

**COMMONWEALTH OF PENNSYLVANIA
IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

**In the Matter of the State Board of
Veterinary Medicine Investigative
Subpoena Duces Tecum issued to NoBull
Solutions, LLC at BPOA Case Nos.
20-57-002388, 20-57-002391, &
20-57-002557**

Docket No. _____ M.D. 2021

**Commonwealth of Pennsylvania, Bureau
of Professional and Occupational Affairs,
Petitioner**

MOTION TO IMPOUND

AND NOW, comes the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs (“**Commonwealth**”), by and through its duly authorized Prosecuting Attorney, Peter D. Kovach, and respectfully petitions this Honorable Court for the issuance of an order to impound the pleadings filed in the instant matter to enforce an investigative *subpoena duces tecum* and in support thereof avers as follows:

1. The State Board of Veterinary Medicine (“**Board**”) is a departmental administrative board of the Department of State, organized under the provisions of

the Veterinary Medicine Practice Act (“VMPA”), the act of December 27, 1974, P.L. 995, No. 326, *as amended*, 63 P.S. §§ 485.1-485.33.

2. Among other powers and duties granted under the VMPA, the Board may:

* * * * *

Section 5. Board Duties, Rights, Privileges and Powers.

* * * * *

(4) *Administer and enforce the law and rules and regulations regulating the practice of veterinary medicine.*

* * * * *

Section 27. Enforcement Duties and Powers

(a) *The enforcement of the laws and rules regulating the practice of veterinary medicine is primarily vested in the Board with the following powers and duties:*

(1) *To employ investigators and clinical assistants or any other necessary personnel.*

* * * * *

(4) *To conduct investigations of alleged violations of this act.*

* * * * *

See 63 P.S. §§ 485.5(4) & 485.27(a).

3. Your undersigned counsel is the duly authorized prosecuting attorney for the Petitioner in the three (3) cases referenced within the caption which are presently under investigation.

4. The Commonwealth is currently attempting to investigate, on behalf of the Board, complaints alleging unlicensed practice of veterinary medicine in violation of the VMPA and/or prior cease and desist orders issued by the Board.

5. At or around the time of the filing of this *Motion for Impoundment* (“**Motion**”), the Commonwealth has also filed a *Petition to the Original Jurisdiction*

of the Commonwealth Court to Enforce an Investigative Subpoenas Duces Tecum (“**Petition**”) (collectively, the “**Pleadings**”) which was issued by the State Board of Veterinary Medicine to the custodian of records for NoBull Solutions, LLC.

6. The Pleadings submitted, or which will be submitted, to the Court with regards to the Petition contain information identifying the individuals who are currently the subject of investigations by the Commonwealth.

7. Because the matters remain under investigation, as of the date of the filing of the Pleadings, no formal administrative action has been initiated in any of the case numbers referenced in the caption and attachments.

8. Section 102 of the Right-to-Know Law¹ (“RTKL”), 65 P.S. § 67.102, provides in pertinent part:

Section 102. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * * * *

“Privilege.” *The attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.*

“Public record.” *A record, including a financial record, of a Commonwealth or local agency that:*

(1) is not exempt under section 708;

¹ The act of February 14, 2008, P.L. 6, No. 3, *as amended*, 65 P.S. §§ 101-3104

(2) is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
(3) is not protected by a privilege.

* * * * *

9. Section 708 of the RTKL, 65 P.S. § 67.708, provides in pertinent part:

Section 708. Exceptions for public records.

* * * * *

(b) Exceptions.--Except as provided in subsections (c) and (d), the following are exempt from access by a requester under this act:

(17) A record of an agency relating to a noncriminal investigation, including:

- (i) Complaints submitted to an agency.
- (ii) Investigative materials, notes, correspondence and reports.

* * * * *

(iv) A record that includes information made confidential by law.

* * * * *

(vi) A record that, if disclosed, would do any of the following:

- (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

* * * * *

(C) *Constitute an unwarranted invasion of privacy.*

* * * * *

10.63 Pa.C.S. § 3019 provides, in pertinent part, that:

Section 3109. Confidentiality of records of licensure boards.

(a) General rule.--

(1) All records under section 708(b)(17) of the Right-to-Know Law relating to a noncriminal investigation, including prosecutorial memos and transcripts of depositions, undertaken by the Bureau of Enforcement and Investigation and the Prosecution Division of the Department of State, Office of Chief Counsel on behalf of the licensing boards within the Department of State or concerning a licensure-related complaint filed with the Department of State shall be confidential and privileged.

* * * * *

(3) This subsection shall not preclude or limit introduction of the contents of an investigative file or related witness testimony in a hearing or proceeding held before the licensing boards within the Department of State.

* * * * *

11.The Pleadings contain information regarding complaints filed with the Commonwealth and an investigation currently under way by an agency in the performance of its official duties; therefore, they are not considered to be “public

records” under section 708(b)(17)(i, ii, and vi(A)) of the RTKL, 65 P.S. § 67.708(b)(17)(i, ii, and vi(A)).

12.The Pleadings contain information which is currently confidential and privileged under 63 Pa.C.S. § 3109(a), and therefore are not considered to be “public records” under section 708(b)(17)(iv) of the RTKL, 65 P.S. § 67.708(b)(17)(iv).

13.In the event that the Commonwealth were to ultimately determine that the filing of formal disciplinary charges was not appropriate, the release of information indicating that a complaint had been filed and/or that an investigation had been initiated by the Commonwealth would be in violation of 63 Pa.C.S. § 3109 and could constitute an unwarranted violation of one or more of the respondents’ privacy; therefore the related records are not considered to be “public records” under section 708(b)(17)(vi)(C) of the RTKL, 65 P.S. § 67.708(b)(17)(vi)(C).

14.Disclosure of information contained in the pleadings filed in this matter may jeopardize the progress or outcome of the Board’s investigation or impair the reputation or personal security of the subjects of the investigations whose names are contained within the pleadings.

15.Except as otherwise authorized by 63 Pa.C.S. § 3109, the Commonwealth will not make information obtained pursuant to the investigative *subpoena duces tecum* available, nor will it disseminate it to any person or entity, public or private,

for any reason other than may be necessary for the further investigation, evaluation and, if appropriate, disciplinary proceeding(s) before the Board for alleged violations of the VMPPA and/or the Board's regulations.

WHEREFORE, the Commonwealth respectfully requests that this Honorable Court issue an Order to seal and impound the pleadings filed in the above-captioned matter for the reasons set forth herein, and direct that review of the file by non-court personnel is restricted to counsel of record and their designated agents.

Respectfully submitted,

/s/ Peter D. Kovach
Peter D. Kovach
PA ID 79150
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
P. O. Box 69521
Harrisburg, PA 17106-9521
(717) 783-7200
pkovach@pa.gov

DATE: September 28, 2021

VERIFICATION

I, Peter D. Kovach, do verify that the facts set forth in the foregoing Motion for Impoundment are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

 /s/ Peter D. Kovach
Peter D. Kovach
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
P. O. Box 69521
Harrisburg, PA 17106-9521
(717) 783-7200
pkovach@pa.gov

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