

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,**

COMPLAINANT,

V.

CASE NO. 0121A

**GARY S. BROWN, DVM,
VETERINARIAN LICENSE No. 8430,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Veterinary Medicine (“Board”) and Gary S. Brown, DVM (“Respondent”) for the purpose of agreeing to disciplinary action which shall be taken against Respondent in the above-referenced matter. As a means of compromise, the Board and Respondent hereby agree to resolve this matter by and through a voluntary agreement and consent to disciplinary action, with consideration given to appropriate safeguards for protection of the public.

WHEREAS, Respondent acknowledges that the Board may file a Statement of Charges alleging that he has violated certain provisions of W. Va. Code §§ 30-10-1 *et seq.* and W. Va. Code R. §§ 26-1-1 *et seq.*, and proceed to a hearing and seek disciplinary action in this matter.

WHEREAS, Respondent hereby waives the filing of a formal Statement of Charges and the parties mutually desire to settle this matter without further prosecution and a formal hearing.

WHEREAS, the Board agrees and acknowledges that this agreement is a compromise of claims disputed by Respondent.

THEREFORE, it is hereby STIPULATED and AGREED between the undersigned parties that this matter be settled and resolved, the parties having reached an understanding concerning the proper disposition of the matter in controversy, and the Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT

1. Respondent is a licensee of the Board, holding License No. 8430, and at all times relevant, held an active license with the Board and practiced veterinary medicine in the State of West Virginia.

2. On or about January 20, 2021, the Board received a written complaint and supporting documentation from Calvin S. Green (“Mr. Green”) regarding the veterinary care that his dogs “Puffin” and “Ziggy” received from Respondent.

3. Mr. Green reports in his complaint that on October 9, 2020, he brought Puffin and Ziggy to Animal Care Center, PLLC, to inquire about having them neutered and spayed. Mr. Green alleges that during that appointment, Respondent recommended that Puffin and Ziggy each have a gastropexy procedure at the same time they were neutered and spayed, and that Respondent explained how the procedure would benefit larger dogs, such as Puffin and Ziggy. Mr. Green further alleges that an employee of Animal Care Center, PLLC, informed him that as long as the gastropexy procedure was completed at the same time the dogs were neutered and spayed, there would not be any additional charges for the gastropexy procedure.

4. On November 10, 2020, Puffin and Ziggy were neutered and spayed, and each had the gastropexy procedure. Mr. Green alleges that he received a bill for \$630.00 for Puffin’s gastropexy procedure and \$740.00 for Ziggy’s gastropexy procedure. Mr. Green alleges that he paid his entire bill so that he could bring his dogs home with him, but that immediately upon

returning home, he called Animal Care Center, PLLC, and spoke with Dr. Danny Montgomery to dispute that he was charged for the gastropexy procedure. Dr. Montgomery referred Mr. Green to Respondent, who offered to discount Mr. Green's bill \$125.00 per dog, for a total of \$250.00 discount for the gastropexy procedures. Mr. Green refused Dr. Respondent's offer and on November 13, 2020, Mr. Green referred the instant matter to the West Virginia Office of the Attorney General's Consumer Protection Division.

5. In response to an inquiry from the Consumer Protection Division, on or about November 30, 2020, Respondent provided a statement to Julie A. Boggess, Mediator with the Consumer Protection Division. In his response, Respondent provided a chronological sequence of the events he maintained occurred concerning the instant matter. Respondent stated that on October 9, 2020, he examined Puffin and Ziggy and explained the gastropexy procedure to Mr. Green and why he recommended it for the dogs. Respondent noted that he performed the gastropexy procedure on Puffin and Ziggy on November 10, 2020, at the same time they were neutered and spayed.

6. Respondent noted that in the evening of November 10, 2020, he received a call from Dr. Montgomery during which Dr. Montgomery informed Respondent that he had spoken with Mr. Green and that Mr. Green was upset with the charges for the care of his dogs. Thereafter, on November 11, 2020, Respondent called Mr. Green to discuss the matter. Respondent maintained that Mr. Green stated that an employee of Animal Care Center, PLLC, told him that the gastropexy procedure could be performed at the same time his dogs were neutered and spayed for no additional charge. Respondent stated that he explained to Mr. Green that the employee had been employed with Animal Care Center, PLLC, for a couple of years and that although he suspected that she informed Mr. Green that the gastropexy procedure could be performed at the

same time the dogs were neutered and spayed, Respondent did not believe that she would represent that the gastropexy would be without additional cost.

7. After looking into the matter more, on November 12, 2020, Respondent spoke with Mr. Green and offered to refund Mr. Green's bill \$125.00 per dog, for a total of \$250.00 discount for the gastropexy procedures. Mr. Green refused Respondent's offer and countered that the only fair resolution was for Respondent to refund Mr. Green the charges for the gastropexy procedure for each dog, a total of \$1,370.00. Respondent informed Mr. Green that he was not inclined to refund the entire cost of the gastropexy procedure, as he did not believe his staff informed Mr. Green that there would be no additional charges for the procedure. Respondent stated that he would interview his staff again and would be back in touch with Mr. Green either that evening or the next morning. Respondent maintained that Mr. Green informed him "unless [the matter] was resolved by tomorrow, I will be going to the Better Business Bureau and every social media outlet to trash your business."

8. On November 13, 2020, Respondent interviewed his staff again. After doing so, Respondent concluded that Mr. Green was an informed client about the procedures that he elected to have performed on his dogs. Also on November 13, 2020, Mr. Green contacted Animal Care Center, PLLC, while Respondent was in surgery and left a message in which he stated that if the matter was not resolved by the end of the day, Mr. Green would take his own actions. Respondent stated that he returned Mr. Green's call on November 13, 2020 at approximately 6:00 p.m., and Mr. Green informed him that he had already filed a complaint with the Attorney General's office, Better Business Bureau, and the state veterinary board. Respondent maintained that Mr. Green's interactions with him and his employees were rude and laced with profanity.

9. On November 24, 2020, Respondent removed Mr. Green's dogs' sutures, as Mr. Green kept his previously scheduled appointment. Respondent noted that he would email Mr. Green his dogs' records.

10. On December 11, 2020, the Board received a copy of Mr. Green's complaint that Ms. Boggess forwarded from the West Virginia Office of the Attorney General's Consumer Protection Division.

11. On or about January 21, 2021, Respondent received Mr. Green's complaint from the Board. The Board requested that Respondent file a response to the complaint. Thereafter, on January 25, 2021, the Board received Respondent's response in which he referenced the response he had provided Ms. Boggess and accompanying documentation.

12. The Board's Complaint Committee reviewed Mr. Green's complaint, Respondent's response thereto, and the medical records and other documents submitted therewith and the Board found probable cause to believe that Respondent failed to maintain complete patient medical records in that Respondent failed to list all anesthetics used in the individual patient's medical records, failed to adequately describe the surgery performed in the notes, and failed to describe the post-surgical care given to Puffin and Ziggy, and further, that Respondent failed to provide Puffin and Ziggy with a pre-surgical examination within twelve (12) hours prior to the administration of an anesthetic, and failed to note the results of the examination in the patient's medical record, in violation of W. Va. Code R. §§ 26-4-5.2.a and 26-4-5.8.b.

13. Upon recommendation of the Complaint Committee, and after reviewing the aforementioned complaint, response, and accompanying documents, the Board, by majority vote at its meeting on July 30, 2021, determined there was sufficient evidence to warrant further proceedings and that further action should be taken against Respondent.

CONCLUSIONS OF LAW

1. Respondent is a licensee of the Board, holding License No. 8430 and is therefore subject to the license requirements and disciplinary rules of the Board.

2. The Board is a state entity created and governed by W. Va. Code §§ 30-10-1 *et seq.*, and is empowered to regulate the practice of veterinary medicine in the State of West Virginia.

3. In order to carry out its regulatory duties, the Board may suspend, revoke, or otherwise discipline an individual's license to practice veterinary medicine under the authority granted to it by W. Va. Code §§ 30-10-5 and 30-10-19 and W. Va. Code R. §§ 26-1-8 and 26-2-1 to 26-2-6.

4. Respondent does not contest that the Board has probable cause to charge him with one or more violations of the Board's governing statutes and rules based upon its investigation and findings in this matter.

5. The conduct described in the above Findings of Fact would, if proven, constitute violations of W. Va. Code R. §§ 26-4-5.2.a and 26-4-5.8.b. Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Gary S. Brown, by signing this Consent Agreement and Order, acknowledge the following:

1. After having had the opportunity to consult with an attorney of my choice, I sign this Consent Agreement and Order voluntarily, freely, without compulsion or duress, and understand that my signature has legal consequences.

2. No person or entity has made any promise or given any inducement whatsoever to encourage me to make this settlement other than as set forth in this document.

3. I am aware that I may pursue this matter through appropriate administrative and/or court proceedings. I am aware of my legal rights regarding this matter, but I have chosen to waive those rights intelligently, knowingly, and voluntarily.

4. I waive any defenses including, but not limited to, laches, statute of limitations, and estoppel, that I may have otherwise claimed as a condition of this agreement.

5. I acknowledge that the execution of this document constitutes disciplinary action by the Board and is therefore considered to be public information.

The Respondent, Gary S. Brown, by affixing his signature hereto, agrees to the following Order:

ORDER

Based on the foregoing, the Board does hereby ORDER and DECREE as follows:

1. Respondent is hereby REPRIMANDED for his actions in this matter.
2. Within three (3) months from the date of entry of this Order, Respondent shall complete three (3) hours of Board-approved continuing education on the subject of medical record keeping.
3. Within three (3) months after taking the above-mentioned medical record keeping continuing education, Respondent shall submit to the Board for its review five (5) patient medical records completed and maintained by him.
4. Within three (3) months from the date of the entry of this Order, Respondent shall reimburse the Board the costs of this proceeding, including but not limited to, the administrative and legal expenses incurred by the Board in the investigation and disposition of this case.

5. Any failure to comply with all provisions in the Consent Agreement and Order may result in additional disciplinary action, up to and including the suspension or revocation of Respondent's license to practice veterinary medicine in the State of West Virginia.

6. This document is a public record as defined in W. Va. Code § 29B-1-2. The Board is bound by law and by this Agreement to report the results of all disciplinary actions, including this matter, for posting in the AAVSB Veterinary Practitioners Disciplinary Database and for posting on the Board's website.

7. This Consent Agreement and Order constitutes the entire agreement between the parties.

In recognition of this Consent Agreement and Order, we hereby affix our signatures.

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WEST VIRGINIA BOARD OF VETERINARY MEDICINE

By: John R. Wilson DVM
Dr. John R. Wilson, Board Chairman

Entered: 1-13-2022
Date

REVIEWED AND AGREED TO BY:

Gary S. Brown DVM
Gary S. Brown, DVM
Respondent

1/10/2022
Date

This day personally appeared before me, Gary S. Brown, whose name is signed to the foregoing document and who is known to me, having acknowledged before me that the statements in the foregoing document are complete, true and correct, to the best of his knowledge, information, and belief, and executed the document voluntarily on the date shown above.

Given under my hand and seal on this the 10th day of JANUARY, 2022.

My Commission expires: DECEMBER 31, 2022

Pamela Fleeman
Notary Public

