

**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**

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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Commonwealth Court of Pennsylvania  
601 Commonwealth Avenue, Suite 2100

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Harrisburg, PA 17106-9185

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213 North Front Street  
Harrisburg, Pennsylvania 17101  
(717) 232-7536

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Bureau of Professional and  
Occupational Affairs,  
Petitioner**

**PETITION TO THE ORIGINAL JURISDICTION OF THE  
COMMONWEALTH COURT TO ENFORCE AN INVESTIGATIVE  
SUBPOENAS DUCES TECUM**

**AND NOW**, comes the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs (“**Commonwealth**” or “**Petitioner**”), by and through its duly authorized Prosecuting Attorney, Peter D. Kovach, and respectfully petitions this Honorable Court to enforce the attached investigative subpoenas duces tecum issued by the State Board of Veterinary Medicine (“**Board**”), and in support thereof avers as follows:

**JURISDICTIONAL STATEMENT**

1. This Honorable Court has original jurisdiction over this matter pursuant to both Section 761(a)(2) of the Judicial Code, 42 Pa.C.S. § 761(a)(2), as well as

Section 27(b) of the Veterinary Medicine Practice Act<sup>1</sup> (“VMPA”), 63 P.S. § 485.27(b).

## **RELEVANT PERSONS**

2. The Board is a departmental administrative board of the Department of State, organized under the provisions of the VMPA.

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 by the Commonwealth.

4. NoBull Solutions, LLC (“NBS”), is registered with the Department of State, Bureau of Corporations and Charitable Organizations (“BCCO”) as a limited liability company formed on or about May 20, 2019.

5. A true and correct printout of the BCCO registration for NBS from the BCCO public lookup page is attached as **Exhibit A** and is incorporated by reference.

6. Per NBS’s filing with BCCO, NBS’s registered business address is: 105 Church Road, Airville, Pennsylvania 17302. See attached **Exhibit A**.

7. The subject of the investigation at case number 20-57-002388 is Ethan Wentworth (“**Wentworth**”).

8. Wentworth has never been licensed by the Board.

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<sup>1</sup> The act of December 27, 1974, P.L. 995, No. 326, *as amended*, 63 P.S. §§ 485.1-485.33.

9. The subject of the investigation at case number 20-57-002391 is Rusty Herr (“**Herr**”).

10.Herr has never been licensed by the Board.

11.The subject of the investigation at case number 20-57-002557 is Dylan Brantner (“**Brantner**”).

12.Brantner has never been licensed by the Board.

### **RELEVANT PRIOR DISCIPLINE**

13.Section 3 of the VMPA, 63 P.S. § 485.3, defines the practice of veterinary medicine as follows:

#### **§ 485.3. Definitions**

*As used in this act:*

\* \* \* \* \*

(10) *“Practice of veterinary medicine” includes, but is not limited to, the practice by any person who (i) diagnoses, treats, corrects, changes, relieves or prevents animal disease, deformity, injury or other physical, mental or dental conditions by any method or mode, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique, (ii) performs a surgical operation, including cosmetic surgery, upon any animal, (iii) performs any manual procedure upon an animal for the diagnosis or treatment of sterility or infertility of animals, (iv) represents himself as engaged in the practice of veterinary medicine, (v) offers, undertakes, or holds himself out as being able to diagnose, treat, operate, vaccinate, or prescribe for any animal disease, pain, injury, deformity, or physical condition, (vi) uses any words, letters, or titles in such connection or under such circumstances as to induce the belief that the person using them is*

*engaged in the practice of veterinary medicine and such use shall be prima facie evidence of the intention to represent himself as engaged in the practice of veterinary medicine, (vii) performs diagnostic veterinary pathology, (viii) implants electronic identification, as determined by the board, upon any animal, (ix) renders advice or recommendation by any means, including the electronic transmission of data with regard to any of the above, or (x) removes any embryo from an animal for the purpose of transferring such embryo into another animal or cryopreserving such embryo, except it shall not be considered the practice of veterinary medicine when: (a) a person or his full-time employe removes or transfers an embryo from the person's own animals for the purpose of transferring or cryopreserving the embryo so long as ownership of the animal is not transferred or employment of the person is not changed for the purpose of circumventing this act or (b) a person independently, with indirect veterinary supervision, implants any embryo into an animal.*

\* \* \* \* \*

14. Subsection 9(a) of the VMPPA, 63 P.S. § 485.9(a), provides, in pertinent part, that:

***§ 485.9. Applicants for license to practice veterinary medicine; qualifications***

*(a) Any person wishing to practice veterinary medicine in this State shall obtain a license from the board and maintain registration. Unless such person shall have obtained such a license it shall be unlawful for him or her to practice veterinary medicine as defined herein and if he or she shall so practice he or she shall be deemed to have violated the provisions of this act.*

\* \* \* \* \*

15. On or about May 14, 2010, the Board issued an *Amended Adjudication and Order* (the “Herr Order”) in the matter of *Commonwealth of Pennsylvania, Bureau*

*of Professional and Occupational Affairs v. Rusty Herr*, File No. 09-57-05797, BPOA Docket No. 2296-57-09.

16. A true and correct copy of the Herr Order is attached as **Exhibit B** and is incorporated by reference.

17. In the *Herr Order*, Herr was found to have engaged in the unlicensed practice of veterinary medicine by, among other things, having performed ultrasounds on cows owned by other dairy farmers in order to:

- a. determine early pregnancy;
- b. scanned ovarian structures;
- c. detect early embryonic death;
- d. detect the presence of twins; and
- e. determine fetal sex of the calf to be born. See attached

**Exhibit B.**

18. Among other things, the Herr Order required Herr to cease and desist from the unlicensed practice of veterinary medicine. See attached **Exhibit B**.

19. On or about October 5, 2018, the Board issued a *Final Order Adopting Hearing Examiner's Proposed Adjudication and Order (the "Wentworth Order")* in the matters of *Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs v. Gideon Alphonse Stoltzfus*, Case No. 16-57-05621 and

Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs  
v. Ethan Wentworth, Case No. 16-57-05622.

20. A true and correct copy of the Wentworth Order is attached as **Exhibit C** and is incorporated by reference.

21. In the Wentworth Order, Wentworth was found after a formal hearing to have engaged in the unlicensed practice of veterinary medicine by having, among other things:

- a. Utilized ultrasound equipment to determine if cows were pregnant;
- b. Performed pregnancy checks on cows owned by others;
- c. Utilized ultrasound equipment to determine if cows were in heat (i.e. estrous); and
- d. Utilized ultrasound equipment to diagnose whether his customer's cows had other medical issues.

See **Exhibit C**.

22. Among other things, the *Wentworth Order* required Wentworth to cease and desist from the unlicensed practice of veterinary medicine. See attached **Exhibit C**.

23. Brantner has never been disciplined by the Board.



## **CURRENT INVESTIGATION**

24.The registered business address for NBS is the same as Wentworth's address. See attached **Exhibit A** and **Exhibit C** at Findings of Fact 4.

25.Upon information and belief, at times relevant to the Commonwealth's investigation, Wentworth and Herr were the principal members of NBS.

26.Upon information and belief, at times relevant to the Commonwealth's inquiry, Brantner was an employee/technician acting on behalf of NBS.

27.The Commonwealth's investigative cases referenced within the caption relate to allegations that Wentworth and Herr (both individually and through their control of NBS) and Brantner (as a technician/employee of NBS), have engaged/continued to engage in the practice of veterinary medicine without the required license(s) by performing, and/or offering to perform through advertisements of NBS, the following services:

- a. reproductive management for clients' bovine and equine animals;
- b. embryo transfer services;
- c. fetal sexing;
- d. early pregnancy exams; and
- e. determination of stage of cycle via ultrasound.

28. Section 27(b) of the VMPA, 63 P.S. § 485.27(b),<sup>2</sup> authorizes the board to issue subpoenas upon application of an attorney responsible for representing disciplinary matters before the board for the purpose of investigating alleged violations of the disciplinary provisions administered by the board; including, but not limited to compelling the production of such books, records, papers and documents.

29. At the request of the Commonwealth, on or about February 16, 2021, the Board issued an investigative *subpoena duces tecum* to the custodian of records for NBS, requiring the custodian to render to the server of the subpoena certain records which generally related to the performance of fetal sexing, pregnancy examinations, ovum pickup, embryo transfer, and ultrasound services performed on bovine and

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<sup>2</sup> 63 P.S. § 485.27. **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:

\* \* \* \* \*

(b) The board shall have the authority to issue subpoenas upon application of an attorney responsible for representing disciplinary matters before the board for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses and to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation or hearing held or had by it. Veterinary records may not be subpoenaed without consent of the client or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoenas as are necessary to prevent unnecessary intrusion into client confidential information. The board is authorized to apply to the Commonwealth Court to enforce its subpoenas.

\* \* \* \* \*

equine animals in the Commonwealth of Pennsylvania by persons associated with NBS. Additionally, the subpoena generally required the production of a copy of all contracts, memoranda, notes, or other written agreements with licensed veterinarian(s) who may have agreed to provide indirect supervision while NBS workers implant any embryo into an animal in the Commonwealth of Pennsylvania.

30. A true and correct copy of the February 16, 2021, investigative subpoena is attached as **Exhibit D** and is incorporated by reference.

31. On or about February 24, 2021, Department of State Professional Conduct Investigator William C. King (“**PCI King**”) traveled to the registered business address of NBS, namely 105 Church Road, Airville, Pennsylvania, and personally served a true and correct copy of the investigative subpoena by handing it to the person for the time being in charge thereof.

32. True and correct copies of the Affidavit of Service completed by PCI King memorializing his personal service of the investigative subpoena are attached as **Exhibit E** and are incorporated by reference.

33. The Investigative subpoena directed that the subpoenaed records be rendered to PCI King within thirty (30) days of its service. See attached **Exhibit D**.

34. NBS failed to produce the subpoenaed records by March 26, 2021, as required by the subpoena.

35.No representative of NBS contacted PCI King on or before March 26, 2021, regarding the subpoena.

36.No representative of NBS contacted the undersigned counsel for Petitioner on or before March 26, 2021, regarding the subpoena.

37.On or about April 19, 2021, a letter was mailed by certified mail to the custodian of records for NBS which:

a. reminded NBS of the investigative subpoena which had been personally served by PCI King on February 24, 2021;

b. provided NBS with a second, courtesy copy of the subpoena;

c. noted that no records had been produced pursuant to the subpoena, nor had PCI King been contacted regarding the subpoena;

d. provided NBS with direction to submit all required documentation to PCI King by May 7, 2021; and

e. advised NBS that failure to respond by May 7, 2021, could result in further action to enforce the subpoena.

38.A true and correct copy of the April 19, 2021 letter is attached as **Exhibit F** and is incorporated by reference.

39.The April 19, 2021 letter was received by NBS or NBS's agent on April 21, 2021 as evidenced by United States Postal Service Electronic Return Receipt.

40. A true and correct copy of the April 21, 2021 Electronic Return Receipt is attached as **Exhibit G** and is incorporated by reference.

41. As of the date of the filing of this Petition, PCI King has not received the subpoenaed documents or otherwise been contacted by representatives of NBS regarding the subpoena.

42. As of the date of the filing of this Petition, the undersigned counsel for the Petitioner has not received the subpoenaed documents or otherwise been contacted by representatives of NBS regarding the subpoena.

43. NBS has failed to comply with the February 16, 2021, investigative *subpoena duces tecum* issued by the Board.

44. The documents that the Commonwealth have subpoenaed are reasonably necessary with regard to the Commonwealth's investigation and evaluation of potential violations of the VMPPA for unlicensed practice of veterinary medicine by Wentworth, Herr, Brantner, and/or other unnamed/unidentified "technicians" who may be performing activities as referenced in NBS advertisements.

45. There are currently no pending formal administrative actions before the Board against Wentworth, Herr, or Brantner; consequently, the current investigations by and on behalf of the Commonwealth are generally considered confidential and privileged pursuant to 63 Pa.C.S. § 3109 (relating to confidentiality of records of licensure boards).

46. 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 VMPA and/or the Board's regulations.

**WHEREFORE**, Petitioner prays that this Honorable Court will:

1. Enter an Order directing NBS to comply with and obey the investigative *subpoena duces tecum* and provide true and correct copies of the records set forth in the Investigative Subpoena at **Exhibit D** within fifteen (15) days of this Honorable Court's Order,
2. If deemed appropriate and warranted, that this Court issue a notice of hearing in this matter; and
3. Grant such other relief as it may deem just and proper.

Respectfully submitted,

/s/ Peter D. Kovach

Peter D. Kovach

PA I.D. No. 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, verify that the facts set forth in the foregoing **Petition to the Original Jurisdiction of the Commonwealth Court to Enforce an Investigative Subpoenas Duces Tecum** 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  
PA I.D. No. 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



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## Order Business Documents

Date: 09/21/2021

### Business Name History

Name	Name Type
Nobull Solutions LLC	Current Name

### Business Entity Details Officers

Name	Nobull Solutions LLC
Entity Number	6892402
Entity Type	Limited Liability Company
Status	Active
Citizenship	Domestic
Entity Creation Date	05/20/2019
Effective Date	05/20/2019
State Of Inc	PA
Address	105 Church Road AIRVILLE PA 17302 York

### Filed Documents

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Exhibit  
A

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Department of State

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PROFESSIONAL

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BEFORE THE STATE BOARD OF VETERINARY MEDICINE

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COMMONWEALTH OF PENNSYLVANIA,  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

v.

RUSTY HERR

DOCKET NO. 2296-57-09  
FILE NO. 09-57-05797

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AMENDED ADJUDICATION AND ORDER

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ROBIN J. BERNSTEIN, ESQ., CHAIRPERSON  
STATE BOARD OF VETERINARY MEDICINE

BASIL L. MERENDA, COMMISSIONER  
BUREAU OF PROFESSIONAL  
AND OCCUPATIONAL AFFAIRS

2601 N. THIRD STREET  
P. O. BOX 2649  
HARRISBURG, PA 17105-2649

Exhibit  
B

## HISTORY

This case came before the State Board of Veterinary Medicine (“Board”) to determine whether Rusty Herr (“Respondent”) was subject to discipline by the Board for practicing veterinary medicine when he was not licensed to do so. The matter commenced when the Commonwealth filed an order to show cause on December 23, 2009, alleging that Respondent violated the Veterinary Medicine Practice Act (“Act”), Act of December 27, 1974, P.L. 995, No. 326, as amended, 63 P.S. §§ 485.1 *et seq.*, by performing a surgical operation, specifically what is referred to as a Gymer/Sterner Toggle Suture Repair of left displaced abomasum, on at least six cows that Respondent did not own, and by performing ultrasound for the detection of pregnancy on cows that Respondent did not own. Section 3(10) of the Act, 63 P.S. § 485.3(10), defines the practice of veterinary medicine to include performing a surgical operation and the practice, by any person who, diagnoses an animal’s physical conditions by any mode. Section 28(c) of the Act, 63 P.S. § 485.28(c), provides that an unlicensed person may be disciplined for practicing veterinary medicine. Respondent was served with the order to show cause by certified mail on December 24, 2007, as evidenced by the certificate of service attached to the order to show cause.

Respondent did not file an answer to the order to show cause. On February 4, 2010, the Commonwealth filed a motion to enter default and deem facts admitted. On March 23, 2010, the Board issued an order granting the Commonwealth’s motion. The Board deliberated the matter and now issues this adjudication and order in final resolution of this matter.

### FINDINGS OF FACT

1. Respondent does not currently hold and, at all times pertinent to the Factual Allegations, has never held a license authorizing him to practice veterinary medicine in the Commonwealth of Pennsylvania. (Board records; order to show cause, paragraphs 1 and 2).
2. Respondent's last known address is 200 Hawkins Road, Oxford, Pennsylvania 19363. (Order to show cause, paragraph 3).
3. Respondent is a dairy farmer. (Order to show cause, paragraph 4).
4. Respondent performed what is known as a Gymer/Sterner Toggle Suture Repair of left displaced abomasum procedures on six cows owned by other dairy farmers. (Order to show cause, paragraphs 5 and 12; exhibit A).
5. The Gymer/Sterner Toggle Suture Repair of left displaced abomasum is a surgical procedure. (Order to show cause, paragraph 7; exhibit A).
6. Respondent performed ultrasounds on cows owned by other dairy farmers in order to determine early pregnancy; scan ovarian structures; and detect early embryonic death, presence of twins, fetal sex of the calf to be born and more. (Order to show cause, paragraph 16; exhibit A).
7. Respondent received the Order to Show Cause on January 9, 2010. (Motion to enter default, exhibit A).
8. The Commonwealth mailed Respondent a copy of the motion to enter default and deem facts admitted on February 4, 2010. (Motion to enter default, certificate of service).
9. Respondent did not respond to the order to show cause or motion to enter default and deem facts admitted. (Docket no. 0255-57-07)

### CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. (Finding of Fact no. 1).
2. Respondent has been afforded reasonable notice of the charges against him and has been given an opportunity to be heard in this proceeding in accordance with the Administrative Agency Law, 2 Pa. C.S. §504. (Findings of Fact nos. 7-9).
3. The facts deemed admitted demonstrate that Respondent is subject to discipline under section 28(c) of the Act, 63 P.S. § 485.28(c), in that Respondent practiced veterinary medicine when he was not authorized by license to do so. (Findings of Fact nos. 1, 4-6).

## DISCUSSION

### Applicable Law

This matter is brought under section 28(c) of the Act, which provides as follows:

#### **§ 485.28. Penalties**

\* \* \*

(c) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to one thousand dollars (\$1,000) . . . on any person who practices veterinary medicine or performs the duties of an animal health technician without being properly licensed or certified to do so under this act . . . .<sup>1</sup>

63 P.S. §485.28(c).

The Act defines the practice of veterinary medicine at section 3 as follows:

**(10) "Practice of veterinary medicine"** includes, but is not limited to, the practice by any person who (i) diagnoses, treats, corrects, changes, relieves or prevents animal disease, deformity, injury or other physical, mental or dental conditions by any method or mode, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique, (ii) performs a surgical operation, including cosmetic surgery, upon any animal . . . .

63 P.S. §485.3(10)

### Due Process

Prior to entering an adjudication, the law mandates that the Board consider whether Respondent was provided adequate notice of the charges against him and an opportunity to present a defense to the charges. "Adequate notice of administrative action is notice which is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency

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<sup>1</sup> Section 28 of the Act, 63 P.S. § 485.28, was repealed insofar as inconsistent with Act 25 of July 17, 2009, P.L. 95, 63 P.S. § 2205(b)(4) (amending the maximum civil penalty to \$10,000). In its order to show cause, the Commonwealth failed to allege any dates of Respondent's practice. Act 25 of July 17, 2009, became effective on September 15, 2009. In the absence of any allegation that Respondent practiced veterinary medicine after that date, the Board will use the prior \$1,000 civil penalty as the maximum allowable penalty per act of unlicensed practice.

of the action and afford them an opportunity to present their objections.” Clark v. Commonwealth, Dept. of Pub. Welfare, 427 A.2d 712, 714 (Pa. Cmwlth. 1981) (citation omitted). “Notice of administrative action mailed to the interested party’s last known address has been found to be reasonable notice.” Kobylski v. Commonwealth, Milk Mktg. Bd., 516 A.2d 75 (Pa. Cmwlth. 1986). “Actual notice . . . is not required to meet the constitutional standard.” Id.

Respondent was served with the order to show cause. (Finding of fact no. 7). The notice and order to show cause clearly and specifically stated the charges against Respondent and directed Respondent to file an answer. The notice and order to show cause told Respondent how to request a hearing and clearly warned Respondent that if he did not file an answer within 30 days he would be deemed to have waived his right to a hearing and final judgment might be entered without a hearing. Due process does not confer an absolute right to be heard, but only requires that a party be provided with an opportunity to be heard. Goetz v. Commonwealth, Dep’t of Environmental Resources, 613 A.2d 65, 67 (Pa. Cmwlth. 1992), appeal denied, 533 Pa. 663, 625 A.2d 1196 (1993). The Board concludes that Respondent had notice of the charges and was given an opportunity to be heard, but did not take advantage of the opportunity. For the foregoing reasons, the Board concludes that the Commonwealth met its due process burden.

#### Discussion

The Board is authorized to discipline unlicensed persons who practice veterinary medicine in the Commonwealth. Respondent does not now nor has he ever held a license to practice veterinary medicine. Both the performance of a surgical procedure, such as the Gymer/Sterner Toggle Suture Repair, and the diagnosis of a physical condition, such as detecting through ultrasound whether an animal is pregnant, constitute the practice of veterinary medicine.



Respondent did not own the cows upon which these procedures were performed.<sup>1</sup> The Board concludes that the Commonwealth has met its burden and that Respondent is subject to discipline by the Board.

In determining the appropriate sanction, the Board considers the seriousness of the violation(s) and any evidence in mitigation presented by Respondent. In this case, Respondent chose not to file an answer to the order to show cause or to appear at a hearing to offer evidence in mitigation.

The Board has a statutorily-mandated duty to protect animal owners from unlicensed persons practicing veterinary medicine. Respondent performed bovine surgeries. Veterinarians who repair a displaced abomasum perform additional pre-surgical and post-surgical procedures to minimize serious risks to the animals and ensure the livelihood of Pennsylvania's dairymen. The General Assembly determined that the health of animals and interests of animal owners was best protected by allowing only licensed veterinarians to perform surgical procedures on animals. Respondent's actions endanger not only the cows on which he performs his procedure, but also the livelihood of the dairymen. It is imperative the Board protect both animals' health and welfare as well as the dairyman's livelihood by enforcing statutory prohibitions on unlicensed practice. These interests are of the utmost importance to the Board. Unlicensed practice is not viewed lightly.

Although diagnosis of pregnancy through ultrasound presents less risk to the animal and the animal's owner than the performance of surgical procedures, the General Assembly determined that this action should be limited to licensed veterinarians. The General Assembly authorized the Board to impose a maximum penalty of \$1,000 per count against unlicensed

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<sup>1</sup> Section 32(4) of the Act, 63 P.S. § 485.32(4) provides an exemption from the act to "any person or his or her regular employe or agent while practicing veterinary medicine on his or her own animals." (63 P.S. § 485.32(4)).

individuals who practice the profession. The Board usually imposes the maximum penalty when there is a pattern of unlicensed practice. Although this was not an isolated incident, but rather a continued practice for which Respondent was paid, certain facts mitigate the penalty to be imposed. Specifically, in a letter sent to the Bureau of Enforcement and Investigation (Exhibit A to the order to show cause), Respondent stated that he was not aware that the Veterinary Medicine Practice Act prohibited him from performing “togglng” surgeries on cows and diagnosing conditions using ultrasound. In his letter, which was attached as an exhibit to the Order to Show cause, Respondent state that he was “no longer togglng other people’s cos.” (Order to Show cause, Exhibit A). Through this adjudication, Respondent has been advised that these practices are prohibited.

The Board finds that a civil penalty of \$500 per count should be assessed for Respondent’s performance of surgical procedures and the diagnosis of pregnancy in the cows. Should Respondent continue to violate the Act, he may be subject to the imposition of a \$10,000 civil penalty per act of practice.

Accordingly, the following Order shall issue:

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF VETERINARY MEDICINE**

<b>Commonwealth of Pennsylvania</b>	:	
<b>Bureau of Professional and</b>	:	
<b>Occupational Affairs</b>	:	<b>Docket No. 2296-57-09</b>
<b>v.</b>	:	<b>File No. 09-57-05797</b>
<b>Rusty Herr,</b>	:	
<b>Respondent</b>	:	

**AMENDED ORDER**

AND NOW, this 14th day of May 2010, the State Board of Veterinary Medicine, having duly convened and considered the entire record of the proceedings, and based upon the foregoing findings of fact, conclusions of law and discussion, hereby finds that Rusty Herr, is subject to the imposition of a **CIVIL PENALTY** in the amount of **\$3,500**. The civil penalty shall be paid by certified check or money order made payable to the Commonwealth of Pennsylvania, State Board of Veterinary Medicine, and mailed to Board Counsel, State Board of Veterinary Medicine, 2601 N. Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649. Failure to remit the civil penalty may result in additional legal action against Respondent.

Respondent Rusty Herr is hereby **ORDERED** to **CEASE** and **DESIST** from the unlicensed practice of veterinary medicine. Failure to cease and desist from veterinary medical practice may result in additional legal action.


This **ORDER** shall become effective on June 14, 2010, thirty days from the date of mailing.

**BY ORDER:**

**BUREAU OF PROFESSIONAL  
& OCCUPATIONAL AFFAIRS**

**STATE BOARD OF VETERINARY  
MEDICINE**

  
BASIL L. MERENDA,  
COMMISSIONER

  
ROBIN J. BERNSTEIN, ESQUIRE  
CHAIRPERSON

Respondent:

Rusty Herr  
200 Hawkins Road  
Oxford, PA 19363

Prosecuting Attorney:

Shawn E. Smith, Esquire  
2601 N. Third Street, P.O. Box 2694  
Harrisburg, PA 17105-2649

Board Counsel:

Teresa Lazo, Esquire  
2601 N. Third Street, P.O. Box 2694  
Harrisburg, PA 17105-2649

Date of Mailing:

May 14, 2010

## NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel  
P.O. Box 2649  
Harrisburg, PA 17105-2649

The name of the individual Board Counsel is identified on the Order page of the Adjudication and Order.

COPY

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF VETERINARY MEDICINE

Commonwealth of Pennsylvania Bureau of  
Professional and Occupational Affairs

v.

Gideon Alphonse Stoltzfus,  
Respondent

Case No. 16-57-05621

Commonwealth of Pennsylvania Bureau of  
Professional and Occupational Affairs

v.

Ethan Wentworth,  
Respondent

Case No. 16-57-05622

Department of State

2018 OCT -5 AM 7:32

PROF 012018

**FINAL ORDER ADOPTING HEARING EXAMINER'S  
PROPOSED ADJUDICATION AND ORDER**

AND NOW, this 5<sup>TH</sup> day of October, 2018, the State Board of Veterinary Medicine, having reviewed the evidentiary record of this proceeding, together with the hearing examiner's proposed adjudication and order, and noting that no party filed exceptions to the hearing examiner's proposal, it is hereby **ORDERED** that the proposed adjudication and order of the hearing examiner be adopted as the **FINAL** adjudication and order of the State Board of Veterinary Medicine in this proceeding. A copy of the hearing examiner's proposed adjudication and order is appended to this order as **Appendix A**.

This order shall take effect immediately.

BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS

IAN J. HARLOW,  
COMMISSIONER



BY ORDER:  
STATE BOARD OF  
VETERINARY MEDICINE

THOMAS N. GARG, VMD  
CHAIRPERSON



Exhibit  
C

Respondents:

Gideon Alpheus Stoltzfus  
aka Alphonse Stoltzfus  
281 White Horse Rd.  
Gap, PA 17527

Ethan Wentworth  
105 Church Rd.  
Airville, PA 17302

Prosecuting Attorney:

Timothy P. Smith, Esquire

Board Counsel:

Thomas M. Davis, Esquire

Date of Mailing:

*OCTOBER 5, 2018*

## APPENDIX A



**RECEIVED**  
SEP 12 2018  
Department of State  
Prothonotary

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF VETERINARY MEDICINE**

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

v.

**Gideon Alphonse Stoltzfus,  
Respondent**

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

v.

**Ethan Wentworth,  
Respondent**

:  
:  
: **Docket No. 1928-57-17**  
: **File No. 16-57-05621**  
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: **Docket No. 1929-57-17**  
: **File No. 16-57-05622**  
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:  
:

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**PROPOSED ADJUDICATION AND ORDER**

---

**David M. Green  
Hearing Examiner**

**COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
DEPARTMENT OF STATE  
OFFICE OF HEARING EXAMINERS  
P.O. Box 2649  
Harrisburg, PA 17105-2649**

Date Distributed 9/12/18  
Prosecution \_\_\_\_\_  
Counsel \_\_\_\_\_  
BFO \_\_\_\_\_  
Hearing Examiner \_\_\_\_\_  
Other \_\_\_\_\_

## HISTORY

This consolidated matter was commenced on October 5, 2017 with the Commonwealth's filing of an *Order to Show Cause* individually against each of the Respondents, Gideon Alphie Stoltzfus ("Respondent Stoltzfus")<sup>1</sup> and Ethan Wentworth ("Respondent Wentworth") (respectively, Exhibits C-1 and C-2, collectively, "OTSCs"). In the OTSCs, the Commonwealth charges that each Respondent is subject to disciplinary action under sections 9(a) and 28(c) of the Veterinary Medicine Practice Act (Act), Act of December 27, 1974, P.L. 995, No. 326, 63 P.S. §§ 485.9(a) and 485.28(c), and sections 5(b)(4) and (b)(5) of the Act of July 2, 1993, P.L. 345, No. 48, 63 P.S. §2205(b)(4) and (b)(5) (Act 48), based upon allegations that each Respondent engaged in the practice of veterinary medicine without being properly licensed to do so under the Act.

Specifically, the OTSCs allege that, from July 2014 through present, each Respondent engaged in the unlicensed practice of veterinary medicine by performing pregnancy examinations on cattle using ultrasound equipment. The OTSCs allege that, to lawfully perform pregnancy examinations on cattle using ultrasound equipment each Respondent was required to hold a current and active license issued by the Board to practice veterinary medicine.

On November 3, 2017, Respondent Wentworth filed a *Response* to the OTSC ("*Wentworth Answer*," Exhibit C-4). On November 6, 2017, Respondent Stoltzfus a letter in response to the OTSC ("*Stoltzfus Answer*," Exhibit C-3).

On November 17, 2017, the State Board of Veterinary Medicine (Board) issued an *Order Delegating Case* to a hearing examiner of the Department of State to conduct a formal hearing and

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<sup>1</sup> Respondent Stoltzfus signed his filings in this matter as Gideon Alpheus Stoltzfus, but also refers to himself therein as Alphie Stoltzfus. The caption in other filings in this matter refers to him as Gideon Alphie Stoltzfus. At the outset of his testimony at the hearing, he identified himself as Gideon Alphie Stoltzfus. The caption in this writing respectfully references him as per his testimony. All references in the record to Respondent Stoltzfus refer to the same person.

to issue a proposed report in accordance with the Administrative Agency Law, 2 Pa. C.S. §§501 *et. seq.*, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§31.1 *et. seq.*

On November 21, 2017, the Commonwealth filed a *Motion for a Consolidated Hearing* of these two matters, stating that the facts and violations alleged against both Respondents are the same, the witnesses to be offered by the Commonwealth will be the same individuals in both matters, and that the majority of the documentary evidence to be offered by the Commonwealth in both cases will be the same. On December 20, 2017, in the absence of any response filed by Respondents, the undersigned hearing examiner granted the motion and issued an *Order Consolidating Hearings*.

On January 8, 2018, the Prothonotary of the Department of State issued a *Notice of Hearing*, which scheduled a hearing for February 16, 2018, commencing at 1:30 p.m. at 2601 N. Third Street, One Penn Center, Harrisburg, PA.

On January 18, 2018, the Commonwealth filed a *Motion for Continuance* of the February 16, 2018 hearing due to the unavailability of its expert witness.

On January 19, 2018, the undersigned hearing examiner issued an *Order Continuing Consolidated Hearing*.

On February 5, 2018, the Prothonotary issued a *Notice of Rescheduled Hearing*, which rescheduled the hearing for April 25, 2018, commencing at 9:30 a.m. at 2601 N. Third Street, One Penn Center, Harrisburg, PA.

On April 6, 2018, the Prothonotary issued a *Corrected Notice of Rescheduled Hearing*, which rescheduled the hearing for April 27, 2018 at 1:30 p.m. at the same location.<sup>2</sup>

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<sup>2</sup> On April 5, 2018, the Prothonotary had issued a *Notice of Rescheduled Hearing* changing the date of the hearing from April 25 to April 27, but listed the wrong time thereon; hence, the need for a corrected notice.

On April 27, 2018 at 1:30 p.m., the hearing took place as rescheduled before the undersigned hearing examiner and Board Member Tom Garg, VMD. Prosecuting Attorney Timothy P. Smith appeared at the hearing for the Commonwealth. The Commonwealth introduced the following exhibits into evidence: the *OTSC* filed against Respondent Stoltzfus (Exhibit C-1), the *OTSC* filed against Respondent Wentworth (Exhibit C-2), the *Stoltzfus Answer* (Exhibit C-3), the *Wentworth Answer* (Exhibit C-4), and the Curriculum Vitae of James A. Orsini, DVM (Exhibit C-7).

Each Respondent appeared *pro se* and waived his right to be represented by counsel. The Respondents collaborated on the presentation of their consolidated defenses. The Respondents cross-examined the Commonwealth's expert and each Respondent testified on his own behalf. At the conclusion of the hearing the parties elected to file post-hearing briefs in lieu of verbal closing arguments.

On May 16, 2018, the record in this matter was closed with the filing of the Notes of Testimony ("N.T."). On May 22, 2018, the undersigned hearing examiner issued an Order Establishing Briefing Schedule. On July 23, 2018, the Commonwealth filed its responsive post-hearing brief. On July 25, 2018, Respondents' consolidated brief was filed with the Prothonotary.<sup>3</sup> This consolidated matter now is ripe for determination.

---

<sup>3</sup> Respondents' brief was due on June 22, 2018. It appears that Respondents' post-hearing brief was mailed to the Office of Prosecuting Attorney as opposed to the Prothonotary's office, and was subsequently transmitted to the Prothonotary for filing, which explains its actual filing date with the Prothonotary. Respondents' brief will be considered as having been filed on time. Respondents did not file a reply brief to the Commonwealth's brief, as provided within the *Order Establishing Briefing Schedule*; however, they were in no way required to do so.

## FINDINGS OF FACT

1. Respondent Stoltzfus does not hold a license to practice as a veterinarian in the Commonwealth of Pennsylvania. (Official Notice, Board Records).<sup>4</sup>
2. Respondent Wentworth does not hold a license to practice as a veterinarian in the Commonwealth of Pennsylvania. (*Id.*).
3. Respondent Stoltzfus's home address is 281 White Horse Road, Gap, PA 17527. (N.T., p. 93).
4. Respondent Wentworth's home address is 105 Church Road, Airville, PA 17302. (*Id.*, p. 102).
5. Respondent Stoltzfus is employed by Select Sires Power as an Artificial Insemination Technician. (*Id.*, p. 94).
6. Respondent Wentworth was previously employed by Select Sires Power as an Artificial Insemination Technician. (*Id.*, p. 103).
7. Respondents' pay structure, at all pertinent times, was a commission based upon their respective sales of semen. (*Id.*, pp. 94, 98-99, 103).
8. Respondent Stoltzfus owns his ultrasound equipment. (*Id.*, p. 95).
9. Respondent Wentworth owns his ultrasound equipment. (*Id.*, p. 103).
10. Respondents used their ultrasound equipment to determine if cows were pregnant. (*Id.*, pp. 95-96, 103).

---

<sup>4</sup> Official notice is taken of the Board's records and the docket filings in this case, since they are clearly something of which the Board has specialized knowledge. This is permissible under the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at § 35.173. *See also Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records).

11. Respondents would perform pregnancy checks on cows that were owned by their customers. (*Id.*).

12. Respondent Stoltzfus would use the ultrasound equipment to also determine if customers' cows were in heat. (*Id.*, pp. 100-101).

13. Respondent Stoltzfus would sell semen to customers after using the ultrasound to determine that their cow was in heat. (*Id.*).

14. Respondent Wentworth used the ultrasound equipment to diagnose whether his customers' cows had other medical issues. (*Id.*, pp. 103, 112).

15. Each Respondent was served with the *OTSC* and all subsequent pleadings, filings and notices in this matter and had an opportunity to be heard and to be represented by counsel (the right to counsel having been waived by both Respondents) at the administrative hearing held on April 27, 2018. (N.T., p. 9 and *passim*; Docket Nos. 1928-57-17 and 1929-57-17).

## CONCLUSIONS OF LAW

1. The Board has jurisdiction over each Respondent in this consolidated matter.

(Findings of Fact Nos. 1-2).

2. Each Respondent received adequate notice of this proceeding and was afforded an opportunity to be heard in accordance with section 4 of the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact Nos. 1-4, 15).

3. Respondent Stoltzfus is subject to discipline under sections 9(a) and 28(c) of the Act, 63 P.S. §§ 485.9(a) and 485.28(c) and under section 5(b)(4) of the Act of July 2, 1993, P.L. 345, No. 48, 63 P.S. §2205(b)(4) (Act 48), and to the imposition of the payment of costs of investigation under section 5(b)(5) of Act 48, 63 P.S. §2205(b)(5), by engaging in the practice of veterinary medicine when he was not licensed by the Board to do so. (Findings of Fact Nos. 1-14)

4. Respondent Wentworth is subject to discipline under sections 9(a) and 28(c) of the Act, 63 P.S. §§ 485.9(a) and 485.28(c) and section 5(b)(4) of the Act of July 2, 1993, P.L. 345, No. 48, 63 P.S. §2205(b)(4) (Act 48), and to the imposition of the payment of costs of investigation under section 5(b)(5) of Act 48, 63 P.S. §2205(b)(5), by engaging in the practice of veterinary medicine when he was not licensed by the Board to do so. (Findings of Fact Nos. 1-14)

## DISCUSSION

### Violations

This Commonwealth's action against each Respondent was brought under sections 9(a) and 28(c) of the Act, 63 P.S. §§485.9(a) and 485.28(c), and section 5(b)(4) of the Act of July 2, 1993, P.L. 345, No. 48, 63 P.S. §2205(b)(4) (Act 48), which provide, in pertinent part, as follows:

**§ 485.9. Applicants for license to practice veterinary medicine; qualifications.**

(a) Any person wishing to practice veterinary medicine in this State shall obtain a license from the board and maintain registration. Unless such person shall have obtained such a license it shall be unlawful for him or her to practice veterinary medicine as defined herein and if he or she shall so practice he or she shall be deemed to have violated the provisions of this act.

63 P.S. §485.9(a).

**485.28. Penalties.**

...

(c) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of four members, whichever is greater, may levy a civil penalty of up to one thousand dollars (\$1,000) . . . on any person who practices veterinary medicine or performs the duties of an animal health technician without being properly licensed or certified to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

63 P.S. §485.28(c).

**§2205. Civil penalties**

...

(b) **Additional powers.** - - In addition to the disciplinary powers and duties of the boards and commissions within the Bureau of



Professional and Occupational Affairs under their respective practice acts, boards and commissions shall have the power, respectively:

...  
(4) To levy a civil penalty of not more than \$10,000 per violation on any...unlicensed person who violates any provision of the applicable licensing act or board regulation.

63 P.S. §2205(b)(4).

Specifically, the Commonwealth charges in its *OTSC* that each Respondent engaged in the practice of veterinary medicine without being properly licensed or certified to do so.

It is undisputed that neither Respondent holds a license to practice veterinary medicine in the Commonwealth. Section 3 (10) of the Act, 63 P.S. § 485.3(10), defines the “practice of veterinary medicine” as follows:

(10) “Practice of veterinary medicine” includes, but is not limited to, **the practice by any person who (i) diagnoses, treats, corrects, changes, relieves or prevents animal disease, deformity, injury or other physical, mental or dental conditions by any method or mode, including the prescription or administration of any drug, medicine, biologic, apparatus, anesthetic or other therapeutic or diagnostic substance or technique ...**

63 P.S. §485.3(10) (emphasis added).

The Commonwealth presented the testimony of James A. Orsini, DVM, is expert in Veterinary Medicine. (N.T., pp. 25-31; Exhibit C-7). Dr. Orsini has been an Associate Professor of Surgery at the University of Pennsylvania School of Veterinary Medicine. (*Id.*). Dr. Orsini has specialized training and experience in the surgical treatment of large animals, mostly cows and horses. (*Id.*). Dr. Orsini explained in his testimony that the most common use of an ultrasound on a cow is for reproductive assessment and to determine whether the cow pregnant or in heat. If a cow is not heat, there may be a problem with ovarian function. (*Id.*, p. 33). Veterinarians are trained in the use of an ultrasound not only in school, but after that as well, and it has become an

area of specialization. (*Id.*, pp. 34-35). The risks inherent in the use of an ultrasound to detect pregnancy or heat include making a wrong diagnosis or tearing the rectum tissue. (*Id.*, pp. 37-38).

Respondents used the ultrasound and/or performed rectal examinations of cows for both diagnostic and treatment purposes, specifically to make a determination regarding the cow's reproductive cycle and to decide whether or not to breed that cow. (*Id.*, pp. 44-45). Whether by use of ultrasound or some other apparatus, method or technique, Respondents, diagnosed whether a cow owned by another<sup>5</sup> was pregnant or in heat. In so doing, and without being licensed by the Board, the Respondents violated the Act as alleged in the *OTSCs*. Accordingly, the Commonwealth has met its burden of proof in both cases.<sup>6</sup>

### Sanction

In each of its *OTSCs*, the Commonwealth sought the return of any fees collected by Respondents for practicing veterinary medicine without being licensed to do so. There is no evidence of record that Respondents collected any such fees. The evidence indicates that any monies received by Respondents were attributable to their sale of semen and not to their conduct

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<sup>5</sup>Section 32(a)(4) of the act states:

**§ 485.32. Exemptions and exceptions**

This act shall not apply to:

\*\*\*

(4) Any person or his or her regular employe or agent while practicing veterinary medicine on his or her own animals...

\*\*\*

63 P.S. § 485.32(4).

<sup>6</sup> The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Commonwealth therefore has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602.

of any diagnostic testing *per se*. Nevertheless, the relationship of the positive diagnosis of heat to the commission-generating sale of semen by Respondents is evident. The economic savings to the cow's owner, based on a positive pregnancy or negative heat result, are outweighed by the risk of harm to the cow posed by the unlicensed practice.

In its *OTSC* filed against Respondent Stoltzfus (Exhibit C-1), the Commonwealth pled that it incurred costs of investigation in the amount of \$2,349.27 and sought imposition of these costs against each Respondent under section 5(b)(5) of Act 48, 63 P.S. §2205(b)(5).<sup>7</sup> In its *OTSC* filed against Respondent Wentworth (Exhibit C-2), the Commonwealth pled that it incurred costs of investigation in the amount of \$1,000.00 and requested imposition of these under Act 48 as well. The Commonwealth did not offer documentation or testimony relating to these costs, whether attributable to its investigation or its expert witness's review, assessment and testimony.

The remaining consideration is the appropriate penalty to impose for each Respondent's unlicensed practice of veterinary medicine. Under section 28(c) of the Act, 63 P.S. § 485.28(c), the maximum civil penalty that can be imposed for each violation is \$1,000.00. Act 48 gives the Board broader authorization to impose a civil penalty of not more than \$10,000.00 per violation on any unlicensed person who violates any provision of the Act. 63 P.S. §2205(b)(5).

---

<sup>7</sup> Section 5(b)(5) of Act 48 provides, in pertinent part:

**§2205. Civil penalties.**

...  
(b) Additional powers. – In addition to the disciplinary powers and duties of the boards and commissions within the Bureau of Professional and Occupational Affairs under their respective practice acts, boards and commissions shall have the power, respectively:

...  
(5) To assess against the respondent determined to be in violation of the disciplinary provisions administered by a licensing board or commission in a disciplinary proceeding pending before the board or commission for final determination, as part of the sanction, the costs of investigation underlying that disciplinary action. The cost of investigation shall not include those costs incurred by the board or commission after the filing of formal actions or disciplinary charges against the respondent.

63 P.S. §2205(b)(5).

In its post-hearing brief, the Commonwealth requests that the Board issue an order directing Respondents to cease and desist from the practice of veterinary medicine and impose a civil penalty on each Respondent in the amount of \$3,000.00. For a number of years, each Respondent has engaged in the unlicensed practice of veterinary medicine by performing pregnancy examinations on cattle using ultrasound equipment.<sup>8</sup> (Exhibit C-1, paragraph 6; Exhibit C-2 paragraph 5). The unlicensed practice of veterinary medicine undermines one of the fundamental purposes of the Act – to protect the public and animals from practice by unauthorized persons.

With that objective, the Hearing Examiner believes that a cease and desist order and the recommended civil penalty must be imposed against each Respondent in an amount to discourage them from continued unlicensed practice.

Accordingly, the following proposed order shall issue:

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<sup>8</sup> The *OTSCs* allege that each Respondent has engaged in diagnosis via ultrasound since July 2014. Respondents' respective Answers do not specifically deny, or otherwise address, this allegation. See, General Rules of Administrative Practice and Procedure at 1 Pa. Code. § 35.37.

**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF VETERINARY MEDICINE**

<b>Commonwealth of Pennsylvania</b>	:	
<b>Bureau of Professional and</b>	:	
<b>Occupational Affairs</b>	:	<b>Docket No. 1928-57-17</b>
	:	<b>File No. 16-57-05621</b>
v.	:	
	:	
<b>Gideon Alphonse Stoltzfus,</b>	:	
<b>Respondent</b>	:	
	:	
<b>Commonwealth of Pennsylvania</b>	:	
<b>Bureau of Professional and</b>	:	
<b>Occupational Affairs</b>	:	<b>Docket No. 1929-57-17</b>
	:	<b>File No. 16-57-05622</b>
v.	:	
	:	
<b>Ethan Wentworth,</b>	:	
<b>Respondent</b>	:	

**PROPOSED ORDER**

AND NOW, this 12<sup>th</sup> day of **September 2018**, in accordance with the foregoing findings of fact, conclusions of law and discussion,

It is hereby **ORDERED** that Respondents Gideon Alphonse Stoltzfus and Ethan Wentworth shall each **IMMEDIATELY CEASE AND DESIST** from the unlicensed practice of veterinary medicine.

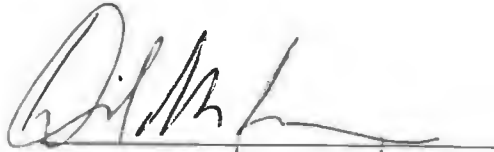
It is **FURTHER ORDERED** that a **CIVIL PENALTY** in the amount of **THREE THOUSAND DOLLARS (\$3,000.00)**, **EACH** shall be assessed against Respondents Gideon Alphonse Stoltzfus and Ethan Wentworth, for their unlicensed practice of veterinary medicine.

The civil penalty and costs of investigation shall be paid by certified check or money order made payable to the Commonwealth of Pennsylvania, State Board of Veterinary Medicine, and mailed to Board Counsel, State Board of Veterinary Medicine, 2601 N. Third Street, P.O. Box

69523, Harrisburg, PA 17106-9523. Failure by any Respondent to remit the civil penalty may result in additional legal action against that Respondent.

The State Board of Veterinary Medicine has announced its intention to review this Proposed Report in accordance with 1 Pa. Code § 35.226(a)(2).

**BY ORDER:**



**David M. Green**  
**Hearing Examiner**

***For the Commonwealth:*** Timothy P. Smith, Esquire  
Commonwealth of Pennsylvania  
GOVERNOR'S OFFICE OF GENERAL COUNSEL  
Department of State  
P.O. Box 69521  
Harrisburg, PA 17106-9521

***For Respondents:*** Gideon Alpheus Stoltzfus, aka Alphonse Stoltzfus  
281 White Horse Rd.  
Gap, PA 17527

Ethan Wentworth  
105 Church Rd.  
Airville, PA 17302

***Date of Mailing:*** 9/12/18



## NOTICE

### **SERVICE OF PROPOSED REPORT:**

The foregoing is the proposed report issued in this matter by a Hearing Examiner for the Department of State, in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.207.

### **EXCEPTIONS TO PROPOSED REPORT:**

Any participant who wishes to appeal all or part of the Hearing Examiner's proposed report to the Board must file exceptions in the form of a *Brief on Exceptions* with the Prothonotary of the Department of State within 30 days after the date of mailing shown on this proposed report in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214.

The *Brief on Exceptions* shall contain a short statement of the case, a summary of the appealing party's position, the grounds for filing exceptions to the proposed report, and the argument in support of the appealing party's position with citations to the record and legal authority. The appealing party may also include proposed findings of fact and conclusions of law.

In the event any participant files exceptions, the Board may substitute its findings for those of the Hearing Examiner, and /or may impose a greater or lesser sanction than that imposed by the Hearing Examiner without regard to the relief requested or the position argued by any party, and without hearing additional argument or facing additional evidence.

Failure to file a *Brief on Exceptions* within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214 shall constitute a waiver of all objections to the proposed report.

### **FILING AND SERVICES:**

An original and three (3) copies of the *Brief on Exceptions* shall be filed with:

Prothonotary  
2601 North Third Street  
P. O. Box 2649  
Harrisburg, PA 17105-2649

Copies of the *Brief on Exceptions* must also be served on all participants to the proceeding.

Briefs on Exceptions must be received for filing by the Prothonotary within the time limits specified herein. Date of receipt by the Office of Prothonotary and not date of deposit in the mail is determinative.

## NOTICE

The attached Final Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel  
P.O. Box 69523  
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Final Order.





CASE NOS. 20-57-002388  
20-57-002391  
20-57-002557

**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF STATE**  
**BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**  
P.O. Box 69521  
Harrisburg, Pennsylvania 17106-9521

# **INVESTIGATIVE SUBPOENA DUCES TECUM**

**Re: Ethan Wentworth, Rusty Herr, and  
Dylan Brantner**

**TO:** Custodian of Records  
NoBull Solutions, LLC  
105 Church Rd  
Airville, PA 17302

**GREETINGS:**

**YOU ARE HEREBY COMMANDED**, that setting aside all manner of business and excuses whatsoever, to render **within 30 days of receipt hereof** to the server of this subpoena true and correct copies of the following records:

- Complete records of all fetal sexing, pregnancy examination, ovum pickup, embryo transfer, and ultrasound services performed on bovine and equine animals in the Commonwealth of Pennsylvania by NoBull Solutions, LLC (“NBS”), its owners, officers, directors, managers, employees, agents, and/or independent contractors (“NBS workers”) from October 2019 through December 1, 2020. Records include, but are not limited to: client lists; patient lists; exam notes; treatment notes; ovum pickup notes and logs; embryo transfer notes and logs; ultrasound notes and ultrasound images; client and/or patient intake forms; billing invoices; and NBS worker duty assignments related to the above services in whatever form maintained. Records related to removal only of an embryo from a bovine or equine in the Commonwealth of Pennsylvania which is owned solely by NBS, its owners, officers, directors, managers, or employees need not be produced. Records related to implantation of an embryo into a bovine or equine in the Commonwealth of Pennsylvania not owned solely by NBS, its owners,

**Exhibit  
D**

officers, directors, managers, or employees shall be produced. Records related to embryo removal from, or implantation into, a bovine or equine in the Commonwealth of Pennsylvania by independent contractors of NBS shall be produced.

- a copy of all contracts, memoranda, notes, or other written agreements with licensed veterinarian(s) who have agreed to provide indirect supervision while NBS workers implant any embryo into an animal in the Commonwealth of Pennsylvania

**This subpoena has been issued at the request of:**

Peter D. Kovach | Prosecuting Attorney  
Office of General Counsel | Department of State | Prosecution Division  
2601 North 3rd St.  
P.O. Box 69521  
Harrisburg, PA 17106-9521  
Phone: 717.783.7200 | Fax: 717.787.0251 | E-mail: pkovach@pa.gov

**WITNESS** my hand and the official seal of the Commissioner of Professional and Occupational Affairs this 16<sup>th</sup> day of February, 2021.



A handwritten signature in black ink, appearing to read "K. Kalonji Johnson".

---

K. Kalonji Johnson  
Commissioner

A handwritten signature in black ink, appearing to read "Dean F. Picarella".

---

For the State Board of Veterinary Medicine  
Dean F. Picarella, Esquire



Bureau of Enforcement and Investigation

Affidavit of Service

Commonwealth of Pennsylvania  
County of Dauphin

Before me, SUSAN L. MATRAZI, the undersigned notary public, personally appeared William C. King, to me known (or satisfactory proven), who being duly sworn according to law, both depose and say that:

On the 24th day of February, 2021, at 12:00 (am/pm) William C. King, a duly authorized agent of the Bureau of Professional and Occupational Affairs and an individual over the age of twenty-one (21) Years, personally served a true and correct copy of the attached Subpoena in the matter of the Bureau of Professional and Occupational Affairs vs. Ethan Wentworth, File No. 20-57-002388 to the following individual: Sheridan Frenell at the following address: 105 Church Rd.  
Acruville, PA 17302

By handing a copy of the same to this person.

The Affiant understands that this affidavit is made subject to 18 Pa. C.S. 4903 relating to false swearing.

W.C.K.  
Signature of Affiant

Sworn to and subscribed before me this

9th Day of MARCH, 2021  
Susan L. Matrazi  
Notary Public

Commonwealth of Pennsylvania-Notary Seal  
SUSAN L. MATRAZI, Notary Public  
Dauphin County  
My Commission Expires November 24, 2023  
Commission Number 1185970

Exhibit  
E



**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF GENERAL COUNSEL**

**Peter D. Kovach  
Prosecuting Attorney**

**pkovach@pa.gov  
Prosecution Division**

April 19, 2021

VIA CERTIFIED MAIL:

9171 9690 0935 0226 5678 34

Custodian of Records  
**NoBull Solutions, LLC**  
105 Church Road  
Airville, PA 17302

**RE: Investigative subpoena issued by the State Board of Veterinary Medicine  
Case Nos.: 20-57-002388, 20-57-002391, 20-57-002557**

Dear Sir or Madam:

On February 16, 2021, the State Board of Veterinary Medicine ("Board"), issued an *Investigative Subpoena Duces Tecum* (the "subpoena") to NoBull Solutions, LLC ("NBS") for certain records related to fetal sexing, pregnancy examination, ovum pickup, embryo transfer, and ultrasound services performed on bovine and equine animals. A copy of that subpoena is attached for your convenience. The Board issued the subpoena pursuant to the authority granted to the Board under section 27(b) of the Veterinary Medicine Practice Act<sup>1</sup> ("VMPA"), 63 P.S. § 485.27(b). Section 27(b) provides in pertinent part:

*§ 485.27. Enforcement duties and powers*

\* \* \* \* \*

*(b) The board shall have the authority to issue subpoenas upon application of an attorney responsible for representing disciplinary matters before the board for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to ... compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation or hearing held or had by it. ... The board is authorized to apply to the Commonwealth Court to enforce its subpoenas.*

The investigative subpoena was personally served at your address on February 24, 2021 by Professional Conduct Investigator William C. King ("PCI King").

The subpoena required NBS to produce the subpoenaed records to PCI King within thirty (30) days of the date of service (i.e. by March 26, 2021). I have been advised that you have neither produced the records nor otherwise contacted PCI King regarding the subpoena.

<sup>1</sup> The act of December 27, 1974, P.L. 995, No. 326, as amended, 63 P.S. §§ 485.1-485.33



As noted in section 27(b) above, this office is authorized to apply to the Commonwealth Court to enforce the Board's subpoena; as part of any enforcement action, this office could also seek other equitable relief such as attorney fees. However, prior to proceeding with the filing of an adversarial action to enforce the subpoena, this office has elected to make a final effort to obtain your voluntary compliance with the subpoena issued in these matters.

Please submit all documentation required by the subpoena such that they are received by PCI King no later than May 7, 2021. Failure to produce the subpoenaed documentation by that date will result in further action by this office to enforce the subpoena.

Sincerely,



Peter D. Kovach  
Prosecuting Attorney  
Commonwealth of Pennsylvania  
Department of State

PDK/pdk

Enclosure:            Investigative subpoena duces tecum



CASE NOS. 20-57-002388  
20-57-002391  
20-57-002557

**COMMONWEALTH OF PENNSYLVANIA**  
**DEPARTMENT OF STATE**  
**BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS**  
P.O. Box 69521  
Harrisburg, Pennsylvania 17106-9521

**INVESTIGATIVE**  
**SUBPOENA DUCES TECUM**

**Re: Ethan Wentworth, Rusty Herr, and  
Dylan Brantner**

**TO:** Custodian of Records  
NoBull Solutions, LLC  
105 Church Rd  
Airville, PA 17302

**GREETINGS:**

**YOU ARE HEREBY COMMANDED**, that setting aside all manner of business and excuses whatsoever, to render **within 30 days of receipt hereof** to the server of this subpoena true and correct copies of the following records:

- Complete records of all fetal sexing, pregnancy examination, ovum pickup, embryo transfer, and ultrasound services performed on bovine and equine animals in the Commonwealth of Pennsylvania by NoBull Solutions, LLC (“NBS”), its owners, officers, directors, managers, employees, agents, and/or independent contractors (“NBS workers”) from October 2019 through December 1, 2020. Records include, but are not limited to: client lists; patient lists; exam notes; treatment notes; ovum pickup notes and logs; embryo transfer notes and logs; ultrasound notes and ultrasound images; client and/or patient intake forms; billing invoices; and NBS worker duty assignments related to the above services in whatever form maintained. Records related to removal only of an embryo from a bovine or equine in the Commonwealth of Pennsylvania which is owned solely by NBS, its owners, officers, directors, managers, or employees need not be produced. Records related to implantation of an embryo into a bovine or equine in the Commonwealth of Pennsylvania not owned solely by NBS, its owners,

officers, directors, managers, or employees shall be produced. Records related to embryo removal from, or implantation into, a bovine or equine in the Commonwealth of Pennsylvania by independent contractors of NBS shall be produced.

- a copy of all contracts, memoranda, notes, or other written agreements with licensed veterinarian(s) who have agreed to provide indirect supervision while NBS workers implant any embryo into an animal in the Commonwealth of Pennsylvania

**This subpoena has been issued at the request of:**

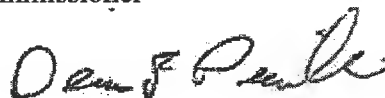
Peter D. Kovach | Prosecuting Attorney  
Office of General Counsel | Department of State | Prosecution Division  
2601 North 3rd St.  
P.O. Box 69521  
Harrisburg, PA 17106-9521  
Phone: 717.783.7200 | Fax: 717.787.0251 | E-mail: pkovach@pa.gov

**WITNESS** my hand and the official seal of the Commissioner of Professional and Occupational Affairs this 16<sup>th</sup> day of February, 2021.



---

K. Kalonji Johnson  
Commissioner



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For the State Board of Veterinary Medicine  
Dean F. Picarella, Esquire





April 23, 2021

Dear Deena Parmelee:

The following is in response to your request for proof of delivery on your item with the tracking number:  
**9171 9690 0935 0226 5678 34.**

#### Item Details

<b>Status:</b>	Delivered, Left with Individual
<b>Status Date / Time:</b>	April 21, 2021, 12:30 pm
<b>Location:</b>	AIRVILLE, PA 17302
<b>Postal Product:</b>	First-Class Mail®
<b>Extra Services:</b>	Certified Mail™ Return Receipt Electronic

#### Recipient Signature

Signature of Recipient:	BB Covid 19
Address of Recipient:	105 Church

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,  
United States Postal Service®  
475 L'Enfant Plaza SW  
Washington, D.C. 20260-0004

