

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

WEST VIRGINIA BOARD OF  
VETERINARY MEDICINE,

COMPLAINANT,

v.

CASE NO. 1221B

MARK MUSIC, DVM,  
VETERINARIAN LICENSE NO. 9724,

RESPONDENT.

**CONSENT AGREEMENT AND ORDER**

NOW COME the West Virginia Board of Veterinary Medicine (“Board”) and Mark Music, 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. 9724, and at all times relevant, practiced veterinary medicine at the Madison Animal Hospital ("Madison") in Madison, West Virginia.

2. On or about December 13, 2021, the Board received a written complaint from Dan Dean ("Mr. Dean") regarding the veterinary care that his dog "Angel" received from Respondent at Madison.

3. Mr. Dean's complaint states that on or about July 31, 2021, he took Angel to Kanawha Valley Veterinary Emergency Hospital ("KVVEH"), where she stayed from July 31, 2021 until August 2, 2021. Mr. Dean maintains that Angel was diagnosed with pancreatitis while at KVVEH and that he was instructed to bring her to her regular veterinarian, Respondent. According to Mr. Dean, KVVEH advised that Angel receive fluids and antibiotics, and that she receive a feeding tube if she did not start eating on her own.

4. Mr. Dean states that he brought Angel directly to Madison after picking her up at KVVEH, where he spoke with Respondent. Mr. Dean maintains that he informed Respondent what KVVEH advised as to Angel's care, and that Respondent agreed to follow those instructions.

5. Mr. Dean notes that on August 3, 2021, he went to visit Angel at Madison for approximately three hours and that he attempted to get her to eat, but that she refused and would only drink. Mr. Dean states that he spoke with Respondent about a feeding tube for Angel, and

that Respondent agreed that a feeding tube should be inserted that day. Mr. Dean further states that Angel was receiving heavy doses of pain medication.

6. Mr. Dean maintains that on August 4, 2021, he spoke with Respondent again about the feeding tube for Angel, and also requested that Respondent reduce Angel's doses of pain medication. Mr. Dean states that he returned to Madison on August 5, 2021 and observed that Angel had not been administered a feeding tube and that she was still receiving heavy doses of pain medication. Mr. Dean asserts that he again spoke with Respondent about these matters, but when he returned to visit Angel on August 6, 2021, Angel still did not have a feeding tube in place and her pain medication had not been reduced. Mr. Dean maintains that he spoke with Respondent about the feeding tube and pain medication once again on August 6, 2021. Mr. Dean reports that Respondent stated that he would insert the feeding tube for Angel on August 7, 2021 and that Respondent wanted Angel transferred to another veterinarian in Charleston.

7. Mr. Dean states that because Madison was closed on Saturday and Sunday, August 7, 2021 and August 8, 2021, he could not visit Angel, and that he was to return Monday, August 9, 2021 to transfer Angel to Charleston. Mr. Dean maintains that on August 7, 2021 at 9:30 p.m., he received a telephone call that Angel had passed away. Mr. Dean reports that Angel had gone without food for a total of nine days.

8. The Board received Respondent's written response to the complaint on January 14, 2022. Respondent maintains that he had treated Angel since she was seven months old, and although she was fairly healthy when she was younger, as she got older she became very obese and developed heart and liver disease due to her poor diet. Respondent states that Angel was diagnosed with cardiomegaly and hepatomegaly in January 2020, despite having normal bloodwork at the time. Respondent notes that in August 2020, Angel's bloodwork revealed

elevated liver enzymes, and she was placed on Denamarin and Amoxicillin, and that in March 2021, Angel was diagnosed with congestive heart failure and placed on Enalapril and Lasix. Respondent states that Angel was not brought back for follow up visits, despite Respondent advising that she return, and that the next time Respondent saw Angel was August 2, 2021.

9. Respondent provides in detail the care he provided Angel from August 2, 2021 through August 7, 2021, including the results of testing performed. Respondent notes that although Angel was initially very lethargic and appeared to be in pain, that she demonstrated improvement on August 5, 2021 and was able to keep food down. Respondent maintains that because Angel was not showing any additional signs of improvement on August 6, 2021, he advised Mr. Dean that she should be transferred to another veterinarian for an abdominal ultrasound, which would take place on Monday, August 9, 2021. Respondent notes that Angel passed away on Saturday, August 7, 2021.

10. In response to Mr. Dean's allegations, Respondent explains that Mr. Dean did not understand that Angel was not overly medicated, but rather, was lethargic due to her health conditions. Respondent further denied that Angel went without food for nine days, and noted that although he withheld food for a few days as he was observing Angel and attempting to treat her abdominal pain, eventually Respondent and Madison forced food and that Angel did not starve to death. Respondent maintains that he does not recall discussing a feeding tube for Angel with Mr. Dean, but he does recall that it was very difficult for Mr. Dean to understand how bad Angel's health was. Respondent asserts that if he could go back and re-treat Angel, he would have pushed harder to try to get Mr. Dean to permit him to perform an exploratory surgery on Angel earlier in the week or to refer her to another veterinarian earlier for an abdominal ultrasound.

11. The Board's Complaint Committee reviewed Mr. Dean's complaint and Respondent's response thereto, and found probable cause to believe that Respondent failed to maintain an adequate treatment sheet for a hospitalized pet, failed to record the time and dosage of the administration of drugs, failed to adequately document communication with the client, and failed to provide sufficient daily physical examination findings, 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 26-4-5.3.c.

12. 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 29, 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. 9724, 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(g)(3) and W. Va. Code R. §§ 26-1-8.1.5, 26-4-5.2.a, and 26-4-5.3.c. Such conduct is therefore grounds for disciplinary action.

**CONSENT OF LICENSEE**

I, Mark Music, 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, Mark Music, 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. Respondent shall attend the Board's continuing education seminar on the topic of medical record keeping to be held on September 23, 2022. The continuing education hours earned during the seminar 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: Keith B Berkeley, D.V.M.  
~~Dr. John R. Wilson, Board Chairman~~  
Dr. Keith B. Berkeley  
Entered: 7 Sept 2022  
Date

REVIEWED AND AGREED TO BY:

Mark Music DVM  
Mark Music, DVM  
Respondent  
8/26/22  
Date

This day personally appeared before me, Mark Music, 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 26 day of August, 2022.

My Commission expires: 1/4/2023  
[Signature]  
Notary Public

