

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
Heber M. Wells Building  
160 East 300 South  
P O Box 146741  
Salt Lake City UT 84114-6741  
Telephone: (801) 530-6628

---

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

---

IN THE MATTER OF THE LICENSE OF :  
**RICHARD LAZONE BAGLEY** : **NOTICE OF AGENCY ACTION**  
TO PRACTICE AS A :  
VETERINARIAN :  
IN THE STATE OF UTAH : **Case No. DOPL-2012-219**

---

THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING TO  
Richard Lazone Bagley ("Respondent"),  
Cedar City UT 84720:

The Division of Occupational and Professional Licensing ("the Division") hereby files this notice of agency action. Said action is based on the Division's verified petition, a copy of which is attached hereto and incorporated herein by reference.

The adjudicative proceeding designated herein is to be conducted on a formal basis. It is maintained under the jurisdiction and authority of the Division as set forth in §58-1-401(2). **Within thirty (30) days of the mailing date of this notice, you are required to file a written response with this Division.** The response you file may be helpful to clarify, refine or narrow the facts and violations alleged in the verified petition.

Your written response, and any future pleadings or filings, which are a part of the official file in this proceeding, should be mailed or hand delivered to the following:

**Signed originals to:**  
Division of Occupational  
and Professional Licensing  
Attn: Disciplinary Files  
**(by mail):** PO Box 146741  
Salt Lake City UT 84114-6741  
**(by hand delivery):**  
160 East 300 South, 4th floor  
Salt Lake City, Utah

**A copy to:**  
Laurie Noda  
Assistant Attorney General  
Heber M. Wells Building  
**(by mail):** PO Box 140872  
Salt Lake City UT 84114-0872  
**(by hand delivery):**  
160 East 300 South, 5th floor  
Salt Lake City, Utah

[

You may represent yourself or, at your own expense, be represented by legal counsel at all times while this action is pending. Your legal counsel shall file an entry of appearance with the Division after being retained to represent you in this proceeding. Until that entry of appearance is filed, the Division, its counsel, and the presiding officer will communicate directly with you.

The presiding officer for the purpose of conducting this proceeding will be J. Steven Eklund, Administrative Law Judge, Department of Commerce, who will preside over any evidentiary issues and matters of law or procedure. If you or your attorney may have questions as to the procedures relative to the case, Judge Eklund can be contacted in writing at P O Box 146701, Salt Lake City, UT 84114-6701; by telephone at (801) 530-6648; or by electronic mail at [seklund@utah.gov](mailto:seklund@utah.gov).

Pursuant to a determination previously made by the Division which generally governs proceedings of this nature, the Division is providing the relevant and nonprivileged contents of its investigative file to you, concurrent with the issuance of this notice.

The Division is also providing its witness and exhibit list to you, concurrent with the issuance of this notice. The witness list identifies each individual the Division expects to present as a witness and includes a brief summary of their testimony at the hearing. The exhibit list identifies each anticipated document which the Division expects to present at the hearing. The Division is also providing a copy of any document to you that has not been otherwise made available to you through the investigative file.

Concurrent with your filing of a written response, you should provide to the Division a copy of any documents you have which relate to this case. Further, you should provide your witness and exhibit list to the Division. The witness list should identify each individual you expect to present as a witness and include a brief summary of their anticipated testimony. The exhibit list should identify each document you expect to present at the hearing.

If you fail to file a response within the 30 days allowed or fail to attend or participate in any scheduled hearing, Judge Eklund may enter a default against you without any further notice to you.

1

After the issuance of a default order, Judge Eklund may cancel any prehearing conference or hearing scheduled in the Division's verified petition, conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and determine all issues in the proceeding.

If you are held in default, the maximum administrative sanction consistent with the verified petition may be imposed against you. That sanction in this case is revocation of license.

Counsel for the Division in this proceeding is Laurie Noda, Assistant Attorney General, State of Utah. Ms. Noda may be contacted in writing at P.O. Box 140872, Salt Lake City, UT 84114-0872 or by telephone at (801) 366-0310. You may, subject to the deadlines established herein, attempt to negotiate a settlement of this proceeding by contacting counsel for the Division.

Any stipulation in lieu of a response should be jointly signed by yourself and the Division and filed within the time that a response would otherwise be due. Alternatively, any stipulation to resolve this case in lieu of the hearing shall be jointly signed by the parties and filed no later than one (1) week prior to the scheduled hearing.

Unless this case is resolved by a stipulation between the parties in lieu of the filing of a response, a prehearing conference will be conducted as follows:

**Monday, July 9, 2012, 10:00 a.m. by teleconference**

During the conference, Judge Eklund will address and resolve any further discovery issues. A schedule for the filing of any prehearing motions shall also be established.

Subject to the Department of Commerce Administrative Procedures Act Rules which govern this proceeding, the evidentiary hearing shall be conducted within 180 calendar days from the date of issuance of the notice of agency action.

You are entitled by law to an evidentiary hearing to determine whether your license to practice as a veterinarian in the State of Utah should be revoked, suspended or subjected to other disciplinary action. Unless otherwise specified by the Director of the Division, the Veterinary Board will serve as fact finder in the hearing. **The hearing will be conducted as follows:**

**Thursday, August 23, 2012, 9:00 a.m. Conference Room TBD  
4th floor  
160 East 300 South  
Salt Lake City, Utah**

During the evidentiary hearing, you will have the opportunity to present an opening statement, submit evidence, conduct cross-examination, submit rebuttal evidence and offer a closing statement to the fact finder. After the close of the hearing, the Board will take the matter under advisement and then submit its Findings of Fact, Conclusions of Law and a Recommended Order to the Division for its review and action.

Dated this 15<sup>th</sup> day of May, 2012.

W. Ray Walker  
W. Ray Walker  
Regulatory & Compliance  
Officer



Laurie L. Noda (USB No. 4723)  
Assistant Attorney General  
MARK L. SHURTLEFF (# 4666)  
Utah Attorney General  
Commercial Enforcement Division  
160 East 300 South, 5th Floor  
Box 140872  
Salt Lake City, UT 84114-0872  
Telephone (801) 366-0310

---

BEFORE THE DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

---

IN THE MATTER OF THE LICENSE OF <b>RICHARD LAZONE BAGLEY, DVM</b> TO PRACTICE AS A VETERINARIAN IN THE STATE OF UTAH	PETITION  CASE NO. DOPL 2012-219
---	--

The Division of Professional Licensing of the Department of Commerce of the State of Utah (the Division), by and through its counsel, Laurie L. Noda, Assistant Attorney General, submits the following petition against RICHARD LAZONE BAGLEY, DVM, (Respondent)

**PRELIMINARY STATEMENT**

These claims were investigated by the Utah Division of Occupational and Professional Licensing upon information that Richard Lazone Bagley, DVM, has engaged in acts and practices which constitute violations of the Division of Occupational and Professional Licensing Act, Utah Code Ann §§ 58-1-101 to 58-1-501

The allegations against Respondent in this Petition are based upon information and belief arising out of that investigation

Each count in this Petition shall be deemed to incorporate by reference the allegations set forth in the other paragraphs of the Petition.

### **PARTIES**

1. The Division is a division of the Department of Commerce of the State of Utah and is established pursuant to Utah Code Ann § 13-1-2

2 Respondent is licensed by the Division to practice as a veterinarian under the Veterinary Practice Act, Utah Code Ann §§58-28-1 to 58-28-10 Respondent was first licensed to practice as a veterinarian and to administer and prescribe controlled substances in the State of Utah on or about December 3, 1975

### **STATEMENT OF ALLEGATIONS**

3. On or about September 2, 2011, the complainant took her dog, Monique, to Respondent for a check up. The complainant had no reason to believe that Respondent would sedate Monique, so she fed the dog prior to taking the dog to the clinic. The complainant left Monique with Respondent at the Mountain View Clinic without discussing sedation with anyone or agreeing to have the dog sedated or having the dog's teeth cleaned.

4 On September 2, 2011, Respondent cleaned Monique's teeth and sedated her, causing the dog to become ill, vomit, and aspirate the vomit Respondent later sent Monique home with the complainant along with antibiotics telling the complainant that the dog would be fine.

5. On September 2, 2011, the Respondent examined of the dog and found that the dog was suffering from an enlarged spleen and liver. Respondent failed to notify the dog owner of the results of the examination or recommended treatment Respondent further failed to provide

the complainant with information regarding post-anesthesia vomiting and aspiration

6. Monique's condition quickly worsened and the complainant took the dog to the Color Country Veterinary Clinic. An X-ray of the dog indicated the dog had air, fluid and food in her stomach and lungs. The dog was diagnosed with aspiration pneumonia. Monique died at Color Country Veterinary Clinic on September 3, 2011

7. Respondent's veterinary records indicate that Respondent informed the complainant that he was going to sedate Monique, however, the medical notes are chronologically out of sequence. The records had a late entry dated September 2, 2011, which stated that the complainant was informed that Monique would be sedated. In addition, the records failed to contain information regarding the name of the substance or amount used to sedate Monique.

8. The Division provided records from the case to a doctor of veterinary medicine for review. The reviewing veterinarian opined that Respondent had engaged in gross negligence and unprofessional conduct, and that Respondent failed to obtain consent from the complainant to sedate Monique. The reviewing veterinarian found no evidence that the complainant consented to Respondent sedating Monique.

#### **APPLICABLE LAW**

9. Utah Code Ann. § 58-1-401 provides grounds for the Division to take action on an occupational or professional license

- (1) The division shall refuse to issue a license to an applicant and shall refuse to renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a licensee who does not meet the the qualifications for licensure under this title.

(2) The division may refuse to issue a license to an applicant and may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the license of any licensee in any of the following cases

(a) the applicant or licensee has engaged in unprofessional conduct as defined by statute or rule under this title,

10 Utah Code Ann. § 58-1-501(2)(a)(b) and (g) defines unprofessional conduct to include the following:

(a) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title;

(b) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title;

\* \* \*

(g) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence

11. Utah Administrative Code Rule R156-28-502(3) further defines unprofessional conduct to include

(3) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board July, 1999, revised November 2003, which are hereby incorporated by reference, .

12 AVMA policy governing Owner Consent in Veterinary Medicine states as follows.

To the best of their ability and in a manner that would be understood by a reasonable person, veterinarians should inform animal owners or their

authorized agents of the diagnostic and treatment options available. They should also provide an assessment of the risks and benefits of such choices, a prognosis, and a documented estimate of the fees expected for the provision of services. The owners or authorized agents should indicate that their questions have been answered to their satisfaction, the information received by them has been understood, and that they are consenting to the recommended treatments or procedures

The consent of the owners or authorized agents should be provided in verbal or written form and should be documented in the medical record by the veterinarian or their staff member

13. Utah Code Ann. § 58-37-6(5)(b) provides in part as follows:

(I) Every physician, dentist, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription

**COUNT I**  
**UNPROFESSIONAL CONDUCT AS NEGLIGENCE**  
**FAILURE TO OBTAIN CONSENT**

14 Respondent failed to obtain consent from the dog owner for treatment of her dog, Monique, which included sedation/anesthesia or for teeth cleaning as described in paragraph 1. Respondent's failure to obtain consent involved gross negligence or a pattern of gross negligence as a veterinarian constituting unprofessional conduct under the provisions of Utah Code Ann 58-1-501(2)(a), (b) and (g), Utah Administrative Code Rule R156-28-502 and AVMA Policy governing Owner Consent in Veterinary Medicine, warranting appropriate sanction against his license in accordance with Utah Code Ann 58-1-401(2)(a)

1. That Respondent be adjudged and decreed to have engaged in the acts alleged herein,
- 2 That by engaging in the above acts, Respondent be adjudged and decreed to have violated the Division of Occupation and Professional Licensing Act and the Veterinary Practice Act;
3. That an Order be issued imposing an appropriate sanction of Respondent's veterinary license.

DATED this 9<sup>th</sup> day of May, 2012

MARK L SHURTLEFF  
UTAH ATTORNEY GENERAL

  
LAURIE L NODA  
Assistant Attorney General

VERIFICATION

STATE OF UTAH )  
 )  
 ) ss  
COUNTY OF SALT LAKE )

Vincent Garcia, first being duly sworn, states as follows:

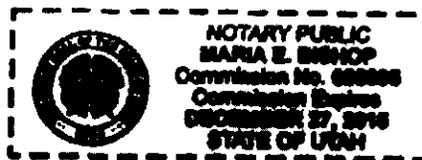
- 1. I am an Investigator for the Utah Division of Occupational and Professional Licensing and have been assigned to work on this case.
- 2. I have read the foregoing motion, including the section entitled "Statement of Allegations." All of the factual allegations contained in that "Statement of Allegations" section are true to the best of my knowledge, information and belief

DATED this 9<sup>th</sup> day of May, 2012.

*Vincent Garcia*  
\_\_\_\_\_  
Vincent Garcia

Subscribed and sworn to before me this 9<sup>th</sup> day of May, 2012.

*Janice Bishop*  
\_\_\_\_\_  
NOTARY PUBLIC



**COUNT II**

**UNPROFESSIONAL CONDUCT**

**FAILURE TO INFORM PET OWNER OF TREATMENT REGIMEN**

15. Respondent failed to notify the pet owner that during his examination of Monique that he found the dog to have an enlarged spleen and liver as described in paragraph 6. Respondent then failed to inform the pet owner of the treatment options regarding the enlarged spleen and liver and the costs and risks associated with the treatment regimen. Respondent's failure to inform the dog owner of the treatment regimen constitutes unprofessional conduct under Utah Code Ann. § 58-1-501(2)(a), (b) and (g), Utah Administrative Code Rule R156-28-502(3) and AVMA Policy governing Owner Consent in Veterinary Medicine warranting disciplinary action against his license under Utah Code Ann. § 58-1-401(2)(a).

**COUNT III**

**UNPROFESSIONAL CONDUCT**

**FAILURE TO KEEP RECORD OF ADMINISTERED DRUGS**

16. Respondent's records failed to contain information regarding the name of the substance or the amount used to sedate complainant's dog Monique as described in paragraph 6. Respondent failure to maintain a record of all drugs administered, dispensed, or professionally used by him to treat complainant's dog constitutes unprofessional conduct pursuant to Utah Code Ann. § 58-37-6(5)(b) warranting disciplinary action against his license under Utah Code Ann. § 58-1-401(2)(a).

WHEREFORE the Division requests the following relief