

BEFORE THE WEST VIRGINIA BOARD OF VETERINARY MEDICINE

**WEST VIRGINIA BOARD OF
VETERINARY MEDICINE,**

COMPLAINANT,

v.

CASE No. 1223A

**KELLY PINKSTON, DVM,
VETERINARIAN LICENSE NO. 9528,**

RESPONDENT.

CONSENT AGREEMENT AND ORDER

NOW COME the West Virginia Board of Veterinary Medicine (“Board”) and Kelly Pinkston, 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 she 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. 9528, and at all times relevant, practiced veterinary medicine at the Help for Animals, Inc. (“Help for Animals”) in Barboursville, West Virginia.

2. On October 10, 2023, the Board received a written complaint from Teresa Pate (“Ms. Pate”) regarding the veterinary care that her cat “Gordon” received from Respondent at Help for Animals.

3. Ms. Pate’s complaint states that she scheduled an appointment with Help for Animals to have her cats, Gordon and Roscoe, neutered on July 13, 2023. Ms. Pate asserts that when she brought her cats in to Help for Animals that morning, she accompanied an employee who took the cats into a small room where Ms. Pate answered some questions and where the employee weighed the cats. Ms. Pate states that she then proceeded to the front desk where she paid for the services and left.

4. Ms. Pate maintains that she returned to Help for Animals that afternoon, sometime around 3:30 – 4:00 p.m., to pick up her cats. Ms. Pate states that a male employee, who introduced himself as a veterinarian, brought her to a small room in the back of the facility where she claims he stated: “Roscoe made it through the surgery just fine, but Gordon, on the other hand, wasn’t so lucky. I hit him with anesthesia, and he died.”

5. Ms. Pate asserts that she reviewed the paperwork Help for Animals provided her and she discovered that the cats' weights were reversed, and that Gordon, who was smaller, was recorded as weighing 9.65 pounds, whereas Roscoe, who was larger, was recorded as weighing 6.76 pounds. Ms. Pate states that when she called Help for Animals to inquire about what she had read, she spoke with "the vet that did the surgery," who informed her "yes, I did get the weights on the cats mixed up, I did make a mistake."

6. Additionally, Ms. Pate maintains that when she went to pick up her cats the afternoon of the surgery, she was informed that Gordon was administered anesthesia while still in his carrier. Yet, Ms. Pate states that she later received documentation from Help for Animals that indicated that Gordon was administered anesthesia outside his carrier, was placed back inside, and when someone returned to check on him after five minutes, he was not breathing and thus CPR was administered, which ultimately, was not successful.

7. By letter to Respondent dated December 6, 2023, the Board transmitted a copy of Ms. Pate's complaint and requested that Respondent file a written response thereto within 30 days.

8. The Board received Respondent's written response to the complaint, along with supporting documentation, on December 21, 2023. Respondent states, and the supporting documentation supports, that the surgery took place on July 11, 2023. Respondent maintains that both Roscoe and Gordon passed their examinations when brought in the morning of July 11, 2023, and that both were cleared for surgery. Respondent asserts:

Once cleared for surgery[,] pre op sedation is then pulled up and is checked again by an on staff Veterinarian. This process makes it highly unlikely that the incorrect dosage is administered. Gordon could have got Roscoe's collar but the 9lb cat would have still got the 9lb dose as they are [weighed] separately and recorded separately. If this was the case the owner would have known the cats were mislabeled when she was notified of Gordon passing and not Roscoe.

9. Respondent adds that when Gordon was removed from his carrier after sedation, it was discovered that he was not breathing and no longer had a heartbeat. Accordingly, Respondent states “[c]rash protocol was followed[.] Gordon was intubated with a size 4.0 mm endotracheal tube then [Respondent] administered 1mL of Dopram IV then [CPR] to no favorable outcome.”

10. Finally, Respondent states that the “male vet” was Help for Animals’ Clinic Director, Jerod Vannatter, who spoke with Ms. Pate upon her arrival to pick up Gordon and Roscoe the afternoon of the surgery. Respondent maintains that she attempted to contact Ms. Pate via her contact telephone number but was unsuccessful. Respondent asserts that Mr. Vannatter informed Ms. Pate that Gordon had passed away shortly after the pre operation sedation was administered, but Respondent questioned the accuracy of Ms. Pate’s allegations as to what Mr. Vannatter allegedly told her had happened.

11. Respondent also provided a memorandum from Mr. Vannatter in her response to the complaint. Mr. Vannatter acknowledges that he administered the anesthesia to Gordon, and after doing so, placed Gordon in his carrier in Help for Animals’ surgery room to be prepped for surgery. Mr. Vannatter confirms that shortly after being administered anesthesia, Gordon was discovered to have stopped breathing and to no longer have a heartbeat. Mr. Vannatter adds that the “crash protocols” given in an attempt to revive Gordon were unsuccessful, and that Gordon was pronounced deceased at that time. Mr. Vannatter denies Ms. Pate’s account of how he informed her that Gordon had passed, and states that instead, he informed her: “Good afternoon, Mrs. Pate, unfortunately I have some bad news about Gordon. He did pass away shortly after being administered his dose of pre operation sedative.” Finally, Mr. Vannatter denies that the cats’ weights were reversed.

12. The Board's Complaint Committee reviewed Ms. Pate's complaint, Respondent's response thereto, and the medical records and other documentation submitted therewith.

13. Upon recommendation of the Complaint Committee, the Board, by majority vote at its meeting on January 4, 2024, found probable cause to believe that Respondent failed to perform sufficient anesthesia monitoring and failed to perform proper resuscitation protocol, in violation of W. Va. Code § 30-10-19(g)(3) and W. Va. Code R. §§ 26-1-8.1.5., 26-4-5.1.b., and 26-4-5.8.a. Accordingly, the Board 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. 9528, 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 her 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, 26-4-5.1.b, and 26-4-5.8.a. Such conduct is therefore grounds for disciplinary action.

CONSENT OF LICENSEE

I, Kelly Pinkston, 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, Kelly Pinkston, by affixing her 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 her 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 anesthesia monitoring. These continuing education hours do not count toward the required eighteen (18)

hours of continuing education.

3. 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 cardiopulmonary resuscitation (“CPR”).

4. Within six (6) 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 Berkeley D.V.M.
Dr. Keith Berkeley, Board Chairman

Entered: 19 Aug. 2024
Date

REVIEWED AND AGREED TO BY:

[Signature]
Kelly Pinkston, DVM
Respondent

8-7-24
Date

This day personally appeared before me, Kelly Pinkston, 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 7 day of August, 2024.

My Commission expires: 6/7/26

[Signature]
Notary Public

