

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,**

COMPLAINANT,

v.

CASE NO. 1121A

**MATTHEW K. FAULKNER, DVM,
VETERINARIAN LICENSE NO. 27-2011,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Veterinary Medicine (“Board”) and Matthew K. Faulkner, 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. 27-2011, and at all times relevant, practiced veterinary medicine at the Fayette Veterinary Hospital in Fayetteville, West Virginia.

2. On or about November 9, 2021, the Board received a written complaint and supporting documentation from Charlee Anne Fox (“Ms. Fox”) regarding the veterinary care that her dog “Banks” received from Respondent at Fayette Veterinary Hospital.

3. Ms. Fox’s complaint states that veterinarians at Fayette Veterinary Hospital exhibited unprofessional conduct in the practice of veterinary medicine on Banks by: (1) failing to respond to concerns over the health of a patient; (2) failing to adequately discuss and advise the patient’s owner on the full risks of a new and serious medication although Fayette Veterinary Hospital was aware that the patient historically reacted strongly to medications; (3) failing to adequately monitor the health of a patient starting on a new and serious medication; (4) failing to deliver veterinary care in a competent manner by ignoring serious blood work results; (5) failing to discuss and advise the patient’s owner on serious blood work results; (6) failing to maintain complete medical records; (7) failing to humanely and timely address an emergency situation; and (8) failing to deliver humane care to a patient and client.

4. Ms. Fox asserts that Banks was seen on September 28, 2020 by Dr. Kathyne Bucks for his yearly check-up and vaccination update, at which time Ms. Fox learned that Banks had

developed ear infections and thus, was prescribed medication to treat the same, along with medication for allergies. Banks also received vaccinations for canine rabies, leptospirosis, and lyme disease. Ms. Fox states that Dr. Bucks also observed that Banks's nose had two small raw dots on it and instructed Ms. Fox to return with Banks if the dots did not go away.

5. Ms. Fox states because Banks's nose had not cleared, she brought Banks back to Fayetteville Veterinary Hospital for an appointment on October 26, 2020. Ms. Fox alleges that Dr. Bucks expressed concern that Banks may have a form of lupus or SLE, and that Dr. Bucks suggested both a punch biopsy and pre-surgery blood work. Ms. Fox agreed and the procedure was performed on Banks the same day. Ms. Fox maintains that she was informed that Banks did excellent throughout the procedure, and that she was instructed to return with Banks in ten (10) to fourteen (14) days if the one stitch he has as a result of the procedure had not fallen out on its own.

6. Ms. Fox asserts that on November 3, 2020, Dr. Bucks reported that the punch biopsy results indicated that Banks had pemphigus foliaceus. Ms. Fox states that she and Dr. Banks discussed treatment options for Banks, and that based on Banks's previous reactions to Prednisone, Dr. Bucks said she would look into alternatives to treat Banks. Dr. Banks suggested, and Ms. Fox agreed, that Banks be treated with Azathioprine, which Banks began taking on November 10, 2020.

7. Ms. Fox states that she brought Banks to Fayetteville Veterinary Hospital on December 10, 2020 for blood work and that they ignored several blood work abnormalities that clearly signaled Banks needed immediate, emergency care. Ms. Fox asserts by that time, Banks had taken twenty-nine (29) of the prescribed one hundred (100) Azathioprine pills. Banks was seen by Respondent, who informed Ms. Fox, after completion of Banks's blood work, that: (1) Banks had "elevated liver enzyme counts;" (2) Banks had "low white blood cell counts;" (3) she

should “stop the Azathioprine cold turkey;” and (4) she should “return in 6-8 weeks to re-check Banks’s labs.” Ms. Fox states that Respondent further advised her that Banks should not be permitted around other dogs, as he was at a high risk for infection, and that Banks should rest. Ms. Fox asserts that she questioned whether it was okay to stop the Azathioprine immediately, as she and Dr. Bucks had discussed tapering Banks off of it, and that Respondent advised that he was okay and also prescribed Banks an ointment for his nose.

8. Ms. Fox reports that between December 10, 2020 and December 14, 2020, while no longer taking Azathioprine and while using the ointment, Banks appeared very tired and lethargic, but that the condition with his nose was improving. Ms. Fox states that thereafter, in the evening hours of December 14, 2020 through the morning hours of December 15, 2020, Banks became sick and was demonstrating signs of stress and discomfort that presented as restlessness, panting, attempting to defecate without results, and stomach spasms. Ms. Fox reports that she spoke with Dr. Bucks in the early morning hours of December 15, 2020, and that she also sent an email to Dr. Bucks and Respondent at 6:11 a.m. on December 15, 2020, wherein she provided an update to Banks’s condition.

9. Ms. Fox states that she had to report to work, so she asked her boyfriend’s sister to bring Banks to Fayetteville Veterinary Hospital on the morning of December 15, 2020. Ms. Fox asserts that she received a call from Dr. Jennifer Norris late morning and was advised that Banks had a temperature of 105.6 degrees, that he was bruising extremely easily on various parts of his body, and that he was receiving fluids. Ms. Fox was informed that although Banks could remain for observation, he would be able to receive more treatments at Virginia Tech Animal Teaching Hospital (“Virginia Tech”), so Ms. Fox opted to bring Banks there for treatment.

10. Ms. Fox brought Banks to Virginia Tech that same day, where he was examined and Ms. Fox was advised that his condition was extremely serious and Banks was placed in the intensive care unit. Ms. Fox asserts that the results of the blood work Virginia Tech performed were very similar to those performed at Fayetteville Veterinary Hospital on December 10, 2020, that the blood work performed on December 10, 2020 revealed that Banks was in dire need of emergency care at that time which was not provided, and that Banks “suffered immensely as a result of this negligence.”

11. Ms. Fox explains the detailed medical care Banks received while a patient at Virginia Tech. Ms. Fox states that despite the aggressive treatment he was receiving, Banks’s condition continued to decline and that Banks passed away after two rounds of cardiac arrest. Ms. Fox maintains that Banks died from severe Azathioprine toxicity.

12. Ms. Fox states that she believes that charges she incurred at Virginia Tech were due to the negligence of Fayetteville Veterinary Hospital, and thus, she sent a demand letter on July 22, 2021 seeking \$3,575.09, which amounted to the total cost of Banks’s emergency treatment at Virginia Tech. At the end of the review process, Fayetteville Veterinary Hospital’s insurance company awarded Ms. Fox \$3,576.09. Ms. Fox states that in order to receive the above “settlement figure,” the insurance company required that she sign a general release form which, among other restrictions, prohibited Ms. Fox from filing a complaint with the Board. Ms. Fox refused to do so, based on the care Banks received, as she states that filing a complaint regarding the same with the Board is more important to her than the money.

13. By letter to Respondent dated November 10, 2021, the Board transmitted a copy of Ms. Fox’s complaint and requested that Respondent file a written response thereto within 30 days.

14. In his written response to the Board, Respondent expresses his sadness that Banks passed away, but maintains that he met the standard of care for veterinary practice in his treatment of Banks. Respondent states that Banks's reaction to Azathioprine was an unpredictably severe reaction, and Banks's case was the only case within Respondent's experience that the patient's bloodwork abnormalities and case outcome failed to improve after stopping the medication. Respondent provides scientific literature in support of his position, and states that medical notes in a patient's file are often brief, although acknowledges that "[t]his is certainly an areas that we could have improved upon in this case."

15. Respondent denies Ms. Fox's allegations set forth in her complaint that Fayetteville Veterinary Hospital failed to respond to concerns about Banks's health, failed to adequately discuss and advise Ms. Fox about the risk of the medications used, failed to adequately monitor Banks after starting him on Azathioprine, failed to maintain complete medical records, and failed to humanely and timely address an emergency situation and deliver such care to Banks. Respondent states that Banks presented as "completely normal" on his physical exam, and that no one could have predicted Banks's condition to worsen so dramatically and quickly after stopping taking Azathioprine.

16. The Board's Complaint Committee reviewed Ms. Fox's complaint, Respondent's response thereto, and the medical records submitted therewith and found probable cause to believe that Respondent failed to maintain complete patient medical records, as the records did not contain vital signs, no physical examination was noted in the records, no post-treatment instructions were provided, and no recommendation was made concerning observation of Banks, in violation of W. Va. Code § 30-10-19(g)(3) and W. Va. Code R. §§ 26-1-8.1.5, 26-4-5.2.a., and 26-4-5.6.e.

17. 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 January 6, 2022, 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. 27-2011, 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 § 30-10-19 and W. Va. Code R. §§ 26-1-8, 26-4-5.2.a, and 26-4-5.6.e. Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Matthew K. Faulkner, 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, Matthew K. Faulkner, 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 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 medical record keeping. These continuing education hours do not count toward the required eighteen (18) hours of continuing education.

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.

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

WEST VIRGINIA BOARD OF VETERINARY MEDICINE

By: 
Dr. John R. Wilson, Board Chairman

Entered: 4-20-2021
Date

REVIEWED AND AGREED TO BY:

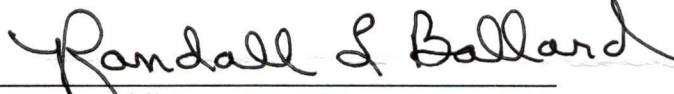

Matthew K. Faulkner, DVM
Respondent

4/14/21
Date

This day personally appeared before me, Matthew K. Faulkner, 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 her knowledge, information, and belief, and executed the document voluntarily on the date shown above.

Given under my hand and seal on this the 14th day of April, 2022.

My Commission expires: January 01, 2027


Notary Public

