

**VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF AMHERST**

**Academy of Veterinary Homeopathy,**

**Plaintiff,**

**v.**

**Case No. \_\_\_\_\_**

**American Association of Veterinary State Boards,**

**Serve:**

**Dale J. Atkinson, registered agent**

**1466 Techny Road**

**Northbrook, Illinois 60062**

**Defendant**

**COMPLAINT**

The Academy of Veterinary Homeopathy ("AVH"), by counsel, alleges as follows for its complaint against the American Association of Veterinary State Boards ("AAVSB"):

1. The Academy of Veterinary Homeopathy is a Florida registered not-for-profit corporation, with its office located at P.O. Box 232282, Leucadia, California 92023-2282. Its purpose is to provide services for its member veterinarians and the public, including, *inter alia*, education, research, certification, referral resources and the establishment of standards of practice. It seeks to advance the science and practice of homeopathic medicine among licensed veterinarians.
2. On information and belief, the American Association of Veterinary State Boards is an Illinois registered not-for-profit corporation, with its office located at 380 West 22nd Street, Suite 101, Kansas City, Missouri 64108. It provides services for its member

state veterinary boards, which include, *inter alia*, a committee known as the Registry of Approved Continuing Education ("RACE"). According to the AAVSB Bylaws, "The RACE Committee shall oversee the development and implementation of the RACE program, which is intended to evaluate and approve providers and programs of continuing education in veterinary medicine." RACE-approved programs offered by approved RACE Providers are widely accepted by state veterinary boards in satisfaction of their continuing education mandates for licensed veterinarians. AAVSB conducts business in all fifty states.

### **COUNT I: BREACH OF CONTRACT**

3. The AVH became an "approved RACE Provider" in 2000 by entering into a contractual agreement with AAVSB, known as a "Provider Agreement," which involved paying a fee and indicating on an application form a willingness to accept certain terms, conditions and standards, and asserting certain qualifications and signing as a qualified representative. AAVSB then reviewed the application and indicated its acceptance by letter. This agreement was renewed at least four times, most recently March 12, 2009, and is still in effect. A copy of the 2009 Provider Agreement is attached hereto as Exhibit 1.
4. On February 8, 2009, the AVH submitted an offer to renew its approved RACE Provider status for an additional two years on the application form provided by AAVSB. The offer was signed in Monroe, Virginia, on behalf of AVH by Sidney H. Storozum, then RACE Chair of the AVH Conference Committee.

5. Consideration of \$100.00 was paid with the application by AVH to AAVSB, with AAVSB to function as an Approving Association with respect to continuing education programs from its approved RACE Providers.
6. Acceptance was made by email letter from AAVSB RACE Program Administrator, Karen Campbell, to Sidney H. Storozum on March 12, 2009, a copy of which is attached hereto as Exhibit 2.
7. In each year from 2000 to 2008, the AVH has held a continuing education conference, for which programs it has applied to RACE for approval of its continuing education ("CE") credits under its then current Provider Agreement. Each program application submitted stated clearly that the program subject matter was related to veterinary homeopathy, and each program was timely approved without further inquiry or requests for additional documentation of content by RACE. The approval notices contained the following or substantially similar language: "The American Association of Veterinary State Boards RACE has approved the program referenced above as meeting the Standards adopted by the AAVSB."
8. On July 26, 2009, the AVH submitted a Program Application, including the prescribed attachments and fee, to RACE for its "AVH 2009 Conference and Annual Meeting," to be held October 22 through 25, 2009, in order to secure RACE-approved CE credits for conference attendees. The Program Application, as submitted, was in all respects timely and complete, and contained the correct remittance.
9. On August 10, 2009, AAVSB emailed to AVH a "Sales Receipt" for the Program Application, dated July 30, 2009, containing the (standard) statement, "**Complete processing time is 3-4 weeks** from the time your completed application is received."

- (Emphasis original.) By separate email to AVH on August 10, Karen Campbell stated, "...the review process will begin right away."
10. On August 20, 2009, Karen Campbell emailed AVH, stating that the RACE committee reviewing the program wanted to examine "the presentations, handouts, course notes, reading lists, etc. that would expand on the content covered in those sessions." This was the first time in ten Program Applications submitted that such a request had been made.
  11. The speaker qualifications and the nature of the program subject matter for the 2009 AVH Conference were in all respects substantially similar to those which had been submitted and approved, without further inquiry, by RACE each of the nine previous years. In each of the Program Applications, the subject matter was listed as containing "veterinary homeopathy."
  12. On August 25, 2009, AAVSB was notified by email that Dr. Shelley Epstein had replaced Sidney H. Storozum as the designated contact for RACE. The request for additional supportive materials was complied with on August 27, 2009.
  13. On August 25, 2009, Dr. Epstein placed the AVH membership on notice, through its email list serve, the primary method of communicating with the membership, that the RACE review committee had taken a different stance on approving courses in veterinary homeopathy, and that prospective Conference attendees should inquire of their individual state regulatory boards as to whether they will recognize the Conference CE if RACE does not approve it. The AVH offered to assist its members in this regard and to file direct applications with some of the state boards.

14. On September 16, 2009, the RACE committee requested that AVH submit the manuscripts for the Conference Proceedings to the committee for review. This request, although most unusual, was complied with on September 21, 2009.
15. On October 14, 2009, eight days prior to the Conference start date and after receiving no communication from RACE on the status of the Program Application, Dr. Epstein made an email inquiry. Karen Campbell replied by email on October 19, 2009, "...the file is still with the committee and it will probably be another week or so. I appreciate your continued patience!"
16. On November 9, 2009, fifteen days after the end of the Conference, Dr. Epstein again inquired by email as to the status of the Program Application. Karen Campbell replied by email the same day, in pertinent part, "The committee has informed me that they will require some additional time to review this program and all of the materials.... I hope to have something more for you in the next several weeks and we thank you for your continued patience."
17. On November 17, 2009, the president and president-elect of the AVH sent a joint letter by email to Robyn Kendrick, AAVSB Executive Director, detailing the unusual course of events and unprecedented delay in connection with the RACE committee's review of the AVH Program Application. They requested that she look into the matter. Ms. Kendrick replied by email on November 19, 2009, that she would "add this item to the next AAVSB BOD meeting and will get back to you with a follow up."
18. On January 4, 2010, the AVH president sent an email to Ms. Kendrick, asking if she had any information on the status of the Program Application or if she could direct

AVH to someone for further action on the matter. It was now more than five months since the Program Application was submitted and more than two months after the end of the Conference.

19. On January 13, 2010, a letter from Ms. Kendrick, dated January 12, 2010, was received by Dr. Epstein and stated in pertinent part:

"The AAVSB Board of Directors, in consultation with the RACE Committee, has determined that the AVH 2009 program under consideration does not meet the Standards and, as such, the referenced program application for recognition is denied. Specifically, the RACE Standards in effect at the time of application require a program to 'build upon or refresh the participant in the standards for practice and courses as found in the curriculum of accredited colleges or schools of veterinary medicine or accredited veterinary technician programs.' (See: AAVSB RACE Standards Program Requirements 2006.) Because homeopathy is not currently taught in accredited colleges or schools of veterinary medicine, the applicant program does not meet the applicable RACE Standards."

20. The above-quoted "AAVSB RACE Standards Program Requirements 2006" are reasonably subject to more than one interpretation. By applying the identical "AAVSB RACE Standards Program Requirements 2006" to substantially similar AVH Program Applications in 2006, 2007 and 2008 and granting program approval, and then denying approval for the 2009 Program Application, AAVSB has breached its Provider Agreement contract as a matter of "course of dealing."
21. Alternatively, by applying the identical "AAVSB RACE Standards Program Requirements 2006" to substantially similar AVH Program Applications in 2006, 2007 and 2008 and granting program approval, AAVSB has effectively waived its legal right to deny approval premised on inconsistencies between its Standards and a the 2009 Program Application under the present Provider Agreement contract.
22. Alternatively, by entering into a renewal Provider Agreement contract on March 12, 2009, with an organization plainly concerned only with "veterinary homeopathy," and

by approving nine consecutive Program Applications whose subject matter was listed as "veterinary homeopathy," and by stating in its approval letters, "The American Association of Veterinary State Boards RACE has approved the program referenced above as meeting the Standards adopted by the AAVSB," AAVSB has made material representations upon which AVH could and did reasonably rely in submitting its program application to AAVSB for its 2009 Conference. AVH has been detrimentally affected by its reliance on these representations and suffered damages. AAVSB is therefore estopped in equity from now asserting that "veterinary homeopathy" does not meet AAVSB Standards and in denying approval for a Program Application on the basis set forth in Paragraph 19. By doing so, AAVSB has placed itself in breach of contract.

## **COUNT II: FRAUD IN THE INDUCEMENT OF CONTRACT**

23. Plaintiff re-alleges paragraphs 1 through 22.
24. Dr. Richard Pitcairn, by reputation a world-renowned and well-respected veterinary homeopath, was also an approved RACE Provider. On February 19, 2009, 21 days prior to acceptance of AVH's renewal contract as an Approved Provider, Karen Campbell notified Dr. Pitcairn by email that RACE declined to approve his course entitled "Annual Meeting in Veterinary Homeopathy 2009." The reason given was failure to meet the same RACE Standards cited in Paragraph 19. The rejection of a CE offering in veterinary homeopathy because homeopathy is not "found in the curriculum of accredited colleges or schools of veterinary medicine" represented a 180-degree policy shift by AAVSB.

25. AAVSB knowingly misrepresented its new position when it invited and subsequently accepted AVH's offer to renew its Provider Agreement to be an approved RACE Provider of CE in the field of veterinary homeopathy.
26. AVH relied and acted upon AAVSB's representations when it 1) submitted its Provider Agreement application/offer and fee, 2) planned to submit program applications for its 2009 and 2010 annual conferences, and 3) did, in fact, submit a program application and fee for its 2009 annual conference. Consequently, other methods of gaining approval for its 2009 conference from the individual state regulatory boards were not pursued by AVH and its membership until it became clear that AAVSB would breach its Provider Agreement.
27. AAVSB knows that AVH and other approved RACE Providers rely upon the RACE program, which was created to streamline the CE approval process in veterinary medicine and to attract the participation of both its member state regulatory boards and providers of CE programs.
28. Alternatively, AAVSB was, at a minimum, negligent in representing that it could and would fulfill its contract obligation as the "Approving Association" for CE offered by AVH when it had already begun implementing a policy that precludes approval of CE programs in veterinary homeopathy. The program content of AVH CE programs has at all times been unambiguously represented as "veterinary homeopathy."
29. AAVSB's misrepresentations in the contracting process and its subsequent breach of contract were substantial factors in causing financial damages and other consequential damages to AVH.



30. The materiality and degree of falsity of AAVSB's representations demonstrate malice on the part of AAVSB or, alternatively, on the part of one or more of its employees or other agents.

THEREFORE, AVH demands compensation from AAVSB in the amount of \$10,000.00 to cover direct and consequential damages, including but not limited to loss of conference participant revenue, for the breach of the Provider Agreement contract, and \$60,000.00 in punitive damages for fraud in the inducement to renew the Provider Agreement contract. AVH further asks for an award equal to the costs, disbursements and expenses of bringing this action, including reasonable attorneys' fees and expenses, and for such other relief as this Court may deem just and proper.

ACADEMY OF VETERINARY HOMEOPATHY

By \_\_\_\_\_  
Of Counsel

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