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WALLMANS
LAWYERS

16/08/10
UF

Our Ref: SFD:djm:102106

13 August 2010

The Proper Officer
Veterinary Surgeons' Board of South Australia
185 Fullarton Road
DULWICH SA 5065

Dear Sir/Madam

GRAEME JOHN MOONEY V THE VETERINARY SURGEONS' BOARD OF SOUTH AUSTRALIA – DISTRICT COURT OF SOUTH AUSTRALIA ACTION NO 1581 OF 2010

Please find attached¹ by way of service Notice of Appeal filed in the District Court of South Australia today, Friday 13 August 2010.

Yours faithfully
WALLMANS LAWYERS


STEPHEN DICKINSON
Special Counsel
Direct Line: 08 8235 3020
Email: stephen.dickinson@wallmans.com.au

Enc
¹ Notice of Appeal

FORM 1

FDN

IN THE DISTRICT COURT OF SOUTH AUSTRALIA

No.

10 1581 BETWEEN

GRAEME JOHN MOONEY, Appellant

and

THE VETERINARY SURGEONS' BOARD OF SOUTH AUSTRALIA, Respondent

NOTICE OF APPEAL

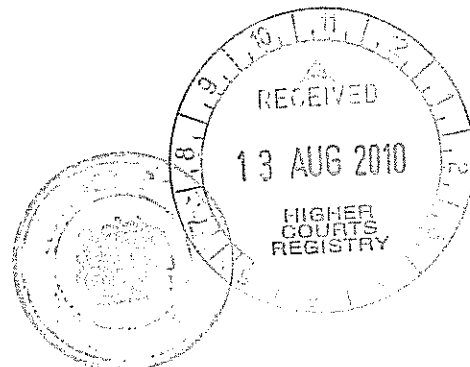
Filed on behalf of the Appellant, Graeme John Mooney by Wallmans Lawyers:

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L Code: L299
P Code: P7963

If the above addresses are not the address for service under Rule 58, state the addresses for service.

Settled by: Stephen Dickinson

Date and time of filing or
transmission:



NOTICE OF APPEAL

The Appellant, Graeme John Mooney, appeals to a Master or Judge of the District Court of South Australia against the Decision on Penalty of the Veterinary Surgeons' Board of South Australia dated 15 July 2010.

Date of Decision	15 July 2010
Judicial Officer/Tribunal appealed from:	The Veterinary Surgeons' Board of South Australia
File No of Court appealed against:	Not Applicable
Respondent's address:	185 Fullarton Road, Dulwich SA 5065

Orders appealed against:

The appeal is against the whole of the penalty ordered by the Veterinary Surgeons' Board of South Australia on 15 July 2010 as follows:

This Board has decided to give Dr. Mooney one last opportunity to again practice as a Veterinary Surgeon, after serving this time a substantial period of suspension from practice. There can be no question of a suspension of this penalty on this occasion.

It is understood that Dr. Mooney is already facing a period of suspension from practice of nine (9) months. He clearly must serve that period of suspension at the outset.

On these complaints, the Board has decided, pursuant to Section 62(4)(f) to disqualify Dr. Mooney from being registered on the General Register for a period of five (5) years from the date hereof, which period includes the nine (9) months period of suspension previously ordered. He is also precluded from applying for reinstatement of his registration for the same period.

Dr Mooney is also ordered to pay the Registrar's costs and disbursements relating to the prosecution of these Complaints fixed at \$15,000. This sum must be paid to the Registrar in full by 31st December 2011.

At the expiry of the five (5) year period of suspension, should Dr. Mooney seek re-registration to again practice as a veterinary surgeon in South Australia, such application will be considered by the Board of the day and would clearly be subject to the provisions of the Veterinary Practice Act including, but not limited to, Sections 35 and 43 therefore, (or such other legislation as may then be applicable). Such re-registration, if granted, would be, in any event, subject to the following conditions:

1. *Prior to making any application for reinstatement,*
 - 1.1 *At his own expense, Dr. Mooney must undergo a course approved by the Board (involving both training and assessment components) in proper veterinary record keeping in accordance with the prevailing standards in the veterinary profession and any applicable Code of Professional Conduct and in compliance with the Controlled Substances Act and all and any other applicable legislation, and provide to the Board evidence of successful completion of such training.*
 - 1.2 *At his own expense, Dr. Mooney is to undergo a course approved by the Board (involving both training and assessment components) in*

euthanasia procedures and protocols and provide to the Board evidence of successful completion of such training.

- 1.3 *At his own expense, Dr. Mooney is to undergo a course approved by the Board (involving both training and assessment components) as to the professional and legal obligations of a Veterinary Surgeon, with particular reference to all applicable legislation and the Code of Professional Conduct applicable to Veterinary Surgeons in South Australia at the time.*
2. *Following upon any reinstatement of his right to practice,*
 - 2.1 *Dr Mooney must ensure that copies of all and any orders for S4 and S8 drugs placed by any practice in which Dr. Mooney works as a Veterinary Surgeon are provided to the Veterinary Surgeons' Board on a monthly basis for review.*
 - 2.2 *A random audit of Dr. Mooney's medical records with reference to prevailing professional standards (including, but not limited to any applicable Code of Professional Conduct promulgated and/or endorsed by the Board) and applicable legislation will be conducted by an inspector appointed by the Board on three occasions in the first twelve months of this resumed practice, which audit is to be at Dr. Mooney's expense, to be charged at commercial rates.*
 - 2.3 *Dr. Mooney must practice only under the supervision of a registered Veterinary Surgeon who has been in practice for at least five (5) years, upon the undertaking of that Veterinary Surgeon to provide to the Veterinary Surgeons' Board of South Australia quarterly reports in relation to the ongoing supervision of Dr. Mooney. Such supervision will cease at the expiry of twelve (12) months, provided all reports of the supervising practitioner are to be effect that Dr. Mooney has practised in accordance with the relevant legislation and prevailing professional standards. If the reports of the supervising practitioner do not confirm this, the Board may extend the period of supervision for such period as it sees fit following consideration of the supervising practitioner's account for the deficiencies in Dr. Mooney's practice, or take such action as the Registrar may consider appropriate.*

The grounds of appeal are:

1. That the penalty, in the circumstances of the case and on the evidence available, was manifestly excessive.

PARTICULARS

- 1.1. The Board expressly stated that it considered it inappropriate to impose deregistration, however proceeded to impose a penalty which had the same affect; and
- 1.2. The Board failed to have proper and adequate regard to the:
 - 1.2.1. fact that the Appellant's veterinary practice is the only equine practice on the Eyre Peninsula; and
 - 1.2.2. the consequent detrimental impact that the penalty has had/will have on both the community and the welfare of animals throughout the Eyre Peninsula.

2. That the order for costs made in favour of the Registrar was manifestly excessive.

PARTICULARS

- 2.1. The Board failed to have regard to the submissions made on behalf of the Appellant on the question of costs.
- 2.2. The Board failed to give adequate reasons for:
 - 2.2.1. The order for costs made in favour of the Registrar; and
 - 2.2.2. The quantum thereof.

The appellant seeks the following orders:

1. That the Court amend or set aside the penalty so ordered.
2. That the Court amend or set aside the order for costs made in favour of the Registrar of the Veterinary Surgeons' Board of South Australia.
3. That the Respondent pay the Appellant's costs of the Appeal.

WALLMANS LAWYERS

Per:

Solicitors for the Appellant, Graeme John Mooney

- NOTES:**
- 1 This notice is to be accompanied by Form 1, duly completed.
 - 2 The party or parties appealing must serve a copy of the notice of appeal on the Registrar or other proper officer of any other Court appealed from and the respondent(s) forthwith, as required by Rule 284.
 - 3 If this document is filed electronically, the initials and name(s) of the issuing Solicitor or Party/Parties should be typed in, in lieu of a signature.

