [19] how he was. So I called my veterinarian, Dr. Kallman,
 [20] at Willow Creek. He told me to bring him in. We'll
 [21] take a look at him.
 [22] Q: What day was this?
 [23] A: The 19th. I think it was the 19th.
 [24] Q: When you took Oscar in to see Dr. Kallman,
 [25] did Dr. Kallman examine Oscar?

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[1] Creek?
 [2] A: Yes.
 [3] MR. ALLRED: Your Honor, I would move to
 [4] admit Division's 24.
 [5] MR. DAHL: No objection.
 [6] THE COURT: Division's Exhibit 24 is
 [7] received and copies may be provided to the Board.
 [8] MR. ALLRED: Thank you, your Honor.
 [9] BY MR. ALLRED:
 [10] Q: Ms. Crocker, would you please tell the
 [11] Board how long Oscar was out of your presence when you
 [12] had him at Willow Creek.
 [13] A: Probably three to five minutes.
 [14] Q: Did you leave Oscar at Willow Creek?
 [15] A: No.
 [16] Q: Did Dr. Kallman perform surgery of any
 [17] kind on Oscar?
 [18] A: No.
 [19] Q: In fact, would you take a look at Exhibit
 [20] 24 and tell me if you see a charge on there for
 [21] anything other than an x-ray.
 [22] A: No, just the x-ray.
 [23] Q: What did Dr. Kallman tell you after he had
 [24] taken the x-ray?
 [25] A: He took the x-ray and brought Oscar back

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[1] in to me and said, "It will be a few minutes for it to
[2] develop." After about 15 minutes, he came back in,
[3] visibly upset, and I'll never forget the words he said
[4] to me, and I quote, "Vicki, I am so sorry."
[5] I mean, my heart fell into my stomach. I
[6] said, "What? What's wrong?"
[7] He put the x-ray up on the lighted board
[8] and said, "The bone is not set." And you could see
[9] the pin going through, crosswise through the bone, not
[10] down through the bone like Taylor had told me it had
[11] been done.
[12] **MR. ALLRED:** Your Honor, I'd like to move
[13] to admit, out of order, out of the order that I've
[14] got, the x-ray that Dr. Kallman took of Oscar. We've
[15] labeled it as Exhibit Number 26.
[16] Your Honor, we ought to go off the record
[17] so we can get the light box set up.
[18] **THE COURT:** That's fine. Off the record.
[19] (Brief interruption)
[20] **THE COURT:** Back on the record. Mr.
[21] Allred, before you display the x-ray to the witness,
[22] Mr. Dahl, any objection?
[23] **MR. DAHL:** No objection.
[24] **MR. ALLRED:** Your Honor, the x-ray bears
[25] the label Willow Creek Veterinary Clinic. It says:

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[1] "Owner, Crocker, Patient, Oscar." Says: "Date, July
[2] 19, 1993." I would move to admit Division's Exhibit
[3] Number 26 into evidence.
[4] **THE COURT:** It is so received. And as you
[5] are located by the illustrator, I'll ask the Board to
[6] relocate so they can view the exhibit while the
[7] witness testifies.
[8] **MR. ALLRED:** Your Honor, if I could just
[9] ask one of the doctors which is the proper way to put
[10] it on the light box. Thank you.
[11] **THE COURT:** Mr. Allred, Mr. Dahl and Dr.
[12] Taylor need to see it, too, so if you need to, tilt it
[13] a little more so that they will be able to see it.
[14] **MR. ALLRED:** I think that will be fine,
[15] your Honor.
[16] **BY MR. ALLRED:**
[17] **Q:** Ms. Crocker, is this the x-ray that Dr.
[18] Kallman showed you on July 19, 1993?
[19] **A:** Yes.
[20] **Q:** And you were in the process of describing
[21] what Dr. Kallman described to you. Could you again
[22] tell us what Dr. Kallman told you?
[23] **A:** He told me that the pin was going in
[24] horizontally instead of, I guess, vertically into the
[25] bone. Dr. Taylor had told me that the pin was down

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[1] through the bone and he had wrapped it with wire.
[2] When Dr. Kallman saw this, he said, "You can see that
[3] the fracture isn't even together." I guess, which is
[4] ununited. He said that the pin is not in the right
[5] way. He was very upset. I mean, he used a bunch of
[6] medical terminology that I didn't really understand.
[7] All I understood was my dog was still messed up.
[8] **Q:** What did Dr. Kallman -
[9] **MR. ALLRED:** Your Honor, I think we're
[10] done with the exhibit.
[11] **THE COURT:** All right. Thank you.
[12] **MR. ALLRED:** Now the Board can take their
[13] seats.
[14] **BY MR. ALLRED:**
[15] **Q:** Ms. Crocker, after Dr. Kallman reviewed
[16] the x-ray with you, what did he recommend?
[17] **A:** He recommended surgery.
[18] **Q:** And did he indicate that he could do that
[19] surgery?
[20] **A:** No. He said the fracture is at least ten
[21] days old. He said that was not within his scope of
[22] expertise or abilities. He said that I would need to
[23] take Oscar to an orthopedic surgeon. And I kind of
[24] laughed, because I didn't know that dogs had
[25] orthopedic surgeons.

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[1] **Q:** Did he recommended an orthopedic surgeon?
[2] **A:** Yes, he did.
[3] **Q:** Who did he recommend?
[4] **A:** Dr. Dale Smith of Sugarhouse Veterinary
[5] Clinic.
[6] **Q:** Did he make arrangements to have Oscar be
[7] seen by Dr. Smith?
[8] **A:** Yes. He asked me to wait with Oscar in
[9] the waiting room, that he would be back. He would
[10] call Dr. Smith. And he come back in the room and
[11] said, "Dr. Smith can see you tomorrow at -" I don't
[12] remember what time it was.
[13] **Q:** And did you then take Oscar and leave
[14] Willow Creek?
[15] **A:** Yes, I did. Well, he gave me the x-ray.
[16] I paid for the x-ray while I was there. I took Oscar
[17] home along with the x-ray, because he wanted Dr. Smith
[18] to see this x-ray. When I got home, I mean, I was
[19] extremely upset. I didn't know what to do. My
[20] husband came home from work. We talked about it and a
[21] comment my husband made to me, I mean it didn't really
[22] phase me at the time.
[23] **MR. DAHL:** Your Honor, I hope my objection
[24] to the hearsay is still -
[25] **THE COURT:** So noted. Go ahead.

[1] **THE WITNESS:** My husband said to me, when
[2] he saw the x-ray he said, "That looks like a 16-penny
[3] nail with the head cut off."

[4] And I laughed. I said, "Yeah, right." I
[5] said, "That's ridiculous."

[6] **BY MR. ALLRED:**

[7] **Q:** Did Oscar go anywhere after you took him
[8] home?

[9] **A:** No, he stayed home. Every time he would
[10] - Oscar likes chairs and pillows, and when he tried
[11] to get off a chair there would be a big yelp or a cry,
[12] and now I know why. The leg wasn't set. And he
[13] wouldn't - he still was very lethargic. The wound
[14] was still oozing all of this stuff. It was getting
[15] all over the blankets, all over the chair. I had to
[16] cover the chair with some towels so that it wouldn't
[17] ruin my chair. The incision, I mean, it looked gross.
[18] It was - I mean, Dr. Kallman had also thought it was
[19] infected.

[20] **Q:** The next morning did you take Oscar to
[21] Sugarhouse Veterinary Hospital?

[22] **A:** Yes, I did.

[23] **Q:** Who saw Oscar at the hospital?

[24] **A:** Dr. Smith.

[25] **Q:** Were you present when Dr. Smith examined

[1] and tell me if you can identify this document.

[2] **A:** Yes. This is the bill from Sugarhouse
[3] Veterinary Hospital for Dr. Smith's services.

[4] **Q:** Did you receive this bill from Sugarhouse
[5] Veterinary Hospital?

[6] **A:** Yes, when I picked Oscar up.

[7] **MR. ALLRED:** Your Honor I'd move to admit
[8] Exhibit Number 25 into evidence.

[9] **THE COURT:** Any objection?

[10] **MR. DAHL:** No objection.

[11] **THE COURT:** Division's Exhibit 25 is
[12] received and copies will be provided to the Board.

[13] **BY MR. ALLRED:**

[14] **Q:** Ms. Crocker, when did you pick Oscar up
[15] from Sugarhouse Veterinary Clinic?

[16] **A:** I believe it was the day after surgery.

[17] **Q:** Did Dr. Smith talk with you when you
[18] picked Oscar up?

[19] **A:** Yes. He told me that - totally opposite
[20] of what Taylor's office told me. He said that he
[21] wanted Oscar down. He said, "If he runs to the door
[22] barking, or, you know, for whatever reason, you know,
[23] just trying to get up," he said, "I want him leashed
[24] to a coffee table or a table or something." He said,
[25] "I want him harnessed when he's going outside so that

[1] Oscar and the x-ray?

[2] **A:** Yes.

[3] **Q:** Did you leave Oscar at Sugarhouse
[4] Veterinary Hospital?

[5] **A:** Yes, I did.

[6] **Q:** What did Dr. Smith tell you regarding the
[7] surgery?

[8] **A:** He told me that because the wound was -
[9] because it was so old, that he needed to - he said
[10] because there were fragments and some other medical
[11] terms I didn't understand, he would have to make a
[12] special plate for Oscar, and that plate would take a
[13] day to make. But he wanted to monitor Oscar. He was
[14] concerned about the infection. He said that he would
[15] need to take bone from his hip to put it into the old
[16] wound so that the tissue, the new tissue would help
[17] the old tissue to grow, I guess, and heal.

[18] **Q:** Do you know what day Dr. Smith performed
[19] the surgery on Oscar?

[20] **A:** He told me that he wanted to keep Oscar
[21] that day. The next day he would have the plate made
[22] and he would operate the next day, I believe it was.

[23] **Q:** Did you know what day that was?

[24] **A:** July 22nd.

[25] **Q:** If you could please turn to tab number 25

[1] he's not walking on the leg." He said, "I want him
[2] quiet and I want him quiet for two weeks. This bone
[3] needs time to heal and the only way we're going to do
[4] it is keep him off it."

[5] **Q:** When did you hear from Dr. Smith again?

[6] **A:** I believe it was a couple of days later.

[7] I think it was - I think it was a Sunday morning or a
[8] Saturday morning. It was about 7:00 in the morning
[9] and the phone rings. I'm not a morning person and I
[10] don't get up that early on the weekend. So I was very
[11] groggy, and I answered the phone and he said, "Vicki,
[12] this is Dr. Smith."

[13] And I said, "Hi, how are you?"

[14] He said, "I'm fine. Where's Oscar?"

[15] And I said - I looked over on the side of
[16] the bed. "He's right here. He's laying on the
[17] floor."

[18] "How is Oscar?"

[19] And I said, "Oscar is fine."

[20] He said, "Are you keeping him down?"

[21] "Yes, I am."

[22] "How does the wound look?" And in
[23] comparison to Dr. Taylor's wound or incision versus
[24] Dr. Smith's incision, Dr. Smith's incision was almost
[25] a perfectly straight line. Dr. Taylor's was not. Dr.

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[1] Taylor's was still oozing from the infection, which
[2] Dr. Smith had done or had given him antibiotic and
[3] said he had done cultures and he would get back with
[4] me on the cultures.

[5] One of the things Dr. Smith said to me
[6] was, "Well, I got back the cultures, and the
[7] antibiotics we've got him on won't work. We've got to
[8] put him on some" quote, unquote, "some big-gun
[9] antibiotics." And I said okay. And he goes, "Vicki,
[10] I've got something to tell you." He says, "I've been
[11] fighting and struggling with this for two days now."

[12] And I said, "What?" I said, "The fact
[13] that Taylor didn't set the leg and the pin's in
[14] wrong?"

[15] And he says, "No. That's only the half of
[16] it."

[17] I said, "What? What's wrong?"

[18] He says, "I really struggled and I didn't
[19] know whether to tell you, but then I decided that
[20] because it is your dog, you have a right to know." He
[21] said that when he got in there for surgery that, in
[22] fact, the pin was a nail, and not only was it a nail,
[23] it was a rusty nail.

[24] Q: Ms. Crocker, when you were taking care of
[25] Oscar after July 17th to July 21, did you notice any

[1] A: Allan Troester, which is my dad's name.

[2] Q: And that's your dad's regular
[3] veterinarian; is it not?

[4] A: Yes and no. He had taken animals to Dr.
[5] Taylor, but my mom had kind of switched veterinarians
[6] in between, but not because of this incident.

[7] Q: Did you tell Dr. Kallman or Dr. Smith to
[8] also take a look at the jaw that had been, quote,
[9] "wired"?

[10] A: Dr. Kallman did, and said because he was
[11] so concerned about the leg not being done, he was
[12] wondering if the jaw had not been done. He took a
[13] look at Oscar's jaw and his bite, and said it was
[14] okay.

[15] Q: Now, let's get some dates established
[16] here. Is it July the 16th that you removed the dog
[17] from Brookside?

[18] A: No, I believe it was the 17th.

[19] Q: And was that in the morning?

[20] A: No, it was in the afternoon.

[21] Q: And what date did you take the dog to Dr.
[22] Kallman?

[23] A: The 19th.

[24] Q: So you had the dog home for two to three
[25] days?

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[1] other incisions on Oscar's leg other than that made by
[2] Dr. Taylor?

[3] A: No.

[4] Q: So there was only the one incision on
[5] Oscar's leg when you took Oscar to Sugarhouse
[6] Veterinary Hospital?

[7] A: Correct.

[8] Q: Ms. Crocker, what is Oscar's condition
[9] today?

[10] A: He got autoimmune hemolytic anemia, and we
[11] had to have him put to sleep.

[12] Q: When did you have him put down?

[13] A: Yes. When? In October of last year.

[14] Q: So in October of 1995 you had to have
[15] Oscar put down?

[16] A: Right.

[17] MR. ALLRED: Your Honor, I believe that's
[18] all the testimony I have, or questions I have for Ms.
[19] Crocker at this time.

[20] THE COURT: Cross-examination, Mr. Dahl.

[21] MR. DAHL: Thank you, your Honor.

[22] CROSS-EXAMINATION

[23] BY MR. DAHL:

[24] Q: Ms. Crocker, under what name was the dog
[25] admitted to Brookside?

[1] A: Two days, yes.

[2] Q: Was the incision sewed?

[3] A: Yes.

[4] Q: What's your husband's occupation?

[5] A: An estimator.

[6] Q: Did you have a light like this to look at
[7] the x-ray?

[8] A: No. Oh, you're asking what his occupation
[9] was for him to determine whether that was a 16-penny
[10] nail?

[11] Q: Yes.

[12] A: He has been in construction, a glazer, for
[13] almost the full twenty years that we've been married.
[14] He's just recently gone into estimating.

[15] Q: So you didn't have a light?

[16] A: No. We held it up to our florescent
[17] light.

[18] Q: And through that picture he was able to
[19] tell you that was a 16-penny nail?

[20] A: He was joking when he said it. I don't
[21] think he really thought it was.

[22] Q: Did he say, "That's a 16-penny nail"?

[23] A: He says, "It looks like a 16-penny nail
[24] with the head cut off."

[25] Q: Now, you say personnel at Brookside told

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[1] you to move the dog. Who was that?
[2] **A:** No, they did not tell me that. That was
[3] my decision.
[4] **Q:** No, I mean to walk the dog.
[5] **A:** One of the girls. She has long, dark
[6] hair. She said, "Don't baby him. Make him work the
[7] leg."
[8] **Q:** Was she a doctor?
[9] **A:** I don't believe so, but I don't know.
[10] **Q:** While the dog was home with you, did you
[11] examine the incision?
[12] **A:** I looked at it, yes.
[13] **Q:** Did you feel it?
[14] **A:** No. It looked sore. I didn't want to
[15] hurt him.
[16] **Q:** And am I correct that you filed a lawsuit
[17] against Dr. Taylor for malpractice?
[18] **A:** Yes.
[19] **Q:** Now, who told you to file a complaint?
[20] **A:** Dr. Smith and I had a conversation when I
[21] picked - or when he called me that morning and he
[22] asked me where Oscar was and how he was. He said to
[23] me, "Vicki, this is wrong. I am so appalled by what
[24] he's done." And he said you had mentioned - I had
[25] mentioned to him when I first took Oscar in there

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[1] about who would I make a complaint to? And would you
[2] back me up, in essence? And he told me in essence no,
[3] he would not back me up. He had said when he called
[4] me, "Vicki, you need to make this complaint." And he
[5] said, "If you don't do it, I will, because I'm so
[6] upset about this." And he said, "No, that is not even
[7] an option. You make the complaint and I will back you
[8] up 110 percent."
[9] **Q:** When you were calling up Brookside after
[10] you had learned the animal had been taken to
[11] Brookside, were they having difficulty finding records
[12] under your name?
[13] **A:** No. I always referred to Oscar as Allan
[14] Troester's dog, because I knew that was the name he
[15] was brought in under.
[16] **Q:** So you referred to him as Allan Troester's
[17] dog?
[18] **A:** Only for -
[19] **Q:** Identification?
[20] **A:** Yeah.
[21] **Q:** Do you know where Dr. Kallman is?
[22] **A:** He's in Omaha, Nebraska, last time I
[23] heard.
[24] **Q:** When did he leave; do you know?
[25] **A:** It was shortly after. I believe later

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[1] 1993, or 1994, early 1994.
[2] **Q:** Let's see. The year we're talking about
[3] here is 1993; is that correct?
[4] **A:** Correct.
[5] **MR. DAHL:** That's all.
[6] **THE COURT:** Redirect?
[7] **MR. ALLRED:** No, your Honor.
[8] **THE COURT:** Any questions by the Board of
[9] this witness? Dr. Taylor?
[10] **DR. TAYLOR:** Do you know if they saved
[11] that intramedullary pin?
[12] **THE WITNESS:** Yes, they did.
[13] **DR. TAYLOR:** Do they have it or will that
[14] be in evidence?
[15] **THE COURT:** I believe it will probably be
[16] referenced through another witness. Dr. Rees?
[17] **DR. REES:** I have no questions.
[18] **THE COURT:** Dr. Brown?
[19] **DR. BROWN:** No questions.
[20] **THE COURT:** Mr. Sperry?
[21] **MR. SPERRY:** No.
[22] **THE COURT:** Is this witness subject to
[23] recall, Mr. Allred?
[24] **MR. ALLRED:** No, your Honor.
[25] **THE COURT:** Mr. Dahl, do you anticipate

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[1] recall?
[2] **MR. DAHL:** No, I don't believe so, your
[3] Honor.
[4] **THE COURT:** Very well. Ms. Crocker,
[5] you're free to leave or stay as your choice may be.
[6] Thank you.
[7] **THE WITNESS:** Thank you.
[8] **THE COURT:** Mr. Allred, your next witness.
[9] **MR. ALLRED:** Your Honor, Dr. Dale Smith
[10] was involved in surgery this morning. Lori Larsen has
[11] just recently been in communication with him and he's
[12] on his way.
[13] **THE COURT:** Do you expect him shortly?
[14] **MS. LARSEN:** He's expected to be here at
[15] quarter to 10:00, so any minute here.
[16] **THE COURT:** Let's take a 15-minute recess
[17] until 10:00, anticipating the arrival of Dr. Smith.
[18] We'll be back in session at 10:00.
[19] (Recess)
[20] **THE COURT:** Back on the record after a
[21] recess of 15 minutes. Mr. Allred, your next witness.
[22] **MR. ALLRED:** Your Honor, the Division
[23] would call Dr. Dale Smith.
[24] **THE COURT:** Doctor, would you raise your
[25] right hand, please.

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[1] (The witness was sworn.)
[2] **THE WITNESS:** Can I get a cup of water?
[3] **THE COURT:** Certainly.
[4] **MR. ALLRED:** Your Honor, I'll take care of
[5] that.
[6] **THE COURT:** Mr. Allred?
[7] **DIRECT EXAMINATION**
[8] **BY MR. ALLRED:**
[9] **Q:** Dr. Smith, would you please state and
[10] spell your name for the record.
[11] **A:** Dale Smith, D-a-l-e S-m-i-t-h.
[12] **Q:** Dr. Smith, what is your profession?
[13] **A:** I'm a veterinarian.
[14] **Q:** Are you licensed to practice veterinary
[15] medicine in the State of Utah?
[16] **A:** Yes, I am.
[17] **Q:** When were you licensed to practice?
[18] **A:** In 1991 in the State of Utah.
[19] **Q:** Are you licensed to practice medicine in
[20] any other state?
[21] **A:** To be honest, I don't know if my licenses
[22] are still current in other states, but I have been
[23] licensed in several other states.
[24] **Q:** When were you licensed in those other
[25] states?

[1] **Q:** Where are you currently employed?
[2] **A:** I own my own practice. It's a veterinary
[3] orthopedic service.
[4] **Q:** Do you have a hospital?
[5] **A:** I don't. It's a mobile service.
[6] **Q:** Have you examined or treated a cocker
[7] spaniel owned by Vicki Crocker by the name of Oscar?
[8] **A:** Yes, I have.
[9] **Q:** Did you see Oscar in July of 1993?
[10] **A:** I'd need to refer to the record on that.
[11] I'm not sure.
[12] **Q:** That's fine.
[13] **THE COURT:** Doctor, just so the record
[14] might reflect it, can you indicate what you're
[15] reviewing now?
[16] **THE WITNESS:** Yes, I'm reviewing the
[17] medical record from Sugarhouse Veterinary Hospital,
[18] which is where I was employed at that time.
[19] **THE COURT:** Thank you.
[20] **THE WITNESS:** I saw Oscar for the first
[21] time on July 20th, 1993.
[22] **BY MR. ALLRED:**
[23] **Q:** Who brought Oscar into Sugarhouse
[24] Veterinary Hospital?
[25] **A:** Vicki Crocker brought the dog in.

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[1] **A:** In 1985 I graduated from veterinary school
[2] and was licensed in Colorado and Maryland and
[3] California at that time.
[4] **Q:** Would you just take a moment and give us
[5] your background for your education, starting with
[6] college and ending with veterinary college.
[7] **A:** I went to college at the University of
[8] Utah and graduated in 1981 in biology. I went to
[9] Colorado State University Veterinary School, graduated
[10] in 1985 and have been in private practice ever since.
[11] **Q:** Do you belong to any professional groups?
[12] **A:** I do.
[13] **Q:** Could you tell us what groups you belong
[14] to?
[15] **A:** I belong to the AVMA. I belong to the
[16] American Animal Hospital Association. I belong to the
[17] Veterinary Orthopedic Society. I belong to the Salt
[18] Lake Chapter of the UVMA and I belong to the UVMA.
[19] **Q:** Do you have an area or areas of special
[20] interest?
[21] **A:** My practice is limited to orthopedic
[22] surgery, diagnosis and surgery.
[23] **Q:** How long has your practice been limited to
[24] orthopedic surgery?
[25] **A:** Approximately two-and-a-half years.

[1] **Q:** Did you speak with Vicki Crocker?
[2] **A:** I did.
[3] **Q:** Does good veterinary practice suggest or
[4] require a veterinarian to obtain a history from the
[5] owner of an animal that has been recently treated by
[6] another veterinarian?
[7] **A:** Yes, it does.
[8] **Q:** Did you obtain a history from Vicki
[9] Crocker?
[10] **A:** I did.
[11] **Q:** Could you describe to the Board and the
[12] Court the history that you obtained from Ms. Crocker?
[13] **A:** The dog had been - had a humeral fracture
[14] that was repaired on 7/19/93 by Dr. Leo Taylor.
[15] **Q:** Did you have any records to review when
[16] Ms. Crocker brought Oscar in?
[17] **A:** I had radiographs that were taken by Dr.
[18] Kallman at Willow Creek Veterinary Hospital that she
[19] brought along with her.
[20] **Q:** Dr. Smith, State's Exhibit Number 26 has
[21] previously been admitted into evidence.
[22] **MR. ALLRED:** Your Honor, I think we'll
[23] want the Board to come around.
[24] **THE COURT:** Okay, I'll need Dr. Denzel
[25] Taylor's help in putting it up to the light.

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[1] **THE WITNESS:** Actually, Paul, I would flip
[2] it 180 degrees upside down from here. One more turn.
[3] **MR. ALLRED:** You can tell I've been to
[4] medical school. I have difficulty in getting that to
[5] stay on the light box
[6] **BY MR. ALLRED:**
[7] **Q:** Dr. Smith, do you recognize that exhibit?
[8] **A:** I do.
[9] **Q:** Is this, in fact, the radiograph that
[10] Vicki Crocker brought with her from Dr. Kallman?
[11] **A:** It appears to be the radiograph.
[12] **Q:** Did you review that radiograph when Oscar
[13] was brought in?
[14] **A:** I did.
[15] **Q:** Can you describe to the Board when you saw
[16] it what the radiograph revealed?
[17] **A:** There is a comminuted humeral fracture of
[18] the right humerus, and it was attempted to be repaired
[19] with a single intramedullary pin.
[20] **Q:** Does the pin appear to be properly placed?
[21] **A:** No, it doesn't.
[22] **Q:** Could you describe to the Board why it's
[23] not properly placed?
[24] **A:** There are several things wrong, I think,
[25] with the placement of the pin. First of all, the pin

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[1] should enter more proximally, or more toward the top
[2] of the bone, and traverse through the center of the
[3] bone. As it is, it's entering not quite mid-shaft,
[4] maybe just a little bit above mid-shaft, and going
[5] diagonal across the bone and really not engaging any
[6] of the distal fragments.
[7] **Q:** How many fragments can you detect from
[8] reviewing the radiograph?
[9] **A:** There is at least a proximal piece, a
[10] distal piece and a large butterfly fragment.
[11] **Q:** You mentioned it appears it's a single
[12] intramedullary pin. Would repairing this fracture
[13] require more than just a single pin?
[14] **A:** Certainly the way the fracture looks at
[15] this point when this radiographic was taken, a single
[16] intramedullary pin would not be adequate for fixation.
[17] **Q:** Does the pin appear to be the right size?
[18] **A:** No. It's small for this type of a
[19] fracture and this type of a bone.
[20] **Q:** Are there any other appliances present in
[21] the radiograph?
[22] **A:** Not visibly on the radiograph.
[23] **Q:** Would other appliances appear on the
[24] radiograph if they were, in fact, present?
[25] **A:** Certainly any other metal would appear on

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[1] the radiograph.
[2] **Q:** What did you do after you looked at the
[3] radiograph?
[4] **MR. ALLRED:** Your Honor, I think we're
[5] done with it.
[6] **THE COURT:** All right. Thank you.
[7] **BY MR. ALLRED:**
[8] **Q:** Did you examine Oscar after you reviewed
[9] the radiograph?
[10] **A:** I can't remember the sequence of events,
[11] whether or not I looked at the x-ray first or the dog
[12] first. But I did examine Oscar and review the
[13] radiograph at that time. The next course of events
[14] was to discuss that additional surgery would be
[15] required to repair the fracture, that we would need to
[16] remove the existing pin and most likely put a bone
[17] plate on it to repair the fracture.
[18] **Q:** Did Ms. Crocker leave Oscar with you after
[19] you examined him?
[20] **A:** Again, I'm going to have to refer to the
[21] record. Yes.
[22] **Q:** Did you examine the incision site on the
[23] leg?
[24] **A:** I made no comments about the incision on
[25] the record, so I have to assume that meant there were

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[1] no problems with the incision.
[2] **Q:** Do you recall if there was more than one
[3] incision on the leg?
[4] **A:** I don't recall.
[5] **Q:** When did you operate on Oscar?
[6] **A:** The following day, 7/21/93.
[7] **Q:** Would you please explain to the Board the
[8] procedure that you followed when you operated on
[9] Oscar's leg.
[10] **A:** I'm not sure in what detail they want.
[11] **Q:** Why don't you go ahead and -
[12] **A:** Full detail?
[13] **Q:** Full detail.
[14] **A:** Can I read from the record?
[15] **THE COURT:** Will this exhibit be offered,
[16] Mr. Allred?
[17] **MR. ALLRED:** No, your Honor, we're not
[18] going to have it admitted.
[19] **THE COURT:** I'll just allow the witness to
[20] refresh with it, and on cross-examination if it can be
[21] made available for Mr. Dahl, he can use it also.
[22] Go ahead, Doctor.
[23] **THE WITNESS:** A lateral approach was made
[24] to the right humerus. I removed the pin from the
[25] previous repair. At that time I noted that the pin

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[1] actually did not look like a standard stainless steel
[2] intramedullary pin; that it actually looked more like
[3] a nail to me in appearance. I had ordered a special
[4] plate to help repair this fracture because there
[5] wasn't a lot of bone to work with, and I didn't think
[6] any of my standard plates would allow adequate
[7] fixation. So I had ordered a special plate the day
[8] before and had gotten that in, and it was - the way I
[9] described it here is a nine-hole 3.5 millimeter custom
[10] plate, and it had additional holes on the end to allow
[11] me to place more screws than a standard plate would
[12] allow me to place.

[13] I did take cultures and sensitivities
[14] interoperatively in case there were any bacteria in
[15] the area. There was one large butterfly fragment
[16] which was secured to the proximal fragment with two
[17] 2.7 millimeter screws placed in like fashion, and
[18] again placed that fragment to the distal fragment with
[19] other 2.7 millimeter lag screw.

[20] In addition, there was even a smaller
[21] fragment that wasn't visible on the radiographs, and
[22] that was reattached with another 2.7 millimeter screw.
[23] That one, however, I placed through the bone plate,
[24] not in like fashion. The bone plate was applied, and
[25] I harvested a cancellous bone graft from the ilium and

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[1] received. The witness may require the opportunity to
[2] observe the exhibit during his further testimony, but
[3] before we get to that I'd like to pass it through the
[4] Board initially, if that's all right.

[5] **MR. ALLRED:** That would be okay, your
[6] Honor.

[7] **THE COURT:** Mr. Allred, the Board has had
[8] the opportunity to initially review the exhibit.

[9] **BY MR. ALLRED:**

[10] **Q:** Dr. Smith, what did you do with Exhibit
[11] Number 27 when you removed it from Oscar?

[12] **A:** Initially I handed it to my assistant and
[13] instructed her to place it in my desk drawer.

[14] **Q:** Did it stay in your desk drawer?

[15] **A:** It did.

[16] **Q:** When did you remove it from the desk
[17] drawer?

[18] **A:** Stayed in my desk drawer until I gave it
[19] to Lori Larsen. I don't remember when that was, but
[20] it was several months later that that was requested
[21] from Lori Larsen.

[22] **MR. ALLRED:** Your Honor, I'm going to ask
[23] Dr. Smith to compare Exhibit Number 27 with the object
[24] that appears in Exhibit Number 26, so I think we need
[25] to have the Board again step down.

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[1] packed it into the area. We flushed the surgical site
[2] with diluted Betadine and closed the skin incision.

[3] I instructed - in my notes here I said
[4] that I instructed the owners to have strict exercise
[5] restrictions until postoperative films would be taken
[6] at four weeks. We then placed the dog on a
[7] combination of injectable ampicillin and amikacin and
[8] gave it an injection of Torbutrol for postoperative
[9] pain. That was the entire entry for that day.

[10] **BY MR. ALLRED:**

[11] **Q:** And when did you release Oscar to the
[12] Crockers?

[13] **A:** Oscar was discharged on 7/22/93.

[14] **Q:** Dr. Smith, I've handed you what I'm going
[15] to mark as State's Exhibit Number 27. I'll show it to
[16] Mr. Dahl before I hand it to you. I've handed you
[17] what has been marked as State's Exhibit Number 27 and
[18] ask you if you can identify that exhibit.

[19] **A:** This is the pin that I removed from Oscar
[20] at the time of surgery.

[21] **MR. ALLRED:** Your Honor, I would move to
[22] admit Exhibit Number 27 into evidence.

[23] **THE COURT:** Any objection?

[24] **MR. DAHL:** No objection.

[25] **THE COURT:** Division Exhibit Number 27 is

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[1] **THE COURT:** All right.

[2] **THE WITNESS:** Can I remove this from the
[3] bag?

[4] **MR. ALLRED:** Yes, you can remove it from
[5] the bag.

[6] **THE COURT:** Doctor, during this process
[7] you may be demonstrating some of your testimony for
[8] purposes of the Board, Mr. Allred, Mr. Dahl, Dr.
[9] Taylor. If you will describe what you're doing so the
[10] court reporter, as you do it, can make a record. Go
[11] ahead.

[12] **THE WITNESS:** I removed the pin from the
[13] bag, and I'm just going to hold it up to the
[14] radiograph to compare the length of the pin. It
[15] appears that on the radiograph the pin is just
[16] slightly larger, and that would be expected. There's
[17] about a 10 to 15 percent magnification on
[18] radiographs. And it looks to be the same pin.

[19] **BY MR. ALLRED:**

[20] **Q:** Do the characteristics you see on the
[21] actual nail show up in the radiograph, that is the
[22] blunt end of the pin?

[23] **A:** It does. Actually, on the blunt end of
[24] the pin you can see where it's been cut off and
[25] there's a pinched end, and if you look closely you can

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[1] actually see the pinched end right there, and the
[2] trocar point or the pointed end looks like a pointed
[3] end and certainly is consistent with it.
[4] **MR. ALLRED:** I think that's all the
[5] demonstration we have for now, your Honor.
[6] **THE COURT:** All right.
[7] **BY MR. ALLRED:**
[8] **Q:** Dr. Smith, do you have an opinion as to
[9] whether Exhibit Number 27 is the same object that
[10] appears in the radiograph, Exhibit Number 26?
[11] **A:** It looks like the same object.
[12] **Q:** What other things did you observe after
[13] you performed the surgery or during the surgery on
[14] Oscar?
[15] **A:** I can't think of anything significant at
[16] this point.
[17] **Q:** Then let me direct your attention. Did
[18] you find any stainless steel wire around the bone?
[19] **A:** There was no Serpiloid wire. There was no
[20] stainless steel wire.
[21] **Q:** Was there anything else present other than
[22] the pin?
[23] **A:** I can't remember if there was any sutures
[24] that I removed, but at the time there was nothing
[25] significant to note in the operative report.

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[1] **Q:** In your professional opinion, would the
[2] procedure that you described or your repair of the
[3] fracture be appropriate procedure?
[4] **A:** It is an appropriate procedure. There
[5] would be other ways to repair the same fracture.
[6] **Q:** Do you have an opinion as to the attempted
[7] repair?
[8] **A:** The repair that I'm looking at now on the
[9] viewer?
[10] **Q:** Right.
[11] **A:** The repair certainly is not adequate for
[12] the type of fracture.
[13] **Q:** In your professional opinion, would the
[14] attempted repair that appears in Exhibit 26 fall below
[15] the standard of practice?
[16] **A:** I believe it would.
[17] **Q:** In your professional opinion, would the
[18] attempted repair that appears in Exhibit Number 26 be
[19] an extreme departure from the standard of practice?
[20] **A:** I believe it would.
[21] **Q:** Would you please turn to tab 28 in the
[22] witness book.
[23] **MR. ALLRED:** Your Honor, this is one of
[24] the exhibits that Mr. Dahl has previously stipulated
[25] can be admitted into evidence.

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[1] **THE COURT:** Any objection?
[2] **MR. DAHL:** No objection.
[3] **THE COURT:** Division Exhibit 28 is
[4] received and copies may be provided to the Board.
[5] **BY MR. ALLRED:**
[6] **Q:** Dr. Smith, if you can just take a moment
[7] and look at Exhibit Number 28, and then I'll ask you
[8] some questions.
[9] **THE COURT:** I may have said 27. I meant
[10] 28. Thank you.
[11] **THE WITNESS:** Okay.
[12] **BY MR. ALLRED:**
[13] **Q:** Does this exhibit look like what you would
[14] expect in reviewing a patient's history?
[15] **THE COURT:** Mr. Allred, before the doctor
[16] answers, do you have a copy for the Board?
[17] **MR. ALLRED:** I apologize, your Honor.
[18] **THE COURT:** Division's Exhibit 28, a copy
[19] has been provided to each board member. Mr. Allred?
[20] **BY MR. ALLRED:**
[21] **Q:** Dr. Smith, do I need to repeat the
[22] question?
[23] **A:** Please do.
[24] **Q:** Dr. Smith, is this the kind of document
[25] you would expect if you were to look at a patient's

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[1] history?
[2] **A:** To me this is more of an invoice than a
[3] medical record.
[4] **Q:** Would you find this helpful if it were
[5] given to you after an animal had been treated by Dr.
[6] Taylor?
[7] **A:** Only with respect to the charges that were
[8] involved, but not at all with the treatment that was
[9] involved.
[10] **MR. ALLRED:** Your Honor, that's all the
[11] questions I have.
[12] **THE COURT:** Mr. Dahl, cross-examination.
[13] **MR. DAHL:** Thank you, your Honor.
[14] **CROSS-EXAMINATION**
[15] **BY MR. DAHL:**
[16] **Q:** What hospital was it that you were working
[17] for at the time you performed this surgery?
[18] **A:** Sugarhouse Veterinary Hospital.
[19] **Q:** And then did you move to another hospital
[20] after that?
[21] **A:** I did.
[22] **Q:** Which one was that?
[23] **A:** I opened my own practice January 1st,
[24] 1996.
[25] **Q:** So you opened your own practice right

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[1] after you left Sugarhouse?
[2] **A:** That's correct.
[3] **Q:** When you worked at Sugarhouse, did they
[4] have computers?
[5] **A:** Yes.
[6] **Q:** Did you have access to putting medical
[7] information on the computer?
[8] **A:** We used the computer for -- "we" meaning
[9] at Sugarhouse -- for keeping track of clients and our
[10] patients and the charges that are incurred, but not --
[11] the medical record does not actually get entered onto
[12] the computer. It is a written medical record.
[13] **Q:** And do you keep that in your own file?
[14] **A:** The file is at Sugarhouse Veterinary
[15] Hospital.
[16] **Q:** I see. So this document that you
[17] testified to on State's Exhibit 28, is that similar to
[18] what is placed on the computer at Sugarhouse?
[19] **A:** It is similar to our invoice. It's not
[20] exactly the same, but it's the same sort of setup.
[21] **Q:** So when you talk about medical history,
[22] that's the notes that the veterinarian or surgeon
[23] makes himself and puts in a separate file?
[24] **A:** That's correct.
[25] **Q:** Did you call up Dr. Taylor for his notes

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[1] on this case?
[2] **A:** I did not.
[3] **Q:** Would you have thought that was important?
[4] **A:** I didn't think it was necessary.
[5] **Q:** Of course, Dr. Taylor will testify that
[6] that is not the pin that he put in there. How would
[7] you have put a pin like that in there, anyway?
[8] **A:** I can speculate if you would like me to.
[9] **Q:** Yes.
[10] **A:** It appears that the pin enters on the
[11] medial aspect of the mid to proximal portion of the
[12] humerus and traverses diagonally across the mid-shaft
[13] of the bone.
[14] **Q:** Looking at that radiograph, can you tell
[15] where the skin line is on the animal?
[16] **A:** Can you see the edge of the skin? Yes,
[17] you can.
[18] **Q:** Where is the edge of the skin?
[19] **A:** Do you want me to stand up and point to
[20] it?
[21] **Q:** Please. And describe it to the Board.
[22] **MR. ALLRED:** Your Honor, perhaps we can
[23] have the Board --
[24] **THE COURT:** I think what we can do is if
[25] you'll show Mr. Dahl first and then just tilt the

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[1] screen so the Board can see it also.
[2] **THE WITNESS:** If you looked at the edge of
[3] where the black starts to turn gray, the edge of the
[4] skin line is right here on the cotyl aspect, and right
[5] here on the cranial aspect.
[6] **THE COURT:** Can you just show the Board,
[7] too, Doctor?
[8] **THE WITNESS:** Right here along the cotyl
[9] aspect and following the line right here on the
[10] cranial aspect.
[11] **THE COURT:** Thank you.
[12] **BY MR. DAHL:**
[13] **Q:** Was the pin anchored in the fourth bone?
[14] **A:** When I took the pin out surgically, it was
[15] anchored in the cortex of the proximal fragment.
[16] **Q:** Normal practice when you use a surgical
[17] pin, is that pin generally positioned so that after
[18] recovery the pin can be easily removed without some
[19] major type of incision?
[20] **A:** Usually the pin is cut off. There are
[21] different ways to do it, but generally the pin is cut
[22] off close to the bone but with enough exposed that it
[23] can be retrieved.
[24] **Q:** And those pins are easily retrieved; are
[25] they not?

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[1] **A:** They're not always easily retrieved, but
[2] the hope is you can go in and grab it and retrieve
[3] it.
[4] **Q:** I want to ask you a hypothetical
[5] question. If you had a pin like this inserted and
[6] removed, could someone have put in, for particular
[7] reasons, a 16-penny nail with the head cut off?
[8] **A:** Certainly it's possible.
[9] **Q:** I don't know if you can see this. What
[10] I'm holding in my hand, is that what you would call a
[11] 16-penny nail?
[12] **A:** I wouldn't know.
[13] **Q:** Did you describe this to Vicki, that that
[14] was a 16-penny nail with the head cut off?
[15] **A:** I certainly never described it as a
[16] 16-penny nail, because I wouldn't know what size a
[17] 16-penny nail was. At the time that I first looked at
[18] the radiograph I had no idea that this was anything
[19] other than a standard stainless steel intramedullary
[20] pin.
[21] **Q:** Would you repeat that again? You, as a
[22] veterinarian, looking at that pin on that radiograph,
[23] you could not tell that was a 16-penny nail with the
[24] head cut off?
[25] **A:** No.

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[1] MR. DAHL: I have no further questions.
[2] THE COURT: Redirect, Mr. Allred?
[3] MR. ALLRED: Your Honor, I have some
[4] questions for Dr. Smith.
[5] REDIRECT EXAMINATION
[6] BY MR. ALLRED:
[7] Q: Dr. Smith, when you examined Oscar, you
[8] testified that you had available State's Exhibit
[9] Number 26, the radiograph. Did you have any other
[10] radiographs available at the time you examined Oscar?
[11] A: No, I didn't.
[12] Q: Since your treatment of Oscar, have you
[13] had an opportunity to look at the x-ray taken by Dr.
[14] Taylor?
[15] A: No.
[16] Q: So you've never seen that x-ray?
[17] A: I've never seen that.
[18] MR. ALLRED: Your Honor, I have an x-ray
[19] taken of Oscar at Brookside Animal Hospital, and I
[20] need to find out from Mr. Dahl if he would agree that
[21] it can be admitted into evidence.
[22] MR. DAHL: No objection.
[23] MR. ALLRED: Your Honor, I believe we're
[24] up to - well, the next exhibit that - I'd like to
[25] have this marked as Exhibit Number 30.

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[1] THE COURT: 30. So identified.
[2] MR. ALLRED: Your Honor, I would move that
[3] Exhibit 30 be admitted into evidence.
[4] THE COURT: Any objection?
[5] MR. DAHL: No objection.
[6] THE COURT: It is so received as
[7] indicated.
[8] BY MR. ALLRED:
[9] Q: Dr. Smith, I'm going to put Exhibit Number
[10] 30 onto the light box, and if you can assist me in the
[11] proper way to orient it.
[12] A: I'm not sure there is going to be a
[13] standard way.
[14] MR. ALLRED: Your Honor, if we could have
[15] the Board review the x-ray as Dr. Smith testifies.
[16] BY MR. ALLRED:
[17] Q: Dr. Smith, if you could just explain to
[18] the Board what you see in this x-ray.
[19] A: The radiograph shows that there is a
[20] fracture of the humerus in here, and I believe there's
[21] a fracture of the mandible at this level right here.
[22] Q: In your opinion, is this radiograph
[23] sufficiently clear to have an opinion on the extent of
[24] the injury?
[25] A: I think with respect to the mandibular

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[1] fracture, it's accurate. I certainly would want to
[2] take additional radiographs of the humerus. It
[3] doesn't show the entire humerus, for one. And I'd
[4] want a second view to see if there were other
[5] complications that wouldn't be able to be seen on the
[6] single view of the humerus.
[7] MR. ALLRED: Your Honor, that's all the
[8] questions I have of this witness with respect to the
[9] radiograph.
[10] THE COURT: Thank you.
[11] BY MR. ALLRED:
[12] Q: Dr. Smith, was there any evidence when you
[13] opened Oscar's leg that another pin had been removed
[14] other than the one you removed?
[15] A: No.
[16] Q: And your opinion is that the pin that was
[17] placed in Oscar's leg was inadequate both in size and
[18] material?
[19] MR. DAHL: I'm going to object as to his
[20] opinion on that. He's testified as to what he found.
[21] THE COURT: I think he's already testified
[22] along those lines, Mr. Allred. If you're asking a
[23] different question, go ahead.
[24] MR. ALLRED: No, your Honor, I'll strike
[25] the question.

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[1] THE COURT: Okay. Further recross, Mr.
[2] Dahl?
[3] MR. DAHL: No, your Honor.
[4] THE COURT: Any questions by the Board of
[5] this witness? Dr. Taylor?
[6] DR. TAYLOR: Was there any evidence when
[7] you went in there of a track of a pin going all the
[8] way up through the humerus where another pin could
[9] have been?
[10] THE WITNESS: There wasn't, but to be
[11] honest I wasn't evaluating for that.
[12] THE COURT: Dr. Rees?
[13] DR. REES: Just there was one incision
[14] that you dealt with?
[15] THE WITNESS: That is correct.
[16] DR. REES: The previous incision that was
[17] put there by Dr. Taylor?
[18] THE WITNESS: I can't recall if when I
[19] made my incision, I made a separate incision or if I
[20] went in through the previous incision. But at the
[21] time there was only one scar.
[22] THE COURT: Dr. Brown?
[23] DR. BROWN: Do you recall where that
[24] incision was?
[25] THE WITNESS: I don't.

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[1] THE COURT: Mr. Sperry?
[2] MR. SPERRY: Yes. If the original pin was
[3] properly inserted, could it migrate out of the shaft
[4] and end up on the angle that it shows?
[5] THE WITNESS: The pin was well anchored in
[6] the cortex where I had removed it from. There was no
[7] evidence that there was any migration at all.
[8] MR. SPERRY: And how do you insert a pin?
[9] Do you hammer it? Is it drilled?
[10] THE WITNESS: It can be either drilled
[11] with a power drill or it can be placed with what's
[12] called a handchuck, which is just a device that
[13] actually holds the pin straight and tight while you
[14] drive it by hand.
[15] MR. SPERRY: And it's your opinion that
[16] the pin that was put in by Dr. Taylor was too small
[17] for the extent of the injuries; is that it?
[18] THE WITNESS: If that is the only pin that
[19] is used, yes, I think it is too small. If it were to
[20] be used in combination with other types of fixation,
[21] it might be adequate.
[22] MR. SPERRY: And you testified that you
[23] didn't think it was necessary to call Dr. Taylor
[24] before you started on the surgery. Why was that?
[25] THE WITNESS: The referral to me came from

[1] alluded to having Ms. Crocker bring Oscar back for
[2] postoperative x-rays?
[3] A: That's correct.
[4] Q: Did Ms. Crocker bring Oscar back?
[5] A: Yes, she did.
[6] Q: And do you take postoperative x-rays?
[7] A: On several occasions.
[8] Q: What is the purpose of taking
[9] postoperative x-rays?
[10] A: Well, certainly the immediate
[11] postoperative x-rays are to make sure that everything
[12] was put back together the way you had intended it to
[13] be, and then the subsequent postoperative x-rays are
[14] to follow to make sure that the repair is holding and
[15] it's starting to heal.
[16] Q: In your opinion, is it appropriate to take
[17] postoperative x-rays after the surgery?
[18] A: I think that it is imperative if you're
[19] going to place any devices inside the body to repair a
[20] fracture.
[21] Q: Are you able at the time you performed the
[22] surgery to conclude whether your repair has been
[23] successful?
[24] A: I'm sorry, repeat the question.
[25] Q: Are you able at the time you perform the

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[1] Dr. Kallman, and I felt like what I could see on the
[2] radiograph and in examination was enough to proceed
[3] with surgery. Of course, at the time I didn't have
[4] any idea that it wasn't an intramedullary pin, which I
[5] discovered interoperatively. And once the fracture
[6] was repaired, to be honest I took a day or two to sort
[7] of digest what had happened, and didn't say anything
[8] to anybody for a couple of days, at which time I did
[9] report the incident to Vicki Crocker.
[10] THE COURT: Yes, Dr. Brown?
[11] DR. BROWN: Do you remember what organism
[12] you withdrew from the surgical site?
[13] THE WITNESS: The culture sensitivity we
[14] grew coagulates two organisms: Coagulates positive
[15] staph and cepacia pneumoniae. Do you need sensitivity
[16] to those?
[17] DR. BROWN: No.
[18] THE WITNESS: It grew two organisms.
[19] THE COURT: Other questions by the Board
[20] of Dr. Smith?
[21] Redirect, Mr. Allred?
[22] MR. ALLRED: Yes, your Honor.
[23] FURTHER REDIRECT EXAMINATION
[24] BY MR. ALLRED:
[25] Q: Dr. Smith, in your previous testimony you

[1] surgery to determine if the repair is fully
[2] successful?
[3] A: You're able to determine if you've
[4] achieved what you set out to do. It's not successful
[5] until it's healed.
[6] MR. ALLRED: That's all the questions I
[7] have, your Honor.
[8] THE COURT: Recross, Mr. Dahl?
[9] RECROSS-EXAMINATION
[10] BY MR. DAHL:
[11] Q: Is this intramedullary pin frequently used
[12] by veterinarians?
[13] A: It could be. I'm not certain. It doesn't
[14] look like the intramedullary pins that I use, but it
[15] might be.
[16] Q: Is this stainless steel?
[17] A: I don't know.
[18] Q: How do you make sure something is
[19] stainless or plain iron?
[20] A: I don't know.
[21] Q: Do you know what this is?
[22] A: Looks like a magnet.
[23] Q: If this were not stainless steel, it would
[24] grab the magnet; would it not?
[25] A: I don't know.

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[1] MR. DAHL: That's all the questions I
[2] have.
[3] THE COURT: Redirect?
[4] MR. ALLRED: Yes, your Honor.
[5] FURTHER REDIRECT EXAMINATION
[6] BY MR. ALLRED:
[7] Q: Dr. Smith, maybe you could tell us what
[8] led you to believe that Exhibit Number 27 was a nail
[9] after you removed it from Oscar's leg.
[10] A: To me it looked like a nail. A stainless
[11] steel pin, even after it has been inside the body and
[12] removed, still looks shiny and silver, and this was
[13] very dull in appearance, and there was even - I'm not
[14] even sure exactly what it is, but it is, as it
[15] appeared at the time of surgery, there is some white
[16] material around the proximal or the end that has been
[17] cut off and I'm not sure what that material is, but
[18] that was extremely unusual in appearance.
[19] MR. ALLRED: Thank you, your Honor.
[20] That's all the questions I have.
[21] THE COURT: Recross, Mr. Dahl?
[22] MR. DAHL: No, your Honor.
[23] THE COURT: Any further questions by the
[24] Board of this witness?
[25] Is Dr. Smith subject to recall, Mr.

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[1] Allred?
[2] MR. ALLRED: No, your Honor.
[3] THE COURT: Mr. Dahl?
[4] MR. DAHL: No, your Honor.
[5] THE COURT: Doctor, you're free to leave.
[6] THE WITNESS: Thank you.
[7] THE COURT: Oh, I'll take that, yes.
[8] Thank you.
[9] Mr. Allred, your next witness.
[10] MR. ALLRED: Your Honor, our next witness
[11] is Robert Brinkman, and Ms. Larsen has gone out into
[12] the hall to bring him in.
[13] THE COURT: Fine. Briefly off the record
[14] until the witness is here.
[15] (Brief pause)
[16] THE COURT: Back on the record. Raise
[17] your right hand, please.
[18] (The witness was sworn.)
[19] THE COURT: Please be seated.
[20] Mr. Allred?
[21] DIRECT EXAMINATION
[22] BY MR. ALLRED:
[23] Q: Mr. Brinkman, would you please state and
[24] spell your name for the record.
[25] A: Robert William Brinkman, that's Brinkman

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[1] spelled B-r-i-n-k-m-a-n.
[2] Q: What is your profession, Mr. Brinkman?
[3] A: I'm a criminalist.
[4] Q: Would you please tell us where you're
[5] currently employed?
[6] A: With the State of Utah Crime Laboratory.
[7] Q: And how long have you been employed with
[8] the State Crime Lab?
[9] A: Since October of 1980.
[10] Q: What is your title?
[11] A: I'm a criminalist.
[12] Q: Could you just give us a brief educational
[13] background of your college education.
[14] A: I have a Bachelor of Science degree in
[15] chemistry. I have Master's Degree, Master's of
[16] Science Degree in engineering. I have a Master's
[17] Degree in business administration.
[18] Q: Were you contacted by Lori Larsen with the
[19] Department of Occupational and Professional Licensing
[20] regarding analyzing a metal object?
[21] A: Yes.
[22] Q: Do you recall when Lori contacted you?
[23] A: Not specifically, no. I didn't make a
[24] record of it.
[25] MR. ALLRED: Your Honor, I'm going to have

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[1] the witness testify with Exhibit 27.
[2] BY MR. ALLRED:
[3] Q: Mr. Brinkman, you've been handed State's
[4] Exhibit Number 27. Can you identify that exhibit for
[5] me?
[6] A: Yes, I can.
[7] Q: Could you please do that?
[8] A: It's a plastic bag. It has my initials
[9] and other markings on it. It also contains a metal
[10] nail-like object.
[11] Q: Is that the metal object that Lori Larsen
[12] brought to you for analysis?
[13] A: It appears to be, yes.
[14] Q: Mr. Brinkman, did you examine Exhibit
[15] Number 27?
[16] A: Yes, I did.
[17] Q: Could you please describe to the Board the
[18] method you used to analyze this exhibit?
[19] A: I examined it first visually and
[20] microscopically, but then I used an electron
[21] microscope with an x-ray analyzer, and the intention
[22] of that was to try to determine what it was made out
[23] of.
[24] Q: Did you compare this metal object to any
[25] other object?

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[1] A: Yes, I did.
[2] Q: What did you compare it to?
[3] A: There was a stainless steel pin that was
[4] submitted, too.
[5] MR. ALLRED: Your Honor, I'm not quite
[6] sure how to mark these. I'd like them marked as
[7] Exhibit Number 31.
[8] THE COURT: They can be so identified.
[9] I'll affix a marker to them.
[10] BY MR. ALLRED:
[11] Q: Mr. Brinkman, I've handed you what will be
[12] marked as Exhibit 31. Does that appear to be the
[13] object you compared Exhibit Number 27 to?
[14] A: It appears comparable to it. I can't say
[15] that it's exactly the same one. If I recall the
[16] container that it was in, I believe it was in
[17] something else.
[18] Q: Mr. Brinkman, I'm going to hand you the
[19] witness exhibit book and ask you to turn to tab number
[20] 29 and tell me if you can identify this exhibit.
[21] A: Yes.
[22] Q: Could you please tell the Court what this
[23] exhibit is.
[24] A: It's a surgical pin.
[25] Q: Is the exhibit a report that you prepared?

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[1] A: Yes.
[2] MR. ALLRED: Your Honor, I would move to
[3] admit State's Exhibit Number 29 into evidence.
[4] THE COURT: Mr. Dahl, any objection?
[5] MR. DAHL: May I have a moment to confer?
[6] THE COURT: Go ahead.
[7] (Brief discussion held off the record.)
[8] MR. DAHL: I have no objection.
[9] THE COURT: No objection? Division's
[10] Exhibit 29 is received and copies may be provided to
[11] the Board.
[12] MR. ALLRED: Thank you, your Honor.
[13] BY MR. ALLRED:
[14] Q: Mr. Brinkman, you did, in fact, prepare
[15] Exhibit Number 29?
[16] A: That's correct.
[17] THE COURT: Mr. Allred, do you have
[18] another one of those? Can I take the one you gave the
[19] reporter?
[20] MR. ALLRED: You can, your Honor.
[21] THE COURT: Thank you.
[22] MR. ALLRED: I gave the original to the
[23] reporter and the copy's stuck to the back of it.
[24] THE COURT: Thank you.
[25]

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[1] BY MR. ALLRED:
[2] Q: Mr. Brinkman, were you able to reach a
[3] conclusion as to the elemental compound you found in
[4] Exhibit Number 27?
[5] A: Yes.
[6] Q: Could you tell the Court what you found?
[7] A: That the primary elements present were
[8] iron and zinc. There were a number of other trace
[9] metals, but that seemed to be primarily what it was
[10] composed of.
[11] Q: And based upon the findings, were you able
[12] to reach a conclusion as to what Exhibit Number 27 is?
[13] A: Appears to me to be consistent with a
[14] galvanized nail.
[15] Q: Could you tell the Board what led you to
[16] that conclusion?
[17] A: Its composition and its appearance,
[18] physical appearance.
[19] Q: Could you describe to the Board what a
[20] nail consists of, what it's made of?
[21] A: Iron primarily, but in this case, having
[22] found zinc in large quantities or what appeared to be
[23] large quantities, I would believe it was a galvanized
[24] nail. The galvanization, you have zinc being there to
[25] prevent corrosion, is typically what it's there for.

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[1] Q: And does the presence of zinc inhibit all
[2] corrosion in this type of nail?
[3] A: Well, it does until it's broken, until the
[4] zinc layering is broken, and then actually the zinc,
[5] once the corrosion begins, that zinc coating is broken
[6] and then actually oxidation and corrosion of it is
[7] accelerated because of the combination of the iron and
[8] the zinc.
[9] Q: Can you look at the Exhibit 27 again for
[10] us and tell us if you can identify the coloration you
[11] see on that exhibit? And you can take it out of the
[12] bag if you need to.
[13] A: Well, in the coloration, as a chemist it
[14] would appear to be iron oxide.
[15] Q: And does there appear to be a white color?
[16] A: Yes, also. That's correct. I'm not sure
[17] I could tell you what that is. I could if I could put
[18] it under the x-ray analyzer.
[19] Q: Let's turn to your report, which is
[20] Exhibit Number 29. I don't know if you brought a copy
[21] of it.
[22] A: Yes, I did.
[23] Q: If I could just have you turn to that.
[24] And in the first paragraph underneath "Trace
[25] Evidence"?

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[1] A: Yes.

[2] Q: Are there any elements that appear that
[3] you found in the nail that are out of place?

[4] A: Well, no, but then I'd have to say I don't
[5] know of my own knowledge exactly where it came from.
[6] I'm relying on other information as to where it came
[7] from. But relying on that information, I'd say no.

[8] Q: Turning your attention to paragraph number
[9] 2, can you tell the Board what you found when you
[10] analyzed the stainless steel pin provided by Lori
[11] Larsen?

[12] A: Yes. I ran it the same way that I did the
[13] first nail, and it's composed primarily of chromium,
[14] iron and nickel with a trace of sulfur and silicone,
[15] the major elements being the chromium, the iron and
[16] the nickel.

[17] Q: Mr. Brinkman, if I could turn your
[18] attention back to paragraph 1. Are there elements
[19] that you found in that nail and reported in paragraph
[20] 1 present in the human body, or any living body?

[21] A: Yes.

[22] Q: Could you identify those for us?

[23] A: I believe you'd find calcium. I believe
[24] that you'd find phosphorus in bones, calcium and
[25] phosphorus both. The other material, aluminum

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[1] silicone, you could find that in - I find that in
[2] practically everything I analyze. It's there as dirt
[3] and grime. Aluminum silicate, very common in dust and
[4] debris, it would appear. Sulfur, I believe you'd also
[5] find trace amounts in the human body, potassium, is
[6] how much sulfur you would find or how much chlorine
[7] you might find, and I assume that the chlorine is
[8] there as a salt of some type.

[9] Sodium chloride, potassium chloride, this
[10] could be sweat from people, from the hands of people
[11] handling the object. Copper, I don't know how this is
[12] manufactured, but the copper might be there as part of
[13] the plating process in the manufacture of the nail.
[14] That would be speculation, I think, though, on my
[15] part, but that's one possible place it could come
[16] from. Or it could be dirt and debris. Again, I'm not
[17] certain.

[18] Q: Would the fact that the elements you've
[19] identified a being present in a living body appear on
[20] the nail, would it be consistent with the fact that it
[21] actually was inserted into a living being?

[22] A: I'd say that's probably certainly a
[23] possibility. This is consistent with other evidence
[24] of this nature that I've examined over the years.

[25] MR. ALLRED: Your Honor, that's all the

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[1] questions I have.

[2] THE COURT: Cross-examination, Mr. Dahl?

[3] MR. DAHL: I have none of this witness.

[4] THE COURT: Any questions by the Board of
[5] this witness? Dr. Taylor?

[6] DR. TAYLOR: No.

[7] THE COURT: Dr. Rees?

[8] DR. REES: No.

[9] THE COURT: Dr. Brown?

[10] DR. BROWN: No, I don't think so.

[11] THE COURT: Mr. Sperry?

[12] MR. SPERRY: No.

[13] THE COURT: Is Mr. Brinkman subject to
[14] recall, Mr. Allred?

[15] MR. ALLRED: Your Honor, I haven't
[16] discussed it with Mr. Brinkman, but I may want to call
[17] him again after Dr. Taylor's witnesses have testified.

[18] THE COURT: You can arrange with him,
[19] then, his possible availability for that. But at the
[20] present time, Mr. Brinkman, you're free to leave.

[21] THE WITNESS: Thank you.

[22] THE COURT: Thank you.

[23] Mr. Allred, your next witness.

[24] MR. ALLRED: Your Honor, if it would be
[25] appropriate, I'd like to take a brief recess.

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[1] THE COURT: That's fine. We'll be in
[2] recess until five after 11:00, for ten minutes. Off
[3] the record.

[4] (Recess)

[5] THE COURT: Back on the record after a
[6] recess of approximately ten minutes. Mr. Allred, your
[7] next witness.

[8] MR. ALLRED: Your Honor, the Division
[9] would call Lori Larsen to the stand.

[10] THE COURT: Would you raise your right
[11] hand.

[12] (The witness was sworn.)

[13] THE COURT: Please be seated.

[14] DIRECT EXAMINATION
[15] BY MR. ALLRED:

[16] Q: Ms. Larsen, would you state and spell your
[17] name for the record.

[18] A: It's Lori Larsen, L-o-r-i L-a-r-s-e-n.

[19] Q: Could you please tell the Board where
[20] you're employed?

[21] A: I'm an investigator for the Division of
[22] Occupational and Professional Licensing, Department of
[23] Commerce.

[24] Q: And how long have you been so employed?

[25] A: I've been with the Division since May of

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[1] 1987.
[2] **Q:** And did you investigate the Leo Taylor
[3] case?
[4] **A:** I did.
[5] **Q:** Did you collect Exhibit 27 from Dr. Smith?
[6] **A:** I did.
[7] **Q:** And what did you do after you picked that
[8] up from Dr. Smith?
[9] **A:** It remained in the plastic bag that he had
[10] sealed when he gave it to me on January 3rd of 1994.
[11] It remained in that bag until I dropped it off at the
[12] crime lab for analysis on October 25th of 1994.
[13] **Q:** Did you deliver anything else to the crime
[14] lab for analysis?
[15] **A:** At that time I also delivered two pins,
[16] stainless steel surgical pins is how they were
[17] identified to me. Those had been given to me by Dr.
[18] Smith for a comparison, and I dropped those off at the
[19] same time that I dropped off the nail.
[20] **Q:** I'm going to hand you what's going to be
[21] marked as Exhibit Number 31 and ask you if you can
[22] identify that exhibit.
[23] **A:** These are two intramedullary pins which
[24] Dr. Dale Smith gave to me so I could see what a
[25] surgical pin looks like when I picked up the nail from

[1] **MR. DAHL:** No, your Honor.
[2] **THE COURT:** Any questions of this witness
[3] by the Board?
[4] Thank you, Ms. Larsen.
[5] **Mr. Allred,** is this witness subject to
[6] recall?
[7] **MR. ALLRED:** Yes, your Honor.
[8] **THE COURT:** All right. Your next witness.
[9] **MR. ALLRED:** Your Honor, with the
[10] testimony of Ms. Larsen, that concludes the Division's
[11] list of witnesses.
[12] **THE COURT:** Will you be conducting any
[13] cross-examination of Dr. Taylor if he testifies?
[14] **MR. ALLRED:** Yes, your Honor.
[15] **THE COURT:** Mr. Dahl, would you like to
[16] start your case now, or shall we take an early recess?
[17] How would you like to handle it?
[18] **MR. DAHL:** I think I would prefer to take
[19] an early recess and get my notes reassembled here in
[20] the proper manner.
[21] **THE COURT:** Okay. Can we reconvene, say,
[22] at 12:15, 12:30? What's counsels' preference?
[23] **MR. DAHL:** I would recommend 12:30.
[24] **THE COURT:** All right.
[25] **MR. ALLRED:** I would concur.

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[1] him.
[2] **MR. ALLRED:** Your Honor, I would move to
[3] admit Exhibit Number 31 into evidence.
[4] **THE COURT:** Any objection?
[5] **MR. DAHL:** No, I have no objection.
[6] **THE COURT:** As identified, so received.
[7] **MR. DAHL:** Your Honor, can I look at them
[8] for a moment?
[9] **THE COURT:** Certainly.
[10] **MR. ALLRED:** I apologize, your Honor, I
[11] didn't allow Mr. Dahl to look at them.
[12] **MR. DAHL:** No objection.
[13] **THE COURT:** Can I circulate them to the
[14] Board?
[15] **MR. ALLRED:** Yes, your Honor.
[16] **BY MR. ALLRED:**
[17] **Q:** Ms. Larsen, when did you retrieve Exhibit
[18] Number 27 from the crime lab?
[19] **A:** I picked that up on November 4th of 1994.
[20] It was in a bag. Again, it had been resealed
[21] by criminalist Bob Brinkman.
[22] **MR. ALLRED:** Your Honor, that's all the
[23] questions I have at this time.
[24] **THE COURT:** Any cross-examination, Mr.
[25] Dahl?

[1] **THE COURT:** We will be in recess, then,
[2] until 12:30. Off of the record.
[3] (Luncheon recess)
[4] **THE COURT:** On the record after a recess
[5] of approximately an hour and 15 minutes. Just one
[6] procedural matter, Mr. Allred. In viewing the
[7] Division's exhibits that have been received, am I
[8] correct that Exhibit 20 has not been offered?
[9] **MR. ALLRED:** That's correct, your Honor.
[10] **THE COURT:** Okay.
[11] Mr. Dahl, your first witness.
[12] **MR. DAHL:** Thank you, your Honor. I'd
[13] like to explain my procedure a little bit. I changed
[14] it a little bit and I'm going to call Ms. Taylor to
[15] the stand first so I can get her out of here and get
[16] her back to the hospital, and this afternoon I'll call
[17] Dr. Taylor. And then I have three witnesses that I
[18] plan on calling tomorrow morning, so unless something
[19] crops up, we ought to be able to get out of here
[20] pretty early tomorrow.
[21] **THE COURT:** Good. Your first witness,
[22] then, is Ms. Taylor?
[23] **MR. DAHL:** Ms. Taylor.
[24] **THE COURT:** Would you raise your right
[25] hand, please.

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[1] (The witness was sworn.)
[2] THE COURT: Mr. Dahl?
[3] DIRECT EXAMINATION
[4] BY MR. DAHL:
[5] Q: Ms. Taylor, would you state your name,
[6] please.
[7] A: It's Geraldine G. Taylor.
[8] G-e-r-a-l-d-i-n-e G. T-a-y-l-o-r.
[9] Q: And where do you reside?
[10] A: In Sandy at 9035 South Fourth East.
[11] Q: And you're the wife of Dr. Leo Taylor?
[12] A: I am.
[13] Q: Are you associated with Brookside Hospital
[14] in any manner?
[15] A: Yes. I have been since we built it in
[16] 1970.
[17] Q: And did Dr. Taylor also own another
[18] hospital previous?
[19] A: Yes. We owned what was previously Taylor
[20] Animal Hospital, now at the Brickyard, owned by Dr.
[21] Sharp and Dr. Kodel. That was on 1221 East 33rd
[22] South.
[23] Q: And what are your specific duties at
[24] Brookside?
[25] A: Officially I'm supposed to be the office

... computers.
[2] A: We do. We installed them in October of
[3] '91.
[4] Q: And what does that computer furnish?
[5] A: It's an IBM and it pretty well gives us
[6] all the histories of clients. We put it in as soon as
[7] they come in, the name, age, breed, sex, what needs to
[8] be done to the animal.
[9] Q: And do you maintain a permanent record of
[10] all pertinent items about animals, such as
[11] immunization, rabies shots and things of that nature?
[12] A: Yes, we do.
[13] Q: And you keep that on every animal that you
[14] treat?
[15] A: Yes.
[16] Q: Now, in the hospital, what type of
[17] equipment is present in the hospital?
[18] A: Oh, we have of course our x-ray machine,
[19] we have a special dental machine, we have our
[20] sterilization machine, we have an anesthetic machine.
[21] Q: Do you maintain a pharmacy?
[22] A: Yes.
[23] Q: And -
[24] A: Most of our lab work goes out to Lab
[25] Corps.

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[1] manager, but I do various and sundry things.
[2] Q: I want to elicit testimony from you
[3] concerning the operations of the hospital. How many
[4] veterinarians are presently at the hospital?
[5] A: Two.
[6] Q: Does that vary from time to time?
[7] A: Not usually. We just have two. Sometimes
[8] we have one that comes in part time.
[9] Q: How many employees?
[10] A: Nine. It varies from nine to 12 depending
[11] on my kennel boys.
[12] THE COURT: Let me help if I can. Ms.
[13] Taylor, if you'd like to just swivel the microphone a
[14] little closer toward you - there you go - you
[15] won't have to keep moving forward. I think the court
[16] reporter will let us know if she's having any
[17] difficulty.
[18] Mr. Dahl, go ahead.
[19] THE WITNESS: I might state that I have -
[20] four of my employees have been with us over 20 years.
[21] Jolette's been with us 20, Janet 25. No, Liz has only
[22] been with us 11. Jan and Carma both have been with us
[23] 15 years.
[24] BY MR. DAHL:
[25] Q: And at the hospital, do you have

[1] Q: Now, are there facilities or do you have
[2] places to house your patients?
[3] A: We do. We have a specially-built room
[4] just for feline. Once in a while we will put a
[5] special case in there. And then we have facilities
[6] for just dogs. We have four exam rooms and a surgery
[7] room.
[8] Q: What do you do about sterilization?
[9] A: We have a sterilizer. We scrub the
[10] instruments and use a special cleaning process, and
[11] then all instruments are sterilized every night, and
[12] if we need to, we do it during the day.
[13] Q: So that we're talking apples and apples, I
[14] need a few definitions myself. We keep talking about
[15] patients and you keep talking about clients. Now,
[16] what's the difference between a patient and a client?
[17] A: A client's the owner of a patient. The
[18] patient usually is an animal and a client is the owner
[19] of the patient.
[20] Q: And one owner can own several animals?
[21] A: Yes.
[22] Q: Which would be several patients?
[23] A: Yes.
[24] Q: Now, you also have a reception area?
[25] A: Yes, we do.

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[1] Q: And do you have a deep freeze freezer?
[2] A: Yes, we do.
[3] Q: And so that the Board may understand, part
[4] of the practice at Brookside is for both large animals
[5] and small animals; is that correct?
[6] A: Yes.
[7] Q: And do you have a special facility in the
[8] hospital where large animals like horses and things
[9] like that can be brought in?
[10] A: Yes. We have an area on the north side of
[11] the building.
[12] Q: That's enclosed?
[13] A: It is.
[14] Q: But there is a driveway in that portion?
[15] A: Yeah.
[16] Q: Which you refer to as the driveway?
[17] A: Probably the overhead.
[18] Q: And, of course, you've got parking spaces?
[19] A: Right.
[20] Q: Let me ask you on some of the questions of
[21] sanitation of the facilities that have been brought
[22] up. Would you explain to the Board what the practice
[23] is as far as sanitation of the facilities?
[24] A: In the four examining rooms, the table is
[25] cleaned between every patient, every time. Our

[1] their receipts when they're discharged.
[2] Q: Now, we have a case here of an animal that
[3] had been operated on and the testimony has been
[4] introduced that the owner of the animal was instructed
[5] to exercise the animal after surgery, after a broken
[6] bone. What is the official protocol?
[7] A: We instruct every person that takes an
[8] animal with a broken limb of any kind home to make
[9] sure that they aren't where they can jump on or off a
[10] bed, they can't be put out in a yard or a fence where
[11] they can injure the leg by jumping up on the fence,
[12] and they're not to be up and downstairs. After a
[13] certain period of time, therapy is recommended, but
[14] certainly not when they take the animal home, even
[15] with ligament repairs.
[16] Q: And are those instructions included in
[17] your computer program?
[18] A: As a rule, yes. Yes.
[19] Q: Now, I have - let me put it this way:
[20] Have I instructed you to go back and reconstruct for
[21] me an average of how many patients and owners
[22] Brookside Hospital services each year?
[23] A: You have.
[24] Q: And how many patients or how many owners
[25] are serviced each year?

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[1] instruments that we use in there are sterilized at
[2] night, and during the day if we need to. We have a
[3] boloscope, different instruments for eyes, ears. We
[4] have a refrigerator for vaccines right there in the
[5] room. They are scrubbed every single night, the
[6] floors are. The floors are cleaned before my girls
[7] ever leave there. They're swept. They're vacuumed
[8] with a water vac and they're mopped before we ever
[9] leave.
[10] Q: Now, what about the cages? How are they
[11] kept clean?
[12] A: We have two kennel boys and I have been
[13] known many, many times to clean kennels if I have to,
[14] and so have every one of my girls. Every girl that
[15] works for me, if there's an animal in there that has
[16] urinated or defecated or vomited and there isn't a
[17] kennel boy available, they will clean the kennels, and
[18] so will I.
[19] Q: Now, are these kennels with a wood floor?
[20] A: They're all stainless steel.
[21] Q: And you have certain protocols dealing
[22] with instructions to patients when they leave the
[23] hospital with their animals?
[24] A: Yes. Usually we give them verbal
[25] instructions, and there are written instructions on

[1] A: Since we obtained our computer, we have
[2] entered 19,633 clients. Last year we had 40,306
[3] patients.
[4] Q: Now, that's in one year?
[5] A: That's in one year. We gave 1,900 -
[6] 19,343 rabies shots. We treated 24,000 dogs and
[7] 13,000 cats.
[8] Q: Do you have a record of neuters?
[9] A: No, that's - we haven't broken that down.
[10] Q: Tell me, what is the work ethic of Dr.
[11] Taylor?
[12] A: Well, he usually gets to the office around
[13] 7:30. He doesn't take a lunch break, and he usually
[14] leaves the office between 7:30 and 8:00 at night.
[15] He's there on Sunday from 9:00 in the morning until
[16] approximately 3:00 in the afternoon, and then he's
[17] back at 6:00 on Sunday night.
[18] Q: How about Saturday? Is that a regular
[19] day?
[20] A: Yes. He took two days off this year to go
[21] to a conference, the Western States Conference. Well,
[22] three days off. He usually takes that time off to go
[23] to the Western States Conference in Vegas for his
[24] continuing education.
[25] Q: How much time do you spend at the

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[1] hospital?

[2] A: I get a day off a week.

[3] Q: And are you familiar with what patients -

[4] I guess that's the patients - each of the doctors

[5] work on?

[6] A: Yes. They're numbered in our computer,

[7] which doctor has which patient.

[8] Q: We have testimony to the effect that Dr.

[9] Taylor is the doctor attending Hillary, the English

[10] Bulldog owned by Cindy Hughes. Are you familiar with

[11] that?

[12] A: I am.

[13] Q: What doctor -

[14] A: Dr. Boyd Stock worked for us at the time,

[15] and when Carma and I got there, one of my girls got

[16] there at about 20 after 8:00, when we usually get

[17] there, between quarter after and 8:30. Dr. Stock was

[18] already in the surgery room and said the woman had

[19] called him at home. He had the answering service that

[20] night. And he said she had called him and told him

[21] the dog was in labor. And the dog was in a large,

[22] stainless steel kennel in the cat room, and there had

[23] been one dead pup delivered when I got there.

[24] Q: Were there any other pups delivered?

[25] A: Yes. I delivered one later on. He had

[1] Q: Now, you say doctors take turns or

[2] something in receiving telephone calls?

[3] A: Night calls.

[4] Q: How does that operate?

[5] A: We have a call forwarding on our hospital,

[6] and we can either put it on Dr. Taylor's home phone or

[7] it just happened it was on Dr. Stock's that night.

[8] And he took it periodically. He didn't take it on

[9] weekends.

[10] MR. DAHL: I have no further questions.

[11] THE COURT: Cross-examination, Mr.

[12] Allred.

[13] MR. ALLRED: Your Honor, I just have a few

[14] questions.

CROSS-EXAMINATION

BY MR. ALLRED:

[17] Q: Ms. Taylor, can you tell us who the two

[18] veterinarians are who work at Brookside?

[19] A: Yeah. Shannon Gilbert - Sharmon Gilbert,

[20] Sharmon, S-h-a-r-m-o-n, Gilbert, G-i-l-b-e-r-t, and

[21] Dr. Taylor.

[22] Q: How long has Dr. Gilbert worked at

[23] Brookside?

[24] A: Since May of last year. She's having a

[25] baby. I think she worked the evening shift.

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[1] given her an injection and I delivered another pup.

[2] Q: The pups you saw, were they fully mature?

[3] MR. ALLRED: Objection, your Honor. I

[4] haven't heard foundation as to this witness' expertise

[5] or her ability to testify as to whether these pups

[6] were fully formed.

[7] THE COURT: Perhaps some background, Mr.

[8] Dahl, would be in order in terms of this witness'

[9] experience.

BY MR. DAHL:

[10] Q: Maybe we ought to go back.

[11] A: I can't really tell you. They were both

[12] dead.

[13] Q: You are not a veterinarian yourself?

[14] A: No, I'm not.

[15] Q: But you can observe the amount of hair on

[16] a pup; can you not?

[17] A: Well, that doesn't necessarily qualify me

[18] to know whether they're full term or not.

[19] Q: I'm not going to ask you any more

[20] questions about that, then. Did Dr. Taylor ever take

[21] care of the bulldog, Hillary?

[22] A: Not to my knowledge. Dr. Taylor didn't

[23] come in until later on that morning. He had a farm

[24] call.

[1] Sharmon Gilbert worked for you when she -

[2] before she graduated? No, she didn't? (Addressing

[3] Dr. Rees) Anyway, she's having a baby Thursday, so

[4] she will be on leave.

[5] Q: Ms. Taylor, I'm going to have you turn to

[6] the witness notebook. I'll hand that to you, and if

[7] you'd turn with me to Exhibit Number 18. Do you

[8] recognize this exhibit?

[9] A: Yes.

[10] Q: Can you tell me where on this exhibit it

[11] has the doctor's identification number?

[12] A: This is a printout sheet. On our record

[13] sheet it does have his number.

[14] Q: Let's turn to Exhibit Number 22. Exhibit

[15] 22 follows the tab number 22. Do you recognize this

[16] document?

[17] A: Yes.

[18] Q: Can you tell me where on this document it

[19] has the doctor's ID number?

[20] A: It doesn't. Whoever put this in put it in

[21] wrong.

[22] Q: What doctor's name is there on each of

[23] these entries?

[24] A: It's Leo Taylor, but whoever entered this

[25] entered it wrong, because Dr. Taylor never saw that

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[1] dog until -
[2] Q: Did you enter the information?
[3] A: No.
[4] Q: How do you know that it wasn't -
[5] A: Because I wouldn't have done that.
[6] Q: Who would have done it?
[7] A: We had a new girl. She might have done
[8] it.
[9] Q: Do you remember her name?
[10] A: I think it was - well, I'm not sure
[11] whether it was Donna Rees. She's probably the one
[12] that did it.
[13] Q: But you're not certain?
[14] A: No. I'd have to look on my record. I
[15] could go through my employee records and find it in a
[16] hurry.
[17] Q: Do you have any other records other than
[18] Exhibit Number 22 on who worked on that animal?
[19] A: This is an insemination record.
[20] Q: Why don't you look at the date of June
[21] 20th and tell me what that says, over in the
[22] description section.
[23] A: Well, on June 20th it says "admit."
[24] Q: So was this an insemination record?
[25] A: No. It was an artificial insemination on

[1] MR. DAHL: No, your Honor.
[2] THE COURT: Any questions by the Board of
[3] this witness? Dr. Taylor?
[4] DR. TAYLOR: No.
[5] THE COURT: Dr. Rees?
[6] DR. REES: No.
[7] THE COURT: Dr. Brown?
[8] DR. BROWN: Yes, just one.
[9] Ms. Taylor, you're saying that Dr. Taylor
[10] did not see Hillary at all? He did not talk with the
[11] owner of Hillary at any time during the treatment of
[12] her?
[13] THE WITNESS: From the time she was
[14] admitted until she was released, no, not to my
[15] knowledge.
[16] THE COURT: Let me just clarify so this
[17] record reflects it. Ms. Taylor, are you talking about
[18] when the dog was admitted to the hospital in labor?
[19] THE WITNESS: Yes.
[20] THE COURT: Okay, thank you. Mr. Sperry?
[21] MR. SPERRY: Yes. We have five history
[22] sheets here and five billing sheets from five
[23] different cases, and not one of them has any kind of
[24] written instructions. You testified that when a
[25] patient is released that you give verbal instructions

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[1] the 21st and 23rd of April.
[2] Q: Do you have any other records that would
[3] help us determine who saw the dog that day?
[4] A: I have three girls, myself and two other
[5] girls that -
[6] Q: Would you just answer my question? Is
[7] there any other record?
[8] A: There might be. We might be able to dig
[9] one out and find it for you. On our printouts from
[10] the admittance records, we have a full list.
[11] Q: When you were served with the subpoena
[12] that Brookside Hospital was served with, and
[13] investigative subpoena, did you turn over all records
[14] that were requested?
[15] A: She didn't request those.
[16] Q: What records did she request?
[17] A: I saw the printouts, and when we admit an
[18] animal, then all the history is put on that animal's
[19] printout.
[20] Q: Did you turn it over to Lori?
[21] A: She didn't ask for it, but I can get it
[22] for you.
[23] MR. ALLRED: Thank you, your Honor.
[24] That's all the questions I have.
[25] THE COURT: Any redirect, Mr. Dahl?

[1] and quite frequently or usually written instructions.
[2] These seem like - every one of them seems like a
[3] fairly significant problem. Where are the written
[4] instructions that you give?
[5] THE WITNESS: Let me explain to you.
[6] MR. SPERRY: Please do.
[7] THE WITNESS: When we print out an invoice
[8] for people that have paid their bill, the instructions
[9] are on those. These are reprints. These are done
[10] under a different - this is done under a 641. I can
[11] make sure you have printouts of these, when people
[12] that are released, when animals are released, what is
[13] given to them as far as instructions are concerned.
[14] MR. SPERRY: Don't you think that would
[15] have been -
[16] THE WITNESS: These are reprints.
[17] MR. SPERRY: Don't you think it have would
[18] have been pretty important for us to have?
[19] THE COURT: Let me ask, because this
[20] witness may not be able to answer the question.
[21] Mr. Dahl, are you going to introduce any
[22] exhibits in this proceeding today?
[23] MR. DAHL: Well, one of my witnesses
[24] tomorrow, I'll instruct her through Ms. Taylor to
[25] bring those in, and I'll have her or I'll introduce

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[1] them through her.
[2] THE COURT: All right. That's fine, thank
[3] you. Any other questions, Mr. Sperry?
[4] MR. SPERRY: No.
[5] THE COURT: Any further questions by the
[6] Board of this witness?
[7] MR. ALLRED: Your Honor, I do have another
[8] couple of questions.
[9] THE COURT: Let me open it back to Mr.
[10] Dahl. Any redirect at this point, Mr. Dahl?
[11] MR. DAHL: No, your Honor.
[12] THE COURT: Recross, Mr. Allred?
[13] MR. ALLRED: Yes, your Honor.
[14] **RECROSS-EXAMINATION**
[15] **BY MR. ALLRED:**
[16] Q: You have told us in your testimony what
[17] Dr. Taylor's schedule is. Can you tell us what Dr.
[18] Boyd Stock's work schedule was?
[19] A: He usually got there around 9:00 and left
[20] at 5:30. He took a lunch hour, and he was off one day
[21] a week.
[22] Q: Which day of the week was he off?
[23] A: Thursday, I believe.
[24] Q: Did he work every weekend?
[25] A: As a rule, we're only open from 8:30 to

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[1] 12:30 on Saturday.
[2] Q: Did he attend the same conference that Dr.
[3] Taylor attended each year, Western States?
[4] A: I don't have any idea. Not while he
[5] worked for us, he didn't.
[6] Q: How long did Dr. Stock work for Brookside
[7] Animal Hospital?
[8] A: About two-and-a-half years.
[9] Q: Can you tell us an approximate time
[10] period?
[11] A: I'd have to look it up on my records to
[12] give you an exact time.
[13] Q: Did he start in 1992?
[14] A: I'm sorry, sir. I will have to look that
[15] up on my records to be exact. I don't want to give
[16] you a time frame that isn't correct.
[17] MR. ALLRED: Thank you, your Honor.
[18] THE COURT: Any redirect, Mr. Dahl?
[19] MR. DAHL: No, your Honor.
[20] THE COURT: Any further questions by the
[21] Board of this witness? Yes, Dr. Rees?
[22] DR. REES: Yes. You spoke regarding the
[23] sterilization of instruments?
[24] THE WITNESS: We have a regular
[25] sterilization.

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[1] DR. REES: A stainless sterilizer?
[2] THE WITNESS: Yes. It is a big one.
[3] THE COURT: Mr. Dahl, is this witness
[4] subject to recall?
[5] MR. DAHL: I wasn't planning on it.
[6] THE COURT: Okay. Ms. Taylor, thank you.
[7] Your next witness, Mr. Dahl.
[8] MR. DAHL: Dr. Taylor.
[9] THE COURT: Doctor, would you raise your
[10] right hand, please.
[11] (The witness was sworn.)
[12] THE COURT: Mr. Dahl?
[13] **DIRECT EXAMINATION**
[14] **BY MR. DAHL:**
[15] Q: Doctor, will you please state your name,
[16] full name and address for the record.
[17] A: Leo N. Taylor, L-e-o, the word N,
[18] T-a-y-l-o-r. I reside in Sandy, West Jordan, Utah is
[19] the hospital.
[20] Q: And would you describe your educational
[21] background.
[22] A: Yes. I graduated from Utah State in 1952,
[23] Kansas State University with a DVM degree in 1956.
[24] Been in practice in the Salt Lake Valley ever since.
[25] Q: And what organizations do you belong to?

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[1] A: The AVMA and Utah Veterinary Association,
[2] AEEP, and up until probably just a year ago the Salt
[3] Lake Valley.
[4] Q: And prior to Brookside, did you establish
[5] another animal hospital?
[6] A: Yes, the one I previously mentioned at
[7] 1221 East 33rd South.
[8] Q: That was called Brickyard?
[9] A: It's called the Brickyard now. It was
[10] called Taylor Animal Hospital before that.
[11] Q: Now, which animals do you handle?
[12] A: I handle both average and small animals
[13] and some exotics, I guess, if you want to call them
[14] that.
[15] Q: Now, according to your wife's testimony,
[16] you handle a great deal of owners and patients in one
[17] year?
[18] A: Right.
[19] Q: One of the cases that is before the Board
[20] here is a neuter case. How many of those neuters -
[21] I may not be defining the words right - how many of
[22] those do you usually or how many do you perform of
[23] those over a six-month period of time?
[24] A: Well, a spay for a female and a neuter for
[25] the male. And you'd have to go more on the record on

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[1] how many we do, but it's quite a number of them.

[2] Q: And do they all survive the procedure?

[3] A: No. I'm sorry to say that once in a while

[4] you have one that doesn't, you might say, read the

[5] book, and it doesn't go according to what you expect.

[6] And you may lose one once in a while.

[7] Q: Can you remember the one animal that you

[8] performed the procedure on that died?

[9] A: Yes. That dog came into the hospital and

[10] was admitted to the hospital. I think Dr. Stock give

[11] it the pre-anesthetic, which is normal. When he come

[12] in we usually use a morphine, etorphine or a

[13] tranquilizer to sedate the animals, and then later we

[14] perform the surgery on them. A lot of times they're

[15] observed when they come in and examined, and we ask

[16] the people if the dog has been healthy in all respects

[17] that way before we ever take the history and take them

[18] into the hospital.

[19] Q: You check to make sure they've had all

[20] their rabies shots and things of that nature?

[21] A: That's all discussed with them, yes. A

[22] lot of times we encourage them, if it's too young of

[23] an animal, to always come in and get the vaccinations

[24] before they ever submit it for surgery.

[25] Q: Now, you performed the postoperative

[1] found that it had pneumonia in both lungs and it had

[2] what the pathologist describes as one of these little

[3] round hearts that wasn't a really heart-shaped heart.

[4] It was more in the round shape, and it was filled with

[5] quite a bit of fluid around there. As far as

[6] submitting any tissues on it, why, we didn't. We

[7] called them back and told them what happened and then

[8] that evening they picked up the body.

[9] Q: Now, what facilities do you have?

[10] Whenever an animal dies at the hospital, what's your

[11] protocol or procedure in disposing of these animals?

[12] A: We ascertain whether the people want to

[13] pick the animal up or how they want it to be taken

[14] care of. We give them a choice whether to have them

[15] cremated, and there's a lot of animals being cremated

[16] nowadays, and they can have that choice. If not, we

[17] put them into a cooler and they're picked up and

[18] disposed of by a service.

[19] Q: I see. One of the testimonies is that

[20] when the owner came to pick up his dog, that you

[21] apparently had done an autopsy or procedure. And I

[22] know there's a different word for it rather than

[23] autopsy, but I'm a layman so I'm going to take the

[24] privilege of using the word "autopsy." But that one

[25] of the owners brought a dog down to you that had died

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[1] examination of that dog; did you not?

[2] A: Yes. I got the dog out. This dog was,

[3] you might say, a non-tactical type of dog. It lunged

[4] at the people in the front office when it came in and

[5] almost bit Dr. Stock. And the lady told her child to

[6] get back because if she wasn't careful, it would bite

[7] him again. And the dog was taken in.

[8] When I started to put it under anesthetic,

[9] using sodium Pentothal, the barbiturates, why, it

[10] seemed to go routinely and went down okay. And trying

[11] to get it so that we could prep it, why, I noticed an

[12] irregular respiration. And before we could regulate

[13] it to sustain that, that it was going to breathe all

[14] right, we had to on oxygen. We intubated it,

[15] put it on oxygen, and still ensued death. We lost the

[16] animal.

[17] That's when I called the owner and told

[18] her that I was sorry. That's the first words that I

[19] ever we lose an animal, is that I'm

[20] sorry to what people would say to argue

[21] about what you tell them, we always tell

[22] them the animal, try to

[23] explain.

[24] And we did an autopsy on it. She

[25] said go ahead. So we did, and we did an autopsy. We

[1] under the care of another veterinarian to ask you to

[2] perform a postmortem.

[3] MR. ALLRED: Your Honor, I fail to see the

[4] relevance of a necropsy done by Dr. Taylor on an

[5] animal not included in the petition, and I sense

[6] that's where Mr. Dahl is heading with this question.

[7] THE COURT: Is that the point of the

[8] question, Mr. Dahl?

[9] MR. DAHL: I thought we had one of the

[10] complaints that was about the unsanitary condition of

[11] the hospital, because when he picked it up, why -

[12] MR. ALLRED: No, your Honor, what Mr. Dahl

[13] is referring to is not in the petition.

[14] MR. DAHL: Oh, okay.

[15] THE COURT: Mr. Dahl, if I can ask, were

[16] you referring to prior testimony as to one of the

[17] owners of the animal who came to the hospital to

[18] retrieve the dead animal?

[19] MR. DAHL: Yes.

[20] THE COURT: Okay. I think that's the

[21] Picklesimer case. I'm not certain. If that's the

[22] intent of your question, I think it might have

[23] been misphrased in terms of how it was put to the

[24] witness.

[25] MR. ALLRED: Your Honor, Dr. Taylor was

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[1] testifying about Char, the animal that died prior to
[2] surgery, and was giving testimony about the necropsy
[3] and picking up a body. But in Mr. Dahl's question, he
[4] started talking about another owner that brought the
[5] animal back to Dr. Taylor, or brought him to Dr.
[6] Taylor for an autopsy, and the animal had died at
[7] another vet's.

[8] **THE COURT:** Yes, I didn't understand the
[9] question, Mr. Dahl.

[10] **MR. DAHL:** Your Honor, I'm probably in
[11] error.

[12] **THE COURT:** Go ahead.

[13] **MR. DAHL:** What was the name of that dog?

[14] **THE COURT:** Char, I believe it is.

[15] **MR. ALLRED:** Your Honor, the dog that Dr.
[16] Taylor has testified about is Char, but the animal
[17] that Mr. Dahl is referring to is named Dalphi. Dalphi
[18] is not part of the petition.

[19] **MR. DAHL:** Okay.

[20] **THE COURT:** Or was it Duffer?

[21] **MR. ALLRED:** Duffer is another case,
[22] another veterinarian.

[23] **THE COURT:** All right, thank you.

[24] Go ahead, Mr. Dahl.

[25]

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[1] **BY MR. DAHL:**

[2] **Q:** Did you say it was Char? If I refer to
[3] it, do you remember the case of Char?

[4] **A:** Yes.

[5] **Q:** What was that case?

[6] **A:** That's one that was referring to the dog
[7] we started to - was going to spay and it died on us.
[8] Am I right?

[9] **MR. ALLRED:** That's correct.

[10] **MR. DAHL:** I guess.

[11] **THE WITNESS:** Uh-huh (affirmative).

[12] **BY MR. DAHL:**

[13] **Q:** And the owner came and picked up the dog?

[14] **A:** Picked up the body after we had performed
[15] an autopsy.

[16] **Q:** Yes, that's the one I'm referring to. You
[17] do have cold storage or a freezer, do you not?

[18] **A:** Yes. Those - after the autopsy, why, it
[19] was closed up and wasn't put in the cooler, as I
[20] remember, because they said they were going to come
[21] pick it up, so we didn't put it into the freezer. It
[22] was picked up before that was done.

[23] **Q:** And I think the testimony is that flies
[24] and so on were all over it?

[25] **A:** Well, that time of year, why it certainly

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[1] would attract that.

[2] **MR. ALLRED:** Your Honor, I object. I
[3] don't recall the testimony of there being any flies
[4] from either owner.

[5] **THE COURT:** My recollection is not
[6] perfect, but I believe the only thing that witness
[7] testified to was the manner in which the carcass was
[8] delivered to him. I don't believe this witness
[9] testified as to the nature of the carcass itself.

[10] **MR. DAHL:** All right. I think I'm going
[11] to go back to my original examination of the witness.
[12] We've got so many cases here I get side tracked every
[13] once in a while.

[14] **BY MR. DAHL:**

[15] **Q:** I want to start with an animal called
[16] Oscar. Are you familiar with Oscar?

[17] **A:** Yes. That's the one we were talking about
[18] this morning, a cocker spaniel?

[19] **Q:** Right. And what do you remember about
[20] that particular patient?

[21] **A:** The animal came into the hospital in shock
[22] and needed emergency treatment, and Mr. Troester
[23] brought the dog in. I guess that's the father to Ms.
[24] Crocker. And we immediately gave emergency treatment
[25] to the dog and tried to stabilize it and told him we'd

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[1] probably have to take an x-ray, which we did, and went
[2] from there.

[3] **Q:** Now, what was the condition of the dog
[4] when you examined it?

[5] **A:** The dog was in severe shock and pain when
[6] it came into the hospital, and we immediately gave
[7] emergency treatment to it to stabilize it, and told
[8] them as soon as we got it stabilized, why, we would
[9] take x-rays and get back with Mr. Troester on what had
[10] to be done to it.

[11] **Q:** And did you do that?

[12] **A:** Yes. We called him back and told him how
[13] badly it was broken up on it, and what it would take
[14] to fix it. And he said, "Well, do the best you can."
[15] We warned him about there may be radial nerve damage
[16] in the front leg and so forth, how it was oblique
[17] splintered, and he still said, "Go ahead and fix it
[18] the best you can."

[19] I had done work for him over the previous
[20] probably twenty years. That's the only reason I
[21] touched this animal, because later that evening when
[22] Ms. Crocker called, we immediately had a disagreement,
[23] you might say. She was very caustic. So the next day
[24] when I operated on the animal - I guess her back side
[25] is better than her front side, as far as that's

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[1] concerned.
[2] But I went ahead and operated on the
[3] animal, and the animal that they have displayed on the
[4] x-ray certainly didn't have the pin in it that I put
[5] in it. I use stainless steel. I've always used
[6] stainless steel, and from years and years ago, why, we
[7] buy those on the exhibit here this morning, and those
[8] are put out ready-made.
[9] But we buy stainless steel from a company
[10] here in Salt Lake, and we can actually put threads on
[11] them and sharpen them to the length that we want. And
[12] as far as the nail that was put in that dog, I don't
[13] know where that come from. I have no idea. I'd like
[14] to know if anybody can explain to me how you can take
[15] a nail that shape and put it in, because when we put
[16] an intramedullary pin into the bone, it's threaded up
[17] through from an open reduction, up through, and it
[18] goes up the proximal end, which is the upper end.
[19] That pin there on that x-ray certainly
[20] wasn't up to the proximal end of that bone. And I run
[21] the pin that I put in there up through the end and
[22] then back down through, and then stabilize it with the
[23] parts together. There was pieces of bone that came
[24] out of that that we took out, and I didn't use any
[25] surgical wire or stainless steel wire on this animal.

[1] to sterilize them, why, you can certainly see the
[2] appearance of what they are.
[3] Q: Is this, what I hold in my right hand, an
[4] example of it?
[5] A: Yes. That is a piece of stainless steel.
[6] Q: If you've been using stainless steel and
[7] you have it in four-foot rods, why would you cut off
[8] the head of a nail and use that?
[9] A: Well, in the first place, if you're using
[10] - putting an intramedullary pin in there, you'd have
[11] to have a nail that would be approximately ten inches
[12] long, and I don't know whether they make those nails
[13] that long. We certainly -
[14] Q: If it -
[15] A: - don't have any in my facility.
[16] Q: If it were not stainless steel, would you
[17] use anything but stainless steel?
[18] A: No. I've never used anything but
[19] stainless steel on any intramedullary pin.
[20] Q: Now, you observed on the x-ray there, was
[21] that, what was showed on the x-ray, a proper length
[22] for this type of an operation?
[23] A: No way. You couldn't put a small piece of
[24] that in there and just cut the head off of it. They
[25] testified that it looked like a nail with the head cut

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[1] I told her that when we operated on it, that possibly
[2] we might have to pin the jaw as well as pin and put
[3] wire in both places. But I didn't put any wire. I
[4] used extra chrome catgut and pulled those bones back
[5] in line.
[6] Now, the pin was cut off just underneath
[7] the skin at the proximal end. Would have been just a
[8] surface on the shoulder, which is much higher than
[9] what that x-ray showed this morning. And how that pin
[10] or that piece of pin got down in there, it certainly
[11] wasn't anything that I had ever seen before.
[12] Q: In what volume do you buy your stainless
[13] steel, Doctor?
[14] A: We buy the stainless steel from over here
[15] on - I can't remember the name of the place. Over
[16] here on about Ninth South and Second West or First
[17] West. It comes in about any length you want, but we
[18] usually buy it in about four- or five-foot lengths and
[19] then cut it off to fit our requirement from there, and
[20] it's in various diameters.
[21] Q: How do you make sure that it's stainless
[22] steel?
[23] A: Well, the appearance on it and also that
[24] it's non-magnetic. And when we sharpen them and fix
[25] them for surgery before we stick them in the autoclave

[1] off it. How could you extend one out through the
[2] bone? Which would take four or five inches to poke it
[3] up through the skin, so that you reverse your - get
[4] ahold of it and push it back down to put it into the
[5] distal part of the bone.
[6] Q: Now, where do you put the end of the pin
[7] in relation to the skin of the animal?
[8] A: Well, it's run through the center of the
[9] bone. Now, this bone was broke on an oblique angle,
[10] and pieces of the bone came out. And it was pushed
[11] back down through and had been seated into the distal
[12] end or down near the elbow on that dog. It had been
[13] twice the length of what they showed in there, at
[14] minimum.
[15] But also we leave that - when we cut it
[16] off, it's just under the skin. You heard Dr. Smith
[17] testify this morning a lot of times it's cut off so
[18] you can retrieve it. A lot of those are left just
[19] under the skin. If this one came loose and broke out,
[20] it might have been loose, and we've had it gravitate
[21] out to where it's sitting two inches or three inches
[22] out of a bone, and you can just take ahold of it with
[23] your fingers and lift it out.
[24] Q: Now, what is the usual procedure after an
[25] operation is done as to taking x-rays after the

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[1] operation?
[2] **A:** We normally would take an x-ray maybe one
[3] or two days afterwards to see that everything was in
[4] place. But this was one - they were very caustic
[5] about it. They took that dog out of the hospital the
[6] next morning before we ever had a chance to do any
[7] further care with it. And we always instruct them
[8] about how to take care of them and what to do. But
[9] that dog was bandaged up, with a big bandage around
[10] its body. Bandaged the leg right to his body.
[11] **Q:** Did any other veterinarian call you for
[12] any medical history?
[13] **A:** No, not on this case, huh-uh.
[14] **Q:** Do they sometimes call for background of
[15] an animal?
[16] **A:** Right, yeah. We communicate quite a few
[17] times, particularly sometimes when we refer them.
[18] **Q:** Let me digress a little bit. A lot has
[19] been said about medical records. What's the protocol
[20] at your hospital concerning medical records?
[21] **A:** Well, what they see that has been
[22] exhibited is mainly a billing, which doesn't have the
[23] details. We have a worksheet that's kept on
[24] clipboards with every animal, and even to what leg the
[25] animal received a shot of penicillin in is recorded,

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[1] and the temperature and so forth on each dog each day
[2] while they're there.
[3] **Q:** And where are those records kept?
[4] **A:** We keep those on a clipboard, and those
[5] don't go into the computer because sometimes they're
[6] quite voluminous.
[7] **Q:** And how long do you keep those records?
[8] **A:** Well, as long as it's an active case, why,
[9] it's kept on closed file. After a period of maybe a
[10] year or something where an animal is deceased, why,
[11] they're no longer kept.
[12] **Q:** And does your hospital keep permanent
[13] records of all immunizations and shots and things of
[14] that nature?
[15] **A:** Yes.
[16] **Q:** Now, you have a pharmacy at the hospital;
[17] do you not?
[18] **A:** Right.
[19] **Q:** When you've furnished medication to an
[20] owner, what do you place on the prescription label?
[21] **MR. ALLRED:** Your Honor, I'm going to
[22] object on the basis of relevancy. There are no
[23] charges in the petition that there's been any improper
[24] prescribing or delivery of medications.
[25] **THE COURT:** I agree that there's no

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[1] allegations of improper prescribing, but there has
[2] been testimony as to whether certain medications were,
[3] in fact, given or not given, particularly antibiotics
[4] I believe in at least one case, perhaps more than one.
[5] I think that's what Mr. Dahl is driving at.
[6] **MR. DAHL:** Yes.
[7] **THE COURT:** And I'll allow him to
[8] continue. Go ahead.
[9] **BY MR. DAHL:**
[10] **Q:** Now, let me ask you this: On medications
[11] that you sometimes use on an animal, is that usually a
[12] billable item, or does that just come with the
[13] services?
[14] **A:** A lot of hospital procedures are just used
[15] in the hospital and they don't put them on the bills
[16] at all, unless we dispense - if we dispense any
[17] antibiotics, if any antibiotics are dispensed, they
[18] are put on there with the instructions on it of how
[19] often and so forth, and if they can refill the
[20] prescription and all that.
[21] **Q:** Now, let's go to Nadia, which is the
[22] DeGuzman's dog with mastitis. Do you recall that
[23] animal?
[24] **A:** I certainly do.
[25] **Q:** Would you explain what procedure - what

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[1] you did with that animal.
[2] **A:** They brought that dog into the hospital
[3] and we set it up on a table and we examined it and
[4] diagnosed that it had gangrenous mastitis. If you
[5] know what gangrenous mastitis is, well, it's - all
[6] over the tissue of the mammary glands is starting to
[7] die and slough away. And it was draining and weeping
[8] out of about four or five different places on it.
[9] We told them we'd have to hospitalize it
[10] and a lot of that stuff was going to be eroded out of
[11] there, and maybe even cleaned out. And the dog acted
[12] all right, but just as they left the dog bit me right
[13] in the face. It actually made a mark on my face, and
[14] jumped off the table and acted like it was going to
[15] run out of there. And I stepped in front of it so it
[16] couldn't run out through the front office, draining
[17] all of this stuff it had dripped all over our table.
[18] Yesterday DeGuzman testified that I kicked the dog.
[19] In no way did I do that.
[20] **Q:** Now, I guess the issue came up that you
[21] did not use any anesthetic when you cut away this
[22] material?
[23] **A:** That is kind of a sore point, as far as
[24] people assuming that we didn't use anesthetic. And
[25] anybody who works on animals and you work with live

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[1] tissue, you know that there's pain involved. Now,
[2] this animal was given anesthetic or a pre-anesthetic,
[3] and a lot of that tissue had sloughed out of there
[4] every day. Sure it drained out, but dead tissue is
[5] dead tissue. It sloughed away and we was in the
[6] process of cleaning this up every day and treating it.

[7] But it was right at Christmas time, and
[8] these people called incessantly day and night saying
[9] that they couldn't pay for the Christmas for their
[10] children they had bought, and that they couldn't
[11] afford to leave it in the hospital. We told them that
[12] it certainly wasn't ready to go home, and it was
[13] open. There was an area in there - well, you saw
[14] pictures of it - that they had taken to the other
[15] hospital. This whole area was sloughing away, and
[16] then dead tissue sloughing out. And sure, in the
[17] process of time we would have sutured it all back
[18] together for them, too.

[19] But they insisted that they take it home.
[20] We told them it wasn't ready to go home and it was an
[21] open wound, and the best they could do is use this
[22] spray to spray in there, which would disinfect it and
[23] help it to resolve to a point maybe it could be closed
[24] up later. Had we bandaged it, why, you'd bandage in
[25] the poison and toxin that was there and done damage to

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[1] the dog at that time.

[2] That dog was always alert and active when
[3] it was at our place. It never missed a meal. It had
[4] antibiotics every day. In fact, right at first all
[5] those animals like that get interavenous antibiotics
[6] and usually an intermuscular antibiotic night and
[7] morning.

[8] But they insisted that they take that dog
[9] out of there, and saying that they couldn't afford it,
[10] and as they testified, we'll show you they paid very
[11] little down on it and we never, ever got another cent
[12] out of it. Next thing you know, through a lawsuit,
[13] why, we had to go to court on it, which has been
[14] resolved.

[15] **MR. ALLRED:** Your Honor, I want to stop
[16] the witness.

[17] **THE COURT:** Mr. Dahl, I don't know if you
[18] provided any guidance to Dr. Taylor, but in case you
[19] haven't, let me do it now.

[20] Doctor, I've already ruled in this case
[21] that the outcome of that litigation is not proper
[22] evidence before the Board. You have referenced the
[23] fact that the litigation was initiated by the Guzmanns.
[24] That is proper evidence before the Board. But there
[25] is to be no reference to the outcome.

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[1] Go ahead, Mr. Dahl.

[2] **MR. DAHL:** Thank you, your Honor.

[3] **BY MR. DAHL:**

[4] **Q:** What is your practice concerning a wound
[5] that is draining, such as on Nadia?

[6] **A:** A lot of times, if they will let us, at
[7] the time those are drained we put what we call drains
[8] in them, suture drains into them so they can be
[9] flushed daily, and take the poison out of it or get
[10] the swelling down.

[11] **Q:** Let's move over to Hillary, the English
[12] bulldog. Are you familiar with that case?

[13] **A:** Yes, I know about it, yes.

[14] **Q:** What do you know about it?

[15] **A:** Well, Ms. Bue thought she was talking to
[16] me and then she didn't talk to me that day at all. I
[17] had nothing to do with that dog as far as entering it
[18] into the hospital or sending it out of the hospital.
[19] I did not know that it was even there probably until
[20] midday that day that I got back to the hospital.

[21] I did see two aborted puppies that was
[22] absolutely premature. After seeing premature births
[23] for years and years, these two puppies that bitch
[24] passed were premature. And they, any way that you
[25] want to look at it, they had very, very little hair on

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[1] them. And if you noticed that at the time that that
[2] dog was inseminated, come in for artificial
[3] insemination, why, it was premature from the last
[4] insemination, because when the eggs leave the ovaries
[5] and start to head down toward the uterus and the sperm
[6] meets it, sometimes you have a delay from two to five
[7] days before implantation down into the uterus. And
[8] from all indications, this dog was premature.

[9] And like I said to Ms. Bue, I did not -
[10] and now that Lori Larsen walked back into the
[11] building, can I comment on what was said to her? When
[12] she came to investigate about this case, I looked at
[13] her in the eyes and I said - and started to stand
[14] up. And I said, "I'll go in the other room and get
[15] Dr. Stock. He's the one that took care of it."

[16] She held her hands out like that and said,
[17] "Oh, no, it's okay." Wouldn't let me walk in the
[18] other room and get him.

[19] **Q:** Now, in the petition here they talk about
[20] alleging that you had flushed out Hillary, a procedure
[21] Respondent performed by inserting a catheter with a
[22] pump on it into the uterus and cleaning it out.

[23] **A:** No, I didn't do anything with that dog.
[24] Maybe if it had aborted later and come back in so that
[25] it was having a vaginal discharge, which sometimes you

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[1] get a separation and a discharge come out later, why,
[2] those procedures might be done. But I didn't do
[3] anything for that dog.

[4] Q: When this animal was received at the other
[5] hospital, did anybody call you or Dr. Stock concerning
[6] the history of what had been done?

[7] A: Nothing was contacted to me, no.

[8] Q: Are C-sections normal procedure in these
[9] types of cases?

[10] A: Yes. All your what we call a
[11] brachycephalic breeds, particularly the English
[12] bulldog, is really susceptible to that.

[13] Q: Have you had any reason why you would not
[14] perform a C-section on it?

[15] A: No, we probably would have done it. Had I
[16] been in charge of it, I think maybe we would have
[17] taken them out.

[18] Q: Where is Dr. Stock now?

[19] A: The last time I knew about him, why, he's
[20] I guess in Payson or down there.

[21] Q: He no longer works for your hospital?

[22] A: No.

[23] Q: Is he suffering from any ailment that you
[24] know of?

[25] A: Well, he must be because I asked him about

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[1] earlier, maybe the outcome would have been better.

[2] The record is that Dr. Stock started that dog out on
[3] Cortical 20. All of the Board up here knows all about
[4] that, that quick-acting Prednisone that relieves
[5] inflammation. And it was given antihistamines,
[6] antibiotics night and morning while it was there.

[7] And the dog actually was bathed off and
[8] helped it express the bladder, which it would leak
[9] out, but it wasn't to the point that it had to be
[10] catheterized while it was there. We had success
[11] getting it out. And a lot times those dogs are kept
[12] on a grate to where the urine runs out and stays away
[13] from them and minimizes the amount of urine burn and
[14] so forth you have.

[15] But this dog, I'm sure that through the
[16] injury it had, it got and drug itself around, it had
[17] scarification, and started out with what we call moist
[18] eczema and redness and irritation of the skin all
[19] under it. But the day that - I can't recall the
[20] guy's name that come and get it.

[21] Q: Schofield?

[22] A: Schofield. Mr. Schofield came and got it.
[23] Why, I guess he had been told that the dog probably
[24] was, you know, suffering quite a bit, and it was at
[25] the point that they maybe should consider putting it

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[1] this case. We got a lawsuit from Ms. Bue suing me on
[2] the dog and loss of litter, loss of - and so forth,
[3] loss of breeding rights later and all that. And we
[4] asked him about this and showed him the lawsuit, and
[5] he immediately developed amnesia. And to this day I
[6] guess he probably has it.

[7] Q: And you discharged him?

[8] A: Yeah. Well, he quit. Somewhere, somehow,
[9] somebody got to him and he all of a sudden decided
[10] that he was going retire. And he left my employment.

[11] Q: Okay, let's move on. Shakesbear, a
[12] four-year-old male chow chow named Shakesbear. Do you
[13] remember that animal?

[14] A: Yes. I was the one that sent it home, but
[15] I wasn't the one that admitted it. There again, I
[16] tried to tell Lori that she could talk to him. He was
[17] the one that admitted it, and actually had talked to
[18] him about the x-ray and what the disposition of it was
[19] on the dog as far as what he had told them. I didn't
[20] know up until the time that I discharged the dog from
[21] the hospital.

[22] And my recollection was that the dog had
[23] been there for about two days. I think the testimony
[24] came out earlier that had they started
[25] anti-inflammatories or Prednisone or those things

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[1] to sleep. Well, he said that he had to talk to his
[2] sister and she wasn't in town at that time, and he
[3] wanted to see the dog.

[4] Well, to his dismay I walked the dog out
[5] to him, ahold of its tail. It had walked perfectly
[6] with the front legs and it couldn't do a thing with
[7] the back, and there was very little sensation on those
[8] back legs. You could give it a shot and it wouldn't
[9] wince at all. And it had very little nerve reflection
[10] of working with the legs.

[11] And when I took the dog out to him, I told
[12] him we needed to clean it up, and he says, "No, that's
[13] okay. Didn't worry about that," that he would take
[14] the dog home.

[15] I said, "No, let us clean it up. I'll
[16] have some help here in a few minutes, and we'll get it
[17] cleaned up." And he insisted it was all right and he
[18] picked the dog up and he took it.

[19] Q: Now, was it you or the other doctor that
[20] had recommended that perhaps Shakesbear, the extent of
[21] injuries he had, should be put to death, I guess?

[22] A: Well, I'm sure that Dr. Stock had talked
[23] it over with him on it. And after maybe two days or
[24] three days if you don't see much improvement on it,
[25] sometimes with a sick animal, they always ask. If a

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[1] person asks if their animal is suffering, you have to
[2] be honest with them and tell them yes, that sometimes
[3] they are, that hypertension and the pain that can
[4] develop from this, certainly they are suffering.
[5] And they use the opportunity to make their
[6] decision of what they want to do. We don't suggest
[7] they put it to sleep unless they're at the point that
[8] they don't want to see it suffer anymore. I certainly
[9] on that one paper said that I told him after 30 years
[10] experience, that I never did see them improve. I
[11] never use that word "never." Somebody will prove you
[12] wrong all the time.
[13] Q: Are you the one that stated that the
[14] x-rays showed the spine was injured and disks were out
[15] of line?
[16] A: Well, I may have told them that, but Dr.
[17] Stock actually had explained the x-rays to them to
[18] start out with, what was wrong with it. And he
[19] consulted me on it and we both agreed that it was
[20] probably about the third lumbar area that had the
[21] greatest damage done. Whether it was enough that he
[22] could recuperate from it, it was hard for us to say at
[23] that time. Maybe with a period of medication, and
[24] like she testified, that was how she worked with that
[25] dog. She's the one that actually got that dog to

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[1] improve. Some of these dogs that go down in the back,
[2] back end, people are willing to work with them, swim
[3] them and everything else, hydrotherapy. They
[4] certainly can bring them back from a lot of different
[5] damages.
[6] Q: What are your procedures at the hospital
[7] concerning instructions to owners about patient care
[8] if they've had a fracture or other distress?
[9] A: All animals that leave the hospital,
[10] they're given instructions on how to minimize the
[11] amount of movement as far as going up and down steps
[12] and jumping up and down on the objects, and maybe even
[13] they have to, if they've got steps, to pack them
[14] outside, down the steps, so that they don't use those
[15] steps for a while.
[16] Q: What is the procedure called when you want
[17] to relieve urine from the bladder?
[18] A: Catheterize.
[19] Q: Yes. Do you know whether or not any
[20] catheterization was done on Shakesbear?
[21] A: I didn't do any catheterization on it.
[22] Whether or not Dr. Stock did or not, I don't know.
[23] But we had trouble initiating the flow of urine, but
[24] once it was started, why he passed urine there
[25] readily. Whether this paralysis had developed and

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[1] come on further to the point where you get lazy
[2] muscles, you might say, the bladder that can't express
[3] itself, then those things, yes, they have to have a
[4] catheter put in them.
[5] Q: On your continuing education, Doctor, is
[6] there a requirement for veterinarians to attend
[7] certain classes to update you as part of your
[8] continuing education?
[9] A: Yes, I believe that they encourage all
[10] veterinarians to get 30 to - Kay would probably know
[11] how many hours they're supposed to receive every year.
[12] Q: And do you meet the minimum requirement?
[13] A: I feel I have, yes.
[14] Q: Does the Association have regular periodic
[15] seminars?
[16] A: Yes. Sometimes the different drug
[17] companies or pharmaceutical companies will put on a
[18] seminar and have a speaker. Those things are credited
[19] toward that, too.
[20] Q: Are there any standards printed at all in
[21] any of your manuals or periodicals stating how the
[22] scope of the history of the animal is necessary in
[23] treatment?
[24] A: You mean as far as taking a thorough
[25] history and the procedures, what is done to the

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[1] animal?
[2] Q: Yes.
[3] A: Yes. It's recommended that a thorough
[4] history be taken. Sometimes that is the best
[5] indication you've got as far as the diagnosis before
[6] you initiate treatment, is to get a thorough history.
[7] That thorough history can be complemented by the
[8] owner, the environment that they've been in and so
[9] forth.
[10] Q: And where is this history stored?
[11] A: We keep a history on all active cases in
[12] the hospital, like I said, on a clipboard with the
[13] history on there, what's preceded the animal to what
[14] procedures we have performed.
[15] Q: What goes into the computer?
[16] A: Well, as far as, like, initial surgery, as
[17] far as that's concerned, why, maybe it was said that
[18] the dog was neutered or spayed. The type of
[19] anesthetic and all those things, that doesn't go along
[20] with that.
[21] Q: Is it your practice when you do a
[22] procedure on a dog that you use some type of
[23] anesthetic on it?
[24] A: Yes. All dogs are given a pre-anesthetic
[25] before they're ever started to do any other procedures

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[1] on them. Even the animals that come in that have to
[2] have teeth work done on them, cleaning of the ears and
[3] all different things, why, usually a pre-anesthetic is
[4] given to them. Sometimes if the sedation is enough
[5] that if an animal doesn't object to it, just that will
[6] do it. But the majority of them are given a total
[7] anesthetic so they can be worked on.

[8] Q: Do you have a machine that does that?

[9] A: Well, we have a gas anesthetic machine,
[10] yes. They're usually put down with a short-acting
[11] barbiturate at first and then intubated and hooked up
[12] on the gas machine.

[13] Q: Is that done when a dog is spayed?

[14] A: Yes. It can be done when a dog is spayed,
[15] yes.

[16] Q: How long are history records kept at your
[17] hospital?

[18] A: We keep most of them, I'm sure, for three
[19] years, and some of them longer than that.

[20] Q: One of the Division's allegations is that
[21] your facilities are unsanitary.

[22] A: Yeah. In a previous statement that was
[23] given by Lori Larsen that she answered the question of
[24] why she wrote that we have an unsanitary facility is
[25] that she saw a loose cat in the office. And the other

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[1] one was that there was a dog that had urine stains on
[2] it and moist eczema; that she testified that it had
[3] all that urine burn and moist eczema. And what had
[4] taken place on the dog, any time you have damaged
[5] tissue on a dog, sometimes it takes about three days
[6] or four days before it starts to separate and to die
[7] and actually fall away.

[8] Q: During the investigation of you which took
[9] over a year, did anybody ever come out from the Board
[10] of Health or from the Division or anybody else come
[11] out and inspect your facilities out there for
[12] sanitation or other purposes?

[13] A: No. No, and I might further comment,
[14] maybe I shouldn't, but in what she wrote up in that
[15] report saying we are dirty and unsanitary, I
[16] challenged her on that, that she could go to other
[17] facilities without being announced and compare.

[18] Q: Would you have any objection if this
[19] Board -

[20] A: None whatsoever.

[21] Q: - wanted to come out and examine your
[22] facilities?

[23] A: If the Board wanted to come out, that
[24] would be fine.

[25] MR. DAHL: That's all I have.

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[1] THE COURT: Mr. Allred, before starting
[2] your cross, I don't want to interrupt it midstream.
[3] Dr. Taylor has been testifying for close to an hour.
[4] I'd like to take a brief recess, if that's all right.

[5] MR. ALLRED: That would be fine with me.

[6] THE COURT: We'll be in recess for ten
[7] minutes, until 2:05.

[8] (Recess)

[9] THE COURT: Back on the record after a
[10] ten-minute recess. Mr. Allred, cross-examination of
[11] this witness.

[12] MR. ALLRED: Yes, your Honor.

[13] CROSS-EXAMINATION

[14] BY MR. ALLRED:

[15] Q: Dr. Taylor, let's start with Dr. Boyd
[16] Stock. Can you tell me what time period Dr. Stock
[17] worked for you?

[18] A: He actually worked for me two different
[19] times, before he moved up to Dr. Winward's place, and
[20] he came back, and I think that was in late '92 or '93,
[21] and he worked up until, oh, approximately - I don't
[22] know. I'd have to look up the dates to give you the
[23] exact on it, but I think it was earlier this year.

[24] Q: Is it fair to say that Dr. Stock worked
[25] for you from approximately 1992 to 1995?

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[1] A: Yes.

[2] Q: Do you know how tall Dr. Stock is?

[3] A: Well, I'm six-one, and I'd say he's about
[4] six, or five-eleven.

[5] Q: Would you change your testimony if I told
[6] you that I have state records to show he's
[7] five-foot-seven?

[8] A: Okay, he's five-foot-seven, then.

[9] Q: You've testified that you keep your notes
[10] on your patients for approximately a year after you've
[11] treated them. Do I have that correct?

[12] A: Right, on the active cases that still
[13] could be coming back to the hospital or a case that is
[14] still pertinent.

[15] Q: I'm going to hand you what's going to be
[16] marked as State's Exhibit 32 and ask if you can
[17] identify that.

[18] A: Yes.

[19] Q: Have you ever seen that document?

[20] A: Right, uh-huh.

[21] Q: Can you tell the Board what that document
[22] is?

[23] A: Yeah. It was one that was served on me to
[24] pick up records on these cases.

[25] Q: Do you recall when it was served?

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[1] A: This is dated the 22nd day of September,
[2] '94.
[3] Q: Do you recall when the document was left
[4] with you?
[5] A: You mean the time of day?
[6] Q: No, when, what day. What day of the
[7] month?
[8] A: I don't recall when the 22nd of September
[9] was in '94, no.
[10] Q: Do you recall having an interview with
[11] Lori Larsen from the Division during October of 1994?
[12] A: Yes, I remember visiting with her.
[13] Q: Did she serve the subpoena during one of
[14] those interviews with you?
[15] A: I believe it was, yes.
[16] MR. ALLRED: Your Honor, I don't have any
[17] other copies than what I have given Dr. Taylor, and I
[18] apologize. I didn't anticipate admitting this into
[19] evidence. But I would move to admit State's Number 32
[20] into evidence, and I'll let Mr. Dahl look at it.
[21] THE COURT: Mr. Allred, is it being
[22] offered to establish that records were subpoenaed and
[23] the date of that request?
[24] MR. ALLRED: Yes, your Honor.
[25] MR. DAHL: I have no objection.

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[1] THE COURT: As identified it is so
[2] received. Before we proceed too much farther, today
[3] during a recess or something I'll have copies made
[4] available to the Board.
[5] MR. ALLRED: Thank you, your Honor.
[6] THE COURT: If you'll give me the one from
[7] the file, I'll provide the copies from that.
[8] BY MR. ALLRED:
[9] Q: Dr. Taylor, let's take a moment and go
[10] through the petition filed against you. The events
[11] that occurred with Oscar took place during July of
[12] 1993. Is that fair to say?
[13] A: Sounds like the time, yeah.
[14] Q: The events that occurred with respect to
[15] Nadia occurred during December of 1993. Is that fair
[16] to say?
[17] A: Sounds like it.
[18] Q: The events as they pertain to Hillary
[19] occurred during June of 1994. Is that fair to say?
[20] A: Yes.
[21] Q: And the events that occurred with respect
[22] to Shakesbear took place in May of '94. Is that fair
[23] to say?
[24] A: Sounds okay.
[25] Q: And the events that took place with

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[1] respect to Char occurred in October of '94. Is that
[2] fair to say?
[3] A: I believe it was.
[4] Q: Let's go back to the beginning and tell me
[5] how long a time period had elapsed between July of '93
[6] and October of '94 when you received the subpoena.
[7] A: The time elapsed? What do you mean by the
[8] time elapsed?
[9] Q: How many months had passed?
[10] A: I guess it was the better part of a year
[11] there.
[12] Q: According to your testimony, you keep
[13] records of active patients for approximately a year.
[14] Did you have the notes that you kept on Oscar when the
[15] subpoena was served on you in October of '94?
[16] A: What was run out of the computer was given
[17] to her. As far as the actual date of the notebook pad
[18] like you said, we don't keep those things much longer
[19] than probably three to four months, or even a year if
[20] it's not going to be an active case.
[21] Q: Were the records, the notes you kept on
[22] Oscar available in October of '94?
[23] A: Should have been, yes.
[24] Q: Did you produce them to the Division?
[25] A: We gave her all the pertinent information

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[1] on that that we had performed on the dog.
[2] Q: Did you provide the notes you kept on
[3] Oscar to the Division?
[4] A: I didn't write down the amount of
[5] anesthetic that was given or the antibiotics that was
[6] given or the fluids that were given to the dog and the
[7] emergency treatment on it, no. Those weren't kept.
[8] Q: Did you write any notes down?
[9] A: Yes. The notes that was kept for shock
[10] treatment and the numbers, what we all did for it.
[11] Q: How long did you keep those notes?
[12] A: Those notes, if the dog looks like it's
[13] going to come back to the hospital, why, they're kept
[14] for as high as three months.
[15] Q: Do you know exactly how long the notes on
[16] Oscar were kept?
[17] A: I couldn't tell you for sure.
[18] Q: Let's turn to Nadia. You treated Nadia in
[19] September of '93. In October of '94, did you have
[20] your notes on Nadia?
[21] A: October of '93 to when?
[22] Q: From December, 1993 till October of '94.
[23] A: Oh, they probably wouldn't have been kept
[24] that long.
[25] Q: How long did you keep notes?

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[1] A: If it looks like it's going to be an
[2] active case that would come back in, I keep them up to
[3] maybe a year. But if it's not, why, some of those
[4] aren't kept very long.

[5] Q: Let's turn to Hillary. Brookside Animal
[6] Hospital treated Hillary in June of 1994. Did you
[7] have those notes when the subpoena was served in
[8] October of 1994?

[9] A: That is on the - refresh my mind which
[10] dog that was.

[11] Q: Hillary is the English bulldog.

[12] A: Yeah. I didn't keep any notes on that.

[13] Maybe Dr. Stock did.

[14] Q: Does Brookside's policy on keeping notes
[15] apply to all veterinarians that work there?

[16] A: Yes, should do.

[17] Q: So did you turn over the notes on Hillary
[18] to the Division when you were served with the
[19] subpoena?

[20] A: All that was in the computer that we had
[21] on it, yes.

[22] Q: Did you keep the actual handwritten notes
[23] and did you turn them over to the Division?

[24] A: I didn't. You'll have to ask Dr. Stock
[25] that. I didn't turn any notes over to her.

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[1] Q: Did the subpoena require you to turn over
[2] all documents?

[3] A: We turned over what we had on it.

[4] Q: Why didn't you have the notes on Hillary?

[5] A: You'd have to ask Dr. Stock.

[6] Q: Did he work for Brookside in June of 1994?

[7] A: Well, I think he did, yes.

[8] Q: Would the notes be at Brookside Animal
[9] Hospital from Hillary from June of 1994?

[10] A: Well, if he kept them I guess they would
[11] be.

[12] Q: Let's turn to Shakesbear. You treated
[13] Shakesbear, that is Brookside Animal Hospital treated
[14] Shakesbear in May of 1994. When you were served with
[15] the subpoena in October of 1994, did you have those
[16] notes?

[17] A: The handwritten things that the dog was
[18] given, as far as all of the medication, should have
[19] been on the thing that we gave Lori.

[20] Q: Did you turn over the handwritten notes?

[21] A: No, I didn't give her any handwritten
[22] notes on this dog, huh-uh.

[23] Q: Did you have the handwritten notes in
[24] October of 1994 on Shakesbear?

[25] A: I don't know. I didn't find any notes on

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[1] it, no.

[2] Q: Let's turn to Char. Char was seen at
[3] Brookside in October of 1994. Do you have the
[4] handwritten notes on Char?

[5] A: This was?

[6] Q: This is the shar pei brought in for a
[7] spay.

[8] A: Yes, okay. The only notes on that dog
[9] would have been what was put on the thing. As far as
[10] handwritten notes, like I said, the type of anesthetic
[11] and the pre-anesthetic and all those, we don't keep
[12] any track of that.

[13] Q: You don't make any notes of any kind for
[14] those?

[15] A: The girls make a note when the dog comes
[16] in.

[17] Q: Do you make notes of the pre-anesthetic
[18] given to a specific animal?

[19] A: It's written down, what pre-anesthetic was
[20] given.

[21] Q: Where are the notes on Char?

[22] A: Well, if they're not put in the computer,
[23] why, they're not kept.

[24] Q: How long do you keep handwritten notes?

[25] A: Like I said, if it's a pertinent case that

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[1] looks like a case will come back, some of these are
[2] kept as high as three months or longer.

[3] Q: How long do you keep notes on an inactive
[4] case?

[5] A: It's kept in the computer. All the
[6] material kept in the computer is kept for at least
[7] three years.

[8] Q: How long do you keep the handwritten notes
[9] on an inactive case?

[10] A: Some of those inactive cases, we don't
[11] keep them very long.

[12] Q: How long do you keep them?

[13] A: Maybe 30 days.

[14] Q: Do you consider a dead animal to be an
[15] inactive case?

[16] A: Yeah. Wouldn't see it again, so wouldn't
[17] have kept any notes on it.

[18] Q: Did you turn over the records on Char,
[19] your handwritten notes on Char when you were served
[20] with the subpoena in October of 1994?

[21] A: We give them all the pertinent information
[22] we had on that dog.

[23] Q: So you didn't have any notes in October of
[24] '94, even though Char died in October of '94?

[25] A: We didn't have any notes outside of a

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[1] pre-anesthetic that was given. And it was just
[2] indicated, that checkoff on it. And the type of
[3] anesthetic, no, we don't keep those, the type of
[4] anesthetic and that on that.
[5] Q: So you don't keep any records on the type
[6] of anesthetic given to an animal?
[7] A: Oh, yeah, it's written down on them. But
[8] as far as the case comes in and is paid today, out
[9] tomorrow, and if everything is normal, we don't see
[10] any reason to keep the information on that.
[11] Q: So how quickly do you dispose of records
[12] like in a case with Char?
[13] A: Like I said, the working notes that we
[14] keep as far as the checkoff notes on a pad on each
[15] one, it's just something like a spay in, spay out,
[16] why, they're only kept overnight.
[17] Q: So you throw out notes on spays overnight?
[18] A: Well, the computer's got all the
[19] information on it. The dog was spayed, the date it
[20] come in, all of the pertinent records on the dog as
[21] far as the vaccinations and status of the health and
[22] so forth.
[23] Q: Let's turn to Oscar, which occurred in
[24] July of 1993. And I'm going to hand you the witness
[25] exhibit book and have you look at some of the exhibits

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[1] that have been admitted. Turn with me to tab number
[2] 26, which is Exhibit Number 26. Pardon me, that's not
[3] going to help anybody, that's an x-ray. So turn to
[4] tab - no, that's not going to help, either. Tab
[5] number 28. Do you recognize this document?
[6] A: Yes, uh-huh.
[7] Q: Can you tell me what the date is up in the
[8] left-hand corner under Brookside Animal Hospital?
[9] A: June the 15th, '95.
[10] Q: Can you tell me why it bears that date?
[11] A: That's the day that this was printed out
[12] of the computer.
[13] Q: Can you tell me what the dates are under
[14] the middle of the words Medical History Report?
[15] A: July 17th of '93.
[16] Q: No, underneath the words Medical History
[17] Report. What dates do you see?
[18] A: You mean over here on the birthday?
[19] THE COURT: The entry at the top of the
[20] form, Doctor. Right in the middle of the page at the
[21] top.
[22] THE WITNESS: January the 1st - June
[23] 15th, '95.
[24] BY MR. ALLRED:
[25] Q: Does your computer show this as an active

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[1] case?
[2] A: Sure, it would be shown as still active.
[3] Q: Yet you don't have the notes, the
[4] handwritten notes on this case?
[5] MR. DAHL: I'm a little confused. The
[6] witness testified that that was the date the
[7] information came out of the computer, and he's asking
[8] if this is still an active case. That's two different
[9] animals.
[10] THE COURT: There's two different dates on
[11] here. The first question went to the date in the
[12] upper left corner with the phrase Brookside Animal
[13] Hospital, and the second is a range of dates under the
[14] title of the report. And I think questions were
[15] directed to each.
[16] As I recall the responses, the first date
[17] under Brookside Animal Hospital is the date this
[18] report was generated. And Mr. Allred asked his other
[19] question about the meaning of the dates under the
[20] title of the report, and then asked if that reflects
[21] that this is an active case, and Dr. Taylor said yes.
[22] Go ahead, Mr. Allred.
[23] BY MR. ALLRED:
[24] Q: Dr. Taylor, how many x-rays did you take
[25] of Oscar?

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[1] A: Just the one.
[2] Q: You just took one preoperative x-ray?
[3] A: Yes.
[4] Q: And when did Oscar leave Brookside Animal
[5] Hospital?
[6] A: Well, I'd have to look that up for sure,
[7] but he was only there I think two days.
[8] Q: When was Oscar brought into Brookside
[9] Animal Hospital?
[10] A: Well, there again, you'll have to refer
[11] back to the things there. I've looked at so many
[12] dates here on these things this afternoon that .
[13] Q: When did you perform the surgery on Oscar?
[14] A: I believe it was the second day after he
[15] had been there. It took one day to stabilize him.
[16] Q: How long did Oscar stay after the surgery?
[17] A: He went home the next day.
[18] Q: Do you know the date that you performed
[19] the surgery?
[20] A: He came in with it on the 15th. We
[21] stabilized him up to the 16th, operated on him on the
[22] 17th, and he went home. We didn't do it until late in
[23] the afternoon and he went home the next morning.
[24] Q: Do you have any other records that show
[25] when Oscar came in?

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[1] A: I think the entry date was given to you on
[2] that.
[3] MR. ALLRED: Your Honor, may I see State's
[4] Exhibit Number 31, which I believe is the x-ray
[5] taken?
[6] THE COURT: Just one minute. 31? 31 is
[7] the two pins that were provided to Mr. Brinkman. If
[8] you're looking for the x-ray of Oscar taken by
[9] Respondent, I believe it's Respondent's Exhibit 3.
[10] MR. ALLRED: Thank you, your Honor.
[11] THE COURT: Division's Exhibit 30, excuse
[12] me.
[13] BY MR. ALLRED:
[14] Q: Dr. Taylor, I've handed you what's been
[15] marked as Division's Exhibit Number 30. Can you
[16] identify that exhibit?
[17] A: Yes, uh-huh.
[18] Q: Can you determine what the date is in the
[19] upper right-hand corner?
[20] A: It's on the 7th and 8th of '93.
[21] Q: So when did Oscar come into Brookside
[22] Animal Hospital?
[23] A: It would have had to have been - this was
[24] probably taken either that day that he came in or the
[25] next morning.

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[1] Q: So when did he come into Brookside Animal
[2] Hospital?
[3] A: You know, as far as this x-ray is
[4] concerned, you'll have to look on the date on it.
[5] Q: So what does the x-ray say?
[6] A: This x-ray showed that he had an oblique
[7] fracture of the humerus.
[8] Q: What date does the x-ray bear?
[9] A: 7/8/93.
[10] Q: So is it fair to say that Oscar must have
[11] been at Brookside Hospital on July 8th?
[12] A: Right.
[13] Q: When did you perform the surgery on Oscar?
[14] A: Well, if he came in that day, it was the
[15] next day.
[16] Q: And when did Oscar leave Brookside Animal
[17] Hospital?
[18] A: Morning after he was operated on.
[19] Q: What does Exhibit Number 28 say?
[20] THE COURT: In terms of what? It says a
[21] lot of things, Mr. Allred.
[22] MR. ALLRED: I'll wait for him to turn to
[23] it.
[24] MR. DAHL: What number is he dealing with
[25] here, so I can follow you?

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[1] THE COURT: Number 28.
[2] BY MR. ALLRED:
[3] Q: Dr. Taylor, what date do you see on the
[4] left-hand column by your name, Leo Taylor, for Oscar?
[5] A: July 17th, '93.
[6] Q: What date is that?
[7] A: Well, that indicates that the dog was
[8] there longer than - I don't get what you're driving
[9] at here, you're trying to find out. I think I've told
[10] you everything that I know about the case.
[11] Q: You've said that you operated on Oscar the
[12] day after he was brought in, and that he left the day
[13] after that. Was that day July 17, 1993?
[14] A: Well, he must have come in on July the
[15] 15th, then. Why this x-ray is dated July 8th -
[16] you're trying to confuse me on these dates.
[17] Q: Did you take any postoperative x-rays of
[18] Oscar?
[19] A: No, I said that I didn't. I didn't have a
[20] chance. The dog went home and we didn't have a chance
[21] to follow up on it.
[22] Q: You testified that you have the ability at
[23] your hospital to sharpen and put screws on the end of
[24] pins?
[25] A: Right.

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[1] Q: What type of machinery do you have?
[2] A: Well, it's an electrical grinder, and a
[3] device that puts threads on different sizes of
[4] machines - of pins.
[5] Q: What size of pin did you put in Oscar?
[6] A: I'd say the size of the one right there,
[7] laying on the table.
[8] Q: Which one are you referring to?
[9] A: The large one.
[10] Q: How long is that pin?
[11] A: Well, that pin would be too short to put
[12] in there to start out with. That's at least a
[13] six-inch, seven-inch pin.
[14] Q: How long a pin did you put in Oscar?
[15] A: Well, you start out with one maybe a foot
[16] long, because you have to thread it out through the
[17] proximal end of the bone that you're pinning and then
[18] insert it back down into the other broken-off piece.
[19] Q: How long a pin did you finish with?
[20] A: Oh, I'd say it should have been at least
[21] five to six inches long at the minimum.
[22] Q: Do you recall having your interview with
[23] Lori Larsen in October of 1994?
[24] A: I had several.
[25] Q: Do you recall telling Ms. Larsen that you

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[1] wrapped the bone with stainless steel wire?

[2] A: I said sometimes we do. On this case I
[3] didn't put any stainless steel wire in it, and I also
[4] told the owners that sometimes you have to put
[5] stainless steel wire in there.

[6] Q: You did not tell Ms. Larsen that you
[7] put -

[8] A: I told her sometime we put stainless steel
[9] wire in them. This case I did not put any stainless
[10] steel wire because quite a big segment of the bone was
[11] taken out.

[12] Q: Did you feel that the five- to six-inch
[13] pin would hold the fracture in place?

[14] A: It should have done, yes.

[15] Q: How many fractures were present when you
[16] looked at the x-ray?

[17] A: Well, it's quite an oblique x-ray that ran
[18] proximal down to the distal end and went on an oblique
[19] angle.

[20] Q: Is it your normal procedure to use a
[21] single intramedullary pin for a multiple fracture?

[22] A: Depends on the fracture and the area where
[23] it's broken.

[24] Q: Do you use anything else to stabilize the
[25] fracture?

[1] exactly what we're talking about, the separation and
[2] drainage from this dog was something that was
[3] beholding that you don't just overnight clean it all
[4] out in one fell swoop. And we told them it probably
[5] would have to be sutured up, but they didn't want to.
[6] They wanted to take the dog out. And it was given,
[7] the type of dog it is, a chow, you don't handle chows
[8] unless you use a sedative on them or like a
[9] pre-anesthetic.

[10] Q: What sedative did you use on Nadia?

[11] A: This dog was used sometimes with Ketomine
[12] and Rompin.

[13] Q: Turn with me to Exhibit Number 4. Do you
[14] recognize this exhibit?

[15] A: Yes.

[16] Q: Does that exhibit have any reference to an
[17] anesthetic on it?

[18] A: No, it doesn't. Like I said, that's just
[19] a billing thing that includes what was sent home with
[20] the animal.

[21] Q: Do you keep on your computer records of
[22] anesthetics used?

[23] A: Well, it goes as standard procedure with
[24] any surgery that you'd use anesthetic.

[25] Q: You didn't answer my question. Does your

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[1] A: Yes. Sometimes you actually can put
[2] plates in there or you can use screws, and like I
[3] said, wire to hold things in that position.

[4] Q: Let's move on to the next allegation,
[5] Nadia. If you'll turn with me to tab number 1. Do
[6] you recognize this exhibit?

[7] A: Yes.

[8] Q: Does this exhibit have any reference to
[9] anesthetic?

[10] A: No, it doesn't, but like I said, we don't
[11] put that on the billing.

[12] Q: Do you charge your patients for
[13] anesthetic?

[14] A: Certainly. It all goes within the
[15] procedure that you would perform.

[16] Q: Can you break out for us how anesthetic is
[17] included in this bill?

[18] A: Like I testified earlier, these people
[19] were actually suffering from Christmas and complaining
[20] about they couldn't hospitalize the animal, wanted to
[21] take it out of there and didn't have any money to pay
[22] for their Christmas, that they wanted to get it out of
[23] there.

[24] And like a gangrenous case of mastitis,
[25] I'm sure that everyone on the Board up here knows

[1] computer record the anesthetic used?

[2] A: The word "surgery" indicates that there
[3] was - you don't perform surgery without anesthetic.
[4] Anesthetic, no, we don't write on it what anesthetic
[5] was given on the computer.

[6] Q: Did you prepare the site by shaving it?

[7] A: The immediate site just around where it
[8] was sloughing off was clipped off. But as far as
[9] shaving it and getting it ready like for surgery, no,
[10] because this animal, we offered that service and there
[11] again, they were reluctant to leave the dog any
[12] longer.

[13] Q: Did you end up cutting away any tissue on
[14] Nadia?

[15] A: Just what was dead and was practically
[16] falling off on its own.

[17] Q: Can you cut back the live tissue?

[18] A: Not on this case, because we didn't have
[19] the animal that long. We would have done it had they
[20] left it with us so we could have completed it.

[21] Q: How long was Nadia at Brookside Animal
[22] Hospital?

[23] A: I think about three days.

[24] Q: Let's go on to the next one, which is
[25] Hillary. If you'll turn to tab number 6 and tell me

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[1] if you can identify this.
[2] **A:** Looks like that's -
[3] **THE COURT:** That's a different animal.
[4] **MR. ALLRED:** I apologize, your Honor.
[5] **THE COURT:** I believe the Respondent's
[6] medical history on that animal is Division's Exhibit
[7] 22.
[8] **MR. ALLRED:** Thank you, your Honor.
[9] **BY MR. ALLRED:**
[10] **Q:** Do you recognize Exhibit Number 22?
[11] **A:** Yes. That's a billing date out of the
[12] hospital.
[13] **Q:** Can you explain to the Board why your name
[14] appears underneath the name "doctor"?
[15] **A:** Because that's normally what they type in
[16] as far as - but as far as the doctor that took care
[17] of it, it's incorrect.
[18] **Q:** So you don't have any explanation other
[19] than someone typed it in wrong?
[20] **A:** That's right. We certainly know that I
[21] didn't have anything to do with that dog that day,
[22] like I testified. She didn't talk to me. She was
[23] talking to Dr. Stock over the phone all the time that
[24] she was corresponding with the hospital.
[25] **Q:** Did you artificially inseminate Hillary?

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[1] **A:** No. Dr. Stock did.
[2] **Q:** Did you ever examine Hillary?
[3] **A:** Not in this case, no.
[4] **Q:** Did you ever examine Hillary for another
[5] case?
[6] **A:** I don't recall that I did. I remember
[7] talking to her on the phone. She wanted to set up an
[8] appointment to have a Cesarian on the dog.
[9] **Q:** So you do recall speaking to her about
[10] setting it up?
[11] **A:** Talking about a Cesarian on the dog, yeah.
[12] **Q:** Let's turn now to Shakesbear, to tab
[13] number 12. Can you tell me if you recognize Exhibit
[14] Number 12?
[15] **A:** Yes, uh-huh.
[16] **Q:** Can you tell us why your name appears
[17] under the name "doctor"?
[18] **A:** There again, the entry's made when it
[19] comes into the hospital, and I guess they just typed
[20] it in there without - you have to understand that at
[21] the hospital when Dr. Stock came to work for us that I
[22] was doing probably 35 to 40 percent of large animal
[23] work and a lot of times I wasn't there, only in the
[24] afternoon or late afternoon. So a lot of these, I was
[25] the second doctor in on them. Whether they typed the

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[1] correct doctor in on these, why, that's .
[2] **Q:** What do you mean you were the second
[3] doctor in on the animal?
[4] **A:** Well, he had taken this animal, he had
[5] taken it in and it was x-rayed and then I was
[6] consulted to look at the x-ray with him. That's the
[7] first that I had anything to do with it.
[8] **Q:** Did you ever examine Shakesbear?
[9] **A:** Yes, I actually give him a shot. Like I
[10] said, he would take a shot without hardly any
[11] flinching in those back legs as far as the nerve
[12] damage that was done to him.
[13] **Q:** Did you test Shakesbear to see if there
[14] was any deep pain sensation other than the shot?
[15] **A:** Yeah. Tested his back legs as far as the
[16] response, and as far as the tail, the peritoneal area
[17] around the tail, as far as the damage that was done,
[18] why, I consulted with Dr. Stock on it. As far as
[19] that, he agreed with me that sometimes these don't
[20] respond.
[21] **Q:** Do you recall speaking to Lori Larsen
[22] about the Shakesbear case?
[23] **A:** Yes. I'm sure we talked about all of
[24] them.
[25] **Q:** Do you recall telling Lori Larsen that in

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[1] your opinion the dog did not need be catheterized?
[2] **A:** I don't recall that, but we sometimes had
[3] to help express it. But if we could express the
[4] bladder and give it a start, then sometimes it would
[5] urinate.
[6] **Q:** Do you recall telling Lori that you tried
[7] to be up front and honest with your clients and that's
[8] why you recommended that this dog be put down?
[9] **A:** Yes, sometimes I certainly do. Rather
[10] than to carry it out any further and spend their
[11] money, which sometimes maybe in the long run would be
[12] useless, I would rather up front tell them that maybe
[13] they'd rather we put them to sleep. Like I said, when
[14] he came there that morning to pick up that dog, I was,
[15] I believe, the only person there and he wanted to see
[16] the dog. And I talked with him and showed him the
[17] dog, and he agreed that he would rather take the dog
[18] home because he had to consult with his sister before
[19] he went any further with what to do with it.
[20] **Q:** Did Mr. Schofield tell you that he was
[21] going to take Shakesbear home?
[22] **A:** Yes. He said he wanted to take the dog.
[23] **Q:** Did he tell you that he was going to take
[24] Shakesbear to another veterinarian?
[25] **A:** I figured he would, yes.

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[1] Q: Did he tell you he was going to?
[2] A: No, he didn't say that. He said he wanted
[3] to take the dog. I said that's fine, it's your dog
[4] and you're welcome to do so. Had he asked me for any
[5] information, they would have called, we would have
[6] told them about the steroids, and everything else that
[7] was given to this dog would have been forwarded to
[8] him. At that time we didn't have a fax machine, but
[9] we faxed practically every day around to different
[10] hospitals and they faxed to us.
[11] Q: Turn with me to tab 15 and let's talk
[12] about Char. Do you recognize Exhibit Number 15?
[13] A: Right.
[14] Q: Did you write that?
[15] A: I worded it and it was typed up, yes.
[16] Q: Did you sign it?
[17] A: Right.
[18] Q: You mentioned in your testimony, according
[19] to the pathology there was a little round heart. What
[20] did you mean by the pathology?
[21] A: Well, the heart that is a normal-shaped
[22] heart like you talk about, it has an apex that comes
[23] to a point down on the bottom end of most hearts.
[24] This one was a little round heart described - and the
[25] pathologist described it as a round heart and

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[1] irregular shaped, and I guess not as efficient as they
[2] should be.
[3] Q: Did you do an exam on Char before you
[4] administered the pre-anesthetic?
[5] A: Like I said, I didn't give the
[6] pre-anesthetic to it. Dr. Stock did, and it almost
[7] bit him in the process of trying to take the dog back,
[8] I guess. I wasn't there at the time.
[9] Q: Did you treat Char?
[10] A: I was the one that administered the
[11] anesthetic to it to spay the dog.
[12] Q: Did you talk to Dr. Stock about whether he
[13] had conducted an exam on the dog before you
[14] administered the anesthetic?
[15] A: Oh, yeah. They said it was an active dog
[16] that had bit the little girl, child, and she told us
[17] she screamed at the child and told it to get back
[18] because the dog would bite it again. And I asked her
[19] about that, and it had bit the little girl in the face
[20] before.
[21] Q: Should pneumonia appear in the
[22] pre-anesthetic examination?
[23] A: Sometimes you don't detect it because -
[24] you've heard of walking pneumonia. It actually can be
[25] packing a small pneumonia that is not detectable

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[1] unless the animal is put under stress some way.
[2] Q: Can you tell us what you mean by excessive
[3] amounts of fluid? Or excuse me. Pneumonia in the
[4] lungs, can you tell us how much fluid was present?
[5] A: The peripheral of both lungs were actually
[6] inflamed and then discolored compared with the rest of
[7] the normal pink lung.
[8] Q: Did you remove one of the lungs during
[9] your necropsy?
[10] A: No, we didn't.
[11] Q: How did you determine that?
[12] A: Well, the gross appearance.
[13] Q: Did you open one of the lungs?
[14] A: We made a slice in one spot of the lung,
[15] and it had excessive fluid in it. One slice is always
[16] made in one lobe of the lung.
[17] Q: You testified that Dr. Stock has amnesia.
[18] Did you mean that generally or only with respect to
[19] the incident involving Hillary?
[20] A: In respect to Hillary because of the
[21] lawsuit that she instigated. And when it was shown to
[22] him, why, I don't know whether he consulted with
[23] somebody. He has worked for half a dozen different
[24] hospitals in the valley, in the state, and I'm sure
[25] that somebody had talked to him, and he all of a

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[1] sudden decided to retire.
[2] Q: Did you discuss the case with Char with
[3] Dr. Stock?
[4] A: Yes. He looked at the animal and agreed
[5] with the conclusions that I had on it.
[6] Q: Did you talk with Dr. Stock about
[7] Shakesbear?
[8] A: Well, I'm sure that - you're talking
[9] about the autopsy on this shar pei?
[10] Q: No. Shakesbear is the chow chow that was
[11] paralyzed.
[12] A: Paralyzed, oh, yeah. Certainly.
[13] Q: Did he recall the incident and the fact
[14] that he treated Shakesbear?
[15] A: No.
[16] Q: Did he get amnesia on this one, too?
[17] A: Uh-huh (affirmative).
[18] Q: Do you know how old Dr. Stock is?
[19] A: Yes. He's probably about six to eight
[20] months older than I am, so he'd be 68 years old.
[21] Q: You stated in your testimony you don't
[22] understand why he decided to retire. Do you think his
[23] age had anything to do with it?
[24] A: It may have done. But you have to
[25] remember that I testified to you that three years ago,

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[1] whenever he moved from up there down to me, why, I had
[2] to initially loan him to help him get into a home.
[3] Q: You didn't testify to that.
[4] A: Even loaned him money to move down with.
[5] and he said he only wanted to work another five years.
[6] Well, he didn't complete that out.
[7] Q: Did you put Shakesbear on a grate?
[8] A: When I got into the matter with him, why,
[9] he was on a blanket, and as they saturate those
[10] blankets, why, they're taken off and given a new one.
[11] A lot of times, yes, we have a grate that can be put
[12] under them so they can drain away.
[13] Q: And do you know in this particular case
[14] whether Shakesbear was on a grate?
[15] A: He was on a blanket, as far as I know.
[16] They walk around and are put into a stall where it's
[17] cement, and as they drag themselves around, why, they
[18] scarify, particularly in the scrotal area, and the
[19] sheath area around the penis on a male.
[20] Q: Did your wife testify that your kennels
[21] have stainless steel bottoms?
[22] A: They were talking about cages.
[23] Q: So where was Shakesbear kept?
[24] A: Well, at the time, most of time he was
[25] kept in a cement stall with blankets and towels to

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[1] keep him so that he wouldn't saturate himself. He was
[2] washed off morning and night, because there was some
[3] people that worked for us, worked from morning to
[4] night on all of the animals to clean them up. And
[5] then one of the doctors would examine the dog and
[6] initiate the treatment and do what treatment is done
[7] on them.
[8] Q: Do you recall where you were on the
[9] morning of June 19, 1994?
[10] A: What case are you referring to?
[11] Q: Hillary.
[12] A: This is the Bue's dog?
[13] Q: Yes, as I understand, the Bue's dog.
[14] A: Yes, I was out on a farm call.
[15] Q: Do you recall who that patient or owner
[16] was?
[17] A: On the farm call?
[18] Q: Yes.
[19] A: I'd have to look back and look at my day
[20] pad as far as that, and maybe go into some records to
[21] tell you. When you maybe do three or four calls from
[22] 6:00 in the morning until you arrive at the hospital
[23] at 9:30 or 10:00, and it's been this long of a period
[24] of time, I think it behooves me to remember that.
[25] Q: Do you recall when you returned to the

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[1] hospital that day?
[2] A: I'd say 9:30 or 10:00.
[3] Q: How long did you stay at the hospital that
[4] day?
[5] A: Oh, I couldn't say, but I think I was
[6] there until noon that day, because I did see two
[7] premature, dead pups laying on the one operating table
[8] over in the other part of the hospital.
[9] Q: Your wife has testified that your normal
[10] work day is from 7:30 a.m. to 7:30 p.m.; is that
[11] correct?
[12] A: Some days that's a minimum.
[13] Q: June 19th, 1994 was a Saturday. Did you
[14] work a regular work day that day?
[15] A: Yup. We're only open until 12:30, 1:00 on
[16] Saturdays and we tell people we close. That doesn't
[17] indicate that we leave there. There's surgery to be
[18] done, there's animals to be treated and a lot of times
[19] on Saturdays I leave and go on calls and come back
[20] later in the evening.
[21] Q: Did you return back to Brookside on June
[22] 19, 1994 in the evening?
[23] A: I'm sure I did.
[24] Q: Were you there approximately 5:30 to 6:00
[25] p.m. on June 19, 1994?

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[1] A: I could have been, yes.
[2] Q: Would anyone else have been at the
[3] hospital at that time?
[4] A: Maybe the other doctor was there. Maybe
[5] there was still kennel people around. I don't recall.
[6] Q: Returning to Char, do you remember the
[7] date that you performed the autopsy on Char?
[8] A: There again, you'll have to - it was done
[9] on the same day that the dog came in and the dog died.
[10] Q: Did the dog die on October 11th when the
[11] owner brought it in?
[12] A: On the same day it came in, yes.
[13] Q: When did you talk with the owner about the
[14] death?
[15] A: Probably within an hour afterwards, from
[16] the time of the death we talked to them. A lot of
[17] times they're not there so we keep on calling until we
[18] get ahold of them.
[19] Q: Did you talk to the owner on October 12th,
[20] 1994 about the death?
[21] A: I talked to her that day and told her I
[22] was sorry, that it was one of those things that we
[23] normally do routine, and this one didn't read the
[24] script and it didn't make it. We're sorry about it.
[25] And I would do an autopsy at no charge to determine

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[1] what we could find out about it. She said okay.
[2] **Q:** Did you perform the necropsy the same day
[3] that her husband picked up the dog?
[4] **A:** Yes. It was done earlier that day.
[5] **Q:** Do you recall having an interview with
[6] Lori Larsen regarding Cindy Bue's dog, Hillary?
[7] **A:** I'm sure we did.
[8] **Q:** Do you recall telling Lori that you
[9] offered to take an x-ray but Cindy Bue declined?
[10] **A:** You'll have to remember, I testified that
[11] when she asked me about that case, I said that, "Dr.
[12] Stock is in the other room. I'll go get him."
[13] And she said, "No, that's okay, you don't
[14] need to." And so she proceeded to question me about
[15] this case, and I said a lot of times before the dog -
[16] you can tell, and on particularly this type of dog,
[17] palpitations, sometimes you can't palpate and tell
[18] because of the structure of the dog and how it's
[19] built. And I said we always offer to take an x-ray.
[20] **Q:** Do you recall how many cases you discussed
[21] with Lori Larsen on October 12, 1994?
[22] **A:** Oh, five or six.
[23] **Q:** Do you recall discussing the Wagstaff case
[24] with Lori Larsen?
[25] **MR. DAHL:** Is that part of the complaint?

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[1] **MR. ALLRED:** No, your Honor, it's not part
[2] of the petition.
[3] **MR. DAHL:** I object as irrelevant.
[4] **THE COURT:** What's the purpose?
[5] **MR. ALLRED:** Well, your Honor, Dr. Taylor
[6] is recalling that he told Lori Larsen on at least
[7] three of these animals that Dr. Stock worked on them
[8] and he didn't. I just want to see what he told Lori
[9] Larsen with respect to one of the other animals they
[10] discussed during that interview.
[11] **THE COURT:** Does it go to credibility
[12] issues?
[13] **MR. ALLRED:** Yes, your Honor.
[14] **THE COURT:** Go ahead.
[15] **BY MR. ALLRED:**
[16] **Q:** Dr. Taylor, do you remember talking with
[17] Lori Larsen about the Wagstaff case?
[18] **A:** You'd have to refresh my memory what the
[19] case was.
[20] **Q:** It involved a dog that was seriously
[21] injured. If I told you that the Wagstaff animal was a
[22] rottweiler, would that jog your memory?
[23] **A:** You're relating back to - what was the
[24] date on that?
[25] **Q:** I don't have a date, but it was discussed

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[1] when the other five cases were discussed with you.
[2] **A:** You're relating back probably two years
[3] ago or longer. How can I remember two years ago?
[4] **Q:** Do you recall if you told Lori Larsen that
[5] Dr. Stock handled that case?
[6] **A:** There again, if you'll identify the case
[7] and what we were doing to the dog.
[8] **Q:** Well, it's a rottweiler, and it's
[9] seriously injured and it had to be fed intravenously.
[10] **THE COURT:** Let me help if I can.
[11] Division's Exhibit 32, the subpoena you've offered,
[12] was requesting documents, and requested documents as
[13] to the treatment of John Wagstaff's rottweiler
[14] shepherd mix, Deep Well, in August, 1993.
[15] **MR. ALLRED:** Thank you, your Honor.
[16] **BY MR. ALLRED:**
[17] **Q:** Does that help you at all, Dr. Taylor?
[18] **A:** Well, really not. I couldn't relate
[19] anything about the dog.
[20] **Q:** Isn't it true that during the interview,
[21] the only animal that you told Lori Larsen that was
[22] handled by Dr. Boyd Stock was the rottweiler?
[23] **A:** No. I told her that the Cindy Bue dog,
[24] which was the dog that was whelping, I certainly
[25] didn't have anything to do with that dog. In fact, I

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[1] didn't see that dog that day. Didn't even lay eyes on
[2] the dog. It was in a cage back there, but I didn't
[3] walk back there to look at the dog. I saw two dead
[4] puppies laying on the table. And outside as far as me
[5] laying eyes on it, I did not see it that day.
[6] **Q:** You didn't tell Lori Larsen that Dr. Stock
[7] only handled the one animal?
[8] **A:** He handled the one that fell off - the
[9] chow that fell off and injured itself. He's the one
[10] that took that one in, and I talked to him about the
[11] injury on it. When she refused to let me get Stock
[12] for that one, why, after telling her that he had taken
[13] that in, why, the interview went on from there. She
[14] wasn't interested in talking to anybody else.
[15] **MR. ALLRED:** Your Honor, I have no further
[16] questions.
[17] **THE COURT:** We've been on this about an
[18] hour for cross-examination. Before I open it up to
[19] any redirect or questions by the Board, I think
[20] another brief recess would be in order. I want to
[21] make sure that Dr. Taylor gets the opportunity to
[22] collect himself before he faces further questioning.
[23] We'll just be in brief recess for five minutes. Off
[24] the record.
[25] (Recess)

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[1] THE COURT: Back on the record after a
[2] brief recess.
[3] Any redirect, Mr. Dahl?
[4] MR. DAHL: No, your Honor.
[5] THE COURT: Any questions by the Board of
[6] this witness? Starting with Dr. Taylor.
[7] DR. TAYLOR: I wondered, Dr. Taylor, on
[8] this pin that shows up, was there a possibility when
[9] you bought that material that they put that galvanized
[10] thing in with that?
[11] THE WITNESS: There's a possibility, but
[12] I've been buying stainless steel rods from that same
[13] outfit for years, and it started years and years ago
[14] when the ready-made ones weren't that available as far
[15] as everything you needed.
[16] DR. TAYLOR: On the tip of that it looks
[17] like it has been sharpened by hand rather than just a
[18] nail. I was wondering about that.
[19] THE WITNESS: I don't know whether there's
[20] a possibility maybe they did, but I cut it off, a
[21] piece of it. The short piece on that table there is a
[22] piece of the same stuff.
[23] DR. TAYLOR: After I looked at that x-ray
[24] quite a bit, a lot of times when you pull a pin out of
[25] a bone it leaves a shadow, and I really don't see it

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[1] on there. I was wondering if you can explain that.
[2] THE WITNESS: Well, like I said, the angle
[3] that pin was laying on that leg, certainly that was in
[4] what looked like mid-shaft, so that going up through
[5] the proximal end of the humerus, why, it should have
[6] left a shadow in there.
[7] DR. TAYLOR: I think that's all.
[8] THE COURT: Dr. Rees?
[9] DR. REES: Yes. Dr. Taylor, do you, when
[10] you anticipate surgery like what was performed on
[11] Oscar, don't you go cut the pin? Do you have them
[12] standard cut or - this is several questions in a
[13] row - but don't you personally say I need a pin a
[14] certain length and will you prepare that for me? How
[15] were these pins prepared for a leg like that?
[16] THE WITNESS: Well, a lot of times we have
[17] ready-prepared ones, but a lot times it's off a piece
[18] of that stainless steel rod, that's maybe four feet or
[19] five feet long. We just take a measure off that and
[20] we can prepare it.
[21] DR. REES: Do you do that yourself?
[22] THE WITNESS: Right. We sharpen it and
[23] put threads on it ourselves.
[24] DR. REES: Can you verify that you
[25] personally cut the pin for this dog?

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[1] THE WITNESS: Right.
[2] DR. REES: And put it in?
[3] THE WITNESS: I certainly did, and I put
[4] threads on the bottom end of it. And that pin that
[5] was in that leg there certainly didn't have any
[6] threads on it.
[7] DR. REES: Isn't it standard in most
[8] practices after putting an implant in to immediately
[9] take a post-op x-ray to determine the position of the
[10] pin at the completion of the job? You testified that
[11] the dog was removed from your care immediately after
[12] the surgery the next day. But isn't it appropriate to
[13] take an x-ray at the time, immediately during the
[14] surgery or immediately postoperatively to determine
[15] the position of the pin and the bone fragment?
[16] THE WITNESS: Yes. Usually you can do
[17] that, but a lot of times if you're pretty well assured
[18] that the pin is in the place where you wanted it to
[19] be, and everything was in that position, and maybe the
[20] next day you would take one.
[21] DR. REES: So you didn't take one?
[22] THE WITNESS: No. There was no
[23] after-surgery x-ray of this.
[24] DR. REES: Is it customary for your help
[25] to instruct a client on the discharge instructions for

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[1] the patient?
[2] THE WITNESS: Absolutely. Every one of
[3] them is instructed. There might be a slipup once in a
[4] while, but the majority of the time, like I said, we
[5] have a printout that comes out of the computer, a
[6] standard thing on those sheets that are sent home.
[7] There's a paragraph in there that instructs them how
[8] to take care of it.
[9] DR. REES: And you suspect that someone
[10] must have misinstructed Ms. Crocker with respect to
[11] this dog? She testified that the dog was to use the
[12] limb.
[13] THE WITNESS: No, we didn't. On a broken
[14] bone like this, particularly an oblique fracture, why,
[15] we certainly don't tell them that. That dog left the
[16] hospital with a wrap around it.
[17] DR. REES: I had a question with regard to
[18] Hillary. My understanding as I've sat and listened to
[19] this proceeding is that you have had nothing to do
[20] with this dog except that you discharged it. You
[21] didn't see this dog? You didn't help it?
[22] THE WITNESS: Hillary? Is that the
[23] English bulldog?
[24] DR. REES: Yes.
[25] THE WITNESS: No, I didn't send the dog

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[1] home.
[2] **DR. REES:** You didn't talk directly to Ms.
[3] Bue about this case?
[4] **THE WITNESS:** No, I certainly didn't.
[5] She's mistaken if she thinks that I was the one that
[6] took care of the dog.
[7] **DR. REES:** Was there ever a question asked
[8] of Dr. Stock, who you testified has handled this case,
[9] as to why no x-ray was taken? Did you ever question
[10] him? You indicated that you consulted, for example,
[11] on Char, the dog that died, with him. But did you
[12] ever consult with him on Hillary?
[13] **THE WITNESS:** Yes. After we got a lawsuit
[14] on this, I asked him why he would send the dog home
[15] and if they did do a Cesarian and found those pups
[16] still in there, why didn't he x-ray the dog or keep
[17] the dog and make sure it was completely cleaned out.
[18] **DR. REES:** The one other question that I
[19] have is relative to Char. Doesn't it make more sense
[20] when you have a dog that dies to get it into the hands
[21] of a disinterested party? In other words, wouldn't it
[22] have been more appropriate to have sent this animal to
[23] a diagnostic lab or even to another veterinarian to
[24] evaluate the animal on a postmortem exam?
[25] **THE WITNESS:** Certainly that can be

[1] charges were made for any of those things?
[2] **THE WITNESS:** Well, they were all within
[3] the - we don't put those out as far as billing
[4] individual things on them.
[5] **DR. BROWN:** But you billed the Amoxicillin
[6] and the Antirobe.
[7] **THE WITNESS:** That was sent home.
[8] Everything that's sent home with the dog is put on
[9] there.
[10] **DR. BROWN:** I see.
[11] **THE WITNESS:** In case you have to refill
[12] the prescription or what. But as far as each
[13] procedure in the hospital, why, no, we don't put that
[14] on the billing part.
[15] **DR. BROWN:** Is it not your common practice
[16] to take two views of a fracture?
[17] **THE WITNESS:** If we deem it necessary,
[18] yes.
[19] **DR. BROWN:** I'm sorry, you don't always do
[20] that?
[21] **THE WITNESS:** No, not always, huh-uh.
[22] **DR. BROWN:** You don't think that would
[23] have helped a lot in Oscar's case?
[24] **THE WITNESS:** Well, I felt that it was
[25] fragmented enough that another picture would have not

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[1] done.
[2] **DR. REES:** Did you ever do that?
[3] **THE WITNESS:** We have done, yes. When
[4] people have questioned what we've done, we've asked
[5] them if they want to, why, we can have an autopsy done
[6] at a lab. We've sent them down to the Provo lab.
[7] **DR. REES:** Was that offered to these
[8] people?
[9] **THE WITNESS:** Well, I told her I would do
[10] an autopsy and see if I could find out what had
[11] happened, and she said that was okay.
[12] **DR. REES:** That's all I have, your Honor.
[13] **THE COURT:** Dr. Brown?
[14] **DR. BROWN:** On Oscar, the dog with the
[15] humeral fracture, you admitted that dog on July 8th
[16] and didn't operate until the 10th. Why did you wait
[17] two days?
[18] **THE WITNESS:** The dog was depressed as far
[19] as its shock and pain, and received a lot of trauma.
[20] **DR. BROWN:** Tell me what you did to treat
[21] that shock.
[22] **THE WITNESS:** It was given Cortical 20 to
[23] start out with and antihistamines and antibiotics and
[24] later it was hooked up on an IV.
[25] **DR. BROWN:** Can I ask the question why no

[1] shown me nothing I needed to know.
[2] **DR. BROWN:** What anesthetic did you
[3] administer to Oscar?
[4] **THE WITNESS:** He was given a morphine,
[5] etorphine, and then put under with Pentothal.
[6] **DR. BROWN:** And he was not on oxygen and
[7] gas or anything?
[8] **THE WITNESS:** No. He had come out of the
[9] shock and pain enough that he'd stabilized, so he was
[10] okay to go under anesthetic.
[11] **DR. BROWN:** So you don't routinely use gas
[12] anesthetic and oxygen on surgeries like this?
[13] **THE WITNESS:** Well, yeah, sometimes we do,
[14] sure.
[15] **DR. BROWN:** How often, would you say?
[16] **THE WITNESS:** I'd say 50 percent of the
[17] time.
[18] **DR. BROWN:** What anesthesia did Char have?
[19] This was the spay.
[20] **THE WITNESS:** Just the pre-anesthetic and
[21] Pentothal.
[22] **DR. BROWN:** How did you administer the
[23] sodium Pentothal?
[24] **THE WITNESS:** IV.
[25] **DR. BROWN:** Did you give repeated doses as

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[1] needed? Because that's a very short-acting
[2] anesthetic.
[3] **THE WITNESS:** Right.
[4] **DR. BROWN:** I think that's all I have.
[5] **THE COURT:** Mr. Sperry?
[6] **MR. SPERRY:** Same question I had for your
[7] wife. There are five receipts, five patient histories
[8] here. None of them have written instructions. Both
[9] of you have testified that written instructions went
[10] out with patients. Why don't we have them?
[11] **THE WITNESS:** Our computer does kick it
[12] out. It's programmed in there so that there's, like,
[13] routine things like send home a spay, a neuter or
[14] whatever, and any adverse effects or if something
[15] happens, to be sure and call. And I don't know why
[16] those didn't have the printout on them. Maybe it
[17] wasn't programmed in at that time. But now it does on
[18] all of those that come out.
[19] **MR. SPERRY:** These have all been printed
[20] recently.
[21] **THE WITNESS:** The program can be put in
[22] there, because - I'll admit something to you. I do
[23] nothing with the computer. Somebody else has to do
[24] it. I couldn't even print my own name on it.
[25] **MR. SPERRY:** Your wife testified that last

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[1] year you saw 40,000 patients. That's 133 patients a
[2] day, figuring a six-day work week, and a 50-week year.
[3] That's a real, real significant workload for
[4] one-and-a-half veterinarians. Are you overworked?
[5] **THE WITNESS:** Well, I guess you could say
[6] sometimes you are. But I would dispute maybe that
[7] number. We can probably print out another one and
[8] find out if that was in error. But I doubt that we do
[9] that many. If you multiply that out and find out that
[10] many a day, no.
[11] **MR. SPERRY:** Dr. Taylor, you graduated in
[12] 1956 from Kansas Veterinary School. What postgraduate
[13] work have you done that qualifies you to perform
[14] orthopedic surgery, and where did you learn how to
[15] create your own wire nails, wire implants?
[16] **THE WITNESS:** I take offense at that word,
[17] "nail."
[18] **MR. SPERRY:** I'm sorry. Wire implants.
[19] **THE WITNESS:** I did not put that pin in
[20] there. I used stainless steel as we showed you there.
[21] And years ago we bought stainless steel and we'd cut
[22] it off and sharpen it and put threads on it to our own
[23] specifications. And I'd use some of them that way and
[24] some I don't. We buy what you've had examples here
[25] shown. We've had a lot of them that way. And as far

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[1] as the surgery, knowing how to do it, I guess it goes
[2] right back years and years ago to doing orthopedic
[3] surgery that we've just accumulated over the years.
[4] **MR. SPERRY:** So you've had no formal
[5] postgraduate work in orthopedic surgery and in
[6] creating your own stainless steel implants?
[7] **THE WITNESS:** No.
[8] **MR. SPERRY:** On Shakesbear, you said there
[9] was no apparent deep muscle or pain reaction to the
[10] injections, but that the dog could pass urine?
[11] **THE WITNESS:** Only after you started him.
[12] He was constantly dribbling urine, but you had to -
[13] to get him to express it out you had to help him.
[14] **MR. SPERRY:** Okay. After you induce
[15] anesthesiology with your patients and they are
[16] starting to enter their unconscious states, how often
[17] do you take vital signs? Who records those vital
[18] signs and who makes the determination that a
[19] patient is slipping dangerously into an unconscious
[20] state?
[21] **THE WITNESS:** Well, unfortunately, most
[22] veterinarians have to be their own anesthesiologists
[23] and everything else, too. And a lot of times you do
[24] have help that watches that. And we do have one of
[25] those oximeters that you can attach to them and watch

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[1] the pulse and so forth, if you've got a patient that
[2] deems it needs to be.
[3] **MR. SPERRY:** So you do not do that
[4] routinely?
[5] **THE WITNESS:** No. On most animals, you
[6] don't.
[7] **MR. SPERRY:** Is it your practice and would
[8] it have been Dr. Stock's practice to do a
[9] pre-induction physical to find out whether you, in
[10] fact, had a healthy animal or not?
[11] **THE WITNESS:** Like on this animal that
[12] died?
[13] **MR. SPERRY:** Like on this animal that
[14] died.
[15] **THE WITNESS:** He showed all appearances to
[16] be healthy.
[17] **MR. SPERRY:** Did you do a physical? Did
[18] you listen for breath sounds? Did you take vital
[19] signs?
[20] **THE WITNESS:** No, all vital signs as far
[21] as appearance and what he showed to me was normal. He
[22] didn't show anything abnormal as far as appearance.
[23] So I didn't - yes, we monitor the heart and lungs on
[24] them if we think it's necessary. And a lot of times
[25] maybe we've even called them up and asked them if they

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[1] wouldn't take it home under medication and wait a week
[2] before they have surgery.
[3] **MR. SPERRY:** I think that's all I have.
[4] Thank you.
[5] **THE COURT:** Any other questions by the
[6] Board? Yes, Dr. Taylor?
[7] **DR. TAYLOR:** I had a question, Leo, on the
[8] records. We haven't gotten your written ones, but
[9] where do you keep your notes on your controlled drugs?
[10] You mentioned using morphine and etorphine,
[11] pre-anesthetic and Pentothal. Could your computer
[12] keep track of that for you, how much of each, and
[13] coordinate some type of log?
[14] **THE WITNESS:** Uh-huh. It has to be logged
[15] in. They keep it in the computer, particularly how
[16] much we've got on hand and what's there.
[17] **DR. TAYLOR:** Does that indicate how much
[18] each individual animal receives? Does that work that
[19] way, overall figures or whatever?
[20] **THE WITNESS:** You could average it out,
[21] particularize an animal, and, you know, how much is
[22] given by the weight and size on them.
[23] **THE COURT:** Dr. Rees?
[24] **DR. REES:** Yes. There were some questions
[25] raised about sanitation, that sort of thing. And was

[1] **THE WITNESS:** We don't board animals, as
[2] far as that's concerned. It's all hospitalization.
[3] **MR. SPERRY:** I understand.
[4] **THE WITNESS:** That depends on the size of
[5] the animal and how much care it takes. One like this
[6] dog we just talked about, it takes a lot more because
[7] of the injurious condition.
[8] **MR. SPERRY:** What would that be? What
[9] would be your daily rate for a dog like that?
[10] **THE WITNESS:** Probably \$6 to \$8 plus the
[11] medication.
[12] **MR. SPERRY:** \$6 to \$8 plus medication.
[13] And you don't break the medication out separately when
[14] you're billing?
[15] **THE WITNESS:** Usually don't. It all goes
[16] in together.
[17] **THE COURT:** Any other questions by the
[18] Board?
[19] **Mr. Dahl,** anything further for this
[20] witness?
[21] **MR. DAHL:** No, your Honor.
[22] **THE COURT:** Mr. Allred?
[23] **MR. ALLRED:** Yes, your Honor, one more
[24] question.
[25]

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[1] Shakesbear bathed? Was he ever bathed? This is the
[2] dog with the paralysis.
[3] **THE WITNESS:** Certainly they were cleaned
[4] up night and morning and put on clean towels or
[5] blankets. And you know as well as I, some of those
[6] cats that have FUS, that you have to put them on
[7] grates. And we do have a grate that we can keep dogs
[8] on. A lot of times they'll crawl off the grate if
[9] they're in a big enough area, not in a small
[10] enclosure.
[11] **DR. TAYLOR:** You offered to have the dog
[12] cleaned up before Mr. Schofield took it home?
[13] **THE WITNESS:** I certainly did. I offered
[14] to have him come back and get it or whatever. We did
[15] not have some help there until later, and we'd bathe
[16] it and clean the dog up before he took it home. And
[17] he said oh, no, he'd take it. That was fine.
[18] **DR. TAYLOR:** Do you clean kennels night
[19] and morning? Is that part of the routine at the
[20] hospital?
[21] **THE WITNESS:** Right.
[22] **DR. TAYLOR:** Okay.
[23] **THE COURT:** Mr. Sperry?
[24] **MR. SPERRY:** What is your daily boarding
[25] rate and what does it include?

[1] **RE CROSS-EXAMINATION**
[2] **BY MR. ALLRED:**
[3] **Q:** Dr. Taylor, you testified earlier that you
[4] obtain your stainless steel pins, your supplies from
[5] one supplier. Do you recall the name?
[6] **A:** We can look it up there for you.
[7] **MR. DAHL:** I was looking for it before. I
[8] think I gave you the name of it, didn't I?
[9] **THE WITNESS:** It's over here on Ninth West
[10] and - Ninth South and about First West. Those were
[11] both examples right there on that table that we bought
[12] there.
[13] **MR. DAHL:** I'll have to look it up and
[14] give it to you.
[15] **MR. ALLRED:** You gave me the name of
[16] Affiliated Metals. Is that it?
[17] **MR. DAHL:** That's it.
[18] **BY MR. ALLRED:**
[19] **Q:** Is that the name of your supplier, Dr.
[20] Taylor, Affiliated Metals?
[21] **A:** I believe that is.
[22] **Q:** Dr. Taylor, your counsel, Mr. Dahl, gave
[23] Lori Larsen of the Division a sample of your stock in
[24] mid-January, and I have a piece that was in my hand.
[25] **MR. ALLRED:** And your Honor, we'll mark

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[1] this as State's Exhibit Number 33. I believe that's
[2] where we are in the count.
[3] **THE COURT:** It is.
[4] **BY MR. ALLRED:**
[5] **Q:** Dr. Taylor, does that look like part of
[6] your steel surgical pin stock?
[7] **A:** Looks darker than what most of them are,
[8] so I couldn't say that that would be one.
[9] **Q:** Does that look like something you gave
[10] your counsel, Mr. Dahl?
[11] **MR. DAHL:** I think when somebody gave me
[12] something, it wasn't something somebody gave me. It
[13] was something I picked up, because it is magnetic.
[14] **THE WITNESS:** I couldn't say that that
[15] would be one of them.
[16] **BY MR. ALLRED:**
[17] **Q:** So you didn't assist Mr. Dahl in going
[18] through your inventory?
[19] **A:** Not that, no. I did those pieces laying
[20] right there.
[21] **Q:** Does that look like anything at your
[22] hospital?
[23] **A:** I don't recall it.
[24] **Q:** So you don't even recognize what type of
[25] metal this is?

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[1] **A:** No, I don't.
[2] **MR. ALLRED:** Well, your Honor, I guess I
[3] can't get sufficient foundation to move to introduce
[4] that.
[5] **THE COURT:** Division Exhibit 33, then, is
[6] deemed withdrawn.
[7] **BY MR. ALLRED:**
[8] **Q:** Dr. Taylor, in your testimony you
[9] described a flushing process for animals with a
[10] vaginal discharge. Could you please describe that to
[11] the Board?
[12] **A:** If you've got a pyometritis or an animal
[13] that's having a postpartum discharge, why yes,
[14] sometimes those can be helped by that.
[15] **Q:** Could you describe the process to the
[16] Board?
[17] **A:** Well, it's you insert a catheter up into
[18] - it's done to horses, cows and all, and you apply
[19] antibiotics.
[20] **Q:** Do you recall telling Lori Larsen during
[21] your interview of October 12th, 1994, that it's
[22] possible to flush an English bulldog?
[23] **A:** I don't recall that I told her that, but I
[24] said it can be done, sure.
[25] **Q:** Did you describe that you can run a

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[1] catheter up a dog with a pump on it and clean out the
[2] uterus?
[3] **A:** Sometimes that's what you do if you have
[4] to flush fluids in and flush it back out.
[5] **Q:** Thank you. You testified that Shakesbear
[6] could urinate if you started him by expressing urine.
[7] How do you know that?
[8] **A:** Because we did that.
[9] **Q:** Did you yourself palpate Shakesbear?
[10] **A:** No, but I saw it happen. They'd palpate
[11] him and start it and then he would express the urine
[12] out of him.
[13] **Q:** Who did you observe palpate Shakesbear?
[14] **A:** Dr. Stock.
[15] **Q:** Is that how you reached the conclusion
[16] that Shakesbear didn't need to be catheterized?
[17] **A:** Well, at that time, why, I guess that was
[18] the conclusion that was used on him.
[19] **Q:** Did you ever touch Shakesbear except to
[20] bring him out to the owner?
[21] **A:** Yes. I gave him a shot of dexamethasone
[22] and antibiotics the morning that he went home.
[23] **MR. ALLRED:** I have nothing further, your
[24] Honor.
[25] **THE COURT:** Any redirect, Mr. Dahl?

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[1] **MR. DAHL:** No, your Honor.
[2] **THE COURT:** Any further questions of this
[3] witness by the Board?
[4] Dr. Taylor, you can return to counsel's
[5] table. Thank you.
[6] **THE WITNESS:** Thank you.
[7] **THE COURT:** Mr. Dahl, any further
[8] witnesses today?
[9] **MR. DAHL:** No. I figured between these
[10] two, I didn't know what period of time we had. But I
[11] will bring in three witnesses tomorrow and we ought to
[12] be through by noon.
[13] **THE COURT:** Very good. Mr. Allred, let me
[14] ask you, do you anticipate rebuttal testimony
[15] tomorrow?
[16] **MR. ALLRED:** Yes, your Honor.
[17] **THE COURT:** Well, we'll commence at 9:00
[18] in the morning, then. And until that time, this
[19] hearing is in recess.
[20] (Whereupon, the proceedings were concluded for the day
[21] at 4:02 p.m.)
[22]
[23]
[24]
[25]

000279

In The Matter Of:

*Matter of License of:
Leo N. Taylor*

*Hearing Volume Number 3
March 20, 1996*

*Rocky Mountain Reporting Service, Inc.
Certified Shorthand Reporters
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[1] BEFORE THE DIVISION OF
[2] OCCUPATIONAL AND PROFESSIONAL LICENSING
[3] OF THE DEPARTMENT OF COMMERCE
[4] OF THE STATE OF UTAH
[5]
[6] IN THE MATTER OF THE LICENSE OF)
LEO W. TAYLOR) CASE NO. OPL-95-19
[7] TO PRACTICE AS A VETERINARIAN) TRANSCRIPT OF
IN THE STATE OF UTAH) PROCEEDINGS
[8]) VOLUME III
[9]
[10] BE IT REMEMBERED THAT on the 20th day of March,
[11] 1996, the hearing in the above-entitled action now
[12] pending before the above-named division was taken
[13] before Deborah F. LaVine, a Certified Shorthand
[14] Reporter and Notary Public in and for the State of
[15] Utah commencing at the hour of 9:00 a.m. of said day,
[16] at 160 East 300 South, Heber M. Wells Building, Salt
[17] Lake City, Utah.
[18]
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PROCEEDINGS

[1] MARCH 20, 1996
[2]
[3] THE COURT: On the record. This is the
[4] time and place set for resumption of the hearing in
[5] the matter of the license of Leo N. Taylor to practice
[6] as a veterinarian in the state of Utah. The record
[7] should reflect the division is again represented by R.
[8] Paul Allred, the respondent is present and represented
[9] through counsel Everett E. Dahl, and that the four
[10] members of the veterinary board previously present
[11] during the earlier days of this hearing are also
[12] present at this time as is the director of the
[13] division, Craig Jackson.

[14] Mr. Dahl, your next witness.

[15] MR. DAHL: Yes, the respondent would
[16] like to call Janet Gillette.

[17] THE COURT: Ms. Gillette. Before you
[18] take a seat, let me ask you to raise your right hand,
[19] please.

JANET GILLETTE

[20] the witness hereinbefore named, being first duly sworn
[21] to testify the truth, the whole truth and nothing but
[22] the truth, testified on her oath as follows:

DIRECT EXAMINATION

BY MR. DAHL:

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[1] Q: So I know how to address you, are you
[2] married?

[3] A: Yes, I am.

[4] Q: And so you're Mrs. Gillette?

[5] A: Yes.

[6] Q: Will you for the record state and spell your
[7] name?

[8] A: My name is Janet Gillette, J-a-n-e-t,
[9] G-i-l-l-e-t-t-e.

[10] Q: And where do you reside?

[11] A: I live in Riverton, Utah. My address is
[12] 11881 South 2700 West.

[13] THE COURT: Do you want to bring the
[14] microphone a little closer to you. Thank you.

[15] MR. DAHL: I don't know if this will
[16] help or not.

[17] THE COURT: I think it's on. Can you
[18] move the chair a little closer to it, Ms. Gillette.

[19] Q: (By Mr. Dahl) What is your occupation?

[20] A: I work for Dr. Taylor. I am a receptionist
[21] and tech. I help with the animals and out on the desk
[22] in front.

[23] Q: Can you speak up a little bit louder?

[24] A: I work for Dr. Taylor. I am a receptionist
[25] and a tech.

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[1] Q: And how long have you worked at Brookside?
[2] A: I've worked there 21 years.
[3] Q: And are you familiar with their records?
[4] A: Yes, I am.
[5] Q: And the protocol at the hospital?
[6] A: Yes, I am.
[7] Q: I asked you to search the days or when Dr.
[8] Stock was employed at Brookside hospital. Did you
[9] research that and obtain the correct days of
[10] employment?
[11] A: Yes, I did. He started 10/5 of '92, and his
[12] last day was 5/5 of '95.
[13] Q: Now Brookside does have a computer?
[14] A: Yes, we do.
[15] Q: And in the computer, are there various
[16] instructions to personnel at the hospital on what
[17] information should be furnished to owners of animals
[18] when they're taken from the hospital?
[19] A: Yes, there is. There is follow-up
[20] information when the dog goes home that is printed on
[21] the invoices when they're invoiced out.
[22] Q: I see. Now you have a whole bunch of papers
[23] in your hands. What is that?
[24] A: Some of them are the check-out sheets with
[25] information on them when the patient is released on

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[1] surgeries, antibiotics, medications that are given on
[2] what to watch for when they're sent home, instructions
[3] to follow. And I have some printouts here. We kick
[4] this out of the computer of all the departing
[5] instructions that are sent home with animals
[6] pertaining to what was done with the animal. This is
[7] just -
[8] Q: Would you cite some examples of, say, a
[9] fracture was repaired.
[10] MR. ALLRED: Your Honor, I'm going to
[11] object to her reading it into the record unless it's
[12] going to be admitted into evidence.
[13] THE COURT: Are you going to offer it,
[14] Mr. Dahl?
[15] MR. DAHL: I don't have enough copies.
[16] I would be happy to offer it.
[17] THE COURT: We can have copies made.
[18] MR. DAHL: Then let me mark it.
[19] THE COURT: It'll be Respondent's
[20] Exhibit 1. And if you'd show it to Mr. Allred before
[21] the witness continues her testimony.
[22] (WHEREUPON, a discussion was held
[23] off the record.)
[24] THE COURT: Mr. Allred, any
[25] objections?

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[1] MR. ALLRED: No, your Honor.
[2] THE COURT: Mr. Dahl, I think you've
[3] got two exhibits you're intending to refer to; right?
[4] MR. DAHL: Right.
[5] THE COURT: Will you offer them to the
[6] witness sequentially, ask her to identify them, and
[7] then they will be received.
[8] MR. DAHL: Yes.
[9] Q: (By Mr. Dahl) I hand you what's been marked
[10] as Respondent Exhibit Number 1. Can you state what
[11] that document represents.
[12] A: This is a handout we give to dogs that we
[13] crop the ears on, special instructions on how to take
[14] care of them when they get home.
[15] Q: And I hand you what's been marked Exhibit
[16] Number 2. What is that?
[17] A: Okay. This is the departing instructions
[18] that the computer puts on all the invoices that we
[19] send home with the animals pertaining to what was done
[20] to them.
[21] Q: How many instructions do you have there?
[22] A: Looks like there's 68, 68 different
[23] instructions.
[24] Q: And can you find an instruction there
[25] pertaining to, for example, a dog that's been released

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[1] that had a fracture repaired.
[2] A: I don't see it on here.
[3] Q: I should have had you review it before I
[4] asked you that. Perhaps you may have it on some of
[5] the documents in there.
[6] THE COURT: Mr. Dahl, maybe we can take
[7] a brief recess to take a copy of the exhibits and also
[8] give the witness time to see if she has what you're
[9] asking for, if that's all right.
[10] MR. DAHL: That would be fine.
[11] THE COURT: We'll be in recess for five
[12] minutes.
[13] (WHEREUPON, a recess was taken.)
[14] THE COURT: Ms. Gillette, if you'll
[15] come back up here, we'll go back on the record and
[16] resume your testimony. Back on the record after a
[17] recess necessary to provide copies of both
[18] Respondent's Exhibit 1 and Respondent's Exhibit 2 to
[19] the board. Mr. Dahl.
[20] Q: (By Mr. Dahl) Mrs. Gillette, do you have
[21] copy of Exhibit Number 1 - or Number 2?
[22] A: Uh-huh.
[23] Q: What does that exhibit constitute?
[24] A: This is departing instructions.
[25] Q: And how many are there, instructions are

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[1] there?

[2] A: There's 68 different instructions.

[3] Q: And how is this related to the computer and
[4] the outgoing instructions?

[5] A: All of our services are on a code, a
[6] number. And we put that number in and the service
[7] comes up. And when this happens, automatically the
[8] instructions are printed on the final billing slip
[9] that goes home with the animal's owners.

[10] Q: Before the recess, I asked you to show me
[11] and tell me the numbers of the printouts dealing with
[12] animals that had been in the hospital for some type of
[13] surgery. Were you during the recess able to locate
[14] those instructions?

[15] A: Yes.

[16] Q: And will you refer the board and the state
[17] those code numbers that explain that.

[18] A: This is pertaining to legs, on setting legs,
[19] pins and that. Number 31 is one of them. If there's
[20] a bandage that is put on the leg after surgery, then
[21] this one will come up on the printout. Number 35, if
[22] there's any swelling, call the office, any swelling of
[23] the leg or - number 42, and that's if there's been a
[24] cast put on it. That tells when you to return for the
[25] cast.

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[1] Q: 38?

[2] A: Yeah. And number 38 is to restrict the
[3] activity for the next week or so many days. It shows
[4] you on that that the animal needs to be restricted.
[5] And then also medications that we send home, any
[6] antibiotics or ointments, this will show up on it,
[7] too. And they're listed on here. There's quite a few
[8] of those, depends on what he dispenses.

[9] MR. DAHL: Your Honor, I move that
[10] Respondent's Exhibits 1 and 2 be admitted.

[11] THE COURT: Any objection, Mr. Allred?

[12] MR. ALLRED: No, your Honor.

[13] THE COURT: As identified, they are
[14] received, and copies have been provided to the board.
[15] (WHEREUPON, Respondent's Exhibits 1 and 2
[16] were received in evidence.)

[17] Q: (By Mr. Dahl) Ms. Gillette, the question has
[18] arisen during this hearing concerning a bulldog that
[19] was brought in to Brookside hospital on the removal or
[20] the whelping of puppies, I guess, is what you would
[21] call it. What do you know about that?

[22] A: On that morning, I came into the office
[23] after they opened, and I went back to the surgery
[24] room. There were two dead puppies on the table. And
[25] Dr. Stock was back there with the bitch. And I walked

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[1] back and I asked him, I said, What happened to the
[2] puppies? And he said, I came in early. The people
[3] called me early, you know, before hours and admitted
[4] the dog. She was in labor. And I said, Are we doing
[5] a C-section, and he said, No. He said, she's whelping
[6] the puppies. There's two that were dead. And I said,
[7] yes, I saw them on the table. And the puppies didn't
[8] have any hair on them. So I asked Dr. Stock, I said,
[9] Is the dog through whelping? And he said, I think so,
[10] but I'm going to watch her through the day.

[11] Q: Did Dr. Walker have anything to do with that
[12] particular patient?

[13] A: Dr. Taylor?

[14] Q: Or Taylor.

[15] A: No, not to my knowledge, he did not.

[16] Q: Now are you familiar with the insemination
[17] of that bulldog?

[18] A: Yes, I am.

[19] Q: And who performed that?

[20] A: Dr. Stock inseminated the dog the one time I
[21] was there.

[22] Q: Now the problem arises, I guess it goes back
[23] to the old saying, What you put in a computer, what
[24] you get back out, but there's some of the records that
[25] indicate that Dr. Taylor was the doctor and not Dr.

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[1] Stock. How do you explain things like that?

[2] A: It was a mistake on the receptionist's part
[3] because Dr. Taylor did not bill this dog out. Dr.
[4] Stock did.

[5] MR. DAHL: I think that's it. Thank
[6] you.

[7] THE WITNESS: Thank you.

[8] THE COURT: Cross-examination, Mr.
[9] Allred?

[10] MR. ALLRED: Yes, your Honor, I have
[11] some questions.

[12] CROSS-EXAMINATION
[13] BY MR. ALLRED:

[14] Q: Mrs. Gillette, are you related to Dr.
[15] Taylor?

[16] A: No, I am not.

[17] Q: You had these computer instructions on your
[18] computer during July of 1993?

[19] A: Yes.

[20] Q: Turn with me in the witness exhibit book to
[21] Number 28, which has been admitted as the Division's
[22] Exhibit Number 28. Can you tell me if you can
[23] identify this document?

[24] A: Yes, this is a medical history report.

[25] Q: Do the codes that you have testified to

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[1] appear on this document?
[2] A: Yes, they do.
[3] Q: Can you point them out to us?
[4] A: Medications and the treatments.
[5] Q: You testified that this was instruction
[6] number 31, instruction number 35?
[7] A: Okay.
[8] Q: Instruction number 42 and 38. Do they
[9] appear on this report?
[10] A: No, they do not show on this because this is
[11] a medical history report that we keep for us. The
[12] instructions that go home are just on the printouts
[13] that the people receive when they take their patient
[14] home. I have some of those here.
[15] Q: Do they appear on the bill? Do those codes
[16] appear on the bill?
[17] A: Yes, they do.
[18] Q: Turn with me to Exhibit Number 22 and tell
[19] me if you can identify that document.
[20] A: This is another medical history report.
[21] Q: Excuse me. Wrong exhibit. Turn to number
[22] 18. Do you recognize this exhibit?
[23] A: Yes, I do.
[24] Q: Do those codes appear on this exhibit?
[25] A: No, they don't.

[1] MR. DAHL: None, your Honor.
[2] THE COURT: Any questions by the board
[3] of this witness? Dr. Taylor.
[4] EXAMINATION
[5] BY MR. TAYLOR:
[6] Q: Just a question on records. Do you guys
[7] keep written records on each patient that's in the
[8] hospital?
[9] A: Yes, we do.
[10] Q: Are they in a file somewhere?
[11] A: Yes, we keep them in boxes. They're all
[12] boxed. Everything from the computer that has been
[13] done is we have those there.
[14] Q: I'm not really talking about what's come out
[15] of the computer. I'm talking about a written record
[16] on each -
[17] A: Oh, yes. We have a check-in slip when each
[18] animal is admitted on surgeries, treatments, that we
[19] keep in the hospital, even the patients that are
[20] treated and sent right home. And we write on those.
[21] The doctors write on those, and the techs write on
[22] those, the dates and what was done, antibiotics
[23] given -
[24] Q: Are these -
[25] A: - on these printouts.

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[1] Q: What is this exhibit?
[2] A: This is Cindy Bue's billing when she took
[3] the dog home after it whelped.
[4] Q: There's no codes on this?
[5] A: No, there's not one evidently on the
[6] whelping procedures.
[7] Q: So there wouldn't have been any instructions
[8] for whelping?
[9] A: There was verbal instructions, yes.
[10] Q: Were you there when those instructions were
[11] given?
[12] A: No, I was not there when the dog went home.
[13] Q: You were there when Hillary was admitted?
[14] A: I was there after she was admitted, after
[15] Dr. Stock admitted the dog.
[16] Q: You were there when Dr. Stock inseminated
[17] Hillary?
[18] A: Yes.
[19] Q: You were there on both dates?
[20] A: Not both dates.
[21] Q: What date were you there on?
[22] A: I believe I was there on the second one.
[23] MR. ALLRED: That's all the questions I
[24] have, your Honor.
[25] THE COURT: Any redirect, Mr. Dahl?

[1] Q: - records kept for a very long time, or
[2] they discarded after -
[3] A: We have all of them since when the computer
[4] started in '91.
[5] MR. TAYLOR: Thank you.
[6] THE COURT: Dr. Rees?
[7] EXAMINATION
[8] BY MR. REES:
[9] Q: Mrs. Gillette, do you assist Dr. Taylor in
[10] surgery?
[11] A: Yes, I have assisted in surgeries.
[12] Q: The question came up in yesterday's
[13] testimony which I don't know whether you are aware of
[14] it. We had some questions with regard to the use of
[15] stainless steel in a surgical procedure that was
[16] performed on Oscar. Are you familiar with the way Dr.
[17] Taylor prepared the steel for these pinnings?
[18] A: Yes, he does.
[19] Q: And do you sterilize that steel?
[20] A: Yes, it is sterilized.
[21] Q: It is autoclaved?
[22] A: I believe it is, yes, it is, and also put in
[23] a solution.
[24] (WHEREUPON, a discussion was held
[25] off the record.)

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[1] A: I'm sorry. Yes, it is, and it's also put
[2] into a solution before it's put in the dog.
[3] MR. REES: That's all the questions I
[4] have, your Honor.
[5] THE COURT: Dr. Brown?
[6] EXAMINATION
[7] BY MS. BROWN:
[8] Q: Do you autoclave the pin first?
[9] A: (No oral response.)
[10] Q: Do you know what an autoclave is?
[11] A: Yes, I do know what an autoclave is.
[12] Q: Do you autoclave the pin first?
[13] A: No. It's put into a solution, and then he
[14] sterilizes it in a solution.
[15] Q: So it's not autoclaved?
[16] A: I'm not sure. I don't think so.
[17] Q: Are the instruments in the surgery
[18] autoclaved?
[19] A: Yes, they are.
[20] MS. BROWN: Thank you.
[21] THE COURT: Mr. Sperry?
[22] EXAMINATION
[23] BY MR. SPERRY:
[24] Q: How was Dr. Stock paid? Was he paid a
[25] monthly salary, was he paid on production, or was he

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[1] paid on specific work?
[2] A: He was on a monthly salary. Plus
[3] emergencies that he did on weekends, he was paid for
[4] those.
[5] Q: So if he came in early to admit Hillary,
[6] would that be considered an emergency and that would
[7] have been a separate payment for Hillary?
[8] A: I couldn't say for sure on that. I know
[9] emergency takes like on Friday, Saturday and Sunday
[10] nights, yes, he would. He had a separate billing that
[11] he would give Jerry.
[12] THE COURT: Yes, Dr. Brown?
[13] EXAMINATION
[14] BY MS. BROWN:
[15] Q: Were you there the entire day that Hillary
[16] was in the hospital?
[17] A: No, I wasn't. I left at 2:30.
[18] Q: And how long was Hillary in the hospital?
[19] A: To my knowledge, she was gone the next
[20] morning.
[21] MS. BROWN: Thank you.
[22] THE COURT: Any other questions by the
[23] board of this witness? Mr. Dahl, further questions
[24] for Mrs. Gillette?
[25] MR. DAHL: I don't believe so.

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[1] THE COURT: Mr. Allred?
[2] MR. ALLRED: Yes, your Honor.
[3] RECROSS-EXAMINATION
[4] BY MR. ALLRED:
[5] Q: Did you work all day on the day that Hillary
[6] was brought in?
[7] A: I got there right after they were open, and
[8] I was there till 2:30.
[9] Q: Did you work the next day?
[10] A: Yes, I did.
[11] Q: The next day was a Sunday, so you worked on
[12] Sunday?
[13] A: No, Hillary was admitted on a Monday
[14] morning.
[15] MR. ALLRED: Your Honor, if I could
[16] have Exhibit Number 32 so I could give that to the
[17] witness.
[18] THE COURT: You want the original?
[19] MR. ALLRED: Yes.
[20] Q: (By Mr. Allred) Mrs. Gillette, I'm going to
[21] hand you what has been marked as State's Exhibit
[22] Number 32 and admitted into evidence and ask you if
[23] you've seen that document
[24] MR. DAHL: Was that admitted into
[25] evidence?

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[1] THE COURT: It's the subpoena. I think
[2] it's in. Yes, it is.
[3] A: Yes, I have seen it.
[4] Q: (By Mr. Allred) You've testified that the
[5] check-in reports for Hillary are available. Do you
[6] know if they've been provided?
[7] A: I don't know that.
[8] Q: Are they available?
[9] A: I imagine they are, yes.
[10] Q: Were you responsible for collecting the
[11] documents requested in the subpoena?
[12] A: No, I wasn't.
[13] Q: Is there an instruction for animals going
[14] home that have open wounds?
[15] A: Verbal instructions.
[16] Q: Are you sure? Have you looked through the
[17] list to see?
[18] A: (Witness complies.) There's instructions for
[19] medications that go home, ointments and antibiotics.
[20] Q: Would you please turn to tab number 1 in the
[21] witness exhibit book. Do you recognize this document?
[22] A: Yes.
[23] Q: Is there a billing on here for antibiotics?
[24] A: Yes, there is.
[25] Q: Is there a code on here that would relate to

000286

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[1] your instructions, the departure?
[2] **A:** Not for penicillin, no. It's wrote on the
[3] package when it goes home?
[4] **MR. ALLRED:** That's all the questions I
[5] have, your Honor.
[6] **THE COURT:** Any redirect, Mr. Dahl?
[7] **MR. DAHL:** No.
[8] **THE COURT:** Any further questions by
[9] the board of this witness? Mrs. Gillette, can I have
[10] the one exhibit that Mr. Allred handed to you, Number
[11] 32, I think it is. Thank you.
[12] Mr. Dahl, is this witness subject to
[13] recall?
[14] **MR. DAHL:** No.
[15] **THE COURT:** Mr. Allred?
[16] **MR. ALLRED:** No, your Honor. Well,
[17] your Honor, I - no. Yes, I may recall this witness.
[18] **THE COURT:** Possibly. Mrs. Gillette,
[19] you can return to your seat. Thank you. Mr. Dahl,
[20] your next witness.
[21] **MR. DAHL:** Respondent would like to
[22] call William Britton.
[23] **THE COURT:** Mr. Britton.
[24] **WILLIAM N. BRITTON**
[25] the witness hereinbefore named, being first duly sworn

[1] mostly. This is a golden retriever by order of Scott
[2] Matheson, but he doesn't know it. And we train these
[3] dogs to take in many a situation which may cost a good
[4] dog his life. And we train them, put them out with
[5] handicapped people for seize and response dogs,
[6] pulling wheelchairs, anything along that order.
[7] **Q:** And you get paid for this service?
[8] **A:** No. People if they can afford to pay for
[9] the dog, they reimburse us what we have in them for
[10] their medical that has been done on them, spaying and
[11] neutering, their shots, anything else like that. Most
[12] of the money that comes in for the dogs is from
[13] foundations throughout the world and people who
[14] donate. No one in our organization can draw one dime
[15] in salary. Everything goes to the dogs.
[16] **Q:** And have you received a national award for
[17] your services?
[18] **A:** Yes, sir.
[19] **Q:** What's that?
[20] **A:** Well, when we had 1800 dogs, then we got -
[21] I got the award for good samaritan of the year.
[22] **Q:** And how many dogs have you rescued to date?
[23] **A:** Over 2700.
[24] **Q:** Now where do you get these dogs?
[25] **A:** People leave them to us in their will.

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[1] to testify the truth, the whole truth and nothing but
[2] the truth, testified on his oath as follows:
[3] **DIRECT EXAMINATION**
[4] **BY MR. DAHL:**
[5] **Q:** Mr. Britton, would you please state your
[6] full name and spell it for the record, please.
[7] **A:** William N. Britton, B-r-i, double T, o-n.
[8] **Q:** And where do you reside?
[9] **A:** West Jordan, Utah, 3470 West 6925 South.
[10] **Q:** What is your occupation?
[11] **A:** Well, I'm retired. And I'm executive
[12] director for the Companion Golden Retriever Rescue.
[13] **Q:** I see. And I notice with you you have a
[14] dog. Is that for any particular purpose?
[15] **A:** Yes, sir, she helps me walk. She does about
[16] anything that I need to do.
[17] **Q:** Do you have a serious injury?
[18] **A:** Yes, sir, I'm a disabled American veteran.
[19] And three weeks after I got retired, I made the
[20] mistake of getting on I-15. An 18-wheeler drove over
[21] me.
[22] **Q:** Now what does this Companion Golden
[23] Retriever Rescue, is that a corporation?
[24] **A:** Yes, sir, we are a federal and state
[25] nonprofit corporation. We take golden retrievers

[1] People that no longer can keep them for one reason or
[2] another, and I get breeders, especially backyard
[3] breeders or puppy mills that the police raid and they
[4] send us the dogs. We get them from dog pounds. If
[5] they're good dogs but nobody adopts them, then we get
[6] them.
[7] **Q:** Now when you receive a dog, are you then the
[8] owner of the dog?
[9] **A:** Yes, sir.
[10] **Q:** And when you transfer the dog to its new
[11] owner, what evidence of ownership do you pass to the
[12] new owner?
[13] **A:** We never sell a dog or give a dog where it
[14] cannot come back to us. We have strict guidelines
[15] that the person getting the dog has got to follow. If
[16] they don't follow these guidelines, they will lose the
[17] dog. It comes back to us. In other words, if they
[18] reimburse us for Dr. Taylor's spaying or neutering and
[19] the shots, they still are only leasing or renting the
[20] dog for the life of the dog providing they allow the
[21] dog to be an inside dog and is taken care of in the
[22] guidelines that we give them. It's actually easier
[23] for you to adopt a child than it is to get one of our
[24] dogs. If you take and sell a dog to the university
[25] for research that you get from us, we will prosecute

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[1] you in any country, in any land, any state.

[2] Q: Now how widespread has the gift of these
[3] dogs been?

[4] A: I've got three dogs in Hong Kong, I guess
[5] every state in the United States, every province of
[6] Canada, and I have dogs in Australia, New Zealand,
[7] Iceland, Germany. And last night, we sent one to
[8] Missouri.

[9] Q: Do you put any identification on the dog?

[10] A: Yes, sir.

[11] MR. ALLRED: Your Honor, is this line
[12] of questioning going anywhere?

[13] THE COURT: Mr. Dahl?

[14] MR. DAHL: Yes, because I'm laying a
[15] foundation as to what he does to the dog and also I'll
[16] move from here into veterinary services.

[17] THE COURT: Go ahead.

[18] A: Every one of our dogs has an ID that says
[19] what kind of a dog he is, if he's a seizure and response
[20] dog, if he's a service dog, therapy dog or if he's
[21] just a companion dog. Plus we get an ID card with the
[22] dog's picture that goes on it. I didn't bring any
[23] extra ones, but I'll show you mine. This is what it
[24] looks like, (indicating).

[25] Q: (By Mr. Dahl) Okay. Now when you get the

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[1] to Cottonwood and maybe one or two other doctors in
[2] other states. But Dr. Taylor has had the honor of
[3] doing them all.

[4] Q: And how have you found his services to be?

[5] A: Wonderful. I have patients that have dogs
[6] that live in Nevada, that live in other states, and
[7] they're so pleased with the service that they come
[8] back here for follow up and treatment.

[9] Q: I guess we ought to give you an opportunity
[10] to brag a little bit. Have you been on national
[11] television concerning these dogs?

[12] A: Yes, sir. We put some dogs, one dog, with a
[13] boy down in Pleasant Grove that was born with no body
[14] below his rib cage. And we trained and put a dog with
[15] him so that he could pull his wheelchair, carry his
[16] books, go to school with him. We go around to the
[17] various schools with some of these dogs showing the
[18] children what they can do, how to take care of them.

[19] Q: You also write children's books?

[20] A: Yes, sir. I write children's books. I put a
[21] book that I've done called the Legend of Rainbow
[22] Bridge, and it's starting today into production to put
[23] it on tape for the blind because so many of the blind
[24] have seeing eye dogs. That's one dog we don't ever
[25] train is seeing eye dogs.

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[1] dog, medically what services are performed on the
[2] animal?

[3] A: Within hours of us receiving the dog, I take
[4] it down to Brookside. And Dr. Taylor gives it a
[5] physical, checks it over, because some of our dogs
[6] come here from the tropics. Others come from Alaska.
[7] So every dog is basically different. He checks the
[8] dog over and finds out just how good it is medically.

[9] We do everything except checking the dog for
[10] hip dysplasia because that's too expensive, too drawn
[11] out. And then if it needs spaying or neutering, Dr.
[12] Taylor does that. Anything else he finds, like
[13] infections in the ears. Long-haired dogs and
[14] long-eared dogs, a lot of times they have infections
[15] in the ears. He's worked on many, many a one of our
[16] dogs.

[17] Q: How about shots?

[18] A: Oh, he gives them all their shots. And then
[19] the ones that are shipped overseas, he makes sure that
[20] everything is up to date and prepares the papers
[21] required by the carrier.

[22] Q: And has he handled for you this 2700
[23] animals?

[24] A: Well, he's done most of them. Ten of them
[25] went to Brent Poppleman, and about 10 or 11 have gone

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[1] Q: This may be irrelevant, but I understand
[2] that you're going on national television in two or
[3] three weeks?

[4] A: Yes, sir, we're supposed, within the next
[5] two months, we're supposed to be on the Oprah show.
[6] We made films for NBC for New York, St. Louis, and Los
[7] Angeles.

[8] Q: Do you pay for veterinary services?

[9] A: Oh, yes, sir, yeah. Leo and I like each
[10] other, but neither one of us took us to raise.

[11] MR. DAHL: That's all I have.

[12] THE COURT: Cross-examination, Mr.
[13] Allred?

[14] MR. ALLRED: No, your Honor.

[15] THE COURT: Any questions by the board
[16] of this witness? Dr. Taylor?

[17] MR. TAYLOR: No.

[18] THE COURT: Dr. Rees?

[19] EXAMINATION
[20] BY MR. REES:

[21] Q: Has Dr. Taylor done surgery on any of these
[22] dogs?

[23] A: Yes, sir. I just had a beautiful little
[24] golden retriever that after we gave it to a woman, it
[25] somehow or another the kids opened the gate and left

000288

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[1] it out. It got hit with a car, and then the guy
[2] turned around at the end of the street - he's an
[3] adult juvenile - came back and hit it again. And Dr.
[4] Taylor worked, I guess, three weeks on that to repair
[5] that dog. And then when we put it out again back with
[6] the family who lived in Magna, the dog was there less
[7] than 24 hours before the neighbor poisoned it because
[8] he didn't like dogs. But this being Utah, Utah will
[9] not prosecute people the way they should for killing a
[10] dog, even a service dog.

[11] **MR. REES:** Thanks.

[12] **THE COURT:** Dr. Brown.

[13] **MS. BROWN:** No questions.

[14] **THE COURT:** Mr. Sperry?

[15] **MR. SPERRY:** No.

[16] **THE COURT:** Any further questions on
[17] redirect, Mr. Dahl, for this witness?

[18] **MR. DAHL:** No, your Honor. And my
[19] third witness, Judge Coombs, was going to be here
[20] about 10:30 because he had some openings in his
[21] calendar. And so I didn't expect us to be through
[22] quite so early, but...

[23] **THE COURT:** Well, for Mr. -

[24] **MR. DAHL:** I would like at this time to
[25] rest. And if he does show, I'd like the opportunity

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[1] stable where he goes ahead and takes care of animals,
[2] horses and also trains them for shows as well as these
[3] other animals and that his veterinarian is Dr.
[4] Taylor. And he is the judge who recused himself from
[5] listening to this one case in court because of
[6] conflict of interest. And his testimony probably is
[7] no more than, as he stated to me, Dr. Taylor has done
[8] an excellent job for him and at reasonable prices.
[9] That's about what he would testify to.

[10] **THE COURT:** Okay. Thank you, Mr.

[11] Allred, do you have an objection to preserving Mr.

[12] Dahl's ability to call Judge Coombs for that purpose?

[13] **MR. ALLRED:** Your Honor, I have an

[14] objection to calling Judge Coombs. I think he's going

[15] to be testifying as a character witness. We've heard

[16] some wonderful things about him, but I don't know what

[17] he can add to this case. I don't see any relevancy

[18] for his proposed testimony.

[19] **THE COURT:** From what I heard from the

[20] proffer, the relevancy would go to his understanding

[21] of veterinary services that Dr. Taylor has provided

[22] animals in his care; correct, Mr. Dahl?

[23] **MR. DAHL:** Correct.

[24] **MR. ALLRED:** Your Honor, I've heard

[25] only a passing comment about large animals. And this

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[1] perhaps to put him on and let him get back to his own
[2] court.

[3] **THE COURT:** Before I address that
[4] request, I'm going to - well, I can do it on the
[5] record. But if there are no further questions for Mr.
[6] Britton - Mr. Allred, do you have any?

[7] **MR. ALLRED:** No, your Honor.

[8] **THE COURT:** Mr. Britton, you can return
[9] to your seat. Thank you, sir.

[10] Procedurally to address your request, Mr.
[11] Dahl, I need to direct a couple questions to Mr.
[12] Allred. Does the division have any rebuttal
[13] witnesses?

[14] **MR. ALLRED:** Yes, your Honor.

[15] **THE COURT:** Who are they.

[16] **MR. ALLRED:** Laurie Larsen, Cindy Bue,
[17] and I may recall Janet Gillette.

[18] **THE COURT:** I need to ask you now to
[19] address the request, Mr. Dahl. What's the anticipated
[20] scope of testimony from Judge Coombs?

[21] **MR. DAHL:** Well -

[22] **THE COURT:** Generally speaking.

[23] **MR. DAHL:** Two things. One is he is a
[24] judge and a lawyer, and I thought this would add to
[25] the integrity. But aside from being a judge, he has a

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[1] case is not about large animals. This case is about
[2] small animals. So I don't understand how that's
[3] relevant.

[4] **MR. DAHL:** He has both large and small.

[5] **THE COURT:** Well, the weight of the
[6] testimony is something the board can consider given
[7] the kind of animals that Mr. Coombs, Judge Coombs, is
[8] aware in terms of veterinary services provided by
[9] respondent. But I don't think it necessarily excludes
[10] it on relevancy grounds. I think his testimony would
[11] be somewhat limited both in terms of scope and time.

[12] I think under the circumstances, and the
[13] reason I was asking whether you had an objection in
[14] terms of sequence of testimony, do you see any
[15] prejudice to your ability to put on your rebuttal
[16] witnesses and then have Judge Coombs testify if he
[17] appears?

[18] **MR. ALLRED:** Well, your Honor, I would
[19] like to maintain the order that's set forth in the
[20] administrative code of my putting on a rebuttal after
[21] the respondent rests his case. I don't want that
[22] broken up with another part of Mr. Dahl's case.

[23] **THE COURT:** Well, I'll tell you what I
[24] would be willing to do if that's your preference. It
[25] would necessitate a half hour recess. And if Judge

[25] years that I have associated with Dr. Taylor.

[25] the witness hereinbefore named, being first duly sworn

[25] **THE COURT:** Anything further of this

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[1] witness, Mr. Dahl?
[2] **MR. DAHL:** No, your Honor.
[3] **THE COURT:** You're free to leave.
[4] **THE WITNESS:** Thank you.
[5] **MR. DAHL:** At this time, respondent
[6] will rest.
[7] **THE COURT:** Mr. Allred, I believe you
[8] have some rebuttal testimony?
[9] **MR. ALLRED:** Yes, your Honor, I do.
[10] **THE COURT:** Your first witness.
[11] **MR. ALLRED:** Cindy Bue.
[12] **THE COURT:** Ms. Bue, I do not need to
[13] administer another oath. Be advised you're still
[14] under oath. Take a seat, Mr. Allred.
[15] **CINDY BUE**
[16] the witness hereinbefore named, being previously duly
[17] sworn to testify the truth, the whole truth and
[18] nothing but the truth, testified on her oath as
[19] follows:
[20] **DIRECT EXAMINATION**
[21] **BY MR. ALLRED:**
[22] **Q:** Mrs. Bue, do you recall the day that you
[23] took Hillary to Brookside Animal Hospital when she was
[24] in labor?
[25] **A:** It was June 18th.

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[1] **Q:** Do you recall what day of the week that was?
[2] **A:** It was a Saturday morning.
[3] **Q:** Who opened up the facility when it was
[4] opened?
[5] **A:** Mrs. Gillette.
[6] **Q:** Do you recognize her?
[7] **A:** Yes, I do.
[8] **Q:** Is she here in the courtroom?
[9] **A:** Yes, she is.
[10] **Q:** Would you point her out.
[11] **A:** The lady in the back row with the glasses.
[12] **MR. ALLRED:** Your Honor, let the record
[13] reflect that the witness has pointed to a witness that
[14] has testified, Janet Gillette.
[15] **THE COURT:** The record should so
[16] reflect.
[17] **Q:** (By Mr. Allred) Mrs. Bue, you've testified
[18] that your English bulldog, Hillary, was artificially
[19] inseminated by Dr. Taylor; is that correct?
[20] **A:** Yes, yes.
[21] **Q:** Did you receive any documentation after the
[22] artificial insemination?
[23] **A:** Yes, I did.
[24] **Q:** What did you receive?
[25] **A:** What I received was a paper that I gave to

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[1] Dr. Taylor to be signed for the registration of my AKC
[2] litter pups which was never sent in to the AKC
[3] because, of course, I had no puppies to register.
[4] **MR. ALLRED:** Your Honor, where is the
[5] state on its exhibit numbers.
[6] **THE COURT:** The one you're about to
[7] offer would be 34.
[8] **Q:** (By Mr. Allred) Mrs. Bue, I'm going to hand
[9] you what has been marked as State's Exhibit Number 34
[10] and ask you if you can identify that document.
[11] **A:** Yes. This is the Certification of Breeding
[12] by Artificial Insemination Using Fresh Semen. And
[13] this is what needed to be filled out completely by
[14] both the owner of the bitch and the owner of the sire
[15] and the attending physician or the attending
[16] professional that would be doing the artificial
[17] insemination to be sent in to the AKC when I
[18] registered the litter.
[19] **MR. ALLRED:** Your Honor, I would move
[20] to admit State's Exhibit Number 34 into evidence.
[21] **THE COURT:** Mr. Dahl, I'll have you
[22] review the document.
[23] **MR. DAHL:** Please. I have no
[24] objection.
[25] **THE COURT:** As identified, Division's

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[1] Exhibit 34 is received. And copies may be provided to
[2] the board.
[3] (WHEREUPON, Division's Exhibit 34
[4] was received in evidence.)
[5] **MR. DAHL:** Thank you, your Honor.
[6] **MR. ALLRED:** I think I may have given
[7] you one too many copies, your Honor. Thank you, your
[8] Honor.
[9] **Q:** (By Mr. Allred) Mrs. Bue, I direct your
[10] attention to item number 4 of the first page.
[11] **A:** Yes.
[12] **Q:** What does that state?
[13] **A:** This states that on April 21st, '94, I
[14] inseminated the above identified female with semen
[15] collected from the above identified male. The named
[16] male was present during the insemination process.
[17] This artificial breeding was effected at the following
[18] location, Leo N. Taylor, 7220 South 1300 West, West
[19] Jordan, Utah.
[20] **Q:** Thank you, Mrs. Bue. Mrs. Bue, do you
[21] remember when you took Hillary in to Central Valley
[22] Hospital?
[23] **A:** Yes.
[24] **Q:** What date was that?
[25] **A:** It was Saturday night. No, it was Sunday

000291

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[1] night. Excuse me. I got Hillary home Sunday
[2] morning. It was Sunday night at approximately 11:30,
[3] quarter to 12:00.
[4] Q: Do you remember that date?
[5] A: Yes, I do.
[6] Q: What date was that?
[7] A: The day I took her down?
[8] Q: To Central Valley.
[9] A: It would have been the 19th, the 19th,
[10] excuse me, Sunday night.
[11] MR. ALLRED: Thank you. Your Honor.
[12] that's all the questions I have.
[13] THE COURT: Mr. Allred, the exhibit
[14] you've offered, I need one of this marked for purposes
[15] of the record, if you have one.
[16] MR. ALLRED: The original has been
[17] marked.
[18] THE COURT: I'll take the original if
[19] that's fine.
[20] THE WITNESS: I will need this for my
[21] records. Thank you.
[22] THE COURT: Copies are all right.
[23] THE WITNESS: Thank you.
[24] THE COURT: Mr. Dahl, any questions of
[25] this witness?

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[1] MR. DAHL: Yes.
[2] CROSS-EXAMINATION
[3] BY MR. DAHL:
[4] Q: Ms. Bue, when you went into the hospital,
[5] they handed this to you to have you fill out and sign
[6] it and bring it back to the hospital?
[7] A: No. I received this from the AKC kennel
[8] company in North Carolina. The hospital did not give
[9] it to me.
[10] Q: So then you took this in and left it with
[11] the hospital to take care of?
[12] A: Yes, I didn't leave it with them. We went
[13] in for the first insemination which was done and then
[14] the second insemination which I had to sign this
[15] before I left and pay my bill.
[16] Q: You said when you went to the hospital when
[17] your bulldog was whelping, as I recall, your testimony
[18] is that the hospital was not open but there was
[19] somebody in the back?
[20] A: No, that was Sunday night. When I had not
[21] received a phone call from Dr. Taylor, I hurriedly ran
[22] down there. And his truck was out in front of the
[23] garage, and I wanted to see my dog. And he hadn't
[24] called me yet.
[25] When I arrived at the hospital Saturday

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[1] morning when she was in labor, I called before I
[2] left. And I did talk to his wife, and his wife said
[3] that she would have two girls there waiting for me.
[4] She knew it was an emergency after I stressed the
[5] point. And when I arrived there, there was nobody
[6] there. And I live in West Valley, so it was a
[7] 20-minute hurriedly ride. And there was nobody
[8] there. And I was running to a neighbor's house to use
[9] the phone, and I see Mrs. Gillette going north, turn
[10] the corner into the hospital. And I actually ran out
[11] to the side of the road, flagged her in and to hurry.
[12] And she drove in quickly. She got out of
[13] her truck or car. I can't remember what it was. And
[14] she come running to the car. And I told her the pup
[15] was moving a few minutes ago. She immediately ripped
[16] the bag open. She started finger compressions and
[17] told me it was dead. She took and unlocked the
[18] hospital, took us into the hospital into a back room,
[19] placed Hillary in a cage and told me to wait for Dr.
[20] Taylor. And she left.
[21] MR. DAHL: I have no further questions.
[22] THE COURT: Redirect, Mr. Allred?
[23] MR. ALLRED: No, your Honor.
[24] THE COURT: Any questions by the board
[25] of this witness? Dr. Taylor?

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[1] MR. TAYLOR: No.
[2] THE COURT: Dr. Rees?
[3] MR. REES: I'm confused.
[4] EXAMINATION
[5] BY MR. REES:
[6] Q: Who did you see come and examine your dog
[7] the first time you took the dog to the clinic?
[8] A: When she was in labor or during
[9] insemination?
[10] Q: Well, you said you saw Ms. Gillette. Who
[11] was the doctor that looked at your dog? Did you wait
[12] with the dog in the examining room?
[13] A: Yes.
[14] Q: Who came in and looked at the dog?
[15] A: The very first person to look at my dog was
[16] Mrs. Gillette, in the car. And she opened the clinic
[17] and let us in, immediately took us to the back room.
[18] And she said, We'll put you in the cat room because
[19] it's quieter. And then she put Hillary in the cage,
[20] and she said she would try and get ahold of Dr.
[21] Taylor. He was still out on a large animal emergency,
[22] and hopefully he would be in soon, and left us in the
[23] room with my dog.
[24] Q: Who came and looked at the dog? What DVM
[25] looked at your dog?

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[1] A: Dr. Taylor. At 8:30, he arrived.
[2] Q: And you testified that he examined the dog
[3] and indicated that the puppies were premature?
[4] A: He examined both puppies and Hillary and
[5] said they were all premature, they were all going to
[6] be dead, and for me to go home.
[7] Q: Did you at any time know that you had talked
[8] with a DVM other than Dr. Taylor about this dog?
[9] A: Never. I have never met this Dr. Stoke.
[10] I've never seen him. I wouldn't know him from Adam.
[11] Q: When you talked with Dr. Taylor on the
[12] phone, was it his voice that you heard?
[13] A: Yes, it was his voice I heard. It was him I
[14] was referring to as, Oh, Dr. Taylor, please help me.
[15] What do I do? It was him.
[16] MR. REES: I have no other questions,
[17] your Honor.
[18] THE COURT: Dr. Brown?
[19] MS. BROWN: No, no questions.
[20] THE COURT: Mr. Sperry?
[21] MR. SPERRY: Yes.
[22] EXAMINATION
[23] BY MR. SPERRY:
[24] Q: When you had the certificate of artificial
[25] insemination or breeding signed by Dr. Taylor, did you

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[1] see Dr. Taylor sign it?
[2] A: Yes. He signed it in our presence on that
[3] same table.
[4] Q: And you were present during the
[5] insemination?
[6] A: Yes, my neighbor and I both was. Mrs.
[7] Gillette was not present during any insemination.
[8] THE COURT: Any other questions by the
[9] board of this witness?
[10] EXAMINATION
[11] BY MR. REES:
[12] Q: You testified they've lied. Dr. Taylor has
[13] testified that he inseminated the dog one time; is
[14] that correct? Or did he inseminate it twice?
[15] A: Both times.
[16] THE COURT: Mr. Allred, anything
[17] further for this witness?
[18] MR. ALLRED: No, your Honor.
[19] THE COURT: Mr. Dahl?
[20] MR. DAHL: No, your Honor.
[21] THE COURT: This witness is excused.
[22] You may leave. Mr. Allred, your next witness.
[23] MR. ALLRED: Your Honor, the division
[24] would call Laurie Larsen to the stand.
[25] LAURIE LARSEN

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[1] the witness hereinbefore named, being previously duly
[2] sworn to testify the truth, the whole truth and
[3] nothing but the truth, testified on her oath as
[4] follows:
[5] DIRECT EXAMINATION
[6] BY MR. ALLRED:
[7] Q: Mrs. Larsen, what do your notes reflect
[8] regarding your interviews with Dr. Taylor?
[9] A: I show that I interviewed him on October
[10] 12th and that that was the first interview. And then
[11] there was another one a few days later and that there
[12] was a final conversation, on October 25th, I talked
[13] with him again. And then I believe I talked with him
[14] again in December of '95 or January of - December of
[15] '94 or January of '95.
[16] THE COURT: Ms. Larsen, could you give
[17] full dates for each contact, please.
[18] THE WITNESS: Yes, I can. I first
[19] interviewed him on October 12th, 1994. Second
[20] interview was December 8th, 1994. No, that would be
[21] the third one. Excuse me. The first one was October
[22] 12th, 1994. The second one, I talked to him on the
[23] phone October 24th, 1994. I stopped by on October
[24] 25th, 1994. And then on the Picklesimer case, I
[25] believe I talked to him on the phone, and I don't

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[1] think I have that date right here, in about February
[2] of '95, I think.
[3] THE COURT: Okay. Mr. Allred.
[4] Q: (By Mr. Allred) Mrs. Larsen, turning your
[5] attention to your interview with Dr. Taylor on October
[6] 12th, 1994, where did that interview take place?
[7] A: That took place at Brookside Animal
[8] Hospital.
[9] Q: Do you recall what time of day that
[10] interview took place?
[11] A: It was from about 2:00 p.m. until 3:30 p.m.
[12] It was in a little side office that looked kind of
[13] like it wasn't an exam room. It was a little side
[14] office to the side of the front door.
[15] Q: What cases did you discuss with Dr. Taylor
[16] when you met with him on October 12, 1994?
[17] A: I discussed the DeGuzman case, the Crocker
[18] case, a case, the Wagstaff case, the Bue case, the
[19] Devlin case, and the Zerker case.
[20] Q: Help us out a little bit. Can you tell us
[21] what animal the DeGuzmans owned?
[22] A: That was Nadia.
[23] Q: And what animal -
[24] A: A chow/lab.
[25] Q: That Crocker's own?

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[1] A: Uh-huh.

[2] Q: What animal did the Crockers own?

[3] A: The Crockers owned Oscar, the Cocker
[4] Spaniel.

[5] Q: And what animal did Cindy Bue own?

[6] A: Cindy Bue had Hillary, an English bulldog.

[7] Q: And finally what animal is owned by Cheryl
[8] Devlin?

[9] A: Devlin was Shakesbear, the chow.

[10] Q: What did you discuss with Dr. Taylor
[11] regarding Cindy Bue's animal Hillary?

[12] A: My purpose in the interview was to try to
[13] get his side of each of the stories. And in talking
[14] with him about Cindy Bue's dog, Hillary, I went
[15] through the different allegations as far as what the
[16] concerns were of the owner and of the others, and I
[17] talked with him about that. So I asked him if he
[18] recalled the case when the dog passed premature
[19] puppies. And he said that from what he saw, the dog
[20] did pass premature puppies.

[21] I asked him if any x-rays were taken of the
[22] Bue dog. And he said that he offered to x-ray it but
[23] that she didn't think they needed to if there was no
[24] need to go to the extra expense. And I asked him how
[25] he would have known there were no more puppies inside

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[1] the dog if he didn't take an x-ray, and he said that
[2] he had palpated the dog and couldn't feel any. I
[3] asked him if he would have given the dog a C-section.
[4] And he said he would have at Bue's request. But she
[5] didn't request it, and he said he didn't see any need
[6] to insist on a C-section when the dog was passing the
[7] puppies on its own and there were no live ones. It
[8] was obviously a litter that had been lost just because
[9] they were premature.

[10] I asked him how he cleaned out Hillary. He
[11] said that he ran a catheter up the dog with a pump on
[12] it and cleaned out the uterus. He said he gave the
[13] dog some POP, which I believe is oxytocin. He was
[14] surprised to learn that another veterinarian had
[15] performed a C-section on the dog. He said that if you
[16] would have brought the dog back after seeing that it
[17] still had puppies inside, we would have gotten it out
[18] for her and saved her some money. And I think they
[19] commented some other things on cost, but those were
[20] the specifics on Hillary.

[21] Q: Did at any time Dr. Taylor tell you that he
[22] did not treat Hillary?

[23] A: No, he did not.

[24] Q: Did he mention Dr. Stock's name at any time
[25] during that conversation about Hillary?

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[1] A: About Hillary, no, he did not.

[2] Q: If I could turn your attention to the Devlin
[3] dog, Shakesbear, what do your notes reflect about that
[4] discussion with Dr. Taylor?

[5] A: Okay. I explained to Dr. Taylor that
[6] another veterinarian had looked at the dog after it
[7] was released from his care, a neurological specialist,
[8] and that the dog had survived. And I said they had
[9] concerns about the burns on the dog's skin and that
[10] the other veterinarian felt that it had been left to
[11] urinate on itself. Dr. Taylor said that it's common
[12] for paralyzed dogs to urinate on themselves because
[13] they can't feel.

[14] And I asked if a dog in that situation would
[15] normally be catheterized. Dr. Taylor said that they
[16] would watch the dog to make sure that it urinates.
[17] And if it's ambulatory, they'll take it out. But if
[18] it was not ambulatory, Dr. Taylor said he can palpate
[19] the bladder and if the dog can't express the urine,
[20] then certainly it could be catheterized. And as Dr.
[21] Taylor recalled it, the Devlin dog was not one that
[22] needed to be catheterized.

[23] And then I asked what would cause the severe
[24] skin burns on the dog. Dr. Taylor said that they
[25] might be bruised spots from the accident or burns from

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[1] the urine that took a day to show up and said that if
[2] a dog urinates on themselves, they clean it up. And
[3] then I asked Dr. Taylor why he recommended that the
[4] dog be put down. And he said that he tries to be
[5] honest and up front with clients and that he would
[6] like to tell them they're sustaining a luxury here.
[7] Taylor said anything beyond your basic needs in taking
[8] care of your kids is a luxury, but he doesn't come out
[9] and say that with her.

[10] MR. DAHL: At this time, I thought that
[11] her testimony concerning who treated the English
[12] bulldog was relevant because it's rebuttal to the
[13] testimony of Dr. Taylor. But now what she's
[14] testifying to is all the other cases with her notes,
[15] and I'd like to voir dire the witness a little bit
[16] before she starts becoming too engaged in
[17] conversations of what was done and what should be done
[18] and so on.

[19] THE COURT: Mr. Allred, given the
[20] purpose of rebuttal testimony, I think specific
[21] directed inquiries to the witness are in order rather
[22] than a narrative from her report. You know what you
[23] intend to offer. I don't think I need to give Mr.
[24] Dahl the opportunity to conduct voir dire as long as
[25] we don't get into areas that are not proper within the

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[1] scope of rebuttal testimony.

[2] **Q:** (By Mr. Allred) Mrs. Larsen, did Dr. Taylor
[3] at any time tell you that Dr. Stock treated Shakesbear
[4] during your interview with him on October 12, 1994?

[5] **A:** No, he didn't.

[6] **Q:** Can you tell us if Dr. Taylor ever mentioned
[7] Dr. Stock's name during that interview?

[8] **A:** Yes. When I talked to him about the
[9] Wagstaff complaint, that's one that wasn't included in
[10] the petition, he said he wasn't as familiar with that
[11] because Dr. Stock had handled that case. And he just
[12] kind of gave me his impression of that and said I
[13] would need to talk to Dr. Stock to find out what had
[14] happened in that case.

[15] **MR. ALLRED:** Thank you, your Honor.
[16] That's all the questions I have at this time.

[17] **THE COURT:** Mr. Dahl?

[18] **MR. DAHL:** Yes.

[19] **CROSS-EXAMINATION**
[20] **BY MR. DAHL:**

[21] **Q:** Ms. Larsen, in your investigation, were you
[22] relying on the history of these animals that you'd
[23] requested from the hospital as to what doctor treated
[24] who?

[25] **MR. ALLRED:** Your Honor, I'm going to

[1] necessary?

[2] **A:** Which animal are you referring to, please?

[3] **Q:** The bulldog.

[4] **A:** No, that's not the case. In the case of the
[5] English bulldog, Dr. Taylor never said that Dr. Stock
[6] handled that animal. And he gave me specific details,
[7] like I've said before, about how he cleaned out the
[8] bulldog, how he palpated the bulldog, and why he
[9] didn't take the x-ray, and what the puppies looked
[10] like. And he never mentioned Dr. Stock in connection
[11] with that animal.

[12] **Q:** Who else was present during this
[13] conversation?

[14] **A:** During the interview with Dr. Taylor, Jerry
[15] Taylor, his wife, did come in and out of the room
[16] several times. Other than that, those present were
[17] Dr. Taylor and myself.

[18] **MR. DAHL:** The reason for the inquiry
[19] is that, I suppose I should have asked Mrs. Taylor
[20] when she was on the witness stand, but she had not
[21] testified yet and I felt it was irrelevant. How long
[22] are you going to be?

[23] **MR. ALLRED:** Your Honor, this is my
[24] last witness.

[25] **THE COURT:** You only have the two

[1] object. I think we're beyond the scope of direct.
[2] He's asking a question about her overall
[3] investigation.

[4] **THE COURT:** Well, I think there is a
[5] legitimate issue. And the reason for this witness
[6] being called on rebuttal is to address testimony
[7] previously offered as to who the attending
[8] veterinarian was. I will allow it. Go ahead.

[9] **A:** What you're asking is if I relied on the
[10] records to say who the doctor was that saw the
[11] animals? Well, I relied on Dr. Taylor because he was
[12] the one who was telling me who he thought. And when
[13] he told me, for example, with the Wagstaff dog, that
[14] he didn't see that dog, then I didn't proceed with
[15] that. And then afterwards as I was talking to Dr.
[16] Taylor, he provided or his wife provided the medical
[17] history report on most of the animals. I don't think
[18] there was one on the Crocker dog. And that also
[19] showed which doctor had handled the case.

[20] **Q:** (By Mr. Dahl) I'm going to ask you a very
[21] blunt question. When you were interviewing Dr. Taylor
[22] in his office, is it not true that Dr. Taylor got up
[23] and said that he did not handle that animal and said I
[24] want to go next door and get Dr. Stock to come and
[25] tell you what took place and you said that was not

[1] rebuttal witnesses?

[2] **MR. ALLRED:** Yes, your Honor.

[3] **THE COURT:** Any further questions of
[4] this witness, Mr. Dahl?

[5] **MR. DAHL:** We're to standstill on it.
[6] I hate to do this, but I know what Mrs. Taylor's
[7] testimony is because she was emphatic that what Dr.
[8] Taylor said, offered to go get Dr. Stock, and she said
[9] it would not be necessary. Let me ask you a couple of
[10] more questions here.

[11] **Q:** (By Mr. Dahl) You're a police officer?

[12] **A:** Is that a question?

[13] **Q:** What's that?

[14] **A:** Is that a question?

[15] **Q:** Yes. You're a police officer?

[16] **A:** Yes, I'm a special function officer. I'm a
[17] certified police officer.

[18] **Q:** And you've had no formal training in
[19] veterinary medicine?

[20] **A:** No, no training in veterinary medicine.

[21] **Q:** And you relied on your information about
[22] veterinary medicine on people you'd talked to at
[23] various occasions, is that right, other veterinarians?

[24] **A:** Yes, in every incident with each of the
[25] cases, I did consult with the veterinarian who saw the

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[1] animal after Dr. Taylor and also with another
[2] veterinarian who just gave overall explanations
[3] regarding veterinary procedures.

[4] Q: Did you ever have any conversations with a
[5] Dr. Gail Soloman?

[6] A: No, I do not recall any conversations with
[7] with Dr. Gail Soloman.

[8] Q: She's in your office, is she not?

[9] A: I'm not familiar with anybody in my office
[10] by that name. We have about 75 people in our
[11] division, but there's no one by that name in our
[12] division.

[13] Q: You were out at the hospital on three, four
[14] different occasions. You are the one who signed the
[15] petition against Dr. Taylor, are you not?

[16] A: Yes, I am.

[17] Q: And in it you made allegations of unsanitary
[18] conditions and various other sorts of allegations.
[19] Let me ask you this. Did you at any time during your
[20] investigation ever ask to see the operating room or
[21] where the kennels are, where the dogs are kept, any of
[22] the sterilization equipment or did you ask to go
[23] through the hospital?

[24] MR. ALLRED: Your Honor, could we avoid
[25] compound questions. I'm objecting because I think

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[1] that are brought to the division, are they
[2] individually sent in to a person in your position? I
[3] guess what I'm asking is, How do these allegations
[4] come to the attention of the division? What is the
[5] process by which Mrs. Bue, for example, would allege
[6] these actions and you are made aware of it? By what
[7] process does that work? Could you explain that?

[8] A: Uh-huh. Just in general, a complaint can
[9] come directly from those who are complaining.
[10] Sometimes they're referred by an ethics committee like
[11] we proceed to from the veterinary ethics committee.
[12] Sometimes they'll come from the humane society. So
[13] there are different ways they can come in. They can
[14] come in by telephone. Those calls are usually
[15] directed to a receptionist or a secretary. Or
[16] sometimes calls do go to an investigator. If the
[17] secretaries have too much coming in, they'll refer to
[18] one of the investigators.

[19] Once the complaint is taken, it's entered
[20] into the system. And then my supervisor, the bureau
[21] chief, will decide who to assign the cases to, to just
[22] assign it at random based on case loads and maybe
[23] other cases that have come into the division. And so
[24] that's kind of the process. And then whatever
[25] investigator is assigned a case follows up.

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[1] there were a myriad of questions.

[2] THE COURT: I'm going to have to ask
[3] the witness to respond as best you can. And Mr. Dahl
[4] if you'd not gotten your question answered because of
[5] the nature in which it was phrased, go ahead and
[6] continue further.

[7] Q: (By Mr. Dahl) Let me ask you this. Did you
[8] ever go through the hospital?

[9] A: No, I didn't take a tour of the hospital.

[10] Q: And why not?

[11] A: Well, I didn't need to. I wasn't there to
[12] inspect the hospital. I was there to talk with Dr.
[13] Taylor about the various allegations and get his
[14] perspective on each of them.

[15] MR. DAHL: I have no further
[16] questions.

[17] THE COURT: Any redirect, Mr. Allred?

[18] MR. ALLRED: No, your Honor.

[19] THE COURT: Any questions by the board
[20] of this witness? Dr. Taylor?

[21] MR. TAYLOR: No.

[22] THE COURT: Dr. Rees?

[23] EXAMINATION

[24] BY MR. REES:

[25] Q: I would be interested, these allegations

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[1] Q: In any of your investigations, were all of
[2] these complaints independent, no solicitation on the
[3] part of division to find any other complainants?

[4] A: Of the five in the petition?

[5] Q: Right.

[6] A: That's correct. The Crocker one was the
[7] first one to come in, and that was referred by the
[8] veterinary ethics committee. And then the next one I
[9] think was the DeGuzman complaint. They contacted the
[10] division directly. Then the next one, I think, was
[11] the Devlins, and that came to me through - to me
[12] because I had been assigned the first two. If one
[13] investigator has them, we keep going. That came in
[14] through John Fox. He's an animal cruelty investigator
[15] at the humane society.

[16] Q: Which one was that again?

[17] A: That was the Devlins. That was Shakesbear.
[18] Cindy Bue, the Hillary case, that came in, she
[19] contacted the division directly. And then the
[20] Picklesimer, which was Char, the chow that died under
[21] anesthetic - well, that died, that one came in, that
[22] was referred to me by the veterinary ethics committee
[23] as well, referred to the division and then assigned to
[24] me. Once I receive a case, I will contact people for
[25] further information and follow up on that, but that's

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[1] how those particular cases came in.
[2] **Q:** How many of those do you get? This may be
[3] an unfair question because you may not know, but how
[4] many of these complaints does the division field a
[5] year? Do you know?
[6] **A:** I'm not sure how many complaints we field.
[7] They're not all veterinarians, of course, so how many
[8] complaints in general we receive, I don't know. And
[9] specifically with veterinarians, I don't know either.
[10] **MR. REES:** That's all I have, your
[11] Honor.
[12] **THE COURT:** Dr. Brown?
[13] **MS. BROWN:** I don't think I have any
[14] questions.
[15] **THE COURT:** Mr. Sperry?
[16] **EXAMINATION**
[17] **BY MR. SPERRY:**
[18] **Q:** Did you ever talk with Dr. Stock or meet Dr.
[19] Stock?
[20] **A:** I have talked to Dr. Stock on the phone
[21] before but have not met him in person.
[22] **Q:** And you did not physically inspect the
[23] operation of Dr. Taylor's at all. You just were in
[24] his front reception area and the office area?
[25] **A:** That's correct. I signed the petition which

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[1] contains all of the allegations, but the allegations
[2] are based on all of the information that's been
[3] gathered. So allegations of unsanitary conditions or
[4] unprofessional conduct are all based on the testimony
[5] of all the witnesses. And I signed the petition for
[6] the investigating officer, but I did not inspect the
[7] facility myself.
[8] **MR. SPERRY:** That's all I have.
[9] **THE COURT:** Any further questions by
[10] the board of this witness? Yes, Dr. Rees.
[11] **EXAMINATION**
[12] **BY MR. REES:**
[13] **Q:** Maybe she is not the right person to ask,
[14] your Honor, but it would be helpful in this hearing to
[15] hear from Dr. Stock. Is he a phantom out there
[16] somewhere, unable to be subpoenaed for this hearing?
[17] **THE COURT:** I think all we have that's
[18] reflected by the record was testimony provided, I
[19] think, by Dr. Taylor yesterday as to Dr. Stock's
[20] status, wherever he happens to be located. It's
[21] frankly up to either party as they see necessary and
[22] as they may be available to contact witnesses in
[23] support of their case. It's not for me to speculate
[24] whether Dr. Stock should have been called by either
[25] party. All we know is that he has not been. And from

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[1] what I can tell, there's no intention of either party
[2] to call him.
[3] **MR. REES:** Thank you.
[4] **THE COURT:** Anything further for this
[5] witness, Mr. Allred?
[6] **MR. ALLRED:** Yes, your Honor.
[7] **REDIRECT EXAMINATION**
[8] **BY MR. ALLRED:**
[9] **Q:** Mrs. Larsen, maybe we can clarify the issues
[10] of sanitary conditions. Is it true that the
[11] allegations of unsanitary conditions relate to
[12] individual animals rather than the facility itself?
[13] **A:** That's correct.
[14] **MR. ALLRED:** Thank you, your Honor.
[15] **THE COURT:** Any recross, Mr. Dahl?
[16] **MR. DAHL:** Not of this witness.
[17] **THE COURT:** Thank you. You're
[18] excused. Mr. Allred, any further rebuttal testimony
[19] on behalf of the division?
[20] **MR. ALLRED:** No, your Honor.
[21] **THE COURT:** Mr. Dahl, any rebuttal
[22] testimony on behalf of respondent?
[23] **MR. DAHL:** Yes, your Honor.
[24] **THE COURT:** Who would it be?
[25] **MR. DAHL:** Dr. Taylor.

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[1] **THE COURT:** Doctor, if I can just
[2] remind you, you're still under oath. Please be
[3] seated. Mr. Dahl.
[4] **LEO N. TAYLOR**
[5] the witness hereinbefore named, being first duly sworn
[6] to testify the truth, the whole truth and nothing but
[7] the truth, testified on his oath as follows:
[8] **DIRECT EXAMINATION**
[9] **BY MR. DAHL:**
[10] **Q:** Dr. Taylor, you've just been listening to a
[11] witness, a state's investigator who says she
[12] interviewed you at Brookside on three or four
[13] occasions. And concerning the English bulldog, she
[14] testified that apparently her thought was that you
[15] were the one who treated the English bulldog, both on
[16] insemination and during the whelping process. I guess
[17] the question I'm going to ask you is, Did you in any
[18] of these interviews tell the investigator that Dr.
[19] Stock was the one than handled the bulldog case and
[20] that he's in his office next door and that you were
[21] willing to go ahead and get Dr. Stock to come in?
[22] **A:** I certainly did. Irregardless of what has
[23] been testified here, I did offer to get him in on that
[24] case. And I signed. It shows that I signed the
[25] artificial insemination which I did not do.

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[1] **MR. ALLRED:** Your Honor, the defendant
[2] or the respondent is answering beyond the scope of the
[3] question, so I'd move to strike.

[4] **THE COURT:** I think for purposes of
[5] understanding the testimony, Mr. Dahl, I'm going to
[6] ask you to make specific inquiries. And, Doctor, if
[7] you'll respond to them accordingly.

[8] **Q:** (By Mr. Dahl) Who was in the office at the
[9] time besides you and Ms. Larsen when you told her that
[10] Dr. Stock had handled that case?

[11] **A:** Well, she and I was there mainly on all the
[12] interview. But my wife, Jerry, did walk in and out
[13] two or three different times. She was in there and
[14] heard some of the testimony while we were talking.

[15] **Q:** Now you have been reading the narrative
[16] provided by Ms. Bue and your own hospital records. Do
[17] the times jibe?

[18] **A:** No, it doesn't. The time that that dog was
[19] in the hospital and discharged on our statement there,
[20] he was in and out the one day, as far as I remember.
[21] But I did not treat the animal, so I couldn't tell you
[22] exactly what happened on that bulldog.

[23] **Q:** See, apparently, this might have taken place
[24] on the weekend. Did you and Dr. Stock take over the
[25] weekends at the hospital?

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[1] **A:** Yes, we do. We alternated it. He would
[2] take it part of the time as well as I.

[3] **Q:** And whoever was on duty, the telephone calls
[4] would be transferred?

[5] **A:** Transferred to their home, yes.

[6] **Q:** What is the procedure on signing
[7] certifications of breeding?

[8] **A:** That verifies so that the AKC or whoever
[9] registers the litter has verification of how it was
[10] conceived. And that was probably presented to me to
[11] sign it and not knowing that the document would come
[12] back at me like this, I probably just signed it to
[13] verify that the dog was done at that hospital.

[14] **Q:** Is Brookside a corporation?

[15] **A:** No, it's solely owned by my wife and I.

[16] **Q:** So as the owner, most official documentation
[17] is signed by the owner; is that right?

[18] **A:** Right. A lot of times, I do sign those
[19] because it reflects right back on the hospital.

[20] **MR. DAHL:** I have no further questions.

[21] **THE COURT:** Cross-examination, Mr.
[22] Allred?

[23] **MR. ALLRED:** No, your Honor.

[24] **THE COURT:** Any questions by the board
[25] of this witness? Dr. Taylor?

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[1] **MR. TAYLOR:** No.

[2] **THE COURT:** Dr. Rees?

[3] **EXAMINATION**

[4] **BY MR. REES:**

[5] **Q:** I guess I'm still confused. You didn't
[6] inseminate this dog ever?

[7] **A:** No, I did not.

[8] **MR. REES:** That's all I have, sir.

[9] **THE COURT:** Dr. Brown?

[10] **MS. BROWN:** No questions.

[11] **THE COURT:** Mr. Sperry?

[12] **MR. SPERRY:** Yes.

[13] **EXAMINATION**

[14] **BY MR. SPERRY:**

[15] **Q:** I certify that on 4/21/94 I extracted semen
[16] from the above identified male for the purpose of
[17] inseminating the above identified female. The named
[18] bitch was present during the collection process,
[19] signature, L.N. Taylor. I certify that on 4/21/94, I
[20] inseminated the above identified female with semen
[21] collected from the above identified male. The named
[22] male was present during the insemination process. .
[23] signed, Leo Taylor.

[24] I have a real problem. This is a
[25] certification, a national certification, that people

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[1] spend tremendous amounts of money based on that
[2] certification. So are you telling me that you did not
[3] - you were not present, and yet you have no problem
[4] in signing that you were present?

[5] **A:** That was probably just handed to me from the
[6] lady at the front desk and asked me, she needed
[7] verification that had to be done. And then I signed
[8] it, yes. And I'm sorry that I wasn't the one that did
[9] the artificial.

[10] **Q:** This is not a new form. If you've been in
[11] practice for 40 years, I'm sure that you've seen
[12] hundreds of them.

[13] **A:** I have seen them, yes, uh-huh.

[14] **Q:** And you have no qualms on signing something
[15] that you weren't involved directly with?

[16] **A:** Well, I probably didn't even look at what
[17] case it was. It was just verification of artificial
[18] insemination that was done by me or the staff that was
[19] there. They all perform that function.

[20] **Q:** But they don't all sign that they were there
[21] during the certification process?

[22] **A:** I'm sure that it was done right afterwards
[23] that that was - the county, right after it was done,
[24] why, they would have the doctor who did it would sign
[25] it.

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[1] Q: Okay, next question. Could you please
[2] explain to me how Dr. Stock was paid, what your
[3] arrangement with him was.

[4] A: He was paid on a salary plus an incentive
[5] for each additional after hour work that he did.

[6] Q: And how did you identify what he got paid
[7] on?

[8] A: He kept track of that and submitted those
[9] extras on a form that he turned in for it.

[10] Q: So it would be fairly important from his
[11] standpoint, it seems to me, that anything that he did
[12] would be accurately reflected in your billing records,
[13] would you agree with that?

[14] A: I imagine if we go back to the paycheck
[15] area, the accounts may probably show when those were
[16] submitted.

[17] Q: So Dr. Stock would be named as record on his
[18] paycheck for the work he did on Hillary; is that
[19] correct?

[20] A: I don't think it would reflect the
[21] individual one. He would have the case and would turn
[22] them in as an extra pay.

[23] Q: So where would these records be kept that
[24] you authorized the payment for?

[25] A: I guess it's with the checks and the

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[1] uncomfortable completely with your record keeping.
[2] And I don't quite understand why we don't have those
[3] records available to us.

[4] A: Well, I'm sure that before he was paid on
[5] all those that he turned in, why, that was summed up.
[6] Like if he had four or five after hour payments coming
[7] in, each paycheck, which was every two weeks, why,
[8] they had an accounting of that.

[9] Q: So where is the accounting? Why don't we
[10] have the records to show that Dr. Stock did the work
[11] on Hillary? It would seem to me that your records
[12] here, your billing records, would be the records that
[13] would be used for paying Dr. Stock for additional
[14] work?

[15] A: That wouldn't show up on these records.
[16] These are just animal records.

[17] Q: My accounting system is connected to my
[18] computer. And any time somebody does something over
[19] here, it reflects over here on this account when I
[20] write the checks, (indicating). Yours is not
[21] integrated?

[22] A: I'm not a bookkeeper, so I don't know what
[23] they put into it, how that is kept.

[24] MR. SPERRY: I don't have any further
[25] questions.

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[1] payroll.

[2] Q: Well, they wouldn't be with the checks
[3] because you're authorizing the check to be paid. So
[4] how did your accountant determine that Dr. Stock was
[5] to get X number of dollars for the work he did on
[6] Hillary?

[7] A: Well, he turned in the slip to get paid.

[8] Q: And where are those slips?

[9] A: Well, they were just written on. He kept
[10] them in a notebook and turned them in. I don't know
[11] whether he kept them afterwards or not.

[12] Q: And you wouldn't keep them?

[13] A: I didn't. I don't have anything to do with
[14] the paychecks.

[15] Q: So even though you're required by IRS laws
[16] to maintain records for seven years, three years
[17] absolute, seven years preferred, you have no idea of
[18] how or why you paid him, no documentation?

[19] A: Yes, all that's in - if you want to look
[20] into the payrolls and look in on that.

[21] Q: It would seem to me based on the statements
[22] that you've made that Dr. Stock was the physician of
[23] record and the person responsible that if I were in
[24] your shoes, that would be the first record I would
[25] have here. And I'm a little confused and a little

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[1] THE COURT: Any further questions by
[2] the board of this witness? Mr. Dahl, any further
[3] testimony?

[4] MR. DAHL: Not of this witness.

[5] THE COURT: Mr. Allred?

[6] MR. ALLRED: No further questions, your
[7] Honor.

[8] THE COURT: You're excused, Doctor.

[9] Thank you. Any further rebuttal testimony, Mr. Dahl?

[10] MR. DAHL: Yes, I'm going to ask Mrs.
[11] Gillette back on.

[12] JANET GILLETTE

[13] the witness hereinbefore named, being previously duly
[14] sworn to testify the truth, the whole truth and
[15] nothing but the truth, testified on her oath as
[16] follows:

[17] DIRECT EXAMINATION
[18] BY MR. DAHL:

[19] Q: Mrs. Gillette, you have been in the
[20] courtroom this morning while Mrs. Bue testified as to
[21] who treated the bulldog?

[22] A: Yes.

[23] Q: She says you opened up the place.

[24] A: No, I did not that morning. That was a

[25] Monday morning, June 20th. I drive a school bus, and

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1 I don't even get to my first school until 8:30 in the
2 morning. And I get there after 9:00 o'clock.
3 Q: When you arrived, what did you see?
4 A: I went in. The client was in the office. I
5 went back in the surgery room and saw the two puppies
6 on the table. And then I talked to Dr. Stock.
7 Q: And he had the bulldog there?
8 A: Yes, it was in a cage on the bottom facing
9 the south.
10 Q: So if this were on a Monday, there would be
11 no emergency payment record kept?
12 A: No. And there was no after hours emergency
13 charge on her bill, so he probably did not receive
14 extra pay for that that day. Usually extra pay came
15 on like Friday night and Saturday night or the morning
16 hours. But Monday morning, no, he would not have
17 turned in a slip for that. And she was not charged
18 for emergency after hours.
19 Q: And so you were driving a bus that day?
20 A: Yes, I do. I drive school bus. And in
21 June, I have yearround elementary, and I'm on the bus
22 from 7:00 o'clock until 8:30 when I drop those kids
23 off at school. And then I go into the clinic.
24 MR. DAHL: I have no further
25 questions.

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1 THE COURT: Any cross-examination, Mr.
2 Allred?
3 MR. ALLRED: No, your Honor.
4 THE COURT: Any questions by the board
5 of this witness? Dr. Taylor?
6 EXAMINATION
7 BY MR. TAYLOR:
8 Q: We're just a little confused on the dates, I
9 guess, basically. This dog had a caesarian on the
10 19th at Central Valley. And you said it didn't come
11 in until Monday the 20th at your place?
12 A: That's right.
13 MR. SPERRY: That's wrong.
14 A: There's an invoice in and out on the 20th.
15 Q: (By Mr. Taylor) This shows it came in the
16 Central Valley emergency on the 19th. The C-section
17 was actually performed at 7:40 a.m. on the 20th. So
18 apparently it came in on a Saturday rather than on a
19 Monday.
20 A: The invoice when she paid and took the dog
21 home, it was on Monday morning. So she came in
22 Saturday when I picked it up, and she would have been
23 invoiced that date out. And I came in on Monday
24 morning.
25 Q: You said that he let her go home early

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1 Sunday night. That would have been invoiced the next
2 day, would it not?
3 A: It would have, but it wasn't in on Sunday.
4 I do not work on Sundays, and I came in the morning
5 the dog whelped.
6 MR. TAYLOR: That's all the I have.
7 THE COURT: Dr. Rees?
8 EXAMINATION
9 BY MR. REES:
10 Q: There's been questions raised about the -
11 we've talked for some time in this hearing about
12 sanitation and so on. Are you familiar with this
13 Shakesbear dog, the one that has been identified as
14 having a rash and a severe dermatitis. Are you
15 familiar with that one?
16 A: No, I'm not.
17 Q: I wondered if you were aware of whether
18 these animals when they urinate on themselves are
19 bathed?
20 A: Yes, they are. I help do kennel work. And
21 normally when we go back and there's an animal that's
22 defecated or urinated all over itself, the animal is
23 taken into a clean cage and bathed off and put into a
24 clean cage. We do not leave it lay in urine or fecal
25 material.

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1 MR. REES: That's all I have.
2 THE COURT: Dr. Brown?
3 MS. BROWN: No questions.
4 THE COURT: Mr. Sperry?
5 MR. SPERRY: No.
6 THE COURT: Anything further from this
7 witness, Mr. Dahl?
8 MR. DAHL: No, your Honor.
9 THE COURT: Mr. Allred?
10 MR. ALLRED: No, your Honor.
11 THE COURT: You're excused, Mrs.
12 Gillette. Thank you. Mr. Dahl, further rebuttal
13 testimony?
14 MR. DAHL: No, your Honor.
15 THE COURT: Mr. Allred, what's your
16 preference in terms of offering a closing statement?
17 Do you want a brief recess before we take that?
18 MR. ALLRED: Well, your Honor, I
19 wouldn't mind a brief recess, but I'm ready to go.
20 THE COURT: How long do you
21 anticipate?
22 MR. ALLRED: I don't think my closing
23 will take more than ten minutes.
24 THE COURT: Why don't you go ahead.
25 MR. ALLRED: Thank you, your Honor.

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[1] We've spent the past two and a half days listening to
[2] testimony from approximately 18 to 20 witnesses.
[3] You've heard the testimony from the DeGuzmans that
[4] they took Nadia home from Brookside hospital and
[5] that same day, they took Nadia to All Pet Complex.
[6] You've heard testimony from Dean Schofield
[7] that he took his sister's dog, Shakesbear, from
[8] Brookside Animal Hospital and took Shakesbear directly
[9] to Dr. Peterson's hospital, Town and Country. You've
[10] also heard testimony that Mr. Schofield spoke to Dr.
[11] Taylor about the x-rays and that Dr. Taylor
[12] recommended that Shakesbear be put down. You also
[13] heard Mr. Schofield testify that the same person that
[14] brought Shakesbear out to his car that day or to his
[15] truck was the same one that he talked to about the
[16] x-ray.
[17] You've heard testimony from Stephanie and
[18] Jeff Picklesimer. You heard testimony that Jeff
[19] Picklesimer picked up Char's body on October 12, 1994,
[20] and delivered that body to Dr. Vande Griend at All Pet
[21] Complex on the same day.
[22] You've heard testimony from Cindy Bue that
[23] Dr. Taylor artificially inseminated her English
[24] bulldog on April 21 and April 23 of 1994. Mrs. Bue
[25] also testified that Dr. Taylor saw Hillary on that

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[1] Saturday morning. She testified that when she came
[2] back later that evening, Dr. Taylor took her into the
[3] facility and showed her Hillary. Dr. Taylor called
[4] her and told her to pick Hillary up on Sunday morning,
[5] and he told her that he had flushed her out and that
[6] Cindy could take her home. And so she did that.
[7] You've heard testimony from Vicki Crocker
[8] that Oscar was hit by a dump truck on July 8, 1993.
[9] You've heard testimony that her father took Oscar to
[10] Brookside Animal Hospital on July 8th. You've heard
[11] testimony that Dr. Taylor called her on the evening of
[12] July 10th and told her that he had performed surgery
[13] on Oscar. You also heard testimony that she picked
[14] Oscar up from Brookside on July 17, 1993. She
[15] testified that Oscar stayed home for the next two
[16] days, that he didn't go outside without someone
[17] helping him and assisting him, that she took Oscar to
[18] see Dr. Callman on July 19, 1993, when she was
[19] concerned about a lump that developed on Oscar's
[20] collar bone. You've heard testimony that she took
[21] Oscar to see Dr. Smith on July 20th, that she took
[22] Oscar home and then she brought Oscar back on the next
[23] day, July 21, and that Dr. Smith performed surgery on
[24] Oscar.
[25] You've also heard the testimony of the

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[1] veterinarians that have treated each of these animals
[2] or seen these animals after they were cared for by Dr.
[3] Taylor. You've heard from Dr. Brown and Shupe who saw
[4] Nadia after Dr. Taylor treated Nadia. They both
[5] testified that the site was not properly prepared,
[6] that the wound had not been properly debrided. In
[7] fact, Dr. Shupe testified that an additional mammary
[8] was involved and it was removed. They both testified
[9] that according to their professional opinion, Dr.
[10] Taylor's care of Nadia fell below the standard of care
[11] or practice for veterinarians in this community.
[12] You've heard the testimony of Dr. Peterson
[13] who saw Shakesbear after Dr. Taylor saw Shakesbear.
[14] Dr. Peterson testified that Shakesbear had a severe
[15] urine scald, that he tested Shakesbear and that
[16] Shakesbear had deep pain sensation. Dr. Peterson
[17] testified that in his professional opinion, the
[18] nursing care provided to Shakesbear while at Brookside
[19] fell below the standard of care or practice for
[20] veterinarians in this community.
[21] You've heard the testimonies of Dr. Vande
[22] Griend and Dr. Neville who saw the body of Char. In
[23] fact, Dr. Vande Griend conducted a necropsy on Char
[24] and that Dr. Neville observed that necropsy. In fact,
[25] Dr. Neville observed the organs. You've heard both of

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[1] their opinions that there was no presence of an
[2] irregular shaped heart or no pneumonia in the lungs.
[3] They've both given you their testimony that they
[4] believe that Dr. Taylor's necropsy of Char fell below
[5] the standard of practice for veterinarians in this
[6] community.
[7] You've heard the testimony of Dr. Chinn who
[8] saw Hillary after Dr. Taylor saw Hillary. You've
[9] heard her opinion that an x-ray is important in
[10] determining the size of the litter. You've heard her
[11] testimony that the puppies that she saw were fully
[12] formed. You've heard her testimony that Dr. Taylor's
[13] care of Hillary fell below the standard of practice
[14] for veterinarians in this community.
[15] You've heard the testimony of Dr. Smith who
[16] operated on Oscar after Dr. Taylor operated on Oscar.
[17] You've heard his testimony that the intramedullary pin
[18] was not properly placed. In fact, you saw the x-ray
[19] that Dr. Callman took after the surgery performed by
[20] Dr. Taylor. Dr. Smith told you that the pin was not
[21] of the right size and the fragments were not properly
[22] reduced and there were no other appliances present.
[23] After he performed the surgery, his testimony was that
[24] to him the pin appeared to be a common nail.
[25] Dr. Smith has testified to you that Dr.

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1 Taylor's care and attempted repair of that fracture
2 fell below the standard of practice for veterinarians
3 in this community. And Dr. Smith went one step
4 further when he told you that Dr. Taylor's attempted
5 repair of that fracture was an extreme departure from
6 the standard practice for veterinarians in this
7 community. He told you that because the nail was an
8 improper intramedullary pin. And even if that had
9 been a proper pin, it wasn't the right size and the
10 break hadn't been properly prepared. An extreme
11 departure is another way of saying gross negligence.
12 That's what Dr. Smith was opining. He testified that
13 Dr. Taylor's treatment of Oscar amounted to gross
14 negligence.

1 I want to focus for a minute on Oscar. I
2 think the defense that we've heard here through Dr.
3 Taylor is he didn't put that pin in Oscar. That
4 raises a real question in my mind. If Dr. Taylor
5 didn't put that pin in Oscar, then who did? It's hard
6 for me to believe that Vicki Crocker or her husband
7 would have subjected the animal that they treated as a
8 family member to something like that. In fact, it's
9 hard for me to believe that a lay person could have
10 inserted a nail into a dog's leg in the way that you
11 saw in that x-ray. So I don't think the Crockers put

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1 at Brookside, which is a significant point. Vicki
2 Crocker's testimony was that Oscar was admitted July
3 8th, 1993, and was released July 17, 1993. What's
4 interesting about that is Vicki Crocker's testimony is
5 supported by Dr. Taylor's own records. Those records
6 indicate that Oscar left the hospital on July 17,
7 1993. Dr. Taylor gave us various dates through his
8 testimony, but he did say that Oscar was only there at
9 his hospital for two days. He stabilized the dog,
10 operated on it, and released it to Mrs. Crocker the
11 next day.

12 Part of your job is to assess the
13 credibility of the witnesses and to determine who you
14 believe is more credible and who you will rely on in
15 giving weight to the evidence. If you remember when
16 we started out this hearing, I told you that the
17 division has the burden, the standard of proof the
18 division has to meet is by preponderance of the
19 evidence. And preponderance again is a greater
20 weight. You can picture a scale, the scales of
21 justice are quite often to referred to closing
22 arguments, but you can stack the evidence on this side
23 for Dr. Taylor and the other evidence on this side for
24 the division. And then you have to come to a
25 conclusion as to which evidence presented by each side

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1 the nail in Oscar's leg. I don't think Dr. Callman
2 did it because he didn't have the time to do it.
3 Vicki Crocker only left Oscar - Oscar was only
4 outside of Vicki Crocker's presence for about three to
5 five minutes while Dr. Callman took an x-ray and she
6 took Oscar home. She didn't leave Oscar at Willow
7 Creek Pet Hospital. I don't think Dr. Smith put the
8 nail in Oscar's leg because the x-ray that we have
9 taken by Dr. Callman reveals to us that that's the
10 same object that Dr. Smith pulled out the leg.

1 It doesn't leave us with a lot of options as
2 to who implanted that nail in Oscar's leg. Now maybe
3 Dr. Stock did it? But we haven't heard any evidence
4 or testimony to that effect.

5 Dr. Taylor would have you believe that the
6 DeGuzmans are not telling the truth in their
7 testimony. Dr. Taylor would have you believe that
8 Dean Schofield is not telling the truth in his
9 testimony. He would have you believe that Dr. Vande
10 Griend and Dr. Neville are mistaken in the conclusions
11 they reached in the necropsy that Dr. Vande Griend
12 performed. Dr. Taylor would certainly have you
13 believe that Cindy Bue is lying. Dr. Taylor would
14 have you believe that Vicki Crocker is not telling the
15 truth, not telling the truth about how long Oscar was

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1 had the greater weight.

2 Dr. Rees asked the question why Dr. Stock
3 was not called as a witness. The division has the
4 burden of proving the allegations. The division does
5 not have the burden of providing a defense. I think
6 if Dr. Stock is largely responsible for the treatment
7 of these animals, it would have behooved Dr. Taylor to
8 have him come in and testify and set the record
9 straight as to who really treated these animals. But
10 that's certainly not the division's job. We're here
11 to put on the evidence that we gathered and to allow
12 you to assess that evidence.

13 Let's turn to the law. The law that you are
14 to apply in this case appears in the petition. But I
15 will just quickly run through it for you. Utah Code
16 Annotated section 58-1-401 subparagraph 2 says that
17 the division may take action against a licensee for
18 unprofessional conduct. Unprofessional conduct is
19 defined in section 58-1-501 subparagraph 2. And
20 subparagraph 2 (b) says it is unprofessional conduct
21 for violating or aiding or abetting any other person
22 to violate any generally accepted professional or
23 ethical standard applicable to an occupation or
24 profession regulated under this title. Then it goes
25 on further in subparagraph (g) and says practicing or

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[1] attempting to practice an occupation or profession
[2] regulated under this title through gross incompetence,
[3] gross negligence or a pattern of incompetency or
[4] negligence.

[5] It's the division's position that it has
[6] presented evidence to you that Dr. Taylor has acted in
[7] a pattern of negligence. We have at least four cases
[8] here and all five of them, this is true, Dr. Taylor
[9] fell below the standard of care. And that's the legal
[10] definition of negligence, so we have a pattern. We
[11] also have a case here that involves gross negligence.
[12] And that's the Oscar case. Remember, that's an
[13] extreme departure from the standard of care. And it
[14] was Dr. Smith's opinion that Dr. Taylor engaged in an
[15] extreme departure from the standard of care in the
[16] treatment of Oscar in trying to repair that fracture.
[17] I told you at the end of this hearing that in my
[18] closing argument I would give you the division's
[19] recommendation. I wanted to hold off on that
[20] recommendation until the evidence was presented and
[21] you'd had an opportunity to try to understand the
[22] case.

[23] Revocation is a very serious thing, as I'm
[24] sure you can understand. We're talking about taking
[25] away the license of a veterinarian, taking away his

[1] of those professions.

[2] You need to consider this case and decide
[3] whether the public has been put at risk here. As I've
[4] thought about this case, I've tried to decide if
[5] there's anything that a veterinarian could do that
[6] would be more egregious than putting a nail in a dog's
[7] leg. It's difficult for me to within the realm of
[8] reason come up with anything more egregious. That's a
[9] horrific thought to most of the general public that a
[10] common nail would be placed inside a living being, a
[11] common nail that's subject to rust and deterioration
[12] is put in with the purpose of uniting a fracture so
[13] that the dog can walk again.

[14] So it's for that reason and the other
[15] evidence that you've heard in this case that the
[16] division recommends that Dr. Taylor's license be
[17] revoked. I want to thank you for your attention. I
[18] know you take your responsibility seriously. I know
[19] you've asked serious and pointed questions. And I
[20] want to thank you for taking this time away from your
[21] practices, away from your business to spend two and a
[22] half days to hear this case. But the division
[23] believed that this case was important enough that you
[24] needed to hear the evidence and then consider it.
[25] Thank you.

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[1] ability to earn a livelihood. And revocation isn't
[2] asked for from the division very lightly. In this
[3] case, we have a situation where Dr. Taylor has not
[4] accepted responsibility for any of these incidents.
[5] As you review the evidence, I think you'll see that
[6] Dr. Taylor has in each instance blamed someone else
[7] for the conduct involved here to one degree or
[8] another, some more egregious than others when you look
[9] at who he has blamed and who he has pointed the finger
[10] at.

[11] Dr. Taylor really hasn't owned up to
[12] anything. And because of the pattern of negligence
[13] that we have shown to you today and the fact that we
[14] have an instance of gross negligence with the
[15] treatment of Oscar, it's the division's recommendation
[16] that Dr. Taylor's license to practice veterinary
[17] medicine be revoked. The division has the
[18] responsibility of protecting the public. And the
[19] division doesn't take that responsibility lightly, and
[20] I know you as board members don't take that
[21] responsibility lightly. That's why you've been asked
[22] to voluntarily serve on the board. The purpose of
[23] regulating professions is to make sure that the public
[24] is protected. And that is done through the division's
[25] regulation of the profession and the board's for each

[1] **THE COURT:** Mr. Dahl, closing
[2] statement?

[3] **MR. DAHL:** Pretty long ten minutes.

[4] **THE COURT:** 15 by my count.

[5] **MR. DAHL:** Members of the board, Judge,
[6] I have been very impressed by the board's attention to
[7] the evidence, the witnesses, the questions that have
[8] been asked. Luckily, I am not going to spend too much
[9] time on closing argument on the alleged facts of both
[10] parties on this case because you've heard the
[11] evidence. And I've noted that you've taken copious
[12] notes and things of this nature. I'm only going to
[13] touch on a couple of things here. One is that members
[14] of the board are all members of the veterinary
[15] profession. I think that probably all of you have had
[16] patients or owners of animals who have taken the
[17] animals from your care to obtain second opinions or
[18] treatment by another licensed veterinarian.
[19] Especially in the light of present day where everybody
[20] is anxious to sue for malpractice, things of this
[21] nature, the one case I'm going to talk a little bit
[22] about is the Crocker case.

[23] One thing that is important is the chain of
[24] control of a substance or the subject matter of some
[25] type of a hearing. The owners Crocker took the dog

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[1] from Brookside the following morning after the
[2] operation. They would have you believe that Brookside
[3] hospital told them even after an operation of this
[4] type. Go ahead and exercise the dog. Don't treat it
[5] gently. So they take the dog home. They don't take
[6] it to another clinic, although the owner of the animal
[7] did have a regular veterinarian. So they exercised
[8] the dog at the house and do with it I do not know nor
[9] do you except it was in their possession for at least
[10] two days. Then they take the animal to their own
[11] veterinarian who was not able to testify in the case.
[12] And he takes a picture, x-ray, sends this with the
[13] owner of Crocker - I've got the names of these, it's
[14] Oscar is the dog. Crocker is the owners. I'm sorry.
[15] They take the dog and the x-ray back home before they
[16] take it to Dr. Smith for his orthopedic procedure.
[17] One thing that was interesting is that when
[18] I asked Dr. Smith, a certified orthopedic with great
[19] experience in reading x-rays, if you'll remember, I
[20] asked him with his knowledge and expertise if he could
[21] tell by the x-ray itself that that was a nail with the
[22] head cut off, remember? He says no. But interesting
[23] enough, and by the way, these are people who have
[24] filed lawsuit, the evening when they take that x-ray
[25] back home, put it on an x-ray viewing machine, by

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[1] putting the x-ray up against fluorescent lights, the
[2] husband of the owner commented to Mrs. Crocker, her
[3] own testimony, Why, that's a nail, a 16-penny nail
[4] with the head cut off. Keep also in mind you've heard
[5] the testimony of the pins that Dr. Taylor uses. He
[6] buys them in four-foot strips, why would a doctor of
[7] his experience and availability of proper equipment
[8] look around to find a rusty nail to go ahead and put
[9] in this dog as a, I guess I'm not going to say cure,
[10] but in this particular procedure?
[11] You've heard Dr. Taylor testify. I'm just
[12] saying how does one prove who put the nail in when you
[13] have no control over and possession of that particular
[14] animal? This is for you to decide. You've heard the
[15] controversy on whether or not Dr. Stock treated the
[16] bulldog or Dr. Taylor. Well, you've got testimony
[17] from a hired investigator from this division and the
[18] owner of the animal. You have testimony by the
[19] doctor, and you also have testimony by an employee of
[20] over 20 years who says that Dr. Stock is the one that
[21] took care of Hillary.
[22] Okay. We have one case where you have a
[23] neuter that fails. As veterinarians, you know that
[24] does occur, not every day, but it's a fact. The
[25] mastitis case, Dr. Taylor didn't have too much

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[1] opportunity to do much for that dog because it was
[2] taken away from his care early on. And, of course,
[3] we've talked about Shakesbear, Hillary, Char. What I
[4] want to emphasize is this. I guess times in this
[5] society are changing. I gathered from this hearing
[6] that veterinary medicine is going through the same
[7] process as the physicians and medical doctors are
[8] going through. Looks to me like what you're going to
[9] see in the future is everybody is going to have to be
[10] boarded, have a special license to do special things
[11] to animals.
[12] Keeping of records, I don't know how each
[13] one of you do keep records. You have handwritten
[14] records, I suppose, like everybody keeps for a period
[15] of time stored away in some box. But your permanent
[16] records are what is tied into the computer. And I'm
[17] going to just make a side comment again. Computers
[18] are a great thing, save a lot of labor. But a
[19] computer reports only what is fed into the computer.
[20] And we all know that when human beings get operating
[21] computers, certain failures occur.
[22] Now the important thing is this, that the
[23] division has over a long period of time put together
[24] five cases to take these license away from a
[25] experienced veterinarian who has a very large

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[1] practice. He employs around 19 people. His charges,
[2] as you've received the testimony, are reasonable. If
[3] you'll compare his charges with the specialists, you
[4] can readily see. The reason is respondent's practice
[5] is so great probably due to two things. One is the
[6] satisfactory service that he performs at reasonable
[7] cost to the owners of the animals.
[8] If you make the care of animals too
[9] expensive, then you'll see more and more animals
[10] dropped by the wayside or put to sleep. Poor people
[11] with kids especially, they're entitled to go ahead and
[12] have a pet and an animal. And it should not be
[13] treated that having an animal is a great luxury that
[14] people have to spend a great deal of money.
[15] Okay. We've got five cases here, out of how
[16] many patients have been handled at Brookside
[17] hospital? I guess we're not perfect. Why, I've even
[18] had clients complain about the services I have
[19] rendered on occasion. And I think all of you have if
[20] you're human. So Dr. Taylor has a daughter who is
[21] going to join him in the hospital in a year or so. He
[22] wants to preserve the practice for her. You've heard
[23] testimony by one person who has taken 2700 dogs to Dr.
[24] Taylor without complaints. You've had another
[25] testimony here on a smaller scale but still satisfied

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[1] with the services at a reasonable price.
[2] This is a strange procedure we're going
[3] through here. The burden of proof is only a
[4] preponderance that the state has to establish, but
[5] they have all the tools. I think what you're going to
[6] have to look at is someday maybe you'll screw up and
[7] you'll be going through the same process as Dr. Taylor
[8] is these last three days. I kind of get the feeling
[9] of being crowded, and Mr. Allred states that the
[10] purpose of this division is to protect the public and
[11] provide good services to the public. All right,
[12] taking away Dr. Taylor's license is not going to
[13] perform that function. Who's going to fill the gap?
[14] Who's going to provide all the employment over five
[15] cases, some of which are very much contested, two of
[16] which involve litigation. I don't know what - I feel
[17] a little helpless, quite frankly. I want to convey
[18] these feelings to you that is very, very important to
[19] Dr. Taylor and his wife and the employees. And I have
[20] faith in you people because you are veterinarians.
[21] You face the public every day. I can remember I read
[22] the article about the one vet who's complaining to the
[23] lawyer about some of his patients complaining. And
[24] the lawyer told him, If you don't have somebody
[25] complain, you must not have a very good practice. And

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[1] I think that statement pretty well sums up what this
[2] situation is about. And I thank you for your great
[3] attention you've applied to this and listening to what
[4] we have to say. And I hope you will allow Dr. Taylor
[5] to finish out his programmed life-style. Thank you.
[6] **THE COURT:** Mr. Allred, do you have a
[7] final reply?
[8] **MR. ALLRED:** Yes, your Honor, just a
[9] brief one. I just wanted to address some of the
[10] things that Mr. Dahl brought up. He pointed out that
[11] he can't understand out why someone would put a nail
[12] into a dog's leg when there are four-foot stainless
[13] steel pins available. The division didn't have the
[14] burden of proving motive. The division only had the
[15] burden of proving the conduct that Dr. Taylor engaged
[16] in was unprofessional. I don't know why someone would
[17] put a nail in a dog's leg. The only person that knows
[18] is the person that put the nail in the leg.
[19] On the question of records, you heard
[20] testimony today from Mrs. Gillette that the check-in
[21] reports are available. You've seen State's Exhibit
[22] Number 32 which is a subpoena that was served on Dr.
[23] Taylor. He was personally served with it, and Mrs.
[24] Gillette was aware of the subpoena. In complying with
[25] that subpoena, Dr. Taylor did not provide those

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[1] check-in reports. That goes back to the comment I
[2] made about Dr. Taylor not taking responsibility for
[3] what happened here. I would think that if the
[4] check-in reports were available, they should have been
[5] made available to the division.
[6] The reason that five cases have appeared in
[7] this case is a question of time. We've been here two
[8] and a half days, and we've gone over five incidences.
[9] It's true that Dr. Taylor has treated a large number
[10] of animals. It's also true that the division had more
[11] complaints than these five. The division selected the
[12] five strongest complaints that would show a pattern of
[13] negligence and, in one instance, a case of gross
[14] negligence. It's not necessary to put on every
[15] complaint that's brought to the division's attention.
[16] Just like it's not necessary if someone is charged
[17] with bank robbery to put on evidence of every bank
[18] they didn't rob, it's not necessary for the division
[19] to put on evidence of satisfied customers. All that's
[20] important is that the conduct that Dr. Taylor engaged
[21] in constitutes either simple negligence or gross
[22] negligence. And that's what the division has tried to
[23] do in this two and a half days is provide evidence
[24] that he has engaged in unprofessional conduct.
[25] You know, I have feelings just like anyone

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[1] else. And when Mr. Dahl said that Dr. Taylor's
[2] daughter is going to veterinary college and hopes to
[3] join Dr. Taylor within a year, I have the same
[4] reaction you probably have. That would be nice. But
[5] Dr. Taylor has never had the attitude during this
[6] entire case or in the investigation before this case
[7] that he wanted to work something out. That's because
[8] he's never taken responsibility for what's occurred
[9] here. And the division felt that it was important for
[10] you to hear the evidence so that you could decide if
[11] there's a risk to the public here.
[12] If Dr. Taylor is allowed to continue to
[13] practice, then there'll be a risk that another nail
[14] will find its way into another animal's leg. And the
[15] division feels like that's a risk that it cannot
[16] accept. This does not seem to be an individual who
[17] can be retrained or reeducated in his practice. It
[18] seems to be an individual who just won't own up to the
[19] conduct that I believe the evidence has proved by a
[20] preponderance of that evidence, by a greater weight.
[21] So there's nothing really the division can do in
[22] working with Dr. Taylor to protect the public.
[23] I just want to, again, thank you for your
[24] patience in listening to the evidence and turn the
[25] matter over to you for your decision. Thanks.

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[1] THE COURT: The board will take the
[2] matter under advisement. Given the length of this
[3] hearing, I anticipate that some recommendation in
[4] written form with conclusions of law and findings of
[5] fact will be submitted to the division for its review
[6] within a matter of two to three weeks. Of course, on
[7] the issuance of any order, it will be provided to both
[8] parties. On behalf of the board, I would like to
[9] express appreciation to all the witnesses who were
[10] here testifying over this rather lengthy hearing, to
[11] respective counsel in your efforts in presenting the
[12] case to the board. If there is nothing further, this
[13] hearing is adjourned. Thank you.

[14] (WHEREUPON, the hearing was concluded
[15] at the approximate hour of 12:15 p.m.)
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[1] CERTIFICATE

[2] STATE OF UTAH

[3] COUNTY OF SALT LAKE)

[4] I, DEBORAH F. LAVINE, a Certified Shorthand

[5] Reporter and Notary Public in and for the County of

[6] Salt Lake, State of Utah, do hereby certify:

[7] That the foregoing proceedings before the

[8] Division of Occupational and Professional Licensing

[9] were taken before me at the time and place set forth

[10] herein and was taken down by me in shorthand and

[11] thereafter transcribed into typewriting under my

[12] direction and supervision.

[13] That the foregoing 99 pages contain a true

[14] and correct transcription of my said shorthand notes

[15] so taken.

[16] Witness my hand and official seal at Salt

[17] Lake City, Utah, this 9th day of May, 1996.
[18]
[19]
[20]

[21] DEBORAH F. LAVINE, RPR, CSR, NP
[22]
[23]

[24] My Commission Expires:

[25] March 4, 1999

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