

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,

COMPLAINANT,

v.

CASE NOS. 0220A AND 0220B

KEVIN HENNESSY, DVM,
VETERINARIAN LICENSE NO. 8734,

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Veterinary Medicine (“Board”) and Kevin Hennessy, DVM (“Respondent”) for the purpose of agreeing to disciplinary action which shall be taken against Respondent in the above-referenced matters. As a means of compromise, the Board and Respondent hereby agree to resolve these matters 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 these matters.

WHEREAS, Respondent hereby waives the filing of a formal Statement of Charges and the parties mutually desire to settle these matters 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. 8734, and at all times relevant, practiced veterinary medicine at Tri-State Animal ER (“Tri-State”) in Ceredo, West Virginia.

2. On or about February 18, 2020, the Board received a written complaint and supporting documentation from Jo Ann Eagle (“Ms. Eagle”) regarding the veterinary care that her dog “Roxy” received from Respondent at Tri-State.¹

3. Ms. Eagle’s complaint states that Roxy was presented to Tri-State on January 29, 2020, with breathing problems and fatigue. Within minutes of arrival, Ms. Eagle was informed that Roxy was in an oxygen chamber and had congestive heart failure. Ms. Eagle alleges that Respondent “showed me X-Rays and the fluid around her heart, lungs and digestive system along with a collapsed trachea.” Ms. Eagle’s daughter then arrived at Tri-State, and Respondent “showed her the same X-Rays.” Ms. Eagle made the decision to leave Roxy at Tri-State for overnight care, but received a call at approximately 4:22 am on January 30, 2020, informing her that Roxy had gone into cardiac arrest and passed away.

4. Ms. Eagle continues in her complaint that, upon speaking with her regular veterinarian about Roxy’s care at Tri-State, she “was advised NO X-Rays were taken of my Roxy.”

¹ This complaint was designated by the Board as Case No. 0220A.

Ms. Eagle then contacted Tri-State to request the X-Rays, but “they could not find them. In researching they found X-Rays on another Roxy that had been there 2 hours earlier and these were the X-Rays they diagnosis my Roxy with!!!!” Ms. Eagle also writes in her complaint, “please notice on her chart that several times notes were marked out, stating WRONG CHART!!!!” Ms. Eagle claims that Respondent was negligent in his treatment of Roxy.

5. By letter to Respondent dated February 18, 2020, the Board transmitted a copy of Ms. Eagle’s complaint and requested that Respondent file a written response thereto within 30 days.

6. The Board received Respondent’s written response on or about March 18, 2020, which included certain of Roxy’s medical records. Respondent prefaced his response by stating that he was recovering from a “recent bout of stroke related amnesia with short term memory loss” and required assistance from his staff in responding. After recounting Roxy’s symptoms, diagnosis, and treatment, Respondent states, “Attempts of radiographs were unsuccessful as removing Roxy from oxygen resulted in dysonia and cyanosis. . . . Because of the disability to take radiographs of Roxy, I used radiographs from a dog with similar singalment [sic], signs and symtoms [sic] in an attempt to show Mrs. Eagle the severity of Roxy’s disease. Whether I was unclear in my intention to use the radiographs to illustrate what I perceived to be Roxy’s advanced state of congestive heart failure or Mrs. Eagle in her distraught state she misunderstood that these radiographs were not Roxy’s, I am not sure but there was certainly no attempt to deceive Mrs. Eagle.” Lastly, Respondent states, “at no time was quality of care ever compromised.”

7. On or about February 25, 2020, the Board received a written complaint and supporting documentation from Melissa Shepherd (“Ms. Shepherd”) regarding the veterinary care that her cat “Tiger” received from Respondent at Tri-State.²

8. Ms. Shepherd’s complaint states that Tiger had been diagnosed with congestive heart failure in October 2019 and was presented to Tri-State on the evening of January 11, 2020, as “his breathing seemed harder and more forced.” Following an initial exam and X-ray, Respondent met with Ms. Shepherd in an exam room, where a disagreement ensued as to Tiger’s proper weight and, according to Ms. Shepherd, Respondent accused her of lying about what Tiger’s cardiologist had recommended. Respondent and Ms. Shepherd then discussed Tiger’s “medication routine” and further treatment, with Respondent ultimately recommending that Tiger remain at Tri-State “all weekend.” Before leaving Tri-State, Ms. Shepherd signed paperwork including a list of medications that Tiger would be given.

9. Ms. Shepherd continues in her complaint that she received a call from Respondent early the following morning stating that she could pick up Tiger at noon, but that he needed “another dose of medicine.” After speaking with Respondent, Ms. Shepherd called Tiger’s cardiologist at Med Vet in Columbus, Ohio, to advise that Tiger was at Tri-State. After the cardiologist was able to speak with Respondent, she called Ms. Shepherd and reported that Respondent “was argumentative about Tiger’s weight” and that “the medicines Dr. Hennessy wanted to treat Tiger with were NOT medications they would use to treat an animal with heart disease.” Upon picking up Tiger at Tri-State, a technician informed Ms. Shepherd that Respondent “talked to Med Vet and they agreed they wanted Tiger on these medications.” When Ms. Shepherd

² This complaint was designated by the Board as Case No. 0220B.

questioned that statement, she was told, "Oh. Well maybe they thought about it and just changed their minds. They are already on your bill." Ms. Shepherd then requested and received a copy of her paperwork and a disc containing Tiger's X-rays.

10. Ms. Shepherd further reports in her complaint that she called Tri-State on three separate dates to confirm that Tiger's records had been sent to Med Vet and left voicemails to that effect. Her calls were not returned. Ms. Shepherd called a fourth time, on February 11, 2020, to request that Tiger's x-rays be emailed to Med Vet. It was not until February 15, 2020, that Med Vet confirmed having received Tiger's x-ray images. Before filing her complaint, Ms. Shepherd contacted Tiger's cardiologist again regarding the aforementioned medications, and the cardiologist confirmed she did not agree with Respondent or tell him to administer the medications.

11. By letter to Respondent dated February 25, 2020, the Board transmitted a copy of Ms. Shepherd's complaint and requested that Respondent file a written response thereto within 30 days.

12. The Board received Respondent's written response on or about March 27, 2020, which included certain of Tiger's medical records. After recounting Tiger's symptoms, diagnosis, and treatment, Respondent states, "I was able to consult with [the cardiologist] and discuss Tiger's situation and at the time she agreed with my treatment regimen. If she had advised me otherwise, I certainly would have deferred to her expertise [sic]." Respondent continued, "In synopsis, we were able to take Tiger, a cat in advanced congestive heart failure with a life threatening cardiac arrhythmia, and convert him to a cat with normal breathing ability befitting his condition and a regular heart rate with a sinus (ie normal heart) rhythm." Respondent ended his response by stating:

I will now address Mrs. Shepherd's complaints. It is obvious we got off on the wrong foot. I did not intend to offend Mrs. Shepherd and initially was unaware that

Tiger was being treated in the terminal stage of his disease. Instead, I approached his case as I would any other pet in a life threatening situation. I fully agree that Tiger wouldn't have survived the journey to Med Vet in Columbus, Ohio and I am convinced that if we had not taken the therapeutic measures that we did, Tiger would not have survived. I am not sure Mrs. Shepherd understands this.

As far as her trouble getting information referred to her regular veterinarian, I'm afraid I have no control over that.

13. The Board's Complaint Committee reviewed the complaints of Ms. Eagle and Ms. Shepherd, Respondent's responses thereto, and the medical records and other documents submitted therewith, and conducted additional investigation including interviewing witnesses. The Complaint Committee found probable cause to believe that Respondent is guilty of unprofessional conduct in his treatment and care of Roxy and Tiger and in responding to the aforementioned complaints, which conduct constitutes violations of W. Va. Code § 30-10-19(g)(3) and W. Va. Code R. §§ 26-1-8.1.e, 26-1-8.1.n, 26-4-3.10, 26-4-3.13, and 26-4-5.1.a-b.

14. Upon recommendation of the Complaint Committee, and after reviewing the aforementioned complaints, responses, and accompanying documents, the Board, by majority vote at its meeting on April 27, 2020, 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. 8734, 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. §§ 26-1-9 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 § 30-10-19 and W. Va. Code R. §§ 26-1-8, 26-4-3, and 26-4-5. Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Kevin Hennessy, 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, Kevin Hennessy, 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's license, License No. 8734, is hereby placed on PROBATION for a period of twelve (12) months beginning on the date of entry of this Order. During this period of probation, Respondent shall be subject to the following supervision requirements:

- a. Respondent's professional behavior and conduct shall be observed by his office manager on a daily basis;
- b. Respondent shall be visited by a Board-approved supervising veterinarian at least once per month, which supervisor shall meet with Respondent to inquire about his patient care and to review patient records of the supervisor's choosing;
- c. Respondent shall be responsible for any and all costs or fees charged by the Board-approved supervising veterinarian;
- d. Respondent shall be responsible for coordinating with the office manager to have him/her submit a monthly report to the Board; and
- e. Respondent shall be responsible for coordinating with the Board-approved supervising veterinarian to have him/her submit a report to the Board after each visit, including copies of patient records reviewed and verification of such review.

2. Within fourteen (14) days of the entry of this Order, and as a condition to his continuation in practice, Respondent must submit to a physical and mental examination by one or

more Board-approved health care providers, at his own expense, and be deemed fit to perform the necessary duties and responsibilities of a licensed veterinarian and to practice in compliance with the Board's governing statutes and rules. Should Respondent fail such examination, his license shall immediately be suspended until he is later examined and deemed fit to practice.

3. Within 90 days from the date of entry of this Order, Respondent shall complete three (3) hours of Board-approved continuing education on the subject of medical recordkeeping and then submit to the Board a certificate of completion or other documentary proof of successful completion. These three credit hours of continuing education will not count toward the continuing education requirement for license renewal.

4. Within six (6) months of completing the continuing education requirements set forth in the immediately preceding paragraph, and assuming Respondent has been deemed fit to practice and is practicing, Respondent shall submit to the Board for its review a total of five (5) patient medical records completed and maintained by him in the course of his practice.

5. Within six (6) months from the date of entry of this Order, Respondent shall complete three (3) hours of Board-approved continuing education on the subject of ethics and then submit to the Board a certificate of completion or other documentary proof of successful completion. These three credit hours of continuing education will not count toward the continuing education requirement for license renewal.

6. Within six (6) months from the date of 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.

7. Any failure to comply with all provisions in this *Consent Agreement and Order* shall result in the immediate suspension of Respondent's license for the remainder of the

probationary period and may lead to additional disciplinary action, up to and including the further suspension or revocation of Respondent's license to practice veterinary medicine in the State of West Virginia.

8. 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.

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

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

WEST VIRGINIA BOARD OF VETERINARY MEDICINE

By: John R. Wilson
Dr. John R. Wilson, Board Chairman
Entered: 7-10 2020
Date

REVIEWED AND AGREED TO BY:

[Signature]
Kevin Hennessy, DVM
Respondent
7/6/2020
Date

This day personally appeared before me, Kevin Hennessy, 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 6th day of July, 2020.

My Commission expires: 12/28/2020

Paula J. Ellis
Notary Public



PAULA J. ELLIS
Notary Public
State of Ohio
My Commission Expires Dec. 28, 2020