

COPY

**ALABAMA STATE BOARD OF
VETERINARY MEDICAL EXAMINERS
MONTGOMERY COUNTY, ALABAMA**

**ADMINISTRATIVE COMPLAINT AND NOTICE OF ADMINISTRATIVE HEARING
TO CONSIDER REVOCATION OF PREMISE PERMIT**

TO: Alabama Spay / Neuter Clinic, Inc.
C/O Mr. Mark Nelson; Dr. William B. Weber, DVM
2721 Crestwood Blvd.
Birmingham, AL 35210

NOTICE OF HEARING

COMES NOW, the Alabama State Board of Veterinary Medical Examiners (hereinafter the "ASBVME") pursuant to Section 34-29-69, Code of Alabama 1975, by and through the Executive Director of the Alabama State Board of Veterinary Medical Examiners, Tammy S. Cargile, and issues this Administrative Complaint and Notice of Administrative Hearing to Consider Revocation of the Premise Permit issued by the ASBVME to the Alabama Spay / Neuter Clinic, Inc. (hereinafter the "ASNC") by and through an application for premise permit and/or renewal of premise permit submitted to the ASBVME by Dr. William Weber, DVM. The purpose of this Administrative Hearing will be to consider whether or not state law and/or rules and regulations of the ASBVME have been violated and for the purpose of determining whether or not the premise permit of the ASNC should be revoked. The Administrative Hearing for this matter will be set to begin on March 19, 2014, at 9:30 a.m. at 8 Commerce Street, Annex Auditorium, Montgomery, Alabama 36104, and continue day-to-day until completed. The Administrative Hearing shall be conducted by the ASBVME and/or an Administrative Law Judge / Hearing Officer assigned to this matter by the ASBVME by and through the Executive Director of the ASBVME. Pursuant to 930-X-1-.16(3), failure to inform the ASBVME Board office within twenty-one (21) days after notice is received of intent to appear at any

administrative hearing or pre-hearing conference scheduled in this notice will be deemed a waiver of the right to a hearing. Respondents ASNC and Weber are hereby informed that, at this administrative hearing, each Respondent shall have the right to be represented by counsel, to call and cross-examine witnesses, and to present evidence on his own behalf. Failure to appear for the administrative hearing and contested case after proper service of notice may result in the ASBVME and/or the Administrative Law Judge / Hearing Officer proceeding with the hearing and a decision being made in the absence of the party.

If you have any questions regarding this administrative complaint and notice of administrative hearing, please contact Tammy Cargile, Executive Director of the Alabama State Board of Veterinary Medical Examiners, at 8 Commerce Street – Suite 910, Montgomery, Alabama 36130-5330 or 334-262-8068. Questions may also be directed to legal counsel for the Alabama State Board of Veterinary Medical Examiners, Mark G. Montiel, Sr., at 334-467-9265 or 334-356-1899.

COMES NOW, the Alabama State Board of Veterinary Medical Examiners (hereinafter the “ASBVME”) pursuant to the Alabama Veterinary Practice Act, Alabama Code 1975 § 34-29-60 through § 34-29-135 and the Alabama State Board of Veterinary Medical Examiners, Administrative Code, Rule 930-X-1-.01 through Rule 930-X-1-.38, by and through the Executive Director of the Alabama State Board of Veterinary Medical Examiners, Tammy S. Cargile, and brings this Administrative Complaint and Notice of Administrative Hearing to Consider Revocation of Premise Permit against the above-named Respondent, Alabama Spay / Neuter Clinic, Inc., C/O Mr. Mark Nelson and Dr. William B. Weber, DVM, and charges and alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction before the ASBVME is proper pursuant to Ala. Code § 34-29-69 and § 34-29-79, and pursuant to the Administrative Code of the Alabama State Board of Veterinary Medical Examiners, Administrative Code, Section 930-X-1-.15, Section 930-X-1-.16, Section 930-X-1-.20 and 930-X-1-.21.

2. Venue is proper in that all parties are residents or entities of the State of Alabama operating pursuant to licenses and premise permits issued by the ASBVME. The ASBVME maintains its office and its records in the City of Montgomery, Alabama, and in Montgomery County, Alabama, and material acts complained of herein occurred pursuant to these licenses and premise permits issued by the ASBVME.

PARTIES

3. The Complainant, the Alabama State Board of Veterinary Medical Examiners, is a State of Alabama governmental agency charged with the responsibility and authority to carry out the purposes of the Alabama Veterinary Practice Act, Alabama Code 1975 § 34-29-60 through § 34-29-135 and its Administrative Code, Rule 930-X-1-.01 through Rule 930-X-1-.38. The ASBVME has the authority, under § 39-29-69(9) to inspect any hospitals, clinics, satellites, outpatient clinics, mobile clinics, or other places utilized for the practice of veterinary medicine.

4. Respondents, Dr. William B. Weber, D.V.M., (hereinafter "Respondent Weber"), and the Alabama Spay / Neuter Clinic, Inc. (hereinafter "Respondent ASNC"), along with Mr. Mark Nelson, have worked together to obtain premise permits from the ASBVME for the operation of facilities at the ASNC. Respondent Weber obtained premise permit control number 0475 for the operation of the veterinarian facility located at Alabama Spay and Neuter Clinic, Inc., 2721 Crestwood Blvd., Birmingham, AL 35210, and has maintained and renewed said

premise permit for all years since it was originally issued. Mr. Mark Nelson is an unlicensed individual who serves as an administrator and day-to-day manager of the ASNC facilities.

**STATEMENT OF CHARGES AND FACTS IN SUPPORT OF REVOCATION OF
PREMISE PERMIT**

Recent information presented before the Board of the ASBVME (hereinafter the "Board") has given the ASBVME reason to suspect that the currently issued premise permit to Respondent ASNC was issued based upon false, fraudulent, and/or misleading information presented to the Board in Respondent ASNC's application for a premise permit renewal that was submitted by Respondent Weber. Further, the information brought to the attention of the ASBVME indicates that Respondent ASNC is not operating under the statutory requirements of the Alabama Veterinary Practice Act and supporting Administrative Code and would prevent the ASBVME from renewing any future premise permit requested by Respondent ASNC.

Alabama law requires that any facility where a licensed veterinarian practices have a premise permit issued by the Board. Ala. Code 1975 § 34-29-88(a). Each application for a premise permit shall set forth the names of all licensed veterinarians who shall be responsible for the management of the premises. Ala. Code 1975 § 34-29-88(b). Further, whenever the practice of veterinary medicine is carried on by a partnership, all partners shall be either licensed or holders of temporary licenses to practice veterinary medicine in the State of Alabama. Ala. Code 1975 § 34-29-87. A premise permit may be revoked, suspended, or denied when inspection reveals that the premises do not meet the standards set by the administrative code of the Board or when the license of the responsible veterinarian or veterinarians has been suspended or revoked. Ala. Code 1975 § 34-29-88(c). The Board may cause the closure of a facility and impose a penalty against any owner, operator, or responsible veterinarian of any premises operating without a premise permit in violation of Ala. Code 1975 § 34-29-88 or any other violation of the

Administrative Code. Ala. Code 1975 § 34-29-88(d). Premise permits issued to satellite, outpatient, or mobile small animal clinics shall state the name of the full service veterinary facility in that locale providing emergency and after-hours service. Ala. Code 1975 § 34-29-88(g). In order that the Board and the executive director may determine whether or not a danger to the public or to animals exists, the executive director or investigators employed by the Board may conduct inspections or investigations of premises suspected of being in violation of any rule of the Board. Ala. Code 1975 § 34-29-88(d). If a violation is found in conducting an inspection which is determined to be a hazard and a danger to the public or to animals, the executive director may suspend that premise permit until further notice. Ala. Code 1975 § 34-29-88(d).

After conducting an investigation, receiving certain documents, and upon consideration of sworn testimony presented to the ASBVME by Respondent Weber, Mr. Mark Nelson, and others, the ASBVME alleges that the premise permit currently issued for Respondent ASNC is invalid based upon the following:

5. On or about March 22, 2007, Alabama Spay /Neuter Clinic, Inc. filed Articles of Incorporation with the Probate Court of Tuscaloosa County, Alabama forming a nonprofit corporation under the laws of the State of Alabama and to comply with Section 501c(3) of the Internal Revenue Code of 1986, as amended. The original incorporators and the original Board of Directors of the corporation were B.L. Howard, Jr., 59 Cherokee Hills Tuscaloosa, Alabama 35404, Mark Nelson, 9021 Park Crest Road, Birmingham, Alabama 35242, Harold Blach, Jr., 2512 Ashford Place, Birmingham, Alabama 35243, and William Mitchell, 1607 13th Street, Tuscaloosa, Alabama 35401. The ASBVME is of information and belief that none of these original incorporators are now, or have ever been, licensed to practice Veterinary Medicine in the State of Alabama. The original officers of the corporation were B.L. Howard, Jr., designated to

serve as President and Chairman, and Mark Nelson, designated to serve as Vice President, Executive Director. The ASBVME is of information and belief that none of these original officers are now, or have ever been, licensed to practice Veterinary Medicine in the State of Alabama.

6. Because those who own the ASNC facility and equipment are not licensed to practice Veterinary Medicine in the State of Alabama, they are prohibited from obtaining a premise permit for the ASNC to operate. Thus, to accomplish its goal of obtaining a premise permit for the facility, Respondent ASNC designated Respondent Weber to apply for and receive a premise permit for the facility. Respondent ASNC has referred to Respondent Weber as the “practice owner” and/or “supervising veterinarian” of the facility. However, Respondent Weber is the “practice owner” or “supervising veterinarian” of the facility in name only. Thus, Respondent Weber’s representations made to the Board in the process of obtaining this premise permit were fraudulent, and the arrangement he made with Respondent ASNC was a complete sham. Respondent Weber does not now, nor has he ever, truly been the “practice owner” or supervising veterinarian for Respondent ASNC. Respondent Weber owns no equipment or portion of the building at the ASNC. He does not interview or make hiring decisions regarding the veterinarians and licensed veterinary technicians that he supposedly supervises and employs. He does not oversee the surgical skill and practice of the veterinarians performing surgeries at the ASNC facility. In fact, Respondent Weber himself does not operate on ASNC patients or practice veterinary medicine at the ASNC facility. Respondent Weber does not supervise, manage, or participate in the practice he supposedly owns and does not supervise or manage the facility to inspect and/or ensure that the facility meets the standards of the Veterinary Practice Act. Despite the incredibly limited role played by Respondent Weber and the lack of his

physical presence in the ASNC practice, he represented to the ASBVME that he was the "practice owner" and "supervising veterinarian" for the facility in order to have the premise permit renewed. Thus, the ASBVME asserts that the information provided by Respondent Weber was false, misleading and fraudulent.

WHEREFORE, the ASBVME, pursuant to Ala. Code 1975 § 34-29-88(c), hereby requests that Respondent ASNC show cause as to why the premise permit issued to their facility under the name of responsible veterinarian William B. Weber should not be revoked. **A hearing for this matter will be set on March 19, 2014 at 9:30 a.m. at 8 Commerce Street, Annex Auditorium, Montgomery, Alabama 36104 and continue day to day until completed.** The Administrative Hearing shall be conducted by the ASBVME and/or an Administrative Law Judge / Hearing Officer assigned to this matter by the ASBVME by and through the Executive Director of the ASBVME. Pursuant to 930-X-1-.16(3), failure to inform the ASBVME Board office within twenty-one (21) days after notice is received of intent to appear at any administrative hearing or pre-hearing conference scheduled in this notice will be deemed a waiver of the right to a hearing. Respondents ASNC and Weber are hereby informed that, at this administrative hearing, the Respondents shall have the right to be represented by counsel, to call and cross-examine witnesses, and to present evidence on their own behalf. Failure to appear for the administrative hearing and contested case after proper service of notice may result in the ASBVME and/or the Administrative Law Judge / Hearing Officer proceeding with the hearing and a decision being made in the absence of the party.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the ASBVME prays that an Administrative Hearing to Consider Revocation of a Premise Permit be held on this complaint and that an Order

be entered to revoke or suspend the premise permit issued to Respondent ASNC and to Respondent Weber for the ASNC. In the event that the Premise Permit is not revoked or suspended, the ASBVME prays that other discipline, fines, and/or costs be imposed in compliance with the Veterinary Practice Act. Please confirm your attendance for the Administrative Hearing in writing to Tammy Cargile, Executive Director, of the ASBVME by U.S. mail or by email to tammy.cargile@asbvme.alabama.gov.

FOR THE ALABAMA STATE BOARD OF VETERINARY MEDICAL EXAMINERS



Tammy S. Cargile

Executive Director, Alabama State Board of Veterinary Medical Examiners



Signed this, the 19th day of February, 2014.



Mark G. Montiel, Sr.

Attorney for the ASBVME

OF COUNSEL:
MARK G. MONTIEL, P.C.
6752 Taylor Circle
Montgomery, AL 36117
(334) 356-1899
(334) 467-9265
mmontiel@montiellaw.net