

BEFORE THE INDIANA BOARD
OF
VETERINARY MEDICAL
EXAMINERS
CAUSE NO. 2010 VB 0001

IN THE MATTER OF THE)
LICENSE OF:)
)
JAMES BRESTER, D.V.M.,)
LICENSE NO: 24003011,)
)
RESPONDENT.)



VOLUNTARY DISMISSAL OF COMPLAINT

The State of Indiana (Petitioner), by Counsel, Deputy Attorney General Elizabeth Kiefner Crawford, hereby submits its Voluntary Dismissal of Complaint and states the following:

1. On or about February 4, 2010, the Complaint in this matter was filed with the Indiana Board of Veterinary Medical Examiners (Board).
2. On or about May 19, 2010, Dr. Brester retained new counsel, Franklin N. DeWester.
3. On or about June 10, 2010, the parties met. For the first time, Dr. Brester brought forth new information including the following:
 - A. In approximately July 2007, Dr. Brester began using Intervet software for record keeping purposes and continues to use the same software today. Intervet software includes a specific field for medication dosage which Dr. Brester now routinely includes in all animal records.

B. Dr. Brester now offers clients the option of conducting a canine parvovirus test when it is suspected.

C. Dr. Brester attended a continuing education seminar in early 2006 at which the presenter discouraged the use of Centrine for treatment of vomiting and diarrhea in dogs. Dr. Brester used Banamine as a substitute for a short period of time, including the time at which the treatment involved in the Complaint took place. Shortly thereafter, and prior to the filing of the Complaint in this matter, Dr. Brester returned to using Centrine and other approved medications. Dr. Brester currently uses Cerenia and Centrine for the treatment of vomiting and diarrhea in dogs as he found the use of these drugs provides better results than Banamine.

4. Based on this new information, Petitioner conducted a thorough review of all of the facts surrounding this Complaint.

5. Subsequent communication with a veterinarian and management analyst at the U.S. Food and Drug Administration (FDA) reveals that the off-label use of medications in animals has been allowed since the passage of the Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA). Extra label drug use privileges for veterinarians are commonly known by the acronym ELU.

6. AMDUCA provides specific precautions and conditions for ELU which appear to have been met given the facts in this Complaint. Specifically, at the time the treatment in this case occurred, Banamine was approved by the FDA for use in horses and cattle but not prohibited for use in dogs. The use in Banamine in the instant case was for a puppy. The FDA indicates the proper inquiry would be whether the individual

veterinarian, based upon his or her experience, feels that both the use and the need for the drug are appropriate.

7. Subsequent communication with the head of Veterinary Clinical Services at Purdue University revealed that ELU is very common in the practice of veterinary medicine.

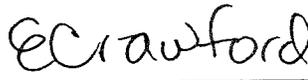
8. Dr. Brester completed the continuing education that was required as a result of his previous agreement which was approved by the Board in 2005.

9. Given the facts that are known now, Petitioner has concluded that there are no longer grounds for a licensing violation in this matter.

WHEREFORE, the Petitioner, by counsel, voluntarily dismisses the Complaint in this matter and for all other necessary and proper relief.

Respectfully submitted,

GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No.: 1958-98
By:



Elizabeth Kiefner Crawford
Deputy Attorney General
Attorney No. 24261-49A

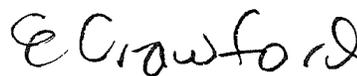
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served upon the individual(s) listed below, by United States mail, first class postage prepaid, on this 8th day of July, 2010:

Franklin N. DeWester
Counsel for Dr. Brester
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Dr. James Brester, DVM
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