



State of Utah
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

Michael O. Leavitt
Governor
Douglas C. Borba
Executive Director
Mark J. Griffin
Division Director

160 East 300 South
Box 146760
Salt Lake City, Utah 84114-6760
(801) 530-6600 • FAX (801) 530-6980
NET: brsec.security@email.state.ut.us

April 29, 1997

Tiffany L. Seevers
Baird, Holm et al
1500 Woodmen Tower
Omaha, NE 68102-2068

Re: Professional Veterinary Products, Ltd. File # 5-8992-50/A60850-50

Dear Ms. Seevers:


This letter is in response to your letter dated April 14, 1997, wherein you requested the Division of Securities ("Division") issue a No-Action Letter regarding the proposed offer and sale of shares of "stock" by Professional Veterinary Products, Ltd., ("PVP"), without complying with the registration requirements and/or exemption filings under the Utah Uniform Securities Act ("Act").

Based on the facts presented in your letter, and in reliance upon your opinion as counsel, the Division will not recommend any enforcement or administrative action should the transactions proceed as outlined in your letter. To avoid unnecessary restatement or summarization of the facts set forth in your letter, the Division's response is attached to a photocopy of your letter.

This response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the Division's opinion on enforcement or other administrative actions.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this No-Action Letter relates only to the referenced issuer and stock and will have no value for future similar offerings and does not absolve any party involved from complying with the anti-fraud provisions contained in § 61-1-1 of the Act.

Very truly yours,


S. Anthony Taggart
Assistant Director

SAT/saa



DERYL F. HAMANN
JERROLD L. STRASHEIM
GERALD P. LAUGHLIN
JOHN S. ZEILINGER*
GARY W. RADIL
KENT O. LITTLEJOHN
MICHAEL G. LESSMANN
ALEX M. CLARKE*
CHARLES J. ADDY*
PAUL SCOTT DYE
RICHARD J. PEDERSEN
THOMAS E. JOHNSON
MICHAEL L. SULLIVAN
DAVID M. PEDERSEN*
WILLIAM G. DITTRICK
KIRK S. BLECHA*
RONALD C. JENSEN*
JOHN R. HOLDENRIED*
JOHN P. HEIL
STEVEN C. TURNER
SHARON R. KRESHA
JONATHAN R. BREUNING*
GARY N. CLATTERBUCK
RICHARD E. PUTNAM
DENNIS J. FOGLEND
TIMOTHY V. HAIGHT*
TERRENCE L. MICHAEL
TRUDY S. BREDTHAUER

Law Offices
**Baird, Holm, McEachen,
Pedersen, Hamann & Strasheim**

1500 WOODMEN TOWER

Omaha, Nebraska 68102-2068

TELEPHONE 402 344-0500

FACSIMILE 402 344-0588

WRITER'S DIRECT DIAL NUMBER

(402) 636-8329

MARY L. SWICK
THOMAS O. ASHBY*
R.J. STEVENSON*
STEVEN M. MAUN
JILL R. ACKERMAN
BARBARA E. PERSON*
LAWRENCE E. KRITENBRINK
CAROL C. KNOEPFLER*
STEVEN D. DAVIDSON
FRANK J. REIDA
KELLY R. DAHL
CYNTHIA A. RISMILLER*
TIFFANY L. SEEVERS*
JULIE A. KNUTSON*
T. PARKER SCHENKEN*
BRUCE R. GERHARDT*
SCOTT P. MOORE*
KURT R. ERSKINE
JON E. BLUMENTHAL
JENNIFER L. GILG

RETIRED
KENNETH B. HOLM
CLEMENT B. PEDERSEN
EDMUND D. MCEACHEN

*ALSO ADMITTED IN IOWA

April 14, 1997

Director of Securities Division
160 East 300 South
Salt Lake City, Utah 84111

Re: No Action Request/Professional Veterinary Products, Ltd.

Dear Sir or Madam:

Pursuant to my conversation with a representative of the Utah Securities Division (the "Division"), this letter is to request a No Action letter from the Division with respect to the issuance of shares of "stock" of Professional Veterinary Products, Ltd. ("PVP") in the State of Utah. It is our opinion that the "stock" of PVP does not constitute a "security" under Section 61-1-13(22) of the Utah Uniform Securities Act (the "Act"), which defines "security," and thus PVP need not comply with registration requirements and/or exemption filings under the Act. The factual representations and legal arguments supporting our opinion, as required by Rule 164-25-5, are addressed fully in our letter to the U.S. Securities and Exchange Commission ("SEC") dated June 27, 1996, which letter is attached hereto as part of Exhibit A and incorporated herein by this reference. In response to that letter, the SEC issued PVP a No Action letter dated July 12, 1996, which is also attached as Exhibit A. We believe that the federal law and analysis thereof set forth in our letter to the SEC, as well as the SEC's response, govern this matter because Section 61-1-27 of the Act states that "[t]his chapter may be so construed as to . . . coordinate the interpretation and administration of this chapter with the related federal regulation."

This position is supported by a recent no-action letter issued by the Division. See *Re: WestMed Physician Network, Inc.*, 1996 Utah Sec. No-Act. LEXIS 2 (July 25, 1996). In *Re: WestMed Physician Network, Inc.*, the Division granted a no-action letter regarding the proposed offer and sale by Westmed Physician Network, Inc. for earned membership units in WestMed without complying with the registration and prospectus delivery requirements of the Act. In the underlying correspondence, it was noted that the definition of security contained in Section 61-1-13(22) of the Act is not materially different from the one contained in Section 2(1) of the

Securities Act of 1933 (the "1933 Act").

Accordingly, the Utah courts have relied on federal case law interpreting Section 2(1) of the 1933 Act in order to interpret the term "security" as contained in Section 61-1-13(22) of the Act. *Payable Accounting Corp. v. Utah Securities Commission ex rel. McKinley*, 667 P.2d 15 (Utah 1983). This position is supported by Section 61-1-27 of the Act which provides, "This chapter may be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to co-ordinate the interpretation and administration of this chapter with the related federal regulation."

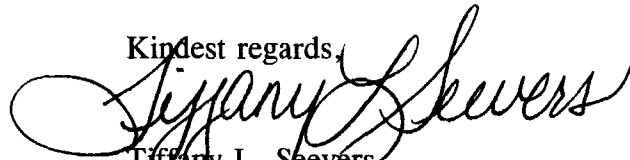
Id. at 21. See also *Re: Physician Management Company of Utah, L.C.*, 1996 Utah Sec. No-Act. LEXIS 1 (March 18, 1996). The characteristics of the "membership units" proposed to be sold in *WestMed* are strikingly similar to the characteristics of PVP "stock." The *WestMed* membership units (i) do not and cannot pay dividends, (ii) are not negotiable or freely transferable and, in fact, member agreements contain a prohibition of any sale or transfer of the membership units other than back to the company, (iii) are not allowed to be pledged or hypothecated, and (iv) have no expectation of profit. As you will note from the attached Exhibit A, the PVP "stock" does not possess the characteristics of a "security." On these grounds, we request that the Division grant PVP a no-action letter.

Pursuant to the Division's request, we note that of the approximately 26 states to which we have made a similar request and received a response, 21 of those states have granted a no-action letter. Of the states that did not grant a no-action letter, the majority of them have a previous relationship with PVP and desired to continue to receive exemption notices from PVP, despite the fact that some of them stated outright that PVP stock is not a security under their state laws.

To the best of our knowledge, there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth herein except for pending requests similar to this one in other jurisdictions and/or exemption filings in such jurisdictions. PVP stock has not been sold in Utah as of this date.

Per your request, enclosed is a check in the amount of \$120.00 made payable to the Utah Division of Securities to cover the costs associated herewith. Please call me if you have any questions. We look forward to hearing from you in the near future.

Kindest regards,



Tiffany L. Seevers
FOR THE FIRM

TLS/kkd
Enclosure

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